

MAKING AMENDS

Episode Seven: It Does Let Us Off the Hook

Herbert: So what does it mean in that sense to hold someone accountable, from a retributionist point of view?

Cameron: To cause them pain.

We're talking about the purpose of punishment in class one morning.

Herbert: And how do you justify causing them pain?

Cameron: Because they caused somebody else pain. The way I like to think of it, is if your goal is to punish someone, then, yes, retribution is the way to go. If your goal is to cause harm for someone who caused harm, then yes. But if your goal is to create whole communities, healthy societies, to correct people, then retribution is not the way to go. But if your singular goal is to cause harm to somebody who caused harm then, yes, retribution makes sense.

Herbert: But retribution is very common

Anthony: It's very common.

Herbert: It's centuries old.

Anthony: And it hasn't worked. I mean, even on a fundamental level, you look at the street culture. The street culture is defined by retribution, and nothing's changed. Like for however long - whether it's in American street culture, whether it's another country's street culture, if I do something to him, kill him, his people naturally from that culture want to come back and kill me or kill somebody associated with me. And all this does is create a continuous cycle. It's never changed anything. So what is the point?

So what is the point of punishment? What purpose do we serve by sending someone to prison? One common answer is this: to get retribution for criminal wrongs. As Cameron and Anthony just explained, retribution is a means by which the scales of justice are arguably re-balanced after a crime. If I take advantage of another person by, say, robbing them, then society arguably has a right to take something from me in response, like forcing me to go to prison.

But even if you think retribution justifies punishment, you still have to ask how much punishment is enough. And there's no better society to ask that question about than the United States, which incarcerates more people than any society in history. Beginning in the 1980's, our prison systems expanded exponentially, so that now, more than two million Americans sit behind bars.

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As we've seen in this series, some people use their time inside to re-evaluate themselves, to assess the damage they've done, and to work toward becoming better people. In short, they are trying to make amends. But if we want as many wrongdoers as possible to make amends in this way, how likely is that in our current system of punishment? Is our love affair with lengthy incarceration really the best means to heal the wounds caused by crime?

This is Making Amends. I'm Steve Herbert. I used a rare degree of access to the Oregon State Penitentiary to get to know Cameron, Anthony and many of their peers. In this series, we are exploring how many prisoners reckon with the past and how they search for a way to atone.

In this episode, we want to consider how the rise of mass incarceration impacts life on the inside, and to begin to assess just what we get for our investment in prisons. If greater justice is our goal, is stuffing as many people as possible into prison cells the best means to accomplish that?

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Herbert: What's the best argument you can make for your own punishment?

Cameron: For me being in prison?

Herbert: Yeah.

This is Cameron.

Cameron: So I was 19 years old, addicted to heroin, and sticking pistols in people's faces. You cannot have that in society. I had to be removed, right? There was no way you could just, "Aww he's just a kid let him, you know." I absolutely needed to be removed from society. But now you have to ask the question: What do you do with me when I'm removed from society? Do you punish me and warehouse me and hope that, you know, I change? Or do you try to facilitate rehabilitation and transformation? And that's where I think the different correctional models come into place. You know, I've seen so many of my peers warehoused and punished and they come out not only not changed but worse, you know. They didn't transform into a better person, they transformed into a worse person. And you know, even guys come in drug addicted, they leave with new addictions and more violent. They came in, you know, a skinny, scared drug addict and came out a giant, not-scared-of-anything drug addict, you know.

Herbert: So retribution leads to warehousing?

Cameron: Yes, absolutely.

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Herbert: I see. And you're suggesting that in a warehouse system most people are gonna get worse or certainly not gonna change for the better.

Cameron: Yeah. There's a spectrum, there's a bell curve of people. And on the far end, there's people who are gonna change no matter what--I think I'm in that group--and on the other end, there's the lifelong criminals that you can give them every opportunity, every chance, and they will just continue in criminality. But then there's the vast majority of people who are capable of change, but it has to be facilitated. They need to be encouraged along the way. But it's the vast majority of people that get lost in the warehousing system that, you know, they have hope for redemption, but it's lost when they're sitting in a cell watching TV for, you know, 14 hours a day.

Herbert: Hope, you mean, they have the possibility, or they have the internal desire for redemption?

