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### Non-Existent Over-Punishment in the Arizona Justice System

Democracy is based upon the ideals of social equality and justice. Justice requires a system to be fair and reasonable for the benefit of all. The justice system in America exists to hold people accountable for their actions, including punishment when necessary. The accused persons are provided fair trials to determine guilt. If a person is found guilty, he or she will be sentenced based upon the severity of the crime. Often, the ruling is a term in prison. Prisons, and the judicial system in general, have been coming under fire recently because prisons are being filled to over-capacity due to perceived over-punishment. Despite exaggeration by the media insisting otherwise, American prisons are not being overcrowded by the over-punishment of petty criminals by a too-harsh justice system.

Overcrowding is used to describe a space filled to over its capacity. In his book, “Overcrowding” about prison conditions, Victor Hassine says, “the term ‘prison overcrowding’ is an overused term describing a collection of conditions that disrupt prisons all over the United States” (30). The loose definition of “prison overcrowding” has led to a large amount of confusion regarding the topic. Because the overcrowding “disrupts prisons,” it is a condition that prison officials should attempt to avoid because the disruption is not conducive to a healthy environment for the inmates within the prisons. Additionally, “in many correctional facilities, prisoners are double bunked in cells meant for one person. In some prisons, inmates sleep in cold prison gyms or on the floors of basements, halls, and dayrooms. Some prisons use tents or force

prisoners to sleep in the same bunks at different times of the day” (Hassine 31). If such overcrowding exists, with prisoners literally on top of each other and no room even to sleep, then it is a problem that requires correction. However, the “overcrowding” as it is described by Hassine, is not due to the over-punishment of petty criminals. Understanding the general definition of overcrowding is necessary to analyze the American prison system in order to establish that petty criminals do not overcrowd prisons. To maintain a consistent perception of certain criminals, the term “petty” must be clearly defined.

According to Webster’s New World Dictionary, the word “petty” is defined as “relatively worthless or unimportant; trivial; insignificant” (“Petty.”). Because it is “unimportant” or “insignificant,” a person who is called “petty” must have exhibited actions that can be deemed “unimportant” or “insignificant.” The truth of these terms reveals that for something to be “petty,” it does not affect much, because it is “insignificant.” Insignificance implies that there is no consequence to the action and therefore there should be little to no consequence placed upon the person who executed the action. This applies to criminals who are deemed “petty.” Based on the definition of the word itself, a “petty” criminal should not face harsh punishment for the “petty” crime he or she committed. With a uniform definition for the word “petty” established, the argument can be better understood within the context of perceived over-punishment of these “petty” criminals.

There is a media perception that the judicial system is over-punishing criminals, which would in turn contribute to the congestion of prisons. In a Reader’s Digest article titled “Petty Crime, Outrageous Punishment,” the author writes of a man who was being punished for breaking the law. First, the author describes the laws put in place that he believes to be excessive. He says, “Throughout the 1990s, state legislatures and Congress kept upping the ante, passing

new mandatory minimums, including ‘three strikes and you’re out’ laws” (Cannon). The author believes that the “three strikes and you’re out laws” are too harsh and that the “mandatory minimums” make it so that criminals must serve longer terms than would previously be required. He then goes on to explain the effects of this harshness that apparently “upped the ante.” As a writer in a major editorial, he is a component of the media. Because of his beliefs that the laws are too harsh and are unfair, he is displaying his perception of the judicial system as over-punishing. His word choice indicates his true opinion on the matter and is therefore contributing to the media misconception of over-punishment. He writes “Andrade will languish in prison, then, serving a much longer sentence for his non-violent crimes than most first offenders, or even second-timers convicted of sexual assault or manslaughter” (Cannon). “Petty Crime, Outrageous Punishment” describes Andrade as a “non-violent” criminal who will “languish” in prison while others with more harsh crimes will be out of prison before he will. Using understated and sorrowful terms like “non-violent” and “languish” make it seem as though Andrade is just an innocent person who made one mistake and does not deserve to be punished so harshly. However, the truth would reveal that he is a criminal with a record of theft. This fact is downplayed by the same source: “Leandro Andrade, a 37-year-old Army veteran with three kids and a drug habit, walked into a Kmart store in Ontario, California, stuffed five videos into his waistband and tried to leave without paying” (Cannon). The author conceals Andrade’s “drug habit” by tacking it on to the statement describing the military service and family life. The seemingly insignificant attempted theft of five videos from a Kmart store, however, is not the end of Andrade’s crimes that put him in prison. Instead, “two weeks later, Andrade went to another Kmart and tried to steal four more videos” (Cannon). Additionally, “he’d committed a petty theft in 1990” (Cannon). Andrade was not a first time offender. He repeatedly made the

