

# Positive-Cooperative Justice

A Practical Alternative to Fighting Fire with Fire

## 1 Author Note

This blog comprises a series of chapters from a manuscript written by the author entitled Positive-Cooperative Justice: A Practical Alternative to Fighting Fire with Fire, completed in November 2020.

At present, the author does not expect to have ongoing access to the means to edit this blog in any digital format for more than perhaps a few months, and in any event, is unable to transmit revisions of this document by any means other than paper or a subscriber based plain text messaging system for approved contacts.

All correspondence with the author should be through the Comment section of this blog.

### Statement of Copyright

The document presented here is licensed under a Creative Commons Attribution Non-Commercial Share Alike 4.0 International License, except where otherwise noted.

## 2 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 They aim to present a fully fleshed out concept for the replacement of our outdated, ineffective and counterproductive criminal justice system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 poling 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.

### 3 Preamble

The questions may arise in initial approach to this document, why a document that proposes a complete alternative to the exiting 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.

## 4 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.

## 5 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 as 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.

## 6 Origins of American Criminal Justice: Fighting Fire with Fire

The ideas of crime and punishment seen in operation in America today are not universal nor are they as self-evident as one might believe. However, the public discourse has, in recent decades especially, generally taken these ideas for granted. It is paramount to

understand that our contemporary conceptual framework around crime actually has a relatively brief history (centuries, not millennia), which is connected to a particular group of people whose views we have inherited (crime, 2014).<sup>1</sup> Furthermore, these ideas have evolved considerably (Davis, 1998). However, they have not necessarily evolved in ways

---

<sup>1</sup> To clarify, crime, and the corresponding criminal justice model of which it is a central component, is one of several fundamentally different ways of looking at or dealing with problematic human behaviors. This model grew up around something called the English Common Law, which is a distinct framework from other systems which have been used by different societies to deal with people's mistreatment of one another or acts against the common good. Other models include civil law (which is a separate body in this country, but which in others serves the same roles for which we have the criminal system), religious, tribal, and various other state based systems (for example, Germanic or Chinese), unique to their given political or traditional frameworks. In religions we see various codes of conduct and in some cases entire legal systems which have arisen from these. The distinguishing feature of criminal law is that a crime is an infraction against the state (or in its original context the crown). This makes criminal law very different in character than civil law which deals with the grievances between the involved parties directly. Criminal law is closer in construction to religious law wherein sin is an infraction is against God, but in criminal law, God has been replaced with the state. Civil law of course still allows for infractions against the state, but they would be more direct, such as espionage, treason, or even destruction of public property. The word crime itself, while having a Latinate root does not appear in the historical record until the 14th century (Miriam-Webster's Dictionary and Thesaurus).

Criminal law on the whole, while it may offer some advantages in terms of the use of case law to establish precedents in interpretation of the law, seems to lend itself to more punitive outcomes and less restorative ones than its civil counterpart, which is what takes its place in most European countries. One of the reasons is perhaps the diminished role of the person who was harmed in the decision making process surrounding what should be done with the person who is found guilty. It has been found for example that in places where Restorative Justice (which is essentially a modified civil mediation process) has been employed, even after the most extreme of atrocities, such as the Rwanda Genocide, what those who were the targets of violence want from those who did the violence is often a lot less centered on punishment than what is seen when a third party makes the decision (FeldmanHall & Sokol-Hessner, 2015).

None of this is to say that there is no utility in recognizing the things we classify as criminal as having some ill effect on the social order. In fact, I propose that, as is the case in Restorative Justice circles, the community itself should be represented alongside any harmed parties, and responsible parties. There are likely to be in any complex situation various impacts felt in various degrees in various directions whenever some serious harms have been done. We should be aiming to look at the whole picture in every case.

that are positively adaptive for the people they affect. Rather, they have evolved for the benefit of their own survival as ideas.

As schoolchildren many of us were taught that the ideas of criminal law we employ came down to us from England, and that we made some big changes such as the presumed innocence of the accused, which the state must prove guilty. While, in contrast, British law required the accused to prove her or his innocence.<sup>2</sup>

The legal system in the newly born U.S.A. was, for a time, advanced, even radical when compared to its British progenitor.<sup>3</sup> Its initial trajectory was toward a more reformatory or rehabilitative oriented model. This however did not hold steady moving forward. The initial steps toward reform were eroded and even turned back toward the punitive in various waves. The first significant roll-back was in response to the abolition of slavery, southern states, post-reconstruction, began during what is known as the Jim Crow era,<sup>4</sup> to incarcerate black men at ever-increasing rates, reduce already poor living conditions within institutions and to initiate large-scale use of prisoners as a source of slave labor (leveraging the wiggle room left in the constitutional amendment abolishing slavery which

---

<sup>2</sup> I have attempted to vary the use of gendered pronouns in this document using the following considerations: 1) wherein the choice seems arbitrary, I have tried to alternate between uses of the male and female pronoun. At present, due to time constraints I will not be able to make sure this is a perfect 50/50 match, but I intend to do that in the future; 2) wherein the choice seems loaded with presumptions, i.e. those areas where our cultural conditioning tends toward assigning this category or that of person to male or female gender respectively, I have attempted to reverse these for the most part (again, I have probably missed a bunch of these which I intend to fix in future versions as time allows).

<sup>3</sup> Although, this is meant to say strictly in relative terms, it was always harsh.

<sup>4</sup> The period wherein segregation laws were imposed and harsh penalties were inflicted on African Americans for a wide range of petty crimes and social ordinances.

allowed for its continued use) (Perkinson, 2010). Later, as the politics within the organization which sets prison standards in this country, currently known as the American Corrections Association (ACA), shifted, the organization moved from being an advocate for rehabilitation, reasonable housing standards and humane treatment for inmates toward the opposite on all fronts (Perkinson, 2010). More recently, along with "tough on crime" era legislative initiatives throughout the 1980s and '90s, virtually all vestiges of the reform model were uprooted (Alexander, 20xx).

Our British precursor's system at the time of the founding of the U.S.A. was at the time, on the whole, punitive, and incredibly harsh. For example, it called for a number of petty crimes to cease being punishable by tortuously inflicted death, mutilation, or exiles,<sup>5</sup> all of which were common practices under monarchies (Pinker, 2013). Yet today, the U.K. sends a far smaller proportion of its people to jail or prison for less time than the U.S. does (World Almanac, 2016),<sup>6</sup> and it abolished capital punishment for most crimes in the 1960s,

---

<sup>5</sup> Note here that prior to our independence, exile to the U.S. was a punishment frequently employed by the British courts.

<sup>6</sup> It should be appreciated here, that the current criminal justice system represents something which has already been doubled down upon multiple times under the pretext of so-called "tough on crime" legislation. The result, as has been widely reported, is that the U.S., which represents itself to the world and in its own imagination as a beacon of freedom, has the largest prison population on the planet. More to the point, we have the largest percentage of our people in prison. According to the 2019 World Almanac, we had 2,168,600 people in prison in 2015, or 872 people per 100,000, second after us was El Salvador at 798.63 per 100k, followed by Trinidad and Tabago, Grenada, Panama and Russia. The remainder of the list includes various politically unstable, impoverished countries, or those ruled by military dictatorships. China was not on this list, which was the top 25; however, in other places it has been said that they do rank among the top three in terms of raw numbers of people in prison (Prison, 2014), but still far below the U.S., at 1.5 million prisoners with a population 1.3 billion at the time of the cited Britannica article, making their incarceration rate 115 per 100k, or about 13% that of our own. None of the established western democracies made the list, and as will be discussed below, many of these employ programs more compatible with the ideas of PCJ. It is also worth noting here that as much as 29% of the US adult population has a criminal record, and 24% have an FBI file for having some arrest for a felony or serious misdemeanor (Petersilia, 2003).

and totally in 1998, along with the rest of Western Europe and most other developed democracies (Capital Punishment, 2014).

A troubling pattern emerges when comparing former European colonies to the rest of the world. We tend to be more vindictive than our parent countries, perhaps due to long-lasting effects of the violent nature (which, as we will see, is transmitted socially, between generations, as a sort of disease of ideas rather than some in-born trait) of colonialism; this is especially true of the mainly British former chattel slavery countries (Norris, 1997).<sup>7</sup>

British law, the punitive kind we know today and have tried to adapt to our country's democratic goals, came into effect in England by the time of the Tudors.<sup>8</sup> It is in their worldview that we begin to see interpersonal harms treated as crimes against the public order (Norris, 1997), rather than strictly interpersonal matters.

Throughout the majority of mainland Europe, in contrast to the split between civil and criminal law employed under British systems and in keeping with Roman origins of European legal systems, all law is civil law (Encyclopaedia Britannica, 2007). While the Romans were no champions of human rights, European law, as it evolved over the ages, came to focus on achieving balance between the concerns of parties affected by what we

---

<sup>7</sup> While it is beyond the scope of this paper, it is important here to recognize that the American form of slavery (including that which extended into the Caribbean), which has been designated here and elsewhere throughout the literature as chattel slavery, was a particular variety of slavery which was especially brutal and indifferent to human rights (Slavery, 2014), above and beyond the limits which many historically slave-owning societies allowed.

<sup>8</sup> An English royal dynasty of Welsh origin, which gave five sovereigns to England: Henry VII (reigned 1485-1509); his son, Henry VIII (1509-47); followed by Henry VIII's three children, Edward VI (1547-53), Mary 1 (1553-58), and Elizabeth 1 (1558-1603) (Tudor, House of, 2014).

would label as crimes (which we in the U.S. define as offences against the state, rather than conflicts between various people or groups, thus criminal cases with names such as *State of Delaware v. Smith*). This is part of the reason that European justice systems tend to focus on things such as reparations, community service and so-called rehabilitation.<sup>9</sup> The German legal system—which is used by Germany and a handful of other countries—does have a criminal component, not unlike the British-American system, as it shares some common historical roots, but is generally more akin to other European systems in how it remedies the aftermath of crimes. In fact, the British have become more European in their sentencing, and Germanic countries are among the most rehabilitation oriented (*Lessons From European Prisons*, 2013). Perhaps the biggest difference between European and Post-Colonial British systems, outside of the underlying assumptions of their theories of criminality, is their willingness to consider evidence in terms of what actually works to

---

<sup>9</sup> This term, rehabilitation, suggest a return to some better state, prior to the taking of some wrong turn in life. In fact, what is needed is, in many cases, more fundamental. Those of us who have caused harm more often need nurturance of and introduction to things which, up to the point of introduction, have been absent from our lives. Rehabilitation is the wrong word to describe the education, therapy and access to opportunities which are the things that most of us need. Note that Miriam Webster's in fact does not support a definition for rehabilitation which matches the way it is used in relation to the criminal justice system; rather, it defines this word as follows:

[ML *rehabilitatus*, pp. of *rehabilitare*, fr. L *re-* + LL *habilitare* to *habilitate*] (ca. 1581)

1 a: to restore to a former capacity: reinstate; b: to restore to good repute: reestablish the good name of

2 a : to restore to a former state (as of efficiency, good management, or solvency), e.g. slum areas; b: to restore or bring to a condition of health or useful and constructive activity.

Reform is a word that used to be used—it's more accurate for what is being sought in the rehabilitation discussion—but at some point it took on negative associations, as it was applied to particularly punitive child reformatory institutions.

Socialization, as in the definition provided by Webster's—to make social, esp. to fit or train for a social environment or treatment—would be more a appropriate term for what is being discussed in the various contexts discussed relevant to the subjects of this paper.



reduce crime and address the needs of those who have been harmed. On the other hand, our system and ones like it, is hooked on ideas that do not pan out when they are tested. Ideas which do little to make our communities safer or relieve those who have been harmed.

America is where the ideas of prisons centering primarily on prescribed periods of confinement to remedy offences were invented. Prior to the 1800s, we mostly used either corporal (bodily) punishments, or capital punishment (death). Debtors' prisons and work camps prescribed hard labor for restitution. Prisons emerged as what was expected to be more humane alternatives to these (Encyclopaedia Britannica, 2007). Nevertheless, they maintained the popular assumption that punishment is the ideal response to some number of those things deemed unacceptable by the State. This position however is remarkably inconsistent when one considers that the list of offenses deemed criminal and therefore worthy of punishment does not include many of the kinds of harms one might cause another person or group of people. Such offences might for example include homicides that take on the label wrongful death under civil law, or forms of financial harm that do not earn the label larceny, which are still handled under civil law and call for restitution or remedies other than punishment.

The modern U.S. style prison, or penitentiary as it is still called in some states, is largely modeled after the ideas of some well-meaning, reform-minded members of the Society of Friends (a.k.a. Quakers) (Pennsylvania system, 2014). In 1829, at Eastern State Penitentiary in Philadelphia (Prison, 2014), they set up an institution with nothing but solitary confinement cells, modeled after the cells in which Christian monks spent large portions of their time praying and meditating. Prisoners had little to no human contact.

Their meals were slid quietly under their doors. A significant amount of these prisoners suffered lasting psychological damage, even after only brief exposure to these conditions (Zinn, 1998).

The belief which led the Quakers to conduct this experiment was that a person forced more or less to adopt the life of a monk, living in isolation in a cell (the same name given to a monk's quarters), would reflect on the error of his ways and turn to God, or at least somehow become penitent, thus the name, penitentiary, or place of penitence.<sup>10</sup> This belief was, within a few years, realized to be mostly in error. Some small number did appear to take to the path the reformers had had hoped for. However, what happened in a significant portion of the cases was that the prisoners became unable to cope with the requirements of unsupervised day to day living and typical social situations,<sup>11</sup> and upon

---

<sup>10</sup> It is unclear that the Quaker reformers believed that their penitentiary model would or should inflict punishment; rather that solitude would generate introspection, as it is professed to do for the monk. Unfortunately, this view did not account for the fact that monks self-select solitude, and undergo substantial training and practice before diving into it (Monasticism, 2014).

<sup>11</sup> The Quakers ideas were not entirely misguided. One thing they perhaps did have right was the belief that those who are caught up in the middle of destructive behavioral patterns in close quarters with one another can, and often do bring out the worst in one another, and tend to reinforce destructive ideas, or worse, conspire to do more crimes together and educate one another in more effective strategies for causing such harms or avoiding detection. So, while there may be some psychological benefit in allowing the incarcerated to socialize with one another, it would be much wiser to create situations wherein their social interactions are more varied and largely among more functional members of communities who are able to live satisfying lives without causing harms. To this end, some institutions and prevention programs in this day and age offer mentoring situations, but a long term (longitudinal) study out of Harvard University (the Cambridge-Somerville Youth Study), which began in the 1930s and continues to this day, has found conclusively that these approaches are insufficient, and even counter-productive, toward the end of teaching good life skills and to the points of discouraging destructive behaviors, as the recipient of mentoring becomes reliant upon a mentor for advice and whenever that connection is broken can tend to lose the bearing of his moral compass. Conversely, though anecdotally, the Vietnamese Buddhist monk Thich Nhat Hanh speaks of a case wherein a very destructive youth was sent to live at his mendicant community, Plum Village in France, and was completely

release, not only did not act any less destructively, but in many cases were more destructive than before incarceration. This unfortunate experiment, in scientific terminology, proved to be a false hypothesis (Scientific Hypothesis, 2014). Nonetheless, while the reformers themselves realized the error and abandoned the project, this method, or variously modified versions of it, became a standard that proved popular with lawmakers throughout the U.S. and Europe. This was not because it worked, but because it appealed to public moods.<sup>12</sup>

The Quakers also believed that meaningful labor had some rehabilitative effect. This, when generalized to meaningful work or other activities which contribute to some good, does seem to hold (Frankl, 1983 edition). Also the idea, that some amount of time in quiet

---

turned around within a single summer vacation in a way that persisted upon her return to her home and throughout the following years. Beyond this isolated example, the preponderance of sociological research shows that being surrounded by so-called good influences and living in what we would call a middle-class environment, rich with positive stimuli, produces people who are not destructive and can resolve the destructive behaviors of those who have been previously immersed in the kinds of social and environmental situation common both to poverty and prisons. In brief, a buoy of hope in a rough water is not as functional toward providing stability as is a patch of dry land.

<sup>12</sup> It is unclear however that public moods in the case of this and various other important social matters are reflective of anything other than the fact of bad or sensationalistic journalism which has led to widespread misperception of the facts surrounding the justice system. The reader will observe that the majority of contemporary news stories surrounding the criminal justice system are the daily reports of specific crimes or trial proceedings. The focus tends to be centered on the outrage and emotions evoked by the story of what happened (as is true in court proceedings), and rarely on what might best be done to remedy such situations or prevent them. A particularly disturbing outcome of this sort of coverage is that while in significant and demonstrable ways, crime rates have plummeted over the course of human history and continued to decline throughout the last several decades in most areas around the globe (they have risen in pockets, which is where news coverage tends to focus), the average person is under the impression that crime rates are on the rise and that doom lurks around every corner (The Violence Paradox, 2019).

solitude (although self-selected, not imposed) can have the effect of allowing one the opportunity to think introspectively in constructive ways, does have merit.

The perhaps correct aspects of the Pennsylvania system have been all but abandoned by the criminal justice model. On the other hand, many of the most destructive and deleterious of aspects of the Pennsylvania system have preserved, here and in other countries. We still have cells in most prisons, though most of these have become two-person (which leads to a lot of conflict and violence among those forced to share tight living quarters, often unsupervised for hours at a time, which are also bathrooms).<sup>13</sup> We—once again—put some number of people in isolation cells, sometimes for decades, with little to no human interaction (this practice had been banned in the U.S. between the late 1800s and 1970s, and remains banned in most developed nations (Special Report on the Use of Solitary Confinement, 2018). And, we still have a large pool of state officials who insist upon the ideas of forced penitence through social isolation and fear of punishment, in spite of a large body of evidence which proves such ideas to be faulty.

---

<sup>13</sup> Many prisons have switched over to dormitory style housing in which a larger number of inmates (anywhere from 3 to upwards of 100) are housed in a large room with bunk beds. This situation also leads to a lot of conflict among inmates forced to live in open quarters with one another, including privacy issues and violent confrontations over personal space and use of shared space and resources, for example how cleaning responsibilities should be handled, who gets to sit at a given table, what television channel is watched at a given time, shower usage, toilet usage, telephone usage, usage of areas for exercise, study, game play, and so forth. The obvious solution is that those who must be confined should have private quarters and separate private bathroom facilities, and that shared spaces should be accessible at all times and should be staffed—with individuals who are there to help and to resolve conflicts, not to dole out punishments, and establish or contribute to an institutional pecking order.

This experiment, even if it was never quite intended to be an experiment, was nonetheless, perhaps the most scientific thing that one will encounter in research relative to the U.S. criminal justice system evaluating its own practices for their effects.

## 7 Crime Versus Destructive, Dysfunctional, or Anti-Social Behavior

Currently our universities teach (broadly speaking) two—oftentimes sharply different—ways of looking at destructive human behaviors. One of these centers on the behavioral sciences and what can be shown empirically, in other words, through observations of *evidence* and experience, the area of specialization in looking at inter-personal harms and their causes is called criminology (Criminology, 2014).<sup>14</sup> The other way of looking at these

---

<sup>14</sup> A note on language: this term, *criminology*, along with the majority of the jargon used in the current literature begs for thoughtful re-evaluation. While there is some utility to proper application of emotionally charged words, it has been observed that there is a phenomenon within human cultures which sociologists identify as *labeling* (Henslin, 2014). James M. Henslin, the author of a standard college sociology textbook challenges the reader:

*Suppose for one undesirable moment that people think of you as a "whore," a "pervert," or a "cheat" (pick one). What power such a reputation would have—over both how others would see you and how you would see yourself. How about if you became known as "very intelligent," "truthful in everything," or honest to the core" (choose one)? You can see how this type of reputation would give people different expectations of your character and behavior—and how the label would also shape the way you see yourself.*

Both within the law and the scientific literature there are many terms which carry connotations in the wider culture and which may be detrimental toward any goal of addressing the problems they describe. Most obviously, the loaded terminology has come to include terms such as *offender*, or *deviant*, which while might be used without regard to connotation in science (Henslin, 2014) to others carry strong negative connotations. Less obviously this jargon contains the word *victim*, which was originally used to refer to "*a living being sacrificed to a deity or in the performance of a religious rite*" (Miriam-Webster's Dictionary and Thesaurus). While it has come to mean also *one that is acted on and usu. adversely affected by a force or agent* <the schools are ~s of the social system>: as a (1): *one that is injured, destroyed, or sacrificed under any of various conditions* <a ~ of cancer> <a ~ of the auto crash> <a murder ~> (2): *one that is subjected to oppression, hardship, or mistreatment* <a frequent ~ of political attacks> b: *one that is tricked or duped* <a con man's ~>, and these uses are how it appears in the

---

context of crime, there are suggestions in sociological research that the original meaning still effects the role the victim plays in our cultural narrative.

Sociological literature is rife with illustrations of how much of the perpetuation of current crime-problem is based on underlying human needs to feel good about oneself by comparison to the misfortunes or evils of others. In short, victims are *still* used (albeit subconsciously) as sacrifices for the sins of the community and criminals are now filling the role of villains which are used as points of contrast for how good the rest of us behave. In the news, they are used as negative examples, what to avoid, how not to be, and also what to be angry about and rally around or against respectively. The functionalist school of sociology goes so far as to say that crime is an essential element of our underlying modern social fabric (Henslin, 2014). Our (essentially immature) tendencies as people are to rely on comparisons between ourselves- in both fortunes and qualities- to those of others, who we see as either *more* or *less* fortunate, or qualitatively *better* or *worse* people than ourselves. When somebody is harmed, if they are not particularly close to us, we count our blessings, or express our outrage-- or both. Unless, we feel that that person deserves said harm, in which case we might variously breathe a sigh of relief, or even revel in that person's misfortune. When somebody does harm--other than the kinds we might engage in- we feel morally superior; or, when they do reflect things we engage in, we might become defensive, perhaps to the point of feeling compelled to deflect attention to our own similar transgressions.

This kind of language is intertwined with our predispositions as a society to encourage us to cast victims and criminals into their various supporting roles in our personal narratives. While there is utility in identifying in sympathetic terms those who have been the targets of violence, or calling for example murder murder or rape rape, there is a difference in how one might react emotionally to hearing the statement "Shirley killed Maxine" and "Shirley murdered Maxine". The first is (maybe) a statement of fact. The second is telling us how to think about what happened without providing any facts and could be used by a person who wanted you to think of Shirley in a certain way even if there were circumstances which strongly suggested self-defense. Such a sentence could be further made problematic by some relatively minor twists, consider for example "Shirley is a murder. Maxine was her victim". This could really set up some strong preconceptions about the kind of person Shirley is and the level of sympathy we should feel for Maxine, we have already implied, Maxine was an innocent. Shirley is beginning to sound pretty malevolent by now.

In an interesting sidenote, as I write this, the headlines are saturated with warnings about the Corona virus pandemic. In apparent direct response to the health scare, sales for Corona beer (which is no way related to the Corona virus) have dropped significantly. Unfortunately, the words we hear, affect how we think, we just are not very good at being objective. Not even those among us whose job it is to be objective. For example, it has been shown that judges when given hypothetical cases to apply sentences to, if they are given a six-sided die and instructed to roll that die prior to deciding what sentence to give, the number on the die actually effects the number they believe is fair to give for a sentence (Kahneman, 2011). Higher numbers on the die result in higher fair sentence choices, lower numbers result in lower ones. Also, it has been shown that judges are more lenient earlier in the day than later, and that generally, they lose patience (so called decision fatigue) with having to sift

---

through facts as the number of facts increase. While these latter facts are not directly related to labeling, one can appreciate the connections. If something as simple as seeing a number can throw off a sophisticated decision, and so many other things play into deteriorating our decision-making processes, in the area of life altering decisions, the kinds made in courts every day, shouldn't we be a little bit more careful about how we present things, and more importantly, how we present people? People are complicated. Labels are all too often simplistic to the extreme and can cause many of us to overlook important things about the people they define in one dimensional terms, or in the case of crimes, permanently by the single worst thing they ever did (or were ever accused of doing).

While there is perhaps some danger in getting bogged down in arguments about semantics, or political correctness, in light of the overwhelming body of evidence surrounding the effects of word choices in psychological, neuropsychological and sociological literature on things like decision making and how people treat each other, I would be remiss in failing to call attention to the language of criminal justice and the suggestion that any alternative model try to use language which is more thoughtful of effects, especially as it relates to making decisions about how to respond to the situation wherein this person or that has sexually violated or killed, or maimed, or damaged the property of that person or this, and how either of the parties should be treated in moving forward.

The language I have chosen to try to emulate throughout this paper for the most part is that of Restorative Justice, which uses terms such as harm, harmed party, and so forth. A good friend of mine who is an attorney also likes the idea of just simply using the person's name and dispensing with labels such as the defendant wherever possible. I do also in this paper still use the criminal system language here and there as to otherwise seems at times awkward, by virtue of the fact that it is so baked into our current lexicon. That doesn't mean we shouldn't question it and think about alternatives, especially if there is the possibility that our language effects our ability to make good decisions. If for example I told you, "here try this ice cream, it tastes like vomit", you probably wouldn't want to try it. It might be however that I lied, and that it was the best ice cream I've ever tasted, nonetheless, my choice of words has soured the deal.

We do need a balance, as George Carlin pointed out, some element of political correctness can be to soften that which is hard to look at. We did go from, as he pointed out "shell shock" to "post-traumatic stress disorder", which is a mouthful, and lacks the power of the original. The point I make here is not that we should soften the language around violence to minimize the role of the person who inflicts it, but that words which describe bad situation should be plain enough that they don't color what kind of outcome we're looking for before we've been able to really digest the facts of the given situation.

