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What If Psychology Redesigned the Criminal Justice System?

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When we embarked upon this project, it arose from a simple question: How can expert psychological knowledge about shaping prosocial behavior be applied to design a criminal justice system? Our point of departure was the widely shared recognition that the criminal justice system was falling far short of its elementary objective of protecting public safety. The focus of our project and book is on violent offending, and we have portrayed what behavioral science has established about its causes and its remedies.

Violent offending has serious implications for public health and public spending. Violence imposes a major burden on the well-being of populations, both worldwide (Krug, Dahlberg, Mercy, Zwi, & Lozano, 2002) and in the United States (Centers for Disease Control and Prevention [CDC], 2006). In the United States, the costs of gunshot and stab wounds in 1992 were $53 billion (Miller & Cohen, 1997), and the costs associated with nonfatal injuries and deaths due to violence in 2000 were more than $70 billion (Corso, Mercy, Simon, Finkelstein, & Miller, 2007). When one adds the value of lost life and the value of injuries to simple monetary costs, the true costs of violent crime in the United States have been estimated to exceed $574 billion annually (Anderson, 1999). Soares (2006) estimated the social cost of violence across 73 countries and put the yearly cost of violence in the United States at 2.9% of gross domestic product. While such cost estimates and criteria vary, it is unmistakable that violence imposes a substantial burden for society.

Violent offending also threatens public safety, evokes fear, and can serve as a political lightning rod. In this book, we have attempted to leave behind...
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divisive political rhetoric that can stand in the way of effective criminal justice policy. Simply put, we do not believe in ideologies as a way of preventing crime; we believe in results. Good ideas are not the exclusive province of either wing of the political continuum, and all too frequently, claims of being tough on crime were euphemisms for being tough on criminals. When one considers strong risk factors for violent crime, such as deficits in life skills, association with criminal peers, and anger dysregulation, the weaknesses of mass incarceration as a crime reduction strategy become all too clear.

Who lives in U.S. prisons? According to the entertainment and “news” media, prisons are filled with superpredators and criminal geniuses. The truth is quite different. Put simply, prisons are filled with people who are bad at life and are not much better at crime. Typically, they are undereducated, unskilled, and often traumatized, with little realistic hope for a better life. Our current policy is to imprison these individuals for relatively long periods of time, with little or no correctional programming. Incarceration has many intended purposes (see Blumstein, Chapter 1, and Hollin, Chapter 2), including punishment, deterrence, incapacitation, and risk reduction. However, if we take various measures of recidivism rates as evidence for the effectiveness of imprisonment, the recurrent verdict is that the current policy is not working from the standpoint of either harm reduction or economic wisdom, as James McGuire (Chapter 12) has so aptly articulated.

For our purposes, we assert that protecting public safety is the overarching goal of imprisonment and, indeed, the entire criminal justice system. Although reasonable experts will disagree about the optimal pathway (e.g., deterrence, treatment, or retribution), there can be little argument that the ultimate goal is to make our communities safer. Using this simple yardstick, we conclude that the current response to crime is failing, in large part because it ignores what the social sciences have learned about why people behave as they do and how to change behavior for the better. The criminal justice system would look quite different, if it were guided by psychological knowledge about behavior change. In this chapter, we outline key principles of behavior change, many of which overlap with the content covered throughout this book. Next, we summarize how these principles could be applied to make key changes to our criminal justice system. We conclude by arguing that we cannot afford not to implement these principles as soon as possible.

Principles of Behavior Change for Correctional Intervention

Donald Meichenbaum is one of the leading contemporary thinkers on behavior change. We asked Professor Meichenbaum to summarize core principles that he had learned in his lifetime that were relevant to changing antisocial behavior via the correctional system. Because his reflections are consistent
with the research and principles presented throughout this book, we distill his reflections (in italics) and elaborate on them below.

1. **Tailor behavior change programs to the individual.** Given the heterogeneity of the offender population, there is a need to recognize that “one size does not fit all.” This principle runs counter to rigid policies applied in the U.S. criminal justice system, which tend to treat low-risk offenders with the same sorts of programs that were designed for high-risk, persistent, and/or violent offenders.

2. **Use risk factors and protective factors to inform supervision and treatment.** Interventions should be strength based and build upon existing resilience and prosocial skills that the offender possesses, along with social and community resources. To live a crime-free life after prison, offenders must possess prosocial skills that can translate to a successful work, family, and social life in the “free world.” Treatment programs should prioritize offenders with high-risk profiles.

