American Criminal Justice Philosophy Revisited

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NEARLY A DECADE AGO, I coauthored an article that appeared here in *Federal Probation*. In that article I commented on the pendulum effect observable within the criminal justice system with regard to the popularity and application of various operational ideologies. The observations appearing in that article appear to have resonated with its readers since it was frequently reprinted and became the introductory article in *Annual Editions: Corrections* (2001/02). Within that article I observed the vacillation that has historically occurred between enforcement and service ideologies, and between punishment and reform. Vacillations of this nature are common (Adams, Flanagan & Marquart, 1998). The slow but persistent swing of my hypothetical pendulum suggested that the complimentary ideologies of enforcement and punishment have recently been emphasized to the near exclusion of service and reform. While vacillations between opposing ideologies likely result from complex and interrelated factors, with each ideological rebirth (or swing of the pendulum) the potential exists for these philosophies and their respective programs to become dissociated from their historical progeny. This increases the probability that officials will operate without an appreciation of their profession's history--an appreciation that is necessary if the system is to achieve a greater level of effectiveness (Adams, Flanagan & Marquart, 1998). Without an appreciation of history, a disjunction may occur between ideology and its implementation. A disjunction of this nature can have a negative impact upon staff, clientele, and even the stability of the system itself (Rynne, Harding & Wortley, 2008).

Two questions have guided this manuscript. The first asks, "Are current movements that embrace service and reform ideologies really contemporary innovations (as they may be perceived) or a repackaging of previous approaches?" The second asks, "What can be learned from the recent terrorist attacks?" In essence, "does innovation still exist within the criminal justice system, and what can be learned from the events of September 11, 2001?" To address these questions, let us begin by reviewing the history of policing.

Policing

While the impact of European ideals on early American jurisprudence is evident (Mason & Leach, 1959), colonial practices depended on citizen participation to a greater extent than did traditional approaches (Peak, 2009). Colonists desired autonomy, were fearful of a strong authoritarian government, and wanted to create a system that would embody their unique beliefs about justice (Mason & Leach, 1959). Colonists recognized that by creating a system dependent on citizen involvement, justice initiatives would remain responsive to the needs of both the offender and community (Chitwood, 1961). Citizens were responsible for identifying, apprehending, sentencing, and punishing law violators. Citizens participated in these activities for

their mutual preservation and the advancement of their collective interests (Mason & Leach, 1959). Peak refers to this approach as the citizen-participation model since the citizenry policed itself (2009). Friedman too notes the prevalence of the citizen-participant in early justice processes (1993). An example of this approach includes the use of the "frankpledge." Frankpledges were verbal agreements made among the males of a particular community to prosecute those suspected of criminal activity. Each male pledged to remain law-abiding and compelled all others to do the same (Peak, 2009). Citizen involvement in the identification and prosecution of the lawbreaker was viewed as one's civic duty (Friedman, 1993).

As America grew and its complexity increased, the need for a more formalized approach to policing became necessary. Nightwatch systems emerged to address concerns about crime and disorder. Sentries, operating under this approach, were responsible for patrolling their communities at night when the likelihood for crime was greatest. As volunteers, sentries sought no compensation for their services. Instead, they acted out of civic duty and a desire to promote the well-being of their communities (Peak, 2009). New York City began experimenting with this approach as early as 1684 (Carter & Radelet, 1999; Lyman, 1999). Other cities, including Boston, Chicago, Philadelphia and Milwaukee, also adopted this approach. Each of these cities eventually added daytime sentries. For example, Philadelphia added daytime sentries in 1833, with Boston consolidating their nighttime and daytime patrols in 1854 (Adler, Mueller & Laufer, 2006). The consolidation of these patrols served as the basis of the professional police force. Like their predecessors, professional officers also remained active in promoting the overall health of their communities. A service orientation remained the "modus operandi" of policing until the 1930s (Peak, 2009).

