The cattle call of reentry
Not all processes are equal

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With budget crunches capturing the attention of state and local governments, the affordability of long prison (jail) sentences is being questioned. States have taken daring steps to use early release tactics, with the expectations that such moves will both save money and reduce recidivism. Kevin A. Wright and Jeffrey W. Rosky (2011, this issue) explored the impact of early release efforts in one state. Not surprisingly, the results are disappointing in that those individuals who were released early were more likely to recidivate than those who served their time. Wright and Rosky point to several explanations, including the potential actions of parole officers and other attributes covered under the umbrella of “criminal justice thermodynamics” where the mechanics of the criminal justice system continue working in such a fashion to “backfire.” The findings of this study are predictable—early releases are more likely to recidivate—and those thrust back into society without preparation are doomed to fail. In this essay, I consider the importance of the messages that are attached to different policy initiatives, the messages that basically support the cattle call that “all things should work.” Unless we focus on the messages and the “punitive culture,” most of our efforts will fail to reform the justice system or people involved in justice environments.

Today’s Scenario
The state legislature declares that one strategy to reduce the budget deficit is to release imprisoned drug addicts early and send the offenders to a residential treatment program. The released prisoners are freed up to 18 months early on parole (or supervised release) and placed in a treatment program. After the residential treatment, the person is mandated to continue treatment in the community as part of supervised release with drug testing and...
monitoring. It looks like a win–win with less use of incarceration and better opportunities to reduce recidivism and improve public safety.

What messages are associated with this early release policy?

**Politician**: We are saving money. Treatment is supposed to be more useful for addicts so we might as well try this option.

**Local community**: We are saving money, and addicts should have not been incarcerated since treatment is the better option. We will change lives by offering treatment.

**Local law enforcement**: Offenders are getting off easy, and we need to make sure they are not using drugs and creating public safety problems.

**Local probation office**: Offenders are getting off easy, and we have to do more work to monitor them; we need to make sure the public is protected with a no tolerance approach (one positive drug test leads to some jail time).

**Local treatment providers**: Treatment is now recognized as a valuable commodity. But the politicians have not given us significantly more resources to handle people who have legal problems and are drug addicts. The funds are not sufficient, and they do not include pharmacological therapies (e.g., naltrexone, suboxone, and methadone) that are known to be effective. We are being asked to do too much with not enough resources.

**Offenders**: We are getting out of prison early because the public does not have the funds to keep us behind bars—they are making us go to treatment, but they do not really believe that we need treatment. It is just a money thing. And we are given “nail ‘em and tail ‘em” supervision, so we will shortly be back in prison.

The same policy can have different messages for various audiences, ranging from money saving to more effective practices to the “right” type of punishment. And each interpretation sets up different expectations depending on which message one believes (or hears). *It is clear that we cannot “win” reentry with such mixed messages and varied expectations.*

Why does early release have null or little impact on reducing recidivism, as shown by Wright and Rosky (2011)? Or for that matter, why does it seem that few correctional policies or programs alter the recidivism trajectory for offenders? During the last 20 years, we experimented with a variety of means to punish offenders, and in most instances, we expect these experiments to “work” (reduce offending)—this applies to early release, increased sentence lengths, decreased sentence lengths, boot camps, intensive supervision, alternatives to incarceration, and so on. Yet seldom have our efforts generated the desired results, and we express great disappointment that another program or idea did not lead to the “promise land.” It may seem rhetorical to ask the question about why we expect programs or policies to “work” (reduce recidivism), but raising this question might compel us to look more closely at how and why we expect a policy or program to do the hard work of impacting individual-level offending behaviors. In other words, if we reduce a prison sentence and release someone early, why do we think this will result in reduced offending?

