

Mass Incarceration Two: The Continuing Saga

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With an estimated 2.4 million people being housed in over 7,000 prisons, jails and facilities across the nation, the United States (US) holds the dubious distinction of being the world leader in incarceration (Wagner and Sakala, 2014, p. 36). China, whose human rights record is often decried by American politicians, ranks second with 1.64 million people behind bars (Zoukis, 2014, p. 9). In the last 20 years, we have seen our nation shift from a defense-based economy to an incarceration-based economy. It is reflected in the fact that 1 in every 31 people in this country are either behind bars or on some kind of supervised release or in the fact that 1 out of 8 state employees works for a corrections-based agency (Reutter, 2009a; Reutter, 2009b), or in the rise of an \$80 billion dollar mass incarceration industry – the list goes on (Larson, 2014, p. 3). The point is how can we contest with entities that have a mandate to incarcerate and have a budget reliant upon the incarceration of people? This dilemma is echoed in the words of Upton Sinclair when he said, “it is difficult to get a man to understand something when his salary depends on him not understanding it” (cited in Frank, 1999, p. 891).

The stark reality is that in this country, public safety continues to be shaped by public opinion. It is reflected in society’s perception that its safety – and therefore its preferences for tougher laws – continues to be patterned after high profile tragedies, along with anger and revenge. It is about basic assumptions regarding what states must do to people who violate the law, not only to ensure safety, but to satisfy the sense of justice of law abiding citizens. As Doran Larson (2013) notes, all “this is at a time when tough-on-crime politicians [and presidential appointees] acknowledge states are going broke funding prisons with no substantial return to taxpayers – including no net boost to public safety” (n.p.) Larson (2013) continues: “Prison size is not determined by crime rates, but by what states decide to treat as crimes, how much punishment the public demands and how successful the prison industry is in forming that demand. All those factors are determined by whom voters imagine this punishment landing upon”.

In his article on Scandinavian prisons, Doran Larsen refers to the findings of Norwegian criminologist Nils Christie when he writes “more homogeneous nations institutionalize mercy, which is to say they attend more closely to the circumstances surrounding individual criminal acts. The opposite tendency ... not only results from, but widens social distance. The harshness of the punishment that fearful voters are convinced is the only

thing that works on people who do not think or act like them becomes the measure of the moral distance between those voters and people identified as criminals” (Larson, 2013, n.p.).

Since 1988, Massachusetts has trembled in the shadow of Willie Horton¹ and now that shadow has been extended by the actions of Dominic Cinelli.² After the horrific tragedy on 26 December 2010 where the latter shot and killed a heroic Wobum police officer, the anguish felt by the officer’s family, friends and colleagues quickly turned to anger – not toward the murderer but toward a system that allowed him to murder. Within days that anger turned to outrage as media outlets revealed unsettling instances of incompetence. Many felt that based on Cinelli’s record he never should have been granted parole. However, it was the lack of proper supervision by parole officers that caused a media storm. Soon the public demanded that Governor Patrick take immediate and swift action to prevent this from happening again. In the days that followed, Governor Patrick navigated a chaotic landscape in which promptness equalled political survival. Within weeks he forced the resignation of five of the seven members who presided over Cinelli’s parole hearing. On 13 January 2011, the Governor explained his actions at a press conference:

I understand that the decision to parole an inmate is an important part of the judicial system and fully appreciate that there are no guarantees in those decisions... However, the facts surrounding this decision and the consequences resulting from it demand action to maintain the public’s faith in the parole board and to protect the integrity of the parole itself (Keiper, 2011),

Unfortunately, the events surrounding Dominic Cinelli were a culmination of systemic failures, none of which were addressed by Patrick. For a deeper understanding surrounding the murder of Officer McGuire one must go beyond the failure of parole supervision or a tough on crime policy that Patrick resorted to. The systemic failures come from the DOC’s inability to rehabilitate the prisoners in their custody, the refusal of the parole board to utilize the tools that would recognize when someone is truly rehabilitated, and the negligence of the executive branch to make use of policies that have long been on the books in Massachusetts since 1899.

