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Donald Roth

Dordt University, donald.roth@dordt.edu

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Abstract

"Our criminal justice system is like the silt layer at the bottom of the ocean. If a problem isn't taken care of higher up in society, it will eventually find its way down to the criminal justice system."

Posting about the need for criminal law reform from *In All Things* - an online journal for critical reflection on faith, culture, art, and every ordinary-yet-graced square inch of God's creation.

<https://inallthings.org/our-criminal-justice-system-should-not-be-our-mental-health-system-but-it-is/>

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Comments

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in things

June 4, 2019

Our Criminal Justice System Should Not Be Our Mental Health System (But It Is)

Donald Roth

Our criminal justice system is like the silt layer at the bottom of the ocean. If a problem isn't taken care of higher up in society, it will eventually find its way down to the criminal justice system. In this way, broken families, substance abuse, neglect, poverty, a lack of self-regulation, and anger all find themselves worked out as unique vectors for the varied and seemingly insurmountable challenges facing the system. One of the most serious challenge vectors facing the criminal justice system today is mental health.

In 2017, around 11.2 million adults in America suffered from a serious mental illness (defined as a mental, behavioral, or emotional disorder that seriously impaired their ability to engage in major life activities). These serious episodes often require extended psychiatric treatment, and experts say we need about 50 beds per 100,000 people to meet those treatment needs. **On average, we have 17.** So where do these people go? For the 80,000 or so people receiving treatment at a psychiatric institution, **140,000 are on the streets** on any given night; however, this figure is dwarfed by the number of people in our prisons and jails who suffer from serious mental illness, which is **estimated to exceed 350,000.**

In other words, the dominant mental health system in America is our criminal justice system, and this absolutely should not be. At a functional level, our criminal justice system is not a health system, and the tools it possesses are not well-adapted to mental health care. As a result, the system is more prone to create than cure issues, and reform is desperately needed.

Our Criminal Justice System is Not a Health System

Health systems are, by nature, oriented toward providing services to meet the needs of certain populations. In other words, they prioritize the well-being of their patients. While the criminal justice system bears certain responsibilities for the care of inmates, the health and well-being of inmates is a second-order concern. Instead, the basic purpose of the criminal justice system is to maintain the civil order, specifically by preventing crime and disorder.

This means that the criminal justice system has some role in promoting the overall health of society, but, at the individual level, this health is usually expressed in the sense of the needs of the many outweighing the freedom of the few. In essence, a law enforcement officer is empowered to set a line for the outer limits of civil behavior and to arrest those who cross it. At this fundamental level, then, the criminal justice system is designed to wield the sword, not the stethoscope.¹

The Sword Is Poor Medicine

This orientation toward the sword creates fundamental problems in caring for mental health issues in a number of important ways, but the two most important involve the values of the judicial system and the application of force.

When I say the values of the criminal justice system present a problem for mental health care, I don't mean that this is a problem with the criminal justice system. The issue is that the system is calibrated to balance general security against individual rights. One way this plays out is that our system is adversarial, with defense pitted against prosecution. This means that procedural due process is more important than the welfare of the accused, and the concern of victims can be left out altogether. Further, the system presumes innocence until guilt is proven, meaning that it can be extremely difficult to remove someone's freedom (say, by involuntary commitment to a psychiatric facility), even if it is in that person's best interest. In general, persons suffering from severe mental illness are typically only confined if it can be shown that they are a danger to themselves or others, and this is so difficult to prove that many states practically just don't do civil commitment. At the same time, the orientation toward liberty means that any mandated confinement must take the least restrictive form possible, not necessarily the form most beneficial for that person's health.

The other major mismatch between the tools of the criminal justice system and the needs of a mental health system is that people having serious mental health issues are less likely to comply with officer instructions and more likely to act unpredictably, especially by resisting officers. Both of these factors make it more likely that people with

mental illnesses will be subjected to the use of force by police. Further, a large number of people with mental illnesses self-medicate with illegal drugs, putting these people on a continual cycle of incarceration. The court system is turning a more critical eye to the use of “hard tactics” like tasers, gas, or batons on those who are clearly mentally ill, but there remains a significant risk that these encounters will escalate, and this creates apprehension for everyone involved.

The System Creates More Illness than It Cures

At the end of the day, because of the factors mentioned above, the criminal justice system is far more apt to hurt than help. An arrest often leads to a loss of employment, and this often cuts people off from their insurance, reducing the likelihood that they can even afford care. Further, the restrictions of incarceration can mean disruption to existing treatment. Again, the system is obligated to provide for inmates, but it is not primarily concerned with (or equipped to care for) the inmate’s health when they’re back on the outside. This creates a trap where some people lose whatever safety net they had because they entered the criminal justice system, and, conversely, incarceration can become one of the few times where inmates are receiving treatment, leaving some people trapped in a street-to-cell cycle that helps no one.

Beyond these issues, the criminal justice system is almost inherently traumatic. Because of security concerns, anyone who is arrested will have their privacy deeply invaded, and anyone who resists will find themselves stripped or shackled against their will. Further, the stresses and dysfunctions of incarceration can bring on or aggravate mental health issues.² Even law enforcement officers themselves don’t escape, as the rates of suicide, PTSD, anxiety, and depression are all higher among law enforcement than they are in the general population.

Needed Reform

Perhaps all this makes the solution deceptively clear—while we face a mental health crisis in the United States, the solution is *not* to change the criminal justice system. Rather, the solution that we need involves keeping the mentally ill (who have not committed crimes) *out* of the criminal justice system. Further, where treatment would likely correct behavior, alternatives to criminal sanctions may also be warranted.

A number of states are doing just this, developing policing policies that deflect certain people toward social services instead of arresting them, diverting people before trial into appropriate care, and even establishing special drug or mental health courts (known as “problem-solving courts”) that function on different standards than the traditional criminal justice system. However, these efforts are often minimally funded,

and best practices are still being explored, meaning that impacts at this point are moderate at best.

Ultimately, we need to work to fix the problem upstream. We need more psychiatric beds. We need to invest in training, research, and support for mental health issues at a community level, and we need to strengthen systems that screen and (appropriately) divert people from the criminal justice system as early as possible, ideally before arrest. If we can't improve our mental health system, it will continue to be handled by our criminal justice system, and everyone will suffer as a result.

FOOTNOTES

1. Romans 13: 1-4
2. According to the Bureau of Justice Statistics, nearly two-thirds of those held in our country's jails (and 56% of state prisoners) suffer from mental health issues at some level.