How can we get results? As a first step, we might consider the notion that the punishment system (or the legal system in general) is an authoritarian process where the only “input” that the accused has is through the defense attorney, if there is a defense attorney (a resource that has been diminishing over time). This imperfect scenario means that the
person is seldom involved directly in choosing a punishment, treatment program, and setting (incarceration/community) that is appropriate for them or that addresses the factors that contribute to criminal behavior. It reinforces the punitive culture, a culture that makes it difficult for change to occur. In this era where the risk–needs–responsivity (RNR) model is recognized as a tool to address this gap, it is also necessary to recognize that the processes we use to implement RNR in operational settings may be a determining factor in whether a sentence or correctional program has an impact. That is, if we use the same old culture, then we will get the same old results. We need to consider creating environments where individuals involved in the justice system can change and where individuals who work in the justice system can use the evidence-based tools of RNR and correctional programming. Otherwise, we are creating inconsistent messages to the public, to the justice system, and to the people in the justice system—these messages will neutralize the impact of evidence-based techniques creating the thermodynamics that maintains the status quo.

In the following text, I highlight the rationale for involving the person (offender) in the decision-making process to clarify the expectations at the individual level, and the message as to the purpose and intent of the policy or program. Using the concepts of communication and messaging, the failure to achieve results may have less to do with the program’s content than with the degree to which the individual offender understands the purpose of the programming, the link to his or her own behavior, and how he or she can benefit from participation (ownership). Second, the manner in which we involve people in the process is likely to have an impact on the lack of motivation to change or the ambivalence attached to modifying one’s own behavior. Feeley (1992) illustrated how the “process is the punishment,” and if we expect RNR and evidence-based programming to be effective, then we need to override the correctional culture with one that supports individual change. Third, the criminal justice policies and programs need to be based on theoretical interventions that are designed to help the person to understand the steps involved in the personal change process. These factors are directed at increasing the legitimacy of the programs and services offered, while providing the important and critical linkages to helping individuals link their own actions and behavior to the policies and programs to which they are exposed.

**Offender’s Involvement in the Decision**

The rationale for involving offenders in the sentencing, program assignment, or release decisions has the potential to impact outcomes. Three theories—legitimacy and procedural justice, contingency management, and shared decision making—can all contribute to the different outcomes by outlining expectations and providing the person with more ownership to their own behavior and/or outcomes. Each offers a mechanism to address offender behavior that evolves from defiance or cynicism regarding the legitimacy of justice actors such as police, probation/parole officers, judges, or others. Policies and practices emanate from the mass incarceration (criminalization) movement, where violating offenders for parole
and probation rules is commonplace. The inclusion of offenders in the decision-making process is premised on addressing the culture and norms of the justice system. Although the current system passively involves offenders (e.g., plea bargaining and choosing whether to participate in a program), the associated process only serves to fuel more cynicism about the system. Conversely, active involvement in the decision-making system is designed to address how best to help the offender assume ownership for the outcomes.

Procedural Justice
In a series of work, Tom Tyler (2000, 2003) tested empirically the importance of procedural justice or processes that promote the fair and equitable application of the law, particularly in the area of law enforcement. A repeated theme is that police can increase their legitimacy through the use of fair procedures, and that fair procedures seem to be essential to achieve impacts on individual-level behaviors, even if the outcomes are arrest or other negative events. That is, procedural processes shape people’s perception of whether they were treated in a manner that they can reconcile as being fair, just, or appropriate. This perception is important because it defines the experience and influences how people interpret events. For example, in one experiment on domestic violence, the police used standard protocol to explain the arrest policy for any domestic situations involving violence. The use of the standard police protocol (language), compared with the traditional practice of merely conducting the arrest, had a deterrent effect on future domestic violence behaviors. The standard language served to inform the individual of the purpose of the police action as well as to clarify expectations as to why the arrest is occurring (see Paternoster, Brame, Bachman, and Sherman, 1997). The veracity of the evidence surrounding procedural justice, and the importance of reinforcing the legitimacy of justice actions, has caused it to be an important component of police research over the last decade (Skogan and Frydl, 2004), and there is now a call for more literature to understand how to advance police legitimacy.