same unfortunate decisions and was subsequently punished for them, while the media contends that Andrade will “languish” in prison: a perceived example of over-punishment for his “non-violent” offenses. However, Andrade recurrently committed the same crimes. As a repeat offender, it would not be surprising for him to face a prison sentence, something that Cannon, the writer of this article, would deem unnecessary because of his own opinions about “over-punishment”.

Another instance of media perception of that the justice system is over-punishing “petty” offenders was torn apart by the Maricopa County Attorney. Candita Gottsponer was described as a woman convicted of a DUI who was unfairly and harshly punished for a minor crime. The Maricopa County Attorney, Bill Montgomery, does not agree with the description. He says, “The problems in this article begin with the characterization of Candita Gottsponer, the convicted felon featured in the opening of the report” (Montgomery). The media “characterized” Gottsponer such that there were “problems” with the truth of her character. In actuality, she was not as innocent as the article portrayed, a detail that Bill Montgomery elucidates. She is a repeat offender with a history of drug-related offenses. Bill Montgomery explains, “a simple internet search... would have revealed that Gottsponer had eight criminal cases, five of which involved felony offenses, including misconduct involving a weapon, possession and use of a dangerous drug, credit card theft, involving a minor in a drug offense and failure to appear” (Montgomery). The article, “A push from the right: More conservatives joining fight to change sentencing guidelines,” in which Montgomery identifies the characterization problems, failed to mention any of the other offenses in an attempt to portray the justice system as over-punishing and cruel. This false characterization by the media implies that the system is handing down exaggerated sentences that are wholly unfair.

Furthermore, the article uses no facts to back up these assessments. Montgomery explains, “The article goes on to suggest, with no objective supporting data, that Arizona has eliminated alternatives to incarceration such as fines and substance abuse treatment in favor of lengthy prison sentences” (Montgomery). The article published, “Setting the Record Straight on Sentencing,” made claims without any “supporting data,” making them unreliable and partial. It claims that “Arizona has eliminated alternatives to incarceration” which suggests that the state is instead opting to punish offenders who otherwise should not be sent to prison, which leads to overcrowding of prisons. However, because there is “no objective supporting data,” these claims are completely unsubstantiated and cannot be taken as the truth. This distinctly reveals that the media’s perception of over-punishment is false because there is “no objective supporting data.” Without any substantiated information, it is erroneous and unfair to argue that over-punishment exists. Similarly, if there is no over-punishment, then the justice system itself cannot be accurately described as harsh or cruel.

The harshness of the justice system that is portrayed by the media does not truly exist. Many states provide avenues to fix the criminal behavior instead of solely disciplining for the sake of cruelty. For example, “California, in particular, has seen a stark drop in crime since passing its toughest-in-the-nation three-strikes law more than ten years ago” (Cannon). California’s three-strikes-law is the “toughest in the nation.” Because it is a “three strikes law,” offenders have two chances to correct the behavior before being sent to prison. Because of those two chances to change, the law that is considered the “toughest in the nation” is actually quite tolerant with its opportunity to fix unacceptable conduct. If California’s law truly is the “toughest in the nation,” as Cannon insists, then logically, there is no other state with harsher laws regarding punishment. The “three-strikes law” in California provides the offender the

opportunity to change his or her behavior before laying down sentences that are more oppressive. In addition, many other sentences offer less severe alternatives.