Cameron: I think both. I think everyone has the internal desire for redemption but to go down that path is painful. And if you're walking it alone you may not take it. But if it can be facilitated and you can be encouraged along the way, then it's much more likely to take place.

*One key question we can ask about our prison system is what **can** make personal change more likely to take place. As we've seen, that change requires that an individual take ownership of their past mistakes. That's the first step on the journey toward making amends.*

Ideally, that assumption of responsibility would happen as early in the justice process as possible. But when you're being charged by the state for a crime, and you are staring at a potentially very long sentence, you might think twice about owning up to your guilt.

Moustafa: In my personal experience, I was entertaining the fact that, alright, take accountability from the start, admitting my faults, and said, "Okay, I did do such and such and such." And then from the very beginning, it was brought to my attention that if I do that, I'm looking at the prospect of life in prison. So to hell with the truth. I'm just going to not be truthful, so to speak. It's like the system forced my hand not to take accountability for my actions, because the consequences are so severe. So, from day one, you're encouraged to plead not guilty and you come believe that you're not guilty, and you just play the game like that. Let them prove that you're guilty.

Our criminal justice process is adversarial. A criminal charge is defined as the state versus the alleged offender. So, if you're the defendant, you are opposed by the state and all of its resources.

Moustafa: You are encouraged to deny guilt and for many people over the duration, if you're sitting in the county jail fighting your case, you come to believe that you're actually not guilty, you know. And it's up to them to prove it. At the time that my incident happened, I was only in the States for 14 months, very unfamiliar with the criminal justice system, very unfamiliar with a lot of aspects government-wise. And when I received my

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indictment, it was Mahmoud Moustafa vs. the State of Oregon. I was like, I'm doomed. What would I possibly have to fight the state of Oregon?

Fighting the state is likely a very daunting prospect, but that's especially true when you are facing a sentence of considerable length. And long sentences are now common in the United States.

Katherine Beckett: I think that just norms began to shift, where it began to feel like prison and jail were the right answer to a lot of complicated social problems.

This is Katherine Beckett, my colleague at the University of Washington, Seattle.

Beckett: So, more people started being sentenced to some form of confinement, whereas before they might've gotten probation or community service or a fine. But then the big shifts really started in the 1980's, with sentencing reform, and the overall drift was to increase the penalties that are imposed on people convicted of crimes. And this was for all types of offenses, so not just drug offenses, but also property and especially violent crimes.

Herbert: So what kind of shifts, more specifically are you referencing there?

Beckett: They take many forms, but I think the most common were things like three-strikes and other mandatory minimum sentencing laws. But then also just a gradual ratcheting up of what seemed like the right number of years for burglary or for assault.

Our increased incarceration came from shifts in sentencing policy. Legislatures across the United States changed their laws to ensure that convicted criminals went to prison, and that they stayed there for a long time. These new laws lessened the power judges used to have to determine someone's sentence. The sentence has now been pretty much pre-determined. So, if you confess quickly to a crime, you can be staring at a lot of prison time. For this reason, you might think twice about offering up the truth right away.

Terrence: I was always taught, tell the truth, you know what I mean, and we'll get through whatever consequences, yada, yada, yada. So that was always in my mind. So when I hit the county and I'm going through my trial and dealing with my attorneys and everything else, I quickly found out that the truth isn't respected. No one cares about the truth. The DA just has this theory of what happens, they want to paint their picture. My attorney has his theory of what happened, he wants to paint his picture. And I'm stuck in the middle. Like, well, dad told me to be honest, but I see that stuff doesn't really matter. And so I'm going to ride with my attorney and what not. And that process, like, made me develop my own story of what took place. And I embraced that, and my thought was, well, if he was selling drugs or what not, you either get killed or you go to prison. That's it, that easy.

Anthony: I think that's a key point, because taking responsibility while you're going through that, you're actually punished for it as a consequence. So if I'm willing to stand up, even if I had the capacity back then to stand up and be like, you know, this is what I did, it was wrong, I get punished for that, because the state turns around and says, "We got you."

