“In a tsedeka model, the act of justice is judged by its result, just as a tree is known by its fruit…” – Dutch criminologist Herman Bianchi

The Expanding Prison: The crisis in crime and punishment and the search for alternatives – David Cayley: A book review by Jesse Edgington. SSCI 302

David Cayley authors an interesting book in which the material had already been compiled, edited and used as a radio broadcast. The broadcast was born out of interviews between Cayley and Oslo University criminology professor, Nils Christie. The two first met to record a program for the CBC Radio series called *Ideas* entitled *Crime Control as Industry*. Later, at a conference about criminology, where concerns were being expressed about expanding prison numbers in the Western World, the concept of further radio broadcasts and this book were born. As the two conduct their series of interviews, they cover aspects such as the increasing prison numbers, historical accounts and developments of imprisonment in our society and an examination of alternatives to the current system that have been attempted and could potentially be expanded.

I found the beginning of the book difficult to engage with because of the bleak outlook of prisons. The situation being discussed, from the late 1990’s, was frustratingly sad and the reason for writing the book was that it was getting worse. Much research and observation had been done showing that imprisonment was not effective in reforming prisoners, yet the situation continues with little to no change. Nils Christie was a student and lifelong researcher listening to criminals stories, studying human social and moral behavior and he was seeing a troubling trajectory of imprisonment to fulfill retributive justice but was doing nothing for restorative justice.

Nils Christie interviewed criminals from World War II, concluding “…those who had killed were for the most part ‘not monsters’ but ‘decent, ordinary Norwegians’ who had, in a deep sense, misinterpreted their experience.” Pg.16. Christie interacted with many of the top criminologists in Europe as they examined the history of incarceration. In the 1960’s, academics were finding that imprisonment neither deterred crime or rehabilitated prisoners, so why were numbers still rising? Public anxiety about crime and political pressures on leaders were muddying the waters of what governments should do about order and justice in their nations.

The increase of drugs and the drug trade also played a large role, as law enforcement and governments had to deal with social and human welfare that was complicated by economics, rising global interaction and politics. In the 1980’s prison numbers had fallen, due to some reform in European countries, but with the ratcheting up of the “War on Drugs” from the USA, numbers again began to rise. The war on drugs also played a huge role in the racial tensions in the US between blacks and whites. During the time of the slave trade, Jerry Miller writes, “Blacks were subject to a terrifying ‘informal’ justice system. ‘Castration, lynching, and other vigilante-type actions were characteristically reserved for citizens of *color*.” Pg. 24

Thomas Mathiesen tried to push prison reform and organized yearly conferences on criminal and penal policy. Participants included lawyers, researchers, social workers, prisoners, prison workers and a whole range of others involved with the system. Their discussions and ideas never seemed to fully take hold though and Cayley believes the growth of mass media, television in particular, is one of the major causes for that. Instead of research, dialogue and print being the things that influenced people of power, now all of the general populace was seeing television news clips, where a long interview could be turned into a thirty second or less sound bite.

Prison policies were being wrapped up in public pressures and were often tied to winning elections or re-elections. Cayley points to a couple of Canadian examples that make this case. One was the formation of a group called Citizens Against Violence Everywhere Advocating its Termination (CAVEAT). They influenced sentencing, bail hearings, parole boards and parole hearings. The other was a volatile situation around changing Section 745 of the Criminal Code, which was the faint hope provision. It gave convicted murderers the chance, at least in principle, to be released from their life sentence under very specific conditions. With public pressure however, federal justice minister at the time, Allan Rock, amended that part of the code to make it much more restrictive.

In the US, political leaders gained power, popularity and influence by campaigning on platforms of getting tough on criminals. While some judges were seeing the reality of crime, saying things like the system was actually dehabilitating prisoners, politicians (along with the economic boom of the prison system) were changing the tide of elections by promising to throw more people in jail. There is a vast wealth of example compiled in this book that gives a very telling historical account of the path of justice.