In a 2013 promotional video, Department of Corrections Deputy Commissioner Peter Pepe stated “we make every attempt to equip the inmate in our care with the tools that they need to re-enter society and become productive law abiding citizens”. While sounding like a well-polished platform, it is nothing more than a convenient cover story behind which \$364 million dollar salaries hide. A clear indicator that shows the folly of Commissioner Pepe’s statement is a 2014 recidivism report that calculates the recidivism rate for Massachusetts at 43 percent (Haas, 2014), a rate on par with the national average of 43.3 percent (PEW Trusts).³ That number is critical to understanding how Massachusetts has failed to utilize visitation, education, compassionate release and parole to prevent future released prisoners from creating more victims.

VISITATION

Studies stretching back over 40 years have consistently found that prisoners who maintain close contact with their family members while incarcerated have better post-release rates (Friedman, 2014, p. 24). However, prison officials often make visitation an unpleasant process, including lengthy waits, onerous searches, restricted visitation time, rigid enforcement of often petty rules, and staff who are abusive and disrespectful to visitors, as well as prison volunteers. The whole visiting process is made into scenes of collective humiliation. For example, one female was turned away because her newborn baby did not have shoes on his feet, while another mother was not let in *until* 4pm despite the fact she arrived at 12:40pm. Another waited while it took two hours to process eight people, and an 11-year-old boy was turned away for wearing sweat pants. The boy cried so much that it left his younger autistic brother traumatized. Even volunteers cannot escape the problematic issues that plague the visiting procedures.

An 83-year-old female volunteer was told she could not wear winter gloves despite the fact that she had to walk the length of a football field, in winter, to get to the chapel. That same woman cried when staff said her clothes were “too revealing”. A catholic Nun was visibly shaken after being told to remove her Habit, and yet still, a staff member told two new volunteers that “for as long as she has been here, she’s never known this religious stuff to work. They’re all phonies (referring to the prisoners)”. The volunteer later said “I’ll pray for her”. Then again during a special Family

and Friends Mass, the same staff member said within earshot of visitors “I can’t believe they allow them to have this. We have to find a way to stop it”. These are just a few of the examples that go on at MCI Shirley. Imagine what goes on at other facilities.

According to a 2011 Vera Institute study, many family members indicated that prison rules and practices – including searches, long waits and inconsistent interpretation of dress codes – can be unclear, unpleasant, and too restrictive and even keep people from visiting again (Friedman, 2014, p. 25).

It is abundantly evident that maintaining family support lowers recidivism rates and therefore results in less crime, which benefits society as a whole. Yet, in spite of this clear correlation, the DOC does little to encourage contact between prisoners and their family members (Friedman, 2014). To further illustrate this point, the Federal Communications Commission (FCC) voted in August of 2013 to reduce the cost of prison phone calls nationwide to foster rehabilitation and recidivism. FCC Commissioner Mignon Clyburn stated “contact beyond prison walls can make a real difference... promoting rehabilitation and reducing recidivism. Making these calls more affordable can facilitate all of these objectives and more” (FCC, 2013). Yet, numerous “D.O.C. officials filed objections to the FCC’s order” (Friedman, 2014, p. 26).

EDUCATION

In addition to family relationships, education plays a significant role in the rehabilitation process. However, since 2007, the amount spent on programming has steadily decreased across all states (Haas, 2012). In 1994, President Bill Clinton gutted prison education programs by barring them from receiving Federal Pell grants. As a result, college programs for prisoners dropped from approximately 350 nationwide to around a dozen according to *The New York Times* (Clarke, 2014). Then Congress failed to renew federal funding in 2011, 2012, and 2013 for Spector grants, a program that helps finance higher education courses. The elimination of Spector funds compounds the woes of prison education programs. A study by the RAND Corporation on behalf of the Bureau of Justice Assistance, integrated a 2013 meta-analysis of more than 30 years of previous research that concluded “inmates who participated in correctional education programs had a 43% lower odds of returning to prison than inmates who did not” (ibid, p. 34). “These findings reinforce the need to become smarter

on crime by expanding proven strategies for keeping our communities safe and ensuring that those who have paid their debts to society have the chance to become productive citizens”, US Attorney General Eric Holder said when the findings were released in 2013 (ibid). Yet, in Massachusetts, the Department of Correction spends less and less of its half billion dollar yearly budget on prisoner programming (see *Table 1*).