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Theron: Even if you feel this guilt, this – I wanna empathize with this victim -- I can't tell the truth. The very system, the way the structure is, prevents us even when we want to because the legal process tells us. You can't do it

Terrence: Once you enter the system and you're being prosecuted and everything else, you keep certain information to yourself and let the courts and DA figure it out. Because if you just open your mouth and tell them exactly what happened, then you're pretty much telling on yourself. But, at the same time, you still have to deal with that truth inside, if that makes sense.

Jonathan: Telling the truth is a leap of faith. Like when I first got arrested, the attorney tells you to say not guilty. And in the back of my mind I'm like, "I'm definitely guilty, why would I say I'm not guilty? I'm lying, you know." But that's just how this system works. That's the first thing you're told to say, not guilty.

Herbert: So, for others of you, was it scary to tell the truth?

Theron: It's definitely terrifying to tell the truth. It's terrifying in this context of the system, because the consequences are in some cases grave. So how do you tell the truth when you're going up against a system that you believe is not going to honor that truth? Because to tell the truth is to box you into a legal situation that you're actually trying to get out of. It shouldn't matter. Internally, if you're being honest with yourself, that acceptance of that truth is what should carry you through. Right? The outcome shouldn't really matter, because if you're trying to be honest with yourself and be at peace with yourself, then that's what carrying you through, I guess. Because if you're sincere about it, then you wouldn't care about the outcomes, you wouldn't care about the time, because the purpose is to be internally true with yourself.

For Terrence, his inability to be truthful in the criminal process delayed his taking accountability for his wrongs. That did not occur until later. You'll recall that Terrence rationalized his crime as the natural consequence of his victim choosing to sell drugs.

Terrence So I embraced that thought, and I carried that thought throughout the whole trial, and when I got here, I was still embracing it and everything else. And it wasn't until I ran across a few older dudes and a few counsellors and we got to talking a little bit, and that's the story that I would explain -- well if you're in this lifestyle, that's what happens, period. There's nothing to say about it. And everyone I explained that to, they all looked at me like you an idiot, you know what I mean? That's not, no, you can't think like that. That's not, that's not how life works. And they would just look at me like I'm just, like, you're not even thinking, you know what I mean? You're not even using your brain. And it was some of these classes and everything else that made me think that, "Okay, well, Terrence you can't be thinking like that. That's not, that's not reality, that's not going to help you grow. That's going to keep you stuck." Yeah, the system and everything else, they didn't really want to hear the truth of what took place. I'm pretty sure his family does, you know what I mean? But they didn't want to hear it and what not. So you know what the truth is, so you have a foundation, you can find somewhere to work from that

So, our adversarial system and our lengthy prison sentences arguably work together to provide powerful reasons not to tell the truth. So, in this fashion, a convicted criminal might

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find it easy to avoid an honest reckoning of their misdeeds, and thus to avoid genuine accountability.

Of course, if they are sentenced to a long prison term, then perhaps that's an acceptable form of accountability. But is that the best way to hold someone accountable? If our prisons are simply warehousing people, is that justice?

Terrence: There's a bunch of us in here. We don't have to take responsibility for our actions and what not, because we're not forced to look at them. We're not forced to deal with them, so therefore, we can spend all the time we want on the yard just messing around or just not thinking about it, because we're not forced to think about it. So, it's like, yeah, you do something, now you're stuck in prison, alright that's the end of it. No longer are we thinking about why are we here. I mean, we see so many different young dudes come in and go out and leave and come back, leave and come back. It's like, "Have you ever really sat down and thought about what it is that you're doing to keep you coming back?" And they're like, "No." "Well, maybe you should start thinking about that, because this is not working."

Moufasta: Any sort of transformation or paradigm shift or change in mentality should not, by any stretch of the imagination, be attributed to how the system is designed. Any person who tries to accomplish something, becomes something, helps someone, is doing that in spite of the structure of the incarceration system.

