

THE UNINTENDED CONSEQUENCES OF DEINSTITUTIONALIZATION

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INTRODUCTION

The intersection between the prison system and the treatment of the mentally ill in America is prominent. According to one report, more than half of all inmates in jails and prisons have some kind of mental illness.¹ The odds of a mentally ill person being put in jail or prison rather than a hospital in 2004–2005 were 3.2 to 1.² Despite housing such a sizable population of mentally ill inmates, many prisons lack adequate resources and training to address treatment for mentally ill inmates.³ The American criminal-justice system currently handles mentally ill offenders in a way that is both unhelpful to inmates and expensive to maintain. Though the shift away from large, state-run asylums was undertaken by the states with the health of patients in mind, it has been ultimately harmful for many mentally ill individuals and a strain on the prison system. This piece is the first of a two-part series exploring deinstitutionalization in America. This piece focuses on the history of deinstitutionalization and the current state of the incarcerated mentally ill population. The forthcoming piece introduces and evaluates proposed strategies for reform.

I. HOW DID WE GET HERE? DEINSTITUTIONALIZATION IN AMERICA

Prisons and jails now function as the de facto method of dealing with the mentally ill. This is partially because mentally ill individuals have a propensity for getting arrested for minor crimes related to their illnesses.⁴

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¹ See Olga Khazan, *Most Prisoners Are Mentally Ill*, THE ATLANTIC (Apr. 7, 2015), <http://www.theatlantic.com/health/archive/2015/04/more-than-half-of-prisoners-are-mentally-ill/389682/>.

² Treatment Advocacy Center, *More Mentally Ill Persons Are in Jails and Prisons Than Hospitals: A Survey of the States*, (2010), http://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf.

³ See Dustin DeMoss, *The Nightmare of Prison for Individuals with Mental Illness*, HUFFINGTON POST (May 25, 2015), http://www.huffingtonpost.com/dustin-demoss/prison-mental-illness_b_6867988.html.

⁴ See Michael Ollove, *New Efforts Aim to Keep The Mentally Ill Out Of Jail*, HUFFINGTON POST (May 19, 2015), http://www.huffingtonpost.com/2015/05/19/mentally-ill-jail_n_7316246.html. (These

America has not always subjected the mentally ill to arrests and imprisonment, however.⁵ Prior to the 1960s, state-run psychiatric hospitals (also known as “insane asylums”) were prevalent and an integral part of the treatment and housing of mentally ill individuals.⁶ The precursor to these hospitals acting as a treatment option was the “moral treatment” movement.⁷ With roots in the Enlightenment, the moral treatment movement advocated for more humane treatment of mentally ill patients. Instead of being chained or beaten, patients were shown patience and kindness by their caretakers.⁸ Founding father and physician, Benjamin Rush helped bring this school of thought to America, insisting the mentally ill should be treated with respect.⁹ Starting in 1841, activist Dorothea Dix furthered Rush’s cause.¹⁰ After witnessing the inhumane treatment of mentally ill inmates in the East Cambridge jail, she advocated for large hospitals with aesthetically pleasing grounds, where mentally ill patients could recover in a peaceful environment, away from the fast pace and stresses of society.¹¹ Dix had a hand in founding thirty-two mental hospitals built based on her model.¹² For a time, popular opinion favored this approach.¹³

Unfortunately, because of a population boom in the United States, more and more patients were admitted, and mental hospitals were at capacity.¹⁴ Asylums workers had less time to attend to individual patients and the facilities required more upkeep.¹⁵ The rise of the eugenics movement in America soon followed and led to experts viewing mental hospitals as holding facilities for the inferior rather than havens for rehabilitation.¹⁶ From the 1900’s to the 1940’s, forced

offenses include trespassing, disorderly conduct, and disturbing the peace).

⁵ See David Eagleman, *Our Prison System Is Our De Facto Mental Health Care System*, BIG THINK, <http://bigthink.com/in-their-own-words/our-prison-system-is-our-de-facto-mental-health-care-system>.

⁶ See Stephen P. Kliewer et al., *Deinstitutionalization: Its Impact on Community Mental Health Centers and the Seriously Mentally Ill*, 35 ALA. COUNS. ASS’N J. 40, 40–41 (2009); Hanna Kozłowska, *Should the U.S. Bring Back Psychiatric Asylums?*, THE ATLANTIC (Jan. 27, 2015), <http://www.theatlantic.com/health/archive/2015/01/should-the-us-bring-back-psychiatric-asylums/384838/>.

⁷ James W. Trent, Jr., *Moral Treatment*, DISABILITY HISTORY MUSEUM, <http://www.disabilitymuseum.org/dhm/edu/essay.html?id=19>.

