ENGELSE TAAL EN CULTUUR

Teacher who will receive this document: Dhr. P.B. van der Heiden
Second reader: Dhr. J. van den Berk
Title of document: The Bar-Spangled Manner. Rethinking the American Justice System.
Name of course: Bachelor Thesis
Date of submission: March 22nd, 2017

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ABSTRACT

America is home to five percent of the global population, yet houses twenty-five percent of the global prisoners (Gottschalk, 2011). Prisons are full to the brim and conditions are dreadful, so the contemporary penal regime is in urgent need of reevaluation. Many studies scrutinize the economic implications of mass incarceration, but much less attention has been paid to the collateral consequences of the current penal policy. This thesis will explore different aspects of the carceral state, with a focus on how it affects individual prisoners and their communities. The research question is: How effective and efficient is the American penal system in realizing the societal objectives of criminal punishment?

Chapter one explains the four main justifying rationales for punishment: retribution, deterrence, rehabilitation, and incapacitation. Justice systems are founded on one or more of these rationales. Chapter two explores the main factors that contributed to the prison boom and goes on to discuss different facets of the contemporary penal system. In chapter three the focus will shift towards the collateral consequences of imprisonment for the individual convict, supplemented with broader implications for society at large. The collateral consequences will be structured by subsequently addressing economic impediments, denial of civil rights, and denial of social and welfare rights.

Findings indicate that justice policy is still geared to the harsh punitive war on crime, epitomized by Raegan. The inheritance of harsh sentencing laws and collateral consequences jeopardize the justice system as well as the chances ex-prisoners have of successful reentry.
INTRODUCTION

"The degree of civilization in a society can be judged by entering its prisons."

~ Fyodor Dostoyevsky (1821-1881), Russian novelist and journalist ~

Prisons effectively isolate inmates from the rest of society and thereby render the inmate population largely invisible to day-to-day public discourse. However, there is great truth in Dostoyevsky’s quote as punishment and society are closely interrelated. Indeed, the collective notion of what constitutes acceptable behavior—and what punishment is imposed upon disobedience—is a reflection of the cultural values and traditions of society. The diverging beliefs regarding sound prison conditions were illustrated once again in December 2016, when the Dutch court of The Hague prohibited the extradition of a suspected sex offender. The defendant held that his extradition to the United States (US) would likely lead to a violation of article 3 of the European Convention on Human Rights\(^1\) (ECHR). The court agreed and held that the defendant could not be extradited to the US (Hof Den Haag, 2016).

This case is illustrative of the diverse beliefs of sufficient prison conditions that different societies hold at a specific point in time. The defendant in the case above had good reason to be apprehensive of serving time in an American prison.

Since the early 1970s, the incarceration rate in the United States has increased by more than six fold. Today, a staggering 7 million people are under jurisdiction of the criminal justice system, equaling roughly 1 out of every 31 adults (Gottschalk, 2011). Approximately 2.3 million are incarcerated in federal prisons, state prisons, or local jails; the rest is on probation or parole. The US is often referred to as the world’s warden, as its incarceration rate of 710 per 100,000 US residents stands head and shoulders above all other OECD countries\(^2\). An estimated 2.7 million children (3% of all children) in the US had a parent in prison, and as of 2007, 53 percent of the inmates were parent of a child under eighteen (Kearney et al., 2014, p. 14). Racial disparities soared as the incarceration rate rose, amounting to a cumulative risk of imprisonment at age 34 for African Americans that doubles the risk for white Americans (Kearney et al., 2014). Scholars estimate that if the

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1 ECHR art.3: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment” ("European Convention on Human Rights Act," 2010, p. 6)
2 2nd place on the list is held by China, with an incarceration rate of 266 per 100,000 residents. OECD country average incarceration rate: 115 per 100,000 residents (Kearney, Harris, Jácome, & Parker, 2014, p. 10).
current trend continues, one in every three Black males and one in every six Hispanic males born recently will be incarcerated some time during their lives (Gottschalk, 2011). The brunt of the dramatic rise in incarcerations was borne by the already disadvantaged groups of society.

The expansion of the carceral state has been perceived as a peripheral problem pertaining to the poor urban communities. But a growing body of research provides evidence that a prison population of this magnitude in a democratic polity has tremendously deteriorating effects on society. Gottschalk (2011) contends that ‘The carceral state has grown so huge in the United States that is has begun to metastasize and warp core political institutions, everything from free and fair elections to an accurate and representative census. Furthermore, the emergence of the carceral state has helped to legitimize a new mode of “governing through crime” that has spread well beyond the criminal justice system to other key institutions, including the executive branch, schools, and the workplace’ (p. 488).

The contemporary penal regime in the US is in urgent need of either reform or refunding. A large body of research scrutinizes the (economic) effect of mass incarceration through the number of inmates behind bars, but much less attention has been paid to the collateral consequences of the current penal policy. This thesis will explore this issue by means of the following research question:

**How effective and efficient is the American penal system in realizing the societal objectives of criminal punishment?**

- What factors contributed to the trend of mass incarceration in America?
- On which fundamental principles is the American penal system based?
- What features characterize the contemporary American penal system?
- What is the collateral impact of the American penal system for ex-convicts?
- What is the collateral impact of the American penal system for society at large?

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3 Note that ‘penal regime’ is chosen deliberately as opposed to ‘punishment’ since the scope of the former is broader as it also includes those instances in which the government decides not to act, whereas the latter necessarily implies that some action is taken.

4 I understand a system to be effective if it uses suitable and appropriate means (policies; laws) to achieve its goal(s).

