

Hale: More justice for prisoners

By Benjamin Hale

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Commentary

Recently, Timothy Masters walked out of the Larimer County Courthouse a free man. For more than nine years he had languished in prison, only to be released when local prosecutors discovered new DNA evidence exculpating him of a murder that occurred when he was just 15 years old, for which he was then found guilty and sentenced to life. Unlike many other innocent prisoners, Masters got lucky.

A week later, John Engel, a Longmont man, convicted of killing his adoptive mother and grandmother when he was but 14 years old, had his 32-year sentence re-evaluated. During his first trial he was found to be mentally ill. This, in part, gave rise to a plea bargain requiring the re-evaluation of his prison sentence after his first seven years in juvenile detention. The Engel case raises questions about the extent to which a mentally ill adolescent can be held responsible for his actions in the same way that a more mature criminal of sound mind can be.

Stories of grievous mistakes, such as the Masters case, or of mentally ill youngsters ending up in the criminal justice system, such as the Engel case, give most of us pause. They fall into a category of problems sometimes debated as "miscarriages of justice." Anybody who has been following either case in the Camera will understand the extent to which these cases spark ire, concern, and debate. They're not the norm, to be certain. But they're not that uncommon, either. What should perhaps give us greater pause is the extent to which these outlier cases only scratch the surface of issues related to ethics and prisoners.

Given that there are roughly 2.2 million people in prison and jail in the United States at any given time, or about one in every 135 citizens, the prison population is sizable. There are serious ethical and moral considerations related to almost all prisoners, young and old, violent and nonviolent, male and female, mentally ill and of sound mind. Here's just one:

In August of 2006, the Institute of Medicine released a report titled "Ethical Considerations for Research Involving Prisoners." Among other things, the committee recommended five central changes to current practice. First, the panel recommended expanding the definition of "prisoner" to include a "much larger population of persons whose liberty is restricted by virtue

of sentence, probation, parole or community placement." Second, the panel argued that prisoners should be assured of universal and standard protections no matter the source of research funding.

Third, the panel suggested that prison research be evaluated on a risk-benefit approach, as opposed to categorically ruling in or out experiments on populations of prisoners. Fourth, they suggested that the prisoners be involved in their research collaboratively. And finally, they suggested that stronger and more rigorous oversight be put into place.

Plainly the manifold ethical considerations here interweave and overlap. There are concerns about interracial justice (as a large portion of the incarcerated are minorities), about individual and public health (as accurate medical research on human subjects could provide valuable insight into cures and solutions to our most vexing maladies), about rights (as the incarcerated have, for lack of a better term, "forfeited" some rights), about freedom (as the incarcerated are not in a position to choose for themselves) and even about autonomy (as it's difficult to say, precisely, what the prisoner truly has control over).

All of these above concerns are, at their core, deeply philosophical, reflective of strong convictions and underlying values. They go well beyond the attention-grabbing miscarriages of justice that I mention above. This is why the Philosophy Department at CU Boulder, under the auspices of the Center for Values and Social Policy, has decided to take on the issue directly. In conjunction with Colorado's Wolf Law School and the Bioethics Center at CU-Denver, CVSP will be hosting a series of public events addressing issues revolving around freedom, health, and choices in relation to prisoners and other vulnerable populations. Events culminate in a major symposium today and tomorrow. For more information and a schedule, please visit the Center's website: <http://www.colorado.edu/philosophy/center>

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