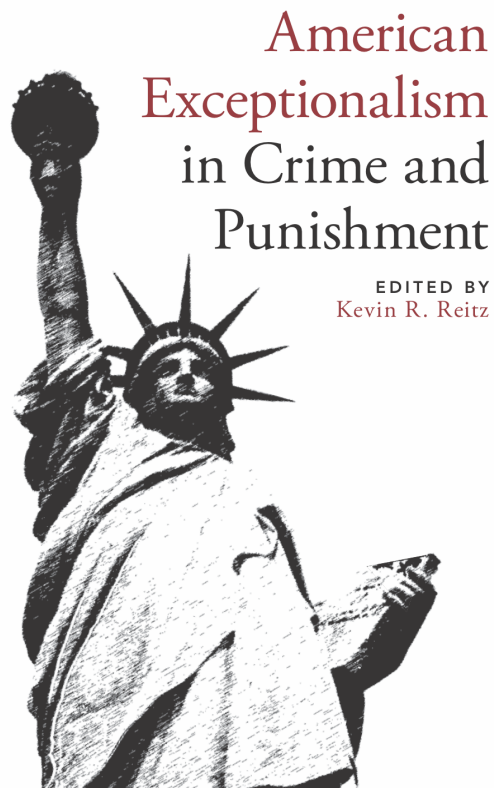


American Exceptionalism in Crime and Punishment: Broadly Defined

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American
Exceptionalism
in Crime and
Punishment



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INTRODUCTION

American Exceptionalism in Crime and Punishment: Broadly Defined

Kevin R. Reitz

IN THE MID- and late twentieth century, the United States diverged markedly from other Western nations first in its high rates of serious violent crime and soon after in the severity of its governmental responses. In the words of historian Randolph Roth, “Since World War II, the United States has stood out from the rest of the affluent world in its violence and in the punitive nature of its criminal justice system” (see Roth, this volume). This has left an appalling legacy of American exceptionalism in crime and punishment (AECP) for the new century.

When the United States is compared with other Western countries and criticized for its exceptionalism in criminal justice, the conversation usually narrows to two subjects: (1) high incarceration rates and (2) the nation’s continued use of the death penalty. With respect to both, the United States is seen as operating on an entirely different scale of punitive severity from other developed societies. Adding to the indictment, it has long been known that America’s uses of prisons, jails, and the death penalty are racially disproportionate (e.g., *Furman v. Georgia* 1972; Blumstein 1982; Ayers 1984; *McCleskey v. Kemp* 1987; Blumstein 1993; Kennedy 1997; Alexander 2010; Tonry 2011).

One goal of this book is to broaden the scope of AECP inquiry to include sanctions beyond incarceration and the death penalty. From what we know, it is reasonable to hypothesize that the United States imposes and administers probation, parole, economic sanctions, and collateral consequences of

conviction with a heavier hand than other developed democracies (see Rhine and Taxman, this volume; van Zyl Smit and Corda, this volume; Demleitner, this volume). Although the inquiries in this book are preliminary, they raise the possibility that AECF extends across many landscapes of criminal punishment—and beyond, to the widespread social exclusion and civil disabilities imposed on people with a conviction on their record (Jacobs 2015; Love, Roberts, and Klingele 2016).

In addition, the book insists that any discussion of AECF should focus on US crime rates along with US penal severity (see Lacey and Soskice, this volume; Lappi-Seppälä, this volume; Miller, this volume; Gallo, Lacey, and Soskice, this volume). More often than not, American crime is discounted in the academic literature as having little or no causal influence on American criminal punishment (see Miller, this volume). This is a mistake for many reasons but is especially unfortunate because it truncates causation analyses that should reach back to gun ownership rates, income inequality, conditions in America's most disadvantaged neighborhoods, and possibilities of joint or reciprocal causation in the production of US crime rates and punitive severity (see Lacey and Soskice, this volume; Lappi-Seppälä, this volume; Miller, this volume; Gallo, Lacey, and Soskice, this volume).

This chapter is divided into three segments. First, it includes a brief tour of the conventional AECF subject areas of incarceration and the death penalty. Second, it will introduce claims that a wider menu of sanction types should be included in AECF analyses.¹ Third, it will speak to the importance of late twentieth-century crime rates to US punitive expansionism.

The Usual Suspects Incarceration

The subject of mass incarceration entered America's consciousness in a big way when the nation cemented its status as world leader in per capita incarceration—a watershed that occurred around the turn of the century,² following a neck-and-neck race with Russia through the 1990s (Sentencing Project 2001, 1; Tkachuk and Walmsley 2001, 15; Kuhn 1995, 56; Mauer 1994; Associated Press 1991).³ Since then, US prison and jail confinement rates have come under increasing public scrutiny and have been widely impugned as “mass incarceration” (e.g., Blumstein et al. 2000; Garland 2001a; Simon 2012). After several decades of tough-on-crime politics and public sentiment, there has been a profound shift in the way Americans talk about prison policy. By 2010—illustrated by the appearance of a new conservative organization called

“Right on Crime”—the view that US incarceration rates had spiraled out of control had achieved a footing in both major political parties (Gingrich and Nolan 2011; Savage 2011; Dagan and Teles 2016).⁴ Despite the outcome of the 2016 presidential election, this bipartisan sentiment has remained alive at the state and local levels, where most criminal justice is dispensed (Hulse 2017; Garrett 2017; Rosenberg 2017).

The basic facts of mass incarceration will be assumed knowledge throughout this book: After 35 years of continuous prison growth, U.S. incarceration rates (counting both prisons and jails⁵) topped out in 2007 and 2008 at 760 per 100,000 general population—a quintupling of 1972 rates—and have since entered a period of modest decline (Kaeble, Glaze, Tsoutis, and Minton 2015: 3 table 2). Near the peak, the Pew Charitable Trusts calculated that “One in 100” American adults were in prison or jail at yearend 2006—or “one in 54” adult males. (Pew Center on the States 2008, 5, table A-6)

As of this writing, America’s per capita confinement has inched downward for six consecutive years, but the reductions have been modest. Overall the nation has returned to the confinement rates of the early 2000s—when the term “mass incarceration” was coined—so the punitive era can hardly be declared over. By the US Justice Department’s counts, America’s combined prison-plus-jail rates in 2014 (477 and 234, respectively) added up to a total incarceration rate of 711 per 100,000. In raw numbers that translated into 2.3 million prison and jail inmates on any one day in 2014 (Carson 2015; Minton and Zeng 2015).

Few nations have ever made it to the “700 Club” (700 or more prisoners per 100,000). Indeed, in contemporary western Europe, there are no nation states at all in the 200 Club, and half cannot even claim membership in the 100 Club (see Lappi-Seppälä, this volume, Figure 5.1; World Prison Brief 2016). By the standards of other developed democracies, the scale of incarceration in America is astounding. Our 2014 incarceration rate was more than 7 times the average in western Europe, 6 times the Canadian rate, more than 4.5 times that in Australia, and almost 3.5 times New Zealand’s rate.⁶ As of 2014, the United States had left its formal rival far behind, exceeding the Russian incarceration rate by 53 percent (World Prison Brief 2016).⁷ For comparisons between the United States and western European states, Figure 1.1 displays changes in incarceration rates from 2000 to 2016 (or the latest available year) in 10 countries.

It is useful to assess what it would take for the United States to rejoin the mainstream of the Western world in its incarceration practices. Regression toward the mean is usually not an ambitious goal, but in this case it is positively grandiose. For instance, in order to downsize to the same incarceration

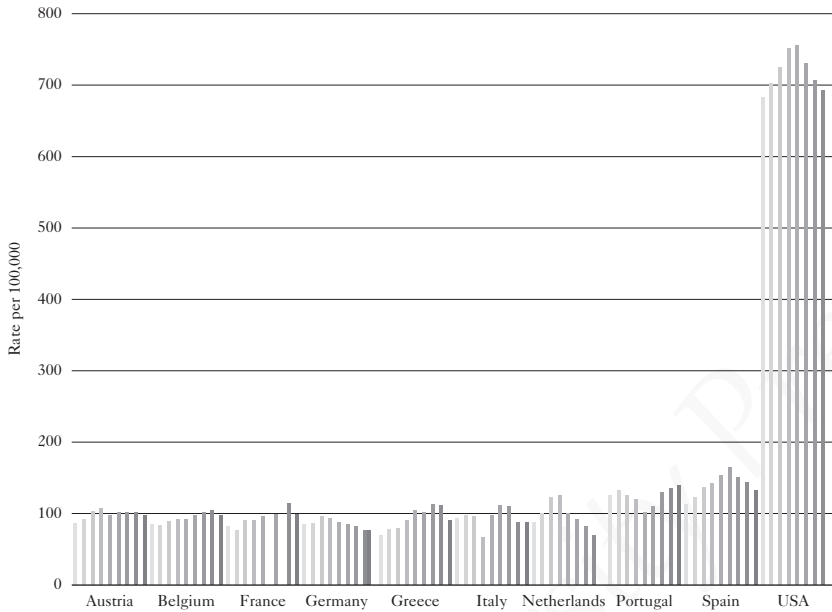


FIGURE 1.1 Incarceration Rates, Western Europe and United States, 2000–2016 or Most Recent (sampling every other year, as available)

Source: Institute for Criminal Policy Research. World Prison Brief. 2017. <http://www.prisonstudies.org/world-prison-brief-data>.

rate as England and Wales—one of western Europe’s leaders in per capita imprisonment—the United States would have to release more than 1.8 million inmates out of a total 2.3 million, leaving 473,000 in the prisons and jails for the entire country.⁸ Immense social and political movements would be required to effect such a change.

Compounding problems of the sheer scale of US incarceration are enormous breakdowns in distributive justice. The African American imprisonment rate is nearly 6 times that for whites, the Latino rate is more than 2.5 times the white rate, and the rate for Native Americans—although not regularly reported—has been about 2.5 times the white rate (Carson 2015, 15, table 10; Ruth and Reitz 2003). Pew’s “one in 100” report observed that roughly “one in 9” (not a misprint) black men aged 20–34 were in prison or jail on any given day in 2007 (Pew Center on the States 2008, 6).

The Justice Department estimated that a black male child born in 2001 had a 32.2 percent chance of going to prison during his lifetime. (The much greater lifetime probabilities of spending time in jail were not calculable.) For a white male child born the same year, the lifetime probability of imprisonment

was 5.9 percent (Bonczar 2003, 8).⁹ These statistics are even more startling when interpreted with class in mind. For middle-class blacks, lifetime risk of incarceration is not dramatically different from that for middle-class whites. Therefore, for the most disadvantaged black men, the chances of going to prison during adulthood are much higher than one in three. For example, Steven Raphael estimated that in California “at the end of the 1990s, over 90 percent of black male high-school dropouts . . . have served prison time in the state” (Raphael and Stoll 2009, 10; see also Pettit and Western 2004).

Before leaving the subject of incarceration and racial disparities, I want to point out an acute policy dilemma that is likely to arise if the United States truly enters a prison-downsizing era. Will we think it more important to reduce the “disparity ratio” between black and white incarceration rates or reduce absolute levels of incarceration? In some foreseeable scenarios, it would be impossible to do both. Imagine a hypothetical reform (such as the introduction of actuarial risk assessment at sentencing as a prison diversion tool)¹⁰ that is projected to reduce incarceration rates nationwide by 20 percent, but the measure would reduce white incarceration rates by 25 percent and black incarceration rates by 15 percent.¹¹ In other words, the probability of a white defendant benefiting from the measure is 66 percent greater than the probability a black defendant will benefit. From a disparity-ratio perspective, this would be a disaster. There’s a fair chance it would even be unconstitutional.