3. **Clearly identify both wanted and unwanted behaviors and establish a positive reinforcement protocol that systematically reinforces the wanted behaviors.** Consider the “functional value” of unwanted behavior, including how it helps obtain perceived desirable consequences (e.g., resources, freedom, or personal safety) or avoid perceived undesirable consequences (e.g., behavioral restrictions, loss of resources, or personal harm). Our basic philosophy is that the best way to influence offenders’ behavior is to “catch them doing something right” and reward them for it. However, we must first understand what each offender finds rewarding, given his or her beliefs, expectations, and value system. In other words, people do what rewards them, but before we can change their ways of getting rewards, we have to understand what motivates them.

4. **Limit use of punishment as a tool for behavioral change.** Intervention programs that are “punitive” and confrontational in nature have poor long-term outcomes. First, although punitive programs may lead to some short-term behavioral changes when applied under direct scrutiny, they rarely lead to long-term behavior change (Bandura, 1973, 1977; Matson & Kasdin, 1981). Application of punitive contingencies will not shape internalized values and self-regulatory skills that are necessary for lasting behavior change. True desistance from crime requires development of internalized controls that punishment cannot instill. Second, in the U.S. criminal justice system, punishment is rarely used in an effective manner, although there are exceptions (Marlowe & Kirby, 1999). Punishment can promote short-term behavior change when the following occur: • Punishment is predictable. That is, offenders can reasonably expect to be caught every time they commit crime and to be assigned a particular penalty for that crime. This is not the case in the U.S.
system. The clearance rate by arrest for violent crime (Federal Bureau
of Investigation, 2008) is 45.1%, ranging from 26.8% for robbery to
63.6% for murder and nonnegligent manslaughter. Even when
offenders are caught and convicted, the plea bargaining process by
which virtually all cases are resolved means that the sentence assigned
is unrelated to that advertised in the criminal law.

• There is temporal contiguity (i.e., timeliness) between the
undesirable behavior and punishment, such that punishment is
clearly associated with the unwanted behavior. In the U.S. system,
consequences do not occur soon after the crime. To take an extreme
example, many executions take place literally decades after the crime.
When the crime is a distant memory, punitive consequences have
diminished effects.

• There is a period of scrutiny (i.e., close supervision after the
punishment is inflicted). This is not the case in the U.S. system,
where burgeoning probation and parole caseloads preclude
meaningful scrutiny after incarceration.

• The offender has the skills necessary to accomplish the desired
changes. It is useless to punish repeatedly violent people for failing to
control their anger, if they have not been helped to develop the
capacity for such control and they are recurrently exposed to anger
activators.

• Punishment is perceived as adverse. For inmates whose long
sentences have left them utterly unprepared for modern life in the
free world, the prospect of returning to prison may seem less
frightening than release.

In short, when held up to the principles of effective punishment, our
criminal justice system falls breathtakingly short. Nevertheless, its ineffective
punishment framework remains refractory. Prison segregation (colloquially,
being placed in “the hole”) was previously used only for the most dangerous
inmates, but it has now blossomed into the fastest growing segment of U.S.
corrections. Many inmates are now released directly from segregation to the
streets of our communities. In a carefully controlled study, Lovell, Johnson,
and Kane (2007) found that direct release from segregation dramatically
increases former inmates’ likelihood of reoffending. Nevertheless, we are
aware of only one state (Michigan) that has begun making systematic attempts
to incrementally resocialize these long-time segregated inmates prior to their
release to the streets. As currently applied in our criminal justice system, pun-
ishment is not working. Programs using positive reinforcement procedures
that encourage prosocial skills would seem to have a greater chance of
success.

5. **Attend to issues of motivation and incorporate methods of
facilitating treatment engagement, such as Motivational Interviewing**
(MI; Miller & Rollnick, 2002). There is considerable merit to the
perspective that many offenders are less “treatment resistant” than lacking in “readiness for change” (Howells & Day, 2003) or challenged by “offender-resistant services” (see Monahan & Steadman, Chapter 11). To ameliorate this problem and to foster reinforcing offender–provider interactions, programs could incorporate MI components, such as building the participatory involvement of offenders in considering the pros and cons of behavioral change and in setting behavioral change goals.