The term criminology, while it includes the harms we call crime generally, implies also that it is the study of some kind of category of person, some type, distinct from those of us we count as *good people*. For PCJ, we need terms that specify *only* the behaviors, or activities which we seek to eliminate, *not* which *combine* these with the people who engage in them, as qualities of their beings. Otherwise, we tend to ignore the inherent tendencies built into the lumping of these two together which in ways which make reaching for solutions aimed at elimination of both the problem and the problem maker as a unit, i.e. those which are conducive to hating the proverbial sin, not the sinner. *People* cause harms. We call (some) of these harms crimes

things currently taught in our universities is something called *criminal justice*, which is more properly understood—on the whole—as pseudo-science rather than science, in that much of it continues to revolve largely around empirically unsound non-evidence-based adherence to *hypotheses* (typically mislabeled as *theories*)<sup>15</sup> such as *deterrence* and *punishment*, as means of remedy for destructive impulses (Davis, 1998), (Criminal justice, 2014 ). While criminal justice does look to statistical data in suggesting that states adopt more rehabilitation-oriented schemes of criminal justice, it remains in a sort of limbo between both scientific and anti-scientific sentiments of various schools of thought about what crime<sup>16</sup> is and how it *should* be addressed. Much of what is being taught in this field, is just not worthy of academic endorsement.

Social scientists, experimental psychologist and even economists have conducted numerous experiments that evaluate the ideas which criminal justice insists upon.

---

and in and of itself, that term is much more emotionally loaded than what is called for in terms of problem solving. We need to identify the people that cause serious harms as people, not some kind of aberration outside of humanity. Elsewise, we should replace the word "people" with "criminals" altogether, as we all have probably broken some law at some point. We need to identify the specific instances of serious harms as individually identifiable problems, with varying underlying causes and potential solutions. Criminology could, just as accurately and to less stigmatizing and obfuscating effect be called something like destructive behaviors research, or dysfunctionology, if we are to insist upon a single categorical word. In short, we need to reframe this area of research as one which looks at how to eliminate or diminish the behaviors, not the persons who act them out.

<sup>15</sup> **hy·poth·e·sis** (ca. 1656) 1 a : an assumption or concession made for the sake of argument b : an interpretation of a practical situation or condition taken as the ground for action; 2 : a tentative assumption made in order to draw out and test its logical or empirical consequences. **the·o·ry** (1592) 1 : the analysis of a set of facts in their relation to one another (Miriam-Webster's Dictionary and Thesaurus).

<sup>16</sup> Though one contention put forward in this paper is that words such as *crime* are not well suited to addressing the problems they describe, I will occasionally use at least that particular word in certain contexts throughout the paper for the sake of clarity.



Experimenters have demonstrated, for example that punishment, rather than deterring bad behaviors, encourages the target of the punishment to become more sneaky about how they do the things which are meant to be discouraged, and it also makes the recipient of the punishment resentful (Citation information unavailable) [note: there was an article on this in Scientific American or Scientific American Mind within the past five years]. For that matter, the practice of scolding or chiding individuals for poor performance even has been shown to have no positive impact on future performance (Kahneman, 2011). Simply put, yelling at somebody does not improve that person's future behavior. Experimenters have also shown that all forms of long-term social isolation or exclusion and even immersion with others who have themselves been steeped in impoverished environments<sup>17</sup> lead to socially destructive behaviors, in both humans and

---

<sup>17</sup> Economic poverty is perhaps too narrow a way of thinking of poverty in the context of harms. Various other forms of poverty come to mind that could play a significant role in this arena. It is possible for example to grow up in a wealthy but abusive or neglectful household. In this light, a broader definition for poverty may be called for, one that includes the possibilities of being impoverished in for example compassion or empathy. Similarly, there could be a poverty of education, which leads to destructive behaviors. It is interesting to observe in this light, that research conducted by the Rand Corporation in the 1970s showed specifically that Liberal Arts college education (versus other sorts of education) is both a good predictor among the population at large for an immunity to legal entanglements, but also a highly effective means of reducing recidivism among prison inmate populations. Research on compassion has suggested that this is because 'this sort of education leads to thinking that is more creative. This enhancement in cognitive sophistication in turn reduces the likelihood of a person feeling the kind of lack of options that might otherwise lead to destructive behaviors. Such an education regimen also puts a high degree of emphasis on so-called perspective taking, wherein one is required to imagine the world through the eyes of others. To this later point, reading literary fiction (which is the kind of fiction that tends to be character-centered, as opposed to commercial fiction, which tends to be plot-centered), has also been shown to improve pro-social tendencies and diminish propensities for violence in individuals.

In a separate but related vein, there has been in the past decade or so movement towards teaching entrepreneurial skills to prisoners and providing them with business education. The research indicates that this approach works well on some—but not all—inmate populations toward the end of reducing recidivism (How to Reduce Recidivism with Prison Entrepreneur Programs, 2019). This sort of education takes advantage of the fact that some of what undergirds problematic behaviors is the

animals<sup>18</sup> (The Perils of Loneliness, 2016). Furthermore, those who have analyzed the effects of the criminal justice based system of retribution have demonstrated that it does significant harms to the *families and communities* of those who are punished in addition to any it does to them personally (Petersilia, 2003). Jails, prisons, and adversarial law enforcement tactics may have some crime controlling, or containing effect, but they also *contribute* to the underlying factors that *encourage* crime. They do not function as adherents to the ideas of penology argue that they *should*.<sup>19</sup>

---

willingness to take risks, which is actually an essential quality of an entrepreneur. It also speaks to the employment challenges that convicted felons are likely to face and it opens up awareness to the possibilities of legitimate self-employment.

Taking these somewhat oppositional approaches to education together, the suggestion is that while there may be a one-size-fits all benefit in the liberal arts approach where discouraging destructive behaviors is concerned, it is not the only approach which works, and there are multiple things which might be tried in conjunction with each other, rather than separately.

<sup>18</sup> Thanks to the observations of animal behavior at the Seattle and other animal research centers, we have mostly stopped allowing animals to be kept in such environments. This is not just because of compassion for the animals, but also for the safety of the people that worked with them (Segment on the first gorillas housed in a naturalistic habitat at the Seattle Zoo, 2016). Animals, especially mammals, kept in cages—not much different from the cells we keep prisoners in—become deranged, destructive and dysfunctional. People do too. Yet, while this was well understood over 100 years ago, yet we keep trying to make it work.

<sup>19</sup> For example, in heavily policed areas, it has been shown that once a certain number of people have been incarcerated, the crime rates increase even further, the magic number appears to be 2% of the neighborhood (Levitt & Dunbar, 2005). There are various reasons for this owing to the fact that people who have spent some significant amount of time in the penal system become institutionalized and bring home destructive or dysfunctional habits when they return to these neighborhoods. This in-turn contributes to the rise of what is called the oppositional culture among youth in the neighborhood, wherein they become convinced that it is better to be feared than loved (Petersilia, 2003). In my own experience, I have met numerous people in prison who come from such neighborhoods and express openly the belief that going to prison is simply a fact of life one must accept associate to life on the streets. It is for some a cost of doing business, wherein the underground economy is concerned, for others more of a rite of passage wherein being seen as tough, or simply not a pushover contributes to the perceived need to act out violently.

The penal concept of corrections is based on daydreams about how *imaginary* people might be expected to respond to punishments and threat of punishment, or people simply projecting their imaginings about how they personally would respond to these, rather than asking, "How might a real and desperate person, *other than me* respond to these threats?" It simply does not account for anything as complex as the human brain and the mechanisms within it which actually motivate and produce both positive and destructive behavior, much less what might produce remorse or a desire to atone for harms done to others.

### The Destructive Brain

One thing which has become exceedingly clear over the course of the last hundred years or so is that *the brain is the organ of behavior*. Whatever happens to the brain has effects on what the brain later does. Some of this effects the owner of that brain more or less exclusively,<sup>20</sup> some can have far flung social consequences. What we have begun to understand about the brain is in part due to various case studies wherein some individual experienced a dramatic change in brain architecture which then resulted in dramatic changes being observed in behavior.

One of the most famous early examples in the literature which is particularly pertinent to the kinds of behaviors we currently classify as criminal is the case of Phineas Gage who lost a large amount of his prefrontal cortex in a blasting accident in the mid-1800s wherein a railroad spike passed through the frontal portion of his skull, ablating a large amount of

---

<sup>20</sup> It should be appreciated however that even so-called personal problems typically effect a great many people connected to the individual in question, humans are social animals, what effects one more often than not effects those around him. Taking for example the simple contagious nature of things such as laughter, yawning or anger.

his prefrontal cortex.<sup>21</sup> Gage went, in one instant, from being an upstanding, socially reserved, respectable and responsible member of the community with good work ethics, good financial habits and realistic life goals, towards which he was actively working, to becoming a bar fighting, loudmouthed braggart, who swore like a sailor, drank and gambled his substantial life savings away, got divorced and ran off to join the circus, only to die some years later, alone and penniless. Predictably, all of the other known patients who have suffered similar damage have taken similar turns (though their particular levels of anti-social behavior and capacities for foul language seem to hinge somewhat on what they might have been exposed to prior to their loss of brain matter) (Damasio, 1994). While Gage never became an all-out criminal (though it is a safe bet if he were alive today many of the things he did could have landed him behind bars), it is the kinds of behavioral change he underwent that are important to appreciate here.

Generally speaking, a person who has diminished frontal lobe capacity, or diminished interconnectivity between their frontal lobe and the parts of the brain which regulate what neuroscientists jokingly call the three F's (fight, flight, and reproductive activity), there is a greater degree of likelihood that that person when exposed to environment triggers associated with these will react as their brain stem have them react. The thing to appreciate here for most of us is that we all have thoughts about doing terrible things. The differences between people in this arena is in their ability to let those thoughts pass

---

<sup>21</sup> The area, which (thanks to study of him and others with similar damage, including prefrontal lobectomy [a.k.a. lobotomy] patients in later decades) we learned effects a significant portion of what we think of as moral judgement and impulse control.

without acting on them.<sup>22</sup> Without the appropriate neurological hardware this is next to impossible.<sup>23</sup>

Various things have been shown to impact the brain in ways which could contribute to destructive behaviors, of the sort which we currently label criminal (Citation information unavailable). Included among these are the following:

- Traumatic brain injury (TBI)
- Brain lesions (structural or biochemical changes in the tissue caused either by injury or disease).
- Under or overdevelopment of key brain regions due to genetic variation<sup>24</sup> or injury
  - Alcohol and drug use
- Residual effects of poverty including:<sup>25</sup>
  - Lack of exposure to stimuli which promote problem solving skills

---

<sup>22</sup> Though conditioning also accounts for a great degree of variability in the content of these thoughts.

<sup>23</sup> Note here I say it is next to impossible, but not necessarily completely impossible. It is in this area that there is some potential wiggle room. Though in fact, there *does* in fact need to be sufficient hardware, and interconnectivity in the brain for this to work, it is possible that it need not be exactly the correct hardware and set of circuits at the outset. This is where the potential for learnable skills such as cognitive therapies or mindfulness come into play. In these frameworks the individual might be able to learn to take a mental step back from the normal flow from impulse to action and find a way to think a set of breaks onto the impulse or otherwise manage to ride out the impulse and let it pass.

<sup>24</sup> It is important to note here that the mere fact of the presence of the so-called violence gene (a genetic marker which is more prevalent in violent men than in the majority of the population), other hereditary or even acquired deficiencies in such brain regions as effect impulse control or violent capacities will always lead to destructive behaviors. Rather, these are factors which when combined with various other stimuli contribute to a bigger picture which might result in such.

<sup>25</sup> In an interesting parallel to human behaviors, experiment have been done which show that groups of mice when confined together in a cage with nothing but food water, bedding material and other mice will begin to pick on each other, frequently engaging in violence, and other anti-social behavior whereas mice put in cages with things to play with will remain more or less peaceful toward one another and show pro-social behaviors including grooming and sharing [Most like this was in PJ Pinel's Biopsychology, which is a secondary source, but is also widely cited elsewhere].

- Lack of sufficient resources or guidance to promote pro-social habits such as sharing
- Exposure to environmental toxins such as lead which have demonstrated links to diminished decision making capacity and whose prevalence in impoverished communities corresponds to crime rates
- Neglect as well as both physical and emotional abuse
- Surgical removal, ablation or, or temporary interruption of brain areas

The above list is by no means exhaustive, however, the key point here is that there are an enormous variety of things which can go wrong with the brain, and this arguably explains nearly all of what we call crime,<sup>26</sup> not just the rare case wherein the courts have acknowledged insanity as a defense. Most of these things are beyond any hint of being under the control of the individual toward whom they happen, and when one appreciates that the impulse to take drugs or alcohol and corresponding lack of inhibition which allow one to follow through on that impulse also arise from the brain itself, it can be appreciated that personal choice has nothing more than some kind of mystical, undefinable place in the equation. Simply put, brains with destructive behaviors are shaped more by the environment<sup>27</sup> than the owners of those brains.

---

<sup>26</sup> The exception being acts which are deemed criminal but lacked any criminal intent or negligence.

<sup>27</sup> In this context, I am defining environment as something which would include genetic factors, or in older terminology both nature and nurture, as neither can be pointed to as being truly self-originating.

Although the facts discussed above are more or less universally accepted throughout the scientific community, for some reason this remains a hard sell for laypersons. This owes perhaps to the fact that we tend to feel very much as though we make a lot of decisions which somehow express an innate ability to weigh things out and do whatever we feel to be best. However, if one really looks deeply at the decision-making process and trace out the supporting factors for each decision it becomes impossible to find any room for what we have historically called *free will*. Take for example your favorite color. Is this something which you can honestly decide to change on the spot, or is it something which only might change if you begin to associate that color with various things which are beyond your control? Even then, is this preference more or less just part of you? Our complex behavioral choices are even more difficult to work out the whys for. The urge to eat might for example send me searching my environment for food, perhaps in the context of contemporary society driving me to the refrigerator, the store, or a restaurant, but why do I choose *which* of these options? First there would be environmentally imposed limitations: what is nearby? What is open at this hour? What do I have the energy for? What am I craving? What can I afford? Do the environment and my other various limitations support my ability to satisfy my exact craving, or do I need to make a compromise?

For an ordinary person under ordinary circumstances something as simple as a hunger pang can lead to a cascade of little problems we must contend with just to initiate a plan of action. Now, what if something is interfering with some aspect of the process? What if for example we add to the complication that there is no money in my wallet, and no free food available? Or, what if my neurological mechanisms for putting the brakes on my impulses are damaged and there is plenty of food? What if I am on a lifeboat with one

other person and there is only one morsel of food? What if the only food available is something I find repulsive? Could any kind of punishment or threat of punishment influence these decisions and if so what does that actually resolve?

### The Real Impact of Punishment

When behavioral scientists conducted experiments on animals in controlled environments, they found that they could *sometimes* teach aversion (getting the animal to avoid a certain object or behavior), by pairing the targeted thing (or activity) with a negative result. Up to this point, except for the fact that it doesn't even always work, this may sound like a partial win for punishment; however, experimenters found that in order for this to work, the association basically the behavior being discouraged and the negative consequence has to be *temporally related*, or in other words, a more or less immediate consequence to the action. For the animal to understand the relationship between the behavior and the punishment, it must be clear that the punishment is the direct- and *consistent- result* of the behavior. This is perhaps the weakest form of *behavioral modification*, and is known as operant conditioning, which was pioneered by B.F. Skinner at Harvard University in the 1950s (conditioning, 2014).

People, rather than being able to use our smarts to be able to work out the associations between a forbidden action and its potential consequences at some remote time, have been shown to operate in much the same way. Though we may intellectually understand the connection, we are actually *more* inclined to use our smarts to work out that if we want to do something-or put more specifically, if we are *attracted* to doing some action because it produces either some good feeling, or some relief from a bad feeling, even if fleeting- and there is some risk of punishment if we are caught doing that thing, or in the



case of addiction, some risk of bad side effect, or even death, rather than skip the discouraged action, we might take measures to try to avoid or soften the consequences of that action. Taking this a step further, we may even do things we do *not want* to do, feel morally disgusted by, or by which we are aware we will suffer in the long run for doing, if our desire for relief from some kind of discontent in a given moment is strong enough to overcome the better angels of our nature. People are highly subject to internal conflict, sometimes for the better- in the case of pushing ourselves to do unpleasant work to reach some higher goal- and sometimes for the worse-in the case of overriding our internal alarm systems to quench some *feeling* of need (even if that sense of need seems misplaced objectively.)

Worse still for the arguments in favor of punishment, when people *do* get caught in some discouraged behavior and punished, the parts of our brains which deal with emotional reactions to outside circumstances cause us to feel as though the punishment is associated with the *fact* of getting caught, *not* with the *act* we were caught for. And- because we are aware of the fact that when one is *blamed* or otherwise afflicted with social pain for some wrongdoing in this culture, the social consequences are typically long lasting or even permanent-when we are caught in some bad act, we are more inclined to protest our innocence than admit any fault. Many of us (but not all) can rationalize the larger connection, but what we inevitably will *feel*, no matter how smart or sophisticated we are, is that we got in trouble because we got caught, and will still know that the unavoidable consequence of being seen as guilty by one's accusers, under the current social climate, is lol].g-term alienation.<sup>28</sup> No amount of rationalization can stop these

---

<sup>28</sup> It is important to appreciate that much of our collective sensitivity and inability to *forgive and forget*, is related to particular ways of looking at human behavior that are embedded in our current cultural norms. Other societies both historically and on

feelings. The *only* way a person can be made to directly associate punishment to an undesired action, thought, or impulse, is to make the punishment immediate *and* consistent, and ensure that the punishment is finite in time and degree. We—for the most part (not all of us)—are able to be conditioned to become averse to doing things which reliably produce negative results in a *temporally contiguous* manner. So for example, most of us (but not all of us), *will* learn quickly that literally putting one's hand to flame hurts, and will stop doing that (some will not or cannot stop) (Citation information unavailable). To this point, this means the person would need to be punished nearly one hundred percent of the time the action was performed, and the pain<sup>29</sup> would have to recede in conjunction with the absence of the behavior. Worse still, this association in order to be durable, would have to be made permanently, as what behaviorist call *extinction* of a behavior (the point when the *habit* of the behavior seems to have stopped), is *not*

---

the micro level currently, demonstrate a much greater capacity to see a person's transgressions in context of a given set of events and conditions and are thus able to inflict temporary social sanctions which leave room for the person who broke the communal trust to regain that trust, or otherwise move on without enduring penalties (Davis, 1998).

<sup>29</sup> It should be appreciated here that neuroscientific research has recently proved physical and emotional pain are both generally interpreted by the brain as *pain* and that *it* has similar responses that pain irrespective of the which kind it experiences. This calls into question the notion that turning from corporal to psychological or social punishment were any less cruel, especially where emotional pain has more potential staying power and deeper repercussions.

While any call for a return to corporal punishment should be seen as a step backwards, and clearly inhumane, as well as contrary to the bases of an ethical society, corporal punishment was at least, in some forms, finite and more readily measurable. Though, it should be appreciated that people vary greatly in pain thresholds and sensitivities—some in fact, though none have been known to live beyond their twenties, feel no pain at all— and as a result, even a given corporal punishment tends to be of variable levels of significance to the recipient, making it impossible to say that any two people can be given *equal* (even if identical) punishment under any circumstances—and it is also well understood that circumstances themselves effect pain perception (Pinel, 20xx). Nonetheless, corporal punishment, while it may scar both physically and emotionally may not have the same tendencies inherent to emotional punishment, which might more readily lend itself to being a source of lifelong pain.

*irreversible*. Any number of experiences in the subjects' life after so-called extinction can cause the behavior to resurface and become even more resistant to modification (Citation information unavailable).

## The Peak-End Rule

Prisons work on the concept of locking people away for prescriptive periods of time. Unfortunately, what we now know about the impact of this strategy is deeply contrary to any sort of desirable outcome. One of the reasons for this is that it turns out that due to something called the duration neglect, in conjunction with the peak-end rule, pain—of any sort—is experienced as greater or lesser in memory based *not* on the length of time over which it is experienced, but entirely on what was felt at the worst moment—the *peak*—*combined with* what was felt at the end (Kahneman, 2011 ). It works like this; the amount of pain a person feels is felt in degrees from greater to lesser. When a person experiences pain, there tends to be some level of ebb and flow, wherein there are peaks and valleys in the severity. The peak-end rule works such that the memory of the overall intensity of any experience is averaged between the worst pain felt, and the pain felt at the end of the experience. In other words, all of the less than peak values *do not* factor into the memory. For example, if a person goes for a dental procedure, there will be some period of build-up toward the actual event of say root canal wherein there might be smaller pains, such as needle pricks for Novocain, followed by a ramp up period of initial drilling, and then a maximum spike wherein the closest contact is made with, or maximal pressure is applied to the nerve tissue. The minor pains do not form a part of the mind's assessment in narrative memory of overall pain felt, unless any one of them happens to come right at the end of the procedure. It turns out that if a person has such a procedure and is then kicked out of the dentist's chair in close proximity to the time of peak pain, that person

will remember feeling more pain than a person who has an identical procedure, but then has a little more poking and prodding done, inducing smaller amounts of pain, toward the end of the procedure.

The initial experience of incarceration carries with it a substantial amount of pain. To begin with, there is the simple fact of being forcefully restrained which produces anxiety and frustration (Citation information unavailable), there is also physical pain associated with restraint devices such as shackles.<sup>30</sup> Added to this there are on a highly variable basis-dependent on the individual and her circumstances any number of socially and psychologically induced pains which may come into play including humiliation, fear, anger and so forth. Next, there is depending again on the personal psycho/social circumstances but also the duration- the potential pain of losses or estrangements, fust of material possessions, and then of social connections, livelihood or career, and so forth. Finally, there may be a loss of identity as these things gel and the person becomes resigned to the idea that her old life has effectively died, while her mind and body persist. But, if there is enough time spent behind bars, much of this recedes into memory prior to release. For that individual who has adjusted over a lengthy stay to the circumstances of prison, there is likely to be minimal residual pain associated with various aspects of the experience by

---

<sup>30</sup> Note: some countries have replaced the pain inducing variety which are standard police issue in this country with a rubber variety which are as secure if not more so and non-pain inducing. In fact, in this country the type currently used, while perhaps having certain minor conveniences for the person doing the restraining in terms of how they can be quickly applied, are considerably more painful to wear for extended periods of time than some types used in the 1800s which were rounded and had no hard edges. While there may be some basis for use of the quick restraint type in an emergency, in transport situations there is none, yet they are persistently used by Departments of Corrections to restrain transportees over durations of hours and even entire days. For anyone who has never been cuffed, or has been cuffed, but only briefly, when wearing these things for hours on end, the pain becomes torturous, it continues to build and nag at one for the entire duration, especially in the areas where there is bone.

the time it comes to an end. In fact, the prospect of *leaving prison* now might be a greater source of anxiety and fear than the ongoing circumstance. To be certain, some events are likely to be remembered as distinct miserable events, but a large number will very likely get chunked into the category of "when I was locked up". This has definitely been my personal experience, and matches the reports I have heard from my fellow inmates. Similarly, the reader, will likely recall, there is some general categorical memory most which allow us to make statements such as *High School was (variously) the best time of my life, the worst time of my life*, or what have you. The result being that the person who spent the most time behind bars will recall the overall prison experience with the least horror.

The irony which needs to be appreciated in the context of the exploration of justice issues is that the maximally effective prison sentence—presuming we are adopting the deterrent philosophy—would be the *shortest* one, and presumably also the first one. Simply put, people who get shorter sentences will tend to recall the experience of incarceration as more hellish than those who have been incarcerated for lengthy periods of time.

One reason for this is the fact that the norm is that as a person progresses through the penal system, the punishments are typically reduced over the duration. One starts with the nightmare scenario of being stripped of one's possessions, ripped from one's environment, separated from one's loved ones, tossed into some typically cold, windowless, hard and ugly, often filthy confined space. They are then either ejected from this hell-scape back into their normal reality, or gradually acclimated to some less severe iteration of such an environment where they are able to live some semblance of a normal (albeit highly impoverished) day to day existence, and then eventually turned back onto

the street. The former provided this was a singular experience and not a return trip-is more likely to remember incarceration as one of the worst experiences of her life. The later might very well have acclimated so well and regained so much relative comfort-owing to reductions in security restrictions as she is (in other contexts wisely and humanely) restored to a living situation which comes closer in approximation to life in society at large—that by the end of her incarceration experience the pain felt is near zero, or closer in any event to that individual's default day to day pain levels. In actuality, for prison to work as a reliable inflictor of pain, the leaving would have to be as bad or worse as the arrival, and time would serve no role in the equation.

To illustrate how the peak-end rule might apply to incarceration, an illustration might be useful. Let's assume that the average person would rate the level of emotional pain of being incarcerated for the first time, on a scale of one to ten as an eight. This number is being assumed based on surveys which list this experience in this range in terms of stress levels, which are being equated here with pain [There was a list which rates stress levels for everything from death of a loved one to moving and a wide assortment of other stressors. I recall the number for being arrested, or put in jail as eight, which was on par with death of a loved one. This also comports with my own experience and that of people I have consulted in this environment re: their initial incarceration period.] (Citation information unavailable), (Author, 2020). We will also assume that this initial pain rate holds pretty steady during the initial six months of incarceration, meaning that during the first six months, the rating will remain steady at eight- and that any time during this period can be seen interchangeably as *peak* pain [There have been various reports, including interviews with a former New York state prison commissioner (I believe this was Martin Hom) turned advocate for prison reform observing that beyond about 6 months, people

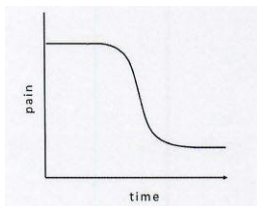
begin to become inured to the prison experience.] (Citation information unavailable), (Author, 2020). After this initial steady period, we should observe a general pattern of decline, wherein from peak, the level begins to subside on a curve over the following two and a half years- meaning that any exit point taken along this curve or thereafter can be seen as *end*.