Tyler (2010) extended his argument about procedural justice to the field of corrections where he outlines the core components to consist of “voice, neutrality, treatment with respect and dignity and trust in authorities” (p. 129). Building on the premise that the process and contextual environment influence individual-level behavior, Tyler demonstrated how the procedural justice framework is applicable within correctional settings (primarily prisons). This framework is built on the need to construct processes where individuals can participate in, and be a part of, key decisions in a way that promotes a perception of justice and fairness. Such processes serve to foster compliance with the rules and law. Implicit is that the corrections process also needs to promote legitimacy where the actions and decisions of justice institutions are sound, defensible, and clear. Actions like “early release” premised on loss of budget would not necessarily be considered legitimate because the reason for the release is not tied to the offender’s crime, punishment, or conduct in prison, which are the usual rationales underscoring both the original sentence and any modifications to the condition of release. Given that the early release policies studied by Wright and Rosky
(2011) did not address the purpose of the original offense and did not prepare the person for release, it is not surprising that illegitimate actions by social institutions do not translate into good individual-level behavior.

Procedurally just corrections processes would support the legitimacy of the punishment by recognizing offender behavior that complies with the rules of the correctional agencies and advances the purpose of the sentence. If the sentence was premised on punishment or rehabilitation, then actions taken by the correctional agencies to reinforce the overall goals would support the legitimacy of the sentence. But actions like early release for the convenience of the state (e.g., to save money) merely undermine legitimacy by suggesting that the original punishment scheme was inappropriate, that the sentence length was not warranted, or that the use of incarceration was an unnecessary punishment tool. All send messages that undermine the legitimacy of the original scheme. But a few changes in how the decisions are made could actually support the appropriate actions by the institutions. That is, a procedurally just corrections or judicial system would allow these persons to have input into the decisions affecting them, thus participating in such a manner that they believe that they are an equal partner. This belief, in turn, leads to increased support for the system based on a perception that institutional processes are fair and equitable. Under this premise, the correctional system should rely less on its authoritarian nature, where the state alone is responsible for making decisions and justice or policy actors can “flex their muscles” in their decisions.

Instead, Tyler’s four components promote an environment where the emphasis is more on the processes that are built on creating a just environment (Blader and Tyler, 2003). Tyler raised the issues of “neutrality” as a consistent “application of the rules” instead of the preference for “individual-level decisions” that often seem to be biased or influenced by participating actors (Tyler and Lind, 2002). Two other tenets, respect and dignity, are important to uphold the humane treatment of individuals as a way of signifying their citizenship. Building the system to respect the individual and reinstate citizenship status is a critical in our punishment system given that many policies suggest that the individual is not a vital part of society.

**Contingency Management (CM)**

Do positive reinforcers or negative reinforcers promote more socially compliant behavior? Our punishment system is built on the deterrence principle that finds compliance to be more of a product of avoiding unpleasant circumstances. This is similar to the utilitarian concept that people will avoid “costs” of punishment through a calculus that the costs are not worth the “benefits” (the fruits of the offending behavior). Therefore, people are more likely to comply with the law or rules to avoid unpleasant punishment. Severe punishments are premised on increasing the stakes associated with the punishment. Whereas punishment dominates criminology, the psychological literature approaches compliance from a slightly different approach, noting that responses are generally a result of operant conditioning.
Within this framework, nearly two decades of research has shown that the human spirit is more inclined to positive reinforces as a motivating factor for improved compliant behavior. That is, people are more likely to comply if they understand the expectations and they are incentivized in this direction.

Contingency management is a procedure that focuses on rewarding people for desired behaviors (e.g., staying drug free, maintaining employment, and not being homeless) that is recognized as an evidence-based treatment (National Institutes on Drug Abuse [NIDA], 2000). In many ways, it is similar to the old token economy systems in prisons that rewarded offenders with early release if they complied with prison rules and worked hard toward correcting their ways. CM interventions have been developed primarily for use in substance abuse treatment, where reinforcement-based interventions have been shown to improve short-term outcomes such as drug-free days (Petry, Alessi, Ledgerwood, and Sierra, 2010; Stitzer, Petry, and Peirce, 2010). Three systematic reviews confirm that CM improves a variety of client-level outcomes, including drug use, treatment attendance, and treatment retention (Griffith, Rowan-Szal, Roark, and Simpson, 2000; Lussier, Heil, Mongeon, Badger, and Higgins, 2006; Prendergast, Podus, Finney, Greenwell, and Roll, 2006). CM involves using operant-based behavioral reinforcement strategies to enhance positive behaviors through the use of either material or social reinforces.