5 I understand a system to be efficient according to how targeted, cogent, and well-organized it is.
Chapter one of this thesis will proceed to inquire briefly into the historical imperatives and assumptions that still form the rational foundation on which the current criminal justice system is based. Chapter two explores different facets of the contemporary penal system in the US, providing information on numbers and figures, as well as predominant beliefs on criminal behavior, and the main factors that fuel(ed) the prison boom. In chapter three the focus will shift towards the collateral impact for the individual convict upon release, supplemented with broader implications for society at large. The collateral consequences will be structured by subsequently addressing economic impediments, denial of civil rights, and denial of social and welfare rights. Chapter four will discuss answers to the research question and propose policy reforms to ameliorate the dire situation of the carceral state. Then, the conclusion briefly summarizes the main argument.

1. THE IDEOLOGY OF PUNISHMENT

Before the Enlightenment, the absolutist states were ruled by a king, who was conceived of as the representative of God on earth. Virtually absolute power emanated from the crown, which used it as a means of displaying power and authority. Public punishments were common as it expressed the king’s ability to crush any kind of popular resistance. Torture symbolized the ultimate proof of a prisoner’s guilt and was therefore justified to a certain extent. This authoritarian system began to show signs of deterioration in the eighteenth century. Firstly, because spectacles of punishment sparked popular dissent as the lower classes started to scrutinize the oppressive rule of the elite – as happened in the French and American Revolutions. Secondly, the spirit of humanism became commonplace and the king’s brutality lost legitimacy. ‘Humanism as a rhetoric allowed the middle class to portray the king as the degeneration, not epitome, of “civil” society’ (Shapiro, 2002, p. 2). Biblical passages had been the justification of punishment for centuries, until utilitarian reformist such as Cesare Beccaria and Jeremy Bentham contested the notion of divine justice and questioned its purpose, if any (Duus-Otterström, 2007). If divine law no longer justified punishment, what did?

Bentham and Beccaria justified criminal punishment through the guiding moral Principle of Utility, which holds that the criminal justice system contributes to the happiness
of the members of society by reducing the amount of crime (Sverdlik, 2017). Their conception of criminal acts is based on the rationality of human decision-making. Thus, every human rationally balances all the (perceived) gains of committing a certain crime against the (perceived) costs. Bentham’s theory assumes that: ‘every rational person seeks to maximize her pleasure and minimize her pain’ (Sverdlik, 2017, p.5). Therefore, punishment must be slightly more severe than the crime, effectively deterring people from committing any. Bentham’s idea of punishment was a *prima facie* evil that ought to be admitted only as far as it promised to prevent some greater evil (Duus-Otterström, 2007). In general, ‘the principle of utility referred to by Bentham is the idea that the rightness or wrongness of every action or practice is determined by its consequences for general utility. If it leads to more utility than disutility than feasible alternatives, the action or practice is right’ (Duus-Otterström, 2007, p.12).

Foucault follows a slightly different train of thought. He argues that as the authority of the nobility declined, the void was filled by the rule of the middle class, the bourgeoisie, causing different social dynamics. The conception of justice adapted to the ‘new’ dynamic of society. Prisons became the dominant type of punishment. Prisons were perceived to be a more gentle and humane kind of sanction (King, 2007), as opposed to bodily punishment, as well as a more suitable and more effective manner of protecting the middle class through the creation of a disciplined population. Incarceration, fines, and public service also reflected the notion that a criminal was indebted to society, instead of to the king. Foucault argues that as God is taken out of the equation, punishment becomes more secular and certain standards are instilled to which judicial professionals should adhere. Such standards hold that the crime is proven beyond reasonable doubt, that the process of passing judgement is transparent, rational and just, that the punishment is proportional to the crime, and that the punishment outweighs the benefits of the crime (Shapiro, 2002).

In the 19th century another idea of punishment gained influence: rehabilitation. Here punishment was also seen as a necessary evil, but instead of scaring offenders into compliance, the penal policy should work to eradicate the causes of crime within offenders (Duus-Otterström, 2007). This view denies the solely rational decision of criminals to engage in crime. Instead, it argues that offenders may suffer from some kind of disorder, whether social, psychological, genetic, or economic, and that sanctioning them should address their
‘deficits’ as well. A sensible penal policy therefore aims at transforming and rehabilitating the individual into law abiding, well-functioning citizens, to the benefit of the offenders as well as society at large (Duus-Otterström, 2007).

Today, penal policy in most developed countries aims at achieving four general objectives: retribution, deterrence, incapacitation, and rehabilitation (Payne, Gainey, Triplett, & Danner, 2004). The degree to which policy is geared towards one or the other objective varies over time and is contingent on social, political and economic contextual factors. The underlying theoretical assumptions of these four objectives will be discussed below, together with their respective justification of punishment. The following section aggrandizes the typical tenets of each objective to juxtapose their distinct character. The provided descriptions serve the purpose of this thesis, not necessarily of nuance and comprehensiveness.

1.1 Retribution

“The retributive view is that punishment is justified on the grounds that wrongdoing merits punishment. It is morally fitting that a person who does wrong should suffer in proportion to his wrongdoing. That a criminal should be punished follows from his guilt, and the severity of the appropriate punishment depends on the depravity of his act. The state of affairs where a wrongdoer suffers punishment is morally better than the state of affairs where he does not…” (Rawls, 2001, p.21).

