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A Moral Examination of Imprisonment in the United States

In 2016, the U.S. Department of Justice estimates that approximately 2,162,400 individuals were imprisoned within the United States (BJS, 2018). Though this number represented a marginal decrease of 0.9% from the previous year, the imprisoned population in the US remains the largest in the world; while the US accounts for At 2.2 million, the amount of people living in federal and state prisons is roughly equivalent to the population of Houston, TX. From the 1980s to the early 2000s, prison populations in the US swelled immensely as more prisons were constructed in response to the “crime boom” (Davis, 2003) of the 1980s and political support for more “tough on crime”(ibid) policies.

Although individuals are imprisoned, often in the same facilities, for both violent and non-violent offenses, the distinction between these two types is important because prisons might have different moral functions for different types of offenders. Violent offenses are defined as crimes in which force or the threat of force is used (FBI, 2011). Violent offenses can be grouped into 4 categories: murder, forcible rape, robbery, and aggravated assault (ibid). Violent crime rates have remained relatively constant and, on average, have decreased slightly during the period of 1980-2003 (BJS, 2018), while prison populations swelled overall.

Non-violent offenses encompass all other manners of property, drug, and public order violations. For perspective, in a population of 100,000 people, 386.3 violent crimes will be reported, while 2,450.7 non-violent crimes will be reported (FBI, 2011). 1 in 5 currently incarcerated people was imprisoned for a non-violent, drug-related offense (PPI, 2019).

It is immediately evident to anyone who interacts with the US correctional system that the general function of prisons within this country is punishment. Therefore, it is vital to consider the following: What, if anything, gives the state the moral right to punish citizens who fail to abide by its laws? Different moral theories provide varying answers.

From a contractarian perspective, if we participate in society and its goods, we have entered into an agreement in which we must abide by a set of restrictions to our self-interest in order to ensure that our own rights are protected. To provide an example, if it is within our self-interest to do something which violates the rights of another, it is safe to assume that it is within another’s self-interest to do something which violates our rights. This situation describes what Hobbes conceived of as the natural state of humanity: a state of war. If we hope to live in a society where our own rights are not at constant risk of violation, we must concede to not violate the rights of others even if it is in our immediate self-interest. Prison looms as a consequence if we should choose to break our agreement.

Similarly, a Utilitarian thinker would argue that certain kinds of punishment might produce the overall greatest societal good, since without punishment, more crime might be committed. If consequences are of sole moral concern, as they are in Utilitarian thought, a right action is that which produces the greatest amount of happiness (defined as pleasure and the absence of pain), a harsh punishment for a minor crime could be justified so long as it produces the greatest overall good. However, another tenet of Utilitarianism states that everyone counts as one. This belief becomes difficult to wrangle when we question how to count those who have committed crimes. A Utilitarian would maintain that the primary function of prison is to decrease total crime, so if prisons do not actually succeed in this endeavor, they are no longer morally justifiable under Utilitarianism.

A Kantian would argue the purpose of prison on the grounds of justice. Under Immanuel Kant’s conception of justice, for a person to commit a crime means that person has violated another’s rights and must be punished in accordance with the severity of the rights deprived. Kant would argue that to punish an individual to make an example out of him would be to treat that person as a mere means and not an end in himself, effectively violating the categorical imperative.

There exist a handful of major justifications for the value of prisons in our society, which I will term “theories of imprisonment” and categorize with their accompanying moral theories:

The first theory of imprisonment asserts that prisons punish in order to prevent offenders from repeating their crimes. This theory relies on two tenets: incapacitation and offender reform. “Incapacitation” (Hoskins, 2013) captures the position that those who have committed crimes pose dangers to the rest of the population and therefore ought to be institutionalized to prevent further violations of the rights (bodily, property, or otherwise) of innocents. This idea aligns predominantly with the Utilitarian view that punishment which minimizes total social harm is morally just. “Offender reform” (Hoskins, 2013) follows a similar line of thought in that it upholds the necessity of quarantining law-breakers in order to change their behaviors and decrease recidivism (the act of committing another crime and returning to prison after release). Incapacitation functions best when applied as a justification for the imprisonment of violent criminals, because this allows us to view prisons as a vital aspect of public safety.

A second theory argues that prisons punish in order to keep would-be offenders afraid enough to not commit crimes. Relying on the concept of deterrence (Hoskins, 2013), this theory aligns with the contractarian perspective previously explained. By leveraging the fear of losing one’s family, job, and freedom, the prison appeals to an individual’s sense of self-interest. The concept of incarceration and all its accompanying ills functions as the enforcement to our social agreements to prevent a state of war.

A third theory of imprisonment states that prisons punish as a way to serve justice or right a wrong. This sentiment leans upon the concept of retribution (Hoskins, 2013) and squares neatly with a Kantian perspective. From a Kantian perspective, prisons are supposed to serve justice proportional to the wrong act committed. We can see this principle reflected through the variance in sentencing for different offenses.