US Secretary of Education Arne Duncan has stated that “[c]orrectional Education programs provide incarcerated individuals with the skills and knowledge essential to their futures” (ibid). The effects can be felt as far as Oklahoma down to Florida and from Minnesota to West Virginia. Stephen Steurer, Executive Director of the National Correctional Education Association (NCEA) said, “[w]e’re cutting our throats” (ibid).

Table 1: Percentage of Yearly Budget Allocated to Programs

Massachusetts D.O.C. Spending for Prisoner Programming				
Fiscal Year	2007	2009	2010	2011
Budget \$	\$13,409,837	\$12,882,947	\$11,308,339	\$10,833,784
Percentage of Budget	2.5%	2.4%	2.2%	2.09%

Figure adapted from: <http://www.realcostofprisons.org/writing/>

In New York, a senior official with the administration of Governor Andrew Cuomo, told reporters at a 31 March 2014 briefing that non-profit organizations and foundations had expressed interest in financing the Governor’s plan to expand college classes at ten prisons. The announcement signalled the revival of a program that Cuomo unveiled in February of 2014, which was quickly scuttled after New York State law makers voiced fierce opposition to using taxpayer dollars to fund college courses for prisoners. When confronted about his educational program expansion, the Governor conceded that “I don’t agree with it but I understand it, and I understand the appearance of it” (Clarke, 2014, p. 36). Yet, despite political backlash and criticism, he never gave up on his plan.

What Governor Cuomo understands is what Fedor Dostoevski explained in his 1866 novel, *Crime and Punishment*, that by treating those society

deems to be the worst of the worst in a humane manner, you enhance the social conscience of society itself. Providing an education to the criminalized is not the misguided act of condoning irresponsible behaviour, nor is it a reward for breaking the law. On the contrary, it is an investment into enhancing public safety by redeeming the ‘incorrigible’, which curbs recidivism and prevents the further erosion of our social fabric.

Citizens are outraged about paying for prisoners’ education when law abiding citizens cannot afford to pay for their own children’s education. The truth is if we spent less on crime and punishment, then more financial aid would be available to help those very people send their kids to college. In Massachusetts taxpayers spend over \$1 billion on an incarceration industry. Why not invest 0.01 percent of that annual budget – equal to \$1 million – on proven strategies like college education or vocational education which would lower the burden of cost to the taxpayer over time? Why pay more for punishment when we can pay less for rehabilitation?

Massachusetts used to be highly regarded for developing innovative programs to reduce recidivism, as well as our work evaluating these programs with the strongest research methods available at the time. Today, we lag far behind the country in implementing reforms proven to reduce costs and improve public safety (Forman and Larivee, 2013, p. 10). The DOC’s culpability for their lack of reforms and developing programs is well documented. However, the failings of the executive branch go widely unnoticed.

COMPASSIONATE RELEASE

According to an American Civil Liberties Union (ACLU) study, Massachusetts ranks third with the highest percentages of aging prisoners at 19 percent, while West Virginia and New Hampshire were in the top two respectively at 20 percent (Prison Legal News, 2014, p. 40). It is also the major reason why state corrections spending has grown by 674 percent over the last 25 years, the ACLU study determined. While ballooning expense of caring for geriatric prisoners is a national issue, the ACLU and other advocacy groups have proposed alternatives.

Some of those proposed alternatives are for parole boards to grant conditional releases to elderly prisoners, using a peer-reviewed, evidence-based assessment to determine the risk to public safety. States should also utilize and expand medical parole, known as compassionate release,

and commutation, an executive decision that has been on the books in Massachusetts since 1899.

An October 2013 report by the Pew Charitable Trusts analyzed data on prison healthcare spending from 44 states. Those states spent \$6.5 billion on healthcare in 2008 – a 2.3 billion increase from 2001 (Ridgeway, 2012, p. 22). Massachusetts alone spent \$95,626,660 on medical costs in 2011 (Department of Corrections, 2011). Contrast those totals with the actual cost of \$3,200 per prisoner to be monitored on electronic bracelet if given a Compassionate Release (Siedlitz, 2012). “When you have people serving life sentences, they’re going to die in prison, just like people serving 20, 30 and 40 year sentences are inevitably going to grow old behind bars”, noted Jamie Fellner, senior advisor of the US Program at Human Rights Watch (Prison Legal News, 2014, p. 40). Since 1983, deaths in prisons nationwide increased an astonishing 550 percent (Siedlitz, 2012).