As modern society moved from state to market driven, Zygmunt Bauman believes we are creating a new generation of underclass disposable people and are moving maintenance of social order from the state to the market system as well. In a market consumer society people are living with constant desire of stimulation for individual fulfillment. This leaves the erosion of the welfare state in jeopardy. Cayley also discusses some of the thinking of author Ivan Illich. Illich describes prisons as “gulags Western-style” saying they are non-places, housing nonpersons. Illich believes imprisonment is a huge ritual that can be compared to religion in its dealing with basic principles of good and evil. It is why we have this urge to try and define morality, social judgments, yet we are drawn to and fascinated by things like crime shows, horror movies and sensationalized media.

Simone Weil states that in reconciling efforts with criminals, the innocent parts of their soul must be fed so they can gain the capacity to judge and condemn their own past, and by grace move to healing and forgiveness. The current state of prisons is not conducive to rehabilitation; they are more likely violent, exploitive and isolating. Rehabilitation implies a former state of good order and in many cases of prisoners; no such state of normal balance is in existence. Prison hides, holds and controls unwanted people for a time, and is merely a symbol that ‘Something Is Being Done.’ Pg. 98. Prison environments more often compound problems, further harden the hearts of those serving time and become a training ground for future incarceration.

Cayley takes a few chapters to tell stories of what prison has done to people and the conditions they are facing, both inside and once they come out. He even describes it as a habit that is hard to break. Inmates learn a system, are regulated in all aspects of their being and find themselves lost when they are released. They feel exposed, with the sense that everyone knows who they are and what they have done.

In the middle of the book Cayley goes into a very interesting discussion about the history of crime, punishment and religion. As far back as 600 A.D. to the twelfth century, punishment was the exception and compensation was the rule. Pg. 124. Often crime was dealt with in long public sessions of discussion resulting in monetary payments to the victims and their kin. Some of this changed with the Papal Revolution, as the church asserted its power over society to become the rule of law, where crime was seen as violation of God’s law. A price had to be paid and that price of upholding law and morality soon began to overshadow the needs of the victims themselves.

As religious leaders were mixing God and law, crime became a moral fault that needed reparation, not a solution. Criminal courts became the new structure and replaced public meetings. Developments in Christian thinking by Anselm, on the topic of atonement, took on special concerns for justice and redemption. Cayley also saw the spread of Calvinism as bringing more harsh punishments. “Christianity underwrote court proceedings through the swearing of oaths on the Bible, though Jesus had taught his followers in the Sermon on the Mount to swear no oaths (Matthew 5: 33-37).” Pg. 135.

Western legal traditions were molded on spiritual foundations and “just as the criminal law had grown from canon law, so the new penitentiaries drew their shape and syntax from monasticism.” Pg. 137. Isolation and solitary confinement were born out of the monastic tradition and while there is virtuous reason for experiencing this in ones own life, it was misguided and abused when coupled with judgment and punishment. I was blown away by this historical account and had no idea about the negative influences of religion and Christianity. I am both amazed and saddened by the course of history that followed from the early centuries. The Kingston Penitentiary in Ontario, Canada, still in operation today, opened in 1835. “The United States Supreme Court ruled in 1871 that a prisoner ‘not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords him. He is for the being a slave of the state.” The penal system took over the slavery system in the US.

Christie moves from this history to how things have changed over time and what alternative signs of hope exist now. Some academics are even researching, working and advocating for complete abolishment of imprisonment. Thomas Mathiesen promotes a strategy of non-penal framework for offenders, increased attention to victims and engaging community. In the final part of Cayley’s book, he examines a range of criminal justice alternatives that have been born out of a new liberalism but have tended to be obscured or oppressed by what he calls years of neoconservative hegemony. Pg. 164.

In the interest of resolving conflict in society, Christie asks, “Could anything be more important than that those who have been hurt get a chance to say so, and that those who have been hurting them would really listen, would really explain why they did it, and really hear what other people thought about it?” Pg. 169. Cayley highlights cases such as innovations in New Zealand’s Youth Court and in Canadian Indigenous communities that involve elements of looking at the incidents, perpetrators, victims and communities in a holistic way, called family group conferences and sentencing circles. Such initiatives have led New Zealand rates of youth in the criminal system to be cut by three quarters and costs reduced by half (from about 200 million to 100 million) between 1985 and 1991. This is a huge economical shift that could be realized by other governments.

