

The Case for Mercy in Policing and Corrections

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One tends to think of mercy as something that judges and chief executives occasionally dole out to convicted offenders. This picture is seriously incomplete. Many others are in a position to be merciful—from police on the street to corrections officers in a prison. In short, anyone who has power to inflict something disagreeable on another person has the opportunity to be merciful. More broadly still, mercy—understood as an act of leniency prompted by compassion—presupposes a capacity or disposition, namely the capacity or disposition to show compassion and understanding for another. This Essay develops both of the foregoing points. First, it points out that there are opportunities for mercy at every juncture of the criminal process, from policing to prison conditions. Second, it is not only the case that acts of mercy at each of these junctures are called for to help ameliorate the harshness of our criminal justice system. More broadly and more deeply, it is vital that all actors in the system approach their roles with the sort of compassionate mindset that is exemplified by, but hardly exhausted by, acts of mercy.

This Essay examines the transformative potential of mercifulness at two critical junctures: one at the very beginning of the criminal legal process, the other at the very end.¹ It first examines the potential for a merciful disposition in policing by the actors who often determine who will be subjected to the criminal legal process. It then considers the role of mercifulness by those who work in prisons and thus represent the system’s “reentry liaisons”—those

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1. This focus on the contexts of policing and corrections is not in any way intended to detract from crucial efforts to address the harsh sentencing practices in the U.S. However, these “poles” of the criminal legal process may be especially ripe for examination both because they are less explored and less subject to traditional critiques of mercy that center around victims’ rights and proportional sentencing (among other equity concerns). But, to be sure, these realms are not without their own equity concerns. For an example in the policing context, see Jonah E. Bromwich, *An Idealistic Cop, a Forbidden Ticket and a Police Career on the Brink*, N.Y. TIMES (Jan. 19, 2024), <https://www.nytimes.com/2024/01/16/nyregion/mathew-bianchi-nypd-traffic-tickets.html> [<https://perma.cc/95A8-GHDPJ>], for a description of the “courtesy cards” distributed by police unions, and the consequences for a police officer who refused to honor them.

who bridge the gap from conviction to release—for the (at least) 95% of prisoners who will eventually leave prison.² In addition to the role-based reasons to examine these two sets of legal actors in tandem (both groups refer to the pervasive danger they face patrolling as “tough beats”³), there is also significant overlap among those who work in the policing and corrections fields. Historically, work in prisons has been a stepping stone for aspiring police officers, and as police recruiting has become more challenging, it is likely that more former corrections officers will have the opportunity to transition to the job of police officer.⁴

In this Essay, I draw on Seneca’s definition of mercy as a “tendency of the mind to leniency in exacting a punishment.”⁵ Notably, this is not the conventional understanding of mercy, which typically refers not to an

2. TIMOTHY HUGHES & DORIS JAMES WILSON, DEP’T OF JUST., REENTRY TRENDS IN THE UNITED STATES (2004), <https://bjs.ojp.gov/content/pub/pdf/reentry.pdf> [<https://perma.cc/K4RK-7WKK>].

3. “Tough beat” refers to the most challenging or difficult assignment or duty within the context of law enforcement. It implies that correctional officers and police officers face particularly demanding conditions and deal with exceptionally difficult individuals as part of their job in the prison system or out on the streets. *See, e.g.*, Don Chaddock, *Correctional Officers Have Long Walked State’s Toughest Beat*, CAL. DEP’T OF CORR. & REHAB. (Jan. 17, 2019), <https://www.cdcr.ca.gov/insidecdcr/2019/01/17/unlocking-history-correctional-officers-have-long-walked-states-toughest-beat/> [<https://perma.cc/C5WF-2X9U>] (describing some of the significant threats correctional officers have endured). This pervasive sense of danger cuts against the practice of mercy, making institutional reform that cultivates empathy particularly crucial in these spheres. *See, e.g.*, *FOP National President Issues Alert to Officers: Be Vigilant*, NAT’L FRATERNAL ORD. OF POLICE (Sept. 15, 2020), <https://fop.net/2020/09/fop-national-president-issues-alert-to-officers-be-vigilant/> [<https://perma.cc/84QA-CBVV>] (“[O]ur officers are targets and may be subject to attack at any point—without warning and without reason. Therefore, I am urging all of our nation’s law enforcement officers to be vigilant.”).

4. *See* JOE RUSSO, NAT’L INST. OF JUST., WORKFORCE ISSUES IN CORRECTIONS (2019), <https://nij.ojp.gov/topics/articles/workforce-issues-corrections#2-0> [<https://perma.cc/TEG2-JR3L>] (describing the corrections job market as being “in full crisis mode” due to poor staff retention); *Survey on Police Workforce Trends*, POLICE EXEC. RSCH. F. (June 11, 2021), <https://www.policeforum.org/workforcesurveyjune2021> [<https://perma.cc/8JNQ-8AUV>] (showing that police agencies are struggling to fill available positions); The Associated Press, *The U.S. Is Experiencing a Police Hiring Crisis*, NBC NEWS (Sept. 6, 2023, 7:49 AM), <https://www.nbcnews.com/news/us-news/us-experiencing-police-hiring-crisis-rcna103600> [<https://perma.cc/48US-YFWC>] (reporting a widespread “police officer shortage”). In some sheriff’s departments, an employee may work across a range of law enforcement positions depending on seniority, including corrections and street patrolling. *See, e.g.*, *Join the San Bernardino County Team*, SAN BERNARDINO CNTY. SHERIFF’S DEP’T (Jan. 1, 2024), <https://www.governmentjobs.com/careers/sanbernardino/jobs/4329096/deputy-sheriff-lateral> [<https://perma.cc/SHE6-BWBD>] (“The San Bernardino County Sheriff’s Department is seeking experienced applicants to fill positions as Deputy Sheriff’s [sic] who perform a variety of law enforcement functions, depending upon the level of experience and area of assignment, in a correctional facility, with the courts, on patrol, or in crime investigations.”).

5. LUCIUS ANNAEUS SENECA, *On Mercy*, in *SENECA: MORAL AND POLITICAL ESSAYS* 117, 160 (John M. Cooper & J.F. Procopé eds., 1995) (55–56 CE).

inclination or disposition but to an act—that is, to a person refraining from exercising a power to do something disagreeable to another (for example, the judge’s bestowal of mercy on the offender). Seneca’s definition is more in line with what we might call “mercifulness,” or a disposition toward being merciful. Whereas acts of mercy are, of course, transformative for an individual, it is only through the cultivation of mercifulness among institutional actors that broader transformation of these institutions would be possible. I thus draw on Seneca’s definition as a model for thinking about this transformative potential within the institutions of policing and corrections. The cultivation of mercifulness as a disposition has more potential for transformation than the cultivation of individual acts of mercy since acts of mercy are understood conventionally to be, by definition, rare or even exceptional. Indeed, if mercifulness becomes dominant as a disposition in corrections, then some of what currently could be characterized as acts of mercy (because exceptional) would cease to be exceptional and, instead, merely be consistent with a revised set of institutional norms.