Retribution is the aspect of punishment that embodies the categorical imperative that acts of crime deserve just punishment. It is the oldest penal theory and supposedly the most emotionally satisfying. It is also one of the most controversial perspectives because it is often taken to be associated with and motivated by vengeance, reactionary politics, and harsh ‘tough-on-crime’-regimes.

The anxiety of a criminal who profits from his actions in a way that compromises the bona fide working class calls for retribution. As John Rawls’ definition above shows, it is in the very act of crime that retributivists find the moral justification for punishment of the offender. A punitive system focused on retribution typically denies the malleability and perfectibility of human nature. People will act self-interested and their conduct can be governed by harsh penalties that ensure that offenders are held accountable for their actions (Sparks, 2007).
Moreover, retribution encompasses indemnification. The system requires the offender to pay reparations or compensation for the damages caused by the crime. This could include restitution of goods, or financial compensation for the direct and indirect consequences of the respective offence. Crime hurts the directly involved persons, but it also has a larger impact on society in general. The derogatory societal nature of crime is being compensated for by imposing sanctions like community service.

Apart from the idea that a criminal has to pay for his actions, retributive punishment also serves a normative purpose. By the type and the length of punishment one can derive what the boundaries of acceptable behavior are. Some societies render the consumption of alcohol unacceptable, some do not. Some accept protecting one’s property in the face of trespassers – even if this causes potentially lethal injury - as perfectly sound behavior, others would prosecute the ‘protector’ for homicide.

1.2 Deterrence

"Deterrence is about making people refrain from doing certain things out of fear or prudence" (Honnerich, 2006, p. 75).

Beccaria and Bentham are among the most influential advocates of deterrence as the primary function of the penal system. The general idea is fairly simple: many potential rule breakers will opt for compliance when the punishment produces sufficient deterrence. Deterrent punishment is justified by its capacity to prevent future breaches of the law (Duus-Otterström, 2007).

It is useful to distinguish between general and specific deterrence. General deterrence is aimed at the broader public. Everyone in society can witness the pain or deprivation imposed on an offender for a certain crime. People will supposedly refrain from crime because of the risk of suffering the same consequences. Specific deterrence is directed at the offender, but follows the same logic. The offender is punished and the severity of the sanction should outweigh the crime’s benefits such that the offender is deterred from future crime at the risk of having to undergo the same punishment once more (Duus-Otterström, 2007).

The idea that deterrent punishment can make society safer and lower crime rates is compelling and plausible. However, the assumption of deterrence is being criticized on practical as well as moral grounds. Comprehensive examinations is beyond the scope of this
paper, but suffice to note that scientific research proving the effectiveness of deterrence is scarce, and that deterrent theory works only for rational, intentional and calculated crime (Duus-Otterström, 2007).

Deterrence also pervades the discussion on prison conditions, which should be set according to the ‘doctrine of less eligibility’, which according to Sparks (2007) asserts ‘that the conditions of life in prison must be set lower than those of the laboring poor, or risk both sacrificing the prison’s deterrent effect on the lower orders and insulting the honest worker’ (p.75). On several occasions moral outrages erupted when news articles reported that hospital patients paid a daily fee for cable tv that was tenfold the fee prisoners paid. Another instance concerned the superior quality of the food served to prisoners compared to the meals served in nursery homes. Acceptable prison conditions are often set just under the poverty threshold.

1.3 Rehabilitation

“Rehabilitation is intervening, with or without consent, in the life of a rule breaker in order to restore him or her to some state of ‘normal’ or desired functioning” (Duus-Otterström, 2007, p.75).

Rehabilitation as a penal theory is younger than retribution and deterrence. It emerged in the early 1900s and was written into law for the first time in 1908\(^6\). Hudson (as cited in Raynor & Robinson, 2005) defines rehabilitation as follows: “Taking away the desire to offend, is the aim of reformist or rehabilitative punishment\(^7\). The objective of reform or rehabilitation is to reintegrate the offender into society after a period of punishment, and to design the punishment so as to achieve this” (p.4). The novelty was the notion that the state had a duty not only to protect against dangerous individuals but also to intervene in such situations. The rapid developments in social and medical sciences led to an expansion in the perceived degree of human malleability (Holmes & Soothill, 2007) which coincided with a broader movement from classical liberalism to welfarism. The ideology of rehabilitation has

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\(^6\) Prevention of Crime Act 1908

\(^7\) It is argued that ‘punishment’ no longer suffices in the practice of rehabilitation since punishment is meant to make life worse for the offender by depriving him of certain liberties and freedoms. Though the latter remains true to some extent, the former is absent in rehabilitative measures because they are designed in the best interest of the offender. Duus-Otterström (2007) therefore argues to distinguish between punishment (as in retribution) and treatment (as in rehabilitation).
been the paramount justification of penal systems throughout the western world and remained largely unchallenged until the 1970s.

Rehabilitation rose to prominence as part of a development throughout the twentieth century: ‘the medicalization of punishment’. This development started to recognize criminals as victims, especially in the case of drug offences, or addiction in general. Consequently, the principle of personal accountability in punishment –hallowed by retribution and deterrence- started to lose ground. Blame started to be allocated –at least in part- to external factors that contributed to crime, like social life, poverty, job availability, housing etc. The criminal was victimized to some extent and consequentially could not be held fully responsible for his actions, which in turn started to erode the need and justification for severe punishment for this was perceived to be detrimental to both the offender as well as society. Perhaps the most notable difference setting rehabilitation apart from other approaches is the solidly ingrained paternalistic element.