Despite the ratio effects, however, the measure would reduce black incarceration rates substantially compared to the status quo. If we forgo the measure on disparity grounds, roughly 150,000 black people would be incarcerated in the United States on any given day, extending into the foreseeable future, who would no longer have been incarcerated if we had adopted the measure.¹² Every year, this would add up to 150,000 *person-years* of confinement for black defendants that could have been avoided. In a mere seven years, the failure to adopt the racially disparate reform would yield more than 1 million additional person-years of black incarceration.

The problem is that the same reform that would buy 1,050,000 fewer person-years of incarceration for black defendants in seven years would yield 1,750,000 fewer incarceration-years for white defendants. What ethical calculus applies?

Capital Punishment

Mass incarceration is a new kid on the block when it comes to comparative embarrassments in American criminal justice policy. As Europe and the Anglosphere abandoned capital punishment in the decades following World

War II, the failure of nationwide abolition in the United States became a leading symbol of American regressivism (e.g., Sellin 1959; Bedau 1964; *Furman v. Georgia* 1972; Black 1974; Zimring and Hawkins 1986; Steiker 2002, 100; Zimring 2003; Garland 2010).

As a purported example of AECP, however, capital punishment in the United States is not in the same league as mass incarceration (see Garland, this volume; Zimring, this volume). America stands alone in the Western world for its retention of capital punishment, but it is far from the planet's leader.¹³ While a deeply significant moral issue, the death penalty in America is applied to a vanishingly small percentage of the population, for example, 28 total executions in 2015 (Death Penalty Information Center 2016a). In the same year, there were 2.59 million deaths from all causes (Centers for Disease Control and Prevention 2016). Other comparisons make the same point: less than 1 percent of all offenders convicted of homicide have been executed since 1976 (Zimring 2003). For 2015, the risk of execution was less than one-tenth the risk of being struck by lightning.¹⁴

In short, unlike mass incarceration (and most other instances of AECP), capital punishment in America is not exceptional because of its scale. Moreover, capital punishment in America is a highly localized phenomenon. Most of the United States can be classified as abolition or nonexecuting territory, in common with other Western democracies (Zimring 2003; Garland 2010). In any recent year, the majority of US states have held zero executions, including abolition states and death-penalty states that rarely carry out the sentence. For example, in 2013, only nine states held executions (a total of 39 executions overall for that year) (Snell 2014b, 1).¹⁵ Even within executing states, a relatively small number of counties are historically where most of a state's death sentences have been imposed and where most executions originate, such as Harris and Dallas Counties in Texas (Death Penalty Information Center 2016d; Texas Department of Criminal Justice 2016).¹⁶ From 1976 to 2013, 2 percent of all counties in America had produced 52 percent of all executions (Dieter 2013, 6). In contrast, from 1967 to 2013, 85 percent of all counties in the United States had produced no executions at all (Dieter 2013, 1).

If racial disproportionality in the use of a criminal punishment is considered an element of AECP, the death penalty qualifies. Racial disparities in the use of the death penalty have been an American disgrace for more than 200 years, especially if one counts vigilante lynchings as a form of capital punishment (Stampp 1956; Wolfgang and Riedel 1973; Higginbotham 1978; Ayers 1984; Kennedy 1997; Cole 1999; Zimring 2003, chap. 5). In the modern era of American capital punishment (post-*Gregg v. Georgia* 1976), large disparities by race of defendant continue to exist—more so in some jurisdictions than

others. Nationally, African Americans are 13 percent of the US population yet make up 35 percent of all people executed since 1976—a racial disparity of 3.4 to 1 when compared with the rate of execution for whites (Death Penalty Information Center 2016c; Baldus et al. 1998; Eberhardt et al. 2006; Tabak 2010).

Starting in the 1980s, a growing body of research has shown that the race of the *victim* is a strong predictor of use of the death penalty in individual cases. The most famous study was conducted by David Baldus, who examined thousands of potentially capital murder cases in Georgia during the 1970s. Baldus found that, holding other factors constant, a black defendant who killed a white victim was 4.3 times more likely to be sentenced to death than a black defendant who killed a black victim (*McCleskey v. Kemp* 1987; see also Phillips 2009; Baldus et al. 2009; Baumgartner, Grigg, and Mastro 2015).¹⁷ Somehow, even while accepting the validity of the Baldus study, the US Supreme Court held in *McCleskey* that the race-of-victim finding did not demonstrate did not demonstrate a constitutionally significant risk of racial discrimination in the administration of Georgia's death penalty scheme.¹⁸

Returning to the issue of the death penalty's scale, the non-Western world includes many other executing jurisdictions (including Israel and Japan¹⁹). While a world leader in confinement, it is less commonly asked where the United States ranks in the per capita use of capital punishment. To facilitate cross-jurisdictional comparisons, I will use a measure of "executions per 100 million." (You need a big denominator to get American execution rates into the single digits.) Corrected for population, the US execution rate in 2015 was 8.7 per 100 million. Since the 1940s, the peak execution year in the United States was 1999, when there were 98 executions total, or 36 per 100 million.

More usefully, American execution rates may be calculated for individual states: in the four decades after 1976, the most executions carried out by any state in one year was Texas in 2000 with 40 executions, or 191 per 100 million population (Death Penalty Information Center 2016c; US Census Bureau 1998, 2001, 2016). In 2015, Missouri was the nation's leader in per capita executions at 100 per 100 million (6 total). In second place, Texas's 2015 execution rate was down to 47 executions per 100 million (13 total). *Subtracting* Missouri and Texas, the 2015 execution rate for the remaining 48 states was 3.1 per 100 million. For 44 states in 2015, the rate was zero.

Many nations have higher capital punishment rates than the United States as a whole, or any individual state. Iran, lately the most vigorous death-penalty jurisdiction, conducted 1,084 executions in 2015, or 1,364 per 100 million (Kredo 2016; Statista 2016).²⁰ As recently as 2002, China was estimated to have executed 12,000 people (Dui Hua Foundation 2016), suggesting an "Iran-like"

execution rate of 937 per 100 million for that year. The number of executions in China has been falling rapidly in the 2000s, however. The Chinese government executed 2,400 people in 2015, as estimated by the Death Penalty Information Center (2016b). If the estimate is correct, China's rate in 2015 was "only" 178 executions per 100 million population—still 20 times the United States rate for the same year.

What would it take for America to rejoin the mainstream of other Western democracies in the abolition of state-sponsored executions? The task is far less daunting than an unwinding of mass incarceration. David Garland argues that the United States is already on a course toward death penalty abolition—in common with other Western nations; the only qualification is that some American states are moving more slowly (see Garland 2010; Garland, this volume). Indeed, some US states abolished capital punishment well ahead of the post-World War II European wave, dating to the mid-nineteenth century, so the entire nation has not been "behind" the Western curve (Zimring 2003).

In addition, capital punishment in the United States could end with a single stroke via a Supreme Court ruling. The country came close to constitutionally mandated abolition in 1972 and again in 1987 (*Furman v. Georgia* and *McCleskey v. Kemp*). No similar heroic remedy is available for mass incarceration or for any of the other species of AECP examined in this book.

AECP in Broader Focus: Other Criminal Sanctions

Probation

The central hypothesis of this book is that AECP is a phenomenon of unacknowledged breadth—which reaches beyond the familiar monstrosities of mass incarceration and capital punishment. "Mass punishment" may be a better, more embracing, term than mass incarceration. This section introduces the claim that probation supervision across the United States is a full-fledged instance of AECP.

Probation used to be considered an instrument of lenity, not severity. In the not-too-distant past, many people thought that making greater and more imaginative use of probation was the best way to reduce incarceration rates (Morris and Tonry 1990; Byrne, Lurigio, and Petersilia 1992; DiIulio 1997). Probation has often been billed as an "alternative" to prison, implying that, if managed correctly, imprisonment should decline as probation goes up (e.g., Cavanagh and Kleiman 1990; Sigler and Lamb 1995; Anderson 1998).

The history of the late twentieth and early twenty-first centuries does not fit the expected program. Instead of acting as a replacement for prison beds, probation

supervision rates have exploded alongside incarceration²¹—and high probation populations have been important feeders of prison and jail populations through the revocation process (Klinge 2013).²² Recently, the literature has begun to speak of “mass probation” or “mass supervision” (Phelps 2016; McNeill and Beyens 2014). On any day in 2014, nearly 4 million people were serving probation sentences across America (Kaoble, Maruschak, and Bonczar 2015, 1).²³ That is roughly twice the size of the combined US prison and jail populations.

The current scale of probation in the United States is considerably larger than that in eastern and western Europe. As the Robina Institute of Criminal Law and Criminal Justice reported, the average 2013 probation supervision rate across all 50 states was more than five times the average among European countries (Alper, Corda, and Reitz 2016; see Figure I.2).²⁴ On this measure, America’s “exceptional” status in probation is even more dramatic than in its use of prisons and jails. The ratio of US incarceration rates to European rates is about 3.5:1 when counting both eastern and western European countries (see van Zyl Smit and Corda, this volume, Figure 10.1).

Further, the day-to-day experience of being on probation is more difficult than commonly understood (Corbett 2015) and especially painful in the United States when compared with other countries.²⁵ Rhine and Taxman (Chapter 9) posit that, more than in other advanced democracies, the philosophy of probation supervision in the United States has shifted away from a social work model and toward an orientation of surveillance and control. One expression of this is the imposition of numerous and intrusive conditions that any law-abiding citizen would have difficulty satisfying (Corbett 2015). Making things worse, the focus of some probation departments and private services providers is to collect supervision and program fees from their clientele (Ruhland, Robey, Corbett, and Reitz 2017; American Civil Liberties Union 2010; Human Rights Watch 2014). Across Texas, for example, county probation offices depend on fees from probationers for 50 to 75 percent of their operating budgets. Probation officers spend much of their time and energy collecting supervision fees (Alper and Ruhland 2016a, 2016b). This conflict of interest detracts from probation’s original mission of rehabilitation, and appears to be a problem peculiar to the United States (see Rhine and Taxman, this volume).

What would it take for the United States to rejoin the Western mainstream in its approaches to probation supervision? In order to approximate European supervision rates, the total US probation population would have to drop from roughly 4 million to 800,000—a differential of 3.2 million probationers. Large reductions in the number of people placed on probation in the first place would probably be necessary, which would require that lesser penalties somehow become acceptable to courts, prosecutors, victims, politicians, and the public.

