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## **There's Got to Be a Better Way: Retribution vs. Restoration**

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When you ask most citizens what their major concerns are, time and again “crime” is among the top responses. For the last two decades politicians and legislators have responded by increasing the number of offenses that call for incarceration and increasingly stiffer penalties for those crimes. Yet, to the dismay of everyone concerned, those actions have been unsuccessful in allaying fears or correcting the problem. In fact, most state governments have realized that burgeoning corrections budgets are robbing the citizenry of needed services and are close to bankrupting the system. It is generally conceded that something must be done and both federal and state officials are working to remedy the situation.

By examining the historical treatment of punishment and the results of those practices, we can more accurately diagnose the problems and prescribe the proper remedies. It is time that we focus on healing instead of simply treating the symptoms with catastrophic intervention. As with medicine, if a problem is detected and treated early the probability of recovery and a healthy life are much higher than beginning treatment after the body has become critically ill. I propose a holistic approach to the problem of crime and punishment and here, specifically, focus on the alternative to current correctional practices. The practice of restorative justice, based on the reconciliation theory, is both the more civilized and effective method of corrections. I will include a brief history of imprisonment, recidivism rates, social cost, economic costs (both in state spending and by inmate families), prisons as business,

rehabilitation, and restoration, particularly faith-based restoration.

The amount of research that has been done on incarceration, inmates, and corrections, in general, is voluminous. For more than 30 years researchers have been telling us that retribution as a deterrent does not work. This is proven by the high rate of recidivism (re-arrest and re-incarceration), which runs on the national level from 50% to 68% for nonviolent offenders and about 60% for violent offenders with re-arrest occurring within three years.<sup>1</sup> The criminal justice system continues a policy and practice that are costly, ineffective, and, at its worst, damaging.

The majority of U.S. policy is based on either retribution theory or deterrence theory. The retributive view is that punishment is justified on the grounds that wrongdoing merits punishment. The deterrence theory, also known as the utilitarian view, seeks to prohibit future conduct. Both of these theories are based on the free will explanation of criminal behavior as found in the Classical Model of criminology as advanced by writers like Cesare Beccaria and Jeremy Bentham. It is known today as the Justice Model, whose proponents include James Q. Wilson, Ernest van den Haag and David Fogel.

The average citizen is appalled by the high rate of crime (which has been up and down over the last 30 years) and is frightened that he or she may be a victim of crime at some point. Because of this, the hue and cry that have gotten so many politicians elected in the last two decades are “Get tough on Crime!” and “Lock ‘em up and throw away the key!” In the 90’s many states have passed mandatory sentencing laws as well as passing legislature that requires inmates to serve at least 85% of their sentences. Yet neither the crime rate nor recidivism has been appreciably reduced. If tougher sentencing laws and longer sentences have not made the desired impact (less crime), then it is obvious that something needs to be done to correct “corrections.”

In his book *Hard Time: Understanding and Reforming the Prison*, Robert Johnson, Professor of Justice, Law and Society in the School of Public Affairs at The American University, states that although prisons are necessary, they should be civilized and civilizing institutions. He believes that prisons should reflect Plato's dictum that the person subject to punishment "should emerge a better man, or failing that, less of a wretch." (Johnson, 4)

We hold the largest number of prisoners in the "free" world and the majority of those are incarcerated for drug crimes or for crimes related to drug use.<sup>7</sup> Many of the offenders are not the down and out elements of society that one would expect, but rather people who have, for the most part, functioned in society. More than two-thirds are high school graduates and have maintained stable employment. (Johnson, 5)

While prisons undoubtedly hold violent offenders, very few prisoners turn to violence while in prison. (Johnson, 6) Most of them do their time peacefully, just trying to survive and make it the best of a bad situation. The majority of today's prisons are, at best, warehouses. Most prisoners sit around with very little to keep them occupied. The public's notion of a country club setting is erroneous. Most prisons are Spartan and the routines very dull. Although our corrections' system means no harm, the fact is that human warehousing is devastating to human potential. As Johnson says, prisons may provide comfort but they are uncomfortable.

Prisoners must serve hard time. And in accordance with the retribution theory, they must suffer for the wrongs they've done to others, that's only "just", and prisons are obviously painful places to be. But the time should be constructive time, not dead time.

One of the most valuable lessons for prisoners to learn is what Johnson calls mature coping. He defines it as: 1) dealing directly with one's problems, using resources legitimately at one's disposal; 2) refusing to employ deceit or violence other than for self-defense; and 3) building

mutual and supportive relationships with others. Immature coping is what leads most offenders to prison in the first place and by learning to cope maturely, the chance of transferring those skills to situations on the outside is increased.