An ideological reflection of rehabilitation exuded from a new penal lexicon, illustrated for instance by the slow obsolescence of prison and the inception of correctional institutes. This emblematic alteration of terminology is the manifest product of a shift in attitude toward punishment: criminals were no longer simply bad people; rather they were good people who had done bad things (Duus-Otterström, 2007). The perception emerged that motivations for crime were more often than not irrational, thus sprouting the perspective of the criminal as suffering from some kind of disorder that caused him to engage in crime (Sparks, 2007). Many proponents firmly contend that offenders need rehabilitation to overcome their criminal tendencies, and therefore providing rehabilitation is understood to be an obligation on humanitarian grounds: rehabilitation is perceived as an offender’s right (Duus-Otterström, 2007). Some of the typical rehabilitative features are: “The parole system, indeterminate sentencing, non-custodial sentences, [and] the increased use of forensic psychiatry in the management of crime” (Duus-Otterström, 2007, p.73).

So, rehabilitation commits to repairing, remodeling, and reintegrating convicts back to a state of normality to be functioning citizens once again (Holmes & Soothill, 2007). The penal measures are tailored to the needs of the individual offender and strict rehabilitationism is not concerned with the principle of proportionality or giving offenders their ‘just deserts’ in any meaningful way. Instead, proponents argue that rehabilitating
offenders is in everyone’s best interest since it reduces crime, reduces recidivism, and produces more successfully reintegrated ex-convicts, which in turn benefits society (Duus-Otterström, 2007).

1.4 Incapacitation

“The idea of the criminal justice system intervening where no serious act had been committed may not sit well with academics and classicists but the law-abiding population might feel safer” (Holmes & Soothill, 2007, p. 599).

Incapacitation simply means constraining one’s freedom to act as he or she sees fit. It is commonly used in a legal context and it then involves the constraining the personal freedom and liberties of an individual deemed dangerous to society. So incapacitation impacts the individual, but is largely motivated by broader protective and preventive concerns of public safety. In theory the idea is fairly simple and straight-forward: the people detained in prison cannot commit crimes during the period of incarceration⁸, therefore it makes the public space a little safer.

There is a distinction between incapacitation of convicted offenders and preemptive incapacitation, of which the former occurs most frequently. In its most austere form, incapacitation implies that a request for parole or (early) release otherwise is denied on the risk-based calculation of the convict’s potential risk of reoffending. Sexual predatory behavior and severe violence are most the common reasons for an extension of one’s sentence, but psychological and mental disorders can also leads to a lengthy stay indoors. The crucial element of incapacitation is the preoccupation with the prevention of recidivism and public safety. Incapacitation manifests in more modest obliges ex-convicts upon release to comply with a regime of supervision with various degrees of stringency. The severity ranges from a duty to report to the US probation office periodically, to an intrusive rigorous regime of daily reporting in addition to unheralded on-site visits at home or workplace and submitting to random drug or alcohol tests. Other more specific measures, mostly based on the type of crime, can entail terms of release tailored to the individual case. The terms of parole for someone convicted of assault might include a prohibition to reside in the direct

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⁸ With the notable exception of crimes committed within prison walls, such as assaulting prison staff or smuggling.
vicinity of or interact with the victim. Another example can be found in the obligation of ex-sex offenders to notify their neighborhood as they move in.

Incapacitation is rarely distinguished as a separate justification or objective of punishment. Instead, it is usually incorporated as an aspect in the penal theories of deterrentism or rehabilitationism (Duus-Otterström, 2007). Incapacitation is an element in the utilitarian perception of deterrence. Utilitarian punishment is designed to maximize the net gains for the larger population. When the gains (safety) of incapacitating high-risk offenders outweighs the costs (expenses; pain for incapacitated person) the measure is justified. Note that this rationale does not necessarily require a criminal offence in order to justify incapacitation. For rehabilitationalists incapacitation is usually the result of non-compliance with one’s sentence. When an offender with a psychiatric disorder is sentenced to a program of mandatory treatment, he or she can be coerced into compliance. This arguably impedes their freedom to a certain degree. Again, incapacitation here involves measures directed at preventing harm to the public by restraining the offender who poses a significant safety threat.

Incapacitation often overlaps with the previous perspectives on punishment. Indeed, regardless of the predominant perspective on punishment, incapacitation usually plays a role in any of them. The reason to treat incapacitation separately is its enhanced prominence as a rationale for imprisonment in advanced liberal societies (Sparks, 2007). New technologies and innovations enable advanced methods of calculating the frequency and prevalence of offending and this has affected the nature of contemporary punishment: “The implication is that the penal system is entirely a regulatory instrument – a kind of sluice gate whose optimal rate of flow can in principle be rationally determined” (Sparks, 2007, p. 79). This instrument is seductively potent for politicians: protection of the public and the ostentation of being tough on crime effectively galvanizes the majority vote (Holmes & Soothill, 2007).

The debate over who should be incapacitated under which conditions is everlasting, but also dangerously imbalanced. Consider that the incapacitated population is obliterated simply because they are deliberately placed outside the public sphere. Imagine a policy is implemented to release some of the alleged ‘menaces to society’. One single felony committed by such an ex-detainee can spark a moral outcry, usually orchestrated by the
media (Holmes & Soothill, 2007). The imbalance lies in the impossibility to test the contrary case. In other words, the number of (supposedly) dangerous people being held incarcerated unnecessarily is an impossible inquiry, simply because it is impossible to determine with any substantial certainty what any human’s behavior is going to be in the future (Holmes & Soothill, 2007).

