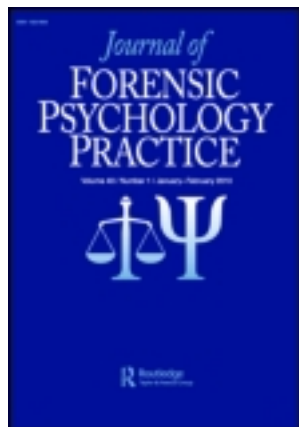


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Homelessness, Poverty, and Incarceration: The Criminalization of Despair

Larry Covin Jr. DMin^a

^a Lancaster Theological Seminary, Lancaster, Pennsylvania

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COMMENTARY

Homelessness, Poverty, and Incarceration: The Criminalization of Despair

LARRY COVIN, JR., DMin

Lancaster Theological Seminary, Lancaster, Pennsylvania

The conditions of jails and prisons in the United States are more often than not deplorable and hidden from public view. The inhumane treatment of prisoners and their appalling living conditions is untenable and requires justice. A 2009 report by the National Institute of Corrections found that the United States ranks first in the industrialized world in the incarceration of its citizens. The social conditions within U.S. society that contribute to criminogenic pathologies—including homelessness, poverty, social location, drug and alcohol addiction, undiagnosed mental illnesses, dysfunctional familial patterns, underperforming pedagogical institutions, and a criminal justice system struggling with the juxtaposition of rehabilitative and punitive justice—serve notice to reframe the current conversation pertinent to corrections today.

KEYWORDS *corrections ethics, homelessness, recidivism, alternative sentencing, social contract theory, John Rawls, John Locke, Jean-Jacques Rousseau*

The discipline of corrections has recently become the subject of significant media attention with television networks focusing on the sensationalized and romanticized depiction of life behind bars. Unfortunately, the characterization of both the inmate population and the administrators of the many correctional facilities profiled have perpetuated significant misnomers and obscured many of the significant challenges faced by inmates and correctional facilities of which professional practitioners would prioritize as

Address correspondence to Larry Covin, Jr., Lancaster Theological Seminary, Lancaster, PA 17603. E-mail: Ethicsjustice@yahoo.com

most exigent. To be certain, riots occur between factions, inmates assault correctional officers, the corrections emergency response team is activated to quell potential inmate unrest; however, fortunately these occurrences serve as anomalies in the context of daily life within jails and prisons. More often than not, correctional officials are faced with the perfunctory daily challenges of overcrowding, case management, responding to inmate medical requests within acceptable time frames, ensuring food service requirements are met for the inmate population, screening visitors for contraband, securing home plans required for inmates prior to release, enrolling inmates into rehabilitative programming (of which there are never enough resources) to reduce recidivism, sifting through volunteer requests vis-à-vis background checks to determine who is eligible and who has a criminal record, overseeing classification to be certain violent offenders are not housed with nonviolent offenders: Juvenile offenders are not housed with adult offenders, suicidal inmates are placed on the proper suicide watch of either 15-minute watches or 30-minute watches, reviewing inmate complaints that have been filed, ensuring inmates are transported securely to court and returned to the correctional facility, conducting inmate count several times per day, determining which inmates qualify for reentry facilities, releasing the correct inmate, thereby circumventing an erroneous release (administrative escape), and the list is inexhaustible. The aforementioned daily activities of jails and prisons are not highlighted on television because they do not improve the network Nielsen ratings. The failure, however, to address these functions would result in a jail and prison environment reminiscent of a corrections dystopia.

The United States Penitentiary (USP) located in Atlanta, GA and part of the Federal Bureau of Prisons served as my introduction to corrections and the plight of the inmate population. My tenure at the USP was in the capacity of a graduate internship. After this venue, I was given a temporary duty assignment to The United States Disciplinary Barracks located at Fort Leavenworth, KS. As a company grade officer (Captain) in the United States Army, it was the first time I worked with inmates convicted of capital offenses and serving their time on death row. From 1992 through 2007, I served as a director within the Programs and Services Department for the Maryland Division of Pretrial Detention and Services (DPDS) in Baltimore, MD. It was during my 15-year tenure with the Maryland DPDS that I witnessed the human tragedy of the indigent inmate population. This indigent-homeless population is the hidden and forgotten aspect of corrections. They are the most despised (based upon the poor services received) of all inmates I have encountered in a correctional career spanning 20 years. Even death row prisoners located at the United States Disciplinary Barracks, located at Fort Leavenworth, receive more humane treatment than do the indigent inmates located in Baltimore City. My final stop as a correctional practitioner was as the director (assistant warden) of treatment, located at the Adams County Adult Correctional Complex from 2008 through 2010.