Johnson cites James Q. Wilson, *The Moral Sense*, 1993, when he says, "the social world of a decent prison is built on social relations. Such relations are the bedrock upon which our . . . moral sense . . . is built. Our notions of right and wrong . . . are premised on our capacity to feel for and relate to other human beings, to take their interest seriously and, moreover, to take the needs and concerns of others into account when we fashion our own lives." Unfortunately, because our prisons are primarily warehouses, the opportunity and the incentive to develop relationships are absent.

To Johnson and many others it is uncomfortable for society to "relegate prisoners to a human junk heap" where pain is an everyday companion one must endure without any redeeming social benefit or purpose. They leave prison worse than when they entered, unable to cope with life on life's terms and consequently unable to contribute to the welfare of society either morally or economically.

The history of incarceration is interesting. Originally detainment was to induce payment of fines or to hold someone awaiting trial, banishment or execution. Punishment by long periods of confinement is a relatively modern phenomenon. Imprisonment is punishment, in and of itself and has always been dating back to Mamertine Prison, circa 64 B.C., which was probably the first "formal" and enduring prison. Mamertine was built under the sewers of Rome and men were confined in cages. Such punishment can certainly be seen as a deterrent to crime. Other punishment, such as being burned or mutilated, was much more dramatic and obviously more painful.

Expulsion or banishment was used to rid communities of criminals, as well as to

isolate those who carried infectious diseases. However, when it was unfeasible to banish the whole community, entire cities would be confined, or quarantined, during the worst of the Plague.

The regimen enforced within the prison of counts and restricted movement is reminiscent of quarantined communities. The occupants of houses were required to appear at their windows at certain times of the day to assure that they were still there and still alive. Much the same is required of inmates in today's prisons.

Deviance was, and is, seen as a plague to society and the American answer to that plague was the penitentiary. It was believed that by hard labor, isolation, silence and only the Bible to read, the deviants and misfits would find God and be reformed. It was unsuccessful. Many men imprisoned during that time lost their minds and never found repentance. From solitude the next step was the prison factory, long hours of hard work, endured in silence, to be brought to conformity with society by discipline. Two types of penitentiaries and two methods of reform: the separate system sought to shape "good and proper men . . . of disciplined habits and solid virtue" that also possessed a preference for simple and solitary pursuits; the other, the congregate system, sought to "forge a crude urban creature, a tame proletarian worker, oppressed and angry" but compliant. (Johnson, 44)

Ten years ago 850,000 individuals were incarcerated in the United States. Today there are more than 2,000,000. The current attitude and practice are one of human warehousing. Incapacitation is the popular response to the problem of crime in America. "The 90's answer to the 90's problem" is the phrase used by Director of Corrections in South Carolina, Doug Catoe. If you get them off the street, they can't commit another crime. "Three strikes and you're out!" reflects the national intolerance for the rampant crime but we have experienced over the last two decades. The problem is that the sentences being

imposed as a result of the hue and cry are not working. If they worked, we would not have seen more than a 100% increase in the number of people we hold in prisons.

There are several reasons that the programs do not work. The first is that punishment based on the loss of freedom does not address the causes of deviant and/or anti-social behavior. Some would argue that to address the causes is not the purpose of punishment. While that may be true, to stop there is extremely shortsighted. Since 95% of inmates will be returned to the communities from which they came, not addressing the problems ensures continued criminal activity. Simply locking someone up, removing them from anything and anyone who is supportive or nurturing, only adds to the deprivation that often is the root cause of the offending behavior. What does happen is that the stress involved with incarceration - loss of love, companionship, productivity, responsibility - compounded by boredom, fear, and constant watchfulness only exacerbates the problems of most inmates.

Most prisons in the U.S. have stripped correctional facilities of the "perks" that prisoners were given 20 to 30 years ago. Perks like educational programs, drug and alcohol treatment, rehabilitation programs, mental health counseling, vocational programs, prison pay, conjugal visits, furloughs and real work. The greatest number of institutions today has little, if any programs for inmates. The public perception of life behind bars was that prisoners were given a free ride and had more benefits than the average Joe on the street. While it is true that not everyone on the outside has access to the above-mentioned perks, most citizens have, at some point, had the opportunity to take advantage of education, training and therapy. The difference is that for those who are incarcerated, without these programs there is little hope of changing their circumstances once they return to the street, which puts them in the precarious position of repeating previous behavior.

The “average” inmates “average” day consists of getting up between 6:00 and 7:00 A.M., breakfast, count (while in their rooms/cells), showers, reading or TV, lunch, count, reading or TV, count, reading or TV, dinner, count, reading or TV, count, reading or TV, lock down at 11:00 P.M. Interspersed throughout this routine is recreation for an hour twice a week, Bible study one to two nights a week, some prison job which takes an hour to two hours to perform, card games with other inmates and an occasional letter home or time spent in line to use the phone. Some inmates are involved in a prison industry such as furniture making, assembly, etc., but that is the minority. There are not enough jobs for the inmate population.