Furthermore, “the overwhelming majority of first-time felony drug possession cases result in probation” (Montgomery). If the “overwhelming majority” of drug possession cases that are classified as felonies result in probation, then the punishments are not too severe. These “first time” offenders have the chance to change their behaviors in the future. Probation allows the offender to change the behavior and is not too harsh. Probation allows the offender to live within society as long as the criminal behavior does not continue. Once the probation period ends, the offender is free, without ever serving time in prison, as long as the offender maintains the terms of probation. This demonstrates that the justice system is not overly harsh. Additionally, Bill Montgomery, the Maricopa County Attorney, says, “The indisputable fact is that a first time drug user has to work pretty hard to get into prison in Arizona” (Montgomery). A first time drug user, who could otherwise be described as a petty criminal, would have to “work pretty hard” to get into prison. If this is truly the case, as the Maricopa County Attorney insists, then there is no possibility that the justice system can be regarded as strict because most of these petty criminals are not even being sent to prison. Therefore, petty criminals cannot be considered over-punished.

Offenders with minor crimes are not being targeted and over-punished. In fact, “Exactly the opposite is true. In 2010 alone, more than 4,400 felons in Maricopa County have been offered diversion programs instead of prison, while defendants in some 6,200 drug cases were sent to substance abuse programs, not prison” (Montgomery). Over 10,000 felons and defendants with drug cases, who could be described as petty criminals, have been offered diversion programs or substance abuse programs instead of prison. These figures are in just one year in one county. This is not over-punishment. Instead, it is, as Montgomery claims, “the opposite.” These

felons could have easily been sent to prison for their crimes, but instead, they are offered various programs to avoid prison.

Moreover, there are even laws to prohibit over-punishment, such as Proposition 200: “Under Proposition 200, with very limited exceptions, first and second-time drug possessors must be placed on probation and offered the opportunity of drug treatment” (Montgomery). The proposition “with limited exceptions” is in place to strictly bar the overuse of punishment on “first and second-time” offenders. Prison is not even an option under this law because the offenders “must be placed on probation.” Because he or she “must” be offered probation, there is no latitude permitted by the justice system. The option is taken away so there is really no choice, save for “limited exceptions,” but to let the offenders off easily. The justice system is not punishing these criminals harshly, and instead, they are providing for the behavior to change by giving the offenders the “opportunity of drug treatment.” This allows them to change their behavior so they may avoid prison sentences and additional criminal activity in the future.

Statistical analysis also indicates that prisons are not overcrowded with petty criminals. The analysis of Arizona prisons found that “The vast majority of inmates, 38,088 or 94.2% of the total population are either repeat felony offenders or have a history of felony violence” (Fischer 2). The “94.2% of the total population” that are “either repeat felony offenders or have a history of felony violence” prove that the large majority of inmates are either repeat or violent offenders. There is no way, then, that petty criminals are leading to the overcrowding of prisoners. With over 90% of prisoners in Arizona being violent or repeat offenders, it is impossible for the petty criminals to be contributing to the overcrowding of prisons. Because “94.2% of the total population” are repeat offenders, that only leaves 5.8% of the population to be a first time offender. 5.8% is a marginal value of the general prison population so to say that prisons are

overcrowded because of these 5.8% of “petty” and “non-violent” offenders is an outrageous exaggeration. Moreover, despite the large number of people going into prisons each year, far more are exiting the system. Montgomery says, “Yes, many people are going to prison – but more are actually coming out. In fact, over the past 11 months, there’s actually been a net outflow of inmates” (Montgomery). A “net outflow” means that more prisoners are leaving prison than are coming into it. Therefore, there cannot be an overcrowding of prisons caused by petty criminals because most of the 5.8% are leaving prisons, as evidenced by the “net outflow.” Petty criminals are not the ones who are overcrowding prisons, despite what the media says, as seen through the statistical analysis of Arizona’s prisons.

Additionally, there are programs in place to reduce inmate population, which would solve any potential overcrowding problems and ensure that petty criminals stay away from doing hard time in prisons. In a publication titled “Smart Reform is Possible,” the author suggests using different methods to reduce prison population. “States should implement non-prison alternatives for technical parole and probation violations” (13). This suggestion would keep very low-risk offenders, or “petty” criminals out of prison by reducing the severity of the punishment. Reforms such as those suggested have already been implemented in many states. One of these programs is parole, which is “the release of prisoners before their sentence has been completed based on good behavior. After release, parolees are monitored to ensure that they function lawfully within society” (Aliprandini). Letting the prisoners out early, “before their sentence has been completed” clears up more space and reduces the amount of overcrowding there might be within prisons because any act that includes “the release of prisoners” must clear out space because the inmate is leaving the institution. It also provides incentives for the inmates to behave well, as parole is determined by “good behavior.” By allowing “the release of prisoners” who have “good



behavior,” there is a relatively simple solution to both overcrowding and any possible conduct issues. The parole program rewards those inmates who choose to behave well by releasing them, and in turn, clears up more space in prisons, which reduces the possibility of overcrowding.