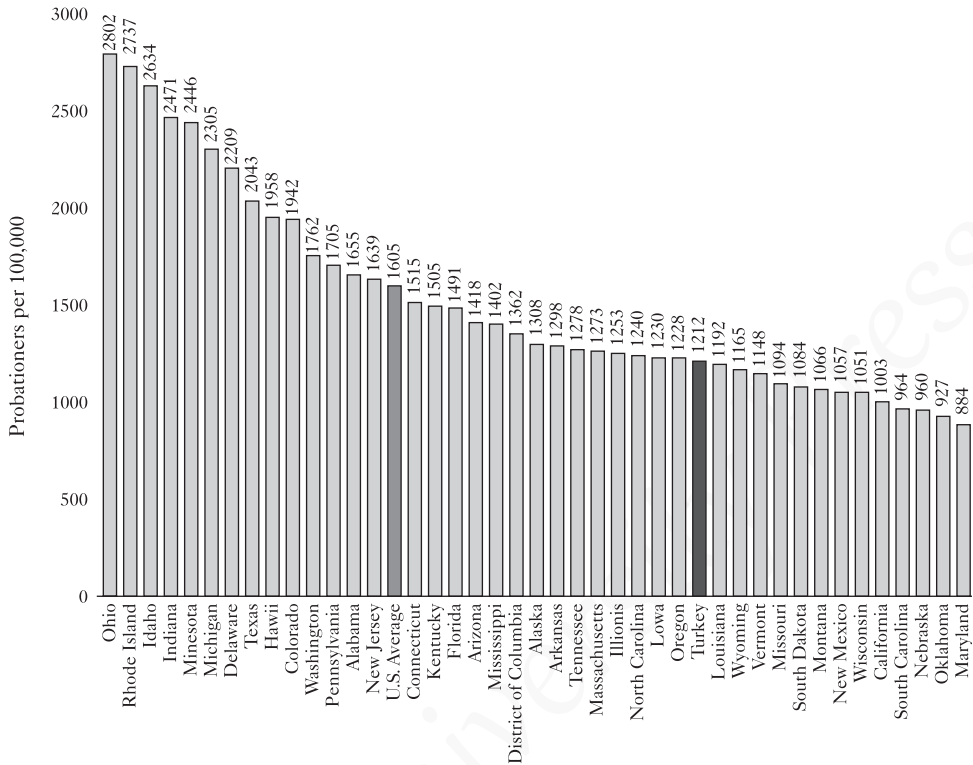


FIGURE 1.2 American Exceptionalism in Probation Supervision

Source: Alper, Mariel, Alessandro Corda, and Kevin R. Reitz. *American Exceptionalism in Probation Supervision*. Minneapolis, MN: Robina Institute of Criminal Law and Criminal Justice, 2016.

Across-the-board efforts would be needed to shorten the average lengths of probation terms, especially in some states, which are considerably longer than those in Europe. There is almost nothing to be gained from a probation sentence longer than two or three years; yet many states mete out probation by the decades, and “lifetime supervision” has become a popular idea for the punishment of sex offenders (American Law Institute 2017, § 6.03 & Comment).

Compared with prison downsizing, large changes in probation strategies across the country would encounter opposition from fewer institutional and economic interest groups. If we monetize probation, it is a much smaller business than incarceration. Probation agencies tend to run on a shoestring, with modest expenditures per client. We do not hear of community corrections unions as major players in state elections, for example, nor does the placement of probation offices drive local economies.

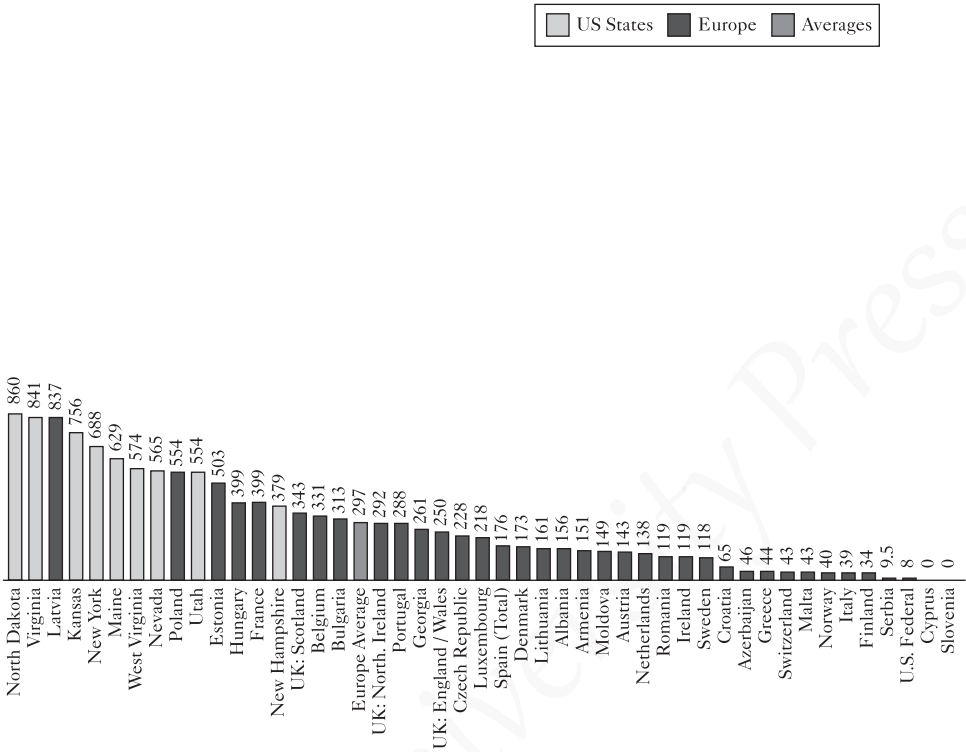


FIGURE 1.2 (continued)

On the other hand, probation is the most decentralized of US punishments because it is overwhelmingly administered at the county level. In practical terms, it is difficult to effect meaningful changes across thousands of largely independent government agencies. This is a puzzle that might be solved by new statewide controls imposed through centralization, legislation, or sentencing guidelines. Institutional creativity will almost certainly be needed, not just a change in policy sentiment.

Parole

The weight of the available evidence suggests that parole as administered in the United States is an instance of AECF, at least when compared with arrangements in other Western democracies for prison release, supervision of releasees, and revocations back to prison. Most importantly, changes in parole practices were a major contributor to US prison growth in the late-twentieth and early twenty-first centuries.

For most people—even criminal justice professionals and academics—this will come as a surprise. Within the United States, parole has had a durable reputation of shortening otherwise harsh prison sentences. Discretionary parole release, because it occurs before a maximum prison term has been served, is often called “early release”; and the law considers it a “privilege” or an “act of mercy” when a prisoner is allowed to serve the balance of his or her prison sentence in the community rather than behind bars (e.g., *Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex* 1979; *Pennsylvania Board of Probation and Parole v. Scott* 1998). From the public and media perspectives, parole release has been associated with the premature release of dangerous criminals and negligent disregard for public safety.

Markers of exceptional severity in American parole practices begin with the raw numbers. At year end 2014, 856,900 individuals were serving sentences of parole supervision across the United States, which translated into 269 per 100,000 general population (Kaeble, Maruschak, and Bonczar 2015, 1; Bureau of Census 2016a). As with prison and probation, there was a quintupling of the parole supervision rate in the late twentieth and early twenty-first centuries. There were 102,036 parolees under supervision in 1965, or 53 per 100,000 general population—a mere one-fifth the national rate in 2014 (Cahalan 1986, 181, table 7-9A).

As with incarceration and probation, the sheer number of people serving sentences of post-prison-release supervision in America is much greater, correcting for population, than the average among reporting nations in Europe. One recent study concluded that parole supervision rates across the United States in 2013 were at least five times the European average (Corda, Alper, and Reitz 2016).²⁶ Some of the 5:1 ratio is a direct product of unusually high incarceration rates in the United States, of course. Unsurpassed high American parole supervision rates might thus be seen as an unsurprising side effect of AECF in imprisonment. Even if this simple explanation is correct, postrelease supervision rates have not been included in the usual accountings of AECF. They are a substantial addition to the descriptive balance sheet.

The experience of parole supervision is no picnic. Compared with probationers, prison releasees are a high-risk population; they are generally managed with tighter surveillance, more restrictive conditions, and more of a sense that they “deserve” the pains of supervision. The distinctive American toughness in community supervision is especially present in parole. As summarized by van Zyl Smit and Corda in Chapter 10,

While in Europe [parole supervision] is mostly structured as a rehabilitative tool aimed at facilitating the re-entry and resettlement of

the offender in the community, in the United States parole tilts more heavily toward a punitive and managerial intervention, weakening or supplanting a commitment to the ideal of reintegrating parolees into society. . . . In comparison to Europe two distinctive characteristics of US parole are (1) longer terms of supervision and (2) more, and more intrusive, conditions of supervision. The latter add greatly to the burden placed on American parolees.

Parole revocation rates also appear to be high in the United States compared with reporting European countries. For the United States as a whole, 26 percent of all prison admissions in 2014 were due to parole violations (Carson 2015, 10, table 7). Probation revocations are not tracked separately in US national statistics but, filling in a reasonable estimate of prison entries from probation failures, at least 50 percent of American prison admissions are probably attributable to community supervision revocations of all kinds.²⁷ In contrast, among reporting European countries in 2012, combined revocations (or “recalls”) from parole and probation amounted to only 7.4 percent of all prison admissions (Aebi and Delgrande 2015, Table 8).²⁸

The legal architecture of parole-release discretion in the United States is by itself a form AACP. Parole-releasing systems are called “indeterminate” because, on the day of judicial sentencing, the actual length of a prison sentence cannot be predicted with reasonable accuracy. The *degree* of indeterminacy in US systems is greater than that in most or all other countries (Reitz 2014).²⁹ In other words, American prison-release agencies control a greater share of the maximum prison term than in other countries—and the number of prisoners serving sentences with extremely long maximum terms is larger in the United States than elsewhere.

To illustrate the high degree of indeterminacy in many American jurisdictions, in New Jersey, a maximum 10-year prison sentence yields first release eligibility after 23 months. The parole board decides one way or another on more than 80 percent of the possible prison term (New Jersey State Parole Board 2010, 35). In Colorado, many lower-level sex offenses carry prison sentences of one year to life (or two years to life or four years). The percentage of the possible prison term controlled by the parole board is not precisely calculable, but very large (Colo. Rev. Stat. §§18-1.3-1004; 18-1.3-401). At the extremes of indeterminacy, six states empower the parole board for most offenses to release prisoners the day they are admitted to prison, or keep them for their full maximum terms, or anything in between.³⁰ In this type of system, the courts decide who will be incarcerated and who will not, but the parole board is 100 percent in charge of prison-sentence lengths.

As far as I know, such stunning delegations of power to prison-release decision-makers have not occurred in other countries.

Just as telling as percentage measures of discretionary-release authority is the looseness with which prison-release agencies exercise their power in practice. In the United States, parole-release decisions are unpredictable and patterns of decisions are highly changeable over time.³¹ There is no substantive or procedural regularity to speak of. Decision criteria are open-ended, usually allowing the board to readjudicate all the factors originally considered by the sentencing court, plus additional considerations—like the infamously vague question of “readiness for release.”

Decisional instruments and parole guidelines, where they exist, are advisory and unenforceable, and the boards’ decisions are effectively unreviewable. Indeed, important decision tools such as guidelines or risk assessments are rarely shared with prisoners, who have no meaningful ability to contest the evidence or evaluations in their dossiers. Victim input to parole boards, which research has shown to make denials of release more likely, is generally held confidential, too. In many states, release decisions are made by one or two board members without consultation with each other or with the board as a whole, and it is common knowledge that individual board members have dramatically different approaches when performing their jobs (Rhine, Petersilia, and Reitz 2017; Reitz 2014; Roberts 2012; American Law Institute 2011, appendix B).