“The risk to re-offense is much lower after age 50”, said David Fathi, who heads the ACLU’s National Prison Project (Prison Legal News, 2014, p. 40). Empirical studies have shown that by age 50, arrest rates are just over 2 percent and almost nil at age 65. In New York, for example, only 7 percent of ex-prisoners ages 50 to 64 return for new convictions. In Virginia, only 1.3 percent of ex-prisoners over 55 committed new crimes (ibid, p. 41). Despite such evidence Massachusetts has granted only one commutation in 27 years, and the only commutations given for medical reasons were in 1979, 1980 and 1981.⁴

One small step toward reform was taken by US Attorney General Eric Holder who announced on 12 August 2013 that the Bureau of Prisons would institute new Compassionate Release policies for federal prisoners.⁵ Currently, there are only 10 states that do not have some type of medical release programs for state prisoners. Most north eastern states (New Hampshire, Connecticut, Rhode Island, and Vermont) have such measures (Muisse, 2013). Until the social distance between the citizenry and those incarcerated narrows, Massachusetts will remain without.

Parole

Doran Larson (2013, n.p.) concludes his article on Scandinavian prison with the following words: “In 1832, Alexis Tocqueville and Gustave de Beaumont came to America to study its prisons. They concluded their report with a warning: Guard against extremes, and do not let the zeal with which

you advocate certain means obscure the object sought to be obtained by them". That warning went largely ignored by Governor Patrick following the Dominic Cinelli incident. Patrick, in bowing to public fears and outrage, attempted to correct the problems, but overzealously forced five of seven board members to resign and appointed a former District Attorney (DA) Josh Wall to head the state's parole board. Both measures were extreme and in no way addressed the problem.

Josh Wall then took the task, as a DA does, to retry the convictions of all candidates for parole with the criminal justice mantra of 'tough on crime' being modified to 'tough on parole'. In fact, from 2011 until May of 2014, there were 365 parole hearings for lifers of which only 28 received positive votes (8.2 percent) (Swartzapfel, 2014, p. 58). His 'tough on parole' mantra earned him a promotion in 2014 as he was appointed a judgeship.

This is a popular political response to a high profile tragedy that gives the public the appearance that it is now safer, yet all it does is obscure the reality of being a criminal justice failure. "Policies that have led to more draconian sentences and fewer paroles", writes Wesley Lowery, of the *Boston Globe*, as they "have extended prison stays by a third since 1990, costing the state an extra \$150 million a year" (Lowery, 2003).

As *Boston Magazine* writer and professor Jean Trounstein (2013, p. 39) wrote "a drop in parole numbers actually makes us less safe". The percentage of prisoners leaving under parole was slashed from 38 percent in 2010 to 19 percent in 2011 under the Governor's newly appointed parole board.⁶ The result was that more prisoners were leaving the harsh prison environment and were dumped directly into society with no supervision or transition assistance. Massachusetts' per capita parole rate is less than one fifth the national average and is the sixth lowest rate for adults on parole. Put differently, while the national rate is 351 parolees per 100,000 residents, in Massachusetts there are 65 parolees per 100,000 residents (Glaze, 2010, p. 33). Is this better public safety or another example of Massachusetts lagging behind in implementing proven reform strategies? Perhaps there is a better way.

Successful parole systems throughout the country employ a system of graduated sanctions. This means that a parolee's restrictions on freedoms are gradually lessened as he/she successfully handles those freedoms, or gradually increased if they fail. In any event, parole revocation is only for newly committed crimes or continued violation of sanctions.