After a year, five years, ten years, 20 years of this routine, the inmate released on the street is ill equipped to deal with life. There is also the stigma of being an “ex-con so often finding gainful employment is difficult, if not impossible.

There is also the constant threat of assault. Impulse control is a contributing factor to the behavior of many individuals and that lack of control is one reason that individuals break the law and end up in prison. Violence is a part of the “crime culture” and control of weaker individuals by threat or action is often the vehicle for respect and status within the walls. Vigilance is the norm and a necessity for survival.

Re-offense with subsequent re-incarceration is known as recidivism. The average time between release and re-arrest is about two and a half years. The national rate of recidivism is more than 50% in the US. Since very few offenders are caught, prosecuted, and incarcerated on their first offense (by self-report, it is usually at least the eighth) two factors become readily apparent. First, the number of people that are locked up is not an accurate reflection of the number of crimes committed and that incarceration is not a deterrent. Just taking a person’s freedom for a specific amount of time does not ensure obedience to the law.

There are many factors leading to re-offense. From the economic aspect, most ex-offenders re-enter the job market with the suspicion attached to an ex-con which makes it difficult to obtain positions that will support an individual, much less a family. There are some jobs they are denied access to permanently, such as security positions, military enlistment, or any type of job requiring bonding. From a sociological perspective, much, if not all, of an ex-offenders support system, i.e., family, friends, former colleagues, are no longer supportive and have abandoned the individual. Transition to life outside the institution is difficult at best and can be impossible at worst. Often, the only support system available to him is the same criminal element with which he was involved before arrest. Usually having received no drug or alcohol counseling while in prison, the return to drugs as a coping mechanism almost assures re-offense and subsequent imprisonment.

An even greater factor to be gauged is the social cost of the current system. How many single heads of households in the United States are a direct result of the current system? With more than 2,000,000 people incarcerated and the majority of those (approximately 95%) male, the social implications are enormous. Statistics show that 54% of those incarcerated have had a parent incarcerated. It was found that of juvenile offenders in Florida, 58% had at least one parent incarcerated and one study showed that factor made them more than six times as likely to become incarcerated themselves. In Florida alone there are almost 60,000 children with an incarcerated parent, which translates into literally thousands of single parent families. Since the majority of inmates come from the lower income stratum, many below poverty level, the perpetuation of economic disadvantage as well as the recognized social and educational bankruptcy associated with it is readily apparent. There will be more broken families; more families on welfare; more single mothers working

two jobs, now making the home absent two parents; the stigma of prison by association. Even more damaging socially is the inability of the offender to achieve the measure of normalcy and reinstatement into the mainstream. When he is released, and most will be released at some point, the stigma attached to an ex-con and his absence from the workforce for an extended period of time makes it extremely difficult to secure employment that will support himself, much less a family. If he does not receive vocational training, counseling or treatment during his incarceration, the core problems that lead to offending have not been addressed and will surely reemerge.

Current figures estimate the average cost of incarcerating one individual to be \$23,000 per year (this does not include geriatric care, juvenile care or super-max care). With more than 2,000,000 people in prison that conservatively translates to 46 *billion* dollars per year! The 2000 budget in Florida for corrections is \$1.7 billion. The cost of imprisonment is borne by the taxpayer: that's you and I. It also means that there are at least 990,000 able body men and women *not* contributing to the tax base of either the state or the country.

The economic cost to the inmate family is enormous as well. In a recent study by the Committee on Corrections of the Judicial Council, Florida House of Representatives, the result showed that the average costs incurred by inmates family was more than \$275 a month or \$3,300 per year. These figures are similar to my findings for a project done in a single institution in South Carolina. What must be realized is that these costs are over and above normal family expenses and represents an additional hardship, which compounds the often devastating loss of income from the primary income earner's incarceration, throwing the family into an even lower economic arena.

The cost of running the facilities is subsidized by the inmate families through commissions earned on items purchased

through the canteen, which is the only legal source available for inmates to obtain goods such as underwear, shoes, paper, envelopes and stamps, etc. Commissions are also earned on collect telephone calls; and vending machine items purchased during a visitation. Again, with the inmate population predominantly originating from a low-income group, the additional financial burden plunges the already needy into even deeper need.

It is estimated that the state spends ten to fifteen times more on corrections than on education. Again, meta-analysis shows a direct link between a lack of education, unemployment, and crime. It would seem that an emphasis on the preventive measures, such as more funding for education in the way of better facilities, higher wages for teachers (attracting more competent instructors), more teachers, up-to-date technology that is available to all students, a more diverse curriculum within the schools (including life skills), after school programs for tutoring and mentoring, etc., would go far in helping to reduce long-term expenditures on corrections by helping to eliminate the core causes.

