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Oregon Then

Commit a crime, and the earth is made of glass.
Ralf Waldo Emerson (1803-1939)
The Dance of Life, ch. 7 (1923).

When Oregon enacted its Constitution in 1859 it enshrined in its articles the belief that “[l]aws for the punishment of crime shall be founded upon principles of reformation, and not of vindictive justice.”¹ In 1963, the Oregon Supreme Court explained what this constitutional provision meant, stating:

Reformation means doing over to bring about a better result, correction, or rectification. Vindictive, on the other hand, is defined by words such as ‘revenge,’ ‘retaliate,’ or ‘punishment.’ The best known law applying vindictive justice is *lex talionis*: ‘An eye for an eye, and a tooth for a tooth.’ Matthew 5:38.²

Rehabilitation, in the prison context, is the practice of improving a criminal offenders outlook on life and personal character in order to function in the community without committing more crimes. That means a system that believes in reformation has to have policies and practices that recognize even those that commit the worse crimes are capable of change. Rejecting all offenders as incorrigible and beyond change is dehumanizing and ignores the reality that crime is based on more than poor moral character and deviant behavior. Crime is a sign and symptom of the condition of society as a whole rather than solely the problem of the offender.

By 1970, seventy-three percent of Americans still held that belief. That began to change, however, in the 1980’s when American entered the so-called “tough-on-crime” era of vindictive criminal justice practices. States began adopting “truth-in-sentencing” laws mandating prisoners

¹ Article I, §15, Oregon Constitution (1859).

² *Tuel v. Gladden*, 234 Or 1, 5, 379 P2d 553, 555 (1963)(in Banc).

serve up to 85% of their sentence regardless of demonstrated rehabilitation.

By the time I entered prison in the 1990's retribution policies had begun to dominate the criminal justice system. In 1994, Congress enacted the "Bill Clinton Crime Bill" which would, in part, award "incentive grants" to states that built or expanded prisons and required prisoners to serve at least 85% of their sentence.³ Rehabilitation would now take back seat for states that could win grants and monetize tough-on-crime policies. Criminal laws became part of the capitalist system of profit over rehabilitation, which could be guised into easily sold "tough-on-crime" packages to the public.

By 1995, months before I was sentenced to life in prison for a crime I committed at 19, only 26% of Americans believed rehabilitation was the purpose of prison.⁴ Just two months after the enactment of the Bill Clinton Crime Bill Oregon decided to cash in on the "incentive grants" and enacted "Measure 11", permitting first time offenders as young as 15 to serve mandatory minimums of 70 months to life in prison and not being eligible for good time for rehabilitation.⁵ For 136 years Oregon had recognized rehabilitation as the purpose of prison and then began its creep toward a state built on vindictive justice in the 1990's.

In 1996, capitalizing on the state of political moral decline politicians moved Oregon voters to amend Article I, §15, of the Oregon Constitution to eliminate the prohibition against vindictive justice, to embrace the coming era of retributive justice. The new amended version would now read "[l]aws for the punishment of crime shall be founded upon principles: protection of society, personal responsibility, accountability, for one's actions and reformation."⁶ While sounding good on the surface the policies and laws of harsh mandatory minimums and retributive justice would grow for the next 20 years as the prison systems population exploded under the guise of "personal responsibility" and "accountability".

At 19 years old I was walking into a changing face of the justice system. At the same time Oregon was embracing a newer harsher justice it was also embracing the new craze of long-term solitary confinement.

³ 42 USC §§ 13703 and 13704; See generally 42 U.S.C. §§ 13701-13712.

⁴ Hallinan, Joseph T. *Going Up the River, Travels in a Prison Nation* (2003) at p. xiv (citing Louis Harris & Associates, study no. 2043: Survey Research Program, College of Criminal Justice, Sam Houston University).

⁵ ORS 137.700.

⁶ Article I, §15, Oregon Constitution (1996).