Core to Seneca’s understanding of mercy is the capacity for empathy—he stressed the importance of humanizing those it might be easy to “other” and firmly rejected an us–them orientation.⁶ Instead of vengeful anger or even a retributive focus on the harsh treatment an offender might deserve, appropriate punishment, according to Seneca, would be geared toward moral reform.⁷ Upon combining Seneca’s concept of mercy with his positive account of punishment, three principles emerge as central to criminal legal practice: (1) a needs-based assessment of those subject to the criminal legal process; (2) a foundation of compassion; and (3) an acknowledgment of shared humanity.

A more merciful policing and corrections would be grounded in compassion and in an appreciation of the shared humanity of those policed or incarcerated.⁸ These values would feature prominently in departmental training and would be modeled by senior leadership.

In the prison context, an exclusive focus on sentence length as the marker of the severity of punishment obscures the significance of practices

6. See *Seneca*, *supra* note 5, at 150 (noting that even between slaves and kings, there is a boundary of decency that cannot be crossed because slaves are human beings).

7. See *id.* at 164 (distinguishing between mercy, pardon, and forgiveness, noting that “[m]ercy . . . judges not by legal formula, but by what is equitable and good”).

8. Seneca describes “judging with” as the lens that allows the judge to identify with the wrongdoer, to understand the situation in its complexity, to empathize, and, while not eschewing punishment altogether, to punish gently. *Id.* at 161–64. In the context of policing and corrections, officers, while not functioning in a judicial capacity, can still either “other” those whom the officers surveil or see them in their full human complexity.

of punishment, which can range from excessive to merciful. In prior work, I have advocated for a “principle of return”⁹ that would make good on the promise of a limited-term punishment. I suggested that, in the absence of such a principle, and if the practices of incarceration do not prepare a person to successfully reintegrate into the polity, that person can be said to have experienced “punishment-plus,” which is excessive even supposing that their term of imprisonment is not excessive.¹⁰ A merciful disposition in the corrections context would entail modes and conditions of punishment that comport with the principle of return and treat incarcerated individuals as full, contributing members of a shared community.

Similarly, in the policing context, the embrace of mercifulness would require that officers envision those policed as sharing with them a common humanity and community. By contrast, at present, officers tend to envision their jobs as “policing future prisoners,” already othering those they police and imagining them as subhuman and threatening, much like corrections officers (and many in the public) think of incarcerated individuals.¹¹ These problems are exacerbated by racial factors and, not surprisingly, members of overpoliced communities are overrepresented in our nation’s carceral facilities.¹² Ultimately, while policing and corrections represent two poles of the criminal legal process, their pathologies reflect each other and the cultivation of compassion in both domains could have a transformative effect in humanizing our criminal justice system.

I. Mercy and Motivation

Mercy is conventionally understood to be a decision to decline to exercise a power that one has over another person to visit some harsh consequence on them for their wrongdoing. For example, a police officer may refrain from exercising his power to arrest someone he observes engaged in criminal conduct, or a prosecutor may refrain from exercising her power to prosecute. The archetypal examples of mercy are motivated by empathy

9. Avlana K. Eisenberg, *The Prisoner and the Polity*, 95 N.Y.U. L. REV. 1, 4, (2020).

10. *Id.* at 11.

11. See ALEX S. VITALE, *THE END OF POLICING* 3 (2018) (describing the “warrior mentality” of police officers and how it encourages officers to view all encounters as potential threats).

12. NAZGOL GHANDNOOSH & CELESTE BARRY, *THE SENT’G PROJECT, ONE IN FIVE: DISPARITIES IN CRIME AND POLICING* 8–11 (2023), <https://www.sentencingproject.org/reports/one-in-five-disparities-in-crime-and-policing/> [<https://perma.cc/7VRL-7R3Y>]; see generally ASHLEY NELLIS, *THE SENT’G PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS* (2021), <https://www.sentencingproject.org/reports/the-color-of-justice-racial-and-ethnic-disparity-in-state-prisons-the-sentencing-project/> [<https://perma.cc/Q5TQ-4GZG>] (cataloging racial disparities in incarceration).

toward the wrongdoer—compassion for the individual and a nuanced understanding of the context of both wrongdoing and broader notions of universal human frailty.¹³ Yet, can one be merciful without being compassionate toward the recipient of the mercy?

First, it bears mentioning that compassion and empathy, while related, are conceptually distinct. Borrowing from Buddhist teachings, compassion, “[o]ur wish to help the other person,” is “motivated by love.”¹⁴ Buddhism defines it “as the wish to give happiness to others.”¹⁵ Tibetan Buddhist David Michie writes that, in extending compassion,

We understand their suffering because we have suffered too. And based on that empathetic foundation, our wish is to help them get out of their pit, to whatever extent that may be possible. We are not taking on their pain as our own. In fact our experience of reality is ideally one of boundless peace and wellbeing.¹⁶

This is “feeling for and not feeling with the other.”¹⁷

Acknowledgment of shared humanity with another person requires some empathy insofar as it allows us to feel a common bond with that person. However, a foundation of *compassion* is really what is necessary as a prerequisite to mercy. Compassion is a willingness to relieve someone else’s suffering, whereas empathy is “the ability to recognize, understand, and share the thoughts and feelings of another person.”¹⁸

Now, what of leniency without compassion, or leniency motivated by factors including but not limited to compassion? Is compassion for the person

13. A more compassionate approach would allow one to better understand the context and circumstances that could partially excuse a person’s wrongful actions. The most obvious example is where Judge J gives offender O a lenient sentence out of recognition that O only committed the offense because O was facing very dire circumstances. In this instance, J is treating O’s offense as partially excused and therefore less blameworthy.

14. David Michie, *Empathy vs Compassion: A Buddhist Perspective*, THE DALAI LAMA’S CAT: BUDDHIST WISDOM & COMPASSION (Mar. 4, 2023), <https://davidmichie.substack.com/p/do-you-ever-face-empathy-burn-out> [<https://perma.cc/2WKU-SM2W>].

15. *Id.* (emphasis omitted).

16. *Id.*

17. Tara Well, *Compassion Is Better Than Empathy*, PSYCH. TODAY (Mar. 4, 2017), <https://www.psychologytoday.com/us/blog/the-clarity/201703/compassion-is-better-empathy> [<https://perma.cc/5R7H-SQJK>] (describing how an experimental group trained in empathy “found empathy uncomfortable and troublesome”).