For sake of simplicity I will illustrate this as linear function, though my guess is that it's more nuanced, perhaps a declining logistic curve,<sup>31</sup> or more likely, as we are people and tend to have our ups and downs from day to day, something more erratic.<sup>32</sup> The linear equation which represents this problem algebraically is  $y = mx + b$ , where  $y$  is the number of months, and  $x$  is the amount of pain,  $b$  is the  $y$  intercept and  $m$  is the slope. In this case, the actual values would be  $m = -1/6$ , for all  $x$  values, we would subtract 6, since the sixth month is the starting point, or effectively 0, and  $b = 8$ , as that is where the pain level starts. Our result on a table would be as follows:

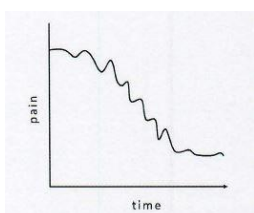
$x$	$y$
<1 to 6	8
12	7

---

<sup>31</sup> A declining logistic curve, showing a gradual decline, leading into a steeper one, which gradually levels off:



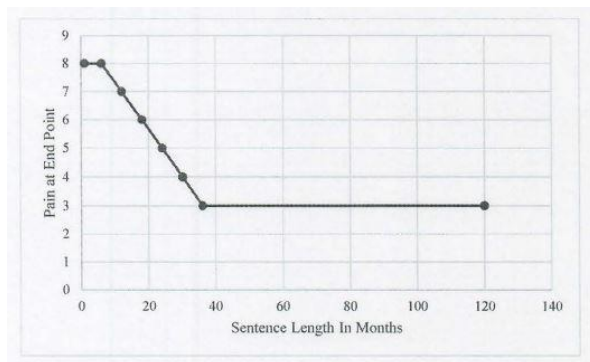
<sup>32</sup> A more randomly variable descent:



18	6
24	5
30	4
36+	3

Looking at this on a chart it is something like this:

Fig. 1



Applying the peak end rule, this means a person who spends less than 1 month to 6 months in prison recalls the experience as pure horror, an eight all the way. The 1-year incarcerated, has left with a memory of level of 7,  $7+8/2=7.5$ , still pretty horrendous. However, by the time, we get down to midway, the person who has spent a year and a half in prison experiences perhaps a full point drop in the remembered pain of the experience, and the person who has spent 3 years is all the way down to a middling 5.5 overall memory of unpleasantness.

The above is obviously a somewhat imperfect representation of the situation. To begin with, the peak-end effect as described by Kahneman assumes a relatively finite experience, such as a dental procedure. In that context the pain is more or less a singular event. In the case of incarceration, I would still however contend, as discussed above, that the experience gets lumped together as a single chapter in memory. The duration of the



pain itself however, and other ongoing stressors associated with incarceration might nevertheless have more lasting negative impacts associated with duration, as they would tend also to generate long-term changes in one's stress hormone levels and so forth, leaving the subject less healthy, or more debilitated after a lengthy prison stay, and thereby, as in other respects, more of a burden on society. Nonetheless, the above presents what is most likely a more or less accurate picture in terms of felt pain. The key takeaway being that the sense of having been punished in *narrative memory* may be greater for the person who has had less of it, while the underlying debilitating impacts would still be likely greater in the person who has had more. It would be interesting to follow up with survey data to find out how the reported interpretations of people's incarceration experiences vary in correlation to the amounts of time incarcerated.

In my own anecdotal observations over my various years behind bars what I have seen and heard does seem to strongly support the above analysis. To begin with, I can say that my first year or so behind bars was by far the worst, and going back over that time line in memory I recall that the first several, maybe six months were the worst of those, the first couple of weeks and days worse than those, and the initial arrest and events immediately following, a nightmare-like scenario, many details of which are burned into my memory. What I have observed and heard stated by others over the years seems to indicate that this is more or less universally how people experience incarceration. I have also noticed that, for the most part, those who have spent anywhere from a few days to a couple of years behind bars are the ones who are most deeply affected by the day-to-day discomfort and speak the most about getting out. Conversely, those who have spent significant amounts of time behind bars, on the order of decades, do not seem too phased by the day-to-day inconveniences of institutional life, and while they may express hopes

around getting out or the things they might do when they get out, they also tend to express anxiety about re-adjusting to life "out there". Those who have spent multiple stretches of time behind bars seem to be completely inured to the experience. Prison to them is often expressed as a fact of life.

A handful of people who have spent a lot of time behind bar-particularly addicts, and including among these some sex addicts who have turned to *directly* harming others in satisfaction of their impulses- will openly discuss either resignation to the belief that they will inevitably come back to prison within a short time of release, because either they lack the life skills needed to function outside of the institutional environment, or because they fear that the system is stacked against them and designed to ensure that they will return. An even smaller handful that I have met openly express their intention to get out and deliberately do something to ensure that they come back. This does not to my thinking describe a deterrent.

### Deterrence: The Failed Hypothesis

While the prospect of losing everything might appeal to the imagination of an ordinary person as a something to avoid at all costs, and while a brush with something like that might be enough to scare a certain kind of person straight (though there isn't much evidence to support that even this works very consistently on any demographic), the hard reality is that for people who wind up doing the worst sorts of things to one another, prison is just some abstract thing off in the back of their mind somewhere that probably doesn't much influence their behavior. The problems with using threats to keep people in line seems to me very clear, yet somehow, the idea that these tactics *should* work are very persistent throughout human societies. It seems to me that most of us don't really walk

around thinking that we choose not to do terrible things because of the threats of what we face if we do them. The reason we do not do bad things is that our bad feelings about doing them outweigh our desires either to do them or for the results that doing such things might produce. The problems happen when the equation tips the opposite way.

What does work to keep most people from causing harms to themselves and others is very much the opposite of threats and violence, it is *prospects* and *nurture*. People who function well in society are people who are able to deal with their own stresses in healthy ways and are able to cooperate with others to achieve both mutual and personal benefits. Jails and prisons, and tossing people into such places for arbitrarily prescribed periods of time do nothing to make up for the lack of emotional and interpersonal skills required by our society for one to stay out such places.

Socially inflicted pain, or shaming, is also not at all useful to this endeavor in our current cultural context wherein those involved in the administration of it lack the organization and discipline that would be needed to ensure that it is finite and consistent. For punishment to work in any reliable way, we would need some kind of guardian for each one of us, following us around, checking to ensure we were following all the rules and then punishing swiftly and consistently at each infraction. The East German Democratic Republic was the only society to ever have come close to achieving this with its secret police (Stasi, 2014), which employed as many as 2 million people to spy on 6 million of its citizens. To most tastes, this produced a significant number of undesirable side effects, for one a complete lack of privacy, and along with that, a strong tendency toward governmental overreach and overreaction to the slightest perception of potential threat to the imposed public order. And, it still did not fully eliminate the behaviors the state was

trying to discourage. Nonetheless, in spite of any basic aversion the majority of us might express to such things happening here, there does seem to be a strong trend toward this kind of solution, as surveillance technology such as publicly located security cameras, drones enabled with super-high resolution cameras able to monitor the movements and track the locations of entire cities full of people from the sky,<sup>33</sup> threat prediction algorithms and convenience technologies such as location tracking GPS enabled smart phones, On-Star™ enabled cars, social media behavior tracking and projection have been growing ubiquitous and ever-more sophisticated. Even if we accept the effective termination of our rights to privacy, we might consider what happens when we become too reliant on some outside agency to police our actions. Like the child whose parent hovers over their every decision (or the person with a mentor cited in the footnotes

---

<sup>33</sup> A PBS documentary (need date and title) aired in 2018, interviewed people involved with an experiment with such technology conducted in Baltimore Maryland by the police (without citizen approval or awareness) in the previous year. In this documentary, the purveyors of the technology demonstrated how it was used to look back in time, zoom in on an area where a robbery had occurred, and then track the suspects as they moved throughout the city and were subsequently intercepted by police who were able to pinpoint their current whereabouts through these means. The company spokesperson boasted that this technology could be used to zoom in at high enough resolution to identify people's facial features, or even the text on something they were reading in-hand, but that their company policy was not to go that far. At higher resolutions, this technology could also be paired with facial recognition, to allow identification of suspects. Whether or not infrared cameras of such high resolution currently exist was not discussed, but one can imagine that, if not now, perhaps soon, that the police could be equipped to watch everyone in the supposed privacy of their own homes at all times, and that artificially intelligent software could be utilized to zero in on people whose movements suggest illegal (or otherwise suspicious, or whatever the current administration deems dangerous or undesirable) behavior, at least in public spaces, and potentially, only if they choose not to ignore them, private spaces, and dispatch officers (or drones, if or when that becomes legal to do, on domestic soil) to the scene of the crime (or potential crime). This is not dystopian science fiction; it is highly plausible today that things could be done this way today, or in the very near future. We (more or less) have the technology. We don't even need the manpower of the Stasi; however, we persist in constantly expanding the ranks of our law enforcement agencies, even as their means for crime detection and efficiency increase by leaps and bounds.

above), if we become too dependent on others to make decision for us, we can become incapable of working out what should be done in a given situation for ourselves. Worse still, we can become defiant, taunting our sitter to react in order that we might feel some sense of agency.<sup>34</sup> In spite of the evidence highlighted here and the vast body of readily available research which refutes any basis for such beliefs, some of us might feel that, in

---

<sup>34</sup> In the author's own prison experience, he has met numerous individuals, who when residing either in solitary confinement, or in a cell within a regular General Population (GP) cell (the designation for those who are not in solitary confinement), will, on occasion (sometimes motivated by things such as bad news from their loved ones, sometimes out of reported boredom or anxiety, occasionally out of anger towards the conditions of their confinement or treatment endured in their dealings with officers or other institutional officials), choose to "fight the move team", which is to say that they will engage in some act of open defiance, such as putting a mattress in front of their door to block the window so that officers are unable to look in when doing their rounds. This then triggers a "use afforce" response by officers, who will typically come to the inmate's door, in groups of 5 or more officers, and demand that the inmate stand-down, or come to the door with his back turned and hands behind his back such that they are able to be cuffed through the door's feed slot (which is like an oversized mail slot on a household door). Assuming the inmate refuses to cooperate (which is the point of the exercise from the perspective of the inmate), the move team will discharge pepper spray on the prisoner, often exhausting multiple canisters of this noxious, pain inducing, sometimes physically damaging substance. In some cases, when the inmate still refuses to cooperate (which again, is part of the ritual), harsher chemicals, such as chemical tear gas may then be used. When the inmate still refuses to cooperate (again part of the ritual), the move team, who are dressed in body armor, provided with gas masks, helmets and billy clubs will have the cell door opened, move in, beat the inmate into submission, and then, in many cases, strap the inmate into an immobilizing chair (which may not allow even head movement, and has every appearance of a mediaeval torture device), in which he may be kept for some indefinite period of time until security can be convinced that he is done resisting, at which point he will return to a solitary confinement cell, oftentimes naked, with no items in the cell, including a mattress.

Similarly, the chair (as I have heard this restraint device called) may be used to manage other unruly, but less overtly violent inmates, in cases where the inmate is deemed to be a potential active threat. Perhaps most disturbingly, inmates who have expressed an urge to commit suicide (either verbally, or by taking actions to harm themselves) may be put on "fire watch", wherein they are kept naked in a cell, in some states with no toilet and shackled to a ring on the floor in the center of the room, wherein, if they need to relieve themselves, they are required to urinate or defecate on the floor, which is hosed down periodically, but on a schedule which allows for the inmate to live in filth for hours on end between cleanings. In some states, the inmate under fire watch is monitored 24 hours a day by a fellow inmate whose job it is to sit and watch them through the cell door and report any problems to a corrections officer.

our *personal experience* (i.e. subjective, anecdotal experience, which fails to account for that we might only notice the things we are looking for, known as *confirmation bias* in research, or that our experiences may not be representative of the norms, or what statistics calls an insufficient sample size), punishment *has* worked. This sentiment however discounts the possibility that the punishment which we associated as having a positive impact might have been coupled with other things that might have affected the outcome, such as other aspects of the situation under which the punishment was inflicted which might have aroused feelings of empathy, remorse, personal responsibility, or already embedded beliefs which arose from previous experiences. Also, this kind of argumentation would tend to assume that those who commit crimes were not punished adequately for smaller infractions in the past. This however does not bear the weight of the evidence, which shows that those who are punished the most in youth are actually over-represented among those most likely to go to prison when they grow up.<sup>35</sup> This relationship proves to be direct, it is not that the unruliest kids get punished more *and* wind up in prison, but that regardless of whether or not a given child is unruly, severity and regularity of punishment correlate directly to later legal entanglements, especially violence related ones.<sup>36</sup> None of this is to say that being overly permissive or lenient with

---

<sup>35</sup> In this context it is also interesting to note that the famed scare tactic programs of the 1980s which brought school children on field trips to prisons panned out the opposite of what was hoped, in that far more of the children who participated in these programs wound up in prison later in life than the groups of demographically and behaviorally similar children who did not participate in these programs [article in Scientific American Mind from perhaps 2014].

<sup>36</sup> A well-known example of this comes to us from the sociology literature. A field study conducted by William J. Chambliss, first published in 1973 and then revisited in 2014, followed two groups of high school children into early adulthood. The two groups were dubbed by the researcher as respectively the Saints, and the Roughnecks. At the outset, the two groups behaved in more or less the same ways, causing trouble, stealing, drinking, destroying property and the like. However, the group identified as saints came from well-to-do families, were well-spoken and came across as respectful of authority whenever confronted with their misdeeds, as a result, they were treated with kid-gloves and given little if any punishment. The Roughnecks

children will keep them out of jail later in life, rather it is to say that it takes more thought to respond wisely to bad behaviors than simply meting out punishments.<sup>37</sup> To illustrate these points more personally, let us try a thought experiment toward understanding how punishment might *lead* to crime. First, imagine that you have been raised in an environment where you are punished regularly for things which seem perfectly normal or even good to you (a situation which is not uncommon in households where the people in charge are lacking in certain relevant aspects of education or perhaps suffered abuse and humiliation in their own upbringing). Say for example you were sent to the store to purchase some grocery item and on the way you were mugged, or otherwise lost the money and were unable to complete your objective. Upon your return to home, empty-

---

conversely came from working class backgrounds. They spoke like street kids and when confronted with their misdeeds, came across as being disrespectful of authority. They wound up being punished more severely, more regularly, developing a generally more adversarial view of and relationship with authority, and eventually began running into greater and greater legal troubles, cycling in and out of jail; two of them eventually committing separate homicides (Henslin, 2014). While there are obviously a great number of additional factors involved in what led to the different outcomes of these two groups, especially in the socio-economic sphere, one of the clear takeaways is that these two groups were treated very differently from each other by people in authority. One group was expected to do well from the outset, and their faults in turn were brushed off. The other were expected to be trouble from the outset, and their faults were amplified. Labeling was one key factor which was identified in this case. However, the punishment cycle itself also played a clear and significant role in the outcomes observed.

<sup>37</sup> Child behaviorist do however suggest that many bad behaviors should be ignored (as long as they are not overly destructive or dangerous) on the basis that many of these are rooted in attempts to get attention (whether it is good or bad, kids crave attention, and so do many adults), and that rather than attend to each undesirable behavior, caretakers should focus on the wanted or good behaviors and rewarding these (mostly through positive emotional responses, not material bribes). Furthermore, reacting to every transgression can lead to a reduction in the child's sensitivity to such reactions, and even to overtly defiant behavior aimed at attracting such reactions in order to demonstrate to the caretaker that such reactions or sanctions will not work.

handed, your parental figures are unwilling to listen to, much less accept your story and either physically hurt you, ground you, or otherwise do something which hurts.

One can easily see how in such a household it would be unwise to let your failures-even ones beyond your control- be seen and why they might need to be concealed. Going a step further, let us imagine that you might be punished for things as arbitrary as how you tie your shoes. There is no limit to the strangeness and arbitrary nature of what might happen in an abusive household, and it can be understood in such a light how a person growing up in such an environment might begin to do things that are even worse than the things they fear punishment for in order to avoid such punishments. In the case above, one might imagine that the child who was mugged on the way to the store might decide to steal the things he or she was expected to bring home, rather than face punishment. At an adult level, one could see how this could translate to for example doing some crime to cover rent, in order to avoid eviction. While the latter could be argued is more a question of a failure in responsibility, it can be seen that the pattern might come from some deeper dysfunction, rather than some innate recklessness, or otherwise that the circumstance might arise in the context of credible causes for desperation.

In other cases, this idea, instilled by authority, that people *should* be punished for doing bad things, could easily translate to a justification of violence *against* such a person, say for example by the property owner who is being stolen from. In terms of encouraging crime more directly, this idea that people *should* be punished for doing bad things, could easily translate into the idea that violence is the best way to get respect, or any number of emotional or tangible needs met. Taking this to its natural conclusion, we must come to terms with the fact that most violent crimes center on the perception of the person who



has done the harm, that acting out violently, in the moment in which they acted, was their natural, if not just response to being wronged by another. In any of these scenarios, punishment becomes the *basis* for bad acts.

Thought experiments aside, it has been found, that a great deal, if not all people who grow up to commit violent crimes either endured violence during their youth or saw others employ violence to get what they wanted,<sup>38</sup> or to get back at someone who did them a bad turn. Furthermore, when the punishment is inflicted via the justice system, the outcome is equally predictable. Kids imprisoned or put on probation grow up to commit more crimes than their counterparts who were given more constructive attention to the same kinds of infractions in youth. Worse still, kids whose *parents* are imprisoned are more likely to wind up in prison themselves later in life.

Bad childhood experiences are not however the only contributor to violence, there are also things that can go wrong with the wiring in our brains which either prevent us from being able to feel empathy with, or compassion for other people and which can contribute

---

<sup>38</sup> While there is considerable public perception that violence in the media and video games has a similar effect. The evidence suggests that only real violence in real life has such effect. Generally, people seem to be able to compartmentalize the kind of violence they do in for example game play as being appropriate to fantasize about but not to actually do. While there are some statistically small number of people who do violent acts in real life which do certainly seem to copy behaviors reported in the media, such as is made evident in the various incidents of so-called copy-cat crimes, or those who might mimic scenes from movies in the details of the performance of their crimes. The people who do these things are typically also those who were exposed to real violence, or have other already manifest predispositions toward violent behaviors of their own. The indications are that prior to their acts, they were already primed to do something destructive. What they copy is the style of the act picked up from media, not the idea to do something tremendously destructive to begin with. The impulse and the follow through are actually rooted in what they have experience in real and personal terms.

to our likelihoods of abusing one another.<sup>39</sup> It has been found that in *one hundred percent* of all of the serial killers studied at this level to date, that each had profound brain damage or deficiencies in a specific area called the orbito-frontal cortex, which is located just above the eye socket, and that they were exposed to profound violence as children. While there are people who have one problem or the other and do not become serial killers, a particular combination of such factors seems to lead directly and perhaps even (somewhat) predictably to that consequence.<sup>40</sup>

---

<sup>39</sup> Though it should also be appreciated that a significant portion of the harms people do to one another stem not from indifference to the plight of others, but rather from the sense of overwhelming need or desire. It should be noted here that the distinction between need and strong desire is something that we may be able to distinguish intellectually, but which the brain itself has difficulty separating, thus, addictions, impulse control disorders and so forth. Furthermore, it has been observed that there are two basic motivators for crime, economic and psychological. The first centers on the perception of the person doing the harm that they could be put in a better condition by doing some act. Some portion of this might revolve around greed or prestige, but it is likely that most of it revolves around actual unmet needs (and in this light, the presence of greed or need for prestige are also indicative of unmet emotional needs). The second category is more complex and includes the above-mentioned things such as addiction, impulse control problems (often stemming from organic brain damage or deficits), delusions, hallucinations, and so forth (Goleman, *Destructive Emotions*, 2008).

<sup>40</sup> Likewise, not every person who grows up in a dysfunctional household will turn to crime later. It is combinations of factors that lead to these sorts of results. Some of these may be innate to the person, but without the environmental triggers or influences which exacerbate them, the problems are unlikely to arise. It has been observed for example that one of the problems in twin studies, wherein two genetically identical people who were separated for adoption at birth, while there are a multitude of similarities typically found between the two people which are suggestive of genetic bases for preferences and behaviors, there is often the fact of similarity of upbringing which is taken for granted. One example pointed to in the literature is the typical news story of male twins separated at birth who grew up to get into the same profession, develop the same tastes in cigars, marry women with the same name as each other and grow similar mustaches. The problems pointed out by the researcher are that the two men grew up in the same area, with parents with similar socio-economic backgrounds, in places where certain trends had taken hold (such as mustaches, or cigar smoking), and wherein certain names were common (as was the case with the names of their spouses). The researcher pointed out that if however, one had been raised by the queen of England and the other a Zulu chieftain, they would likely grow up to have far less in common and may not even have

All of these things taken aside, there are those who would argue that punishment is an end unto itself, that the point is not so much whether or not punishment corrects bad behavior, but that it satisfies the bad feelings of the person who was harmed. This goes hand in hand with the idea of what some call the Leviathan (Pinker, 2013), the notion that in a democratic society, the state is given the sole right to act violently. This resignation of the right to personal vengeance allows the state to be the avenger and is credited with a major part of the reduction of interpersonal violence. The chief problems with this theory are that while there may be research which confirms the notion that some people actually *do* feel better when they know that the person who harmed them or their loved one—or even a stranger—is being punished, there is no evidence that it helps to reduce the likelihood of a person being harmed by another in the first place. As has been demonstrated above, punishment does not correct the causes of destructive behavior, worse still it may deepen or further complicate them. The other problem is that it sends a mixed message to the public. On the one hand, the state says to its citizens "do no harm", on the other hand it says "*or else* (we'll do harm to you)". This, do as I say, not as I do, style of guardianship does not work in parenting and it does not work in statecraft. While an increasing number of people have resigned themselves to this *threat*, and agreed not to take the law into their own hands, this method has done nothing to elevate the kind of thinking which leads to violence in the first place. Those of us who subscribe to the notion that "rather than take matters into my own hands I will call the police." Have merely shifted the *tool* they use for aggression. Those who feel that the police will not champion their cause too often still take the law (sometimes that of the streets, sometimes that of

---

both liked cigars much less the same varieties, nor had the option of marrying women with the same name, nor been as inclined this way or that to grow similar facial hair to one another.

personal honor) into their own hands, and as a result, violence is perpetuated.<sup>41</sup> So, while it is possible for a person who is committed to the notion that violence *is* the answer for complex social and personal problems to believe that criminals should be treated harshly, it is not consistent or honest to hold the idea that this person or that, should not have behaved badly, and therefore should in turn be treated badly. That is simply bad medicine. It ensures that the legacy of abusive behavior is stretched out over a greater length of time and comes to harm more of the undeserving people we claim we are trying to protect with the rule of law. Rather than continue to sacrifice all of our dignity and submit to the potential for abuse which a punitive surveillance state tends to devolve to, for the sake a false sense of security, we could make moves toward addressing the underlying problems which lead to the (actually statistically relatively small)<sup>42</sup> tendency for some of

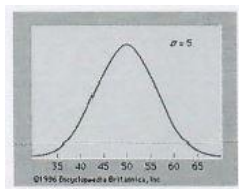
---

<sup>41</sup> It can be observed that much of gang violence is based on so-called street-justice. Gangs enforce their own codes of honor; likewise, they may regulate trade (primarily black market and grey market, but sometimes all local business), act as brokers of insurance (albeit sometimes against the threat of their own destructive actions), or provide private security services and so forth.

<sup>42</sup> While the television media since around the 1960s has grown ever increasingly focused on reporting an ever-more inclusive spectrum of the sorts of crimes which occur on a daily basis, the actual trend observed throughout the country (in fact throughout the world) is that both violent and property crimes have been in significant decline throughout human history, and particularly throughout the last century, and more still, throughout the last few decades (Pinker, 2013). Crime rates do fluctuate (World Almanac, 2016), and there are hot spots, such as the much reported problems in a small part of Chicago over the past few years, wherein homicide rates have risen. Overall however, the trend continues downward. Research on the causes of this demonstrates that tougher law enforcement and better policing are relatively insignificant factors in producing these results (Kahneman, 2011). In fact, some of the most heavily policed areas are the ones where crime rates have escalated, and often in apparent reaction to the increase in police presence and harshness of punitive measures employed. Perhaps, due to the perceptions (or realities) the presence of an adversarial force in one's home area which comes with such solutions. Fighting fire with fire seems to be a deeply imbedded reaction which we reach for when we feel threatened, but that does not mean that it is a good reaction. One thing which is certain is that all things which can be looked at through the lens of economics, including behaviors, have certain levels of optimal effectiveness, beyond which they cannot be pushed. In the case of policing, even if we want to ignore its inbuilt self-defeating aspects, can only make a positive difference toward

effecting the outcome of crime reduction up to a certain number of officers on the street. If we look at crime reduction as a product of policing, then we can observe that where there are no police on the street in a given area there is a certain amount of crime on average. When we introduce one police officer, the number of crimes falls very slightly (that officer just can't do much alone), adding a second cop, the rate of impact is higher than double the effect of the first, another one does something more, then at some point the effect of reduction by adding one more unit begins to become steady. This pattern continues for a while, wherein by introducing one more cop, there is a corresponding drop in the crime rate. Then, just as you would see in a factory producing a product, there is a point where the amount of change produced by introducing one more unit begins to flatten out, at the peak level, adding one more cop makes no statically significant difference to the crime rate. Then, as you continue along this line, according to a fundamental law of economics, which is observed in all situations wherein some process is used to produce some result, called the law of diminishing returns (diminishing returns, 2014), adding one more cop at a time, the opposite begins to happen, the crime rate actually begins to climb. There is actually some point where the number of officers on the streets could be high enough that the impact on the crime rate would be the same as if there were none (Kahneman, 2011). When the results of the many real-world chance experiments have occurred the results, if looked at on a graph tend to play out along the familiar bell-curve pattern seen throughout nature, as seen in figure one below:

Fig 1: A normal probability distribution with a mean ( $\mu$ ) of 50 and a standard deviation ( $\sigma$ ) of 5. Source: Encyclopaedia Britannica Ultimate Reference Suite Version: 2014.00.00.000000000



The specific reason is somewhat speculative, but it can be gathered that there is some combination of factors within this arrangement which includes the fact that when there are too many officers for the number of people they are charged with serving and protecting, they wind up idle and, as the saying goes, "idle hands do the devil's work", meaning there is some increase in corruption which contributes either directly or indirectly to increased crime. Also, as suggested above, overly policed people, might tend towards increased hostility toward police and their mission of stopping crime in general. Whatever the reason, policing can definitely be overdone, to the point of being as damaging as its absence. Beyond this, as suggested in the discussion above, when compared to those things which actually address the underlying problems which policing responds to, policing itself contains within its tactics perpetuation through example of the basic impulses which it is meant to address.