The idea of graduated sanctions should begin in prison long before a prisoner even sees a parole board. Prisoners should move to lower security as they approach parole dates, but that is not happening in Massachusetts. In the 1990's, the DOC and its union managed to convince the legislature to build a super maximum security prison that required more correctional officers than the lower security facilities they were closing at the same time. By 2011, only 14 percent of the prison population was in minimum security facilities. By 2008, less than 33 percent released on parole from prison left from minimum security (Department of Corrections, 2008, p. 64). Six years later, the problem has only become worse.

Rhiana Kohle (2008, p. 25), who authored *Massachusetts Recidivism Study*, concluded: "If an inmate is going to be released into a community without being paroled (as current trends indicate), policy makers should devise a method of reducing, if not eliminating, the number of inmates who live in a medium or maximum custody prison one day and in the community the next". Doing so supplants a prisoner from a hostile environment that does little to prepare prisoners for re-entry and places them squarely into an environment unequipped to handle a person that is institutionalized, unsupervised, and without a support system.

Presumptive parole requires paroling a prisoner at the earliest release date unless negative behaviour of the prisoner or lack of programming occurred during incarceration. So, rather than a parole board focusing their investigation into an already convicted person's crime, as they currently do, they would limit their research to the prisoner's incarceration record. If prescribed rehabilitative programming and education was engaged and the prisoner remained nonviolent and drug/alcohol free – parole is presumed. For a presumptive parole system to be employed in Massachusetts, new legislation is required. Current law states that parole cannot be granted "merely as a reward for good conduct" in prison (Massachusetts General Law Chapter 127ss130), but what about rehabilitation? Statistics and certificates alone do not accurately depict an individual's growth.

Effective determination of parole eligibility is best determined by those with firsthand knowledge of the parolee regardless of the crime. In 1964, Ronald Johnson was convicted for the murder of a Boston police officer and sentenced to die in the electric chair at the maximum security state prison in Walpole. His original sentence of death was overturned by the US Supreme Court under *Furman v. Georgia*, 408 US 238.33.LE 2nd 346. 92 S CT 2726

(1972). By 1974, less than two years after leaving death row, Mr. Johnson was granted furlough status. He completed the necessary 156 furlough hours in order to become certified for all future furloughs. This certification meant his furlough papers no longer had to go to the Commissioner's Office, but were automatically approved by a phone call. By 1984, he received a favourable vote of 4-2 to forward a commutation recommendation to the Governor. When he went before the Commutation Board he had amassed a large number of support letters comprised of a who's who of correctional officers and DOC Personnel.⁷

Needless to say, Mr. Johnson did not receive a commutation nor did he receive it on his three future attempts. He completed 2,917 furlough hours and his institutional record was nearly perfect. He was, however, a casualty of the politically charged Willie Horton commercials that all but ended Governor Dukakis' presidential run.

Nonetheless, it is what he did receive that is of significant importance. Receiving letters of support were much easier back then. Today, such letters are as extinct as payphones – unknown, unheard of and definitely forgotten – even by those who once used them. In today's culture, letters of support are frowned upon and discouraged. The very people who know you better than any statistic or six-part folder are not relied upon for arguably the most important decision that directly impacts public safety. DOC staff is wide-eyed when asked for such letters and volunteers are fearful of being banned. One such volunteer who taught Bible study at MCI Walpole, showed up for a parole hearing in March of 2007 and found himself banned for life from all institutions.

Instead of alienating such people, they should be encouraged to give their feedback on all lifers going before the parole board. Members of the parole board should be making periodic unannounced visits to keep abreast of a prisoner's progress or by simply calling the institution and speaking to those who are familiar with the prisoner and his/her daily habits. Of course this does not address the needs of a prisoner once granted parole. For presumptive parole to work effectively it would require more of an investment in parole field officers. In 2007, there were only 51 field parole officers with an average case load of 47 parolees, which is 30 percent higher than the national average (Massachusetts Parole Board, 2007). In the US the average parole field officer carries a case load of 39 (Rezendes, 2012, B2). Shifting human resources from prisons to parole is fiscally sound policy

because parole management is only 6 percent of the cost of incarceration (Haas, 2010, p. 22).

Without changes in the system, Massachusetts parole will not be able to function effectively. Parole's intended purpose of supervised integration back to society would best be served if the recommendations in this paper are implemented. Strengthening our parole system and making it more effective will reduce recidivism, increase public safety and save millions of taxpayer dollars. But again, presumptive parole requires legislative action.