6. **Establish high-quality relationships with offenders.** In group-based interventions, establish cohesive groups with mutual prosocial goal setting. In correctional settings, staff are sometimes cautioned against establishing any relationship with offenders, based partially on fear that the relationship will be used for “manipulation” purposes. Similarly, the idea of a cohesive group is discouraged in most U.S. prisons, because it seems closely related to gang activity. This is inconsistent with research knowledge. Psychologists have known for decades about the importance of the therapeutic relationship for optimizing clinical outcomes (Norcross, 2002; see also Ackerman & Hilsenroth, 2003; Lambert & Barley, 2001). A growing body of work suggests that firm, fair, and caring relationships between offenders and community supervision officers is a powerful predictor of criminal justice outcomes (Skeem, Eno Louden, Polaschek, & Camp, 2007). For such reasons, Burnet and McNeill (2005) have argued for reinstating the officer–offender relationship as a core condition for changing offender behavior and the social circumstances associated with recidivism. Similarly, Andrews (see Chapter 6) advocates respectful, caring, and collaborative relationships with offenders.

7. **Use and establish real evidence-based programs.** Evaluation measures and procedures should be built in to programs so that progress can be monitored and ongoing feedback provided to both staff and offenders. For every program, the same questions should be asked: “How do you know it works?” “How strong is the evidence?” Those who choose interventions and implement them must be critical consumers, mindful of fads and questionably grounded procedures that are actively sold to various criminal justice agencies. For some interventions, the phrase “evidence based” is not much more than a marketing slogan. Rigorous and meaningful controlled evaluations of programs (not pre/post tests) are essential for establishing an evidence base.

8. **Implement a training approach that nurtures prosocial skills, encourages prosocial affiliations, and promotes a positive lifestyle** (see also Andrews, Chapter 6, and Oudekerk & Reppucci, Chapter 9). What skills are likely to be used in a variety of life situations to prevent general antisocial behavior? Skills in solving problems, communicating and negotiating effectively with others, resolving conflicts, and
planning for the future. What skills are likely to prevent violent behavior, specifically? Because most violence is impulsive or reactive, self-regulation skills are central. Programs should boost internal control capability, as opposed to reliance on external controls. Offenders must learn to monitor themselves and control anger and other emotions of distress that lead to violent behavior. Although this self-regulatory orientation may seem axiomatic, it flies in the face of most correctional practice, where obedience to authority is rewarded and disobedience punished. If an offender only learns how to obey, there will be no positive effect on offending after release. Individually and personally, the offender must make prosocial choices without the benefit of an authority figure’s explicit instructions. Instead of learning how to obey, offenders must learn how to make better decisions.

9. **Incorporate procedures to increase the likelihood of generalization and maintenance of intervention effects.** This requires behavioral rehearsal and skills practice (e.g., role plays) that approximate real-life situations. This principle is vital. Intervention should not be limited to didactic instruction, because offenders’ active participation is critical. Beyond experientially teaching reentry skills, Meichenbaum recommends involving significant others in the intervention and providing community-based social supports with prosocial peers. The goal is to establish a prosocial lifestyle and a new “possible self” by engaging offenders in supportive, meaningful relationships, helping them find good jobs, and helping them avoid “high-risk” people, places, and things. To maintain prosocial behavior, booster sessions that reinforce learning and help offenders identify and establish community resources can be helpful.

10. **Incorporate a relapse prevention component that actively involves the offender in considering possible obstacles to behavior change efforts and in formulating “game plans” and “backup plans” to confront each obstacle.** Relapse prevention strategies are relevant to preventing repetition of internally rewarding and exciting behavior, such as substance abuse (Marlatt & Gordon, 1985) and criminal offending (Hodge, McMurran & Hollin, 1997). The goal is for offenders to foresee situations that might elicit violence and to develop self-management skills tailored to those situations, thereby reducing the risk of reoffending. Risk is elevated by negative emotional states (e.g., anger, disappointment, depression, shame), interpersonal conflicts, and social pressures. Avoidance and/or escape from high-risk situations, self-regulation of emotional distress, and enhanced communication and problem-solving skills are marshaled to prevent relapse. In their analysis of 24 studies of relapse prevention programs with offenders, Dowden, Antonowicz, and Andrews (2003) found that the most effective elements of such
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programs were training of significant others, role playing the situations, and focusing on precursors in the offense chain. Programs with multiple elements produced significantly higher gains.