One explanation for the perpetuation of the prison industry despite evidence that the system is severely flawed is that it is big business. With the average cost of building a prison \$200 million plus it is no wonder that companies in the business of building prisons are lobbying intensely for the "law and order" agenda on Capitol Hill. Geographically, most facilities are located in rural or sparsely populated areas, thereby providing a source of revenue in the form of services provided and employment for an often economically depressed area, the loss of which would return the community to its former economic status.

For a short period of time during the late 60's and early 70's, the correctional system adopted a rehabilitation model, which has since been abandoned by the majority of state systems. Why? The consensus is that rehabilitation doesn't work.<sup>3</sup> My contention is that it was never

given enough time to work. It was abandoned because it is initially more expensive to rehabilitate than to incapacitate. If offenders received education and treatment they would be less likely re-offend and therefore there would be less of a need for prisons.

The programs that were offered included vocational programs, drug and alcohol treatment, other mental health services, anger management, stress management, furloughs, educational courses which included two and four year degrees, work initiatives and other skills development. As with any program, a holistic approach must be taken. With a piecemeal approach you will get a piecemeal result. One of the main problems associated with the lack of success of the rehabilitation model is that many prisons did not offer complete programs but only a few here and there. In most Departments of Corrections today, there are still remnants of these programs available to inmates. However, no facility has all the programs that are offered. In Florida and South Carolina, as well as in many other states, while there may be a variety of programs offered, usually the program is offered in only one, two or three facilities but certainly not all, which effectively means that they are not available to thousands of inmates.

The bottom line is that our current system of corrections doesn't work. In fact, it actually perpetuates its own failure. It is costly and, in many cases, inhumane. The success of any program is gauged by the achievement of its goals. If the goal is retribution, how does one really gauge "just desserts?" And who benefits from the retribution? Does the victim? Definitely not. Ask a victim of crime if he or she is satisfied with the outcome and if the sentencing of the offender has made the situation better, for the most part, the victim will tell you no. If the goal is deterrence, it's obvious even to the casual observer that it doesn't work by the sheer number of prisons being built to hold new and repeat

offenders. If incapacitation worked, offenders would not be returning to prison in such large numbers.

A new proposition is in order. How can we meet the true objectives of corrections? First, we must define those objectives. The following are taken from Departments of Corrections' mission statements or goals:

"The agency provides offenders under its jurisdiction with Opportunities to become productive, law-abiding citizens . . ." South Carolina

"[G]uiding offenders to become law-abiding citizens . . ." Utah

"The Department of Corrections protects the public by operating a safe, secure, humane and efficient corrections system." Florida

"In partnership with the citizens of Alaska, protect the public from repeat offender crime by using the best correctional practices available to provide a continuum of appropriate, humane, safe and cost-effective confinement, supervision, and rehabilitation services. The Department will carry out its responsibility while respecting the rights of victims and recognizing the dignity inherent in all human beings." Alaska

"The mission of the Department of Corrections is to protect the public from criminal offenders through a system of incarceration and supervision which securely segregates offenders from society, assures offenders of their constitutional rights and maintains programs to enhance the success of the offender's reentry into society." Illinois

"The mission of the Oregon Department of Corrections is to promote public safety by holding offenders accountable for their actions and reducing the risk of future criminal behavior." Oregon

“To provide public protection by operating humane and secure facilities in a safe working environment, where the health and well-being of the committed are sustained, and opportunities are available for the committed to address issues related to their reintegration back into the community.”

Hawaii

“To provide the necessary custody, care, and supervision of juvenile and adult offenders for the protection of the citizens of South Dakota.” South Dakota

“Restorative justice is a new framework for the criminal justice system that is rapidly gaining acceptance and support by criminal justice professionals and community groups in Minnesota and across the nation. The Minnesota Department of Corrections advocates adoption of restorative justice principles and has established a department unit that supports implementation of restorative justice concepts throughout the state. This statewide effort involves all aspects of the community including schools, churches, courts, corrections and law enforcement agencies, and citizens.” Minnesota

As is evident by the disparity among the states' correctional systems regarding their missions, is it any wonder that the system struggles and fails? There is no cohesion or uniformity of mission. While some propound to provide opportunities for inmates to become law-abiding citizens, in practice there is little, if any, systematic approach to rehabilitation. Some states have no mission statement regarding their corrections policy so it's not surprising that in those states, incapacitation is the only goal for the offender. In fact, the term “corrections” is a misnomer since there is little effort on the part of the state to correct the behavior, or the problems leading to criminal behavior. How then can any state system expect to lower recidivism and promote *long-term* public safety (which is

in the mission statement of almost every department)?