The last 20 years have served to inform my “Insider’s Perspective” of jails and prisons in the United States. I am particularly fortunate to have experienced corrections at the county, state, and federal levels. While my experiences may not reflect the totality of the jail and prison experience, I am confident that my reflections upon corrections are rather comprehensive. Finally, my doctoral research helped to crystallize my findings. My doctoral dissertation served as the culmination of a 20-year career in corrections. My work reflects an attempt to create a humane corrections ethic for jails and prisons throughout the United States. It is entitled “The Constructing of a Contemporary Corrections Ethic in the Tradition of Social Contract Theory: An Extrapolation from the Work of Political Philosopher John Rawls.”

What are the conditions the homeless and indigent face when incarcerated in jails and prisons in the United States? The conditions of jails and prisons in the United States are more often than not deplorable and hidden from public view. The inhumane treatment of prisoners and their appalling living conditions are untenable and require justice. Writing in *A Theory of Justice*, political philosopher John Rawls argues that institutions must prioritize justice even above efficiency.

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. (1971, p. 3)

Unfortunately, many of the thousands of individuals serving jail or prison sentences are doing so as a result of laws that target the homeless population. Over the last few decades, there has been a dramatic increase in the arrests of American citizens in general and the homeless/indigent in particular. In an article written by Anna Blasco appearing in *National Alliance to End Homelessness* entitled “Incarceration and Homelessness,” the crisis is highlighted:

According to the Pew Center on the States, between 1973 and 2009, the nation’s prison population grew by 705 percent, resulting in more than 1 in 100 adults behind bars. When this growing population exits the corrections system, they are frequently at risk for homelessness, which can in turn increase the likelihood of another imprisonment. People leaving incarceration tend to have low incomes, and, often due to their criminal history, lack the ability to obtain housing through the channels that are open to other low-income people. (Blasco, 2011, p. 1)

A 2009 report by the National Institute of Corrections found that the United States ranks first in the industrialized world in the incarceration of its citizens.

The number of prisoners held in 218 independent countries and dependent territories is reported. Over 9.8 million people are incarcerated, with over 30% held in the United States. The U.S. has the highest prison population rate of 756 per 100,000 of its national population followed by Russia (629 per 100,000). (United States DOJ, 2009, p. 1)

The problems that contribute to debilitating conditions within correctional facilities range from the tension between treatment and custodial care or security, under-qualified individuals serving on jail and prison disciplinary hearing boards/panels, the ethical dilemma of the misuse and abuse of solitary confinement, institutional methods of control involving cell extraction teams and use of restraint chairs, overcrowded jails and prisons, incarcerating and housing the seriously mentally ill, housing juveniles within adult jail and prison populations, the unique problem of housing female inmates, and housing the lesbian, gay, bisexual, transgender populations within the general population. The resulting consequences of suicide in jails and prisons, prison rape and violence, the spread of HIV and AIDS in jails and prison, and the normalizing of generational criminal deviant behavior within under-invested communities as a pathway to incarceration are among the problems that typify jails and prisons in the United States. The external conditions within U.S. society that contribute to criminogenic pathologies including homelessness, poverty, social location, drug and alcohol addiction, undiagnosed mental illnesses, dysfunctional familial patterns, underperforming pedagogical institutions, and a criminal justice system struggling with the juxtaposition of rehabilitative and punitive justice, serve notice to reframe the current conversation pertinent to corrections today.

What are the environmental factors leading to jail and prison in the United States? Why are the homeless more likely to have been homeless prior to arrest and more likely to be homeless after release from prison, which paradoxically contributes to recidivism? In an article appearing in *Center for Poverty Solutions* entitled "Barriers to Stability: Homelessness and Incarceration's Revolving Door in Baltimore City" the following observation is made:

One-third (30.9%) of the reported convictions for which respondents were imprisoned people were homeless-related offenses. These included sleeping in public, loitering, trespassing, public urination, and panhandling. Seventy-nine percent of all the reported offenses were non-violent in nature. Thirty-seven percent of the respondents had been incarcerated 3 to 5 times and 41.0% of the respondents had been imprisoned for more than 3 years total in their lifetimes. . . . While 63.3% of the ex-prisoner population in the sample owned or rented housing before their incarceration, only 29.5% had permanent housing after they were released from incarceration. Conversely, individuals living on the streets or in abandoned buildings rose from 8.3% before incarceration to 20.1% after incarceration. (United States NIH, 2003, p. 9)