4 Toward a Justice System of the Future

The chapters of this volume have probed the strengths and weaknesses of today’s justice systems, especially in the United States. The results of the inquiries have led to a surprisingly simple but important array of changes that can improve our justice systems.

1. **Stop incarcerating low-risk offenders and provide more intensive services to high-risk offenders.** As our late colleague Professor Don Andrews so eloquently argued, correctional programming for low-risk offenders is worse than wasteful; it actually increases crime! Yet we continue to waste tens of thousands of dollars per offender on incarceration of relatively low-risk offenders. Incarcerating fewer inmates will allow more resources to be aimed at effective programs for high-risk offenders.

2. **Conduct risk and needs assessments of every offender.** Assessing risk and criminogenic needs of each offender is essential to meet the demands of a scientifically informed justice system. The results of these assessments must then be used to guide the system’s response to each offender and crime. Our authors’ guidance is clear and incontrovertible: To be effective, programs must be aimed at criminogenic needs. If one does not address the reasons that crimes are committed, one stands little chance of preventing them in the future.

3. **Staff correctional institutions and community corrections programs adequately.** With adequate staffing, the criminal justice system can be both safe and effective. Budgetary constraints induce correctional administrators to choose the former at the expense of the latter. However, the system must get back into the business of correcting behavior, with programs that have been shown to improve motivation, enhance acquisition of prosocial life skills, enhance protective factors, and maximize the offender’s chances of successful desistance from crime. Adequate staffing is not just a matter of workforce numbers—it also means having personnel with the appropriate skill set. Since resources are at a premium, if it is not feasible to increase correctional staffing, an equally effective measure would be to reduce the number of low risk inmates. Because incarceration is neither necessary nor effective for low risk inmates, reducing their incarceration would reduce staff-to-inmate ratios at no cost.

4. **Teach staff to use the most powerful behavior change agent at our disposal: positive reinforcement of prosocial behaviors.** Despite the
power of positive reinforcement (see earlier), to our knowledge, no
government correctional agency has ever systematically trained its line staff to
use this weapon with accuracy and consistency. Each offender should be instructed in the specific areas of skill deficit that have led him or her to crime. Staff should be oriented toward identifying prosocial and violence-antithetical behaviors when they occur, and to reinforce them. This reinforcement can be material (e.g., tokens that can be exchanged for desired goods), social (e.g., verbal praise), or enhanced privileges, and must only be given contingent upon the prosocial behavior. Fundamentally, for rewards to be meaningful, we must shift the person’s valuations in a prosocial direction.

5. Create and implement individualized release and reentry plans. Fortunately, one area of recent improvement is in the form of release planning. Community corrections agencies increasingly are using risk-needs assessment tools to inform supervision. Nevertheless, parole and probation officers remain overwhelmed by caseloads that typically exceed 100 offenders. Agencies that match caseloads to risk level, with minimal or no supervision of the lowest risk offenders and intensive supervision of the highest risk offenders, represent one advance. Until intensive supervision is matched with intensive services for high-risk offenders, however, there will be few returns in recidivism reduction (see Turner & Petersilia, Chapter 8).

6. Stop sending low-risk and juvenile offenders to “crime school.” As is the case with adult offenders (see Andrews, Chapter 6), correctional programs that include high-quality services reduce recidivism for youth, whereas programs based solely on punishment do not (see Oudekerk & Reppucci, Chapter 9). To reduce the staggering number of graduates of juvenile institutions who go on to adult prisons, juvenile justice systems must match the intensity of intervention services to offender risk level and target criminogenic needs. Equally important is the implementation of multi-level, comprehensive treatment programs to address multiple known causes of delinquency, with special attention to the effects of trauma. Finally, whenever possible, programs must emphasize family and community engagement in close proximity to the youth’s home.

7. Leverage new tools for prevention and intervention. As one example, the power of the media is undeniable. As Saleem and Anderson (see Chapter 4) show, entertainment and news media could be applied in a manner that reduces, rather than exacerbates, the violence potential of at-risk youth and adults. There are many possibilities for intervention. Witness the incredible efficacy of television advertising to change the behavior of consumers throughout the world. Why hasn’t television been used creatively, as a reinforcer, as a teacher, and as a means of changing values and attitudes toward crime? In the prison of the future, television could be used not as an unearned
babysitter, but as a powerful tool for reinforcing behavior, teaching skills, and changing attitudes.