There are a few states that have adopted a progressive approach to rehabilitating the offender. In those states, although the cost per inmate is higher than those whose goal is simply incapacitation, it is not significantly higher and their recidivism rates are lower. Arguably, recidivism rates can be manipulated and across the board states are generally showing lower rates. What one must keep in mind when reviewing those numbers is that because of the tougher sentencing laws of the last two decades, offenders are serving much longer sentences and therefore are not returning to the street as quickly. Additionally, with longer sentences being served, offenders are older upon release and, statistically, as one ages the likelihood of criminal activity drops dramatically.

So, does incapacitation work? If it only means getting one criminal off the street for a specific length of time, then, yes, it works. But is that the best course for society? Is it the best course for the individual? Is it the best course for the families of the offender? And is it really the best course for the victim? Absolutely not!

In a nutshell, this is how it works. A crime is an offense against the state. Historically, a crime was an offense against an individual or a community. Today, the state has usurped the community's and the individual's right to restitution and reconciliation. Instead of an offender making his wrongs up to those he has violated, he makes it up to the state by way of being locked up. How does this help restore the victim and the community to a place of wholeness? It simply does not. While some may question the need to restore the neighborhood community one must remember that the community is a microcosm of the global community. Where there is fear and distrust, where there are separation and segregation, there can be no peace. There may not be a next victim for a while, but the injured party is left “unwhole.” The community is left violated.

Although many victims are awarded restitution, few ever receive it. Logically, how is an inmate going to pay restitution if he is locked up for years? If you ask a victim of crime if financial restitution is what they want, most will tell you that financial restitution is only part of the picture. Most victims want to know “why?”. Why them? Why did the guy do it? And a great many want to know if this person is worth “saving.”<sup>3</sup>

There is no argument that there must be consequences for violating the laws of society and the laws of man. The problem is that the way we do it hurts more people than it helps. The whole focus of our current system segregates every faction and does little to reestablish a whole and cohesive unit, the community. It also does irreparable harm to families, the core of our society. With a damaged family and a damaged community, the cycle continues. There is monumental data showing the disintegrating and fractioned family as one of the major contributors to the ills of society, including drug addiction, poverty, and crime. Taking an individual off the street and locking him up for years is certainly not conducive to building the family unit, contributing to the financial welfare of the family, or making him a law-abiding, contributing member of society.

What then is a reasonable and effective course of corrections? How do we *really* help offenders become law-abiding citizens? What course of action will reconcile the victim and the offender? What programs incorporate all parties in a solution that benefits the victim, the community and the offender, and still holds the offender accountable for his deeds?

The restorative justice movement has been gaining interest and acceptance internationally with such supporters as Bishop Desmond Tutu. Restorative justice is based on Biblical principles of restitution and restoration that involves everyone; the victim, the community and the offender. There are a few states that have embraced

the restorative justice principles in all correctional institutions, there are a few communities whose local governments have adopted restorative programs and there are many corrections departments that have integrated a few of the programs if not converting to full program operations.

The focus is on “making things right” as opposed to a focus on punishment. The principles are simple: Crime results in injuries to victims, communities and offenders; therefore, the criminal justice process must repair those injuries. Not only government, but also victims, offenders, and the communities should be actively involved in the criminal justice process at the earliest point and to the maximum extent possible. In promoting justice, the government is responsible for preserving order, and the community is responsible for establishing peace.

There are ten commandments that have been adopted by the restorative justice movement. Very simply:

- I. You will focus on the harm of crime rather than the rules that have been broken,
- II. You will be equally concerned about victims and offenders, involving both in the process of justice,
- III. You will work toward the restoration of victims, empowering them and responding to their needs as they see them,
- IV. You will support offenders while encouraging them to understand, accept, and carry out their obligations,
- V. You will recognize that while obligations may be difficult for offenders, they should not be intended as pain,
- VI. You will provide opportunities for dialogue, direct or indirect, between victim and offender as appropriate,

VII. You will find meaningful ways to involve the community and to respond to the community bases of crime,

VIII. You will encourage collaboration and reintegration rather than coercion and isolation,

IX. You will be mindful of the unintended consequences of your actions and programs,

X. You will show respect to all parties-victims, offenders, justice colleagues.

In the states that have adopted restorative justice programs, recidivism rates have dropped considerably.<sup>5</sup> Victims report a greater satisfaction with the criminal justice system, citing a feeling of importance and value. Offenders are given an opportunity to be pro-active in the resolution of the offense and consequences. They are provided with appropriate mental health or drug and alcohol therapy, if needed. They can continue, in most cases, to work and support their families while making restitution to the victim and community, both financially and with community service. When incarceration is required by statute, they are provided programs to develop vocational and educational skills, often working in a prison industry thereby developing or maintaining self-esteem.