CM has a formula that emphasizes an individual’s involvement in decisions, similar to the procedural justice processes outlined by Tyler (above). CM begins with desired target behaviors such as applying for jobs, providing drug-free urines, attending treatment, and going to self-help group meetings. These target behaviors are considered incremental steps to addressing a problem behavior. In essence, the process that the counselor (or probation officer) uses to work with the person is designed to help the person understand the nature of the problematic behavior, help them identify target behaviors that are “within reach” (doable and feasible), and outline the contingencies associated with achieving the target behavior. Along with this process are the contingencies associated with repeated negative behaviors. Clarifying expectations is part of the negotiation process where the individual is empowered to address his or her own choices. In a desirable CM scenario, the defined target behaviors would be agreeable to the offender and the benefits would be clearly laid out. CM uses rewards schedules that may involve “bonus points” (extra rewards) for special efforts or duration of periods where the person maintains the target behaviors. The goal is to put in place a structured pathway of success where individuals know up front what they are likely to gain from participating in the rewarding protocol. The CM framework enhances the core components of procedural justice: outline expectations, outline benefits, and follow through on expected (positive) outcomes.

In a recent implementation study where CM was applied, probation officers were receptive to the concept of the CM protocol but expressed concerns about some processes (see Friedmann et al., 2008; Rudes et al., 2011). Notably, these concerns centered on informing the individual (offender) of the likely outcomes that might occur with
achieving the desired target behaviors. Officers expressed hesitancy because of their concerns about offenders manipulating the system. The officers also raised concerns about sharing information about offenders’ risk and need factors because they felt that people should already be aware of their problem behavior. Unexpected barriers in implementing CM centered more around the process of working with the offenders—open communication, clear expectations, and disclosure of criminal justice information—than about the use of tokens or incentives.

**Shared Decision Making**

In the medical field, most patient education models center around individuals understanding the nature of their disorder, and through this understanding, they are more likely to comply to achieve a better health status. The power between the provider and the individual lies in the balance between the two in making choices concerning the nature of the intervention. These choices are bounded by cost, safety, impact on others, and alignment with values. This type of balance also applies to justice settings. As defined by Légaré et al. (2008: 3):

The health decision-making process is complex, as it brings together a health professional, considered a scientific content expert, and an individual, considered an expert in his own personal values. It is in this context that there is considerable interest today in the process of shared decision-making (SDM). SDM is defined as a decision-making process jointly shared by patients and their health care provider, and is said to be the crux of patient-centered care. It relies on the best evidence about risks and benefits associated with all available options (including doing nothing) and on the values and preferences of patients, without excluding those of health professionals. Therefore, it includes the following components: establishing a context in which patients’ views about treatment options are valued and deemed necessary; reviewing the patient’s preferences for role in decision-making; transferring technical information; making sure patients understand this information; helping patients base their preference on the best evidence; eliciting patients’ preferences; sharing treatment recommendations; and making explicit the component of uncertainty in the clinical decision-making process.

The shared decision-making process recognizes the individual as a contributor to the process, where individuals determine their own options, within a range. This model is recognized as a key factor to facilitating the role of the individual to be “in charge” of making decisions designed to maximize valued outcomes. In the context of the justice system and its processes, shared decision making is viewed as an opportunity to help an individual understand conforming behavior and the consequences of nonconforming behavior. The justice system uses early release as a reward but does so in a manner where the criteria for release are unclear and vary considerably, therefore not allowing the individual to participate in the
decision. Like the procedural justice process where clear consequences are needed, shared decision making is based on a premise of the system actors giving up “power” by allowing the person to make choices for which ultimately he or she is responsible. The theory is that by allowing the person to respond to his or her own risk and need factors, there will be greater ownership to the behavior and greater commitment to behavior change. That is, the sentencing and corrections process could be more appropriately aligned where options are not merely judged based on what is the “least restrictive sanction” or the most severe punishment but from a perspective of being in the best interest of the person. This is similar to the tenets of therapeutic jurisprudence, but the emphasis is more on involving the person in the decision-making process.