American parole boards are supremely powerful institutions. In a recent count, 347 individuals served as members of paroling agencies across the United States as a whole (Paparozzi and Caplan 2009). This small group wields greater power over the duration of prison terms than legislators, judges, prosecutors, corrections officials, or anyone else in the criminal justice system.³² The long-term prison policy of indeterminate states is thus (and has been) dominated by parole-release decision-making—a fact that has gone almost totally unremarked in the “mass incarceration” literature.³³

At the same time, parole boards are exceedingly weak agencies in terms of status, political insulation, and members’ job security. Most boards are made up of gubernatorial appointments, and members are easily removed by the governor. One member of the Arkansas parole board explained the “most obvious” reality of this setup: “If the governor likes you, you might get to keep your job” (Arkansas Times Staff and Max Brantley 2005). In the vast majority of states, there are no required statutory qualifications for appointment to the parole board (Ruhland, Rhine, Robey, and Mitchell 2017), so members lack the professional standing of other key decision-makers.³⁴ Turnover rates are high, even among chairs, and only some of this is voluntary. Members or entire

boards have been forced to resign after a single high-profile crime committed by a released prisoner. In the wake of episodes like these, firings or no, release rates plummet (Schwartzapfel 2015).³⁵

The combination of great discretion to make prison policy and minimal institutional clout has been a formula for disaster. The parole-release decision point across America is dominated by risk aversion, which I sometimes visualize as an oppressive cloud of humidity in every hearing room. A parole board member *never* takes a personal risk by voting to deny release and *always* takes a chance when letting someone out. While this is a long-recognized problem (e.g., Morris 1974), it has gotten worse over the past several decades. In a 2015 national survey, parole board chairs nominated political vulnerability and pressure toward minimization of all risk as one of the most important problems confronting the field today (Ruhland, Rhine, Robey, and Mitchell 2017). Even in states with good-quality decisional and risk-assessment instruments, parole board members depart from recommendations to release far more often than from recommendations to deny release (e.g., Colorado Division of Criminal Justice and Colorado State Board of Parole 2013).

Contrary to the romanticized vision of US parole systems as “giving breaks” to large numbers of offenders, actual practices have run a different course. Indeed, one major cause of mass incarceration was a nationwide shift among discretionary prison-release agencies toward lower release rates. From the late twentieth century, most paroling states have been high-incarceration jurisdictions when compared with “determinate” states that have done away with discretionary release. Nine out of 10 states with the highest prison populations at the peak of the prison boom were paroling states and not determinate states. The indeterminate states also had the greatest increments of prison growth dating back two or three decades (American Law Institute 2011). An American Law Institute report compared the total amount of prison growth experienced by all 50 states from 1980 to 2009, according to the type of sentencing system in each state, as displayed in Figure I.3.

The case of American parole systems as an instance of AECP is largely the story of parole’s causal connections to mass incarceration, which derive from a set of legal and institutional arrangements that are peculiarly American. Without the high degree of indeterminacy in prison-release decision making that has existed throughout most of the United States, and the political weakness of parole boards, the nation’s overall incarceration rates would be substantially lower today.

What would it take for the United States to rejoin the Western mainstream in parole practices? The task would be easier than for probation because parole-release and revocation decisions are concentrated in single agencies

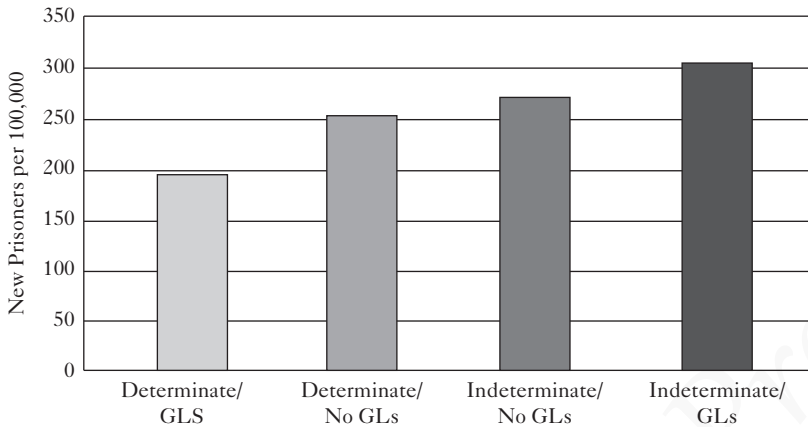


FIGURE 1.3 Per Capita Prison Growth by Sentencing System Type, 1980–2009

Source: Sourcebook of Criminal Justice Statistics Online. Table 6.29. 2012. <http://www.albany.edu/sourcebook/pdf/t6292012.pdf>.

with only 4 to 14 board members per state. This provides a ready focal point for system change. Outright abolition of discretionary parole release has already been pursued by roughly one-third of the states—an option that has been endorsed by the American Bar Association (1994) and the American Law Institute (2011). Retention of state parole boards with significant reform is also possible but has never been tried. For a comprehensive plan, see Rhine, Petersilia, and Reitz (2016).

Economic Sanctions

Although little noticed, the use and severity of economic criminal penalties in the United States have rocketed upward in the last few decades along with most other forms of criminal punishment. This is a badly under-researched and under-theorized area of American penalty.³⁶ There is no readily available statistic, like an incarceration rate, that indicates the average severity of economic penalties across different states and countries or changes in severity over time. And in order to estimate the practical severity of fines, forfeitures, restitution, costs, and fees we would have to know a great deal more about defendants' means to pay and whether they can pay while still living at a reasonable subsistence level (see American Law Institute 2017, § 6.04(6) & Comment).

Despite a shortage of statistics, there is much suggestive evidence that AECP extends to financial sanctions.

First, we know that economic penalties have been rapidly expanding in the United States since the 1980s, albeit with large variations across states and counties.³⁷ There has been a sustained uptick in fine amounts, asset

forfeitures, and a congeries of costs, fees, and assessments levied against criminal offenders.³⁸ At least some of the growth is due to the fact that the criminal justice agencies that impose and/or collect these monies are often entitled to keep the funds for their own budgets and expenses, or the funds are used as revenue for their home municipalities. The systematic soaking of the poor in Ferguson, Missouri is only one of many examples (see, e.g., US Department of Justice 2015; Logan and Wright 2014; Alper and Ruhland 2016a).

In addition, across all 50 states, there has been a wave of constitutional and statutory provisions that mandate or authorize victim restitution as part of criminal sentences (Tobolowsky et al. 2010, 155–57). Efforts at collection and enforcement have also intensified, including the piling on of interest and late fees (Bannon, Nagrecha, and Diller 2010).

The ballooning of economic penalties has overlapped with decades of growing income inequality in America. If we imagine a growth curve for the cumulative effect of all these obligations, and their real impact on the already-poor, the slope would be upward with a vengeance for the past three decades or so. And as illustrated in the US Department of Justice's Ferguson Report (2015), disadvantaged minority communities have been hit the hardest. So much fits the AECF pattern.

With caution, we can also posit that other countries do not tax offenders as exuberantly as the United States does.³⁹ While some European countries have boosted their use of fines in recent decades, this has been a part of efforts to reduce the use of short prison terms.⁴⁰ Low probation supervision rates in Europe may also owe something to the use of fines as default punishments for low-level offenses. Scandinavian countries have developed "day fine" systems that assess proportionate financial penalties according to the wealth, earning power, and obligations of each defendant.⁴¹ At least in some legal systems, therefore, the application of monetary sanctions shows greater sensitivity to defendants' means than is commonly true in the United States.

If America is distinctive in the ways described, it does not add up to a good program. Offenders under the jurisdiction of criminal courts may be the worst of all candidates to be designated as special taxpayers, no matter how great the need to make up shortfalls in funding for police, the courts, defense services, and correctional programming. Convicted offenders by and large come from the lowest rungs of the economic ladder and are struggling with the stark employment-market disadvantages that come with criminal convictions.⁴² Politically, offenders may be attractive targets for special taxation because they are unpopular, tainted by a finding of guilt, and disenfranchised; but American tax policy is distorted when they are exploited or driven into financial hopelessness. Heavy economic sanctions are regressive taxation taken to an extreme (see American Law Institute 2017, § 6.04 & Comment).

Nor does any of this serve traditional criminal justice priorities. Revenue generation is not a legitimate purpose of criminal law, and it is a goal that is antagonistic to the usual concerns of criminal sentencing. Certainly, rehabilitation and offender reintegration do not play major roles in the creation and administration of financial penalties in the United States.⁴³

Several bodies of research into desistance from crime suggest that economic sanctions, when overdone, are criminogenic.⁴⁴ Falling behind in payments often leads to further sanctions that deepen the hole for offenders, including suspension of driver's licenses, lengthened periods of community supervision, arrest warrants, and sentence revocations.⁴⁵ Unrealistic or heavy financial obligations interfere with offenders' abilities to obtain credit, pay for transportation (often essential to employment), and pursue educational opportunities. Damaged credit can make it hard to find housing or land a job. Processes for the collection of criminal justice debt can also disrupt employment relationships—as when garnishment of wages is used—or may simply reduce the incentives of ex-offenders to earn in the legitimate economy. Also, if the burdens of criminal justice debt make it impossible for a husband or father to contribute his share to household expenses or even his own living expenses, the sentencing system places strain on the bonds of stable family life (Eaglin 2015; Bannon, Nagrecha, and Diller 2010).⁴⁶

The bulk of social science research indicates that decent housing, strong families, and satisfying work are among the most important protective factors associated with desistance from crime.⁴⁷ Criminal justice policies that block or dilute these protective factors are profoundly misconceived.

A long list of changes would be needed for the United States to reform its use of economic penalties. Financial sanctions add up to big money for the police, courts, corrections agencies, and private corrections providers. Police and prosecutors will go to the mat to defend asset forfeitures, for example, which are among the worst abuses (American Law Institute 2017, § 6.04D). Victims' rights groups are powerful, and restitution is the most broadly accepted part of their agenda (Ruback 2015). Expect huge resistance—and who politically will stand for criminal offenders, overwhelmingly poor, who are caught in the system?

One large step forward would be to create an enforceable standard of means testing at sentencing, with an across-the-board rule that no economic penalty of any kind may be imposed unless after payment (of the total amount or scheduled installments) the defendant would still have sufficient economic resources to provide reasonable support for himself and his family.⁴⁸ This rule was adopted as part of the new Model Penal Code's recommendations to state legislatures nationwide (American Law Institute 2017, § 6.04(6) &

Comment).⁴⁹ If implemented, it would be significantly more muscular than the weak “ability-to-pay” protection in constitutional law.⁵⁰ Given the financial standing of most defendants in state criminal courts, a “reasonable subsistence” standard would drastically cut back on imposition of financial penalties in the aggregate and would foreclose the worst abuses in states’ and local governments’ current practices.

Collateral Consequences of Conviction

Across the United States, the number of civil legal consequences of conviction had dwindled to historic lows in the 1960s⁵¹ but soon began to grow by leaps and bounds (Klinge, Roberts, and Love 2013). Today, “[p]eople convicted of crimes are not subject to just one collateral consequence, or even a handful. Instead, hundreds and sometimes thousands of such consequences apply under federal and state constitutional provisions, statutes, administrative regulations, and ordinances” (Chin 2012). As summarized by the American Law Institute (2017, 238),

[I]n 1962, the primary consequence of conviction was a fine, probation, or a period of incarceration. Collateral consequences were limited in most cases to a temporary loss of the right to vote, hold public office, serve on a jury, and testify in court. Since then collateral consequences have proliferated, and now include mandatory deportation, inclusion on a public registry, loss of access to public housing and benefits, financial aid ineligibility, and occupational licensing restrictions. Some of these consequences last for the duration of the convicted individual’s life.

Professor Michael Pinard has said that, “Given the breadth and permanence of collateral consequences, [convicted] individuals are perhaps more burdened and marginalized by a criminal record today than at any point in U.S. history” (2010a, 1219).⁵² Nonetheless these sanctions fly below radar because the individual unit of punishment appears minor; they are far from the stuff of television drama.