The main factors which have been cited by researchers as the apparent underlying causes for the reduction of violence are improved education, improved mental health (though we still tend to stigmatize overt mental health disorders, jail people for

us to hurt the rest of us. To do this, we need to look at how human behavior really works, and what really works to deal with the destructive aspects of that. *This* is far different than resigning ourselves to the *false dichotomy* which says that we must choose between being tough on crime and being lenient. We need to work smarter, not harsher.

## Human Behavior

To be clear at the outset, I will not be getting too far into what is or is not desirable behavior. What a given society or community finds right or wrong for people to do, and to what degree, is something which is highly variable. Certainly, *correction* of human behaviors, can be a pretty sticky subject. The PCJ model, rests on the concepts of nonviolence and helping people function healthily and in-community with others. How specific communities want to fine tune that is beyond the scope of this paper. To be clear, I believe that PCJ must aim to prevent people from tangibly harming each other, whether that is on a physical or material level, and probably also should aim at least to mitigate or lessen the intangible psychological sorts of harm. I will also assume that most of us can agree that there is value in encouraging people to put others' interests at least on level with their own, if not perhaps ahead of their own, especially wherein harms have already been inflicted.

---

mental health related offences, and ignore some of the many subtler forms of mental dysfunction which have been historically seen as personality quirks or even signs of greatness [for example the corporate or political leader who is ruthless, self-centered and manipulative (Beauchamp, n.d.) , (Gamble, 2019)]), improved material security (fewer people go hungry today than in previous times, and the trend toward improved base status continue albeit much slower than they have the potential to do if we act with more determination), and a greater reliance on cooperation between groups and individuals (while capitalism has some aspects which may encourage selfishness, markets have a strong reliance on cooperation) (Pinker, 2013).

We will also assume that dealing with addictions in some meaningful way is a worthy goal. Whether this means aiming to make all addicts non-addicts, or helping them to simply function better in community and work out what they want to do is debatable, but I would tend toward the latter. Other sorts of things which might find their way into law I am choosing to leave out of this discussion. Behaviors, or customs communities believe need to be honored may or may not have a place in PCJ, this is something which will have to be looked at more closely by each community. It is my hope however, that any decisions made in this area will remain in harmony with the basic principles of PCJ and in-line with the spirit of documents such as the US constitution and the Universal Declaration of Human Rights (Universal Declaration of Human Rights (UDHR), 2014).

The above points acknowledged, the conditions and events which can *lead to* various kinds of behaviors—*good or bad*—are perhaps best understood through the model used by behaviorism, known as operant conditioning, which comes to us from Harvard researcher B.F. Skinner, who discovered its workings in the 1950s. Under this model, we are looking at what *reinforces* a given behavior (conditioning, 2014). What has been shown in countless experiments is that a behavior which reliably produces a given result, near to 100% of the time, is relatively easy to modify, for example, if one is accustomed to getting water from the faucet and then one day the faucet stops working (aside from calling the plumber) the person is able easily to *adapt* to the idea that they must go elsewhere for water and will not keep trying the faucet (until its fixed). In short their behavior is changed.

The most difficult behaviors to change are those wherein the operant (behavior) produces *inconsistent* results, i.e. producing either *rewards* (e.g. with the faucet above, clean water)

or *punishments* (e.g. sludge) *inconsistently*. This is most easily appreciated in trying to assess why slot machines are so addictive. Each time a person plays, there is some chance of a win, and a (more likely) chance of a loss). This keeps it enticing, and keeps the person trying, the potential for a big win, makes the (perhaps much greater in accumulation) gradual smaller losses acceptable-in greater or lesser degree-to a given player. While in the lab, Skinner was able to engineer results to change behaviors, in real life, *the environment* is not so cooperative, and that is why the only place for real wiggle room is in developing an alternative behavior (or operant) to put into action when a given unconditioned stimulus (the slot machine in the above example) presents itself. In short, the would-be player—if she wants not to play—must *do something* other than play, perhaps, turn around and walk away, but if she is stuck in the room with a pocket full of tokens perhaps, this person needs a much stronger *replacement* behavior to distract her from the urge to play the slot. This is the way that all the successful behavior modification models have come to settle on as being the most effective strategy (Duhig, 20 12).

One might like to imagine his or herself immune to such conditioning, but all of us experience it, without probably noticing or knowing what it is. For example, the change in feelings one gets in anticipation of a pending good or bad event. The elated anticipation a child might feel on the night before Christmas, or the nervousness one might experience on the eve of a test, on a first date, before a job interview, a public appearance, or a day in court are examples of these. Each of these, under the foundational Pavlovian model of behaviorism (which Skinner's model builds from) is an example of an unconditioned response (UR) to either some kind of stimulus (US), or conditioned stimulus (CS).<sup>43</sup> Our

---

<sup>43</sup> The distinction between these two sorts of stimuli is basically irrelevant to the current conversation, but in the case of Pavlov's dog, the US would be the food, and the CS would be the bell. Both acted as environmental cues for a pending reward



responses to these can be wide and varied and they range from physical reactions—sweaty palms, hairs rising on the back of the neck, salivating in anticipation of a tasty treat, butterflies in the stomach a headache—to complex behaviors (perhaps as much motivated by subtle physical reactions as the outside stimulus)—reaching for a drink, your wallet, the door, a gun. We can learn to live with these feelings and not be overwhelmingly controlled by them, but we can't wish them away or otherwise decide our way out of them. They are fundamental to how we make decisions (Damasio, 1994). And, beyond these, we each (excluding those of us with specific types of profound brain damage) have a host of subtle, but measurable stimuli to which we respond automatically. We identify these responses in everyday language as likes, dislikes, loves, hatreds, and so forth.

Our preferences are therefore a big part of what goes into what we call a decision. The moral part, which many of us take for granted as either a basic quality of a person, i.e. their essential goodness or meanness, or their adherence to a given moral code, is also based on some set of environmentally or socially presented stimuli and how each of us react to them at an automatic level, or that is, as our *responses*. Somewhere in that mix, there is a lot of complex learning going on. These environmental cues, and our hardwired reactions to them, explain our impulses. Our behaviors (operants), are our *routines* for dealing with our automatic reactions. Bad feelings generate responses which aim to make the bad feeling go away, good feelings generate responses which aim to intensify make or

---

(consumption of the food). The things different models call triggers, or cues are simply the various instances of US and CS offered by the environment without regard to the motivations that put them there. We could say, in the case of a cigarette company, the cigarette is the US, the package or add is the CS, but either of these, or various other things which make us think of these are cues/triggers.

the good feeling stay. We cannot do much about those basic impulses, they are related to the same fundamental ones which keep us alive.

Most of us have some capacity for resistance to impulses, this is perhaps why some find the addictions of others so hard to comprehend. The problem is that this resistance, what we call willpower, works something like a muscle (Duhig, 2012). We each have some variable amount to begin with, but whatever that amount, like any other strength related capacity, is finite. The more it is taxed, the more it runs down in a given set of circumstances or over a given day. It does respond to something like a workout program, it is possible to improve one's ability to resist impulses, but nobody can resist all impulses all day, otherwise, as in the case of water, we could easily put off drinking it for something we thought was more important and then drop dead as a result. This is perhaps why addictions are so tough, they hijack our survival mechanisms.

Another more recent model for looking at these things comes to us from UC San Diego Larry researcher Squire in the 1990s. His research uncovered the patterns which underlie habit formation. In this model, there is some kind of cue from the environment or the social sphere, which after some period of learning wherein the subject responds to that cue in different ways, a routine is developed toward attaining some reward. As long as there is some apparent connection between the cue and the reward, and a sufficiently basis for craving the reward, a person will tend to develop some routine to get that reward. These patterns become our habits and explain most of what we do on a day-to-day basis, from brushing our teeth, to driving to McDonald's, to going to work, to robbing someone for money. Arising from this body of research we find what has been dubbed the Golden Rule of habit change, which is that you cannot extinguish a bad, you can only

change it (Duhig, 2012). So for example, a person could learn to change from smoking cigarettes to doing pushups, or modify their career path from robbery to something more socially acceptable. No matter which model we chose to examine these things, the conclusions come out the same.

To change our behaviors in meaningful ways—ways which align with begin fully onboard with the changes and not just those which suppress taking action on some desire in order to avoid a bad consequence or allow time for planning to avoid detection (and thereby avoid the consequence)—we need to actually *replace* the operant/routine/behavior whatever you want to call it, and to do that, we need to be onboard with making those changes, or they won't take. To do that, we have to *want* to change. Provoking that desire within a person who is not seeing the need would have to be the first order of business in anything one might venture to call corrections.

Once the desire to change is there, change can happen. This takes work, but it is in *most cases* doable. The reason it is not *always* doable is that most of our impulses are central to or hijack mechanisms related to the workings of the body, for example, one will never get rid of the impulse that we call thirst, at least not as long as our brains are mostly functioning, nor, short of the introduction of an intravenous tube, we will find a behavior which suppresses our desires to drink water in response to that impulse. However, as a counter example, the impulse to drink *alcohol*, can literally be taken away from the brain surgically—though it is important to recognize how deeply ingrained this suggest the habit

can be—and in conjunction with this, the other behavioral components which makeup the drinking habit can be changed through therapy and effort (Duhig, 2012).<sup>44</sup>

Nonetheless, it is to be certain that not all people will be on-board with all changes, no matter how apparent their need is from the outside. Also, to be certain, not all people can muster the strength to make the changes they would like to make all on their own. These things acknowledged, we are getting better at working out what can be done to better encourage people to make changes that the social order requires, that health providers recommend, or that they themselves recognize that they need a helping hand in achieving. Sadly, we are rarely applying this understanding to helping people within those segments of society where it is most needed. This is much of what PCJ would aim to remedy, in its initial phases.

How changeable each individual is in respect to her responses to given stimuli—assuming she is on-board with such changes and is given all the right kinds of tools, influences and assistance—so far, still looks to be variable, but the success rates for good treatment programs continue to climb. Furthermore, as is demonstrated by the millions of people who *do not* engage in some given behavior which some other number of people *do* engage in under similar circumstances, most of our behaviors are probably subject to

---

<sup>44</sup> To be clear, I am not advocating that we should tamper with people's brains to change their behaviors, at least not without their express consent. That said, this has been done as mentioned above. In these cases, however, it was found that while the brain mechanism directly associated to the impulse to consume alcohol can be interrupted by the placement of an electrode which actively interferes with this function, the other forces within the individual which drove him or her to drink were not affected, and so without therapy, the person would still wind up drinking.

modification.<sup>45</sup> The question, where *corrections* are concerned is how to influence or *incentivize* a person to want to make the change being demanded by the social

---

<sup>45</sup> Contrary to the earlier belief that the human brain stops changing after a certain age, a growing body of research indicates that it is capable of rewiring itself under a wide variety of conditions. This so-called *neuroplasticity* is what allows a person to learn new skills, recover from a stroke, increase her or his capacity for retaining certain kinds of information and so forth, throughout his or her adult life. The areas responsible for putting the brakes on destructive impulses or even learning to empathize with people or develop compassion for others, where this capacity seemed previously to be absent (as into the level of being a character flaw, or potentially dangerously anti-social trait) have been demonstrated to be among the features of brain function which are responsive to neurological change. This kind of change can occur in both directions, as was already noted historically in cases such as the famed case study subject Phineas Gage discussed above.

On the opposite end of the equation, it has been shown that people who practice mindfulness meditation develop stronger connections between their prefrontal cortices and central (emotional reaction and impulse dictating) areas of their brains, and, along with these changes, become better able to resist impulses (i.e. in the case of addictions or other complex behaviors). Furthermore, it has been shown that increases in brain matter, interconnectivity between brain areas and changes in corresponding *pro-social* behaviors and reactions have resulted from activities such as mindfulness and other compassion building practices. Researchers have indicated that even psychopaths respond to treatment in ways so significant that (outside of any social reaction against so doing), they could be rehabilitated to the levels of conscientiousness which would render them harmless (Goleman, *Destructive Emotions*, 2008).

The specific organic brain problems which underlie all of what we call crime are growing increasingly measurable through improved brain imaging technology, and the changes which would be required to elicit meaningful behavior or even personality changes are becoming more and more evident. Based on what we currently know about behavior, brain activity and changes in brain architecture, it is the author's opinion that with proper ongoing brain imaging conducted on treatment participants, we are well into the stage of technological development where we could literally see the transformation of a person from destructive and anti-social to constructive and pro-social. The current dominant strain of conversation on this subject falls far short of this. We tend to discuss peering into people's brains to see how dangerous they are, and discussions have even come into the public sphere around the potential of committing people for their *potentials to commit crimes in the future* ala Minority Report (Blame, 2016). This is not only disturbing; it is deeply misguided. While we cannot assert that a person will commit a crime at some future point, due to some kind of brain damage (for example, Phineas Gage, while becoming exceedingly anti-social and destructive never graduated beyond bar fights to murder, or from blowing his fortune to theft), we *can*, beyond a reasonable level of certainty, make assertions about who will *not* be likely to commit a future crime, by examining features of their brains and reactions to certain kinds of stimuli. We already know what healthy brains look like,

environment. If you cannot do that, you cannot do something called corrections. In fact, if we are to look at prisons as *businesses*, and assume that their mission is to modify behaviors, then from the point of view of strategic planning (OpenStax, 2019), the strategies employed by them would have to be scrapped as ineffective.

## 8 A Fundamentally Flawed System

The penal system is so fundamentally antithetical to anything which would be conducive to the approaches called for here, that it should be apparent that this set of institutions needs to be replaced, not reformed. Punitive justice, in any form, revolves around the primitive idea that the only way to get people cooperate is to keep them in-line by inflicting pain or instilling fear. Attempting to shape their behaviors through nothing but suppression of impulses or their corresponding behaviors, without helping people (typically the most in need of such help) find alternative means for managing those impulses. These specific methods, which as discussed above, have been proven not to work.

State violence, or however one wants to interpret the methods of putting a person in a cage to manage or respond to their behavior, is the result of frustration with the unwanted behaviors of others, wherein the agents of the state demonstrate through such action that they have a poor understanding of how to cope with such problems. It is the same basis people use to justify violence at home, in our communities and between tribes

---

we should be focusing on using technology to help people develop such brains and get people through treatment as rapidly and efficiently as possible.

or governments. When we cannot figure out how to elicit cooperation with our goals, many of us turn to the use of force. Where in the individual instance one can see how emotional, in-the-moment reactions to such frustrations could lead to such responses, in the case of the republic, or democratic State, wherein the judicial system is meant to ensure measured and thoughtful response, this is a serious failure. Punitive Justice is, simply put, the authoritarian (authoritarianism, 2014) philosophy in action. It is a civilized looking construct of what otherwise might be labeled as might makes right, or the law of the jungle. It is counter to all democratic principles.

At the time of its founding, a time when the U.S. saw itself as revolutionary in contrast to its European parents, there were relatively advanced ideas being discussed around justice. Thomas Paine once said: "Lay then the axe to the root, and teach governments humanity. It is their sanguinary punishments which corrupt mankind." Yet, this advice was ignored when the government which he fought to see established finally formed its criminal justice system. All subsequent attempts to reform it have proved futile, as this system itself is a chronic recidivist, because its basis is spite. Any changes made to it, however long they might last, eventually get dialed back, until reform is called for again.

We have been stuck in a loop for a while, going through periods of reform and creeping back to periods of severity (Pertsilia, 2003). In addition to solitary confinement coming, going, and coming back again on overdrive, we have seen a whole host of things do the same. There was a time when no state had a death penalty anymore (Zinn, 1998). Nonetheless it came back. Most states, at one time, even allowed prisoners weekends with their families either in special quarters at the prison, or even at their own homes (Zinn, 1998). The sentiment which lead to the ending of these reforms was that these

things were somehow "soft on crime". However, this sentiment misses the point that getting rid of solitary and allowing prisoners more quality-time with loved ones was good for the rest of society, because it ensured that they would retain some sense of connection to other humans, which solitary confinement destroys, and which social isolation at the least erodes. This is not a wise thing to do with people who will, for the most part, later be put back among the general population.

We should want people who may have ignored the needs of others to become more—not less— social. By isolating people, as solitary confinement does in the extreme—and as separation from family and community does in all forms of incarceration—we make them more likely to turn inward and reject the needs of others as well as the norms of society. We act against our own best interests, effectively cutting off our noses to spite our own faces<sup>46</sup> when we ostracize a person who has already done something which indicates a lack of compassion or empathy within that person.

Many things did once exist based on the understanding that the majority of all prisoners—currently, 93% or more—would go home from prison sooner or later and that it was smarter to keep them connected to some sense of normalcy than to get them too thoroughly habituated to institutional life (Pertsilia, 2003), or too alienated from normal social situations. Prior to the 1970s the overall trend in corrections was toward corrective measures and behavior-based sentence reduction (Zinn, 1998); —thus the name, corrections. Today this label—corrections—is largely nothing more than a euphemism

---

<sup>46</sup> This term-cutting off one's nose to spite one's own face-roots back to a medieval practice wherein the wife of a man caught committing adultery was subject to having her nose cut as punishment for her husband cheating on her (Pinker, 2013).



applied to punitive institutions. Though, things appear to be starting to change back. The question is: then what? What is it that we can do now to stop the pendulum from swinging back to where it is at the present, or worse? Can we ever truly mend ideas which originated in the dungeons of medieval Europe? No one speaks of dungeon or torture reform; however, this is what we are really talking about when we mask it these things in contemporary terminology by calling them prison or justice reform. Just because we have removed ourselves from that basis by renaming the dungeon to prison and the torture to punishment, and, in line with these new names, changed the shape and design to suit modern sensibilities does not change what they actually are. Can vengeance be reformed, or must it be abandoned?

"Mass incarceration" is only the latest manifestation of an ongoing problem one which the American public has gone along with since colonial times, but which began with our government's sanguinary European monarchist roots, centuries ago. Our culture once tolerated and even embraced the ideas of floggings to the bone, dismemberments and public humiliations such as binding people in the stockades and allowing the mob to spit on and throw things at the defenseless person (Pinker, 2013). We organized the most gruesome sorts of execution as social events, wherein children were encouraged to attend, picnics were held and souvenirs sold (Pinker, 2013).

At times, the sorts of things which carried the kinds of penalties described above included the impossible, such as turning one's neighbor into a frog using magic. In all too recent times they have included things such as being a black man while glancing in the direction of a white woman (Pinker, 2013). All of these sentiments were conditioned into the public mind over the course of generations. We are not, as some earlier apologists of these

arrangements once argued, naturally inclined toward believing that the best way to fix things is through force, or otherwise that might makes right, at least not wholly. Enough of us have collectively come to realize that the will of the strong is not typically in the big-picture best interests of the majority (or even necessarily the long-term best interests of the strong themselves), that we have developed social and political structures which exist largely to overcome the tendencies of those who would use what power they have to enforce their own authority.

It is true, that like animals, when we feel deprived, when we live in states of scarcity of resources, humans tend to fight over these things rather than cooperate and share (though not universally true, and those who cooperate still tend to do better). However, it has been a long time since most humans really needed to worry about this. We live in an age of plenty. The issue is that in the past, we did face these environmentally imposed hardships of scarcity, and the social and governmental systems which developed out of those times and around those problems tended to focus on enabling the most self-interested above the betterment of the whole. Today, we each of us, grow up under regimes which are still, to greater or lesser extent, based on how we dealt with these problems of endemic scarcity during times when they were not readily manageable. The poverty which so many endure today is one which is fundamental to the design of our societies, not the conditions of the planet itself. Yet, to some degree, we still fight wars over economic resources, and we still hoard resources within our social structure, excluding and exploiting those groups which we have become historically accustomed to excluding and exploiting social and economic structures. Worst of all, we still, in action if not expression, largely buy-in to the proposition that individual wrongs must be settled by force, whether we believe that force should be applied by the individual, the mob, or the

agent of the state. Today however, we do not need to base our families' location on proximity to a fertile river valley and fight out who gets to live there.

We can see that these ideas are fading, but in most respects, today we are living with the fruits of our ancestor's struggles, and the marketing to the masses of the self-aggrandizing proposition of the mighty, that might makes right as the organizing principle of principalities and states which favor the strong (or empowered) and marginalize the rest. Still, for them (even the mighty), and for us, it would have been better in the past if people cooperated more and fought less, and it still would be better for all concerned. The advancements which brought us out of environmentally imposed scarcity arose primarily through cooperation. It is things such as international trade and recognition of shared interests which have reduced the number of wars over the centuries. It is this same force of nonviolent cooperation and our ability to compromise with each other which have reduced violence between communities<sup>47</sup> and within those communities between individuals, and likewise within families (Pinker, 2013). It is almost exclusively in those areas where resources have remained scarce and such cooperation has remained absent, that interpersonal violence has continued to prevail.

---

<sup>47</sup> Lest we forget, wars used to be between tribes and city-states. Imagine a war between New York and Newark today. This is what it used to be like. That said, this is still what it is like for kids growing up in gangs, fighting between neighborhoods. These are—while largely centered on things which seem superficial such as one's reputation or pride, or material status symbols such as sneakers and cars—largely economic struggles over locally scarce resources and jobs. To that point, drug dealer, is a job description, which, in such areas where scarcity remains the norm, is often aspired to because it promises a prestige wage for people whose other job prospects (if any) are in the minimum wage or lower categories. Though it is interesting to note in spite of the impressions of potential wealth marketed to the prospective drug dealer, most remain below the poverty line for the bulk of their careers (Levitt & Dunbar, 2005; Levitt & Dunbar, 2005).

While most of us have realized that violence is not the answer in our personal lives, our culture persists in the belief that those of us who fail to cooperate with it need to be met with the violent response of tossing us in a dungeon and or torturing us. Fully appreciated for what it is, this is deeply ironic. Right now, we seem to be as society, beginning (once again), to rethink this proposition. The current calls for reform are however largely centered on reducing sentences for so-called non-violent offenders,<sup>48</sup> or diverting *them* to treatment (Pertsilia, 2003). There is little meaningful discussion about what to do with people who commit violent acts and less about those who have sexually related crimes,<sup>49</sup>

---

<sup>48</sup> I say so-called because I think this is a relatively arbitrary distinction. While certain classes of harm which are designated criminal are arguably directed toward oneself versus others, it has been pointed out, rightly I think, that there is no harm done whether inwardly or outwardly directed which happens in isolation. Or as some might put it there are no victimless crimes. That is not to say that the person who for example breaks a drug prohibition demonstrates as deliberate an indifference to the plight of others in the act of using some substance as the person who carries out a direct act of violence. However, there is to be sure a high degree of likelihood that by virtue of the prohibition itself there is some violence or exploitation happening in the market activities surrounding the supply chain of the substance to which there is some direct causal link between the person breaking the prohibition and the persons harmed. That said, this is also often true of a great many market activities which are not prohibited, for example the trade of diamonds (blood diamond, 2014). The larger point here however is that reduction of sentences only for those we feel the most empathy toward misses the point of the reforms which are called for.

<sup>49</sup> Much of the current handling of so-called sex offenders (a label which carries harsh, and typically lifelong social consequences for a wide range of both violent and non-violent offences) centers on erroneous beliefs about their recidivism rates being among the highest of all crime categories, when in fact, people whose crimes fit into these categories are among the least likely to recidivate. These beliefs root back to a poorly researched article in the popular science magazine *Psychology Today*, published in 1986 by a person who was a so-called treatment provider, not a research psychologist, who recommended various experimentally unsound treatment regimens including electrical shock produced aversion to sexual stimuli and who claimed that the recidivism rate for sex offenders was 80 percent but provided no sources for these claims (When Junk Science About Sex Offenders Infects the Supreme Court, 2017). The *New York Times* article cited here states that the rates are more like 3.5 percent recidivism (in other words, more than 95 percent do not reoffend) within three years (which is the time period beyond which recidivism drops to much lower numbers for all categories of crime). The facts around the dangers of repeat offending are much the opposite of the number broadcast to masses via sloppy sensationalistic journalism and the ill-considered reliance of the Supreme Court on this single non-research based 33-year-old magazine article. In response to these

or so-called sex-offenders.<sup>50</sup> In fact, if anything, the trend seems to persist in medieval styled traditional responses where violence and dysfunctional sexuality is concerned. The

---

unfounded beliefs, most states have some requirement for sex offenders to participate in so-called sex-offender treatment programs in order to qualify for parole (which is nonetheless rarely granted to people with convictions in this category. In many cases, these programs are used to either clear a person from a potential civil commitment requirement (discussed below) or to find reasons to justify such a commitment.

The current treatment programs employed by criminal justice institutions revolve around outdated models for behavior modification which have always been controversial, and have long been abandoned as ill-conceived, if not unethical by the majority of psychologists and social scientists. Among the evaluation methods for patients of this kind of treatment, is the exposure of the subject to semi-pornographic material including images and audio, depicting children engaged in sexually suggestive behaviors or wearing revealing attire, as well as similar material depicting acts of sexual violence, during which the person being exposed to such materials (in some cases, presumably for the first time in their lives), is connected via electrodes attached to their genitals to a machine called a plethysmograph, which monitors blood flow, which in theory will act as sort of a lie detector to monitor whether or not the person subjected to this is turned on by the material they are being exposed to.

There are, to be certain, serial offenders in this and all crime categories (particularly addiction or impulse control related ones). But the solution is not to indefinitely imprison those who might legitimately need more supervision and treatment and call that treatment even when it is really prison. There are smarter ways to handle these things, some of which will be discussed below.