18. *Empathy*, PSYCH. TODAY, <https://www.psychologytoday.com/us/basics/empathy> [<https://perma.cc/U8JK-2Z88>]. The term “empathy,” however, is often used colloquially to describe the synthesis of an acknowledgment of shared humanity with another and compassion toward that person.

who is being, to some degree, spared an element of mercy?¹⁹ Surely, not all examples of leniency can be categorized as merciful. Imagine a judge who is prepared to impose a prison sentence on an offender but then grants parole simply because the judge has learned, much to their dismay, that the relevant facilities are so overcrowded that there is no place in which to imprison the offender. It seems more apt to describe this as an instance of “luck” on the part of the offender than “mercy” being bestowed by the judge.

Many hard cases will involve mixed motives—compassion may be one factor, but there is at least one additional factor that motivates the lenient behavior. How does one delineate the boundaries of mercy? Instead of imagining a binary that categorizes behaviors motivated entirely by compassion as merciful, and all other behaviors as outside the scope of mercy, perhaps a more helpful approach to delineating the scope of mercy would be to visualize an atomic structure. At the center of the atom are cases where compassion for the wrongdoer motivates the leniency of the person who can be said to have bestowed mercy. Out from the center, orbiting around it, are cases where the motives of the person behaving leniently are more complicated or murky—for example, compassion toward persons other than the wrongdoer or generalized concerns about the doing of justice.²⁰

But not all cases of “letting someone off easy” are cases of merciful treatment, and at some point, one ventures outside the atomic structure entirely. Perhaps merciful acts can be motivated by various motives or reasons, but not *any* motive or reason. In addition to the foregoing example of the judge who grants parole against his will, consider a case in which a police officer catches a wrongdoer red-handed but lets him go because he recognizes that the wrongdoer is the son of the city’s mayor and is nervous about retaliation by the mayor if there were an arrest. Here, the officer’s release of the wrongdoer seems purely instrumental or narrowly self-interested in a way that belies characterization as an act of mercy. For the concept of mercy to have independent meaning, lenient behavior must be motivated, at least in part, by compassion to be merciful.

19. One can imagine a host of scenarios where compassion might be one of many motivating factors, but perhaps not even compassion toward *that* defendant. For example, consider a prosecutor who brings a lesser charge because she heeds the pleas of the defendant’s family to be merciful, only to spare the family from difficulties they will face if the defendant faces a harsh sentence. Or imagine a police officer who chooses not to arrest a defendant because the defendant is an important figure on whom an entire community depends (a key employer, for example).

20. For example, one could imagine a police officer who nabs a teenager red-handed in the act of burglary, but on this day is feeling especially tired and fed up with sending young offenders into the crucible of the criminal justice system, and so on this occasion lets the teenager go.

One might wonder why, especially in the hyper-carceral system of punishment in the United States, should one not favor *any* exercise of leniency, whatever the motivation? Indeed, as a policy matter, one might not feel compelled to differentiate between leniency motivated by compassion and that motivated entirely by self-interest. And to the recipient of lenient treatment, the motivation might be irrelevant if the outcome is the same. However, there are still strong reasons to favor the cultivation of empathy, particularly in the contexts of corrections and policing. Institutional norms and culture are crucial in these contexts, and it is difficult to imagine making much progress in dialing back the punitiveness of policing and corrections without addressing the us–them orientation that pervades both of these realms. While a person who is prone to “othering” and lacks a general disposition toward being merciful might still on a given occasion act mercifully, meaningful systemic change would require that institutional actors change to some degree their understanding of their mission and their relation to the people with whom they regularly interact.²¹

II. Mercy and Institutions

We tend to think of mercy in the criminal legal context as something a judge or executive doles out—a lighter sentence, or perhaps a suspended sentence, a pardon, or clemency. But, in a system so punitive as to be an outlier among peer countries—based both on the number of people incarcerated and length of sentences—it bears considering whether there is an overall shortage of mercy in the system and of conditions that would support the exercise of mercy within institutions. Many have rejected the “bad apples” theory in policing, demonstrating that it simply is not the case that removing a few officers will change the culture of police departments.²² So too is it naïve to imagine that a modest increase in the number of pardons or clemency doled out by executives, or a few months (or even years) shaved off some prison sentences, would meaningfully change the punitiveness of the U.S. criminal legal system, let alone infuse mercy into that system.

21. While there are no guarantees that compassion will lead to mercy, compassion is a prerequisite for mercy. Thus, for those who would favor less punitive and more merciful institutions, a key first step would be to cultivate compassion. This will require creating institutions where the people who work there are also treated with compassion. It will be crucial to show compassion to officers in order to cultivate compassion in them—this will require modeling a more humane system from the top down.

22. See, e.g., Chiraag Bains, “A Few Bad Apples”: *How the Narrative of Isolated Misconduct Distorts Civil Rights Doctrine*, 93 IND. L.J. 29, 48–51 (2018) (collecting statistics that indicate systemic, rather than individual, disparities in policing).

If an institution were to be infused with mercy—or the capacity for mercy—what of concerns that merciful behavior, to count as such, must be exceptional? Indeed, in the criminal legal context, acts of mercy appear exceptional. Grants of clemency or pardons are rare, and our system is characterized by a high level of punitiveness.²³ As a reference point, each year, the President of the United States is televised pardoning two—and only two—turkeys at Thanksgiving.²⁴ But must acts of mercy be exceptional in order to “count” as mercy? Could a leader or institution demonstrate mercy as a feature? Much of our contemporary understanding of the concept of mercy and its connection to justice comes from ancient religious texts. In the context of the Sanhedrin—the Jewish high court that dates back to the sixteenth century—while certain crimes were punishable by death, it was commonly said that, if the Sanhedrin executed someone once every 70 years, it was a “bloody court.”²⁵ Owing to extensive procedural safeguards, it was commonplace for the Sanhedrin to spare individuals deserving of punishment by death, and in this context, mercy became a defining feature of the court, such that the institution itself was described as merciful.²⁶ In contemporary policing and corrections contexts, a turn toward mercifulness would result in an increase in acts of mercy but, more strikingly, would eventually result in a more transformative institutional norm shifting. Merciful acts would no longer be viewed as exceptional but rather the result of an infusion of mercifulness into the institutional practices of law enforcement.

Law enforcement personnel are embedded in institutions, and institutional design choices affect whether those who work within these institutions are encouraged to develop a merciful disposition or not. It thus bears considering these institutional design choices and whether they facilitate or cut against the exercise of mercy by institutional actors or, perhaps more fundamentally, habits of mind that would promote merciful dispositions.