Away from the Cattle Call: The Demand for New Processes
Wright and Rosky’s (2011) study did the field a huge favor by reminding us that the best intended policies that have one motivation (reducing costs) may not serve to achieve other objectives (recidivism reduction). And, that the criminal justice system works in such a fashion that the laws of physics apply—each part will maintain equilibrium that ultimately results in few changed outcomes. Wright and Rosky identified that there is a need for greater preparation for release from prison, that parole officers may operate in such a fashion to reflect the punitive culture, and that the collective can serve to explain the poor recidivism outcomes for early release offenders. But, the underlying issue is that there is not just a need for reentry services, but also there is a need for a different process that will facilitate better individual outcomes. That is, the omnipotent punitive culture is the main message and it has the capacity to override all good intentions. Recent evaluation findings confirm that our existing approaches offered within said punitive environments have null to little impact. For example, the Serious and Violent Offender Reentry Initiative, with its emphasis on type of prerelease and early parole supervision process, yielded null recidivism reduction results (Lattimore, Steffey, and Visher, 2009) The same is true for Project Greenlight (it actually had a negative effect), a comprehensive program that was defined as a “kitchen sink” of various services (see Wilson and Davis, 2006; Marlowe, 2006) and Transitional Case Management, a strengths-based case management model with a standard fare of programming (Prendergast et al., 2011). In essence, each approach is based on similar premises that the state or county agency personnel will assess, determine needs, and assign individuals to appropriate programs (the components of RNR). That is, the social control framework, the punitive environment, maintains “power” and authority with state (or county) actors, with little role for the individual offender (client). Most reentry processes are built on case management models where the preference is for the state to determine the needs of the individual and for the individual offender to be directed (conditioned) to partake in various services or programs. This approach fails to include our knowledge about operant conditioning, stages of change, change processes, or human developmental growth.
Given the results of nearly 30 years of mass-incarceration–based policies and programming, which has contributed to more of the same accountability approaches to reentry and offender programming, two needs exist: (1) an adoption of a supportive, more offender-change friendly environment; and (2) different theoretical models to guide the next generation of reentry processes and programming that are based on the person having a role in making choices that support changes. The punishment-oriented, social-control–based, and deterrent-based policies that drive contemporary correctional programming account for much of poor outcomes—it is unlikely that a person will or can change in an environment where staff and the system are focused on “looking for failures.” Operant conditioning, stages of change, and human development argue for a model that involves the person in the decisions and choices to be made. Often referred to as “client centered,” the approach focuses on involving the person in the process in a manner in which the individual is empowered to make choices. As highlighted previously, the reentry process must incorporate dignity and respect for the individual as part of the process—these mechanisms of action are theoretically led to achieve ownership and commitment to changing human behavior. The guiding principle is that effective change-oriented processes/programs cannot tolerate a “process is the punishment” approach (see Feeley, 1992) because this orientation undermines the change processes.

The role of the individual in the process is one strategy to alter the existing framework to reentry. As noted by Tyler in his work on procedural justice, involving the offender in decisions, even if the choices are bounded and associated with clear consequences, should serve only to boost the legitimacy of the processes and increase compliance. Capitalizing on the theoretical framework of procedural justice, contingency management, and shared decision making, these processes need to be associated with clear messages regarding the importance of the individual in making individual decisions, in participating in activities that are of benefit to the individual, and in clarifying how this process can contribute to recidivism reduction outcomes. The message to the individual offender, as well as to the stakeholder community, needs to be clear as to the rationale for the reentry process or programming. Clear social messages about the rationale are important in the process.