<sup>50</sup> This largely pejorative term, often abbreviated both in writing and conversationally as S.O., or intensified to the levels of so-called predator or sexual predator (both terms with no scientific bases), depending on particularities attached to laws surrounding civil commitment- which is a loophole that allows some people who have been given a specific length of sentence by the courts to be held indefinitely in so-called treatment centers (When Junk Science About Sex Offenders Infects the Supreme Court, 2017)-but which has become a term which is used interchangeably for all members of this criminal sub-class among Corrections Officers (C.O.s), the media, the general public, and perhaps most consequentially, the inmates whom many C.O.s encourage to further ostracize and target such individuals for harassment and violence within the institutional setting. It is interesting to note as well that this particular creation of a sub-class of criminals is unique to those who fall in this category. There is no such comparable thing done for people who for example have been convicted of murder. While our culture at large may label such a person a murderer, in the institutional setting they are not subject to any additional marginalization or labeling, in fact, if anything, they are elevated to the top of the institutional pecking order. Furthermore, there is a strong tendency within this setting to give sympathy to the person who claims actual innocence of murder, which is rarely, if ever, afforded to the person who claims actual innocence of a sex offence (Author, 2020).

call is, in these cases, all too often for permanent estrangement from society, long-term confinement, punishment and even death. But isn't discouraging these violent crimes the most important problem for which criminal justice exists? For now, at best, we can expect there *might* be some reduction to the time served on a sentence for some people in either of these sub-classes of crime. While this is an area of serious ongoing contention, there have been moves toward offering parole possibilities for some people which were previously denied any possibility for any such opportunity. What however does this do except to reckon with the fact that most people in these categories are unlikely to commit a second crime? What does it do to prevent the *first* offence of murder or rape? What does it do to minimize the overall level of harm inflicted in any given set of circumstances? Sentencing which reflects the anger—justifiable or otherwise—of those who would have it inflicted, does nothing to make the world a demonstrably better place. It only masks our failures to be able to solve things in any meaningful way. This way of addressing serious problems creates the illusion that serious steps have been taken to right some wrong, without ever actually doing something which could be described as remedial or curative.

Also, there remain other concurrent converse trends ongoing which call for harsher punishment and lifelong social sanctions against people who are convicted of various sorts of crimes.

Rather than a consistent pro-punitive position from one side of the political spectrum standing in opposition to a pro-treatment or restorative solution call from the other, there is a considerably mixed bag of views calling variously for exoneration demonization of this category of crimes or that, which vacillates loosely along party lines group or personal sentiments. The voices calling for comprehensive reforms based on views of the big-

picture are present on both ends of the political spectrum, but are still meeting with resistance and are generally pushed to the margins. It does seem apparent that there is an overall trend toward reform-based solutions, but what does this do except dial us back to an earlier iteration of the overall problem?

Under the umbrella of reform, there is a trend towards institutional re-education programs.<sup>51</sup> These however, typically are offered only to those who are highly motivated

---

<sup>51</sup> These are typically labeled rehabilitation programs, but are in-fact typically just a bunch of instructional classes intended to win individuals over to more socially acceptable lifestyles, or for lack of better terms, to indoctrinate or re-educate. While there may be merit to ideas or ideals they attempt to instill, the methods employed by these classes are not well conceived. Whether or not they are mandatory (meaning failure to participate results in additional institutionally meted out punishments) or optional (meaning failure to participate may limit chances for obtaining parole), they are effectively forced on the individual. Behavioral research has demonstrated that this is one of the least effective ways to encourage change in an individual, i.e. relying on entirely extrinsic (outside) factors to motivate people (Benabou, R. and Tirole, J., 2003). Researchers have tested various more effective ways to encourage personal change than these, and they have developed a substantial body of evidence on what does and does not actually work when various things have been tried in the real world, but to my knowledge, none of this insight is being employed in any U.S. prison. These significantly more effective treatment regimens tend to be more personalized (though some involve environmental changes which can affect the collective behaviors of entire groups), and are therefore likely to be more expensive (though the environmental and policy based ones are not necessarily, and may even be less expensive than existing so-called security measures). They do require both more individual interaction and more skilled treatment provided by thoroughly trained individuals (where the current programs are based on manuals written by individuals with views which may not comport with research, and are frequently administered by people who have simply been trained in administering prison programs, often only generally, and not even specific to the programs they will teach, and who lack any special qualifications outside of a clean criminal record). Nonetheless, it is to be expected that the overall costs for proper treatment would amount to a reduction in total and long-term spending on dealing with the kinds of things law enforcement exists to address. Simply providing proper treatment, and coupling that with active and ongoing assessments, of dangerousness of individuals who present with a demonstrable need and using that as the primary guide in determining the levels of supervision and restriction needed to ensure public safety, could be expected to dramatically reduce the amount of money needed for the total lifetime treatment and housing (confinement) for any given individual. Furthermore, in so doing, one could expect this to be coupled with a more significant drop in crime rates than any business-as-

to participate in such programs and keep out of trouble within the institutional framework, i.e. those least in need of motivation to change.<sup>52</sup> Those who most need treatment in order to be functioning members of any kind of normative social structure, outside the prison pecking order, are typically the ones who get the least of it (Special Report on the Use of Solitary Confinement, 2018). In many cases, prison worsens those who are most in need of a correction to their life-path.<sup>53</sup> And while this fact is something which is no big secret—to the extent even perhaps that the public perception is that prisons make more people into worse criminals than they actually prove to (Pertsilia, 2003)—there is virtually no discussion on what to do about it, outside of the circles the reformers themselves travel in. In fact, even media outlets whose reputation is that of *liberal*, such as the New York Times, when reporting on prison *reform* are quick to declare without qualification, as though it were fact, things to the effect that some people will *always* need to be kept in prisons, citing no reasons to justify their opinions, or qualifications surrounding their implication of ability to prognosticate over the future of human cultural development, which such absolute statements tend overlook (Lessons From European Prisons, 2013). The *belief in* the necessity of this relatively new institution

---

usual law enforcement offerings or security could ever hope to offer. In short you get what you pay for, though right now we do pay too much for too little result.

<sup>52</sup> That said, in my over 10 years' experience as a prison inmate, I have seen, anecdotally, the opposite happen. In other words, oftentimes the people who go home early are those who seem least motivated to change, and among those with numerous disciplinary issues within the prison environment. Those who appear to be most committed to positive change are often repeatedly denied parole. This in itself is an issue which deserves thorough scrutiny, and may be a significant enough issue to distort the statistics on both recidivism and parole success rates (Author, 2020).

<sup>53</sup> It is interesting to note here, that the military have found similarly that those soldiers who go AWOL who are thrown in jail continue going AWOL 90% of the time. However, those who instead get extra duty, i.e. those compelled to become more engaged, typically stop going AWOL (Goleman, Destructive Emotions, 2008).



is so embedded into our culture today that it is all too often taken as some immutable fact of human existence. It is not.

Mass incarceration is part of a much larger ongoing problem that will not cease to be by merely gouging out the cankers of the system. Moreover, this problem will not be resolved by simply reformulating the most obviously dysfunctional aspects of it. As one cannot cure a wound by picking at the scab. Most of the proposals being considered today offer just that. Mass incarceration is a problem which is simply a presently salient aspect of the callous nature of the concept of punitive remediation of destructive behaviors. As Jeremy Bentham observed in the 1700s "all punishment is mischief all punishment is in itself evil". Fixing the massiveness of our current punitive response will only reduce this mischief and allow it to recede further from public awareness.

Until we have *replaced* this broken system, we *do* need in the meanwhile to reduce the number of people we lock up, *and* we need to go through with the various narrow reforms being suggested by the experts, but none of these are enough. In the bigger picture however, we need something which actually resolves the problems it seeks to remedy, something which serves all of our people and communities. So, we need to begin working on the replacement while we also make the temporary changes needed to reach the other shore.

Albert Einstein is, among other things, famous for having pointed out that it is impossible to solve problems at the same level of thinking that created them. What we call crime is largely what happens when a person puts his or her well-being above the safety and security of others. What we call criminal justice, is when we do to that person bad enough things to induce a sense of satisfaction in the mob, or in many cases, just the state 's

officials. In subscribing to the concept of retribution via law and order, we elevate our combined senses of what promotes individual wellbeing and feelings of security above the actual safety and security of the society in which we live, or that is to say our actual collective good. We just do it in a way that maintains an air of order and proportionality (though the latter has largely been dispensed with). Neither the criminal nor the court demonstrates concern for what creates the greatest good for the greatest number, or the subtler problem of where to draw lines in facilitating *that*. And so, it is both the individual who does a given harm and the criminal justice system which responds to said harm with more mischief which are in need of similar kinds of re-adjustment in order that they might function well in the social sphere.

## 9 A Practical Alternative

This is where the need for Positive-Cooperative Justice becomes apparent. We could define PCJ as: a paradigm for justice which exemplifies the social behavior it seeks to instill, bringing all aspects of justice in-line with contemporary scientific methodology and democratic mores. PCJ would among other things, be largely capitalizing on the findings of the model of mental health know as *positive* psychology (humanistic psychology, 2014) (Positive Psychology, n.d.). This would be coupled with the understanding of the human brain and how behaviors arise from it, as discovered in the field of cognitive neuroscience, and the many other more nuanced understandings of behavior that have arisen through

careful observation and experimentation in the various relevant fields of research over the past several decades.<sup>54</sup>

## The Healthy Brain

Positive psychology works on something along the lines of preventative medicine. The basic notion that it operates under is that a healthy mind does fewer destructive things than an unhealthy mind. In this model, the *patient* is helped to improve her or his overall outlook and perhaps even develop a sense of meaning to his or her life and actions, as it is the absence of this kind of healthy engagement with the stuff of life, which is most often at the root of destructive behaviors. Alongside this, the PCJ model would set aside the ineffective strategy of attempting to delete the behaviors which arise when a person acts on a given impulse through pure abstinence (which is currently what we are attempting, or pretending to attempt to promote via the poorly considered and non-finite *conditioned stimuli* of punishment or fear of punishment), which leaves the initial impulse frustrated or suppressed. In place of this, the PCJ model would call for thoughtful behavioral modification efforts toward developing more constructive, or socially acceptable behavioral responses to stimuli. Research in various relevant areas has shown time and again that to change behaviors you must change the routine, but not the cue and the reward (Duhig, 2012). In other words, one must eliminate the association between a given urge, a particular behavior and a desired result, by replacing the middle part (the

---

<sup>54</sup> While it should be noted that this is an area of ongoing research, the level of current scientific understanding is already far beyond sufficient to allow for the proposals outlined in this paper. In truth, though much of the detail was lacking on the neurological level until the last few decades, most of the ideas proposed here under the heading of PCJ on the treatment end of things as well as the societal have been well understood and agreed upon by our best and brightest minds at least since the 1960s (see for example works in behaviorism, and positive psychology) and have already in many important ways been adopted in Germany and the Scandinavian Countries (Lessons From European Prisons, 2013) since around that time period.

behavior). Impulses and the need to satisfy them do not go away, but the routine is malleable.

Specifically, treatments might include teaching patients to apply skills such as mindfulness, which has proven lasting benefits for brain health and towards developing overall happiness (Hanson, 20xx), cognitive therapy techniques, and might utilize proven varieties of various technological aids in areas such as biofeedback of immersive virtual reality situational training scenarios and so forth. In conjunction with treatments, real neurological evaluations should be taking place at regular intervals alongside any other sorts of behavioral or psychological testing or observation. Patients would also be able to participate in an array of research vetted social and emotional intelligence skills building programs and the like on an ongoing basis, learning things ranging from how to handle their own difficult emotions to nonviolent ways of successfully navigating conflict with others.

The key point here is that we should use what works but temper that with what is ethical to use. As has been a key factor in the trends underlying the so-called treatment-oriented portion of the current system, cognitive therapy based regimes as well as educational programs aimed at motivating changes in how an incarcerated person makes future decisions or fits themselves into the fabric of society, have shown relatively promising results. Mindfulness mediation has also shown some promise in the handful of formal studies where it has been tested on inmate populations. However, it appears that most of the experiments in this area have been centered on running study participants through a fairly brief period of supervised practice, perhaps not sufficient to establish the kinds of neurological changes observed in other studies of this practice whose outcomes gave rise

to the expectation that this kind of treatment could have a significant and lasting impact. Similarly, Hatha Yoga practice has been demonstrated to reduce recidivism in prison populations, and some of the studies have centered on those who have received supervised instruction for longer periods than those of the mindfulness studies. The obvious problem with all of these sorts of treatments is that they require the active participation and engagement of the person in treatment, this may be just fine for those who are eager to make a change in their live, but for those who are not, there is a problem here. One solution might be to make the environment more amenable to encouraging the potential participant to take an interest in such activities, and in fact, this is what has emerged from behavioral economics. Essentially, if a person finds themselves immersed in an environment where people are doing this, that or the other, they are likely to adopt what those around them are doing. We are inescapably social beings, we tend to copy those around us and participate in whatever is readily available.

The above considerations call for greater inclusion of the community and family at the location of treatment or confinement (in the case of those who are deemed to be an active and ongoing threat to the wellbeing of others). They also call for a different kind of physical environment than the punitive institution as well as a different kind of staffing. In order to wind up with a situation where those who have been the most destructive in need of treatment from the social perspective wind up actually wanting to change or at least are willing participants in activities which are likely to lead to such change, the environment—both physical and social—has to be conducive to such participation. Without this, we should expect high recidivism rates along the lines of what we see presently.

If the most egocentric, least socially engaged individuals are those who present the most threat to those they come in contact with, it should be assumed that forcing them to participate in programs against their will (as is often the situation today in punitive institutions) might not just fail, but also potentially backfire. It is for this reason that treatment programs in any place where a person might be forcibly confined should always be optional and that non-participation should not be punished. The question of what should be done to discourage non-participation, or conversely encourage or incentivize participation is an open ended one. There are various methods which might be employed which could work within the ethical framework of PCJ. For now, I would say that if confinement or restrictions are based strictly on demonstrable necessity for safety concerns—rather than the satisfaction of some party that a person is being sufficiently deprived of freedom to somehow evoke justice—then the most likely scenario is that the person who refuses to participate in treatment oriented activities will deny herself the possibility for lifting restrictions wherein they are unable to demonstrate that they do not need such restrictions. To be clear, I am not saying that restrictions should be imposed on those who do not participate in rehabilitative activities, rather that they should be imposed strictly on demonstrable need, and that by participating in activities which help one get along better with others (or on his or her own), a given person is more likely to overcome the measurable indicators of such a need. It has been verified through experimentation that encouraging a person to do something which requires willpower to do (which any good treatment program would require), if they are onboard helps them, but telling them that they have to do it actually makes it more like that they will fail (Duhig, 2012).

Taking the above into consideration, it can be assumed that in spite of any incentives, some people will not choose to participate in any kind of programming or voluntary treatment. This is where environmental factors can make all the difference. Whether we choose to or not, people are naturally inclined to imitate, both each other, and things in their environment. So, even the person who refuses to go along with any kind of treatment regimen can, in effect, be treated in certain in non-invasive, nonforceful ways, simply by virtue of making that person's environment more amenable to the kind of behaviors needed to navigate the social order. Conversely, a cold institutional environment can wreak all sorts of havoc and reinforce the kinds of thought process which lead people to be destructive. It is now known for instance that a person in a box shaped room will actually do less well than a person in an organically shaped room in thinking up creative solutions to a given problem [this was discussed in an article in Scientific American Mind within the past few years]. Bearing these things in mind, spaces could be designed and activities arranged so that people residing in these spaces are constantly surrounded by positive and engaging stimuli that might draw them out. Spaces could be intentionally built to provoke creative thinking and social activity.

In addition to the kinds of treatment where a person puts in a lot of participatory effort, or the kinds of things which might help nudge a person in a positive direction, there is also the possibility of direct neurological stimulation. In the recent PBS documentary, the Violence Paradox on Nova, a method was shown wherein researcher Adriane Raine demonstrated something called upregulation of the prefrontal cortex, wherein this area of the brain is given a low level of electrical stimulation, essentially making it work better. In his experiments he found that participants showed a 30 to 40% decrease in criminal

intent. In other words, that when confronted with a given situation wherein a person might be tempted to do some wrong, this kind of stimulation reduces the impulse.

Whether or not this type of treatment produces lasting effects was not discussed, but by Hebb's law (neurons that fire together wire together) (Hanson, 20xx), this might be what could be expected. Provided this is the case, there is the possibility that a treatment of this sort could have a place in something like PCJ, but it would have to be strictly voluntary. Similarly, there are forms of bio-feedback wherein a person might be exposed to given sets of stimuli and encouraged to evoke certain kinds of emotional responses which in turn might correspond to certain brain activities which can be measured and built up like a muscle. As Rick Hanson points out in his book *The Buddha's Brain*, which discusses the lasting effects of meditation on the brain "When your mind changes, your brain changes too".

Generally speaking, it can be said that once you get past the fundamental desire to change a habitual behavior, impulse control is the key underlying issue where most of the destructive behaviors justice touches on are concerned. To this end, as suggested at the end of the above paragraph, it is important to understand that researchers have shown over and over again that the quality we typically call willpower which is a key component in making any lasting changes in habits is a lot like a muscle. It is something which we only have so much of to use in a given moment, something which fatigues over the course of use throughout the course of daily events, and is something which responds to a workout program. What this means, is that we know enough now to be certain that given the right circumstances, tools, methodologies, and so forth, it is certain that people can change. In fact, whether or not they change in the ways that the social order demands aside, the rule



of thumb is that people *do* change from day to day, year to year, sometimes for the better, sometimes for the worse, how we as a society want to position ourselves in relationship to that process is the question. The primary emphasis of PCJ will center on helping people, whether or not they have already caused some significant harm, learn effective and socially responsible ways of dealing with life's difficulties. That is something we can do. That is something which would be in everyone's best interest.

### The Scientific Method

In dealing with destructive behaviors, treatments to address them, meaningful steps to prevent them at the personal and community levels and remedying the underlying causes which foster them, PCJ would also be positive in the sense that it would be founded on the principles of *positivism*, the philosophical term for what science *is*: the requirement that one must be able to point to what is able to be verified before being accepted as fact. In sharp contrast to the kinds of responses to crime which *criminal justice* advocates, PCJ will rest on what can be demonstrated to be true.

The scientific disciplines of psychology, neuroscience, sociology and behavioral economics all point directly to measurable and meaningfully effective ways in which the number of crimes could be dramatically reduced, and that for maximal effect, these need to be the bases for our response to such problems. As these sciences have identified and tested various ways of addressing interpersonal harms with much greater effectiveness and with much lower expense than what law enforcement costs in both human and financial terms, it is these findings that PCJ would act on. The sciences demonstrate, for example, what the underlying mental (largely *physiological and educational*), and social (largely *financial and educational*) motivators for destructive behavior are. They also point to the ways in

which we can address these factors most effectively, both within our current means, and those things that we might do to largely *eliminate* these problems in the long run, as both our means and our understanding improve. PCJ would be *that* form of justice which acknowledges the facts and acts based on them.

## Positive Philosophy and Principles

PCJ is the only path we can follow that is truly in line with the professed principles of our nation. All things considered, we need to abandon, not just prisons, but also the entire concept of criminal law. This concept is so laden with ignorance, cruelty, superstition and pseudo-scientific concepts of murky origins that it just has no place in a modern nation. While elements of it have been referred to in the U.S. Constitution, on the whole it is incompatible with the bulk of the principles the Constitution revolves around.<sup>55</sup> The

---

<sup>55</sup> The opening paragraph of this document reads "We the People of the United States, in Order to form a more perfect Union, establish Justice, ensure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.". Criminal justice fails to establish true *justice*, as is evident by the disproportionate punishment of impoverished, mentally ill and minority groups, and its repeatedly demonstrated ability to ruin people's lives when it gets the facts wrong-or to add-on the ruin of those lives of the innocent friends, families and communities of those it purports to punish. PCJ would dispense with the inflicted ruination aspects of justice in favor of solutions which could be tolerated even if the findings of proceedings were in error. Criminal justice, beyond a certain level, has been demonstrated to have a negative impact on "domestic Tranquility", and does not do as good a job of promoting this tranquility as things such as education, mental health care and the alleviation of poverty could at much lower overall costs. It also fails to provide the "common defence", as it has been shown that it fails to *protect* people, in preference of *punishing* those who have caused harm, *after* they have been enabled to do so by the shortcomings of this solution. Lastly, as criminal justice brought us from being a country whose founders and majority of citizens believed should have no standing army, or even tolerate the use of soldiers domestically to being one which has repeatedly deployed the National Guard against its citizens (albeit in a few instances *for* their protection from violence), and has militarized its police. The idea of a standing police force anywhere in the U.S. was itself deemed unacceptable by the majority until the mid-1800s (police, 2014). To meet the guidelines enshrined in the opening lines of the Constitution, we desperately need a rethink of our approach.

foundational ideas of criminal justice simply fall apart under scientific scrutiny, and so they must be abandoned. They should be rightly understood as religious<sup>56</sup> in nature and

---

<sup>56</sup> The term religious as used here is not in any way meant to denigrate those religious beliefs which the reader might hold in relation to the subject matter of this paper. I do not contend even that the basis of criminal law comes down from any particular religion. Rather, it comes from a hodgepodge of religious and philosophical sources which have come alongside the development of statecraft down through the ages. While there are elements of crime and punishment which appear on the surface to be, for example, of Judea-Christian origin, there are as many or more which stem from Greco-Roman, Norman, and Germanic religious or philosophical beliefs, and yet others which grew of communal sentiments, the views of village chieftains, feudal warlords, emperors, kings, queens and military leaders, and even more recently particular religious sects, as in the case of the Quakers, academicians, politicians and philosophers.

The point which the author aims to communicate here is that because we have a Constitutionally enshrined separation of Church and State, the State has an obligation to adopt a position which is based entirely on empirical evidence and doctrinally neutral. It is true that statements made in the Declaration of Independence suggest some form acceptance of the founders of so-called *Natural Law* (natural law, 2014), as illustrated by the statement "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights". And while there are suggestions of a religious basis for the ideas of the equality and unalienable rights in the use of the word Creator, the language is not religion-specific, in that it could be embraced by members of any religion or even those who believe that an unconscious universe itself is said creator, and has within in its makeup, some essential rules which favor what works out to be ethical behavior.

It is also true that mere adoption of a strictly defined *positive law* system (i.e. that which is law because it is decreed by authority) (see natural law citation, above), can run contrary to the good of people. That said, the simple application of the framework of positivism to the problem of law need not stop at the analysis of what is so, and justification of what is so based on analyzing the elements of how things stand. Rather, positivism, or that is to say the scientific process, can and would best be applied starting from the basic position of natural law, i.e. that what we casually call goodness, kindness, or non-harming behaviors are what we should be encouraging in a civil society, or that at least, we should protect those under our umbrella against the opposite. In other words, "That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed", as the Declaration phrases it, which suggests more of a positivistic position on the question of how these rights should be dealt with.

The Constitution, which is the basis for our government, and which supersedes the Declaration of Independence is specific in the exclusion of laws which relate to the "establishment of religion, or prohibiting the free exercise thereof", as stated in the first Amendment. While there have been various interpretations of the meaning of this, the general consensus is that it creates a strict separation of Church and State. The thesis of this paper rests on the fact that the methods employed by our government to deal with crime have no empirical basis and therefore are more akin to religion than any other discipline. To

therefore completely out of step with clear constitutional requirements. We can be a democracy, we can even be one that acknowledges a place for certain traditional practices which fall outside of scientific validation, but we cannot sustain the ideas of the 18th and 19th centuries post-colonialism indefinitely with a religious like adherence, without any rational justification for doing so. We have no rational justification for clinging to this outdated and ill-conceived system. Just because the mob demands its pound of flesh, we cannot enshrine that demand in law. As a republic, we have the obligation to ignore popular opinion when it is in direct conflict with the essential principles of responsible governance. We legalized slavery, not because it was unpopular- the country was deeply divided over their personal feelings about whether or not it was right to continue this practice. We abolished slavery (except for the case of prisoners who are excluded from the 13th amendment) because it was in conflict with the overarching principles laid out in the Constitution. We need to start over from what we know, and what contend to hold most indispensable to the bases of the American idea.

---

underscore this point, as noted elsewhere in this paper, this branch of law even contains terminology which is distinctly religious in origin and which has no currency in scientific terminology, for example the term victim as discussed above. My contention is that criminal law, and especially the punishment aspect associated to its application is effectively an unconstitutional construct and needs to be scrapped in favor of an approach which is in line with the Constitution. While it is fair to say that there needs to be some ethical systematically philosophical basis which we use to determine what kinds of behaviors should be intervened upon by the community or state, it is clear that this should not be specific to some narrow religious perspective which is not generally shared by the public at large, so democracy seems to be the best way to decide what should and should not be allowed. However, on the question of how to address those behaviors deemed unwanted most effectively, the best toolbox we have is science, and it is the only one which is compatible with the First Amendment. Yes, there needs to be some philosophical a priori basis which keeps the solutions bound to certain guiding principles, i.e. that we do no harm (or as little as possible) in the process of doing good, but the doing of good with an eye to effective results is critical in this.

The way forward is to apply scientific scrutiny to the problems that we have become accustomed to addressing using criminal justice, and to do so in a way that satisfies our needs *ethically*. This application of science to the problems of justice should adopt both means for making fair and reasonable decisions wherein restitution is needed, and also be infused with (especially as it would include medical elements) the Hippocratic Oath's call to *above all, do no harm*. Prisons do not keep us safer than smarter alternatives would. They incubate crime and leave a vacuum for new people to take over where the last criminal removed from the streets left off (Pertsilia, 2003). Prisons do not even effectively deliver vengeance; they tend to harm the loved ones of the criminal (McLaughlin, et al, 2016) in ways which are as undeserved as any other act of random violence. Furthermore, the adversarial legal process and its aftermath can deepen the resentments that justified harmful actions in the mind of the person who committed them (Pinker, 2013). Add to this the need to defend oneself against the prospective loss of *everything*<sup>57</sup> (however much or little that may be) one holds dear inherent to being imprisoned, and you have a recipe for generating within a person a defensiveness of bad acts themselves and even denial of responsibility- further compounding the underlying issues which lead to such harm. If we want people to feel badly about causing harm— something that *is* a worthy goal (though not entirely sufficient for prevention of impulse driven behaviors)—we need to think through how that's best accomplished (Davis, 1998). If we want to *prevent* harms, we need to think a lot bigger than strategies that seek to induce fear of consequences in people who rarely, if ever, consider long-term consequences to begin with. Fear of punishment works best on those who otherwise would still rarely commit crimes

---

<sup>57</sup> When a person is threatened with potential incarceration, they are often faced with the possibility that they will lose not on their job and residence, but often all of their property, social connections and even their means for self-expression.