Anthony: My own personal example, right—I was 15 years old. They gave me 25 to life. Let's just say, you take me out of society for 25 years at 15 years old, right, without nothing being facilitated, just retribution. What do I learn? I get out of prison at 40 years old, and who have I become, without something being facilitated to change and instill something in me? I've become worse! Not saying now, because I've taken initiatives on my own to change and mature and grow as a man. But without some facilitation, and I get out at 40 years old from 15 in prison, how do I function in society? Like, so the whole concept of, "Just give him a time out", it doesn't make sense. Like, as an adult, I've never lived free in society. So if there wasn't facilitation and personal initiative that was intentional on my behalf, getting out of here, I would be a worse man than I was a 15-year-old child. It doesn't—like I said, it doesn't make sense, without adding into the pot facilitation and real reconciliation with self and community, and growth. You take away programs and you take away the ability to get a trade or anything like that, I'd just go out there and probably rob somebody—what do I do?

In fact, if you think about it, perhaps our prisons work largely to allow people to avoid being held accountable.

Theron: I think it does let us off the hook. It lets us off the hook, because my case is a prime example. Like sitting down with the victim's family would humanize my actions, versus just paperwork. There's no one that I have to really, I don't have to worry about bringing up the individual's name, I don't have to make the individual whose life I took realistic anymore. I can just say the case is the case and it's paperwork, it's just my paperwork. So, he's paperwork versus if he was, if I was faced with a situation to where I have to acknowledge it. So, like one of the things that I'm doing with my own transformation is

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trying to actually say his name, to acknowledge that you took a life. You know, like, Carlos. This is the individual. I think we get off the hook, because we don't have that human response back. It's easy for us to just avoid the actual damage that we've done.

Herbert: You're just a cog in a big bureaucratic machine.

Theron: Exactly.

In our adversarial system, it's the state against the individual who's been charged with a crime. The interests of the victim are presumably being protected by the state. But if you are facing a prosecutor who's seeking to convict you and see you sentenced to a long prison term, you might not be thinking all that much about the victims that you wronged.

Cameron: You know, the State v. Cameron, you know, the victim's nowhere in there. And I think that's important, to give them a voice because they are the ones that were wronged, their needs should be met. But on the offender's side, I think it does a lot of good too, because just like we were saying, we can't repair the harm if we don't know what it is. If I would have had a victim-offender dialogue from that first day, I would have understood the harm I caused. The people that I was robbing, you know, they would have asked me like, "Why did you choose me?" You know, "What was it?" And I would have been able to visibly see the harm I caused and been affected by it. Maybe changed sooner, you know, been motivated by that. So if we don't know the harms, then we can't amend them.

Herbert: And as you went through the criminal process, you didn't really think about the victim.

Cameron: No, not at all. It's like, it's very adversarial. It's about evidence and trying to, you know – it's a chess game with the state.

Herbert: So, if you had heard from the victims earlier in this whole process, you think things would have played out differently?

Cameron: Personally, emotionally, absolutely.

Herbert: Why do you think that's the case? What would have gone on for you emotionally that would have been so significant?

Cameron: Well, I mean for so many years, I didn't see the wrong. I didn't understand the wrong. Like I said, no one got hurt. So I don't know what the big deal is, you know what I mean? I thought it was, you know, America's obsession with money. I took some money was the problem. But you know, if I would have understood the emotional toll that I took on these people -- and I did have victims. I had people that I hurt and I traumatized. If I would have understood that, I would have been more understanding of how I need to make amends for that, you know. I did a wrong and now I have to make it right.

Herbert: I'm still trying to figure out why hearing their emotional reaction you think would have impacted you. What is it about hearing that that you think is significant?

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Cameron: Well, I just would have understood the harm I caused. Them articulating, me seeing them in front of me, I would have understood that.

Herbert: And empathized.

Cameron: Yes.

So, our punitive and adversarial criminal justice system perhaps does not encourage the level of accountability that we might want. If we hope that wrongdoers will make amends, then perhaps our current approach is not ideal.

But Cameron seems to be suggesting that there's another way to help prisoners make amends, one that involves closer communication between those who commit crimes and those who are their victims.

Anthony: Like, when you don't have an opportunity to really sit there and address the real impact of what you did, coming from maybe your victim's family or your victims, it's difficult to really get a real understanding of the impact of that decision. You can get it kind of abstractly, vicariously through other stuff, but I think it'd make a big difference -- like I killed somebody. If I could sit right across from my victim's family through some mechanism and really have a conversation, I think that impact would be a lot more deeper than me just kind of abstractly coming to an understanding of what I did.

What a more restorative approach to crime might look like – that's next time on Making Amends.