In the policing context, for example, the line officer, who makes individual decisions whether to arrest a person, is embedded in an office with departmental norms and expectations. If a department’s culture glorifies

23. See Rachel E. Barkow & Mark Osler, *Restructuring Clemency: The Cost of Ignoring Clemency and a Plan for Renewal*, 82 U. CHI. L. REV. 1, 3 (2015) (lamenting the rarity with which recent presidents have granted clemency).

24. Associated Press, *White House Turkey Pardon 2023: Watch Live as Biden Pardons Thanksgiving Turkeys Liberty and Bell*, YOUTUBE (Nov. 20, 2023), <https://www.youtube.com/watch?v=Jc58Z7qDPmI> [https://perma.cc/KN8Y-KYQT].

25. Jack B. Weinstein, *Does Religion Have a Role in Criminal Sentencing?*, 23 TOURO L. REV. 539, 540, 542 (2007) (quoting Alex Kozinski, *Sanhedrin II*, NEW REPUBLIC, Sept. 13, 1993, at 16).

26. Gabe Jacobson, *The High-Lights of the Great Sanhedrin*, 3 MISS. L.J. 261, 269 (1931).

arrests (or if there is a system of quotas that incentivizes arrests), the officer working within this institution will be far more likely to decide to arrest in a situation where they would be permitted either to arrest or give a warning.²⁷ By contrast, if the officer works in a department that encourages the issuing of warnings when possible, instead of arresting people, the officer may approach policing with more compassion and more of an inclination to exercise mercy.²⁸ Institutional design choices—including decisions about recruiting, hiring, training, and promotion—could play a pivotal role in creating conditions that are conducive to and motivate merciful dispositions and, ultimately, merciful decisions by institutional actors.

Similarly, in the prison context, institutional design choices could make the corrections industry less punitive and more compassionate, or the opposite. Correctional officers make discretionary decisions every day,²⁹ such as, for example, the choice to discipline a prisoner by placing them in solitary confinement, which is not subject to meaningful oversight and may have a huge effect on a prisoner's physical, mental, and emotional well-being.³⁰ In a departmental culture where us-versus-them dynamics are pervasive and officers routinely put inmates in solitary as a disciplinary measure, an officer is far more likely to do so rather than approaching a difficult (or even annoying) situation with compassion and with openness to finding other ways to address the situation. By contrast, if the departmental culture were such that officers were trained for and expected to perform a social work function, they would feel responsible for attempting to make the lives of prisoners better and for helping them develop the skills necessary to thrive upon release. This shift in institutional norms and expectations would impact the likelihood that officers would cultivate a merciful disposition and deploy mercy in their day-to-day discretionary decisions.

27. See Shaun Ossei-Owusu, *Police Quotas*, 96 N.Y.U. L. REV. 529, 540–41 (2021) (describing how quotas drive perverse incentives for police officers).

28. See *id.* at 582–83 (explaining how quotas limit police discretion and “disincentivize police from engaging in socially beneficial activity”).

29. Discretionary actions by officers include decisions about “where an inmate serves his or her sentence” and whether to “send[] inmates to administrative segregation,” both of which “affect the inmate’s accrual of good time.” Avlana K. Eisenberg, *Incarceration Incentives in the Decarceration Era*, 69 VAND. L. REV. 71, 111 (2016) (emphasis omitted). Moreover, oversight by wardens “may involve mere ‘rubber-stamping’” rather than meaningful review of official actions. *Id.*

30. See *Federal Prisons Haven’t Addressed Longstanding Concerns About Overuse of Solitary Confinement*, WATCHBLOG, U.S. GOV’T ACCOUNTABILITY OFF. (Feb. 6, 2024), <https://www.gao.gov/blog/federal-prisons-havent-addressed-longstanding-concerns-about-overuse-solitary-confinement> [<https://perma.cc/PCP2-LLJ7>] (highlighting failures in oversight); Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 CRIME & JUST. 365, 370–75 (2018) (collecting studies on the detrimental effects of solitary confinement).

The next two Parts will consider what institutional design choices preclude the practice of mercy in policing and corrections, and what it would take to infuse these institutions with mercy by cultivating institutional leaders and line officers who are predisposed toward mercy.

III. Mercy in Policing

Police officers are the gatekeepers of the criminal legal system. As such, their decisions about how to exercise their powers over persons suspected of criminal wrongdoing are immensely impactful to those persons' lives. A single decision by an officer could cause an individual to be swept up in the criminal legal machinery or spare them entirely from criminal proceedings. These decisions, while perhaps less visible than the granting of clemency or a pardon, can involve extremely high stakes. Research findings have shown the deleterious effects of arrest. Even one night in pre-trial detention can have negative effects on the detainee, including on the outcome of their criminal case and their future personal and professional prospects.³¹

While officers might behave mercifully in a given situation, there are widespread cultural factors that cut against the exercise of mercy. Most notably, core to police culture is a “danger narrative,” according to which “policing is inherently dangerous, and officers are under constant threat of grave physical harm at the hands of those whom they police.”³² This narrative, while lacking any plausible empirical basis, “dominates police self-image and professional protocols” and is “core to police training.”³³ It is also consistent with an us–them orientation that “casts those policed as potential enemy combatants.”³⁴

This us–them orientation runs directly counter to a merciful disposition, making policing a challenging yet crucial locus for reform. The cultivation of a merciful disposition would transform prevailing police culture and thus have the potential to create far more widespread and meaningful institutional

31. See, e.g., Gary Fields & John R. Emshwiller, *As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime*, WALL ST. J. (Aug. 18, 2014, 11:30 PM), <https://www.wsj.com/articles/as-arrest-records-rise-americans-find-consequences-can-last-a-lifetime-1408415402> [<https://perma.cc/8STU-34Q6>] (documenting how people with arrests but no convictions are subsequently impacted); Corinne A. Carey, *No Second Chance: People with Criminal Records Denied Access to Public Housing*, 36 U. TOL. L. REV. 545, 551–52 (2005) (surveying the effects of arrests on public housing access).

32. Avlana K. Eisenberg, *Policing the Danger Narrative*, 113 J. CRIM. L. & CRIMINOLOGY 473, 476 (2023); see Michael Sierra-Arévalo, *American Policing and the Danger Imperative*, 55 L. & SOC'Y REV. 70, 71 (2021) (discussing how police are socialized into the “danger imperative”—a framework that “emphasizes violence and the need to provide for officer safety”).

33. Eisenberg, *supra* note 32, at 478.

34. *Id.* at 481.

change than individual harm-regulation techniques, such as banning police chokeholds or requiring that officers wear body cameras.³⁵ While these harm-regulation techniques are not incompatible with the cultivation of mercy in policing, they are far more limited and subject to technicalities that might still absolve officers who use excessive force or fail to de-escalate a situation that is not inherently risky.³⁶ Also, concerningly, harm-reduction techniques are not inconsistent with an us–them orientation in policing.