(Kahneman, 2011). Moreover, even in those who it does influence, the tendency is that it makes them more sneaky and resentful, *not* more responsible (Kahneman, 2011).

We need to decide what we want philosophically. Ethics, which should be central to discussions of whatever might someday replace criminal justice, is not purely scientific. Nonetheless, it is already employed in the sciences in ways which are perfectly compatible and do not rely upon a shared religious doctrine are already used to guide life and death decisions.

What we should be focused on, is the creation of a new system of justice which meets our needs as an entire society of diverse cultures; a society which is currently comprised of many individuals and groups who go through life feeling alienated and at odds with their fellow citizens and residents; a society which currently sees violence as a normal solution to a wide range of problems. We need a remedy to this. Prisons and the types of solutions employed by criminal justice on the whole are neither remedies nor Band-Aids, they are more like a good old fashioned blood-letting (though the former at least have valid medical applications, where prisons have no such comparable benefit).

When we encounter problems—potential or actual—with one another, or even within ourselves, we need to have effective ways to confront these problems, non-violently and without fear of blowback. Most of us probably do *not* have a full complement of such tools, even though we may be able to navigate the social landscape without winding up in prison. We need institutions which are equipped both to make up for our deficits in these areas in the form of mediation, and to teach these *skills*— which have been identified variously as social and emotional intelligence (Goleman, Emotional Intelligence, 199x)—both to anyone with the desire to improve their tactics for handling difficulties with life

situations, and for those who have proven through their actions to be dangerously ineffective in these areas. Such facilities need to be properly equipped and staffed to diagnose and treat these problems, including, *especially*, the violent kinds. We need these institutions to be able to allow the people they treat to carry on, or in many cases *develop*, normal healthy personal relationships, especially with those to whom they are already connected. These institutions need to be located *within* the communities they *serve*, not tucked away, out of sight. Such places of healing, safety and service would need to operate openly and transparently as an integral part of their communities. At the same time, the people under their care need to be treated as *patients* in every sense of the word, and in therefore, in need of the strictest confidentiality. Who did what to who needs to be a matter strictly kept between those with a direct concern in knowing. Otherwise, as we have today, there is the problem that a person may never be able to live down their mistakes, and in relation to this, subject to mob or street justice of the very kind that we should be working to eliminate.

*Truly* dangerous people do need to be kept under effective supervision and in many cases restrictions *but only for as long as they remain an active a danger, or endangered* by angered members of the community, and this needs *not* to be confinement to a cage or a box. Everyone needs to be given ways to remain or become part of and, perhaps most critically *contribute*, to a healthy community (Frankl, 1983 edition).<sup>58</sup> Whoever is to be

---

<sup>58</sup> In his ground-breaking book *Man's Search for Meaning*, Victor Frankl both describes his own experience as an inmate in a Nazi concentration camp during World War II, and the motivations which kept him and others who lived through the experience going. He concluded that the most effective strategy for survival (provided one was not arbitrarily selected for execution) was to have some sense of a purpose, *beyond* the confines of the camps for living. In addition to this, he observed, both in the camps and in the aftermath of the war, that those whose purpose was finite and centered around specific people or plans were the most fragile; for example, the person who looked forward only to being reunited with loved ones at war's



considered dangerous needs to be a dynamic and ongoing process. We need to be able to assess these things objectively. We need to stop relying entirely on statistical probabilities that treat a person who has acted in various ways in the past as a threat in perpetuity and instead look to individual assessments.<sup>59</sup> Restrictions placed on individuals should be lifted as quickly as it can be reasonably determined that they are not critical. People can be autonomous in their ability to navigate social situations and day to day living to greater or lesser degree, and need to be able to exercise that autonomy, or they will tend to devolve to dependency upon others to babysit them (Benabou, R. and Tirole, J., 2003). It is paramount that those who have demonstrated a lack of self-regulation that they be taught, or otherwise encouraged to develop the skill sets necessary to keep themselves out of trouble. It is also demonstrably doable.

---

end ran the risk of losing their reasons for going on upon learning that the object of their affections did not make it through. Those who, like himself, had something they wanted to contribute to the greater good of humanity, proved to be the most resilient. In line with his set of observations, researchers in the various fields of psychological and sociological research which apply most directly to the issues one must consider surrounding the problems related to the harms people do to themselves and others have found that those who are most committed to contributing to things larger than themselves are the ones who prove to be most committed to the avoidance of causing harm to others (Citation information unavailable). Conversely, those who are the most committed to personal goals (which is the majority of what is currently emphasized in what little training and treatment goes on in our prisons) are much more likely to cause harm to others in the process of achieving these or other self-centered goals (Goleman, *Destructive Emotions*, 2008). There is also direct evidence that volunteerism reduces recidivism (Petersilia, 2003).

<sup>59</sup> It is well understood in research that malleable traits play a much more significant role in recidivism than static ones (Petersilia, 2003). Nonetheless, contemporary parole guidelines in most states give more consideration to the static than the malleable, essentially assuming- in spite of contrary statistical evidence—that certain *types of people* are more likely to return to destructive behaviors. The reality is that rehabilitation works wherein the habitual types of harms are concerned. These things acknowledged, there are also significant numbers of one-off sorts of harm for which people are often incarcerated (Citation information unavailable). In such cases, the likelihoods for recidivism are often immeasurably small, and the justification for incarceration is strictly retributive.



We have good clinical means already at our disposal for assessing what individually varied people in particular kinds of situations are actually likely to do (Goleman, *Destructive Emotions*, 2008). We have technologies and other practical solutions for ensuring that such individuals keep out of problematic situations. Most importantly, we have treatments that can reduce and even eliminate the underlying causes for concern. In this day and age, these are the things we should be using. What we are doing instead, is simply irresponsible.

None of this is to suggest that people should not be held accountable to their actions. In fact, a system of this nature would be centered on fostering people's abilities to *hold themselves accountable*, and giving them the tools they need to make amends for harms they have caused. Without this, the idea of holding a person who has demonstrated a lack of capacity for consistently responsible behavior is a folly. A major component of such a system would be making sure that the needs of harmed parties and effected communities are well addressed in direct relation to the redemption of the person or persons who most directly brought them about. That said, where environment plays such a large role in crime,<sup>60</sup> it is also *we*, including those of us who reside in impoverished areas *and* who are able to see what could be improved and take action on it, as well as those who reside outside impoverished areas, and have the resources to help those on the inside obtain these, who need to take responsibility for the underlying problems which create this disparity. Or in other words, any and all of us who are able.

---

<sup>60</sup> See for example the fact that 70% of all NY state prisoners come from 8 neighborhoods in New York City) (Zinn, 1998).

## 10 The Centers

Our communities need PCJ Centers. These would be places which are both safe and inviting, wherein those who know that they need help in order to function in harmony with their neighbors can turn *voluntarily*, or where those who have been deemed by their neighbors to be unmanageably destructive can be compelled to reside *until* (and only until) they are able to function non-harmfully, without ceaseless intervention.

PCJ Centers should be centrally located and scaled to answer the needs of a given community. For example, in a city, a center might be designated for a give neighborhood, whereas in rural areas, one might serve a county. These centers, above all, should be made representative of the areas they serve. They should be anchored to, and act as anchors, to their respective communities. Each center should be *owned* by its community and managed by a *cooperative trust*<sup>61</sup> comprised primarily of residents or those able to satisfy residents that their interests are exclusively in line with those residents whom they serve. Wherever possible, the professionals employed by such centers should be from the communities they serve, or failing this, should move to these communities and become active members of them outside of their official capacities. Thus, we arrive at the name *Positive-Cooperative Justice*, in that inclusivity in management, community involvement, and ownership would all be regarded as fundamental aspects of the model. Furthermore,

---

<sup>61</sup> Such a trust should be bound by a charter to ensure that the Center, all financial interests invested in, and all proceeds derived from, are used in strict compliance with PJ principles and the common good of the specific community, its individual members, and the greater society at-large. In most respects its charter should resemble that of a charitable trust, but there are various ways in which it would necessarily diverge, in for instance, the fact that it might be that dividends derived from Center business activities may be doled out to community members as the possibility and utility arise. The specifics of how such a trust should be organized and assembled are beyond the scope of this paper and call for further elaboration.

there would be an emphasis on fostering cooperation and mutuality in the areas of just outcomes, treatment, community and personal development.

Centers would operate as a mix of non-profit and community co-op business models.<sup>62</sup>

The primary treatment and residential services could be funded through a mix of tax revenues, grants, sliding scale pricing for the various available services, on and offsite housing and amenities paid by those with the means to pay, and various goods and

---

<sup>62</sup> The concept herein being labeled as a community co-op is one which the author has found no specific examples of in the literature. This may be a unique formulation, meriting additional elaboration as a business model in its own right. In brief, the idea being suggested here, is that regardless of any investments or contributions made, members of the geographically defined community in question would be given equal stake in ownership of this business and its resources without any attached obligations or liabilities. Shares would be forfeit upon leaving the community and granted upon joining it. Some other sort of investment-based shares could also be issued, but these would have to be less than sufficient to create the potential for a controlling interest, these could perhaps be bonds, rather than shares. Effectively, there could be a certain number of shares in existence at all times which mirrors the number of people in the population, and is reflexive to its growth or shrinkage at all times. All goods and services provided by this business would be available to community members equally. Goods in particular could perhaps be provided to community members at cost, or cost adjusted for overhead, or otherwise at some discounted rate which applies to all members, in some cases there might also be some giveaways. Service offerings would be provided on sliding scales based on the individuals' ability to pay, and in many cases for free, outside of any donations of time, money or wares the member might voluntarily make.

As the primary functions of the business (i.e. treatment, housing, education and so forth) are likely to cost a substantial amount of money, until such time as a break-even point is reached, most of the revenues would go into operating the business. In the long-run however, there is the potential that the business will become profitable. At this point, surplus funds should first be reinvested into things which will be of benefit to the community as a whole, and perhaps, toward expansions of the model into other communities. The profits beyond those which are put to such purposes, should be distributed to community residents in the form of dividends. Management should be based on some standard framework compatible with the community's justice and economic needs, but should include a democratic component wherein aspects which effect the community at-large are voted upon, or wherein democratically selected committees of representatives and experts are formed and consulted in such matters. No private funds should be allowed in campaigns for elected positions.

services which can be produced by people residing in otherwise working at the center or its subsidiary and sister community partnered businesses.<sup>63</sup>

## Primary Services

These centers would offer both residential and outpatient, state-of-the-art treatment for addictions and impulse control disorders, such as those which lead to violent outbursts, anti-social, or destructive sexual behaviors, as well as things which lead to more personal problems, such as gambling addictions, chronic unemployment, homelessness and so forth. Essentially these would be the go-to places for both mental health treatment and growth, and for learning the skills needed to become economically stable and socially functional, or to improve one's lot in these areas. They would aim to prevent the destructive behaviors we currently label as crimes and address their underlying causes, as well as act as places where those who are actively destructive can be effectively managed, or where those who need help with aspects of day-to-day living can get the assistance they need. At the same time, they would be of high enough quality to attract paying customers from both outside and within the community for the available treatment options, wellness services and learning opportunities.

---

<sup>63</sup> In general, centers should assess the local business environment with an eye to whatever is lacking in the local business environment and could be helpful to either serve the community or bring in revenue from other communities to boost the local economy. They should also focus on business models which are conducive to creating meaningful work and opportunities for community members to develop marketable skills in the event that they should choose to move on from community employment into other businesses or self-employment. Generally speaking, centers should avoid choosing business models which would compete with already existing locally owned businesses, unless there are circumstances wherein the local community funds that some such business is being operated in a way which is not good for the community. Naturally, business models should also adhere to PCJ standards and not engage in destructive activities.

## Work

For those who are required to stay on-site, or submit to any kind of community imposed restrictions (geographical or otherwise), there would also be ample opportunity on-site to do meaningful work to make reparations for harms they have done to others, both on a fully voluntary basis and wherever required to do so in conjunction with decisions reached through the community mediation processes surrounding harms done.<sup>64</sup> Unlike penal institutions, the emphasis, as stated above, should be on providing opportunities for *meaningful* work. This means that those basic upkeep functions of the facility, such as

---

<sup>64</sup> This point will be elaborated upon in a future paper detailing the possible operations of a PJ centered arbitration and mediation system based on civil law, which under PCJ principles would come to replace criminal courts. In brief, these should be proceedings which involve all effected parties and ensure that all are given equal representation (as opposed to the mere right to representation which may be of grossly unequal quality and means which is afforded under criminal law) wherever harms have occurred. These proceedings should be focused on finding remedies for all relevant issues. So for example, the community and the person directly harmed would most-often have separate areas of concern which need to be addressed, and therefore would be represented through separate counsel throughout proceedings. Likewise, cases are likely to arise wherein the loved ones of a person who has come under community scrutiny, and that person themselves, might have differing needs and levels of responsibility to be worked out. These too could require separate representation. In this light, it might be found that various parties have various responsibilities which need to be attended to, and so, the findings of any such proceeding might come to include not only things that the person being held directly responsible for a given issue might have done in the instance which brought intervention to bear, but that there might also be things which were done to that individual by others, relevant to those harms being considered, which also need to be addressed. Similarly, it could be found that the community might shoulder some responsibility toward the persons harmed. Since things which produce destructive outcomes tend to have a web of causes, any such proceedings could result in various kinds of binding and non-binding contractual agreements.

There is a great deal which needs to be worked out for a fully functional model, but among the things which need to be addressed are ways in which objectivity on the part of decision makers can be ensured in those situations where mutual agreements are unable to be reached. There also need to be considerations built-in to ameliorate those situations wherein a person has been wrongly held responsible for some harm, either at the outset, or in result of the proceedings of PCJ. Above all, such decision-making bodies should aim to produce no harm, and to generate solutions which are workable for all those effected by inter-personal harms done.

cooking and cleaning, should be more of an *option* for those who can find satisfaction in such work, and perhaps be split up into part-time positions, allowing workers time for other vocations and studies. Individuals should also be encouraged to keep up after themselves and thereby minimize the need for support staff. Things such as individual laundry and so forth should be done by the individual, with assistance and encouragement from social work staff wherein personal hygiene issues are present. Training for market demanded jobs should be available, but also, as suggested above, the Center itself should aim to provide various products and services both of the sort needed directly by the community and the sort which can bring in revenue streams from outside. To whatever extent possible, residents should be employed in such work. That said, residents who are already gainfully employed at the time of entry should be allowed to whatever extent possible to continue to work at their current job if they so choose, and so long as there is no conflict with so doing with whatever remedies have been decided through arbitration, mediation, or in the case of those who have self-selected for residential treatment, counsellor recommendations. In those cases, where there are active concerns for on-going harms which might arise in the context of the individual being transported back and forth and allowed to work at the jobsite, efforts should be made to see if the individual can do some kind of work from the Center grounds. If all else fails, treatment providers should aim to work with the individual, her employers and any potential go-betweens such as friends or family of the person under treatment to try to arrange for extended leaves of absence with the possibility of return at the conclusion of the current crisis.

### Shared Spaces

In addition to spaces for living, treatment, classes and so forth, there should be some number of community common areas for recreational activities, sports, artistic endeavors,

performances and entertainment. Except under circumstances which prevent safety in tangible ways, all residents should be able to access such common areas and attend events. Similarly, there should be areas for various forms of dining, including cafeteria type spaces closer in line with those in non-institutional settings, but also places where friends and family can dine more formally, or cook together.

### Onsite Resources

All residents and members of the community at large should be able to access resources for education and artistic self-expression as well as self-guided learning and research onsite, more or less equally (notwithstanding any specific active security issues). There should be for example a well-stocked library, internet access (filtered or supervised if deemed necessary), art studios with a full spectrum of freely available media, music instruments and audio-video production equipment, stages and spaces for public presentations. Along similar lines, each center should include resident, and community tended gardens, including at least edibles, but probably also decorative plants. These features are important both for the proven therapeutic benefits of artistic self-expression and in-turn, that benefit itself on reducing destructive behaviors.

In conjunction to the availability of research materials, artistic media, and gardening spaces, classes should be made available on these subjects on-site, as well as workshops and opportunities for learners to interact with experts and other well-seasoned amateurs and laypersons in various fields. At the same time, formal education at all levels, from basic education, thru to graduate level collegiate studies as well as in-demand or otherwise meaningful vocational studies should be accessible through the center. Furthermore, all such educational opportunities should be equally available to all

community members, whether or not residing at the center. Students should pay for classes on a sliding-scale basis based on their means to pay.

In addition to the typical sorts of educational opportunities outlined above, in furtherance of developing the core emotional and social skills associated with the PCJ model, centers should offer classes and workshops on subjects such as emotional and social intelligences, Nonviolent Communication (NVC), the Alternatives to Violence Program (AVP), secular addiction recovery and support groups along the lines of the Rational Emotive Therapy based Self-Managed Addiction Recovery Treatment (SMART recovery) program. As well as things such as entrepreneur education and resources, especially as they apply to the PCJ co-op model, economics both for practical application and awareness of community issues, civics, and any other subjects which the community and its people need or can otherwise benefit from.

## Security

Security within the facility should be handled on a basis of graduated levels of restriction between various levels or layers of access. Certainly there should be no weapons allowed anywhere on the facility, except maybe by authorized personnel during emergency situations (i.e. nobody should be allowed to carry anything during the regular operation of the facility). In more restricted areas, access to potentially dangerous objects would be more and more limited. The question of how paraphernalia of various sorts should be kept out of this place or that is however up for debate. It is possible that airport style checkpoints could be used, but these could be too severely off-putting toward those who might otherwise benefit from or provide benefit to center pursuits to justify their use. Some balance between pragmatic security measures and maintain and inviting



atmosphere must be struck. In any case, there should be no overly-institutional or oppressively styled and outfitted rooms or cells. Every space within the facility should be designed and outfitted to accommodate a person's basic human need to feel at-ease and afford access to means for creative expression and the like. Heavily restricted residents should be allowed to access less restrictive areas with more direct supervision or security escort as much as possible.

Less restricted residents and visitors should be able to access the more restricted areas and interact with any more heavily restricted residents, as appropriate, and with whatever level of supervision is needed to ensure the safety of all involved in such activities. Also, wherever and to whatever extent possible residents should be able to gain access to, or reside in, areas which are private or semi-private wherein security remains a legitimate safety concern. Security in all cases should be used only for purposes of promoting a *reasonable expectation* of safety, never as a punishment.

To cope with the security issues that might arise either in dealing with residents with active behavioral problems, or members of the community who might threaten individuals with whom they are angered, rather than isolate the individual in question, wherever and whenever possible such individuals would be accompanied by sufficient social work/security personnel to address such problems. Such personnel should be physically able and well trained to handle potentially violent situations, but should also be able to communicate effectively and constructively with the various people whom they would come in contact with in the course of duty. Such persons should be able to handle their own emotional reactions well and be skilled in de-escalating potential conflicts among those they serve, which would include simultaneously the person under direct

supervision, and the community members with whom they interact. In-short they should be social workers who are also good bodyguards.<sup>65</sup>

It can also be assumed that some number of those who wind up in situations which would call for PCJ services, will be already socially isolated. To this end, it will be crucial to draw in volunteers from the community who are willing to share their time and energy to socialize with, and to create opportunities and space for such interactions to occur. So, in addition to any supervisory and treatment duties of staff, every effort should be made to connect both residents and other PCJ service takers to a variety of ongoing opportunities to join or re-join the community at large. In and of itself, this positive action to promote

---

<sup>65</sup> This is not without precedent, as some European prisons already have guards who are cross-trained to act as effective social workers and who are charged with working directly with a small number of inmates on a day to day basis, helping them to structure their daily activities and so forth. In these settings the guards are given a handful of inmates whom they are responsible for during their shifts and are encouraged to develop a personal relationship with each individual, effectively acting as mentors or life coaches for those they supervise. For less troubled or threatened individuals residing in PJ centers, a more or less identical approach would be appropriate. For those who are higher-risk, the proportions might be reversed, i.e. one resident might be accompanied by a handful of social worker-guards, or some combination of social workers and guards. While such a scheme might seem to potentially create more of a burden on resources than simply housing larger numbers of inmates with smaller numbers of under-trained guards (or so-called corrections officers), the likelihood is that by being more selective in how supervision is dealt out to among center residents and the community at large, a great deal could be saved in the long-run. Our current system tends to cycle those people with the greatest potentials for destructive behaviors back and forth between the community and prisons, allowing them to gradually spin completely out of control until they cause sufficient damage to require more and more drastic restriction. This is foolish and cost creating-both in dollars and human life. PJ would instead seek to directly address destructive behavioral patterns and situations in-action, and work to eliminate or mitigate the underlying factors, thus allowing resources to be spent wisely and cost-effectively. By handling things in this manner, it can be assumed that the number of personnel needed to work with a given number of troubled community members should gradually shrink (perhaps quite rapidly after some indeterminate introductory period), as the community as a whole moves from a given level of interpersonal dysfunction to greater peace and prosperity. So, as with various other aspects of PCJ it can be gathered that initially costs will run high, but over time, as the system works, they will be reduced until negligible.

socialization and belonging should help to reduce the likelihood of further or on-going destructive behaviors or reduce the impact thereof.

## Isolation

Isolation, as in the sense of seclusion or alone-time should not however be completely eliminated. One thing the Quakers did have right in their ideas surrounding the institution of solitary confinement, is that people *can* benefit from both as individuals and social creatures from some level of solitude. The area where the idea went astray was in making it imposed versus self-selected isolation. When a person is simply thrown into such a situation, or otherwise encouraged to withdraw into his or her own shell, the effects can be devastating and even debilitating. However, if a person wants some alone time for self-reflection, meditation, or creative concentration, the effects can be rejuvenating and beneficial both personally and socially (Hanson, 20xx). For this reason, there should be afforded to all members of the community, both center residents, and non-residents, places conducive to such activity, so long as a person is not considered an active threat to themselves.

## Drug and Alcohol Use and Abuse

Specifically, how addictions should be dealt with within PCJ center premises is a bit beyond the scope of this paper. However, there are various possibilities and a particular—though perhaps novel approach which could potentially be incorporated into such locations arises in the context of the present discussion. Prisons and current treatment centers fully restrict the use of drugs and alcohol, yet, in both settings, some number of people continue to abuse substances on a surreptitious basis. Both types of facilities tend to respond to this with punishments when such activities are detected, within punitive

institutions, either taking away privileges, or putting individuals in more restrictive housing or solitary confinement, or in the case of treatment center, kicking people to the curb. These are dysfunctional responses to dysfunctional behaviors. Such responses are clearly not in line with what PCJ aims to do and should not be entertained in this framework. One possibility which arises in this context, though it runs into potential problems under current laws, is allowing supervised and regulated use at some level. With legally prohibited drugs, one workaround might be to use substitutes which are legal, for example some prescriptive narcotic in place of heroine.

The key would be that any drug or alcohol use permitted on the PCJ campus would be administered clinically, or in some kind of sterile and loosely unappealing setting, which emphasizes more directly the actual act of use, over the environmental or social adjuncts which typically go along with such use. So, while alcohol use is commonly relegated to bars, homes, or in some cases parks, porches or door stoops, requiring one to go to a clinic to take a dose might reduce some of the appeal to the act of drinking. The same case might be made for the use of drugs, which might typically be procured and used in dilapidated houses, at parties, in bars, in back-alleys, or in parks. In that, even while such places may possess some inherent lack of appeal, they still confer some quality of an atmosphere conducive to use. Research has shown that mere exposure to such environments--even in virtual reality- acts as a trigger for the impulse to use drugs (note: there was an article on this either in Scientific American Mind, or the Regular Scientific American magazine at some point in the past few years).

After the individual has used a given amount of a drug, further attention might be given by staff, volunteers, or more generally by the environment to the deleterious effects of the

use of the substance though this should be done only as appropriate or necessary. For example, the social drinker who exhibits no major behavioral problems under the influence of alcohol might be left alone, where the problem drinker might be given some appropriate and purposefully functional amount of feedback in relation to their condition in the moment. Such attention could similarly be given as a person crosses certain thresholds of use, so, for example, past a certain number of drinks the person administering the alcohol might engage the drinker in conversation about what is motivating him or her to drink more.

As a major component of PCJ will be helping people learn to function well in social settings, under the above proposed model, once a person has used whatever amount of a substance they choose to, they would be allowed to go wherever they want within the facility. The only exceptions to this policy should center on whatever restrictions might normally be imposed upon such persons for legitimate and active security concerns, or any active security or health concerns which might necessitate temporary quarantine. However, adequate attention should be given by staff to ensure that any areas in which fellow users might congregate while under the influence are kept sufficiently interspersed with people who are able to supervise and interact with intoxicated people as appropriate to minimize the social reinforcing effects associated with substance abuse.

The key issues to be considered here are that once people are living outside of the community center, it can be assumed that they would have opportunities to abuse substances and go wherever they choose while in states of intoxication, and that even if it is possible to force a person to stop using substances while under direct supervision, there is nothing to stop people, other than themselves, from doing so once on their own in the

community. It is well understood that even a significant portion of people who want to break addictions sometimes relapse. Rather than insisting upon the impossible goal of teaching all addicts lifelong abstinence and hoping against hope for this tactic to magically work if all of a sudden we find the right way to enforce it, PCJ would acknowledge that there is wisdom in teaching people how to function better while intoxicated, and how they might begin to regulate their behaviors, and perhaps their addictions, if not perfectly, at least better.