The vast majority of these collateral sanctions are technically classified as “civil” and “regulatory” measures rather than “criminal punishments”—but they must be included in an overall accounting of the harshness with which Americans are treated after the conviction of a criminal offense. They are laws that make it harder, and often more humiliating, to live—and they persist long after criminal sentences expire.⁵³ Margaret Love (2015, 250) has observed that “[a]s a practical matter . . . collateral consequences have become more

important to many criminal defendants than any penalty likely to be imposed by the court.”

Not only have collateral consequences increased in their effects on *individual* offenders but their societal effects have been doubly magnified because the number of people carrying criminal convictions has itself exploded. While something approaching 7 million people are serving a criminal sentence on any given day in the United States, it is estimated that 10 times that number have a record of prior criminal conviction (Jacobs 2015; Rodriguez and Emsellem 2011). With such large numbers, the legal system is not targeting hard-core criminals with its civil restraints. The majority of people who suffer under collateral consequences have never been to prison—a conviction followed by a probationary or suspended sentence also triggers the cascade of sanctions (Chin 2012).

Collateral consequences of conviction in the United States appear to exhibit the hallmarks of AECP: they greatly expanded in the United States in the late decades of the twentieth century, in parallel with prison and jail populations, probation, parole, and economic penalties. They are racially disparate in their effects and hit the poorest and most disadvantaged ex-offenders the hardest (Alexander 2010; Pinard 2010b). If they reflect a criminal justice philosophy, it is one of punishment and incapacitation, with little regard for net effects on recidivism rates and public safety.

While the number of comparative policy analyses is small, they have concluded that America has earned exceptional status in the domain of collateral consequences when compared with other Western democracies (Pinard 2010b; see Demleitner, this volume). As Nora Demleitner puts it in Chapter 11,

The starkest differences between collateral sanctions in Europe and the United States are the breadth, automaticity, and often the lengths of the consequences that befall offenders in the United States even after they have served a criminal justice sentence. . . . Even though sanctions generally have also become harsher in Europe in recent decades, collateral sanctions remain more narrowly targeted, less comprehensive, usually imposed directly and publicly, not retroactive, and time-limited.

Moreover, legally instantiated collateral consequences float in the community alongside powerful social and economic forces of exclusion that operate privately, without legal mandate or encouragement, as when an employer turns down a job applicant, a parolee cannot rent an apartment, or a person

with an arrest or conviction on his or her record cannot find a college willing to admit him or her. All of these informal disabilities are especially *enabled* by American laws, however, which make criminal-record information freely available to the public, including private vendors who gather and maintain databases that cannot practicably be corrected when wrong, or expunged when outdated (Jacobs 2015).

Taken as a broad category, collateral consequences affect more lives in America on a daily basis than any other repercussion of a criminal conviction. If the death penalty is the small-numbers phenomenon of AECF—a relative drop in the bucket—then collateral consequences are a sea. Indeed, they suggest that the greatest and most persistent social impacts of an overgrown criminal justice system may be low on the scale of punitiveness of intervention. Racially stilted stop-and-frisk and traffic stops (“walking” and “driving” while black), fines and fees extracted overwhelmingly from the poor, extraordinarily high community supervision rates with decreasing emphasis on services—these are all low-level uses of governmental coercion when compared with capital punishment and imprisonment, yet they touch many more millions of lives.

While collateral consequences have been on the American criminal law reform agenda for two decades, the tool of comparative analysis has not been exploited. It would be useful to know if *any* other democratic society approaches the United States in the disabilities it imposes on ex-offenders or the degree to which it facilitates private discrimination. If you ask around, at international conferences or when working abroad, the usual answer is “no”; but documentation of America’s outlier status would be helpful.

It would be a staggering job to limit or repeal the thousands of statutes, across state and federal codes, that make up the confusing jumble of collateral consequences now in force. The American Bar Association (2016) undertook merely to *compile* the relevant laws in state and federal codes, and it proved a bottomless task. Any program of direct reconsideration of these provisions, one at a time, would make a good example in the legal dictionary under “piecemeal reform.”

A more sweeping approach could be to give sentencing judges the power to grant relief from collateral consequences, either at sentencing or at a designated later time (American Law Institute 2017, § 6x.04)—but this is a responsibility many judges do not want or feel qualified to discharge. In fact, for this particular instance of AECF, no one is at the wheel. There is paralyzing uncertainty about who should be professionally responsible for comprehending this subfield of criminal punishment, let alone administering it in a prosocial way.

AECP in Broader Focus: Serious Violent Crime

America has long been an outlier among developed democracies for its high rates of homicide and serious violent offending more generally (see Roth, this volume; Lappi-Seppälä, this volume). This is not true for all crimes across the board. Zimring and Hawkins (1997) drew a distinction between “crime in general” and the small percentage of criminal acts that are lethal or near-lethal in their effects. The United States does not have more “general” crime than other Western societies when corrected for population—but it has considerably more homicides, near-homicides, and serious woundings.

American serious violent crime rates surged from the early 1960s through the early 1970s and then remained at very high levels for two decades—a 20-year period one might call the “high-crime plateau” (Wilson 1995). After 1993 and through 2014, American crime rates dropped or remained stable—the “crime drop” period—returning the United States to lower volumes of crime not seen since the 1960s. Even today, however, American homicide rates remain high by Western standards. To illustrate, Figure I.4 depicts the crime drop in homicide for seven English-speaking countries from 1994 to 2014. Even after 20 years of remarkable decline, the 2014 homicide rate in the

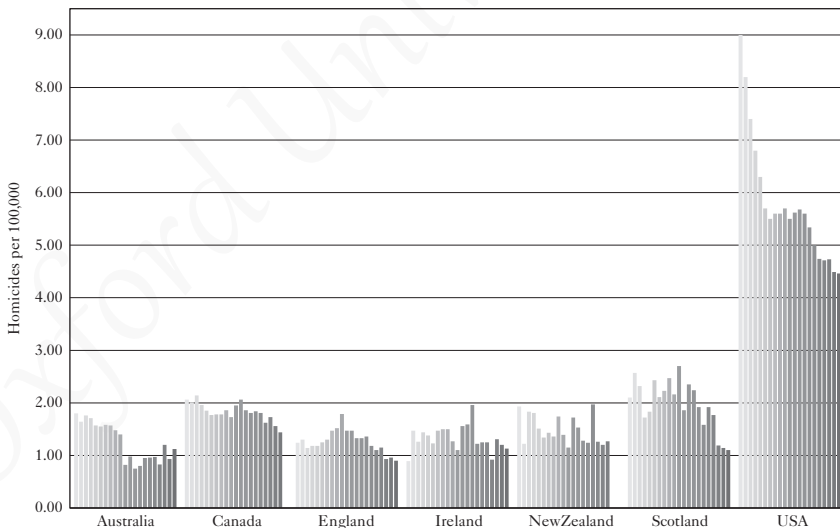


FIGURE I.4 Homicide Rates, Seven English-Speaking Countries during “Crime Drop” Decades, 1994–2014 or Most Recent

Source: Institute of Criminology and Legal Policy, University of Helsinki. 2016. Data provided in personal correspondence by Martti Lehti, June 22, 2016.

United States remained about three to four times that of Australia, Canada, England, Ireland, New Zealand, and Scotland.⁵⁴

In all of American history of crime and punishment, one of the most pivotal decades was the 1960s or, more precisely, the years from the early 1960s through the early 1970s. To understand the American milieu of criminal justice policy through the late twentieth and early twenty-first centuries, this is the critical juncture. I will call it the “crime-spike” period.

US homicide rates doubled in the compressed span of 10 years, which is even worse than it sounds. Homicide trends tend to be a bellwether of trends in other categories of serious violent offending. According to the FBI’s yearly Uniform Crime Reports, other frightening crimes were rising even faster than homicide. Figure 1.5 examines the changing rates of the four most serious reported crimes from 1962 to 1974. To facilitate comparisons, the 1962 rates

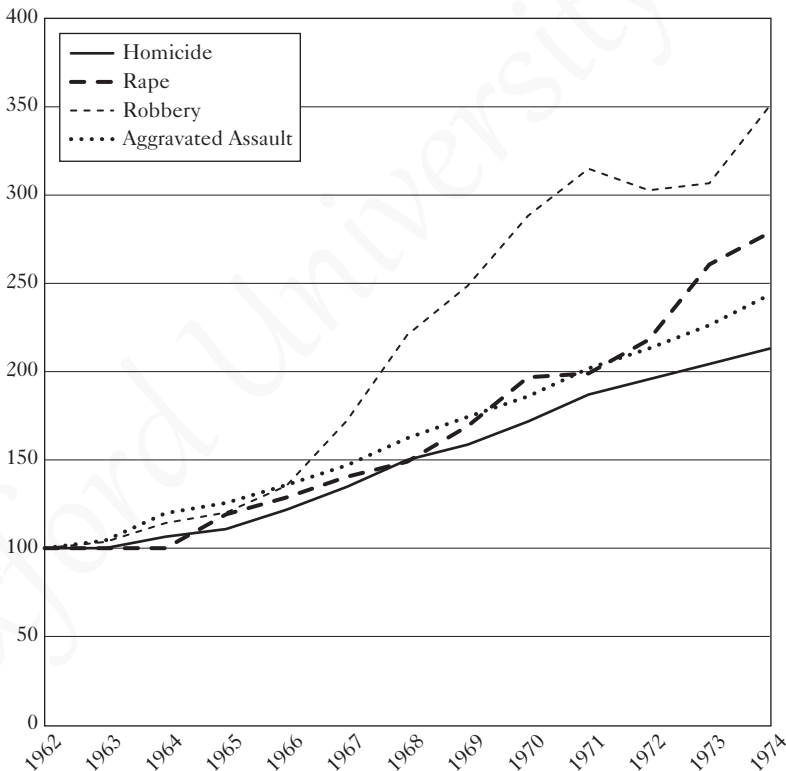


FIGURE 1.5 Crime Spike: Four Serious Violent Crimes, 1962–1974 (Standardized to 100 in 1962)

Source: Federal Bureau of Investigation. Uniform Crime Reporting Statistics, UCR Data Online. 2017. <https://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm>.

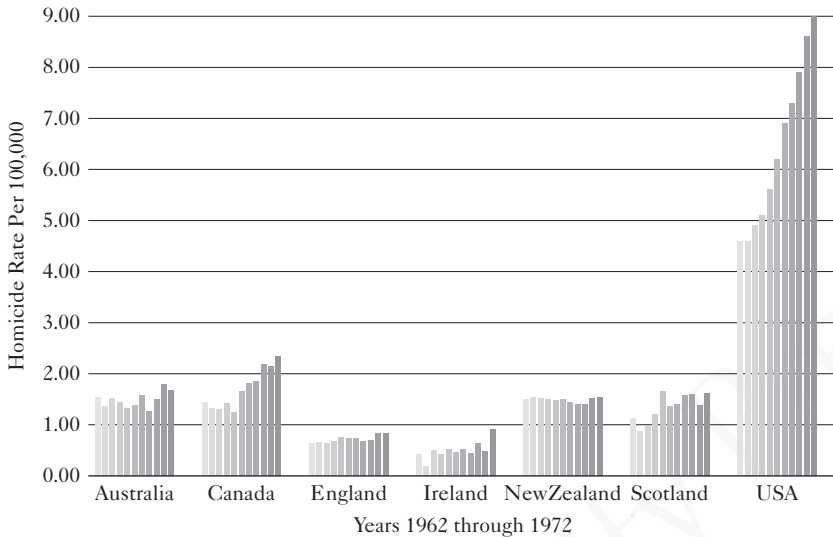


FIGURE I.6 Homicide Rates, Seven English-Speaking Countries, 1962–1972

Source: Institute of Criminology and Legal Policy, University of Helsinki. 2016. Data provided in personal correspondence by Martti Lehti, June 22, 2016.

of all four offenses are standardized to 100. While homicide increased by a factor of 2.1 over the period, the reported robbery rate increased by much more (3.5 times), while rape (2.75 times) and aggravated assault (2.4 times) also outstripped the homicide increase.⁵⁵

No other Western nation had a comparable experience. Figure I.6 tells the story of homicide rates in seven English-speaking countries from 1962 to 1972. Correcting for population, the annual number of *additional* homicides in the United States from 1962 to 1972 was 4.4 per 100,000 population (rising from 4.6 to 9.0 per 100,000). Among the other countries in Figure I.5, the average increment of change was 0.4 (less than one-tenth the US change); the largest was in Canada: 0.9 per 100,000.