It is because of the potency of incapacitation to buttress public anxiety—often irrational and emotively driven—that I have chosen to discuss this aspect separately. As governments lay their trust in artificial intelligence to calculate and manage risk behaviors of various sorts, incapacitation can seem to provide a deceptively attractive solution, without due consideration of the practical and moral hazards involved in the slippery slope of preemptive incapacitation (Holmes & Soothill, 2007).

2. THE WORLD’S WARDEN

This chapter will examine the sharp rise in incarceration rates since approximately the 1970s in the United States. In doing so, some of the most significant elements, policies, or processes that spurred the prison boom will surface, some of which are still highly influential today. Moreover, the chapter provides a typology of the contemporary penal practice and highlights those aspects that strongly influence the American penal system in this day and age. Finally, the chapter states some of the economic and financial consequences involved in operating a punitive institution of this magnitude. Close attention to the ideological, moral, and pragmatic justifications of punishment will pervade throughout the chapter.

2.1 Explaining the prison boom

“WE NEED TOTAL WAR IN THE UNITED STATES AGAINST THE EVILS THAT WE SEE IN OUR CITIES. TIME IS RUNNING OUT FOR THE MERCHANTS OF CRIME AND CORRUPTION IN AMERICAN SOCIETY. THE WAVE OF CRIME IS NOT GOING TO BE THE WAVE OF THE FUTURE IN THE UNITED STATES OF AMERICA” – RICHARD NIXON, IN 13TH (DUVERNAY, 2016).

Criminologists have found persuasive evidence that crime does not precede increased rates and severity of punishment, in fact they are hardly related at all (Clear & Austin, 2009; Mauer, 2004; Tonry, 2004). Rather, levels of punishment move independently following government’s proclivity to punish, turning the issue ultimately political. Tonry (2004) compares crime and punishment in Finland, Germany, and the US between 1960-1990,
crime rates are (close to) identical, notwithstanding an incarceration rate that quadrupled in the US, remained broadly stable in Germany, and fell by 60% in Finland. Lynch (2011) points to local changes in legal practices as the main contributor to the prison boom in America, arguing that the greatest power to incarcerate lies with the substate institutions: “Although sentencing statutes have been toughened at the state or federal levels, thereby creating the capacity for mass incarceration, mass incarceration has not been realized without local-level criminal justice actors transforming their daily practices to send more and more offenders away to state penal institutions” (p. 676). Mauer (2011) acknowledges the importance of assessing local developments and their contribution to mass incarceration, but argues that this must not obscure the “broader political dynamics that are in fact the driving forces of this change [in prison growth]” (p. 701). Whether one takes a micro- or macro-level approach, there is widespread support among scholars that suggests that “mass incarceration had less to do with sound crime-control policy than with other social, cultural, and political forces” (Lynch, 2011, p. 678). One consistent factor that creates the capacity for mass incarceration is embedded in the institutional infrastructure of federal vs. state politics: “it provides local criminal justice actors with the power to incarcerate but no responsibility to pay for it” (Lynch, 2011, p. 681). Other substantial contributors to mass incarceration are: recoil of failing rehabilitation; the War on Drugs; ‘tough-on-crime’-rhetoric in political discourse; changes in law and policy; and public opinion.

**2.1.1 Rehabilitation fails: ‘Nothing Works’**

Until the 1970s, American punishment was predominantly inspired by rehabilitation. The Radical Era was succeeded by a conservative backlash and most scholars agree on Nixon’s presidency as the etiology of mass incarceration. Republicans denounced the New Deal-inheritance and the corresponding rampant government spending. Mehigan and Rowe (2007) contend that the new era of Conservative leadership was accompanied by an increasingly authoritarian state and punitive approach to law and order. During the late 60s

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9 There is some evidence for this argument. Indeed, one needs to acknowledge the considerable variation that undeniably exists across the country. For instance, the incarceration rate per 100,000 inhabitants ranges from 150 in Maine to 881 in Louisiana, or capital punishment as an integral part of American criminal justice, whereas in fact its persistence is particularly local: only 14 counties, from four states, are responsible for 30% of all executions in the modern era (Lynch, 2011, p. 683).
a small but noticeable rise in violent crime occurred and presidential candidate Richard
Nixon was the first to politicize the issue into a focal point of the campaign. In one of his
speeches, Nixon commented on his plans to curtail crime: “Each moment in history is a
fleeting time, precious and unique. But some stand out as moments of beginning in which
courses are set that shape decades or centuries. This can be such a moment” (DuVernay,
2016), and the succeeding decades would prove him right. It must be noted that politicians
during the late 1960s perceived the rise in crime as an isolated problem, neglecting the fact
that it was in large part attributable to the baby boom generation growing up and reaching
adolescence and young adulthood in which people in general are most susceptible to
criminal activity10 (Kearney et al., 2014; Maruna, 2007).

Besides rising crime rates, the “infamous decline of the rehabilitation ideal” (Lynch,
2011, p. 674) was enhanced by an evaluation of numerous rehabilitation programs by
Martinson (1974). His somewhat defeatist conclusions were demoralizing: none of the
programs were found to produce any significant effect. The roots of the ‘nothing works’-
doctrine, which would influence penal practice for decades, lie in Martinson’s work. Since
rehabilitation was found to be ineffective yet still costly, it quickly lost the favor of
policymakers as well as the public (Orrick & Vieraitis, 2015). Rehabilitation was discarded
and replaced by punitive goals directed at incapacitation, deterrence, and retribution (Lipsey
& Cullen, 2007).