⁸ See *id.*

⁹ See *id.*

¹⁰ See Manson S. Parry, “*I Tell What I Have Seen*”- *The Reports of Asylum Reformer Dorothea Dix*, 96 AM. J. PUB. HEALTH 622, 624–25 (2006).

¹¹ See *id.*; Trent, *supra* note 7.

¹² See *Bio, Dorothea Dix Biography*, BIO. (July 24, 2014), <http://www.biography.com/people/dorothea-dix-9275710#personal-life>.

¹³ See Trent, *supra* note 7.

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ See *id.*

sterilization, lobotomization, and electroshock therapy all emerged as acceptable treatment options for the mentally ill.¹⁷

The American public turned against asylums when reports emerged about the terrible conditions patients faced.¹⁸ In 1962, the novel *One Flew Over the Cuckoo's Nest* (based on the author's experiences working in the psychiatric wing of Menlo Park Veteran's Hospital in California) was published and met with both suspicion and acclaim.¹⁹ A *Life* magazine exposé entitled "Bedlam 1946" featured a scathing indictment of two state hospitals that pointed out their overcrowded nature, routine beating of patients, and lack of adequate food, among other abuses.²⁰ The article explained that "[t]hrough public neglect and legislative penny-pinching, state after state has allowed its institutions for the care and cure of the mentally sick to degenerate into little more than concentration camps."²¹ That statement, only a year after the end of World War II, had a serious impact on readers.²² This change in public opinion coincided with the development of the antipsychotic drug Chlorpromazine (also known by the trade name Thorazine), which was introduced to the United States in 1954.²³ Chlorpromazine treated many symptoms of mental illness and helped to stop "psychotic episodes," making it feasible to move patients out of the hospital setting and back into their communities.²⁴ Additionally, federal financial incentives motivated states to shut down their mental hospitals.²⁵ Medicaid was established in 1965 and it excluded Medicaid payments for patients in state psychiatric hospitals and institutions for the treatment of mental diseases.²⁶ This spurred states to move patients to state hospitals and nursing homes so they would receive the Medicaid reimbursement.²⁷ Together, these

¹⁷ See Deanna Pan, *TIMELINE: Deinstitutionalization and Its Consequences*, MOTHER JONES (Apr. 29, 2013), <http://www.motherjones.com/politics/2013/04/timeline-mental-health-america>.

¹⁸ See John Rudolf, *Where Mental Asylums Live On*, N.Y. TIMES (Nov. 1, 2013), <http://www.nytimes.com/2013/11/03/opinion/sunday/where-mental-asylums-live-on.html?pagewanted=all>.

¹⁹ See James Wolcott, *Still Cuckoo After All These Years*, VANITY FAIR (Dec. 2011), <http://www.vanityfair.com/news/2011/12/wolcott-201112>.

²⁰ See Albert Q. Maisel, *Bedlam 1946*, PBS (May 6, 1946), <http://www.pbs.org/wgbh/americanexperience/features/primary-resources/lobotomist-bedlam-1946/>.

²¹ *Id.*

²² *See id.*

²³ Pan, *supra* note 17.

²⁴ Leon Eisenberg & Laurence B. Guttmacher, *Were We All Asleep at the Switch? A Personal Reminiscence of Psychiatry From 1940 to 2010*, 122 ACTA PSYCHIAT. SCAND. 89, 93, 97(2010).

²⁵ See Treatment Advocacy Center, *Deinstitutionalization*, TREATMENT ADVOCACY CENTER, <http://www.treatmentadvocacycenter.org/component/content/article/35>.

²⁶ *See id.*

²⁷ *See id.*

factors lead to the closing of mental institutions that is known as deinstitutionalization.

The goal of transferring mentally ill patients out of mental hospitals has been accomplished. The number of mentally ill people in psychiatric hospitals has fallen from its peak of 560,000 in 1955 to 35,000 people in 2012.²⁸ However, although the plan was to move mentally ill individuals to community-based mental health treatment centers, these centers did not materialize due to lack of funding and community commitment.²⁹ With the prior system dismantled, and a new system not in place, many mentally ill individuals ended up homeless.³⁰ Once on the streets, these individuals were and continue to be easily jailed for minor offenses such as trespassing, disturbing the peace, or disorderly conduct.³¹ Sometimes, these individuals were even jailed in an attempt to help them.³² Dr. Reginald Wilkinson, head of the Ohio prison system, noted:

I've actually had a judge mention to me before that, "We hate to do this, but we know the person will get treated if we send this person to prison." When you know the courts are more apt to send a person to prison because they are going to get treated, there's something disconcerting about that.³³