So, what might examples of a more merciful policing look like? First, the dominant danger narrative would need to be replaced by a new narrative, one that cultivates empathy and “would enable police to imagine a shared vulnerability between themselves and those policed.”³⁷ Instead of an alienating us–them frame, this appreciation of a shared humanity would give rise to a “focus on (and curiosity about) the needs and past traumas of those policed.”³⁸

In practice, a merciful disposition in policing would reject the overgeneralized us–them orientation that alienates police from those policed and instead recognize that a compassionate approach need not be incompatible with public safety. For example, instead of issuing a ticket for a moving violation, the officer could choose to issue a warning. An officer who encounters an individual who is using illicit drugs but appears not to be a danger to themselves or others might check in to make sure that person has a place to sleep and a buddy to look after them, rather than arresting the person. An officer who encounters a non-compliant person who appears to

35. See COUNCIL ON CRIM. JUST., CHOKEHOLDS AND OTHER NECK RESTRAINTS 1–2 (2021), https://assets.foleon.com/eu-central-1/de-uploads-7e3kk3/41697/pdf__chokeholds.d78d7aa1fada.pdf [<https://perma.cc/RS29-4WZL>] (predicting that proscribing chokeholds can only save against a “small share of fatalities” because chokeholds cause less than one percent of police-related deaths); RESEARCH ON BODY-WORN CAMERAS AND LAW ENFORCEMENT, NAT’L INST. OF JUST. (Jan. 7, 2022), <https://nij.ojp.gov/topics/articles/research-body-worn-cameras-and-law-enforcement> [<https://perma.cc/8CJ5-J6XS>] (finding that “[r]esearch does not necessarily support the effectiveness of body-worn cameras in achieving” body-worn cameras’ purpose).

36. See Monika Evstatieva & Tim Mak, *How Decades of Bans on Police Chokeholds Have Fallen Short*, NAT’L PUB. RADIO (June 16, 2020, 5:11 AM), <https://www.npr.org/2020/06/16/877527974/how-decades-of-bans-on-police-chokeholds-have-fallen-short> [<https://perma.cc/JKU5-C5EW>] (noting the lack of accountability arising from chokehold bans, partially due to the primacy of internal disciplinary processes); Eric Umansky & Umar Farooq, *How Police Have Undermined the Promise of Body Cameras*, PROPUBLICA (Dec. 14, 2023, 5:00 AM), https://www.propublica.org/article/how-police-undermined-promise-body-cameras?c_src=33685809.57194 [<https://perma.cc/9QEK-72MM>] (detailing the shortcomings of body-camera mandates, including that police departments eschew transparency for “protect[ing] . . . themselves” and can frequently control what body cameras capture).

37. Eisenberg, *supra* note 32, at 518.

38. *Id.* at 519.

be in mental distress might refrain from arresting them and instead work to de-escalate the situation while calling for medical help.

How do we get to a point where officers do not jump to arrest and do not escalate encounters unnecessarily, where officers, while still considering their own safety and that of others, assume a more circumspect approach and are predisposed to give someone the benefit of the doubt if arrest or the use of force is not strictly necessary? Inculcating a merciful disposition in police culture would require substantial shifts in police training protocols and departmental norms. Police department messaging from recruitment onwards would reject an us–them orientation in favor of a depiction of the officer as community partner. Recruits would learn about the history of policing in the United States—including the racialized origins of us–them policing—and training would include elements of a trauma-informed approach that would, among other aspects, “provide helpful context and perspective for officers as they interpret their encounters with civilians, many of whom may have a deep-seated fear of police.”³⁹ Recruits and seasoned officers alike would be exposed to personal narratives (ideally, firsthand) of those who are members of overpoliced communities—including Black Americans, those who suffer from medical conditions that might make them particularly susceptible to over-policing, and advocates for those suffering from mental illness. Exposure to these personal narratives could play a significant role in cultivating compassion by providing police with a multidimensional lens from which to approach individuals whom police might be inclined to “other” and perceive, reflexively, as dangerous.

Officers would also be given more training on medical and mental health issues and, ideally, they would partner with health experts who are in a better position to respond to such needs when they arise. Additionally, officers would be educated about mental health conditions, such as PTSD, that disproportionately affect law enforcement,⁴⁰ and they would be provided with resources to address their own needs. The unresolved trauma of law enforcement officers, if unaddressed, may result in officers reacting violently out of fear even when not subject to heightened risk, and in an inability to feel compassion or acknowledge a shared humanity with those they police.

These suggested reforms are not fanciful. Rather, they are drawn from pilot programs in U.S. police departments that could be adopted more

39. *Id.* at 524 (citing Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 *YALE L.J.* 2054, 2068 (2017)).

40. See Gordon J. G. Asmundson & Jennifer A. Stapleton, *Associations Between Dimensions of Anxiety Sensitivity and PTSD Symptom Clusters in Active-Duty Police Officers*, 37 *COGNITIVE BEHAV. THERAPY* 66, 66 (2008) (noting that “[p]revalence estimates [of PTSD] are higher in high-risk populations,” including “law enforcement officers”).

broadly.⁴¹ As for the three examples of merciful police behavior described above—issuing warnings rather than tickets, checking in on individuals using drugs to make sure they are not in danger, and de-escalating encounters with non-compliant but non-dangerous individuals and delegating their care to mental health professionals—the author witnessed each firsthand on a recent ride-along with a police officer in a large U.S. city.

Yet, a merciful disposition is fundamentally at odds with hypervigilance, making such a shift particularly challenging given the heightened suspicion that characterizes the dominant disposition in contemporary U.S. policing.⁴² This is why a major overhaul of police recruiting, training, and protocols would be necessary to inculcate a more merciful disposition among those who work in law enforcement. Such a transformation, however, could pay dividends, especially at this early stage in the criminal legal process where the exercise of mercy could allow individuals to avoid getting swept up into the process in the first place.

Given the rigidity of the law enforcement hierarchy, a more merciful disposition in policing would require commitment from the highest echelon of any department. But it is possible. For example, while Commissioner William Evans was at the helm of the Boston Police Department, arrests decreased by almost 25%, and use of force complaints decreased by almost 50%, at the same time that there was a significant overall decrease in crime.⁴³ In a recent conversation, Evans pointed to these statistics as what made him “most proud” about his time as Commissioner.⁴⁴ He explained that the shift toward a more merciful police department during his tenure was far from accidental, stressing the centrality of values such as “empathy” and a “belief in second chances.”⁴⁵ You “give someone a break if you can,” he explained, providing the example of pulling someone over for running a red light and giving a warning rather than issuing a ticket.⁴⁶ Commissioner Evans stressed

41. For examples of police partnerships in the mental health context and of programs advocating for historically and trauma-informed policing, alongside diverse community collaborations and learning through direct exposure, see Eisenberg, *supra* note 32, at 522–26, 531–37.