There are many uses for media productions in treatment programs that target self-control. For example, Walker, Novaco, O’Hanlon and Ramm (2009) incorporated film and television video segments into an anger treatment program at a high security forensic hospital. The video segments are integrated within a group-based treatment protocol to engage patients in the therapeutic material of each session, including considering the costs of anger dysregulation, taking other people’s perspectives, and preventing relapse. The video materials serve many purposes. For example, viewing film segments in the initial stages of treatment can provide violent offenders with a safe opportunity to talk about themselves and their life circumstances indirectly through the characters in the film. As they discover that it is safe to talk about anger, they progressively open to treatment with group leader guidance. Film segments can also be used to demonstrate the multifaceted aspects of an anger episode, which can be replayed and discussed to facilitate learning of self-monitoring. Moreover, film segments can demonstrate alternative ways of responding to provocation, providing visual-motor imagery for effective coping. As participants grow accustomed to viewing film segments as part of treatment, they become more amenable to having themselves filmed in doing role plays. That then can provide material for treatment staff to coach participants and to support their efforts at behavior change.

The Costs of the Status Quo

An objective look at today’s criminal and juvenile justice programs reveals the sad truth: If this were a boxing match, there would be an investigation, because it looks like we are trying to lose. In the United States, billions of dollars are spent annually on a punitive system that consistently fails to increase public safety. Given our policy of mass incarceration, generations of minority children are growing up without a father in their home. Money that could be spent on community development and the creation of jobs is being poured into the construction and operation of prisons. The tremendous cost of this strategy to our nation’s communities certainly is not offset by the few jobs that prisons create in small towns, regardless of how fiercely local residents protest against sensible downsizing.

Arguably, opportunistic politicians from all sides of the political kaleidoscope have helped to create this system of ineffective and counterproductive punishment. Mindless punishment makes people more likely to commit crimes, by eroding existing prosocial skills, increasing anger, and destroying ties to family and prosocial friends. We need to ask ourselves, “Making people worse—how is it working out so far?”

Can we afford the changes suggested in this book? All it takes to answer this question is to compare the dramatic increases in correctional budgets to
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those of higher education, or the average cost of a prison bed to a year of community college or university. Sociological research tells us that as high-risk teenagers develop into adults, they are likely to desist from crime, if they get a job or go to college (Elliott, 1994). Simply put, prison costs more than college, both literally and figuratively. Can we afford to make these changes? Yes. In fact, we cannot afford not to change.

It is hard to find a politician who does not claim to be “tough on crime,” but our justice systems are not tough on crime; they are merely tough on criminals. As a result, America’s approach to changing criminal behavior (with other developed nations close behind) has devolved into one simple and ineffective answer: mass imprisonment. Worse, the conditions of imprisonment fly in the face of social science, leaving offenders more angry, less skilled (except perhaps at crime), and less capable of a crime-free life when they leave prison than they were when they entered. In this book, we have proposed that the unabashed goal of justice systems should be to enhance the safety of the men, women, and children who live in our communities. We have argued for a more scientifically informed justice policy—one where offenders can be helped and expected to learn the skills they will need to succeed in avoiding crime upon release. We have long known the limitations of punishment as a behavioral change agent, as well as the immense power of targeted reinforcement of prosocial behavior.

We recognize that there are impediments to change that make for system inertia, but we are fortified in our optimism by existing prototypes that have produced both violence reduction and economic efficiencies (see McGuire, Chapter 12). We do not oppose the use of incarceration; to the contrary, in many cases, it is an obvious necessity. However, if we are going to spend enormous amounts of public funds on locking people up, this most costly intervention should be reserved for the most dangerous offenders, and we owe it to our communities to make sure that the prison experience is likely to make people better, not worse.

We have dedicated this book to our friend and colleague Don Andrews, who devoted his life to the optimistic notion that “nothing works” is an angry lie. Simply put, psychologists know a great deal about changing human behavior for the better, and it was Don’s dream, and ours, that these lessons might be put to use in America’s courts, jails, juvenile halls, and prisons. Mohatma Ghandi wrote, “An eye for an eye makes the whole world blind.” It is our hope that justice systems in America and throughout the world will turn away from a self-defeating and seductive investment in revenge and stop turning a blind eye to the lessons of psychology and social science about how to reduce violent behavior. It would be far better to embrace rational, evidence-based approaches to crime and punishment. As Nelson Mandela famously said, “It always seems impossible until it is done.”
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