CONCLUSION

"The punishment is the restriction of liberty; no other rights have been removed", reads a fact sheet on criminal services in Norway (cited in Zoukis, 2014, p. 9). Scandinavian prisons believe in the concept of rehabilitation without being naïve. They believe that prisoners want to change and prison officials do whatever they must to help facilitate that change. It is a combined process that involves prison, probation and greater society. Inside American prisons "the ideology holds that punishment, for the sake of the infliction of pain, is the logical response to all misbehaviour" (Larson, 2013, n.p.). The maxim that "*nothing else works* is not a statement of fact; it is a declaration of that ideology" (ibid).

As Paul Wright (2014, p. 10), editor of Prison Legal News wrote in an editorial: "While there are undoubtedly prisons in other parts of the world that are 'worse' than those in the U.S. it is worth noting that as a general rule it is not a deliberate government policy in such countries to treat people poorly and cruelly as part of a punitive system, whereas the U.S. spends billions of dollars to do just that". Rather than remediating the effects of what led a person to prison, prisons tend to institutionalize them.

Without changes to visitation policies, incorporating educational programs, legislating compassionate release and revamping the parole system, prisoners will continue the cycle of creating victims. To echo Governor Cuomo, "we're imprisoning, we're isolating, but we're not rehabilitating the way we should" (cited in Clarke, 2014, p. 34). So why continue with the draconian and antiquated prison system that is failing both those who reside inside them and those who live in society?

US Supreme Court Justice Anthony M. Kennedy summed it all up best when he stated, "A people confident in its laws and institutions should not

be ashamed of mercy... a decent and free society founded in respect for the individual ought not run a system where the sign at the entrance for incarcerated people says ‘Abandon All Hope All Ye Who Enter Here’ (cited in Hames, 2013, p. 175).

ENDNOTES

- ¹ Willie Horton left Massachusetts during a June 1986 furlough (his tenth). He had been serving a LWOP sentence for first-degree murder in the 1974 death of Joseph Fournier, a gas station attendant. Horton was convicted under the Massachusetts felony murder law because the slaying occurred in the act of a robbery. It was never proven that Horton, rather than one of his accomplices, actually committed the act. During his tenth furlough, he left the state and broke into the Maryland home of Clifford Barnes and his fiancée and, armed with a gun and a knife, slashed him repeatedly and raped her twice. Horton was convicted by a Maryland court and sentenced to life in imprisonment. The case achieved national notoriety because of its impact on the Presidential election strategy. The case was particularly notable in the long-term because it increased public fear of crime and of corrections policy.
- ² Dominic Cinelli was convicted of Armed Robbery and sentenced to life in prison. In September 2009, Cinelli was granted parole and remained on parole until 26 December 2010, when in the commission of a robbery he killed a Woburn police officer and wounded another. Cinelli was shot and killed in the shootout. During the investigation, several glaring “management lapses” were discovered that led to the resignation of numerous parole board members and other public safety officials who held key positions during Cinelli’s parole period.
- ³ John A. Burke (1979) second-degree murder; Anthony McDonald (1980) second-degree murder; Maurice Roulhac (1981).
- ⁴ Based on that average rate an estimated 276,000 prisoners who are released can be expected to recidivate each year.
- ⁵ Other public figures such as Jennifer Granholm (Michigan), Mike Huckabee (Arkansas), Rick Perry (Texas), Jeb Bush (Florida), Andrew Cuomo (New York) and Newt Gingrich have taken similar public policy positions against the current embrace of penal populism, and have expressed the desire to eliminate inefficient government spending and utilizing the tools necessary to accomplish that task.
- ⁶ Statistical data from Annual Report of the Parole Board, as well as the Department of Corrections.
- ⁷ Ronald Johnson had support letters from such individuals as Commissioner of Corrections, Luis Berman, Associate Commissioner Fred Butterworth, Superintendents Alvin Jones and Barbara L. Young, Deputy Superintendents George Madderi, Bill Boyajion and Dennis W. Brown, along with head correctional social workers, correctional counselors, staff psychologists, administrative assistants, supervisors, executive directors, etc.

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