It was during the 1930s that policing in America began to change. Most of this change resulted from the Federal Bureau of Investigation's campaign to professionalize policing by promoting a strict law enforcement orientation. Police departments nationwide followed the example set by the Bureau. This movement downplayed the delivery of services while promoting the image of the police as crime fighters. The Bureau also advanced the use of technology (Peak, 2009). Technological advancements, especially in transportation and communication, decreased police and citizen interaction and isolated officers from the public (Friedman, 1993). With the increased use of motorized transportation, fewer officers were walking the beat. This fundamentally changed the nature of citizen-police contact. Instead of friendly greetings and intimate exchanges, contact with the citizenry was largely the result of an investigation or arrest. Similarly, with the growing popularity of the radio and telephone, officers acquired information directly from dispatch. This too had an isolating effect.

The adoption of a strict law enforcement ideology lent itself to an increased reliance by the police on paramilitary structuring and an interest in firepower and force (Friedman, 1993). Specialized tactical units were formed to showcase this newfound might. In fact, J. Edgar Hoover (Director of the Federal Bureau of Investigation from 1924 to 1972) acknowledged the pride of having a "tightly knit, tightly controlled and highly mobile and hard-hitting" police contingent (Foreword to Whitehead, 1956: pp. ii). Operational secrecy and an unwavering obedience to an emerging "code of conduct" became valued. This code established the idea of a professional brotherhood. The notion of a brotherhood and the "thin blue line" began to characterize the isolation and the growing adversarial nature of policing (Peak, 2009). In return, society began to view the police more apprehensively. This apprehension turned to mistrust and a pervasive anti-government sentiment (Adams, Flanagan & Marquart, 1998). Policing was being transformed from a proactive, personalized activity to one that was rigid, formalized, and impersonal. Remember Joe Friday? This popular television character epitomized the professional officer. His proclamation of "just the facts, ma'am" clearly reflects the extent to which policing was becoming a cold and sterile pursuit. According to Walker (1980) this approach persisted through the 1970s. Yet anecdotal accounts suggest that even during an era characterized by police professionalism, the delivery of services remained a citizen expectation.

The 1970s mark a pivotal era in policing. A dissatisfied public began to demand that the police take a more proactive and personal approach. These demands gained momentum and were a direct result of the social movements of the sixties. In response, police officials began to provide

a variety of services. The slogan, "To Protect and Serve" gained prominence. Citizen dissatisfaction ultimately resulted in community-oriented policing initiatives. These initiatives acknowledged the importance of the citizen, and cultivated goodwill by providing needed services. The public welcomed this change as evidenced in the ongoing popularity of community policing. By 1997, there were 21,000 community-policing officers employed at the state and local levels. By 1999, this number had increased to 113,000 (Hickman & Reaves, 2001).

Corrections

Shifts in the popularity of various correctional ideologies have mirrored those that have occurred in policing. To establish a basis for this observation it is necessary to understand that the early European prison, popularized during the 16 th century, was an attempt to quell public concerns about crime and disorder (Friedman, 1993). While treatment within these prisons could be brutal by today's standards, a reform ideology was nonetheless present (Friedman, 1993). The pursuit of offender reform was fueled by the puritanical principles of forgiveness and salvation (Blakely, 2007). Officials of these prisons sought offender reform through training and education (Rothman, 1998). According to Schmalleger and Smykla (2007), during four of the nine stages of prison development, officials openly embraced inmate reform as their primary objective. In several of the remaining stages, inmate reform was a secondary objective. The value of offender reform is reflected in many of the philosophical statements of that era (Walker, 1980). Writings attesting to the value of reform were common throughout the prison's early evolution (Friedman, 1993). Reform as a correctional objective was officially endorsed by a group of colonial leaders that met at the home of Benjamin Franklin. While early America imported traditional European sanctions, colonial penalties were generally less harsh (Chitwood, 1961; Friedman, 1993). First-time offenders often received light punishments (Friedman, 1993). This leniency suggests a belief in offender reform. Had colonists not valued reform, their punishments would have been much harsher.