What has happened to us as a society is that we have forgotten that the offender is a human being, capable of change when it is self-initiated and worthy of basic respect and dignity as a human being. Most citizens of the United States do not know or do not have personal contact with someone who is or has been incarcerated. That seems destined to change. According to the Criminal Justice Index 1999, we now have one out of every 150 individuals in prison. Our public perception is that all offenders are deranged, violent, "lowlife scum" (the words of a juror). They are not seen as sons, brothers, husbands, fathers or friends,

or in the case of female offenders, daughters, sisters, wives or mothers. The current sentiment of "lock 'em up and throw away the key" is one of complete depersonalization. I ask you, if it were *your* loved one, would you have the same philosophy? I believe not. In this era of insulation and isolation, with our associations limited predominately to work and the Internet, it is easy to dismiss and discard those we do not know who have broken the rules. We are taught from an early age not to trust those we do not know, to view them with suspicion. We have a fear of strangers and when a stranger violates the law it simply reinforces our belief. If that stranger is locked up, then we are safer.

What is imperative for us to remember, and more so in this global atmosphere, is that we are not individuals alone. We are members of an ever-widening community, the community of our families, the neighborhoods in which we dwell, the cities we inhabit, the states and countries we call our own and on the grandest scale, the worldwide community at large. Granted, our immediate concerns are largely local and within our own state, but even with that limited approach we must realize that the choices we make in the treatment of all our members, including those who have broken trust and offended individuals and the community, have dynamic implications.

That being the case, how do we best look after our own interests in the area of corrections? In order to have a safer, more secure environment in which to live, we must, first of all, address the problems that contribute to the development of crime. "An ounce of prevention is worth a pound of cure." Prisons have been called the best "crime schools." One of the reasons that juveniles are now housed separately is to prevent the advancement of their criminality. Incarceration only exposes offenders to more crime and criminal practices. Very simply, they learn to become more criminal. As parents, why do we monitor and restrict the associations of

our children? To protect them from negative influences, to ensure that the influences in their lives mirror our own values and to provide them with a positive track to pursue. Why then would we put someone we know is going to return to our community at some point in a direct daily, concentrated, almost exclusive contact with those who can influence them more negatively? It makes no sense. What offenders need in order to become law-abiding citizens is to develop respect for others, the community and themselves; the skills and experiences that contribute to that development; logical consequences for their actions (accountability); and the continued contact and support of friends and family.

This is best done in a non-prison setting, in the community where he or she has offended, with the victim who has been harmed receiving the restitution and if willing, involved in the process. The first step in rehabilitation and restoration is to have an awareness of the harm that one's actions have caused. Most offenders depersonalize the victim. If it's a burglary, they break into a house, not someone's home. If they steal a car, they're taking wheels, not someone's ability to get to work. If they graffiti a building, they're leaving their signature, not depriving someone of income because the public is discouraged from entering his place of business. It is almost exclusively about money, with no understanding of the human dynamic. It is mostly about money to support a drug habit, which I will discuss later. They are products of our age.

One of the most successful programs used today in the restorative justice milieu is Victim Offender Reconciliation Programs (VORP). Offenders and victims meet with a mediator to discuss the effects of the crimes on their lives, express their concerns and feelings and work out a restitution agreement. Often the restitution agreement is secondary to the emotional healing and satisfaction for the victim and growth for the offender. Used mostly in nonviolent crimes, there are more and more instances

of VORP being used in serious or violent crimes. One such program is Victim-Offender Mediation/Dialogue Program in the Texas Department of Criminal Justice. The program has been operating for six years and is recognized as the first its kind. As of April 2000, there have been 15 face-to-face violent crime mediations, ten of which have been between murderers and their victim's families. Officials from Japan, four European countries and several other U.S. states have studied the program. The program is strictly voluntary between the offenders and the families. Although some victims' advocates question their effectiveness in the emotional healing of those harmed, David Doerfler, who heads the program, insists that all the victims who have participated on them have benefited from them.

From participants:

"I decided the only way I could get anything out of him was to treat him like a human being . . . You diffuse some of the anger by being able to say, 'This is what you did . . . how could you do it?' . . . There will never be a time I forgive him, but when you work through these things, you see so much . . ."

"I was able to see beyond his faults and see his needs," her own abusive past enabling her to understand. "I used to hate [Charles], but if you want to heal, you can't stay in the same place . . . forgiving is letting go of anger and moving forward to something productive."

(From the offender) "At one time I really didn't think of the pain I caused [her], but now I know it - I feel it every day. It's a scar you can't cover up." His disciplinary actions have dropped from 148 in the first 12 years of his incarceration to only two since June of 1998. "I always see her face telling me to do what they [correctional officers] tell me to do."