In an ill-fated juxtaposition, the frightening crime spike of the 1960s coincided with a time of wide-ranging liberalization in the nation's criminal justice policies. As surveyed by Ruth and Reitz (2003, 70–72), major markers of this advancement included the following:

- 1960–1972 was one of the rare periods since the invention of American penitentiaries in which the nation's imprisonment rate declined substantially.
- Through the 1960s, the US Supreme Court issued a remarkable series of decisions that asserted federal power over state criminal justice systems

and placed new federal constitutional limits upon state criminal courts, juvenile courts, and police activities nationwide.

- The lower federal courts became significantly involved in overturning state court convictions through federal habeas corpus review.
- The use of capital punishment in the United States dwindled through the 1960s and early 1970s, partly due to Supreme Court intervention, falling to zero executions from 1968 to 1976. Compared with any prior decade in the twentieth century, the 1960s saw the flowering of a death penalty–abolition movement.
- The liberalization of criminal justice policies was strongly associated with the civil rights movement, which itself moved ahead with particular momentum in the 1960s. Charges of racial discrimination in policing, prosecution, and sentencing were broadly voiced and taken seriously by large segments of the American public.
- The gun control movement in America became more visible and assertive than ever before in the nation’s history.
- In the early 1970s, the federal courts became active—sometimes to the point of micromanagement—in regulating conditions of confinement in prisons and jails at the federal, state, and local levels.
- Laws against drug possession, public drunkenness, and public order offenses were relaxed in the 1960s and early 1970s, as was the enforcement of those laws. Some were declared unconstitutional by the federal courts.
- Legal changes in case processing and courtroom procedure during the 1960s focused almost exclusively on the rights of criminal defendants and either ignored or worked against the interests of crime victims.
- The 1960s and early 1970s were marked by broad-based enthusiasm, among policymakers and criminological experts, in favor of programs for the rehabilitation of criminals and social welfare programs aimed at poor and crime-ridden communities. The Presidential Crime Commission declared that “Warring on poverty, inadequate housing and unemployment, is warring on crime. A civil rights law is a law against crime. Money for schools is money against crime. Medical, psychiatric, and family-counseling services are services against crime. More broadly and most importantly every effort to improve life in America’s ‘inner cities’ is an effort against crime.”⁵⁶

Of course, the convulsions of the 1960s reached far beyond the criminal justice system.⁵⁷ Numerous destabilizing forces reared up during that turbulent decade—including many that invited a conservative backlash.⁵⁸ Unique in

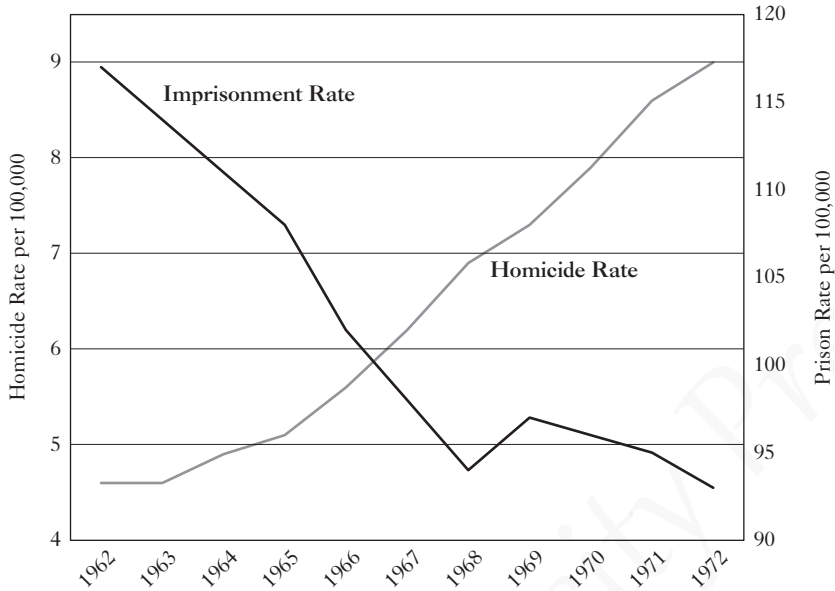


FIGURE I.7 Scissors Effect: US Homicide and Prison Rates, 1962–1972

Source: Bureau of Justice Statistics. *Sourcebook of Criminal Justice Statistics*, 1999. Washington, DC: Government Printing Office, tables 3.120 and 6.26. 2000.

America, however, was the collision between an especially horrific violent crime spike and a robust liberal revolution in criminal justice law and policy. Virtually every element of the leftist reform agenda was moving forward—but the seeming effects were awful.⁵⁹

Figure I.7 gives one graphic illustration of the train wreck. It displays the criss-crossing of prison rates and homicide on the y axes. We could just as easily draw similar pictures using other serious violent crimes and alternative indicia of the increasing “softness” of American crime policies.

By the mid-1970s, the pillars of liberal criminal justice ideology collapsed with unceremonious abruptness. Robert Martinson’s 1974 meta-analysis of rehabilitative programs concluded that most did not work or had only small effects—and that some programs made criminals worse. The study made a tremendous splash and spawned the “nothing works” outlook that towered over the field for the next 20 or 30 years. In 1975, James Q. Wilson’s *Thinking about Crime* repudiated every major tenet of the liberal criminal justice philosophy of the 1960s. The book became the most influential academic work in the history of American crime policy and served as an intellectual blueprint for conservative reaction (Ruth and Reitz 2003). Wilson skewered rehabilitation, promoted deterrence and incapacitation, and declared that his program

was firmly on the moral high ground. The book concluded (at p. 209) with the following summation:

Wicked people exist. Nothing avails except to set them apart from innocent people. And many people, neither wicked nor innocent, but watchful, dissembling, and calculating of their opportunities, ponder our reaction to wickedness as a cue to what they might profitably do. We have trifled with the wicked, made sport of the innocent, and encouraged the calculators. Justice suffers, and so do we all.

Sentiments like these granted permission to conservative leaders and a frightened public to see criminals as unchangeable and evil, or venal and calculating, and fully deserving of harsh treatment when necessary to protect society.

What made everything worse was that, after serious violent crime rates had shot up so precipitously through the early 1970s, they *remained* at those elevated levels for the next 20 years. Figure 1.8 compares the homicide crime spike (1962–1972) with the homicide “plateau” (1972–1992). Consistently high rates after 1972 produced more crime and victimization by far than the spike of the 1960s. In addition, persistent high rates can be more conducive of outrage and despair than spiking rates because they suggest a permanent equilibrium. As the crime spike settled into the crime plateau, America’s self-image became one of a “high-crime society” (Garland 2001b). In major cities, perceptions of disorder and personal danger were ingrained in daily life (Wilson and Kelling 1982). By the early 1990s, there had been no stretch of time in the past 30 years that did not feature sharply increasing crime rates or rates that were “stuck” at peak levels.

After three decades in the making, it took a while for the high-crime mentality to ease in Americans’ psyches. When the crime drop began in 1993, it was the most unanticipated societal transformation since the crime spike, and it did not achieve credibility as a sustained phenomenon for 10 years or so. (This is about the same period of delay as between the beginning of the crime spike in the early 1960s and the solidification of the get-tough orientation in the early 1970s.) Indeed, even as the US crime drop was gaining steam, respected national leaders and criminologists were warning the nation to expect a “bloodbath” through the 1990s and into the 2000s as a large demographic of “juvenile super-predators” aged into the prime of their criminal careers (DiIulio 1995; Fox 1995; Bennett, DiIulio, and Walters 1996; Haberman 2014). *Newsweek* (1995) reported that, “Criminologists are already warning that the United States can expect another wave of violent crime in the coming decade, and some say it will be much worse than the

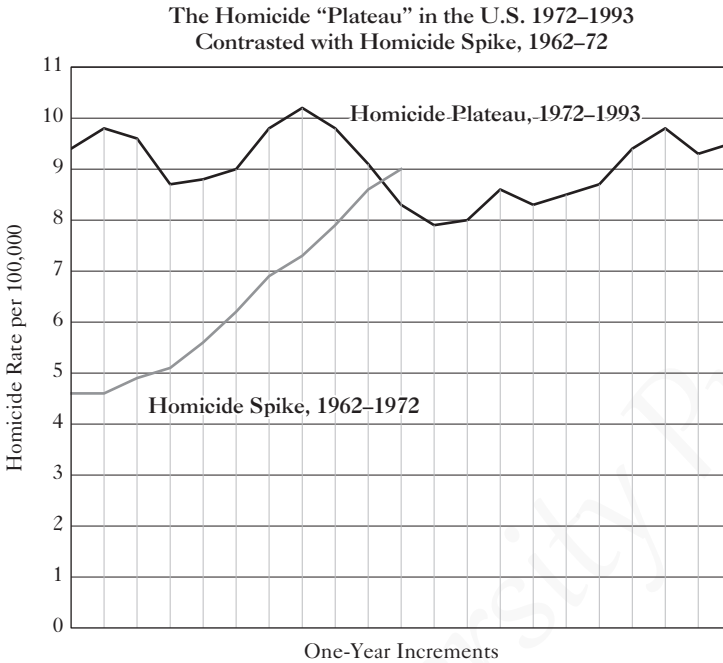


FIGURE 1.8 The Homicide “Plateau” in the United States, 1972–1993; Contrasted with Homicide Spike, 1962–1972

Source: Federal Bureau of Investigation. Uniform Crime Reporting Statistics, UCR Data Online. 2017. <https://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm>.

one that is now subsiding.” James Q. Wilson, by then the nation’s preeminent political scientist and an adviser of presidents, urged the public to “Get ready” (1995, 507).⁶⁰

By the early 2000s, however, serious people were taking notice of the crime drop. The search for explanations became an academic specialty—including, most famously, the theory that the establishment of women’s right to abortion was the most significant factor (Donohue and Levitt 2001; see generally Blumstein and Wallman 2000).

If American exceptionalism in crime was one proximate cause of the country’s long season of punitive expansionism, then an era of lower crime rates should create room in political dialogue and public opinion for a loosening of those policies. This is not likely to happen in year-by-year correspondence with drops in homicide and other serious violent offenses, but as the culture gradually assimilates new expectations about criminality and the vulnerability of the average citizen.