Social contract theorist Jean-Jacques Rousseau suggests that society is contrived in such a way as to compound the debilitating conditions that tend to marginalize individuals and favor conditions that preserve the status of those in control. Rousseau argued that these conditions were established early in the formation of society as individuals made untenable claims to property and possessions. In a translation by G. H. D. Cole entitled "A Discourse for the Academy of Dijon," Jon Roland highlights Rousseau's indignation concerning civil society. Rousseau famously wrote in *Discourse on the Origins of Inequality*,

The first man who, having fenced in a piece of land, said, "This is mine," and found people naïve enough to believe him, that man was the true founder of civil society. From how many crimes, wars, and murders, from how many horrors and misfortunes might not any one have saved mankind, by pulling up the stakes, or filling up the ditch, and crying to his fellows: Beware of listening to this impostor; you are undone if you once forget that the fruits of the earth belong to us all, and the earth itself to nobody. (Roland, 1998, Cole Part II)

The demography of jails and prisons at the county and state levels in the United States is disproportionately made up of individuals lacking property, position, and power. There is a correlative relationship between poverty, homelessness, and incarceration. It is obvious that the poor do not commit more crimes than do the wealthy; however, they are more likely to encounter discriminatory practices throughout the adjudicatory process from beginning to end. Writing in *Inequality: Social Class and Its Consequences* by D. Stanley Eitzen and Janis E. Johnston, author Jeffery Reiman observes the following:

Between crimes that are characteristically committed by poor people (street crimes) and those characteristically committed by the well-off (white-collar and corporate crimes), the system treats the former much more harshly than the latter, even when the crimes of the well-off take more money from the public or cause more death and injury than the crimes of the poor. To support this we compared the sentences meted out for robbery with those for embezzlement, for grand theft, and Medicaid-provider fraud, and we looked at the treatment of those responsible for death and destruction in the workplace as well as those responsible for the savings and loan scandal and the recent financial cheating at Enron and other major corporations. (2007, p. 145)

An effective corrections ethic interprets the correlation between disparities in wealth or what Rawls refers to as primary goods and the dissolution of order or civility within society; to the extent that individuals are excluded from participating in upward mobility and the quality of life that certain others are readily afforded due to their advantage of social location. The resulting effect of this debilitating correlation is the criminalization of entire

communities representing the poor, homeless, urban or inner-city, undereducated, mentally ill, and addicted and the branding of its citizens, African American youth in particular, as outlaws.

Social contract theorist John Rawls articulates three concepts imperative to an effective corrections ethic relative to the aforementioned disparity in wealth and the dissolution of civility within society: *two principles of justice*, *primary goods*, and *conception of reciprocity*. The two principles of justice Rawls envisions in *A Theory of Justice* do not extract wealth or property from the wealthy and redistribute it to the indigent; however, they create an environment of opportunity and access by all to the most comprehensive range of prospects.

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all. (1971, p. 53)

The two principles of justice would effectively create a more equitable society, thereby affording alternatives to criminogenic life choices and allowing marginalized individuals and dislocated communities to participate in quality-of-life opportunities heretofore made inaccessible to them. This structural change accompanied with the dismantling of the systemic strategy to incarcerate certain segments of society would dramatically reduce the rate of incarceration and the jail and prison population.

One of the most significant challenges to the homeless population upon release from jail and/or prison is finding employment. In 2004, I was appointed by Governor Martin O'Malley (Mayor O'Malley in 2004) to the steering committee of the Ex-offender Employment Initiative in Baltimore City. The obstacles to employment of indigent and homeless ex-offenders at times appear insurmountable. Potential employers are too often hesitant to employ individuals with criminal records. The Ex-offender Employment Initiative brought together an eclectic assembly of leaders from around the state of Maryland in an effort to strategically negotiate creative employment opportunities. Leaders representing the business community, religious community, city government, and the nonprofit sector engaged in dialogue and made substantive commitments to address the employment of ex-offenders.

Rawls contends that there are basic possessions each person in society can reasonably expect to desire. These he refer to as *primary goods*.

. . . Suppose that the basic structure of society distributes certain primary goods, that is, things that every rational man is presumed to want. These goods normally have a use whatever a person's rational plan of life. For simplicity, assume that the chief primary goods at the disposition of

society are rights, liberties, and opportunities, and income and wealth. These are the social primary goods. (1971, p. 54)

Rawls argues that a just society comprehends the “mutual benefit” of all parties in a given society having parity and material goods. This need not be predicated upon the altruism of those in society who possess power, wealth, and property but can be understood as a means for achieving and maintaining stability within a given society. It is a lesson those in power historically fail to heed vis-à-vis Egypt, Libya, Iraq, and now those in power in the United States who helped to facilitate the financial crisis, including the failure of financial institutions and the crash of the housing market. This is indicative of a minority of interested parties accumulating and hoarding wealth at the expense of the larger society. Rawls contends,