II. THE CURRENT STATE OF AFFAIRS: THE PLIGHT OF THE INCARCERATED MENTALLY ILL

Though prisons have become an integral part of the treatment of mentally ill individuals, a prison's primary purpose was never to rehabilitate the mentally ill.³⁴ Gary Bevan, Chief Forensic Psychiatrist at the Ohio Department of Rehabilitation and Correction, explained:

I think the first thing that people should realize is that prison doesn't exist to provide mental health treatment, the prison exists to provide security and safety to the

²⁸ Ana Swanson, *A Shocking Number of Mentally Ill Americans End up in Prison Instead of Treatment*, WASH. POST (Apr. 30, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/04/30/a-shocking-number-of-mentally-ill-americans-end-up-in-prisons-instead-of-psychiatric-hospitals/?utm_term=.933769800f7c.

²⁹ See PBS, *Some Frequently Asked Questions*, PBS (May 10, 2005), <http://www.pbs.org/wgbh/pages/frontline/shows/asylums/etc/faqs.html>.

³⁰ See Rudolf, *supra* note 18.

³¹ See Ollove, *supra* note 4.

³² See PBS, *supra* note 29.

³³ *Id.*

³⁴ See FRONTLINE: THE NEW ASYLUMS (PBS 2005).

community. And so you have to be realistic. If there's an inmate, even though he's sick, refuses to come out of his cell, refuses to allow officers to inspect the property, refuses to comply with orders and stands fast to that, eventually, that inmate is going to do what they're told, whether they want to or not.³⁵

For this reason, mentally ill prisoners who refuse to comply with prison rules are often compelled to comply through physical force and are subject to methods such as chemical sprays, electric shocks, and long-term physical restraints.³⁶ Physical punishment might be justifiable in an emergency situation, when the lives of others are threatened, but it is less justifiable for minor offenses, such as urinating on the floor or cursing at a guard, especially because this behavior is often caused by symptoms of mental illness—symptoms that guards are often not trained to recognize.³⁷ Though there is a shortage of national data on use of force in prisons, experts consulted for a study by Human Rights Watch reported that the problem is widespread, possibly increasing, and caused in part by inadequate training and policies meant to protect prisoners.³⁸ This use of force can turn deadly, as it did in a Fairfax County jail when mentally ill inmate Natasha McKenna (diagnosed with schizophrenia and bipolar disorder) died after being shot four times with a Taser for not bending her knees to allow her to be strapped to a chair.³⁹ At the time she was shocked, her hands and feet were already shackled so she posed no risk of hurting anyone or fleeing.⁴⁰

In addition to physical abuse, solitary confinement is also used to control mentally ill prisoners.⁴¹ In solitary confinement, prisoners are put in cells alone, usually for twenty-three hours a day.⁴² The prisoners' only

³⁵ *Id.*

³⁶ See Human Rights Watch, *Callous and Cruel: Use of Force Against Inmates with Mental Disabilities in US Jails and Prisons*, HUMAN RIGHTS WATCH (May 12, 2015), <https://www.hrw.org/report/2015/05/12/callous-and-cruel/use-force-against-inmates-mental-disabilities-us-jails-and>.

³⁷ See *id.*

³⁸ See *id.*

³⁹ See Martin Weil, *Death of Woman Shocked by Stun Gun in Fairfax Jail is Ruled an Accident*, WASH. POST (Apr. 28, 2015), https://www.washingtonpost.com/local/crime/death-of-woman-shocked-by-stun-gun-in-fairfax-jail-is-ruled-an-accident/2015/04/28/7bc85f36-edfc-11e4-a55f-38924fca94f9_story.html?utm_term=.24f1556aca47.

⁴⁰ See *The Abuse of the Mentally Ill in America's Prisons*, WASH. POST (May 13, 2015), https://www.washingtonpost.com/opinions/callous-and-cruel/2015/05/13/379637bc-f8eb-11e4-a13c-193b1241d51a_story.html?utm_term=.40711a16483a.

⁴¹ See FRONTLINE: THE NEW ASYLUMS, *supra* note 34.