It is no coincidence that this drastic alteration took place under conservative
leadership. Payne et al. (2004) assert that public attitudes about punishment are useful
because they generate an understanding of a particular culture’s basic values and beliefs.
Moreover, research comparing penal tendencies in western style democracies provides
considerable evidence that the proclivity to punish is highest in ‘neoliberal’ countries with
liberal market economies11 (Brown, 2013). Albeit grossly generalized and simplified, there
are two major explanations why neoliberalism is often concomitant with high incarceration
rates. The first is encapsulated in the core ideology of neoliberalism: besides economic
deregulation and the devolution of the welfare state, it fosters an “expansive, intrusive, and

10 “The ‘age-crime curve’ is one of the best established facts in criminology and it is well known that criminal
behaviour [sic] is far more prominent among adolescents and young adults than it is among those in their 40s,
50s and older. … criminologists expect that approximately 85 percent of the crime-involved young people will
desist by the time they are 28 years old” (Maruna, 2007, pp. 651-652).
11 Such as the USA, South Africa, New Zealand, England, Wales and Australia.
proactive penal apparatus to contain the disorders generated by diffusing insecurity and deepening inequality” (Wacquant, 2009, pp. 306-307). In other words, neoliberalism is more tolerant of inequality and as inequality aggrandizes overall levels of punishment follow suit (Brown, 2013). Furthermore, inequality in developed countries is correlated to higher homicide rates, higher levels of punishment, more police per capita, and the redistribution of resources from education and welfare to the criminal justice systems (Brown, 2013).

The second explanation lies in neoliberalism’s cultural trope of individual responsibility (Wacquant, 2009). Along with an increased emphasis on the victims of crime goes neoliberalism’s “perceived efficacy of deterrence and the belief that offending behaviour [sic] is a simple matter of choice” (Mehigan & Rowe, 2007, p. 360). Haney (2008) explains that crime was decontextualized and judged as an isolated event, completely detached from the offender’s background, let alone circumstances. Sentences were based solely on the nature of the crime, indiscriminate of any characteristics pertaining to the offender. Criminals were understood as rational calculative individuals presumed autonomous and in possession of free will, thus warranting full culpability. Their morally blameworthy or harmful choices stemmed from internal traits of wickedness that were intractable. Consequentially, the paramount objective of punishment became punishing the wrongdoer, since any effort for reform, rehabilitation, or redemption was considered futile (Haney, 2008; Payne et al., 2004). Haney describes this as the “penal harm movement” which entailed a penal philosophy that “amounted to little more than devising creative strategies to make offenders suffer” (pp. 961-962). Moreover, Feeley and Simon (1992) assert that a “new penology” emerged in which mandates for rehabilitation were revoked and transformative efforts were disbanded in favor of correctional strategies aimed at “managing costs and controlling dangerous populations” (p. 465).

2.1.2 War on Drugs

As Brown (2013) noted, the political configuration of the Conservative era was fertile ground for increasing levels of punishment, but did not cause the staggering incarceration rates of the late 80s, 90s and 00s. The War on Drugs did. As mentioned, Nixon launched a war on crime as well as drugs, but the latter problem had not yet propagated into the nation-wide crisis that would rock the foundation of the country during the mid-1980s. Carter, succeeding Ford, embraced a paradigm of reasonable but not overtly stringent anti-
drug policy. It would prove to be a relative silence before the storm because Reagan’s presidency marked an unprecedented intensification of a now full-fledged War on Drugs.

The media eagerly portrayed sensationalized images of this new epidemic that flooded the country. Media reports of ‘clean-cut’ white teenagers from idyllic happy-go-lucky suburbs were invariably described as tragically defenseless at the mercy of sinister outside forces lurking in the shadows (Lassiter, 2015). News stories on overdosing teenagers victimized the user and vilified the (mostly black) dope dealers as sole perpetrators of pure evil who were framed to be personally responsible for the intentional death of innocent American children. As such, drug abuse was not presented merely as a public health threat. Rather, media coverage reflected the strong conviction of the American public that drug use was a foreign phenomenon, inherited from immigrants who saddled the ‘clean’ American society with this new erosive problem. There was a rigid determination that drug abuse was an essentially ‘un-American’ problem that posed a direct threat to the social fabric of communities (Falco, 1994).

America approached the drug problem through a predominantly criminal—as opposed to a medical—perspective. The criminal model assumes that drug use is voluntary and based on a rational decision to use a certain drug, including the frequency and extent to which the substance is used. Users can therefore be held accountable for their transgressions of normative standard and should, consequently, be punished according to the law (Hawdon, 2010). Severe punishment is assumed to effectively prevent future use. Reagan adopted a strategy to combat drug abuse comprised of vigorous law enforcement. By taking a criminal approach to drugs, Reagan more or less denied the involuntary nature of addiction. His approach is clearly summarized in of his television statements: “The government will continue to act aggressively, but nothing would be more effective than for Americans simply to quit using drugs” (Hawdon, 2010, p. 429). Khalil G. Muhammad, professor of history, race and public policy at Harvard, comments that: “What Reagan ultimately does is [he] takes the problem of economic inequality, of hyper-segregation in American cities, and the problem of drug abuse, and criminalizes all of that in the form of the war on drugs” (DuVernay, 2016).

The logical consequence of this particularly accusative stance on drugs was: draconian sentences for drug offenders. American drug policy has been directed at efforts to
curtail demand for drugs. The primary tool of severe punitive measures negates potential mediating factors such as social and economic conditions that seduce many Americans to use drugs in the first place (Andreas, 1996). Harp (2010) writes that: “drug distribution has come to be punishable by sentences commensurate with those usually reserved for homicide and rape, despite the lack of intrinsic moral culpability in the act of a voluntary transaction” (p.1674). This resulted in a sharp increase of drug-related convictions, of which many nonviolent, amounting to 1.55 million\(^\text{12}\) in 2012. Around 750,000 convictions involved violations of the Marijuana Law, and approximately 660,000 cases involved possession only (DrugPolicyAlliance, 2014). The average prison sentence for drug-related offences was 11.3 years (Taxy, Samuels, & Adams, 2015).