A further point is that the difference principle expresses a conception of reciprocity. It is a principle of mutual benefit . . . Thus the more advantaged, when they view the matter from a general perspective, recognize that the well-being of each depends on a scheme of social cooperation without which no one could have a satisfactory life; they recognize also that they can expect the willing cooperation of all only if the terms of the scheme are reasonable. (1971, p. 88)

An informed corrections ethic corroborates the theories put forth by both Rousseau and Rawls and the implications that social stratifying portends, creates, and maintains a permanent underclass and jail and prison population through the systematic implementation of rules and regulations that serve as hegemonic strategies that erode the quality of life, dignity, and ethical judgment of specific communities. Corrections ethics has as a fundamental goal the deciphering of such strategies to communities most adversely impacted and to develop practices and strategies to circumvent unfair rules, laws, and cultural bias.

The insidious and far-reaching implications of homelessness are often unclear beyond the immediate crisis. The effects of poverty and homelessness, however, have ramifications for the development and inculcation of criminogenic ethics and values. This is especially true among juveniles. In an article appearing in the *American Psychological Association* entitled “Effects of Poverty, Hunger, and Homelessness on Children and Youth,” the correlation is documented.

Poverty is linked with negative conditions such as substandard housing, homelessness, inadequate nutrition and food insecurity, inadequate childcare, lack of access to healthcare, unsafe neighborhoods, and under-resourced schools which adversely impact our nation’s children . . . Unsafe neighborhoods may expose low-income children to violence which can cause a number of psychosocial difficulties. Violence

exposure can also predict future violent behavior in youth which places them at greater risk of injury and mortality and entry into the juvenile justice system (American Psychological Association, 2012, p. 2).

Criminogenic lifestyles and behaviors are more likely to manifest in unstable families such as homeless families. This is significant because the familial institution is where children learn their values and their interpretation of ethics.

An effective corrections ethic must analyze and incorporate into its programs; curriculum, policies, and procedures; and standard operating procedures a methodology that interprets the context of environmental factors that lead to jail and prison. The social contract theory as espoused by John Rawls introduces two concepts that take environmental variables into consideration. The first Rawls refers to as the *morality of authority* and is a concept that suggests that children develop a sense of morality first in the family. While the presumption is that the morality inculcated within the child through the family will make for a well-adjusted individual, the same holds true for values that represent countercultural mores. In either instance, these values are learned and developed by children through the institution of the family. Rawls outlines the morality of authority in *A Theory of Justice*:

The first stage in the sequence of moral development I shall refer to as the morality of authority. While certain aspects of this morality are preserved at later stages for special occasions, we can regard the morality of authority in its primitive form as that of the child. I assume that the sense of justice is acquired gradually by the younger members of society as they grow up. The succession of generations and the necessity to teach moral attitudes (however simple) to children is one of the conditions of human life. (1971, p. 405)

An effective corrections ethic deconstructs the pathologies associated with the fracture of the family unit vis-à-vis poverty and homelessness and the criminogenic lifestyle internalized through the “succession of generations” and the resultant contributing factors leading to the criminalization of individuals and entire communities.

The second concept introduced by Rawls and imperative for an effective corrections ethic is the *morality of association* and refers to the community of which an individual is most influenced subsequent to the family. Because individuals do not exist in a vacuum, the influence of the environment upon the behavior of the individual cannot be overstated. The case can be made arguably that the societal norms and mores of a given community can supercede even the influence of familial structures. Therefore, corrections ethics must advocate intervention in the communities most severely affected by criminogenic patterns as well as homelessness prior to, throughout, and after incarceration. Rawls defines the *morality of association* in *A Theory of Justice*:

The second stage of moral development is that of the morality of association. This stage covers a wide range of cases depending on the association in question and it may even include the national community as a whole . . . The content of the morality of association is given by the moral standards appropriate to the individual's role in the various associations to which he belongs. These standards include the common sense rules of morality along with the adjustments required to fit them to a person's particular position; and they are impressed upon him by the approval and disapproval of those in authority, or by the other members of the group . . . Similarly there is the association of the school and the neighborhood, and also such short-term forms of cooperation, though not less important for this, as games and play with peers. (1971, p. 409)

An effective corrections ethic understands the *morality of association* as influential and formative relative to the community and its impression upon the *tabula rasa* of individuals. This holds true, then, not only in a healthy, constructive and well-adjusted context but in a debilitating construct as well. Therefore, corrections ethics must interpret the morality of association and its impact upon communities and individuals in the context of the transient homeless population and its influence upon jail and prison incarcerating trends.