⁴² See Treatment Advocacy Center, *The Treatment of Persons with Mental Illness in Prisons and Jails: A State Survey*, TREATMENT ADVOCACY CENTER (2014), <http://www.treatmentadvocacycenter.org/storage/documents/treatment-behind->

human interactions are with prison guards, and the one hour outside of solitary confinement, which is spent showering and doing exercise.⁴³ Solitary confinement is already a controversial punishment when used on prisoners who do not have compromised mental states.⁴⁴ The practice has been known to induce hallucinations, paranoia, panic attacks, obsessive behavior, and hypersensitivity to external stimuli.⁴⁵ Unsurprisingly, solitary confinement almost always has an adverse effect on mentally ill inmates.⁴⁶ Many mentally ill inmates attempt self-harm or commit suicide while in solitary confinement.⁴⁷

Even outside of solitary confinement, mentally ill inmates disproportionately commit suicide in prisons and jails. A study in King County, Washington found that 77% of suicide attempts were made by inmates with a “chronic psychiatric problem.”⁴⁸ A similar study of California prisons found that 73% of suicide attempts were made by individuals with a history of mental health treatment.⁴⁹

The abuse that mentally ill inmates suffer is not limited to abuse from guards.⁵⁰ Mentally ill prisoners are also more likely to be abused by their fellow inmates. In a 2007 survey of male prisoners, one in twelve mentally ill inmates reported at least one incident of sexual abuse over a six-month period, compared to the rate of non-mentally ill prisoners, one in thirty-three.⁵¹ The rate for mentally ill female inmates is even higher at one in four.⁵²

Not only does funneling the mentally ill into the unsuited prison system hurt prisoners, but it is also financially inefficient. Mentally ill inmates tend to cost the state more money than non-mentally ill inmates for several reasons.⁵³ They tend to stay in prison longer and are more

bars/treatment-behind-bars.pdf.

⁴³ *See id.*

⁴⁴ *See* Jason S. Breslow, *What Does Solitary Confinement do to Your Mind?*, PBS (Apr. 22, 2014), <http://www.pbs.org/wgbh/frontline/article/what-does-solitary-confinement-do-to-your-mind/>.

⁴⁵ *See id.*

⁴⁶ *See* Treatment Advocacy Center, *supra* note 42.

⁴⁷ *See id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *See* Dahlia Lithwick, *Prisons Have Become America's New Asylums*, SLATE (Jan. 5, 2016), http://www.slate.com/articles/news_and_politics/jurisprudence/2016/01/prisons_have_become_warehouses_for_the_mentally_ill.html.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *See* Treatment Advocacy Center, *supra* note 42; *see, e.g.*, Treatment Advocacy Center, *supra* note 2. In Broward County, FL it costs \$80 per day to house a non-mentally ill inmate and \$130 per day to house a mentally ill inmate. In Texas, it costs \$22,000 per year to house a non-mentally ill inmate and \$30,000–\$50,000 per year to house a mentally ill inmate.

likely to reoffend.⁵⁴ Additionally, they require medication that other inmates do not, and are more likely to be a suicide risk. This requires extra personnel to watch them.⁵⁵ Finally, these inmates are incarcerated for crimes that are often wildly disproportionate to the amount of money spent holding and trying them. In one case, a lawyer defending a man charged with jumping a turnstile was offered a deal by the prosecution of one year in prison.⁵⁶ Jumping a turnstile deprives the state of \$1.50, while holding the man in prison for a year would cost \$69,000.⁵⁷

CONCLUSION

Though deinstitutionalization was initiated with laudable goals in mind, and has had positive outcomes for some,⁵⁸ the drawbacks have been expensive and severe. The mentally ill are imprisoned, which is the same reality Dorothea Dix actively fought against. To make matters worse, these inmates are being imprisoned at a high cost to taxpayers. In these ways, the problems of the past have come full circle.

Economic and humanitarian concerns are what spurred deinstitutionalization originally and similar concerns exist now. There is now increased public concern over the treatment of the mentally ill due to high-profile crimes committed by mentally ill individuals, such as Aurora movie theater shooting.⁵⁹ Solutions have unintended consequences and a quick fix is not likely. But a shift in the treatment of mentally ill individuals to focus on these individuals' unique needs rather than treating them as criminals would ultimately be an economic and humanitarian victory. Some states have already begun implementing programs to better serve their mentally ill populations. The programs are explored in the next piece.

⁵⁴ See *id.*

⁵⁵ See *id.*

⁵⁶ See Peter Wagner, *Incarceration is not a Solution to Mental Illness*, PRISON POLICY INITIATIVE (Apr. 1, 2000), <https://www.prisonpolicy.org/blog/2000/04/01/massdissent/>.

⁵⁷ See *id.*

⁵⁸ See Kimberly Amadeo, *Deinstitutionalization: How Does It Affect You Today?*, BALANCE (Dec. 5, 2016), <https://www.thebalance.com/deinstitutionalization-3306067> (pointing out that deinstitutionalization provided more rights to mentally ill individuals and benefited those with more “high functioning” mental disorders).

⁵⁹ See Ann O'Neill, *Will Mental Illness Save Holmes' Life*, CNN, Aug. 3, 2015, <http://www.cnn.com/2015/07/16/us/holmes-aurora-theater-shooting-jury-choice/>.