One mother, whose 17 year-old daughter had been murdered, said that she has not forgiven the murderer, but she has learned that “he is a human being and not the monster” she thought he was before their mediation. After viewing the photos that she brought to the mediation it made him realize for the first time the impact of his crimes. “It was like a door opening, letting everything I had covered up and refused to look at . . . come up.” He says prison life can’t make offenders fully accountable for their crimes the way the mediation did for him. He could no longer fool himself, make excuses or downplay his actions after he met face to face with the mother of the woman he murdered.

In the Texas program, more than 400 victims and 85 offenders have shown an interest in mediation, but since it is strictly voluntary on both parts, they can take place only if both parties are willing. Importantly, it should be noted that no special considerations as far as sentencing, probation or parole benefits are offered to the offender and they must admit their guilt and take responsibility for the crimes in order to participate. Whether they are released in the future or not, the acceptance of responsibility and the awareness of the impact of their crimes is an important step in the restoration process.

Another successful program is Restorative Community Service. This program is usually run by the sheriff’s office or probation department and make the service both “*viable* and *visible*.” The focus is on building offender competency (and thereby building self-esteem) through acquisition of job and life skills *while* earning money for restitution to victims. In Deschutes County, Oregon, the Community Justice Coordinator places both juvenile and adult probationers with mentors that teach them house-building skills. Part of their community service is served with the nonprofit Habitat for Humanity or benefiting the victim directly, if requested (such as a work project on the victim’s home or business). How better to make

restitution to the victim than to repair damage to his property or to the community by helping to provide for others?

Some of the most highly recognized and successful programs nationally are Drug Courts. Substance abusers are held accountable for their behavior and, at the same time, required to participate in a very structured program of counseling, therapy, education, job training, and work. In most Drug Court programs, family, friends, employers and community members act as monitors, mentors, and support.

The effectiveness of both Drug Courts and inmate drug treatment has been borne out in many studies. A study by the Federal Bureau of Prisons (FBOP) in 1997 found that those treated while incarcerated were 73% less likely to be re-arrested during the first six months after release than untreated inmates and were 44% less likely to be detected for drug use during that time.<sup>6</sup> Columbia University’s Center on Addiction and Substance Abuse found that 80% of inmates were either high on drugs or alcohol when arrested, stole property to buy drugs, or have a history of drug or alcohol abuse.<sup>7</sup> Although you cannot be arrested for being an addict, you can and mostly likely will be arrested and incarcerated for behavior associated with addiction. Since addiction is a disease, punishing the behavior someone exhibits because they are sick instead of treating him or her is akin to punishing someone whom is erratic and explosive because they have a brain tumor. Addiction is treatable; oftentimes a brain tumor is not.

There is an old saying to which most people ascribe that says, “An idle mind is the devil’s workshop.” Locking someone up and then giving him or her nothing beneficial to keep his or her mind busy is simply asking for trouble. Locking someone up and keeping them inactive is the same. How are inmates to be rehabilitated and made law-abiding citizens if they are idle and left to simply “do their time”? Only a small percentage of prisoners are involved in work of any kind, much less

work that is productive and translatable to the labor-force on the outside. While they are incarcerated, the state should make use of those who have skills such as carpentry, welding, sheet metal working, painting, culinary, etc. If the state employed these people in state jobs instead of contracting with civilians it would save the state literally millions of dollars, put the prisoners to work in real jobs while earning the money needed to take care of their families (which would relieve some of the welfare burden of the state). It would also enable them to pay restitution to their victims, subsidize their own care, and hopefully, build a re-entry account they would receive on release.<sup>8</sup> According to the Urban Institute, a Washington, D.C., think tank, 90% of those incarcerated will at some time be released. Over the next several decades, we are talking about *millions* of people who never acquired job skills (or lost them in prison) or education to a degree necessary to function in the labor market. In addition, they will meet the suspicion of potential employers and the communities to which they return, which is guaranteed to cause localized and massive economic problems.

You may argue that it is not safe to have that many prisoners integrated into our communities. The truth of the matter is that most people who are imprisoned are not imprisoned for violent crime. And the majority of those who are imprisoned for violent crimes were under the influence of their addictions when they committed the crime. If drug or alcohol treatment is a prerequisite to entering a bona fide work program, then it's a win-win for the offender and for society. Obviously, we would not release anyone into the community that is still violent, still indulging in drugs and alcohol (yes, they are very available behind the walls), who has not gone through counseling and skills development, and monitoring, either electronic or visual, would be a requirement.