In many at-risk communities, the prospect of homelessness is an ever-present threat. The institution of the jail and/or prison is the primary facilitator of this reality. There are communities, especially in urban areas that have been decimated by the removal of either one or both parents from the home as a result of being incarcerated. This phenomenon has egregious implications for the financial stability of the home. As a director for the Maryland Division of Pretrial Detention and Services from 1992 through 2007, I began to notice a disturbing trend at the correctional facility. During this time, the correctional facility began housing inmates who were often related to one another and at times from the same immediate family. It was not uncommon to have a mother housed in the Women's Detention Center building, a son in the juvenile section of the facility, and a father in the Men's Detention Center building. Over a period of years, correctional personnel would begin to recognize younger offenders as a result of knowing a father or an uncle who had passed through the system years before. The cycle of incarceration was being perpetuated from one generation to yet another generation. The criminogenic psychosis of the family was being internalized and re-taught either subconsciously or intentionally. I refer to this phenomenon as "legacy correctional institutionalization" to describe the transmission of criminogenic values within families or entire communities. In many communities, the morality of authority is a familial system that passes down values and reflects an ethos in conflict with or antithetical to mainstream American values. This same ethos parallels the pervasive culture of jails and prisons in the United States. In certain communities, children learn that the jail and prison is a place to be visited on a weekly basis much

in the same manner some children grow up with the synagogue, mosque, or parish being part of their orientation. As a director, I often recalled visiting lines that stretched extensively down the sidewalk at the detention center filled with mothers and babies waiting to enter the correctional facility. Even at the earliest stages of my career, I was astute enough to query concerning the danger of familiarizing young children with the day-to-day routine of incorporating the jail into their familial paradigm. In the case of the Maryland DPDS, it is an institution that is part of a larger complex or consortium of jails and prisons. This complex of penal institutions is within the community of east Baltimore and is situated between the communities of east Baltimore and downtown Baltimore. The insidious implication of the physical location of the facility is that its presence is inescapable if you live in east Baltimore. The complex consists of the Maryland DPDS, the former Maryland State Penitentiary (where the death penalty is carried out), the Maryland Super Maximum Prison (for the most notorious criminals), and the Central Booking facility, which is technically a part of the Maryland DPDS; however, it is a gargantuan facility physically located on a city block of its own. This complex must be negotiated by children going to school or downtown and is a blight on both the physical and mental landscapes of the children and adults of the east Baltimore community. This correctional complex would never exist in communities that had political clout or the luxury of choices. One would never choose to live in a community that served as a daily reminder of the lack of opportunities and the drudgery of life one can look forward to.

The majority of homeless inmates will not find refuge in the suburbs or affluent communities upon their release from jail or prison. Most likely, ex-offenders will return to impoverished communities. Corrections ethics must devise methodologies not centered on helping individuals to escape the so-called ghetto or communities mired in despair, for the suburbs, as this is a faultily conceived logic; however, the goal must be to inundate these communities with evidence-based collaborations. Partnerships between businesses and schools represent one such collaboration. Other alliances must exist between local colleges and universities and communities at risk of homelessness and being drawn into the criminogenic vortex. Paradoxically, the jail and prison can act as a de facto university where offenders learn the most basic educational and life skills missed in the formation of their morality of authority. Presently, most jails and prisons are universities for honing their criminal activities, but it does not have to be this way. Religious institutions must be informed participants in the collaboration between institutions also. This is particularly true within the context of the African American community in which the church serves as a surrogate family for many single women, children, and young men entangled in the snare of the correctional system. In certain communities, the institutional Black church is one of the few, if not only, settings families can go to that have any semblance of structure and is a locus of power and voice in the community. Writing in *The Daily Voice* in an article entitled "The Power

of the Pulpit: Black Pastors and Social Justice,” Gilda Daniels observes the historic role of the black church:

Historically, the “Black Church” has been a voice for social justice and outspoken concerning injustices, whether the injustice occurred in the pews or politics. A sermon from a black minister that was critical of the United States was once commonplace and necessary to achieve change. Black ministers have been front-line witnesses to the anger, pain and degradation confronted on the African American community from slavery to more contemporary concerns, and traditionally they have spoken out. (2008, p. 3)

Corrections ethics must then engage every resource available to disrupt the heritage of legacy correctional institutionalization within marginalized communities. Writing again in the *American Psychological Association*, in the article entitled “Effects of Poverty, Hunger, and Homelessness on Children and Youth”:

Approximately 74 percent of children in homeless families are Black, although Black children make up just 15 percent of the U.S. child population (Child Trends Databank, 2012). On the other hand, although White children make up 66% of the child population, they account for 38% of homeless children. Hispanic children make up 13%, whereas Native American children make up 2% of the homeless children population. (American Psychological Association, 2012, p. 6)