**Determining the Win**

Recidivism reduction is a long haul. Traditionally, a criminological approach focuses mainly on examining technical violations, rearrest, reconviction, and reincarceration (measures of recidivism). Theoretically sound reentry approaches need to recognize that intermediary steps contribute to long-term goals such as participation in treatment and services, employment, stability in the community, and other measures. We need to use a health services approach that considers outcomes to be a function of processes, such as initiation, engagement, and retention in the core processes/programming. The health services model recognizes that each of these processes contributes to outcomes, and that if one desires
to assess early impact, then more attention needs to be given to the individual’s various levels of participation of appropriate services. The health services framework emphasizes the individual and how the system can facilitate the individual’s healthy involvement in programs and services. Measuring these processes is also important to strengthening our knowledge about effective reentry practices. Criminologists in our studies need to adopt these measures to assess whether the reentry process is affecting individual engagement—without the individual making such choices to participate and to take advantage of the programs and services, it is unlikely that we can make good strides. Reentry success then should be determined on these intermediate, proximal steps that are more associated with making gains in the community.

Addressing the Challenges Ahead
Although the evidence-based practices literature has aggressively pushed forward the need to expand the array of clinical services such as cognitive-behavioral therapy and therapeutic community, the challenges of implementation in justice settings cannot be understated. Within the context of implementation, there is a need to understand better the transportability of medical or social service evidence-based practices in the justice system (see Taxman and Belenko, 2011). Procedural justice, contingency management, and shared decision-making emanate from other settings. Although the core components are similar (i.e., clarify expectations and messages, identify target behaviors, and outline consequences), more attention needs to be given to the issues related to operating within justice settings, particularly regarding the compatibility with core legal principles. That is, involving an offender in key decisions in the justice system must be handled in a manner that does not jeopardize civil liberties such as the presumption of innocence and right against self-incrimination. In the past, these legal principles have been used as barriers to including the offender in the process. Although involving individuals in decisions has clear benefits, it is recognized that there is a need to establish an environment where embarrassing, stigmatizing, and even incriminating experiences are minimized. A review of guidelines for confidentiality in clinical practice can be informative such as the National Association of Social Workers’ Code of Ethics (18 provisions related to the confidentiality of the therapist/client relationship) or the American Psychological Association’s Code of Ethics (10 provisions). That is, although coerced treatment assumes that individuals will participate because they are required to, the reality is that there is a need to create an environment in which the individual feels empowered to collaborate in the change process, and such involvement facilitates behavioral change but does not jeopardize civil rights.

Toward a New Century of Reentry Programming
Reentry processes fail for several reasons—inadequate programming, inadequate resources, punitive approaches, and mixed messages to all sorts of stakeholders. The confusing and
conflicting messages of current programming merely serve to delegitimize the reentry processes (and correctional programming), and to contribute to the cynicism that society does not desire for offenders to succeed. Doing more of the same will produce more of the same. In this essay, I examined the social messages to understand that there is likely to be a lot of misconceptions regarding reentry strategies and how these misconceptions feed unmet expectations. I have also offered a few new frameworks to consider in the reentry processes and programming to actualize the individual’s commitment to desired societal goals of reduced offending. As scientists, we need to demand more of our profession to develop and test new processes that can affect the correctional culture, develop programs that are likely to alter offending behavior, conduct studies of organizational change to understand implementation issues better, and highlight the need to alter environments for programs and people to be more successful. In all, to achieve different outcomes, it is apparent that reentry processes should focus on a different position for the individual offender in reentry. A repeat of second-class citizenship, limited options in terms of choices, and programming that fails to address criminogenic needs (such as early release efforts) will not alter the prospects for the future. The next generation of programming should pay greater attention to humanistic approaches that override the current “catch ‘em” reentry efforts, even from well-intended policies such as early discharge. And, this includes attention to the organizational culture of reentry programs, probation and parole agencies, social service agencies, and the justice system overall—otherwise, the criminal justice thermodynamics will persist.

References


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