Results of these conferences and sentencing circles were also significant for the people participating. “…nearly all young offenders offered to impose tougher demands on themselves than the victims thought appropriate. Victims often found themselves arguing the case for leniency… they both became more human to each other.” Pg. 177. It offered healing to both parties as well as created solutions that would work for the community. Community holistic circle healing has also been used in the province of Manitoba in sexual assault offenses. Cayley describes specific cases where alternatives have been used and how they worked. While many of the alternative models share common principles, the success of them is often due to the contextualization to the situation and people involved.

In 1974, facilitated by probation officer Mark Yantzi and leader of MCC, Dave Worth, the first official court ordered victim-offender reconciliation was issued in Canada. For such alternatives, Dave Gustafson identifies three things victims want; an explanation of why, recognition by the offender of the harm done and acknowledgement from the offender of responsibility. He describes these meetings as being so powerful that “he felt as if he was on holy ground.” Pg. 228. Jim Cavanagh says there is nothing more an offender fears more than facing his victim. Dr. Jerry Miller, who has held many prominent positions in the legal systems in the US, believes that if alternatives were routinely available to the courts, the national prison population could be cut by at least a third. Pg. 256.

Victim sentencing, felony diversion tracks and community sponsors can all be alternative tools for judges in current systems. Finland has led the way in prison reform especially in the case of young people. With alternative sentencing like fines and community service, Finland has managed to bring the number of boys under the age of eighteen in prison to be less then ten… total. Wow! They want to avoid early recruitment into a prison career and say that young brains that are still developing should not be exposed to the prison system. “Prisons are warehouses for outcast; they put problem people at a distance from those who might effectively shame them and from those who might help reintegrate them,” John Braithwaite. Pg. 275. We should call on people’s social ties to help reform and reintegrate, not cut them off. This hurts the imprisoned and the community left behind.

Japan has the lowest rates of imprisonment; 37 per 100,000 (lower almost by half than most of Europe). Societal harmony is emphasized and guilty people are expected to confess, show remorse, make contact with victims and negotiate reparation with them to their satisfaction. Imprisonment is used as sparingly as possible because they want to include the community, ensuring they will successfully be able to help reform and reintegrate the offenders. Communities and social structures must be upheld to fight against the individualization of crime and punishment because it effects more than individuals.

One of the most difficult community and parolee interactions is in the case of sex offenders, particularly pedophiles. The best way found to support them is with wrap around supports, also called circles of support. It is an intensive community volunteer team that will be committed to see that parolee every day with some meaningful interaction. Cayley tells a couple of stories of this happening in Canadian communities and how it is very difficult. Contact is very restricted for the individual but it is very needed for the community to grow in acceptance and understanding and for the individual to face the hard questions and emotions that will help in rehabilitation. People in communities tend to react with fear and rejection of the individual without knowing any details, even when church communities try to come alongside.

One sad thing for individuals, and humanity I think, is that in Canada the Crown can designate a criminal as a dangerous offender, which means they can be held indefinitely. This law was passed in 1977 and in the first twenty years of that law 178 people have been designated dangerous offenders; with 10 having died in prison. In that bleak place of no hope, I was struck by these words by Pierre Allard. “It’s that, whatever they have done, there is still a spark of the Divine. However ugly the image is of God, however broken it is, we must try, with determination and courage and with faith and hope, to find that little corner and try to spark it for greater renewal.” *The Expanding Prison* is a rich mix of history, story, despair and hope. Even though the situation can look as empty as an eight by ten cell, there are people truly and honestly pursuing the betterment of all humanity, even those behind bars.

“If healing and reconciliation are possible for the victim, then it is the humanization that occurs when an offender acknowledges and tries to atone for what he has done that is most likely to bring it about. In this respect each holds the key to the other’s liberation…” – David Cayley