While penologists have long recognized rehabilitation as a correctional objective, its modern pursuit remains contentious. This is partly due to a recent police posturing that valued enforcement over service. In fact, reform-oriented programs have until recently been considered by many corrections officials to be nonessential luxuries (Cullen, 2007; Adams, Flanagan & Marquart, 1998) in much the same way that police have considered the provision of services unnecessary. As gatekeepers of the criminal justice system, the police often act in ways that produce a ripple effect system-wide. For example, an aggressive law enforcement stance contributed to a massive increase in prison admissions. Between 1970 and 1995, the number of inmates housed in state and federal prisons more than quintupled. In fact, between 1970 and 2000, the number of inmates increased by more than 500 percent (King, Mauer & Young, 2005). Conditions produced by overcrowding encouraged administrators to disregard offender reform and instead focus their efforts on maintaining facility control. To manage the exploding inmate population, efforts at rehabilitation became secondary to the orderly operation of the prison (Blakely, 2007).

While prison crowding contributed to a decreased interest in rehabilitation, it also placed a great deal of stress on inmates. Crowding intensified competition among inmates for scarce institutional resources (Blakely, 2007). Riots, including those at Attica and the Penitentiary of New Mexico, reveal just how intense this competition became. Post-riot studies identified overcrowding as a leading contributory factor of these riots. In their longitudinal study, Montgomery and Crews (1998) identified a total of 1,334 riots that had occurred between 1900 and 1995. Of that number, 776 (or almost 60%) occurred during the 1970s and 1980s (the era in which reform was being de-emphasized). These riots further convinced officials that a strict model of incapacitation, devoid of treatment, was appropriate. Prison officials postulated that by reducing "nonessential" programs and by enhancing the security apparatus, prisons could diminish the likelihood of similar riots.

The actions of prison officials nationwide were further legitimized when scholars offered their impressions about offender reform (Cullen, 2007). For example, both James Q. Wilson and David Fogel challenged rehabilitation as a correctional pursuit. Likewise, Robert Martinson

proclaimed rehabilitation unattainable in his now-famous "nothing works" report. With rehabilitation being openly challenged by prominent scholars, incarceration without recreational, educational, and vocational programming became common. Known as inmate-warehousing and no-frills incarceration (Adams, Flanagan & Marquart, 1998), this style of imprisonment offered inmates few opportunities for productive activities. According to Tony Joyce (himself an inmate), in the absence of a reform ideology, prisoners linger in a state of agonizing limbo (Schmalleger and Smykla, 2007). Joyce suggests that warehousing does little to reform inmates and contributes to recidivism. Cullen too notes that there is growing evidence that this form of imprisonment leads to elevated re-offending rates (2007). A recent study suggests that 31 percent of all "warehoused" inmates will return to prison within 3 years of their release. However, only 21 percent of the offender population that participates in reform-oriented programs will return (Schmalleger & Smykla, 2007; Adams, Flanagan & Marquart, 1998). Even the Bureau of Justice Statistics reports that inmates participating in treatment programs are less likely to recidivate (Harlow , 2002). In spite of this finding, warehousing has steadily gained momentum – yet the correctional system has not totally abandoned a reform ideology. In fact, treatment, rehabilitation, and reintegration remain dominant themes in the mission statements of most correctional departments (Gaes et al., 2004). The word "corrections," which gained prominence during the 1970s and 1980s, suggests a reform ideology. Even when reform was under attack, the public clearly supported programs designed to promote rehabilitation (Cullen, 2007). A refusal by the correctional system to totally abandon reform ideology is evident even now. Prison programs that promote reform are again becoming popular (Schmalleger & Smykla, 2007). Similarly, the growing use of community supervision also attests to the support being given this objective. At the nucleus of these initiatives is a belief in the "reformability" of the lawbreaker.

Discussion

After reviewing the histories of policing and corrections, we can now determine whether recent movements embracing service and reform ideologies are contemporary innovations (as they may be perceived) or whether they are merely a repackaging of earlier approaches. While it may appear unnecessary to make this determination, to do so will allow these movements to be placed within their proper historical contexts.