### Precedents and Potential Models

While at first blush, many of these ideas might seem lofty or even utopian, none of them are unprecedented. To begin with, many of the features being suggested here mirror, or otherwise build upon, what are already being employed variously by private addiction treatment centers, mental health hospitals, and prisons in various quarters of Europe, in particular Scandinavian countries and Germany. In certain cases, some of our own prisons and community supervision programs already contain various and sundry of the elements discussed here. To this date, however, each existing solution has its shortcomings when compared to what has been herein proposed under the moniker of PCJ. The model employed in Denmark, for example, is practically as described here, with the exception of the fact that the facilities are still in some visibly identifiable senses prisons, they are still not typically central to the communities they serve, and they still require one to break the social contract to get services. In the U.S., we simply give better treatment to those who can afford private care, and we often divert certain classes of those who have been convicted of crimes to better facilities or programs than we do the majority. Much of this latter set of divisions, to this day, centers on race, class, and prejudices toward those whose dysfunctional behaviors fall into certain categories. However, in some areas

diversion from the criminal system into solutions such as Outward Bound, drug courts, or Restorative Justice may reflect the growing dissatisfaction with the results of the punitive system.

### Financial Concerns: Costs and the Benefits Which Might Offset These

The chief objection which one might expect to be employed against this new paradigm for handling societal ills is that it sounds expensive. When looking at the sheer number of people incarcerated currently and running out the numbers, simply warehousing people as we do today is in itself an expensive proposition, averaging around \$35k a year per inmate (see appendix 1). However, this commonly reported figure is just the tip of the iceberg and when we factor in the various other costs associated with keeping a person locked away, they numbers leap to a staggering \$479,304.35 per inmate per year (see appendix). A short-sighted retort to the various recommendations made throughout this paper might take one of the above numbers and try to simply add to it the additional costs of professional clinical treatment, facilities upgrades, education, additional staff and training requirements and so forth. However, as discussed in greater detail in appendix 2, and covered in brief in the above discussions, there are good reasons to expect that in the long run, the overall costs of doing PCJ versus criminal justice will be substantially less and potentially negative, or that is to say *profitable* for the effected communities and nation as a whole, in ways much more meaningful and universally beneficial than the bittersweet if not unsavory boost to GDP which a narrow set of profit takers extract from the punitive system.

## 11 How to Emulate Positive-Cooperative Justice Now

As a prisoner in the existing punitive system, I have found myself variously in despair and frustrated by what is and isn't possible within this framework. I haven't been particularly upset about the lack of ability to go to nice places and do fun things, but rather the lack of access to be able to participate in constructive activities, healthy community and so forth.

The following is a brief set of recommendations for how the interested prisoner might simulate a PCJ environment on his or her own. These are things which I have personally found very helpful, and bear out in research as being demonstrably helpful toward improving one's outlook, and through that perhaps one's place in the world whether inside or out of the institutional setting.

The following activities are generally recommended for developing empathy:

- Reading literary fiction (The Violence Paradox, 2019). For a good list of books see the top 100 books of all time, published by the Guardian, or start with a good literary anthology such as Norton, or look for collections of short stories by respected authors. The key thing to appreciate is that literary fiction is the sort which focuses on the characters, their interactions, and what goes through their minds, versus plot centered fiction which tends to have stereotyped heroes and villains doesn't offer a lot of insight into human behavior.
- Do loving-kindness type mediation practices (Hanson, 2008). Rick Hanson's book the Buddha's Brain discusses this and what it does to improve one's outlook and brain architecture.



The following activities are recommended in Rick Hanson's above-mentioned book to reduce stress and make other positive brain changes:

- Do slow breaths while counting of equal duration in and out.
- Do strong exhales.
- Deliberately generate feelings of safety.
- Practice generosity (in prison this can be a bit dodgy, use your head, don't let yourself be used, but be creative with it. Secret generosity is usually safe).
- Stimulate positive emotions by engaging the facial expressions associated with them.
- Expand the category of "us" in your mind.
- Cultivate positive emotions.
- Practice non-contention (not arguing with situations or people, and accepting what is). Note: This does not mean ignoring things that really require action.
- Develop self-compassion. Note: this does not mean excusing yourself for harms done in the past, but rather putting them in context, *that was then, this is now*. It includes or implies the commitment to move forward being kind and helpful towards others and above all avoiding hurting others.

- Letting go of ill will.
- Studying ill will, understanding what's behind it.
- Investigating triggers.
- Accepting your wounds.
- Don't teach lessons in anger.
- Warm the heart.

One or two I would add to the above:

- Examine or even be suspicious of desires.
- Be mindful about what you choose to follow through on
- Challenge yourself to do the opposite of some arbitrary habit. This has been shown to increase willpower muscle. The example most frequently used is brushing your teeth with the opposite hand of what you are used to for a week.

A few nonfiction books stand out as being particularly worthwhile in the general area of self-help. This category is a big mixed bag of stuff, but a good handful of scientifically backed researched-based books stand out. There are also a couple here which merit attention without the backing of the associated research, but are based on related topics:

- Buddha's Brain, by Rick Hanson, Ph.D,
- Wherever You Go There You Are, by Jon Kabat-Zinn
- The Power of Habit, by Charles Duhgg
- Thinking Fast and Slow, by Daniel Kahnemann
- The Better Angels of Our Nature, by Steven Pinker

More to come in this section as time allows ...

## 12 About this Document

This document should be viewed as a work in progress. The author currently enjoys limited access to a computer with word processing capabilities in conjunction to a college program, under which this paper was developed to be submitted as part of a class assignment. There are no proofreading services available to the author at present, so there may be grammatical errors. Also, as some of this has been done with very spotty access over prolonged periods there are places wherein the same point may appear in one or more places, where one might do. Since time for access to computers is limited and sporadic, there are aspects of this document which lack full development in consideration of producing something cohesive within the allotted time.

As the author has composed this document while incarcerated, the many limitations placed on access to information for prison inmates have prevented the author from being able to fully reference his citations. Missing citation information is noted throughout. The author has also begun adding notes beside the missing citations on where such information might be located. While the author asserts the verifiable validity of all statements made herein, and these statements are the result of exhaustive research into the various subjects touched upon throughout this document, the author did not foresee the need for keeping track of citations for much of this information in the years leading up to this project. Given a few hours' internet access, the author could easily reassemble the appropriate references, in the meanwhile he is attempting to communicate the specific research requests to a handful of people who have been providing some aid in this process. Furthermore, due to the limitations mentioned, in making up for these gaps in reference information, it has been difficult to obtain primary sources to cite, and therefore the author has relied heavily on secondary ones including the Encyclopedia Britannica as well as a few radio shows and documentaries (though some of these were also the originating sources of information discussed here), while these may be adequate for the purpose, the author recognizes that a greater balance of primary sources would be preferable. It is the author's hope that some number of interested and capable readers will come forward to aid in filling in the gaps in the proper citation of sources.

There are a few peculiarities to the formatting of this document which are worthy of immediate comment. While generally speaking this document is written following the APA format, the author has elected to use footnotes throughout the document, which the APA format generally discourages. The author however, being particularly fond of the books of the late neuroscientist Oliver Sacks feels, as did he, that these are the best vehicle for

allowing the addition of various details sets of facts and data which are not wholly necessary to the understanding of the ideas presented, but which add depth to the various points made. Footnotes are also easier on the reader than endnotes, which require the reader to do unnecessary extra work to keep track of the information being presented in context.

The reader may also note that, past this author note section, the author has elected to use the first person in various instances and generally more accessible language than might be typical of research papers of this sort in the hope that this will result in a paper which is more widely accessible than the typical academic work, more in line with the so-called popular science format. Finally, this is a paper which advocates a particular idea and makes strong recommendations based on the data examined. This appears to be atypical in this day and age wherein the typical style of research papers is to present facts and leave the reader to decide what—if anything—should be acted upon as a result of the findings. It is the author's feeling that this approach in this area is ineffective. There are mountains of papers illustrating why we should be doing something other than punitive justice. For the most part these papers seem to exist in an echo chamber of academic thought and lead to little if any action beyond the writing of more papers. What is needed is action. The business plan included here as Appendix 3 aims to act as potential blueprint for such action. The paper itself and other included appendices aim to provide the basis for that in research.

This document offers only a start into the field of what PCJ may need to entail in moving from concept to reality. Several ideas this paper brings up call for additional documentation, in order to flesh them out. To that end, the author has generated both a

sample business plan and marketing and fundraising plan for a hypothetical PCJ center (both of these sub-documents also lack necessary data). There are also two other papers which the author wrote in conjunction with this project, *The Real Costs of Incarceration*, and *Cost Differentials Between Punitive and PCJ*. These, along with the business plan are included as Appendices A, B and C of this document. It should be noted that the papers contained in the appendices, due to time constraints have not been properly correlated to the information contained in the body of this text. The marketing plan was intended be added as an appendix as well, however, the original file has been deleted, and only the hard copy currently exists, this therefore is being sent out as a separate item. The author hopes to get the time over the course of the coming months to revisit this paper to complete entering the available citations and complete the tying together of the appendices with the main body of the work. In the meantime, it seemed best to print what has been done to this point to at least get these ideas out to those who might be interested.

There are also many related areas for further discussion touched briefly upon within this document, which call for further development and therefore, the need for additional documents covering these. These include aspects of PCJ compatible community intervention programs<sup>66</sup> which would largely compete with contemporary law enforcement mechanisms such as policing, and detailed expositions on the workings of

---

<sup>66</sup> There is a model that is currently being employed to great effect toward the goal of violence prevention in a few areas globally (having been successfully piloted in Baltimore MD called Safe Streets (The Violence Paradox, 2019; Charm City, 2019). This organization, rather than acting as a vigilante policing organization, employs people from the community, many with previous run-ins with law enforcement, to work as Violence Interrupters. In the years covered by the Charm City documentary, there was a 26% drop in gun violence, and of homicides in the three neighborhoods served from averages of twelve or more down to zero.

the PCJ conflict resolution and mediation mechanisms and services, which would compete with courts of criminal justice, and would operate on a basis of civil law, Restorative Justice compatible approaches and scientifically vetted best practices in the area of decision making. The specific day-to-day operations of a PCJ center also lie far beyond the scope of this paper and suggest the need for the creation of a handbook or set of handbooks that spell out the ways these things might best be addressed. The author is also of the opinion that the details of how PCJ might best be approached are themselves subjects for supplementary research, modification, elaboration, expansion and community input. The author aims to write more on these subjects as time and access to research materials permit. It is also the author's hope that other might contribute to this process as either co-authors or contributors of their own related ideas for how PCJ might become a reality. While the author has shaped this idea into something which may be unique in both formulation and name, he claims no ownership to the ideas expressed here and only the hope that someday, somewhere they will be implemented to their fullest potential.

### Pending Work

Opportunities to work on this document being inconsistent, it made sense to me as the author to drop my work, print what I have to this point and get it out. There are numerous things I would like to add to this paper and will strive to do so as time allows in the near future. The following is a list of topics which I intend to discuss in future iterations of this paper, and furthermore welcome others to chime in on these subjects:

- Add/Update citations

- Write conclusion
- Possibly rework sections on language into standalone section and reference as needed elsewhere.
- Break off section on decision making re: both criminal acts and what to do in response to crime.
- Social and environmental influences on decision making, re: especially how these account for the stark regional variations in crime rates, both among the individual and groups.
  - Correlation of crime rates to lead exposure.
  - Preponderance of different types of crime relative to climactic regions.
- Deleterious effects of housing people in prison or classically institutional environments.
  - Psycho-social effects of living in closed box shaped spaces or cages, and the corresponding neurological effects of such spaces on brain development or plasticity.
  - Dangers associated with housing two or more people in a small space (bathroom).



- Perils of being locked into a small space without means for communication with others in the event of an emergency.
- Psychological and social impact of being immersed in a noisy environment.
- Psychological and social impact of being surrounded by nothing but hard and or mechanical objects.
- Psychological and physiological impact of being deprived of sunlight.
- The application of mindfulness and other meditative techniques toward reducing destructive emotional reactions.
- Section on how those who are not committed to personal change and who have developed socially or destructive or otherwise dysfunctional patterns might be encouraged to adopt a pro-social and functional outlook, without the use of force.
- Statistics on violence in law enforcement, especially re: how many people are killed in the process of fighting crime in the US versus other countries and what tactics have been shown to work better in both policing and non-violent, non-militaristic, or non-paternalistic intervention.
- Less violent means to incapacitating actively violent individuals than those currently employed.
  - Negotiation.

- Reducing or rethinking which sorts of harms merit hot pursuit of people who are in fight or flight mode.
- Specific alternatives to pain inducing or deadly weapons in law enforcement and institutions.
- Non offensive martial arts techniques or other means for disarming without harming.
- Discussion of distortions of recidivism statistics, re: the fact that most recidivism is either for so-called technical (i.e. minor) violations such as curfew, alcohol or drug use, or lifelong behavioral issues which the penal system has failed to resolve with a small subset of individuals who are counted multiple times in the data.
  - In this context, shortcomings of so-called Intensive Supervision (ISP).
  - In this context, misuse of and shortcomings of monitoring and surveillance technologies.
- Prisons as a breeding ground for racism and class divisions.
  - Segregation of inmates by race tolerated or encouraged by prison officials and staff.
  - Institutional pecking order re: different categories of crime.

- Effects of economic disparities among inmates and their support networks in driving black market activities within the institutional environment and extortion.
- Racial disparities in law enforcement, prosecution and inmate housing.
- Elaboration on the ideas of community and mutual ownership and the historical basis for these in the context especially of so-called self-help organizations, which were more popular in Great Britain around the turn of the 20th century (from the 19th) than here in the US (Woodin, Crook, & Carpentier, 2010).
- The use and misuse of technology and mathematics in furtherance of both the punitive and Positive-Cooperative Justice models.
  - Predictive algorithms.
  - Actuarial or statistical prediction of so-called criminogenic potentials.
  - Neurological and other physiological imaging and reaction testing.
  - Surveillance technology, privacy, fairness and public safety.
  - Location monitoring.
  - Technologies for restricting or monitoring usage of motor vehicles, firearms the internet and etc.

- Social media or other centralized shared data platforms for organizing re: Positive-Cooperative Justice.
- What prisoners can do to work toward Positive-Cooperative Justice.
  - Oases of positivity within the institutional environment.
  - Self-work: development of mindfulness and functional lifestyles.
  - Meaningful positive action.
- Utility of approaching Positive-Cooperative Justice as a business or marketing problem
  - Competing with business aspects of punitive system
  - Addressing marketing/media image of punitive system
  - Possibility of bypassing difficulties of needing substantial changes in law to get started
- Check continuity between main paper and appendices
  - Fix discrepancies in numbers between document sections wherein different source materials were used (prefer latest figures, or highest wherein costs are being estimated).

- Check for unnecessary duplication of topics or areas wherein one section can be better tied to another.
- Integrate Appendices 1 and 2 into main paper.
- Re-type marketing plan and add as appendix.
- Revisit all sections to bring to completion.
- Fix long sentences and passive voice wherever possible.
- Transition this paper into a book
  - Add more visual elements.
  - Layout.
  - Formal chapter structure.
- Glossary
  - decision fatigue
  - narrative memory
  - neuroplasticity

## Requests

As mentioned in the author note of this paper, as a prison inmate, the resources and avenues open to me necessary to put most of the ideas presented here are limited. For this reason, I ask that the interested reader consider volunteering some of her or his time or resources toward getting what I am tentatively labeling the Initiative for PCJ off the ground. There are several things which have occurred to me that could be helpful in facilitating this effort. This list is by no means exhaustive. There are likely to be a thousand and one things that would need doing in order to see this become a success. The following are the things that occur to me at the time of this writing.

- Secure the name Positive-Cooperative Justice, or find some useable alternative. In conjunction with the above, I would like to see something perhaps called The Positive-Cooperative Justice Initiative brought into existence as charitable organization, or as outlined herein, a business whose profits go to this cause.
- As my credentials are essentially nil, and furthermore I have chosen anonymity, it seems to me vital that those with academic backgrounds relevant to the various aspects of PCJ, whether they be legal, business related, economic, socio-psychological, neuroscientific, or otherwise weigh in on these ideas. I see this paper as a potential starting place for a fully developed idea. I have done my best to this point to elaborate on the basic ideas, to think through how some of them might be accomplished and to assemble some of the research necessary to back them up. Nonetheless, there is much more I would like to do if I had better resources, and it is my hope that others might be able to pick up from where I have left it for now.

- As mentioned in the preamble, there is a need for additional materials describing or fleshing out the ideas of PCJ. I would like to suggest a simplified pamphlet to be able to hand out to people at events or perhaps throughout a given community should take top priority. I will attempt to create something like this in the time I have remaining to work on such things, but it would not hurt to have more than one such take on this. I am proposing the title *What is Positive-Cooperative Justice?*
- As I would like to continue to add to this body of work, it is clear that I will have an ongoing need for research materials. Unfortunately getting such materials into the prison environment presents challenges. To this end, if there is any attorney willing to assist in this process, it would be helpful if such person were willing to make arrangements with the person running the forum in which this document resides to send me such materials.

#### A Final Word From the Author: My Personal Stake in All of This

As mentioned in the preamble, I am currently living within the existing punitive system. I think it is appropriate in the context of this fact that I say a few things about my situation to shed some light on why I have chosen to publish this paper in anonymity, and what my personal reasons are for putting this set of ideas forward. The critic might suggest that the fact of my incarceration naturally predisposes me to desire some softer situation for myself. In truth, there is no likelihood, with the amount of time it would take under the best of circumstances, for anything along the lines of what I am proposing here to reach where I am in the system before I have long since been released.

I would very much like to see a day when PCJ reaches the place where I came from, and every corner of the world, but I can't honestly see my hometown or even the state in which I reside as being a prospective starting place for it. The place where I am from has perhaps not yet grown weary enough of the current paradigm. That is not to say things are not bad there, *they are*. I grew up in a scene wherein my observations were that the children of a lot of arguably socially conscious people, carried forward not their parents' high ideals, but our greater culture's tendencies towards settling disputes through violence and permanently ostracizing those who have done certain sorts of harms, while at the same time socially elevating, or holding in high esteem, those who have done certain other sorts of harms. This place perhaps has the potential to swing back, but I do not see it at the vanguard of any movement of the sort which perhaps speaks most directly to the immediate problems of poverty.

Hitting the walkways of these odd city-states we call jails and prisons opened my eyes to a lot of things. Some of them about myself, some of them about our society and its people. I grew up, like most of us, fearing these places. There *is* a lot to be feared here, however, it is very little like what one sees in most of the movies and television shows. The people here are just people. One cannot say, some of them are good and some of them are bad, that would be overly simplistic at best, dishonest, if we are being frank. Most of my neighbors here have been damaged. That much is true. That includes me. That also includes the people that run the places, and to greater or lesser degree the ones that work here in their various capacities. The number of inmates I've met that have harmed mostly only themselves and yet *think of themselves* as "bad people," was one of the first things I didn't expect to find here. The number of people that have done tremendous harm to others yet would sacrifice anything for practically anyone under the right set of



circumstances (often a much lower bar than one might imagine) was another. When they are willing and able to tell the whole story of how they got to these places, the people here leave me being able to see how I might have wound up making the same choices they did to wind up here, if I'd been through the same things and had their same capacities. I include the people that run the places when I say this.

A lot of the particulars of why people wind up here are tied up in things like addiction and similar things along the lines of impulse control issues (whether recognized as diagnosable impulse control disorders or otherwise indicative of what might be casually observed as poor self-control in various areas which intersect with the social sphere including sex, violence, and money). Others are mixed up in things as simple as bad circumstances and poor (long-term or big picture) decisions, but of the sort which might have seemed not so dumb in the moment. A more dumbfounding set of causes that might lead to incarceration are, more often than I ever expected to encounter, tied up in morality, but not the lack of morality typically associated in the public imagination with crime. Many of the violent crimes, maybe most, stem from people perceiving that they need to stand up for themselves, their loved ones, their neighborhoods, or what have you, against some wrong or some threat, whether real or believed. I was also somewhat surprised to learn that not as much theft, scamming and black-market activity is as selfishly motivated as the TV might lead one to think (growing up among the poor, I already kind of knew this). Some number of economic crimes, perhaps most, stem from people just trying to get by, or wanting to provide for their loved ones. It's by no means all greed.

The completely out-for-himself type whose crimes center on the economic sphere seems from my observation no more prevalent in this category than violent crime.<sup>67</sup> In a startling number of cases, people who grew up in poverty just don't see any compelling evidence around them that there might be better options within the civic framework. *That* is a systemic failure. My subjective, anecdotal observation, is that prisoners are *not just* on the whole moral people, when at their best, or when free of conflicting factors. Rather, they are among the most moralistic if not morally fixated groups of individuals one could ever hope to encounter (Author, 2020).<sup>68</sup> These things acknowledged, there are among us some number of people who do violent, or economic harms only for personal gain or some kind of psychological satisfaction, but I must stress, these are *not* the people you tend to meet in your typical prison, there are handfuls of them. It is probably true that a

---

<sup>67</sup> It has been noted in various recent studies that there are as many or more such individuals among the free population (citation information unavailable), causing as much or more damage to society and individuals as anyone behind bars while typically being able to avoid criminal prosecution or even very impactful civil punishments. Many such individuals, rather than gravitating toward overtly criminal ventures find their ways into positions of power in business and politics, others simply barrel through life with little regard for what harm they inflict to others and for whatever reasons either don't get into legal trouble, or if they do somehow avoid major entanglements.

<sup>68</sup> In fact, this has a strong correlation in the literature. Research indicates that a disproportionate number of prison inmates in the U.S. describe themselves as adherent to some religious faith or spiritual tradition, in particular, many identify as Evangelical Christians, regularly attend services while in prison, profess strong moral positions in concert with their faith, and even in relationship to the crimes for which they personally were convicted (Citation information unavailable). It has been observed that this is most likely not in any way indicative of some generalized lack of moral fiber within the evangelical community, but rather correlates to the fact that a significant portion of the traditionally working poor segments of our population happen to be of this faith group, and in turn that the poor for any number of reasons tend to be more religious than other segments of the population at present (this has not always been the case). The research suggests that having a moral code and the means for strong adherence to that moral code are not one and the same (citation information unavailable). So, as discussed throughout the body of this paper, poverty of one sort or another (material, educational, psychological, emotional, social, or otherwise categorized) remains the keystone issue, not (probably in most cases) morality, which our society seems to have plenty of to go around.

significant number (but probably not all) of these individuals could be diagnosed with what psychologists call anti-social personality disorder (mental disorder, 2014), otherwise labeled as sociopaths (psychopaths being, as I understand it, a more nuanced subset of these). In brain science terms, these are people with diminished neural interconnectivity between the areas which attenuate survival behavior and other impulsive type behaviors with capacities such as empathy and compassion. Others might have other more complex psychological motivations which do not rise to the level of sociopathology, or do not suggest any generalized lack of social awareness or capacity, but nonetheless indicate problems in psycho-neural areas. The thing is, in my observations and interactions with others in this environment of the course of numerous years, and at various facilities of the low to high end of medium security type, these are *not the majority* of those of us who wind up in prison, though it has been observed that most of us who do wind up incarcerated do have some deficits in the relevant psycho-social and cognitive areas (citation information unavailable; probably Adrian Raine).

Whatever the case may be regarding the underlying factors which lead to the kinds of harms that people get incarcerated for, people, even those of us with problems which manifest around brain injury, do respond to treatment specific to these sorts of problem areas. Research indicates that even people such as serial killers can in all likelihood be taught the emotional skills they would need to function in the community without causing further harms (citation information unavailable; probably Emotional Intelligence).

Whether or not community members would feel okay about having them back among them is a separate issue. This also means that if we got just a little bit better at looking ahead, getting past our current paradigm of waiting until a tragedy presents to address

such issues, these are areas in which problems that might suggest the need for attention, could be addressed well *before any significant harms have been done*.<sup>69</sup>

Under a model such as PCJ, wherein the stigma of mental health problems might more readily overcome and wherein a person in need of help could get treatment simply by walking in and asking for it, or wherein loved ones or concerned community members might bring skilled experts from the PCJ community in to aid in an intervention (but not necessarily any kind of detention, unless the need for such is a clearly demonstrable), such a person might be helped ahead of time, thereby averting the more catastrophic outcomes which arise when treatment has not come in time.

Relating these points back to the question of what motivated my writing, I am one of those who fell somewhere in this group, that is to say, I had psychological problems which manifested in harms which landed me in prison, and I am pretty sure that a number of what at the time were seen as minor head injuries in my youth contributed to the manifestation of these psychological problems, *though I remain undiagnosed in this area, after numerous years of incarceration and various complaints to medical staff which should under normal circumstances have led to thorough brain imaging*.<sup>70</sup> I cannot say for certain what might have happened differently had something such as PCJ existed prior to my spiraling out of control, but I know that I looked for help and was unable to find it. I

---

<sup>69</sup> It should be stressed here that this does not mean that we should ever entertain the idea of locking people away in anticipation of harms that we fear they might cause in the future. A person's so-called criminogenic tendencies are not reliable predictors of harms yet to be done by that person.

<sup>70</sup> In spite of the kinds of things one sees on television, when I brought these issues up as mitigating factors to my attorney, I was informed that this kind of information is largely irrelevant in criminal proceedings, and I was unable to have brain imaging done in conjunction with my trial, or in light of any treatment I might someday receive within the institutional environment.

believe that if I knew where to find the right kind of help a lot of harm could have been avoided. This seems to me like something of a no-brainer. I wanted help, and was scared to death of the consequences of seeking it through the normal channels. Nonetheless, I did try to find treatment and even eventually found a psychiatrist I was able to talk to for some time until that individual violated my trust leaving me feeling as though I had no options but to try to work my problems out on my own.