Another argument is that it would take

away the jobs of decent, law-abiding citizens. That is exactly the theory that Zygmunt Bauman holds as to the global fascination with incapacitation, of which the U.S. is the undisputed leader. It is a way to maintain *immobilization*, which eliminates an unwanted segment of lower echelon workers and maintains economic control.<sup>9</sup> It is interesting to note that when unemployment rates are figured the 2 million people that are incarcerated are not included in those statistics. So, just how healthy is our economy and what will happen to those rates in the next ten to twenty years as prisoners are released into the community? The jobs that would be most affected are the lower paying, labor and service industry jobs, not the white-collar jobs or those requiring advanced technical skills.

One argument that continually emerges is that restorative justice is soft on crime. While the rehabilitation model has many of the basic components of the reconciliation model, there is one major flaw. To quote Joe Loconte:

“Herein lies perhaps the most heinous omission of the liberal-minded prison programs: they fail to confront the offender with the wrongness of his actions and force him to assume responsibility for making amends. Government funds a litany of courses in self-esteem, behavior management, and therapy in our prisons. What is missing in most of them is the moral dynamic. Without it, criminals continue to focus on themselves, not their victims.”

Although I am a proponent of rehabilitation as a minimum effort within our correctional system I must agree with Jeff Kimmel, the chief of staff at Justice Fellowship and Howard Zehr, author of *Changing Lenses*. The rehabilitation model falls short because it allows the offenders to distance themselves from the victims and avoid responsibility by rationalizing their behavior and attributing it to their

own past victimization or discrimination. In other words, it's not their fault. "Owning" your behavior is the first step to changing your behavior.

There is no argument that there are some offenders who should and will be locked away for a very long time. Some are dangerous. Some are unremorseful. Some have no inclination or desire to live any but the criminal life. But the vast majority of offenders do not want to repeat their behavior, especially once they face the moral aspect of their decisions and action. The impact on the crime rate and on our lives can be monumental when offenders are held responsible to the real victims - the individuals and communities, not the state. They must be required to and given the opportunity to make restitution to their victims, as well as provided with support and with the opportunity to acquire the skills necessary to function within society. Finally, they must be restored to the community instead of being ostracized and excluded,

Our overall correctional policy has failed miserably and to continue to "throw good money after bad", so to speak, is insane. The first step in making the change is to educate the public to the truth regarding the state of corrections because without knowledge, John Q. will still subscribe to the political blast and remain a victim of his fear and ignorance. That must be done the same way that restorative justice operates, within the community. We live in an age of sound bites. Most people get the news of the world in half an hour at 6:00 PM. This issue is too complex to reduce to minutiae. We need dialogue, interaction and involvement. We must put a face on the problem, the face of our neighbor or loved one.

## Footnotes:

(U.S. Bureau of Justice Statistics, USA Today, April 13, 1998.)

<sup>1</sup> While this has been the conclusion of most research data in this field, I'm specifically referring to the information provided in an article by Joseph A. Califano Jr., *A Punishment-Only Prison Policy*. Mr. Califano is the founder and president of the National Center on Addiction and Substance Abuse located at Columbia University in New York City. Additionally, he was Secretary of Health, Education and Welfare from 1977 to 1979.

<sup>2</sup> Robert Martinson summarized the dismal rating give to the rehabilitation model in what is considered his classic review of the methodologically acceptable studies done between 1945 and 1967. Those studies measured results in terms of recidivism. His assessment has been rebutted by Canadians Gendreau and Ross (1979; 1987) as well as by meta-analytic reviews showing that treatment, when administered thoroughly and properly, can work (Andrews and Bonta 1998; Andrews, Zinger, Hoge, Bonta, Gendreau, and Cullen 1990).

<sup>3</sup> Victims report having piece of mind after confronting the offender. Psychological studies have shown that the emotional damage felt by a victim often outweighs the physical or material damage. Sometimes knowing (even if what one knows is worse than what one thought) is better than not knowing.

<sup>4</sup> Genessee County, New York has been practicing restorative justice for 20 years. Although there has been a slight growth in population since 1980, felony offenses have dropped by 14 percent. The results of their Felony Diversion program seem to be working: for felony offenders, the recidivism rate is less than half that for criminals sentenced to prison or probation.

<sup>5</sup> “New Research Reveals Federal Inmate Drug Treatment Programs Reduce Recidivism and Future Arrest.” Bureau of Prisons, Office of Public Affairs, February 9, 1998.

<http://www.bop.gov/ipapg/ipatriad.html>

<sup>6</sup> “Behind Bars: Substance Abuse and America’s Prisons.” Center on Addiction and Substance Abuse At Columbia University: 1998

<sup>7</sup> The Departments of Corrections for Pennsylvania, Ohio, and Mississippi utilize this option more widely than some, although most use inmate labor to some degree.

<sup>8</sup> Bauman, Zygmunt. “Local Laws, Local Order.” *Globalization: The Human Consequences*. New York, Columbia: 1998.

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