Despite a number of efforts to shift drug policy away from draconian enforcement and interdiction, towards a more sensible drug policy, the Clinton and Bush administrations have upheld policies allocating huge financial resources to the incarceration of all those taken ‘captive’ in the War on Drugs (Human Rights Watch, 2017). Ironically, ‘the drug trade is in many ways the quintessential expression of the kind of rugged, high-risk entrepreneurialism advocated by the US free market proponents’ (Andreas, 1996, p. 55).

### 2.1.3 The ‘Tough-on-crime’-fanfaronade

The interplay of politicians and the media has had a significant influence on incarceration rates. Politicians –but also other government officials and agencies- are excellent “politico-moral entrepreneurs” (Hawdon, 2010, p. 422) and they easily obtain political credit by resorting to strong popular one-liners: ‘eradicating the cancer that threatens our children’ or ‘defending the nation’s freedom’. Resorting to this kind of rhetoric yields much more electoral advantage than a more nuanced approach to the crime problem. The public -now framed to be included in the problem- laudably applauds presidential rhetoric like Reagan’s famous words: “They can run but they can’t hide” (Hawdon, 2010, p. 428). Andreas (1996) adds that just as politicians in earlier years loathed appearing ‘soft on Communism’, in today’s political climate the reputation of being “soft on crime” is similarly pernicious. Law professor and Civil Rights advocate Michelle Alexander explains: “a rhetorical war was announced as part of a political strategy by Richard Nixon which morphed into a literal war by Ronald Reagan. He [Nixon] played on fear of crime and law and order to win the election.

\(^{12}\) Out of a total prison population of approximately 2.3 million.
Reagan promised tax cuts to the rich, and to throw all the crack users in jail. Both of which devastated communities of color, but were effective in getting the southern vote” (DuVernay, 2016).

The political clout that crime exerted was illustrated veraciously in the 1988 presidential elections (Lynch, 2011). George H.W. Bush ran against Michael Dukakis, who enjoyed a double digit lead in the polls. Before his candidacy, Dukakis served as governor of Massachusetts and had supported weekend furlough programs for prisoners in that capacity. During the presidential campaign, a felon –Willie Horton- serving life in prison for murder escaped during weekend furlough, went on to rape a woman and kill her husband. The media reports castigated and slandered Dukakis and his Republican opponents cordially grasped every opportunity to vilify him. Dukakis’ reputation was stained irrefutably with the blood of Horton’s victims; his double digit lead vaporized into thin air overnight (DuVernay, 2016; King, 2007).

Democrats evaluated their defeat in the elections of 1988, 1984 and 1980 and stubbornly came to the conclusion that adopting a more centrist position was necessary, as long as it did not make their candidate appear soft on crime. As a result, bipartisan candidates adopted a tough-on-crime-rhetoric which soon nullified the competitive advantage. This led to a new political discourse in which “politicians vied with one another to see who could be toughest on crime and relinquished rational arguments concerning deterrent effects or a weighting of costs and benefits, for fear of being labelled ‘soft on crime’” (King, 2007, p. 100). In spite of substantial proof, politicians proliferated their infatuation to be the best crime fighter and eagerly adopted harsher policies that ‘crack down hard on criminals’ (Haney, 2008). Notice the political rule of thumb that policies are adopted easily, but exponentially harder to revoke (Mauer, 2005). Advocating justice reform is highly tendentious and precarious business for any politician.

The media put tremendous pressure on the already cautious politicians by focusing on errors of commission in which ex-convicts –such as Willie Horton- committed further crimes. By contrast, media coverage was oblivious to errors of omission, in which prisoners unlikely to recidivate continued to be incarcerated needlessly (Holmes & Soothill, 2007). The sensationally-oriented media “always found it more convenient to use easy, but misleading, sound bites – ‘three strikes and you’re out’ and ‘truth in sentencing’ with calls for
'mandatory minimum sentences’ – rather than much more complicated and time-consuming reflection about the social and financial impact of such ‘solutions’ to the crime problem” (King, 2007, p. 100).

2.1.4 Law and Policy

Since the surge in punishment gained traction, a number of laws and policies have contributed to the prison boom, some directly others indirectly by unanticipated implication. Note that not all statutory changes described below have had an equally large influence on punishment and that significant variation exists within and between states.

Limiting parole and probation

Liberals were concerned about disparities in sentences, which discriminated unjustifiably between different offenders for the same crime. Since personal transformation was not a particularly salient tenet of neoliberalism, to say the least, legislation aimed at earning good credits and early release opportunities to streamline reentry into society, was considered to be inherently flawed and dangerous (Haney, 2008; King, 2007). The discretion for criminal justice professionals and judges to use parole and probation was severely restricted. Furthermore, there was a sharp increase (ex-)convicts who were sent (back) to prison due to a violation of their terms of probation or parole. This frequently happened for minor technical violations. The proportion of inmates that was comprised of probationers and parolees returning to prison exacerbated in all states. California stands as a hallmark case: by 2000 the percentage of parole and probation violators rose to a staggering 40% (Lynch, 2011). Parole boards were often taken out of the equation and since parole officers feared redundancy, they lobbied – successfully – for an extension of the period of parole supervision. Needless to say this added to the general increase of the prison population (Lynch, 2011).