So in many ways, my interest is personal, but not in that I think I might get something out of it. Rather, it is personal in the sense that this matters a lot to me. I feel daily waves of misery, whenever thoughts arise about the harms I have caused both directly, and indirectly in relation to those who care about me and are distressed to have me stuck in this situation, or who never found out why I simply fell off the face of their Earths one day. I don't want anyone else to have cause to feel this way, and I don't want the people I hurt to feel that hurt, but it is too late or otherwise impossible under the current set of conditions for me to do anything to alleviate much of that pain, or prevent anyone else from travelling down the same sort of path that lead me here. My only remaining hope where these things are concerned is that I can help to create something which could potentially reduce the harms others might do to themselves or those around them, in the future, or in those situations wherein harms have already occurred, to help in the healing process. That is where this idea of PCJ comes from. I figure maybe if it gets off the ground I can do some kind of volunteer work within that framework or maybe even a paying job, but I don't expect it to be my primary source of income no matter how things unfold.

It is true that being incarcerated has been a factor in getting me to self-examine and come up with some ideas which might be good, and might help others. Nonetheless, it is truer

still that if PCJ existed when I went to jail, instead of jail, I could have done all of these things and more, and more importantly, I could have done them without doing anyone any harm, or bringing so much stress to my loved ones. I have no doubt that this stress was a major component of what lead to my mom's health declining and her dying several years, if not decades before her time. If PCJ existed, my grandmothers who counted on hearing from regularly would not have spent their last couple of years in this world thinking I'd forgotten about them, because my family didn't know how to tell them what happened to me. My father and stepmother wouldn't have to spend as much money on me as though I were a high schooler with a part-time job, just to keep me generally healthy and mildly entertained through my mid-life.

On the other hand, it *is* also true that incarceration is allowing me the free time to get some work on myself done as well as to develop this idea of PCJ. This acknowledged, I cannot help but to think I could be doing more of greater or at least more direct meaning and impact to make up for the harms I've caused. I also cannot help but to recognize that just being here is *not* what made me able to re-assess the way my life was going. That ability came from a combination of things, some of which I had actually started working on *before* prison, as soon as I came to realize that I had problems that might be leading to this kind of outcome. Primarily, these consist of things I figured out after doing some research into what in the arena of self-help might actually help me. *None* of these is among the things that I learned from the prison system itself.

I can identify three general things which in have influenced my overall progress towards personal change. The things that I perceive have actually helped me—and on whose effects I have received positive feedback from others—have come to via my own

motivation to find some way to resolve my own problems. The first helpful thing I learned was a form of cognitive therapy (Rational Emotive Therapy) which enables one to see how one's beliefs influence one's experiences and actions, in addition to how one develops these beliefs. The second was the introduction of various meditation practices, which included mindfulness, or that is to say, the act of attempting to direct one's attention away from actively engaging with one's thoughts and instead putting it on to noticing that the thoughts are just there, along with whatever feelings or emotional reactions that might go along with them.<sup>71</sup> In conjunction with this practice, another set of meditative practices that have affected my outlook, thinking and actions has been those that center on the development of compassion, or to put it simply, learning to try to appreciate the suffering of others at both the mental and emotional level. The third, was the time away from *some* (but not all) of the stimuli with which my problems centered around, and along with this the time to work on the above two things.

While none of these exercises nor the time to allow them to percolate has perfectly transformed me into the person that I strive to be, they have made it easier for me to see (at least in times of relative calm or those wherein I am to harness the strength to able to take a mental step back from my raw emotions) things from other people's perspectives. At the same time, the introspective and perspective taking ability fostered by these practices along with the ample time I have had to steep in this environment have also made it impossible for me not to notice that within this third piece of this puzzle, the component of incarceration is on the whole deeply flawed and ill-conceived. Noticing this, and more importantly, what was working toward the overall improvement of my outlook,

---

<sup>71</sup> This is a practice, which although originating in Buddhism, does not depend upon any kind of specifically Buddhist belief system.

relationships and overall trajectory contrasted with that which was otherwise being thrust upon me-led me to the unavoidable conclusion that the systematic effort of doling out harms to address other harms, the central theme of imprisonment, can never be made into a good idea.

This incoherent concept of punishment for punishment's sake called prison just does not make any sense to me. What does society get out of this? I guess I somewhat bought into it up until I got to see it from the inside, but I admit that never really thought it through until it hit home. I feel badly that I hurt people, but what am I supposed to do with the idea that the state or whoever feels justified in doing harm to me and my family with the irrational aim of somehow bringing things back into balance? The whole notion of this seems truly bizarre when I step back and really look at it. Even if the reader's world view is that people "deserve" this or that and that it is somehow better for some indirectly interested party to dole out punishments than those who have been harmed, what about the loved ones and communities of these pain deserving people? In certain circumstances, it might be that there was some measure of responsibility that roots back to these, but what about when it does not, and in any case, when was *their* day in court?

Harm seems to me a communicable disease. I do not blame anyone else for the harms I have caused in my life, however, I cannot ignore that there is some clear connection back to harms that have been done to me which found their way to others through me. I have no doubt that those who harmed me had themselves been the recipients of harms toward themselves. In my experience, the only thing that stops the communication of harms from one person to the next is when there is some kind of healing, some kind of railing against the impulse to carry that harm forward. I see no evidence to support the idea that prisons



serve that purpose. They just perpetuate the harms, the very things which they are supposed to address.

The way we are going is not sustainable. We can soften, or as we like to call it *reform* criminal justice, but until we truly embrace the scientific method and marry this to a wholly consistent ethical foundation, we will continue to sacrifice masses of people to the altar of law and order. Desperate people will continue to have nowhere to turn. A desperate society will still rely on primitive reactions. Far too many will suffer. I do not believe we will ever achieve perfection, as long as people have brains that capable of becoming screwed up, we will do terrible things to each other that look downright deliberate. But, I believe, we know enough by now, that we could be doing a heck of a lot better with this stuff, and because we could, we should. *That* is what I want to be a part of. *That* is what motivates me. If I can be involved with some part of getting things moving in that direction, I will feel a little happier, that is why I wrote this.

## 13 Appendix 1: The Real Costs of Incarceration

On January 25, 2017, researchers Peter Wagner and Bernadette Rabuy published a paper in [prisonpolicy.org](http://prisonpolicy.org) entitled *Following the Money of Mass Incarceration* (Wagner & Raby, 2017). This article included an infographic, which is a sort of hierarchy chart showing the costs this article tracked in relation to their relative proportions. While this is a very useful way of demonstrating these items and their assessment included various useful figures, there were various important items which were not accounted for in this set of figures, these include any estimate of the moneys lost by virtue of the fact that incarceration impacts the incomes of those who are incarcerated, and the various additional economic burdens incurred by the families, children and communities of the incarcerated. These are important considerations when looking at the overall impact which the incarceration of a given individual can exert on the loved ones of those incarcerated, as well as our communities and more generally our Gross Domestic Product.

To adjust for this shortcoming, included here are figures from an earlier and in many ways more complete, but less visually dynamic report, *The Economic Burden of incarceration in the U.S.* (Mclaughlin, 2016). For the category *Inmate Wages Lost*, we use \$33,066.00 per inmate, per year in the published 2014 dollars (which should be appreciated to have increased with inflation since that time), which in turn originates from a 1999 study. It is unclear what criteria were used to arrive at this number, but Mclaughlin et al state that this number accounts for wages earned by incarcerated persons during the time of their incarceration, and is assumed to reflect the U.S. median income. However, McGiauglin, et al, go on to illustrate how the actual economic burden incurred by inmates is \$392.6 billion, and for families, children and communities of these individuals comes to \$531

billion per year. When dividing these numbers out across the number of inmates {which albeit is slightly mismatched as we are using a mix of numbers from 2014 and 2017), we come to the startling conclusion that the costs borne by incarcerated individuals, their families, children and communities greatly exceeds any amount one could expect many of the individual units to come in tangible contact with in a given year. And so, it can be gathered that these shortfalls shift on to regular taxpayers and other constituents of the economic base writ large. This being the case, while the column Dollars Per U.S. Resident is an imperfect fit, as the immediate burden falls on the inmate and those most closely proximate to that individual, there is some aspect of considering it in these terms which gives an approximation of the actual impact on the regular citizen.

As can be observed through these data, for each year that a person is incarcerated, they not only exert a financial burden on others, they also decrease in some measurable way the economic health of our society at various levels. While some number of those incarcerated have wound up in prison due to illegal money-making activities, whether those be explicitly black-market activities, or financial wrongdoings within the legitimate business framework, it can be assumed that a substantial portion, most likely the majority of those incarcerated, could be otherwise gainfully employed in the legal job market. The potential impacts of this, while being beyond the scope of this paper to analyze are several. The most obvious immediate impact of this situation is that those incarcerated, in the typical medium and high security institutions are unable to earn sufficient income to meet their own consumer activities, much less contribute to the various expenses, or wealth building activities which their loved ones might otherwise expect some contribution toward. The economic impact of this situation is such that for those families who are already burdened by the situation of their loved ones by the direct expenses they

endure as indirect punishment for caring about an incarcerated person, are further harmed by the situationally imposed inability to improve their own economic status, or presumably in many cases, prevent themselves from slipping down the economic ladder. This in turn can have deleterious effects on the communities which the incarcerated person's family resides, as they will have less income, which in-turn most likely corresponds to the economic factors which contribute to the generation of more crime.

The overall effect of this arrangement is a tangible reduction in national productivity and correspondingly to GDP. In looking at these numbers, along with the other financial data associated with the American incarceration model suggests that the overall impact of the ways in which we handle crime in this society create both tangible and avoidable economic damage to our society, but also make us less safe than more pragmatic alternatives to the current arrangements. The key feature of Excel which is useful here beyond the groupings and subtotals is the Conditional Formatting button, which is located on the Home tab. In this case, I have elected to highlight those values which exceed 1% of GDP (6% is the estimated total cost of Criminal Justice when all factors are considered). This demonstrates that the greatest costs of this way of doing things, outside of those put on the incarcerated (which can also be seen as direct depletions from GDP) are borne by the families and communities of those who are incarcerated, or are otherwise re-appropriated from other monies which would otherwise have benefitted these groups see table 1 (below).

Table 1 *US Annual Justice Costs*

Spending Category	Sub-Category	Annual Amount (In Billions of Dollars)	Percentage of Total	Dollars Per US Resident (=B/314,785,000)	Dollars Per Detainee* (=B/2.3 Million)
Public Corrections Agencies (Prisons, jails, parole and probation)	Public Employees	\$38.40	3.48%	\$121.99	\$16,695.65
Public Corrections Agencies (Prisons, jails, parole and probation)	Health Care	\$12.30	1.12%	\$39.07	\$5,347.83
Public Corrections Agencies (Prisons, jails, parole and probation)	Construction	\$3.30	0.30%	\$10.48	\$1,434.78
Public Corrections Agencies (Prisons, jails, parole and probation)	Interest Payments (On past construction)	\$1.90	0.17%	\$6.04	\$826.09
Public Corrections Agencies (Prisons, jails, parole and probation)	Food	\$2.10	0.19%	\$6.67	\$913.04
Public Corrections Agencies (Prisons, jails, parole and probation)	Utilities	\$1.70	0.15%	\$5.40	\$739.13
Public Corrections Agencies (Prisons, jails, parole and probation)	Private Corrections (aka private prisons)	\$3.90	0.35%	\$12.39	\$1,695.65
Public Corrections Agencies (Prisons, jails, parole and probation)	Private Prison Profits	\$0.37	0.03%	\$1.18	\$160.87
Public Corrections Agencies (Prisons, jails, parole and probation)	Other (non- specified)	\$16.73	1.52%	\$53.15	\$7,273.91
	Total	\$80.70	7.32%	\$256.37	\$35,086.96
Judicial and Legal (Criminal law only)	Prosecution	\$5.80	0.53%	\$15.89	\$2,521.74
Judicial and Legal (Criminal law only)	Indigent Defense	\$4.50	0.41%	\$12.33	\$1,956.52
Judicial and Legal (Criminal law only)	Other (non- specified)	\$18.70	1.70%		\$8,130.43
Judicial and Legal (Criminal law only)	Total	\$29.00	2.63%	\$28.22	\$12,608.70
Policing (Criminal law only)	Total	\$63.20	5.73%	\$200.77	\$27,478.26
Civil Asset Forfeiture	Total	\$4.50	0.41%	\$14.30	\$1,956.52
Bail Fees	Total	\$1.40	0.13%	\$4.45	\$608.70
Costs to Families and Communities	Commissary	\$1.60	0.15%	\$5.08	\$695.65
Costs to Families and Communities	Telephone Calls	\$1.30	0.12%	\$3.56	\$565.22
Costs to Families and Communities	Other (McLaughlin, et al)	\$528.10	47.90%	\$1,446.85	\$229,608.70
Costs to Families and Communities	Total	\$531.00	48.17%	\$8.64	\$1,260.87
Costs to Inmates	Total	\$392.60	35.61%	\$1,075.62	\$170,695.65
<b>Grand Total (approx. 6% of GDP)</b>		<b>\$1,107</b>	<b>100.00%</b>	<b>\$3,243.57</b>	<b>\$479,304.35</b>
Items in Red are ≥ 1% GDP (183 Billion Dollars)					

Other costs which are not detailed here include such things as the costs of transportation imposed on the loved ones who visit persons incarcerated both remotely and even locally, as jails and prisons are rarely conveniently located, opportunity costs imposed on such loved ones who need to take time off from work to visit incarcerated persons, and similarly, opportunity costs associated with the need to turn down whatever employment opportunities become unmanageable to the person who is connected to the incarcerated. Furthermore, the impact of incarceration on the children of the incarcerated person have real and economically significant impact in various ways (McLaughlin, 2016). It is known

for example that such children are more likely to need therapy around the emotional impact of their parents' situation, they might also wind up taking on various burdens associated with the maintenance of the household, including caring for younger siblings and so forth which might otherwise have devolved to the parent, direct financial burdens in needing to enter the job market to earn income to lend support to their families or even meet their own material needs. These various burdens carried by the children of the incarcerated can in turn lead to diminished ability to succeed in academic as well as social life, leading in some cases to additional far-flung and multi-generational economic impacts and even to more crime.

## Conclusion

In considering the data evaluated in this analysis, it is clear that there are various flaws in our national thinking on the arrangements made around crime and punishment which perpetuate and even exacerbate the conditions which lead to the need for some kind of response. It is hoped that in considering these facts, that discussion around these topics will lead to thoughtful reconsideration of our approaches to the various social and psychological problems which are currently addressed through the criminal justice framework. It is apparent that even failing any more meaningful systemic changes in our approaches to those behaviors we currently define as criminal, that there are at the very least ways in which prison inmates could be allowed to participate in the economic health of their families, communities and the nation as a whole, and that there are ways in which the various economic, social and emotional costs imposed on loved ones could be mitigated if not eliminated. It is the author's hope that the data analyzed here will contribute to meaningful and effective discussion in this area.

## 14 Appendix 2: Cost Differentials Between Punitive and Positive-Cooperative Justice

In a previous project using Excel to evaluate the costs of the existing US criminal justice system, the author of this paper generated a spreadsheet which showed the associated costs as laid out in the academic research paper on this subject, and organized these into groups with sub-totals. While these data in and of themselves demonstrate some areas for serious consideration around what things might be done better in the area of criminal justice, mere analysis of these figures does nothing to suggest how such costs might be reduced or to what ends. This paper and associated estimates based on these and other available data aim to demonstrate how a particular set of alternative arrangements, which the author has labeled Positive-Cooperative Justice (PCJ) (see above) might speak to these issues.

To calculate estimates for what PCJ might cost, the costs associated with criminal justice act here as a starting point (McLaughlin, 2016) (Wagner & Raby, 2017). The first area under consideration is what items or categories expense PCJ could eliminate. PCJ would aim to ensure that all capable people who are required to reside in some secured facility for any length of time would be engaged in work which provides enough pay to meet their material needs, enables them to fulfil their familial obligations and creates revenue streams for their communities by way of providing in-demand goods and services. In so doing, the financial burdens place on the loved ones of inmates and their communities can be expected to eliminate. This removes the entire category of costs to families and communities from the modified data set. While PCJ will use a very different kind of mediation system, the level of sophistication and expertise to be employed could be



guessed to be roughly similar to judicial and legal expenses under criminal justice, so the judicial and legal category numbers will remain intact, but be renamed to Mediation and Resolution. Similarly, PCJ would largely replace policing with its own community outreach services, these most likely would be significantly less costly than policing, as there would be less equipment used, however, for lack of better estimates, the policing numbers will be retained. Costs to inmates under PCJ should be non-disruptive of legitimate income opportunities and in many cases might replace lower wages with higher ones as educational and vocational opportunities will be built-in to the PCJ arrangement. Finally, civil asset forfeiture, while likely to be something which would be far less frequently enacted under PCJ, might still be utilized in some cases, for lack of a means for estimating, this category will remain unchanged.

The total costs of running prisons versus PCJ centers are difficult to work out without significantly more data on the pricing of construction elements, furnishing and equipment. The per-diem cost of keeping a person in a secured facility within the community said person originates from is likely to be higher on average than the costs associated with prisons, which are often located in rural areas. This being the case, it could be guessed that the per-bed price might be comparable to local jails. While PCJ would call for more livable spaces than an average jail cell, the special hardware and furniture typically used in jail environments is most likely more expensive to purchase and install than the kinds of furnishings most PCJ living and shared spaces would require. Some parts of the facility would obviously need to be designed for occupation by people who are actively acting out destructive behaviors. However, where in most jail facilities, all spaces and furnishings are designed around the assumption that any inmate might act out destructively at any time, PCJ would be more oriented toward promoting self-regulation among residents, and



would not design facilities built entirely around on the needs of the few who require greater supervision and restriction. Somewhere in this mix it could be guessed that a facility with adequately graduated levels of security balanced against basic human environment needs might be similar in cost to solidly medium-security incarceration facilities in the locations they would serve.

Figuring out costs for the level of residential treatment in a PCJ center versus the punitive model, which assumes mostly security personnel, is also tricky. One possibility which seems like it should come with similar costs and needs for security is residential mental health treatment centers range from \$10 thousand to \$60 (Tracy, 2019) thousand per-month, per patient. Most of the upper-end price differences are related to amenities. PCJ facilities should be secure, but also livable and non-oppressive environments, with state of the art brain imaging equipment for evaluating problems and progress in measurable terms. For the sake of argument, the guess made here is that really good in-patient treatment of the kind needed to take people who engage in destructive activities in and properly and fully treat them would be around \$15 thousand per month, or \$78 thousand per-year. A Scientific American article from several years ago (Citation information unavailable) put the price of keeping those who have been found "not guilty by reason of insanity" at around \$58 thousand a year (which presumably works-in the facility construction costs). In any event, this article stopped short of considering the fact that treatment-based solutions might be expected to be significantly less time-intensive than prescriptively applied prison sentences based on statutes and precedents.<sup>72</sup> To adjust for

---

<sup>72</sup> These facts considered in light of the fact that these two countries also have had greater successes in lowering their crime rates over the past several decades than we have suggests that for the mere satisfaction of knowing someone is locked up for a longer period of time, without any measurable benefit we are already paying more than we need to.

this likelihood, the best available method for estimation of expected time requirements it to compare incarceration figure between the US and Sweden whose existing criminal justice system already employs something which is comparable in most of the cost related ways to PCJ (Hedstrom, 2018). In the US in the years which the paper comparing the US and Sweden paper examined, for every felony committed in a given year, there is 121% correspondence in jail/prison populations. In Sweden, this number is only 5%. If we were to keep a similar portion of people who commit harms in PCJ residential treatment, the reduction in numbers of occupied beds would bring the number of people in custody to something like *95 thousand*, for the entire US (versus 2.3 million today).

Taking our highest per-resident, per-year cost estimate of \$78 thousand and multiplying by 95 thousand, the total costs for residential would work out to \$7.4 billion per year. To calculate the costs of the remaining people's treatment and supervision, which would happen in-community, with some level of participation in community center programs, we could take the total number we incarcerate today, subtract out the 95 thousand who reside in PCJ centers, arriving at 2.3 million. Taking this number, we could multiply it by some estimated dollar value for in-community intensive probation (which although it is punitively oriented, where the PCJ version would not be, probably requires at least as many economic resources). Adult figures are considerably lower than juvenile, at around \$5,925 per year, but for sake of argument, we will use the most expensive figure cited for juveniles (whose handling is likely to be considerably more complex, as it involves monitoring school attendance, participation, home life and so forth) which is \$18.5 thousand per year (AOS, 2003). This calculation brings us to \$42.6 billion or 53% of the current \$80.7 of the incarceration portion of the punitive system.

The grand total projected costs for PCJ, in replacement of the entire existing punitive framework, according to this projection would come to \$146.70 billion, compared to the \$1,102 billion estimated yearly spending for the existing punitive system. Meaning, that PCJ could cost 13%, or a little under 1/7th the amount of the current punitive version, perhaps, less, as I have deliberate chosen the highest values for the estimates surrounding PCJ. To put it another way, this is a projected savings of 87%.

In addition, there would be potential revenue streams beyond the scope of this analysis, which could be expected to boost the bottom-line of effected communities, the GDP, and more than off-set the costs of this likely more effective means of combatting inter-personally destructive activities which include what we currently define as crime and other harms beyond these.

Table 1 US Annual Justice Costs

Spending Category	Sub-Category	Annual Amount (In Billions of Dollars)	Percentage of Total	Dollars Per US Resident (=tot./314,785,000)	Dollars Per Detainee* (=tot./2.3 Million)
Public Corrections Agencies (Prisons, jails, parole and probation)	Public Employees	\$38.40	2.20%	\$121.99	\$16,695.65
Public Corrections Agencies (Prisons, jails, parole and probation)	Health Care	\$12.30	0.71%	\$39.07	\$5,347.83
Public Corrections Agencies (Prisons, jails, parole and probation)	Construction	\$3.30	0.19%	\$10.48	\$1,434.78
Public Corrections Agencies (Prisons, jails, parole and probation)	Interest Payments (On past construction)	\$1.90	0.11%	\$6.04	\$826.09
Public Corrections Agencies (Prisons, jails, parole and probation)	Food	\$2.10	0.12%	\$6.67	\$913.04
Public Corrections Agencies (Prisons, jails, parole and probation)	Utilities	\$1.70	0.10%	\$5.40	\$739.13
Public Corrections Agencies (Prisons, jails, parole and probation)	Private Corrections (aka private prisons)	\$3.90	0.22%	\$12.39	\$1,695.65
Public Corrections Agencies (Prisons, jails, parole and probation)	Private Prison Profits	\$0.37	0.02%	\$1.18	\$160.87
Public Corrections Agencies (Prisons, jails, parole and probation)	Other (non-specified)	\$16.73	0.96%	\$53.15	\$7,273.91
	Total	\$80.70	4.63%	\$256.37	\$35,086.96
Judicial and Legal (Criminal law only)	Prosecution	\$5.80	0.33%	\$18.43	\$2,521.74
Judicial and Legal (Criminal law only)	Indigent Defense	\$4.50	0.26%	\$14.30	\$1,956.52
Judicial and Legal (Criminal law only)	Other (non-specified)	\$18.70	1.07%	\$59.41	\$8,130.43
Judicial and Legal	Total	\$29.00	1.66%	\$92.13	\$12,608.70
Policing (Criminal law only)	Total	\$63.20	3.63%	\$200.77	\$27,478.26
Civil Asset Forfeiture	Total	\$4.50	0.26%	\$14.30	\$1,956.52
Bail Fees	Total	\$1.40	0.08%	\$4.45	\$608.70
Costs to Families	Commissary	\$1.60	0.09%	\$5.08	\$695.65
Costs to Families	Telephone Calls	\$1.30	0.07%	\$4.13	\$565.22
Costs to Families	Other (McGlaughlin, et al)	\$528.10	30.30%	\$1,677.65	\$229,608.70
Costs to Families	Total	\$531.00	30.46%	\$1,686.87	\$230,869.57
Costs to Inmates	Total	\$392.60	22.52%	\$1,247.20	\$170,695.65
<b>Grand Total (approx. 6% of GDP)</b>		<b>\$1,743.10</b>	<b>100.00%</b>	<b>\$5,537.43</b>	<b>\$757,869.57</b>
Items In Red are ≥ 1% GDP (183 Billion Dollars)					

Table 2 US Estimated Positive-Cooperative Justice Costs



Spending Category	Sub-Category	Annual Amount (In Billions of Dollars)	Percentage of Total	Dollars Per US Resident (=tot./314,785,000)	Dollars Per Detainee/ Patient*
Positive-Cooperative Justice Residential	Total	\$7.40	5.04%	\$23.51	\$78,000.00
Positive-Cooperative Justice In-Community Supervision and Treatment	Total	\$42.60	29.04%	\$135.33	\$18,500.00
Positive-Cooperative Justice Mediation and Resolution	Total	\$29.00	19.77%	\$92.13	\$12,608.70
Positive-Cooperative Justice Community outreach and security	Total	\$63.20	43.08%	\$200.77	\$27,478.26
Civil Asset Forfeiture	Total	\$4.50	3.07%	\$14.30	\$1,956.52
<b>Grand Total (approx. 0.8% of GDP)</b>		<b>\$146.70</b>	<b>100.00%</b>	<b>\$466.03</b>	<b>\$62,903.61</b>

\*Total dollars per Detainee represents weighted average between in-patient and out-patient, plus other costs.

Institutional Type	Annual Costs (In Billions of Dollars)	Dollars Per US Resident (=tot./314,785,000)	Dollars Per Detainee* (=tot./2.3 Million)
Criminal Justice System (all fields)	\$1,102.4	\$3,243.57	\$479,304.35
Criminal Justice System (jails/prisons only)	\$80.7	\$256.37	\$35,086.96
Positive-Cooperative Justice (all fields)	\$146.0	\$466.03	\$62,903.61
Positive-Cooperative Justice (residential and in-community supervision and treatment combined)	\$50.0	\$158.84	\$17,600.00

\* On Positive-Cooperative Justice Costs, Combines 95 Thousand Residential & 2.2 Million for In-Community From Previous Sheet