When comparing historic and modern criminal justice initiatives, it becomes obvious that original approaches were based on direct citizen involvement and the delivery of services to citizens and offenders alike. The recent advent of community policing clearly acknowledges the value of these earlier approaches and is an attempt by the police to counter the strict law enforcement orientation previously adopted. Similarly, correctional officials are also becoming cognizant of traditional approaches. Correctional literature increasingly acknowledges that 95 percent of all inmates will eventually return to society (Hughes & Wilson, 2002). This fact has motivated officials to pursue offender reform as a way to promote public safety. The increasing quality and quantity of correctional treatment is a direct result of this acknowledgement (Schmalleger & Smykla, 2007; Rynne, Harding & Wortley, 2008).

These observations suggest that the criminal justice system is hesitant to completely abandoned traditional service and reform ideologies. This hesitancy is reflected within the literature, where countless descriptions of respective programs and their assessments appear. Literature also serves as a conduit for futurists to address the anticipated effect of innovation and technology on justice initiatives that have yet to be adopted. A review of the literature reveals that traditional service and reform ideologies readily lend themselves to modern application. Thus, innovative programs of the past are perhaps inevitably linked to those of the present and future. Contemporary practices appear to be as innovative as those of a more historic nature.

Before addressing the effects of the terror attacks on the criminal justice system, a few additional comments are necessary. First, I chose September 11, 2001 as a reference point since it is universally recognized. This date permits observations to be made about the popularity of criminal justice ideologies on a "before and after" basis. In essence, it allows the effects of the largest mass murder event in our nation's history to be isolated. No other event provides this opportunity. Second, it must also be understood that prior to these attacks, police and corrections

officials were beginning to re-embrace service and reform philosophies. While the swing of the pendulum was already being altered by a renewed interest in these ideologies, it appears that the September 11 attacks reinvigorated these efforts. In essence, these attacks may have helped popularize these ideologies. While one might reasonably expect crimes of this magnitude to produce a backlash against these philosophies (after all, applying service and reform philosophies is often perceived as being "soft" on crime), in reality this did not occur. Yes, get-tough initiatives may be a common reaction to crime but such a reaction did not occur following these events. While the precise reasons for this are unknown, speculation suggests that events that shock our collective sensibilities may fuel an interest in humanitarian acts. Following September 11, the nation did in fact witness an increase in the number of citizens volunteering with social service agencies, pursuing public sector employment, and even donating blood (Glynn, 2003). Public service messages were also frequently aired urging citizens to become involved in their local communities. These messages meshed neatly with existing service and reform philosophies. And as Dutta-Bergman suggests, communications of this nature can mobilize individuals toward charitable pursuits (2006). Similarly, Lafree and Hendrickson (2007) note that events of national significance often rekindle society's interest in serving the needy and marginalized.

To determine the merits of this observation, consider that for each year between 2000 and 2004, local and state police agencies added fewer officers to their ranks than in previous years (Reaves, 2007). Furthermore, the percentage of the population targeted by the police for contact has remained constant since the mid-nineties (Langan, et al., 2001; Durose, Schmitt & Langan, 2005). These observations suggest that a mobilization of police power (at the local and state levels) did not occur in the years following these attacks nor was there an increase in the level of police-initiated contact. In fact, the percentage of those individuals stopped and arrested by police decreased slightly from 1999 to 2005 (Langan et al., 2001; Durose, Smith & Langan, 2007). These findings fail to support the contention that the police have become more enforcement-oriented since the September 11 attacks.