Central to an effective corrections ethic is the initiation of advocacy emphases throughout each phase of the adjudicatory process by encouraging the stability of the familial structure. Consistent with high rates of incarceration is the erosion of a significant family unit support system. The culture of jails and prisons as reflected in their policies and procedures, standard operating procedures and inmate handbooks need to promote practices that support strong family involvement with offenders in order to reduce recidivism. Programming that instructs offenders on building and maintaining healthy relationships is a viable approach to this end. Cultivating familial relationships during the incarceration period of the inmate ensures there will be an adequate “Home Plan” in place, which will either facilitate the timely release of the inmate to an environment consistent with his or her rehabilitation or prevent the inmate from being homeless upon release from jail or prison. Inmates lacking adequate Home Plans are often required to remain incarcerated beyond their minimum sentence, essentially remaining incarcerated because of homelessness. Cultivating family relationships during incarceration averts delays in Home Plan approvals. Creating a morality-of-authority paradigm that inculcates family members with values consistent with the larger society, corrections ethics must engage the challenges that exist that continually decimate the family unit and marginalize communities.

In an article written by Dr. Angela R. Fertig of the College of Public Health at the University of Georgia and Dr. David Reingold of the School of Public and Environmental Affairs at Indiana University, entitled "The Characteristics and Causes of Homelessness among At Risk Families with Children in Twenty American Cities," the pervasiveness of homelessness as an epidemic is cited:

Homeless families can be found in virtually every American city, living in cars, abandoned buildings, and homeless shelters, among other places. While some families are able to avoid this type of severe material hardship by doubling-up with friends and family, the conditions responsible for these unstable housing arrangements are often intertwined with past exposure to the effects of domestic violence, a history of mental illness, and drug abuse. The growth in single-parent families and the decline of marriage are thought to have left women and children more vulnerable to numerous economic hardships, including homelessness. (2008, p. 3)

This is of particular concern within the demographic of the African American community. There are divergent theories related to the dissolution of the family within black culture, none of which, however, deny the catastrophic impact this has had on the overall wellness of Black culture in America. As Rawls has postulated in his *Morality of Authority*, it is within the context of the family that children learn how to exist in the larger context of society. It is within this context that children learn what is normative and tend to replicate learned values in their lives. The absence of the male figure in African American homes is detrimental in many instances. Practically speaking, if nothing else, the economic impact of missing fathers is traumatic and creates a financial hardship upon families. The emotional strain of rearing children as a single parent is unhealthy for both the child as well as the adult. Though this phenomenon may appear trendy and even a sign of independence and liberation for women in higher socioeconomic communities, it has proven to undermine and threaten the stability of the African American community. Roberta L. Coles and Charles Green describe the magnitude of the problem in *The Myth of the Missing Black Father*. In a review by Columbia University Press, the authors give the alarming statistics:

Only 16 percent of African American households were married couples with children, the lowest of all racial groups in America. On the other hand, 19 percent of Black households were female-headed with children, the highest of all racial groups. From the perspective of children's living arrangements over 50 percent of African American children lived in mother-only households in 2004, again the highest of all racial groups. Although African American teens experienced the largest decline in births of all racial groups in the 1990s, still in 2000, 68 percent of all births to African American women were nonmarital, suggesting the pattern of single-mother parenting may be sustained for some time into the future. (Coles & Green, 2009, p. 1)

As a director at the Maryland DPDS from 1992 through 2007 and as a director at the Adams County Adult Correctional Complex from 2008 through 2010, I witnessed inmates lose their property during their incarceration only to be either released or found not guilty. As a result, individuals were faced with the daunting prospect of beginning life anew as homeless individuals. Nonviolent offenders and those accused of nonviolent crimes would be better served through alternative sentencing. Alternative sentencing would dramatically reduce homelessness among the population accused, and even convicted, of crimes. Through alternative sentencing, individuals would be allowed to earn a living as well as pay their debt to society. What are the alternatives to jails and prisons in the United States?

