

Social Justice vs. Criminal Justice: The Need For Balance

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One of the most critical aspects of managing any form of state or local government is one's ability to efficiently and effectively both protect its citizens and care for those in need. For purposes of this article, we will identify these two separate responsibilities as "criminal justice" (protection) and "social justice" (caring). When looked at individually, each of these responsibilities lack ambiguity. However, when woven together, these two elements can become quite disruptive by leading to incredible inefficiencies and ideological impasses that have the potential to break down the system completely. I believe that this troublesome combining of social justice and criminal justice has significantly contributed to the ongoing "jail overcrowding" debate. It is this specific topic of jail overcrowding and pretrial release that I would like to further discuss in this op-ed and show how the solution could be simpler than we think.

Going back centuries to feudal England, the bail bond industry was brought to this country by our founding fathers and has long been a vital component of the criminal justice system in the United States. The concept of people promising property or other monetary assets to financially secure the release of an individual from jail while awaiting trial did not only work centuries ago, but also continues to work just as effectively today. With over 2 million bail bonds posted in the system each and every year, the commercial bail industry has prided itself on a proven track record of not only getting defendants to court but also indirectly lowering recidivism rates of those individuals who are out awaiting trial. In other words, the commercial bail industry not only guarantees that our criminal justice system gets a chance to work as efficiently and effectively as possible.... in that process, they also ensure that the concept of "accountability" is maintained and that the public is protected.

Back in the 1960's our elected officials were pushed to focus more time and resources on the other side of the system...the social justice side. Efforts were made to reform the criminal justice system to include more social justice (caring) components. In order to achieve this goal, Pretrial Services Agencies were created with the use of taxpayer dollars to facilitate and administer these "social justice" types of services/programs. In the context of the criminal justice system, these services were promoted as being necessary to help the indigent (those that have no means or social ties) get out of jail pretrial, help those with drug and alcohol dependency issues get out of jail and into special programs, as well as those who required professional mental health counseling. Initially, these programs did a great job of caring for those that had these special needs. In fact, because so many within the system needed the services of these social justice programs, more and more were released through these Pretrial Services Agencies.

Like any governmental function, the programs, perhaps predictably, grew. This growth saw those released going far beyond the "special needs" prospect and the agencies today lobby the courts to allow even persons with no special

needs to be so released. This approach however relegates to relative unimportance that most necessary element: getting persons to court. Research study after research study has shown that when someone is released with a financially secured commercial bail bond they will show up for court way more often (28% more often) than someone released through a Pretrial Services Agency. In other words, the system was gradually losing its hold on accountability. As you can imagine, in the world of pretrial release, appearance rate is everything, so much so that it becomes the ultimate variable that can determine the success or failure of the system overall. For example, if no one shows up for court, then no one is being held accountable and justice can't be served.

Today, many pretrial service agencies are still in existence (about 300 counties out of 3000 counties in the US have them). The difference however, is that today, these pretrial service programs have a different agenda...a different social purpose. Their goal is to not only help those that need help or don't have help, but rather to become the "monitor" for everyone released pending trial. In other words, to eliminate the workable alternative: secured release. They appear to be on a mission to expand their social justice programs deeper into the criminal justice system and blur the lines between these two critical components of the justice equation. The problem with this approach and this overdose of social justice into the process is that it unbalances the two sides of the equation and unfortunately removes the most vital component of our criminal justice system...accountability. If people have no sense of accountability then the system ultimately fails. Criminal justice is all about accountability and making sure that those charged with a crime have their day in court and if found guilty are held accountable for their actions. Remove that accountability and there will be no justice in the system, especially for those it was designed to serve. Coincidentally, their growth policy violates the age old proposition: Be fair to the accused by not making the release conditions harsher than they need to be, but make them sufficiently strong enough to ensure appearance as directed.

The commercial bail industry tirelessly commits itself to ensuring that the criminal justice system continues to work as effectively as possible. By financially guaranteeing that a defendant will show up for court, the commercial bail industry guarantees the personal accountability of the accused. At the same time, the industry is not blind to the need for social justice programs. In fact, it has been extremely vocal in support of the role of Pretrial Services Agencies on behalf of the indigent and those needing help...the people the programs were initially designed for.

Applying this principle (the difference between social and criminal justice) to the challenge of jail overcrowding can be extremely revealing. If our goal is to release individuals both pretrial and post-conviction into the public and to supervise their behavior, should we turn to a method of release that was designed to help those that couldn't help themselves (social justice), or should we turn to a solution that was designed to ensure accountability and guarantee performance (criminal justice)? Looking at it through this lens, it is easy to see that jail overcrowding isn't a social justice issue, but rather a criminal justice issue that requires a criminal justice solution.

Even beyond jail overcrowding and looking at a broader view of the system, the same question must be addressed: Where is the balance between the need for social justice and the need for criminal justice, and who is best positioned to service the needs of each of those requirements? We believe the solutions lies with both. Let the commercial bail industry focus on those defendants who need to be held accountable and brought through the system as effectively and efficiently as possible, while Pretrial Services Agencies focus on helping the truly indigent and those who can't help themselves. This way all stakeholders win.