42. See Eisenberg, *supra* note 32, at 476 (characterizing the “danger narrative” as possessing “vast influence”).

43. Amy Tournas, *So What Will Commissioner Evans’ Pension Be?*, PIONEER INST. (Aug. 8, 2018), <https://pioneerinstitute.org/blog/so-what-will-commissioner-evans-pension-be/> [https://perma.cc/HT7T-4M79].

44. Interview with William Evans, Former Comm’r, Bos. Police Dep’t, in Boston, Mass. (Dec. 20, 2023).

45. *Id.*

46. *Id.*

the importance of hiring and promotion, noting that the “key is to pick command staff with these values” and to “preach it during recruiting.”⁴⁷

Notably, Evans connected his merciful disposition to his childhood experiences—he “grew up without a mother and with an alcoholic father, was raised by his brothers and got into trouble as a kid.”⁴⁸ Evans reflected that he was “given opportunities” and “provided a lifeline” by supportive adults who recognized his needs and saw his potential, rather than being channeled through the criminal legal system.⁴⁹ A self-described recipient of mercy, Evans expressed appreciation for the value of mercy in policing as a guiding principle and, accordingly, for reforms that would cultivate empathy across U.S. police departments.⁵⁰

IV. Mercy in Corrections

More than ninety-five percent of incarcerated individuals eventually will leave prison.⁵¹ The “practices of incarceration”—and those who work in prisons and oversee or administer these practices—play a pivotal role in determining the reentry prospects of the incarcerated.⁵² These practices can range from cruel to merciful. Prison reform advocates, as in the policing context, have tended to focus on harm reduction: for example, documenting and critiquing the use of solitary confinement, especially for those with mental health conditions and for significant stretches of time.⁵³ While such efforts are crucial to addressing some of the most inhumane conditions in U.S. prisons, it is also important to consider what practices may be less obviously dehumanizing yet also may have adverse effects, and how the introduction of mercy into corrections could shift prison norms and culture.

The us–them dynamics in prisons are particularly pronounced: by many accounts, the interpersonal dynamics in prison may appear “designed to be us versus them.”⁵⁴ Corrections officers “refer to prisoners as ‘bad guys’ or

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. Hayne Yoon, *Back to School: A Common-Sense Strategy to Lower Recidivism*, VERA INST. OF JUST. (Sept. 19, 2019), <https://www.vera.org/news/back-to-school-a-common-sense-strategy-to-lower-recidivism> [https://perma.cc/8TX5-ZF6Q].

52. Avlana K. Eisenberg, *supra* note 9, at 5.

53. KAYLA JAMES & ELENA VANKO, VERA INST. OF JUST., *THE IMPACTS OF SOLITARY CONFINEMENT* (2021), <https://www.vera.org/downloads/publications/the-impacts-of-solitary-confinement.pdf> [https://perma.cc/K4SA-M4TA].

54. Eisenberg, *supra* note 29, at 95 n.137 (quoting Telephone Interview with Donald Cohen, Exec. Dir., In the Public Interest (Apr. 8, 2014)).

‘thugs,’ defining their professional roles in direct opposition, as ‘the toughest beat’ or as ‘patrolling the toughest precincts.’”⁵⁵ This dynamic echoes the broader us–them dynamic between incarcerated and non-incarcerated individuals—prisoners are routinely “othered,” which precludes any appreciation for the common humanity between these groups. Many corrections officers come from similar backgrounds as the prisoners under their watch, and they may feel a psychological need to “other” them,⁵⁶ even to the point of dehumanization—referring to them as “animals.”⁵⁷

Many have described prisons as sites of deprivation—the incarcerated person is deprived of autonomy, privacy, social interaction, access to nature, and a broad range of other enriching sensory stimuli and opportunities for personal growth. While mercy is not generally defined as the lack of deprivation, in a system where deprivation is the norm, perhaps the decision to withhold deprivation is itself an act of mercy. In the prison context, a precondition for the decision to withhold deprivation is to view prisoners as humans. This may strike many as an extraordinarily low bar—requiring only the smallest iota of compassion—but in many U.S. carceral facilities, it may constitute a radical change.⁵⁸ Relatedly, in a place where denial of human dignity is the norm,⁵⁹ an acknowledgment of the dignity and humanity of the prisoner would cut against the default norm of deprivation.⁶⁰

A merciful disposition in the corrections context would necessitate a shift away from an us–them frame and toward envisioning incarcerated individuals as full, contributing members of a shared community.⁶¹ From the moment a person enters prison, the focus should be on the unique needs of that individual. An initial assessment would focus on a “root-cause analysis” to “expose the root causes of their criminal activity,” whether related to

55. Eisenberg, *supra* note 9, at 46.

56. Eisenberg, *supra* note 29, at 96.

57. Interview with Anonymous Corr. Officer at MCI-Framingham Prison, at MCI-Framingham (Jan. 22, 2019).

58. *See, e.g.,* *Brown v. Plata*, 563 U.S. 493, 502–06, 510–11 (2011) (detailing the inhumane conditions to which inmates were subjected in California prisons, much of which being “foreseeable and/or preventable”).

59. *See id.* (describing the abhorrent conditions in California prisons and how these conditions violate principles of human dignity).

60. The affirmation of a prisoner’s dignitary interest would also raise curiosity about that person’s unmet needs, and rather than reflexively disciplining the non-compliant, non-dangerous prisoner by sending them to solitary, perhaps the officer would be more likely to assess and address these needs in a less punitive way.

61. Eisenberg, *supra* note 9, at 47 (advocating for a “communitarian approach” that informs the responsibility borne by the state to prisoners and arguing that “the state is required to provide to term-limited prisoners at least a plausible hope of basic reintegration and the avoidance of further debilitation”).

mental health, addiction, poverty, or another underlying affliction.⁶² As important, “the state should assess what each person would need to thrive in society upon release . . . [and] what services must be provided to those it incarcerates such that they will be able to reintegrate successfully upon release from prison.”⁶³ A mercy-oriented frame would center the needs of each individual, the cultivation of empathy based on these particular needs, and the appreciation of interconnectedness between incarcerated and non-incarcerated individuals—each “flawed yet aspiring” and possessing the capacity for personal growth and aspiration.⁶⁴ Such a conceptual shift would need to be modeled by the highest levels of prison leadership.

