Nathan Goodman
When Prisons Enable Crime
March 29th, 2016

https://c4ss.org/content/44276

en.anarchistlibraries.net

When Prisons Enable Crime

Nathan Goodman

March 29th, 2016

The dominant belief in our society is that prisons are a necessary tool to fight crime. Prisons are often thought to counter crime in at least three ways:

1. Deterrence: The expectation of a prison sentence increases the perceived cost of committing a crime, thus creating incentives not to commit crimes.

2. Incapacitation: By coercively separating prisoners from the rest of society, prisons prevent them from victimizing members of the general public.

3. Rehabilitation: Through job training, reflection, or study, prisoners might emerge as better, more productive, more peaceful citizens upon release.

Even most critics of mass incarceration believe that prisons are necessary and important to serve at least the first two functions, at least for some crimes. While many people recognize that imprisonment is an unjust response to victimless crimes such as drug

use, they may see incarceration as necessary in order to deter and incapacitate violent criminals.

Most people's intuitions about the necessity of incarceration are shaped by status quo bias and a failure to imagine alternative modes of governance. However, they're also shaped by an accurate understanding that human beings can achieve their ends through peaceful cooperative means or through coercive and predatory means. The coercive means are socially destructive, but may offer some people an easier way to achieve their goals. If people are not innately good, but instead are often selfish and opportunistic, then incentives should be put in place to deter destructive and predatory actions. Offenders, particularly repeat offenders, may have displayed proclivities towards predatory and violent behavior that presents an ongoing threat to others, and incapacitating them may be desirable. Prisons may provide both incentives that deter crime and a technology to incapacitate criminals.

However, while prisons can serve these functions, they may also enable and promote crime. Those who examine only incarceration's effectiveness at deterring aggression and incapacitating aggressors are examining the benefits, but they also should consider the costs. Not merely the fiscal costs, but the costs in terms of crime created rather than deterred. The costs of enabling people to engage in the same predatory behaviors that we want a legal system to prevent.

Predation by Guards

Prison guards are given extraordinary power over prisoners. They monitor prisoners, control their access to goods and services, and literally hold them captive, unable to flee them. In a free society, most people have the ability to exit relationships. This ability to leave a situation when it becomes intolerable creates incentives that constrain abuse. A restaurant that continually serves poisoned food to its guests is unlikely to stay in business very long because customers have the ability to take their business elsewhere. Prison-

ers by definition have no ability to exit. This leaves them incredibly vulnerable to predatory behavior by guards.

Predation by guards often takes the forms of the most heinous violent crimes our society recognizes. In particular, prisons leave prisoners vulnerable to rape and sexual assault by guards. In 2011, roughly half of all sexual assaults reported in prison were committed by guards.

In a contest between a guard's word and an inmate's, the guard is likely to win. There is a pervasive attitude of disdain and disbelief directed towards prisoners who report sexual violence. Kay Walter, a prison superintendent, responded to a series of sexual assaults in Washington prisons by saying, "We will never take an inmate's word against staff–they're not in prison because they're honest people."

Legislators have attempted to reduce prison rape through reforms such as the Prison Rape Elimination Act. Yet these reforms leave the fundamental power dynamic between guards and prisoners untouched, and so prisoners remain vulnerable to predatory guards. As C4SS Senior Fellow Charles Johnson put it, "the first basic obstacle is no matter how unambiguously written and strongly worded the law is, it is always nearly impossible ever to safely try to get a hack prosecuted from inside your cell. There is just no way. The same overwhelming, full-spectrum life-and-death domination that facilitates the endemic, repeated rape also makes it impossible to defend yourself from them through legal processes."

Those barriers exist even for rapes that are clearly recognized as illegal. But one other perverse facet of prisons that enables predation by guards is that actions we would ordinarily recognize as abusive become treated as legitimate policy tools. To some extent this is inevitable with imprisonment. If an ordinary individual locked you in a cage and prevented you from leaving, we would ordinarily call them a kidnapper. If a prison guard does it, they're simply enforcing a public policy. Sadly, this special privileging of aggressive actions by prison guards extends not just to kidnapping, but to

sexual assault as well. Strip searches, and cavity searches in particular, have many characteristics that we would ordinarily recognize as rape or sexual assault. As Assata Shakur attests in her autobiography, these searches can involve penetration, and non-consensual penetration is the FBI's definition of rape. But even when penetration is not involved, commanding a human being to strip, spread open their ass, spread their labia, or otherwise expose their own private anatomy, is a form of sexual humiliation exacted with threats of violence. There's a reason Angela Davis calls it "the routinization of sexual abuse."

Institutional Design as a Balancing Act

A just society is one where interactions are voluntary, where people's rights are secure, where they're free from violence and plunder. In such a society, people have incentives to trade, produce, and cooperate with each other rather than plunder, assault, and exploit one another. Their sexual and romantic interactions can be sites of authentic love, pleasure, and care rather than violence, abuse, and trauma.

But how do we get there? What types of institutions can bring us such a world? We want to provide incentives that deter predation, violence, and plunder by private individuals. But the dominant approach our society currently uses for that end, the prison, enables vicious abuse and predation through its basic institutional features!

I don't know the way forward. But this way of framing the question, this understanding of the capacity of governance to enable the very abuse it's designed to prevent, provides a heuristic for understanding the problem. By examining the incentives that any given governance approach provides both to its enforcers (assuming those enforcers are a separate class at all, which shouldn't be a given) and to the general population, we can figure out whether those means are conducive to anti-violence ends.

Institutional Diversity, Status Quo Bias, and the Need for Imagination

The fact that prisons are the main tactic used to deter violent crime and incapacitate violent criminals does not mean that they're the only game in town. If prisons often exacerbate the violence people want them to stop, then they need to imagine other possible responses to violence. This can be difficult in a world so shaped by the state.

One way to broaden our imagination is to recognize that none of these approaches needs to be a panacea, and that multiple approaches can coexist. Moreover, they don't need to be designed from the top down.

It's possible, and likely in my view, that the best way to create sustainable justice systems is within a polycentric system, where there is no one center of power designing and imposing justice from the top down. This approach is likely to feature the exit rights that, as mentioned earlier, produce incentives that deter abuse and promote quality provision of services. Moreover, it is likely to create justice that is driven by and responsive to those who are impacted by violence, rather than the imperatives of political demagogues and rent-seeking special interests.

To develop an incentive compatible justice system, we need institutional changes that allow individuals and communities to discover new ways of resolving violence, mitigating harm, and arbitrating disputes. To do anything less is to invite stagnation and preserve a status quo that empowers violent criminals and calls their crimes law enforcement.