When we examine statistical evidence regarding the effectiveness of imprisonment, we see that prisons continually fail to decrease law-breaking. Neither increasing the number of prisons nor the number of imprisoned people has had any significant effect on crime rates (Davis, 2003). Additionally, recidivism rates indicate that 76.6% of released prisoners were re-arrested and re-incarcerated within 5 years of their release (Durose, 2014)

These realities indicate that prisons fail from a Utilitarian perspective, since the consequences of imprisonment do not appear to be successfully maximizing overall societal good. Furthermore, from a contractarian perspective, the ineffectiveness of prisons to significantly decrease crime indicates that they do not succeed in enforcing societal order or preventing further violations of rights after prisoners are released.

Imprisonment in the US also presents a problem from a Kantian perspective because justice is arguably being unevenly applied along racial gradients. While Black Americans constitute 13% of our population, they account for 40% of our incarcerated population (PPI, 2019). Meanwhile, white Americans account for 64% of the US population, but only 39% of the incarcerated population (ibid). A number of theories exist to explain this skew, including the over-policing of communities of color and racial bias in sentencing procedures, but given that evidence indicates Black people receive longer sentences than white people committing the same crime (PPI, 2019), I argue that justice in the form of imprisonment is not being proportionally applied.

Of these issues, writer and prison abolitionist Angela Davis asks “Are we willing to relegate ever larger numbers of people from racially oppressed communities to an isolated existence marked by authoritarian regimes, violence, disease, and technologies of seclusion that produce severe mental instability?” (Davis, 2003). Davis indicts media portrayals of prisons as unquestionably omnipresent institutions which she claims causes us to take their existence for granted and prevents us from rationally confronting the failures of prisons to achieve their moral goals. Davis also indicts the prison-industrial complex as a major factor responsible for the endurance and proliferation of the prison in American society. The prison-industrial complex describes the cycle in which corporations develop vested interest in the creation of more prisons and more prisoners, so they can use them as cheap labor alternatives to outsourcing (primarily manufacturing) jobs.

It’s vital to consider whether the problem is with the social institution of the prison or with the way capitalist interests and racism influence the disbursement of justice in the US. Of this, Davis argues the following:

“The prison therefore functions ideologically as an abstract site into which undesirables are deposited, relieving us of the responsibility of thinking about the real issues afflicting those communities from which prisoners are drawn in such disproportionate numbers. This is the ideological work that the prison performs—itrelieves us of the responsibility of seriously engaging with the problems of our society, especially those produced by racism and, increasingly, global capitalism.” (Davis, 2003)

Her argument hinges on the reality that the likelihood of a person committing a crime is a deeply environmental factor. Areas which are economically destitute are most often the same which yield the highest crime rates. Poverty translates to a scarcity of legal opportunities for individuals to meet their needs and resultantly high stress levels, making some more likely to violate laws in order to meet their needs. A contractarian perspective on incarceration seems callous when one considers the difficult situation many in poverty face. When faced with little choice other than to meet basic needs through extra-legal actions, it seems that the standing social agreement to not break laws is no agreement at all, but rather a death sentence.

Both poverty and crime are highly correlated with untreated mental illness (Davis, 2003). Many individuals living in poverty become impoverished due to their mental illness negatively impacting their ability to hold steady employment. Their economic status then makes affording proper treatment to manage latent mental illnesses all the more difficult, creating a vicious cycle in which the likelihood they may abuse drugs or violate another law in order to meet basic needs increases manyfold.

When profit-motivated entities are largely controlling every aspect of an incarcerated person’s reality and using their imprisonment as justification to extract as much value from them as possible, substance abuse treatment and mental health intervention don’t neatly factor into the business model. As such, many of the factors that may have led these people to commit crimes go unaddressed, perhaps consciously so because to address these things would be to decrease the likelihood of those individuals to become re-incarcerated, effectively decreasing the reliability of these entities’ cheap labor supply.

A service learning project I’d propose as a response to this ethical issue would be an information campaign to illuminate the ways in which Old Dominion University participates in the exploitation of imprisoned laborers. For context, Virginia Code § 53.1-47 mandates that all “departments, institutions, and agencies of the Commonwealth” supported by the state treasury must purchase “articles and services produced or manufactured by persons confined in state correctional facilities”. This means that as a state school, the ODU is required to purchase everything from lounge furniture to office seating to electronics from companies which exploit prison labor. I choose the word ‘exploit’ because prison labor is excluded from the law’s definition of “employment” (Section 26 of the United States Code), so private businesses that use prison labor are not required to pay their laborers the minimum wage and are exempted from having to pay employment taxes, making their use of prison labor all the more lucrative and tacitly state-encouraged.

By pressuring public universities to divest from participation in Virginia’s prison-industrial complex, we can begin the process of reclassifying imprisoned workers as laborers under the law. By forcing companies to pay incarcerated laborers a living wage and benefits, we would effectively erode private industry’s vested interest in keeping people in prison. I believe de-capitalizing incarceration is a necessary step in reframing prisons as reformatory institutions which can actually begin to seriously address factors like substance abuse and mental illness which cause many to become incarcerated and continue to fester in the current justice system.

Ultimately, I concur with Angela Davis’s position on prison abolition, however I recognize the reality that I am only a small cog in the social machine and have a much more realistic chance of affecting positive change by working first towards reform of the current system rather than advocating solely for its dismantling.

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