Over time, one would expect to see a tentative slowing, stopping, and reversal of the growth in prison, probation, and parole populations and conversation about more of the same. One would expect a nascent awareness of the burdens on the already-impoorished when economic sanctions and collateral consequences of conviction push them further into hopelessness. One would expect a return to the days when the excesses of the criminal justice system were prominently linked in the public mind with issues of racial injustice. One would expect greater and more successful political activism from the inner cities as the majority culture evinces somewhat more willingness to listen. If any of the above things were to happen, they would be good signs.

For those who would advocate major changes, however, one serious problem will be the difficulty of ground-level, unglamorous implementation. As of this writing, there has been a change in the rhetoric of criminal justice reform in the United States, but it is mostly talk. Because of our crazy-quilt federal system and our peculiar empowerment of local governments, there are uncounted efforts to be launched—each requiring calibrated adjustments for local circumstances—and hordes of people to persuade in the microcultural pockets throughout America. Local governments may be particularly hard targets, if Lacey and Soskice (Chapter 1) are right that political realities at the local level lean naturally toward policies that drive crime rates *and* punitive severity upward at the same time. Even with the crime drop fueling changes in politics and public attitudes, the problems of logistics in trying to access so many different fiefdoms should not be underestimated. It is nearly impossible to *overestimate* them.

In addition, pinning reformist optimism to a new “low plateau” of American crime rates is not a wholly defensible way to plan for the future. Just because the nation experienced a historic crime drop from 1993 to 2014 does not mean that we can count on crime to continue going down or even stay where it is. The FBI reports for 2015, for example, show homicide rates rising quickly in many major cities, including Chicago, St. Louis, and Baltimore, with a 10 percent increase in homicide nationwide from 2014 to 2015 (Federal Bureau of Investigation 2016, table 1). Preliminary reports for 2016 foreshadow a continuing upward trend in serious violent offending (Federal Bureau of Investigation 2017, table 1).

What is the plan if we enter a new crime spike? An optimist must hope that Americans have learned something from the societal catastrophes of the past 40 years. *Constructive* strategies to fight crime in the coming years will deserve greater attention than they received during the last panic over rising and sustained crime rates (e.g., policing reform, gun control, early childhood care for those who can't afford it, reinvestment in public schools, renovation

of social welfare programs). The 1960s sentiment that “warring on poverty is warring on crime” deserves a more genuine test drive than it received in the twentieth century. We now have reason to believe that successful efforts to “war on crime” will reinforce a “war on mass punishment.”

NOTES

1. This is not offered as a full accounting but is broader than the usual and explores relationships between sanctioning policies that may otherwise be missed.
2. Criticism that America’s incarceration rates were too high dates back at least to the 1960s and 1970s but was limited to law reformers and academics, some of whom assumed the nation was on a natural and enlightened course to dramatically cut back in the use of prisons and jails (President’s Commission on Law Enforcement and Criminal Justice 1967; American Friends Service Committee 1971; National Advisory Comm’n on Criminal Justice Standards and Goals 1973; Frankel 1973). Before the 2000s, concern over incarceration rates had virtually no resonance in public or political discourse—or if it did, it was in the form of stout calls for the *greater* use of imprisonment to reduce crime rates (Wilson 1975; Bennett, DiIulio, and Walters 1996).
3. Technically, America’s incarceration rates are not so distinctive if we count countries with populations no larger than a small city. For instance, the World Prison Brief listed Seychelles—an island nation off the coast of East Africa—with a 2014 incarceration rate of 799 per 100,000 (735 prisoners total). At the time, Seychelles had an estimated general population of only 92,000. Another diminutive country within striking distance of world leadership is St. Kitts and Nevis, a Caribbean island nation reported to have 334 prisoners and a prison rate of 607 per 100,000 in 2014—which placed it in third position worldwide for that year (World Prison Brief 2016). It is also doubtful the United States is the world’s all-time carceral leader by historic standards. Scholars have documented a higher incarceration rate for Stalinist Russia, at least twice the peak US rate (Belova and Gregory 2009, 465–66; estimating, depending on whom you count, an incarceration rate of 1,558 or 2,605 per 100,000).
4. High-profile members of Right on Crime have included Bob Barr, William J. Bennett, Jeb Bush, Chuck Colson, Monica Crowley, John J. DiIulio Jr., Newt Gingrich, Asa Hutchinson, George Kelling, Edwin Meese III, Pat Nolan, Grover Norquist, and Rick Perry (Right on Crime 2011, 2016).
5. The US “imprisonment rate” captures only inmates in state and federal prisons; more than 30 percent of inmates are held in local jails on any given day (Minton and Zeng 2015; Carson 2015). In American discourse, “incarceration rates” are defined as the sum of prison plus jail confinement rates. In other countries,

- “incarceration rates” and “imprisonment rates” tend to be synonymous terms; other jurisdictions do not follow America’s idiosyncratic division of confinement populations into prisons and jails or do not bifurcate their reporting of statistics.
6. New Zealand is the Western nation with the highest incarceration rate after the United States (World Prison Brief 2016).
 7. Russia has significantly decreased its prison populations and rates in the past 15–20 years. From 1999 to 2001 alone, the Russian incarceration rate fell from 730 per 100,000 to 644, due in part to mass amnesties (Sentencing Project 2001, 1). By 2016, the Russian rate had fallen to 453 per 100,000 (World Prison Brief 2016).
 8. England and Wales’ total incarceration rate was 146 per 100,000 in 2016 (World Prison Brief 2016). US prison-plus-jail rates in 2014 added up to 711 per 100,000, a total of 2,305,908 incarcerated people on any one day (Carson 2015; Minton and Zeng 2015).
 9. This estimate was based on the national prison rate in 2001, which was nearly identical to the national rate in 2014 (see Bonczar 2003, 8; Carson 2015, 8, table 6).
 10. Ostrom et al. (2002); Bazelon (2005); American Law Institute (2017, § 6B.09).
 11. In fact, one of the most common concerns about the use of risk-assessment instruments as prison diversion tools is that they will benefit whites more than blacks. The ethical dilemma is far worse if risk-assessment technology is used to increase the severity of prison sentences compared to the status quo (Harcourt 2006; Starr 2014). On the other hand, concerns about racial bias in actuarial risk assessment have not often been tested with empirical rigor, and the best study to date indicates that those fears may be exaggerated. Skeem and Lowenkamp (2016, 700) studied the postconviction risk assessment (PCRA) currently used in the federal system and concluded the following:

[T]hese results indicate that risk assessment is not “race assessment.” First there is little evidence of test bias for the PCRA. The instrument strongly predicts re-arrest for both Black and White offenders. Regardless of group membership, a PCRA score has essentially the same meaning, i.e., same probability of recidivism.
 12. Figures are roughly based on current incarcerated populations.
 13. With 28 executions in 2015, America fell last in the top five for raw numbers of executions (Amnesty International 2016, 63), but several other countries had *much* higher rates of execution per capita.
 14. From 2006 to 2015, the National Weather Service reported that an average of 31 people per year have been killed by lightning strikes and an average of 310 people have been injured or killed each year (National Weather Service 2016).
 15. The most executions in the past 70 years occurred in 1999 (98 executions), but still only 19 states participated—and nine of these states held only a single

- execution (University at Albany, Hindelang Criminal Justice Research Center 2012, table 6.85.2012).
16. Stephen Bright (2008, 374) reported that “[m]ore people sentenced to death in Harris County [Texas] have been executed than from any state except Texas itself.” For reports from other states, see Rosenberg (1995, 22: Pennsylvania), Willing and Fields (1999, A1: Ohio), and Paternoster (2005, A19: Maryland).
 17. Little comparable research has been done for noncapital cases, in part because race-of-victim data are rarely included in official records. A handful of studies suggest that the devaluation of black victims relative to whites also occurs in cases of violent and sexual assaults not resulting in death (Spohn and Spears 1996; Walsh 1987; LaFree 1989).
 18. *McCleskey* was a 5–4 decision. Justice Lewis Powell, the swing vote and author of the majority opinion, later told his biographer that he regretted his vote in *McCleskey* and would change it if he could (Jeffries 2001, 451).
 19. Japan held three executions in 2015, for a rate of 2.7 per 100 million. The 2015 US rate without Texas and Missouri was a “Japan-like” 3.1.
 20. Further down the rankings in 2015 were Saudi Arabia (406 per 100 million, 128 total) and Pakistan (170 per 100 million, 326 total).
 21. In 1965, the number of probationers in the United States was estimated to be about 432,000, which translated into a probation supervision rate of 222 per 100,000 general population (Ruth and Reitz 2003, 24, figure 1.4; Cahalan 1986, 181, table 7-9A). By 2014, the total number had grown to 3,864,100, or a rate of 1,212 per 100,000—more than a fivefold increase in per capita supervision (Kaeble, Maruschak, and Bonczar 2015, 1). This is uncannily similar to the increase in per capita incarceration over the last several decades.
 22. “Revocation,” in US terminology, occurs when a probationer is found to have violated one or more of the conditions of his or her probation sentence and on this ground is sent to prison or jail (see Mitchell et al. 2014).
 23. American probation populations are racially disparate but not to the same degree as those in prisons and jails. While about 13 percent of the US population, African Americans made up 36 percent of all prisoners in 2014, 35 percent of all jail inmates, and 30 percent of probationers. Similarly, Hispanics accounted for 22 percent of all prisoners, 15 percent of all jail inmates, and 13 percent of probationers. In contrast, whites are more heavily represented among probationers. Whites made up 54 percent of US probation populations in 2014, 34 percent of state prisoners, and 47 percent of jail inmates (Carson 2015; Minton and Zeng 2015; Kaeble, Maruschak, and Bonczar 2015). In other words, as the severity of sanction type increases, so does the relative share of people of color exposed to that sanction, while the exposure of whites declines.
 24. This finding is based on statistics from 39 reporting European countries, compiled by the Council of Europe for 2013 (Aebi and Chopin 2015). Depending

- on how one interprets the Council of Europe data, the ratio between US and European probation rates is probably closer to 9:1 (see van Zyl Smit and Corda, this volume). The Robina report was based on the most conservative possible calculations of US versus European rates—that is, it counted several ambiguous categories of European offenders who might not meet the US Department of Justice definition of being “on probation” (Alper, Corda, and Reitz 2016) but, for example, might instead be prison releasees or unsupervised pretrial defendants.
25. In some states, it is not unusual for defendants to decline the offer of a probation sentence and opt to serve out their prison time as the easier route to a clean slate. Likewise, some probationers volunteer for revocation in order to “max out” their prison sentence and bypass the difficulties of community supervision (Ruhland, Robey, Corbett, and Reitz 2017).
 26. As with the comparative probation study, the calculation of a 5:1 ratio is conservative. All ambiguous categories of offenders in Council of Europe data were “credited” to European post-prison supervision rates if there was any doubt that those offenders would meet a definition of parole supervision comparable to that used in the American Bureau of Justice Statistics counts (Corda, Alper, and Reitz 2016).
 27. Probationers are at lower risk of failure than parolees, but there are four times as many probationers. When records are compiled at the state level, it is common to find that over 50 percent of prison admissions stem from parole and probation revocations combined.
 28. The compatibility of European and American statistics on this point is open to question. The American figures do not include jail admissions or the numbers of probationers admitted to jails due to sentence violations.
 29. This may have been due to excessive American optimism, in the Progressive era, about the prospects for the rehabilitation of prisoners and about the ability of parole boards to detect when rehabilitation had occurred in individual cases (see Webster and Doob, this volume; Rothman 1980).
 30. See Ruhland, Rhine, Robey, and Mitchell (2017, 13–15) (in national survey, paroling authorities in six states reported that they held discretion to set minimum terms for violent, property, sex, and public order crimes; parole boards in eight states reported having such power in drug offense cases).
 31. One famous study found that parole-release rates declined during state election cycles as the next election approached (cited in Travis 2002). Another study found that parole boards’ generosity in granting release dropped significantly as the amount of time since members’ last meal increased (Kahneman 2011, 43).
 32. In addition to their releasing powers, parole boards preside over revocation decisions (returns to prison for violations of parole). Parole revocations accounted for 28 percent of all prison admissions in 2015 and a much larger percentage of prison admissions in the 1990s and 2000s (Carson and Anderson 2016; Carson