Aside from keeping violent criminals locked up, states have no real incentive to keep prisoners in prison. In fact, the price of keeping inmates is actually driving states to find new solutions: “With the cost of housing prisoners projected to reach \$40 billion by 2011, alternatives to incarceration for nonviolent crimes are being proposed” (Katel). \$40 billion to keep criminals locked up is such a large amount of money that “alternatives to incarceration...are being proposed.” With “alternatives to incarceration,” prisoners who are of little risk to society can be kept out of prison or released if they are already locked up. The release is beneficial not only for the inmates, but also for tax paying citizens of the states. It is beneficial because release “provides them the chance to return to a normal life and reintegrate into society while also reducing financial burden on state and federal tax-based programs and alleviating crowded prisons” (Aliprandini). The prisoners are able to “reintegrate into society” while also relieving the financial burdens. The programs “alleviate crowded prisons,” which is beneficial for almost everyone—prisoners and taxpayers. According to the Fiscal-Year 2009 State Expenditure Report, “state funds accounted for 95 percent of total state corrections spending in fiscal 2009” (54). The “state funds” that are spent on “state corrections” come directly from taxpayers, as they are the main sources for revenue to supply the “state funds.” In order to reduce costs further, there are additional programs in place to reduce prison populations.

One program introduced to curb inmate population is the Special Curfew Parole, “which allowed a greater number of prisoners to be paroled but monitored them more closely as they reentered society. Another was the Reparative Work Project, which allowed prisoners to be

eligible for parole sooner if they completed a certain number of volunteer work hours”

(Aliprandini). These various programs are already in effect, meaning that the overcrowding of prisons is already being reduced because of programs such as parole and probation. Reducing the overcrowding of prisons via alternative methods, namely the Reparative Work Project, parole, and probation, is further ensuring that petty criminals are not overcrowding prisons.

Through the analysis of statistics regarding inmate populations and the existence of programs designed to reduce the inmate population, petty criminals are not overcrowding prisons because of an overly harsh and unfair justice system. The justice system was designed in a way that is meant to keep order for the public in the fairest way possible. The accused are given chances and opportunities to plea their cases but ultimately, accountability is required. It is because of justice and social equality that democracy survives in America.

## Works Cited

Aliprandini, Michael, and Laura Finley. "The Parole System: An Overview." *Points of View*.

2011. EBSCO. Web. 11 September 2011.

Cannon, Carl M. "Petty Crime, Outrageous Punishment." *Reader's Digest* 167. 1002 (2005):

152. EBSCO. Web. 11 September 2011.

"Fiscal Year 2009 State Expenditure Report." *National Association of State Budget Officers*

2010. Print.

Fischer, Daryl R. "Prisoners in Arizona: A Profile of the Inmate Population." *Arizona*

*Prosecuting Attorneys' Advisory Council* 2010. Print.

Hassine, Victor. "Chapter 2: Overcrowding: Too Many Prisoners in One Place." *Prison*

*Conditions: Overcrowding, Disease, Violence & Abuse* (2007): 28-43. EBSCO. Web. 11

September 2011.

Katel, Peter. "Prison Reform." *CQ Researcher* 17.13 (2007): 291. EBSCO. Web. 11 September

2011.

Montgomery, Bill. "Setting the Record Straight on Sentencing." Editorial. *Arizona Capitol Times*

11 July 2011. Web. 11 September 2011.

"Petty." *Webster's New World Dictionary*. 3<sup>rd</sup> ed. 1991. Print.

"Smart Reform is Possible: States Reducing Incarceration Rates and Costs While Protecting

Communities." *American Civil Liberties Union* 2010. Print.