Those in the original position, behind a veil of ignorance, envisioning and conceptualizing a state of nature more reflective of John Locke, Jean-Jacques Rousseau, and John Rawls, could conceivably establish a society where jails and prisons either do not exist due to the principles of justice or their use is employed minimally as a last resort. The concept of jails and prisons would be foreign to the initial comprehension of individuals. Presently, jails and prisons are part of the initial conceptualization of many individuals in the United States, relative to responding to crime and criminogenic behavior. Incarceration is part of the American psyche. The goal of this corrections ethic is to engage both casual observers and criminal justice experts in a paradigm shift away from jails and prisons to conceptualizing alternatives to incarceration or more specifically to imagine alternative sentencing. There are certainly esoteric reasons for such a shift, and theoretical justifications can be brought forth. It can be maintained that a society that values the individual worth of each person and has as its goal Rawls's "self-respect of individuals," "conception of his good," and the facilitation of "his plan of life" is a society most reasonable persons would conceive of in an original position and therefore reflects a society that strives to keep its citizens in free society. However, there are immoral forces operative that exist to maintain the present status quo relative to the proliferation of jails and prisons. Those forces involve jail and prison privatization. Aside from the lofty ideals of a paradigm shift from jails and prisons to alternative sentencing, the reality is that it is impractical fiscally for counties and states to maintain jails and prisons and to meet budgetary requirements at the same time. The tension that exists is between the immorality of selecting for-profit jails and prisons and the exorbitant costs of maintaining county and state jails and prisons. The morally and economically feasible course of action is found, therefore, in alternative sentencing. Writing in *Alternatives To Prison: Rehabilitation And Other Programs*, Craig Russell in consultation with the John Jay College of Criminal Justice highlights the costs of jails and prisons over the last couple of decades in the United States:

The U.S. Department of Justice reported that in 2004, the day-to-day operations of all state prisons cost \$28.4 billion dollars per day, an increase of \$5.5 billion over 1996. Between 1986 and 2001, state prison costs almost tripled, climbing from \$11.7 billion per year to \$29.5 billion per year. In other words, while it cost the average American \$49 a year to keep one person in prison in 1986, it cost \$104 a year to keep someone there in 2001. By 2005, it cost between \$25,000 and \$30,000 a year to keep one person in prison. (2007, pp. 14, 17)

The movement from jail and prison to alternative sentencing is, therefore, a fiscally responsible shift.

Alternative sentencing is a broad description of a wide array of innovative treatment and rehabilitation-orientated programs, geared toward nonviolent offenders as an alternative to either jail or prison. Writing in an article entitled "Alternative Sentencing: Statement Prepared for the United States Sentencing Commission," James Van Dyke, director, The Salvation Army Correctional Services, defines alternative sentencing:

Alternative sentencing provides options other than incarceration for certain offenders (e.g., first-time offenders, offenders committing crimes other than crimes of violence, offenders involved in drug-related crimes who could benefit from treatment). Courts considering sentencing alternatives utilize clearly defined eligibility criteria and a continuum of sanctions . . . Research that also began in the 1980's reveals that evidence-based correctional programming, if incorporated into alternative sentencing, can offer additional benefits in terms of reduced recidivism, lower social costs to victims and communities, and changes from antisocial to prosocial behavior. (Van Dyke, n.d., p. 1)

There are a number of alternative sentencing programs to be explored here, and following are 12 that represent some of the more well-known alternatives to jail and prison.

Diversion programs represent one type of alternative sentencing and have as their goal the removal of a pending case from the adjudicatory process within the court system, to community focused educational programs or the completion of treatment curricula.

Deferred sentencing is the process by which a judge may choose to not impose a sentence as part of a plea bargain while a defendant satisfactorily completes some form of mandated requirement and remains out of trouble during a specified period of time. Once the defendant completes this requirement, the original charge may be dismissed altogether.

Drug courts are alternative sentencing programs that treat addicted offenders as those possessing an illness as opposed to the criminalization of addiction. These courts require defendants to undergo rigorous drug and alcohol testing while attending either individual or group treatment for their

addiction. The successful treatment of addiction addresses the primary factor for recidivism by addicted offenders.

The restorative justice model as an alternative sentencing program is one in which the offender is required to collectively engage the community in which his or her offense was committed. The restorative justice model is intended to help the offender comprehend the impact of the crime upon both the victim and the community. It also affords an opportunity for the victim to work through his or her catharsis through the process.

Home detention as a sentencing program alternative to jail and prison requires that offenders be restricted to their homes for the duration of their sentence. Offenders are confined and monitored through the use of electronic ankle bracelets and must call supervisory officials from a “designated home” telephone number. Under certain circumstances previously agreed upon, offenders are allowed to attend school, treatment, or religious worship, given strict guidelines.

Weekend jail represents a form of alternative sentencing that requires offenders to report to jail either in the evenings or on the weekends for a specified period of time. This allows the offender to continue employment while making restitution. The court will determine how long the offender must meet the requirements of weekend jail before his or her sentence is satisfied.

Work release is a form of alternative sentencing, though not in the context of the preceding programs. Work release allows an already incarcerated offender to enter the community each day and report to a jobsite. Only inmates nearing the end of their sentence and possessing a minimum security classification are allowed to participate in this program.