- and Golinelli 2013; Jacobson 2005; Petersilia 2003). Unique among American criminal justice players, parole boards hold both “in-out” discretion and “out-in” discretion.
33. If anything, the literature tends to blame the abolition of parole-release discretion in some states as a major factor contributing to prison growth (Reitz 2006; American Law Institute 2011, 142–43 note 88).
 34. While the best European systems vest prison-release discretion in judicial officers, such an arrangement is extremely rare in the United States (van Zyl Smit and Spencer 2010).
 35. Episodes like this have occurred in Pennsylvania, Massachusetts, and Connecticut. For example, in Massachusetts in 2010, following the killing of a police officer by a parolee, the chair, board members who voted on his release, and the executive director resigned (Reitz 2014; Clear and Frost 2014; American Law Institute 2011, Appendix B).
 36. Things may be changing. America’s “mass fines” practices gained prominence post-Ferguson, where the police shooting scandal was supplemented with a report revealing “soaking the poor” and “debtors’ prison” scandals. The same has been uncovered in more and more jurisdictions (Harris 2016; US Department of Justice 2015; American Civil Liberties Union 2010; Bannon, Nagrecha, and Diller 2010). In 2014, National Public Radio reported on a yearlong investigation into user fees imposed by courts and corrections agencies in a series of broadcasts called “Guilty and Charged.”
 37. For an excellent compilation and analysis of economic sanctions in Pennsylvania, showing average amounts that differed wildly from county to county, see Ruback and Clark (2011, 770). Ruback and Clark identified 2,629 separate economic sanctions across the state, of which 2,371 were costs and fees imposed by counties and an additional 79 were county fines (p. 767). For a study focused on Washington State, see Beckett and Harris (2008).
 38. On the growing number, use, and amounts of financial sanctions in the United States, see Beckett and Harris (2010, 512); Bannon, Nagrecha, and Diller (2010, 1); Corbett (2015); Ruback and Clark (2011, 752–53). On costs, fees, and assessments, see American Law Institute (2017, § 6.04D; recommending their abolition); Ruback 2015 (same). Fines, fees, and forfeited assets often go to the municipality or agency that collects them, such as courts, prosecutors, police departments, community corrections agencies, private corrections providers, or local governments (US Department of Justice 2015; Ingraham 2015).
 39. On the rarity of the imposition of criminal justice costs and fees outside the United States, see O’Malley (2011, 547–48): “Fees . . . are much less prominent outside the United States, almost never being levied for imprisonment and only in recent years being levied in some jurisdictions for victim compensation and costs of fine enforcement.”

40. In present-day American culture, economic sanctions do not have much “utility” as retributive punishments. That is to say, a judge’s pronouncement of a large fine delivers little retributive satisfaction to the American ear. Because of this low retributive valuation, American legal systems have not found it possible to substitute economic penalties for jail or prison terms—and it is likely they do not stand in for probationary sentences either. Instead, in American legal culture, fines, restitution, fees, and surcharges are “add-ons,” rarely viewed as adequate sentences in themselves.
41. See Federal Ministry of Justice (Germany) (2007, 81): “In 2004, the sanctions given to 94% of all persons convicted under general criminal law were either fines (80.6%) or suspended prison sentences (13.7%).” Also Morris and Tonry (1990, 143–44; discussing the use of day fines in Scandinavia).
42. A large percentage are also in arrears in child support payments, including at least 20 percent of all prisoners. A collaborative investigative report by The Marshall Project and the *Washington Post* (Hager 2015) interviewed dozens of released fathers and found child support debts ranging from \$10,000 to \$110,000. The report observed the following:
- [R]esearch shows that the two most important factors in a former prisoner’s successful reentry into the community are employment and positive relationships with family. Both of these are hindered by the aggressive pursuit of child support arrears: Garnishing 65 percent of a father’s paycheck, so he is tempted to earn cash off the books; suspending his driver’s license so he can’t get to work; sending him bills that are so far beyond his capacity to pay that he keeps his distance from his family. . . . “I see it all the time,” [Bo] Twiggs [Director of the Upnext Program in New York City] said: “Not reengaging with the family. Noncompliance with parole and child support. Under-the-table efforts at income. Self-defeat, high anxiety, general institutional distrust. All of that is triggered by this absolutely overwhelming, impossible feeling of debt.”
43. Almost no one thinks about the proportionality of economic sanctions imposed in the United States, standing alone or in combination with other penalties (American Law Institute 2017, § 6.04 & Comment). In part this is because system actors assume that most offenders will never be able to pay their economic sentence amounts in full, so “pronounced” sentences are regarded as flimsy and of doubtful weight in proportionality analysis.
44. Although there have been very few studies, empirical research suggests the same (Piquero and Jennings 2016; Pleggenkuhle 2012).
45. Under the law, probationers in most states may be revoked to prison for nonpayment (Mitchell et al. 2014), and the threat of revocation is used as a powerful collections tool. Ethnographic and interview data show that some probationers abscond, and go “on the run,” when they fall hopelessly behind in their fees. At least some others turn to the criminal economy to meet their financial debts to

- the justice system (see Goffman 2014; Ruhland, Robey, Corbett, and Reitz 2017). Needless to say, these are not outcomes the criminal law should be abetting.
46. In addition, when unrealistic economic penalties are visited on offenders, they can inspire feelings of despair and futility or perceptions of courts' sentences as illegitimate. None of these are desirable outcomes.
 47. Strong work ties and job stability correlate with lower rates of reoffending (Sampson and Laub 1995, 140–41). The acquisition of a “satisfying job,” not just any job, may have an even greater correlation with desistance (Shover 1996, 127). One study found the employment effect greatest for men over the age of 27, with no measurable effect for younger participants (Uggen 2000, 529). On housing, see National Research Council (2007, 54–55): “Released prisoners who do not have stable housing arrangements are more likely to return to prison.” One widely cited study found that being married was associated with a 35 percent reduction in risk of reoffending (Sampson, Laub, and Wimer 2006, 465). Other research has discovered similar but smaller effects (Horney, Osgood, and Marshall 1995, 665; Piquero, MacDonald, and Parker 2002, 654). On the importance of family ties more generally, see National Research Council (2007, 44): “Greater contact with family during incarceration (by mail, phone, or in-person visits) is associated with lower recidivism rates. Prisoners with close family ties have lower recidivism rates than those without such attachments.”
 48. A frequent objection, or reason given for pessimism, is that most courts have no reliable way to find out how much money a defendant has or can be expected to earn (Eaglin 2015). For myself, I would accept the sworn testimony of the defendant on this point unless the government produces evidence to the contrary. As information systems within and across state governments improve, it will become easier to access defendants' tax returns, social welfare records, and the like. Further, because the criminal defendant population is overwhelmingly poor, it makes sense to “slant” the process in the direction of presuming poverty, with the burden of persuasion on the government to rebut a defendant's testimony.
 49. The new Model Penal Code includes a comprehensive slate of recommendations to reform economic sanctions law across the United States (American Law Institute 2017, § 6.04 et seq.). For another set of far-reaching recommendations for legislative, judicial, and executive reforms in the realm of criminal justice debt, see Criminal Justice Policy Program (2016).
 50. *Bearden v. Georgia* (1983): offenders may not be incarcerated for failure to pay a fine or restitution unless they “willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay”; there is an exception, however: offenders without ability to pay may be incarcerated for nonpayment “if alternative measures are not adequate to meet the State's interests in punishment and deterrence.” By many accounts, the *Bearden* principle has not been

applied conscientiously by many courts. See American Civil Liberties Union (2010, 5): “Today, courts across the United States routinely disregard the protections and principles the Supreme Court established in *Bearden v. Georgia* over twenty years ago. . . . [D]ay after day, indigent defendants are imprisoned for failing to pay legal debts they can never hope to manage. In many cases, poor men and women end up jailed or threatened with jail though they have no lawyer representing them.” See also Bannon, Nagrecha, and Diller (2010, 20); Beckett and Harris (2010, 524–25); Katzenstein and Nagrecha 2011, 565).

51. Civil consequences of criminal conviction have deep historical roots in Roman and Germanic law (see Demleitner, this volume). In England and early America, convicted felons were subject to “civil death” and lost most of their legal and civil rights, including the ability to sue another person in court. The severity of these civil consequences was mitigated, however, by the relative frequency of pardons in those times. Also, record-keeping and information systems were primitive, allowing people to slip between the cracks relatively easily; and civil death applied only in the state in which a person was convicted (Chin 2012).
52. Jacobs points out that informal discrimination against people with criminal histories is more robust in the United States than in many other societies because the United States makes arrest and conviction records more widely available to the public. Jacobs calls this “U.S. criminal record exceptionalism” (2015, 159: “In Europe, individual criminal history records created and held by the police are not available to non-police agencies, much less the media and general public.”
53. More than this, the number and severity of collateral consequences may be increased long after the dates of offenders’ convictions or after they have completed their criminal sentences. There is no *ex post facto* prohibition on increased punishment in this context because the vast majority of collateral sanctions are deemed civil and regulatory rather than criminal (Chin 2012, 1811; *Kennedy v. Mendoza- Martinez* 1963).
54. US homicide rates were also more than four times the rates in most of western Europe, including Austria, England, France, Germany, Italy, the Netherlands, Portugal, Spain, and Switzerland (Institute of Criminology and Legal Policy, University of Helsinki 2016).
55. The Uniform Crime Reports of this era probably exaggerated the actual increases in robbery, rape, and aggravated assault; but an informed estimate is that rates of all four crimes actually doubled from 1962 to 1974—very close to the curve of the homicide spike (see Ruth and Reitz 2003).
56. President’s Commission on Law Enforcement and Criminal Justice (1967, 6).
57. This chapter cannot even sketch a history of the 1960s in America, but here is a list of some of the most memorable disruptions: urban riots across major cities and the assassinations of a president, a national civil rights leader, and a presidential candidate; the Vietnam War and the rise of student protests across

universities; the Cold War; the threat of nuclear holocaust (which was still novel enough to provoke all sorts of irrational behavior); the rise of youth culture and the sexual revolution; the rise of a militant black protest movement; and the unraveling of the 1950s *Leave It to Beaver* model of the stable nuclear family with low divorce rates and stay-at-home mothers. For a rich description, see Garland (2001b).

58. This includes every part of Lyndon Johnson's "Great Society," federal civil rights legislation, and voting rights legislation.
59. I do not personally believe that liberalization of crime policy in the 1960s contributed very much to the upsurge in crime—but I am here mostly concerned with appearances and understandable public perceptions at the time.
60. As Wilson is so quotable, here is the entire passage:

Meanwhile, just beyond the horizon, there lurks a cloud that the winds will soon bring over us. The population will start getting younger again. By the end of this decade there will be a million more people between the ages of fourteen and seventeen than there are now. . . . This extra million will be half male. Six percent of them will become high rate, repeat offenders—thirty thousand more young muggers, killers, and thieves than we have now.

Get ready.

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