Getting line officers to buy into this vision of prisoners as fully human would require a commensurate shift in the job of correctional officer⁶⁵—from mere warehousing to a role more akin to social work (as is common in some European countries).⁶⁶ A few U.S. corrections directors have already taken steps to shift their departmental culture toward a more “therapeutic” model.⁶⁷ For example, after participating in a “fact-finding trip” to visit prisons in Germany and the Netherlands sponsored by the Vera Institute, one American corrections leader committed to “training corrections staff in client-centered counseling techniques in an effort to bring her staff more in line with European standards.”⁶⁸ She explained, “We can’t replace all of our

62. Avlana K. Eisenberg, *Getting to “Prisoner as Neighbor”*, 75 OKLA. L. REV. 69, 83–84 (2022).

63. *Id.* at 84.

64. *Id.* at 87. It will also be important to provide opportunities for offenders to recognize their agency, including responsibility for wrongs done and harms caused. An important part of rehabilitation for many will be the recognition of responsibility, whether through a restorative justice process or otherwise, as a critical dimension of being a person who is entitled to be treated with dignity and respect.

65. For a stark example of how some corrections officers view their role, as one MCI-Framingham officer explained, “Their job is to beat us, our job is to stop them.” Interview with Anonymous Corr. Officer, MCI-Framingham, at MCI-Framingham (Jan. 22, 2019).

66. To give an example, “[i]n Germany, training spans two years with 12 months of theoretical education followed by 12 months of practical training,” where officers must take courses in “constitutional law, psychology, and educational theory,” among others. RAM SUBRAMANIAN & ALISON SHAMES, VERA INST. OF JUST., SENTENCING AND PRISON PRACTICES IN GERMANY AND THE NETHERLANDS: IMPLICATIONS FOR THE UNITED STATES 12 (2013); see also Meagan Denny, *Norway’s Prison System: Investigating Recidivism and Reintegration*, 10 BRIDGES: J. STUDENT RSCH. 22, 23 (2016) (crediting the “use of educational and normalization programs” for Norway having “one of the lowest recidivism rates in the world”).

67. Christopher Moraff, *Can Europe Offer the U.S. a Model for Prison Reform?*, NEXT CITY, EQUITY FACTOR (June 19, 2014), <https://nextcity.org/urbanist-news/us-prisons-reform-european-prisons-model> [<https://perma.cc/H4ZW-HDJC>].

68. *Id.*; see also SUBRAMANIAN & SHAMES, *supra* note 66, at 2, 15–17 (reporting on the “conversations, personal experiences, and perceptions” of trip participants).

supervisors with attorneys and social workers, . . . but we can start changing their mentality to show inmates that we're here to advocate for them.”⁶⁹

The shift toward mercy in corrections would require not merely the absence of unduly harsh conditions (such as extensive stays in solitary) but also the presence of growth-oriented programs and opportunities for prisoners that would help to compensate for the negative consequences of incarceration. Indeed, “[n]umerous policies and practices enshrine a distinction between those who have and have not been convicted of a crime,” creating “an ‘undercaste,’ which renders prisoners and those formerly incarcerated as ‘permanent second-class citizen[s].’”⁷⁰ A disposition of mercy in corrections would help to “reconceptualiz[e] . . . the prisoner as prisoner-citizen,” disrupting the us–them dynamic and improving the incarcerated person’s prospects for successful reentry.⁷¹ This would require a top-down transformation: as in the context of policing, for mercy to take root as an institutional value, it must be modeled by those in leadership positions.

Centering mercy in corrections might include the introduction of home leave or work release programs.⁷² While unusual in the United States,⁷³ these are typical in countries whose prison systems are built around the principle of “‘normalization,’ which aims to make life in prison ‘as similar as possible to life in the community.’”⁷⁴ Home leave programs would allow prisoners to maintain contact with their families and would enrich the personal connections that are crucial to reintegrating upon release from prison. Work release programs would allow incarcerated individuals to continue using and developing their skills and supporting themselves and their families. They would also help to mitigate the jarring transition that often results upon release, from the totalizing experience of incarceration, into the

69. Moraff, *supra* note 67.

70. Eisenberg, *supra* note 9, at 48–49 (quoting MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 12–13 (rev. ed. 2012)).

71. *Id.* at 49.

72. For more on what a system of “partial incarceration” might look like, see Avlana K. Eisenberg, *Discontinuities in Criminal Law*, *THEORETICAL INQUIRIES L.*, Jan. 2021, at 137, 142.

73. While these programs are unusual, and eligibility for those that do exist is very limited, there are some examples of such programs in the U.S. For the home leave program in North Carolina, see *Home Leave*, N.C. DEP’T OF ADULT CORR., <https://www.dac.nc.gov/divisions-and-sections/rehabilitation-and-reentry/home-leave> [<https://perma.cc/46DU-U9Y4>], which seeks to “re-establish family relationships and community socialization” for inmates nearing release. For another example, see 103 MASS. CODE REGS. 464 (2017), the work release program in Massachusetts that establishes guidelines for work release programs aimed at “contribut[ing] to successful reentry of inmates into the community.”

74. Eisenberg, *supra* note 9, at 55 (quoting SUBRAMANIAN & SHAMES, *supra* note 66, at 7).

community,⁷⁵ a formidable challenge that is further exacerbated by the web of collateral consequences that limit formerly incarcerated persons' employment prospects. Other programs might focus on education, including higher education and critical thinking skills, life skills courses—such as those focusing on anger management and financial literacy—and other wellness courses, including meditation, offerings in the creative arts, and programs that allow incarcerated individuals to care for animals.⁷⁶

A shift to operationalize mercy in corrections may require buy-in and collaboration among a host of legal actors and institutions including legislators, prison administrators, and corrections officers—in addition to broad public support. The recent congressional decision to reinstate Pell Grants for prisoners after a twenty-six-year ban exemplifies this shift and its multi-stakeholder challenges.⁷⁷ From 1994 until 2020, prisoners were barred from accessing Pell Grants to support higher education.⁷⁸ During that time, there were many efforts by specific legislators to reinstate access for prisoners but insufficient overall support in Congress because of campaigns by constituents who opposed these efforts.⁷⁹ While the recent legislative sea change is highly significant, without buy-in from prison leaders and corrections officers, higher education programs will face significant

75. See Sharon Dolovich, *Foreword: Incarceration American-Style*, 3 HARV. L. & POL'Y REV. 237, 242–43 (2009) (contending that the idea of rational decision-making is unrealistic in supermax prisons, where deprived inmates may resort to disruptive behavior, impeding their ability to function in society).

76. Reducing deprivation in prisons would also put incarcerated individuals in a better position to be the recipients of more conventional acts of mercy, such as clemency or early release. For example, if more prisoners were able to partake of educational or vocational training while incarcerated, they would be better able to demonstrate a readiness for release and that they had transformed themselves, that they had taken on responsibilities, and that they should be considered in a new light, beyond their criminal activity and related personal limitations that they may have faced when they entered the carceral facility.