Community service as an alternative sentence allows those convicted of a crime to work off their sentence by laboring in the community, often through menial tasks such as road cleanup, painting or fixing up dilapidated buildings.

Electronic monitoring as an alternative sentence is a particularly useful way of tracking the movement and location of sex offenders in the community. Making use of modern GPS technology, electronic monitoring can notify corrections officials if sex offenders enter forbidden zones such as school districts, or restricted residential areas.

Sober living environments are residential living facilities that exist in order to meet the needs of addicted offenders in recovery or during a phase of their recovery process prior to reentering the community to live unassisted. The sober living environment residential living facilities have strict guidelines and are therapeutic treatment environments. They serve among other things as alternatives to jail and prison.

Day reporting centers represent one of the alternative sentencing programs with extraordinary potential. These centers operate during the day and require offenders to report during day hours for treatment, drug and

alcohol testing, and other rehabilitative programs. Day reporting centers are nonresidential, therefore, offenders return home in the evenings. This allows corrections officials to maintain strict accountability of offenders without incarcerating them.

Intensive probation supervision (IPS) is a program in the classification of alternative sentencing that is one category below incarceration. IPS is the most restrictive form of probation and requires the most severe scrutiny of offenders in the community. IPS is intended to allow for offenders who would otherwise be incarcerated to remain in the community but with very little autonomy. It is a very invasive form of supervision.

Alternative sentencing is the most effective method for stemming the proliferation of jails and prisons in the United States. While it does not serve as a panacea for the problem of incarceration of citizens, it represents a major shift in ideology relative to penology.

The existence and proliferation of jails and prisons and the staggering number of Americans incarcerated are an indictment upon the United States in a variety of ways. First, the thousands of people incarcerated each year in the United States require a discussion relative to the systems that make up the very essence of American society. Inconvenient questions that probe the inability of so many to successfully live within a society freely are a practical and fundamental question. Do the structures of American society create a social vortex that siphons a certain portion of its citizens into a ghettoized dispensable population and is this phenomenon or dispensable portion of society necessary to power the engines of American supremacy and is, therefore, a necessary evil within such a state as ours? Or, is the social vortex siphon less insidious and reflects the result of "the perfect storm" of circumstance that marginalizes individuals and entire communities? Second, the proliferation of jails and prisons in the United States reflects a failure within our culture to invest in and develop an intentionally segmented portion of society. Jails and prisons represent a waste of human talent. Jails and prisons are the repository for neglected and culturally atrophied individuals, groups, and communities. The existence of jails and prisons is reliant upon inadequate housing, nonexistent prenatal care, lack of comprehensive health care from infancy to adulthood, inadequate school systems, lack of economic development and employment, and non-assurance of safe and secure neighborhoods. All of these variables are seemingly unrelated to jails and prisons; however, they have a very deterministic role in the proliferation of jails and prison populations.

With a paradigm shift from the conceptualization of jails and prisons to alternative sentencing, I can visualize a societal landscape free of jails and prisons and not feel utopian in my conclusions. This reality is far removed from the second decade of this twenty-first century; however, it is attainable. Whether it will be attained is a different discussion. The lingering question, pertinent to the elimination of jails and prisons in the future, will be the remaining dilemma of accounting for those Rawls referred to as incapable

of achieving the capacity for moral personality, who are those “scattered individuals” within our society who represent a small portion of the jail and prison population. These are individuals within our society who either are incapable of adherence to societal rules or choose not to live within the agreed-upon structures of society due to egregious alienation. In either instance, this group represents a segment that threatens to encroach upon the rights of other members of society. John Rawls refers to this segment of society as those lacking the “capacity for moral personality.” Writing in *A Theory of Justice*, Rawls makes the following observation:

We see, then, that the capacity for moral personality is a sufficient condition for being entitled to justice. Nothing beyond the essential minimum is required . . . It should be stressed that the sufficient condition for equal justice, the capacity for moral personality, is not at all stringent. When someone lacks the requisite potentiality either from birth or accident, this is regarded as a defect or deprivation. There is no race or recognized group of human beings that lacks this attribute. Only scattered individuals are without this capacity, or its realization to the minimum degree, and the failure to realize it is the consequence of unjust and impoverished social circumstances, or fortuitous contingencies. Furthermore, while individuals presumably have varying capacities for a sense of justice, this fact is not a reason for depriving those with a lesser capacity of the full protections of justice. (1971, pp. 442–443)

Therefore, an effective corrections ethic must take into consideration those “scattered individuals” in society and create contingencies for their control—the resolution of which will eradicate the last remaining justification of jails and prisons within our society.

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