Similar observations can also be made about corrections. I will limit my consideration to imprisonment since it is the most punitive sanction available (excluding execution). This will provide a rigorous test of the effects of the recent terror attacks. During 2001, prison populations increased at their most sluggish pace since 1972. In fact, during the last six months of 2001, state prison populations declined by nearly 3,500 inmates (Harrison & Beck, 2002). This trend has continued, resulting in a prisoner population growth rate that is significantly smaller than that experienced in previous years. The annual rate of incarceration during 2005 was half the average annual growth rate experienced since 1995 (Harrison & Beck, 2006). Furthermore, 90 percent of all prisons currently offer inmates access to therapeutic programs (Harlow, 2003). Simply put, the popularity of incarceration is decreasing while the prevalence of reform-oriented programs is increasing. Similarly, the nation's parole population grew by 1 percent in 2001 (Glaze, 2002). However, during 2002, the nation's parole population grew by nearly 3 percent (Glaze, 2003). This figure has remained stable (Glaze & Palla, 2005) and represents an increased use of parole that is nearly double the average annual growth rate since 1995 (Glaze, 2003). These figures do not indicate an increased interest in punitive measures following the September 11 attacks.

While these attacks had obvious military significance, they were also crimes (Lafree & Hendrickson, 2007). As crimes, these events culminated in the deaths of nearly 3,000 individuals. Following these attacks it became common for citizens to express concerns about the existing infrastructure's ability to provide for their safety. Immediately, the American criminal justice system became the focus of national and international attention. This renewed attention led me to solicit information from practitioners and scholars alike about what may be learned from these events. As part of an ongoing study that will conclude in 2011, I have conducted nearly 100 open-ended interviews on such questions as the system's clientele, the system's reaction to information, and the benefits of placing events in their proper historical contexts. Conversations suggest that:

- ▪the system should remain attentive to its clientele regardless of whether they are citizens or offenders;
- responses to criminal events should be controlled, measured and deliberate (as is reflected

in the ongoing debate about the effectiveness and costs of current anti-terror and crime-reduction strategies); and

- actions of the criminal justice system must be undertaken with a concern for the future, based on an evaluation of past practices. It is only through an appreciation of history that risks can be properly assessed, sound decisions made, and contemporary events understood.

In summary, these are recommendations that the criminal justice system be attentive to the needs of citizens and offenders alike. According to respondents, this is essential if the system is to effectively promote community safety. A corollary also suggested by respondents is that the system's reaction to crime be balanced. In essence, law enforcement must be tempered by a service orientation, and punishment must be tempered by treatment. Furthermore, a controlled, measured, and deliberate response requires a thorough appreciation and understanding of past practices. The past, present and future are intimately connected. For criminal justice initiatives to reach their optimal effectiveness, officials must identify and imitate those earlier approaches that proved promising. The caveat that "we must learn from our mistakes and build upon our successes" warrants repeating. The optimism expressed during these conversations indicates that our system is resilient, responsive, and is able to protect our way of life. But respondents also suggested that in light of low crime rates and slowing prison admissions, a reevaluation of our system's programs, priorities, and guiding ideologies appears appropriate.

Conclusion

A review of criminal justice initiatives, both past and present, reveals community policing and the pursuit of offender reform as historic practices. While service and reform ideologies were established early in the system's history, their continued application remains a testament to their value. Furthermore, for any set of ideologies to gain and loose momentum or be emphasized to the near exclusion of others is an indicator of systemic-imbalance. The literature is full of statements attesting to the recurrent imbalance of the system and the need for equilibrium. A state of equilibrium requires service and reform ideologies to be valued to the same degree as enforcement and punishment. The original designers of the criminal justice system desired balance and moderation (Cullen, 2007) and viewed such a state as being achievable (Friedman, 1993). The future will ultimately reveal whether the current state of equilibrium can be maintained – but judging from past vacillations in the pendulum's swing, such a state is probably temporary.

It is also obvious that the correctional system has historically taken its operational cues from the police. While a substantial delay occurred between the adoption of a strict law enforcement orientation and a de-emphasis on offender reform, it nonetheless appears that the police (as gatekeepers) largely determine the manner by which the system operates. To keep the system in balance, those ideologies that guide policing must remain in equilibrium.

The September 11 attacks continue to serve as the impetus for the assessment and improvement of the criminal justice system. While these attacks appear to have produced an increased interest in service and reform ideologies, only additional research can explain this apparent association and the probable effects of these events on future criminal justice processes.

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