77. See *Pell Grants Restores Possibilities for Incarcerated People*, FED. BUREAU OF PRISONS (July 12, 2023, 6:38 PM), https://www.bop.gov/resources/news/20230712_pell_grant.jsp [<https://perma.cc/3LDA-3HBQ>] (announcing the availability of Pell Grants to incarcerated persons).

78. *Id.*

79. See Michael Stratford, *Congress Clinches Deal to Restore Pell Grants for Prisoners 26 Years After Ban*, POLITICO (Dec. 20, 2020, 4:30 PM), <https://www.politico.com/news/2020/12/20/congress-pell-grant-prisoners-449364> [<https://perma.cc/793M-2ZCU>] (describing a prisoner-grant reinstatement bill introduced by Senator Brian Schatz and co-sponsored by Senator Mike Lee and Representatives Jim Banks and French Hill); see also Bradley D. Custer, *The History of Denying Federal Financial Aid to System-Impacted Students*, 50 J. STUDENT FIN. AID, no. 1, 2021, at 1, 5, 9 (noting that the frequent efforts to repeal the Pell Grant ban prior to 2020 almost always failed).

challenges.⁸⁰ Prison officials have tremendous discretion to impose discipline, to lock down facilities, and to control access to and the substance of course materials and research tools (including internet access). Prison higher education leaders have explained that their ability to do their jobs as educators is entirely dependent on whether they have good relationships with prison administrators and officers, that their classes are routinely disrupted by impromptu roll calls and other administrative proceedings, and that support by prison leadership for a program is the single most important factor in determining whether a course in prison will run smoothly or not.

V. Officer Overlap and the Problem of Policing Through a Corrections Lens

Policing and corrections share many institutional similarities including a rigid hierarchical structure, officers' perception of a pervasive, undifferentiated threat that characterizes their "tough beats,"⁸¹ an us–them orientation that presents substantial obstacles to cultivating compassion, and protections for officers that further reinforce this us–them outlook.⁸² Beyond these similarities in structure, self-perception, and orientation, there is also significant overlap among the officers who work in policing and corrections.

Being a corrections officer has long been a stepping stone to becoming a police officer.⁸³ In recent years as police recruiting has become more

80. A lack of compassion may stem from many sources, including fear, disgust, or even resentment, and addressing these underlying factors is crucial to expanding a person's capacity for compassion. Notably, in my research on prison higher education programs, I kept hearing from program leaders and teachers in these programs that they experienced antagonism from corrections officers—the officers were obstructionist and surly, and they seemed to find any excuse to interrupt a class, often for long stretches of time, making it impossible to make any progress. Eisenberg, *supra* note 9, at 44. These were the reports I heard across the board—except in St. Louis. The required credential to be a corrections officer is only a GED, and as it turns out, the program in St. Louis was the only program in the country that offered parallel classes for prisoners and for corrections officers. The St. Louis program leaders described the COs as very supportive, and even recounted some enthusiastic conversations between prisoners and officers—who shared a curriculum though not a classroom—about the ideas they were grappling with from the books they were reading. *Id.* at 71–72.

81. On the meaning of "tough beat," see *supra* note 3.

82. See Mary Ann Farkas & P.K. Manning, *The Occupational Culture of Corrections and Police Officers*, 20 J. OF CRIME & JUSTICE, no. 2, 1997, at 51, 55–56 (highlighting similarities between corrections and police officers).

83. *Crossover from Correctional Officer to Law Enforcement Officer (C.C.)*, FLA. STATE COLL. AT JACKSONVILLE, <https://www.fscj.edu/academics/programs/cc/5798> [<https://perma.cc/B347-B7QK>] (describing a program that was founded to help corrections officers transition to policing: "The mission of the Crossover from Corrections Officer to Law Enforcement Officer career certificate program is to provide law enforcement education and training. . . to take and pass the

challenging,⁸⁴ many former corrections officers have transitioned to the role of police officer, a job that is more lucrative than that of corrections officer, and viewed as more respectable and prestigious.⁸⁵ This shift is not without concerns—as one police leader explained, corrections officers “get jaded,” adding, “[H]ow could you not, working in a prison?”⁸⁶

Dominant strands in police culture already reinforce an us–them orientation, and as more former corrections officers join the force, it will become even more crucial to counterbalance this orientation through interventions that center the disposition and practices of mercy. Ultimately, while one realm is largely hidden and the other involves everyday encounters in public streets, both police and corrections are in dire need of an infusion of mercy. Both jobs should be reconstituted to focus on the unique needs of those under criminal-justice scrutiny, and both sets of institutions should adopt interventions that would cultivate compassion through exposure and narrative, as well as foster the appreciation of shared humanity between officers and those under their watch. A social-work orientation for either job may seem unimaginable in the United States but is the primary role of officers—in both policing and corrections contexts—elsewhere in the world.⁸⁷ And even in the United States, there are law enforcement leaders who can envision this shift and are taking steps to transform their institutions.

Law Enforcement State Officer Certification Exam and to perform the duties of an entry-level police officer”).

84. Robert Klemko, *Police Agencies Are Desperate to Hire. But They Say Few Want the Job.*, WASH. POST (May 27, 2023, 7:00 AM), <https://www.washingtonpost.com/national-security/2023/05/27/police-vacancies-hiring-recruiting-reform/> [https://perma.cc/BW8J-9R8X]; Kayla Gaskins, *Quantity Over Quality? Some Say Lowering Police Hiring Standards Could Be Deadly Choice*, WPDE (Feb. 23, 2023, 9:07 PM), <https://wpde.com/news/nation-world/quantity-over-quality-some-say-lowering-police-hiring-standards-could-be-deadly-choice-police-opting-for-quantity-over-quality-to-fill-ranks-some-say-its-a-deadly-choice-law-enforcement-policing-physical-fitness-police-officers-police-shortage> [https://perma.cc/PP7M-NH92].

85. See Jody L. Sundt, *Good Job or Dirty Work? Public Perceptions of Correctional Employment*, FED. PROB., Dec. 2009, at 40, 41, 43 (discussing research findings from an occupational prestige study showing that correctional officers scored lower than average and significantly lower than police officers).

86. Interview with former police chief of major U.S. city (Dec. 2023).

87. See, e.g., Deborah Berlioz, “*We Are More Like Social Workers Than Guards*,” 19 HESAMAG 23, 24 (2019) (observing that in Norway guards are “no longer there just to open and close doors; they [have] to develop connections with the prisoners and serve as a kind of role model”).

According to Cory Tchida, police chief in Georgetown, Texas, law enforcement needs a rebrand, and he wants “recruits who thrive on community engagement.”⁸⁸ Tchida explained his response upon hearing “old-school cops say, ‘It’s not my job to be a social worker’”: “Bro, that is the vast majority of your job. You’re definitely a social worker.”⁸⁹

88. Klemko, *supra* note 84.

89. *Id.*