The revocation mandate of judges and justice professionals to dispense punishment at their discretion impaired possibilities for early release, thus keeping many incarcerated under false pretenses of public safety. Moreover, Lynch (2011) notes that probation and parole had functioned as an important “institutional release valve” to regulate the prison population size (p. 679).
Mandatory sentencing

Mandatory sentencing was implemented following similar arguments as previously mentioned for limiting parole and probation. The Sentencing Reform Act of 1984\textsuperscript{13} implied that discretion was taken away from judges in favor of predetermined minimum sentences established by Congress (Federal Bureau of Prisons, 2015). Sentencing thus became a reflection of the political climate and had the severest impact on drug laws (Haney, 2008; Lynch, 2011). For instance, the crack epidemic of 1986 incited a draconian increase in mandatory minimum sentences for crack: one ounce of crack and a hundred ounces of cocaine invoked the same mandatory minimum sentence (DuVernay, 2016).

The well-known mediagenic soundbite of ‘Three-strikes-out’ is another example of mandatory sentences that Courts were bound to impose. The implication is simple: one who receives a third conviction for repeated breaches of the same law, is sentenced to life in prison, often without the possibility of parole (Haney, 2008; Mauer, 2004). Note that not every state passed ‘three-strikes’ laws.

The enactment of ‘truth-in-sentencing’ held that the public ought to be able to trust the justice system when it sentences someone to a certain amount of time in prison. Early release violates this trust. Thus, ‘truth-in-sentencing’ legislation prevented possibilities of early release and ensured that prisoners served at least 85\% of their time. By implication, the average duration of a prison stay increased (Mauer, 2004).

Adult trials for juveniles

Nearly every state passed legislation that permitted adult trials for juvenile offenders in certain circumstances. Adult trials implied more severe – longer – sentences, apart from the detrimental effect on juveniles of being incarcerated in adult prisons (Mauer, 2004).

Prison conditions litigation

An unexpected side effect of the fight for prisoner’s rights was a larger influx of inmates. The Prison Rights Movement started in the early 1960s with Black Muslim prisoners and resulted in legislation enabling prison litigation. As a result of prison conditions law litigation, federal courts started to intervene in the management of prisons and ordered authorities to resolve

\textsuperscript{13} “The Sentencing Reform Act of 1984 establishes determinate sentencing, abolishes parole, and reduces good time; in addition, mandatory minimum sentencing provisions are enacted in 1986, 1988, and 1990” (Federal Bureau of Prisons, 2015, p. 9).
the problems of overcrowded prisons (Salinas, 2009). Perhaps fearing to be ‘soft on crime’, perhaps for other reasons, fact is that some states “dug in against court orders to reduce prison population and rhetorically transformed the battle as one of state’s rights versus federal intervention” (Lynch, 2011, p. 678). Schoenfeld (2010) finds that consequently, states embarked on “an aggressive prison construction program, rather than making efforts to reduce prisoner population in response to court orders, thereby creating the capacity for mass incarceration” (p. 751).

2.1.5 Public opinion

Sometimes, the public serves as an easy impersonal scapegoat for politicians trying to camouflage their share in the ratification of inhumane penal legislation. However, there is also a case to be made that a public demand for harsher sentences did in fact exist. For instance, public anger against drug offenders corrupting American children was widespread around the country (Payne et al., 2004). Commentators coined the term ‘superpredators’ for supposedly young dangerous criminals threatening communities, and soon people began to demand repressive punitive measures to curtail feelings of unsafety (Haney, 2008).

Direct democratic mechanisms, such as referendums, were employed regularly by states to seek support for various ‘tough-on-crime’ laws. This process of democratic initiative has been instrumental in approving enhanced severity in punishment, ‘three-strikes’-laws, and expansion of death-eligible offenses.

2.2 The contemporary penal system

“The Bureau of Prisons [BOP] has a long tradition of protecting society by confining offenders in facilities that are safe, humane, cost-efficient, and secure. We provide programs to inmates—education, substance abuse treatment, job skills training, and more—to prepare them for a successful return to the community. Reentry is a critical component of public safety, and preparation for reentry begins on the first day of incarceration” -BOP director, Charles Samuels Jr. - (Federal Bureau of Prisons, 2015,p. 2)

Despite a small decrease in prison population since 2012 the US still houses by far the largest number of inmates. With an incarceration rate of just below 700 per 100,000 inhabitants it still holds the dubious honor of undisputed world champion in the global incarceration ranking, with a global average of 130 per 100,000 inhabitants (Kearney et al., 2014).
2.2.1 Current state of affairs

During the Obama administration there was bipartisan agreement on the failure of the War on Drugs in reducing crime levels, not to mention the need to limit its gargantuan costs (Owen, 2017). Courtrooms are increasingly willing to employ alternatives to incarceration – such as treatment or community supervision- and law enforcement in general has abandoned the strategy of reducing crime by vigorously increasing the number of arrests, in favor of strategies of dialogue and problem-solving (Mauer, 2005). Justice reform enjoys fair levels of bipartisan support in Congress and at the moment of writing a bill has been introduced to establish a National Criminal Justice Commission responsible for evaluating the Justice system, as well as drafting proposals for reform (Owen, 2017). In spite of congressional support of reform, its foundation is shaky since the start of the Trump administration. Jeff Sessions, the new Attorney General, seems to rekindle the aggressive rhetoric of Nixon and Reagan, a recent memo of his Department of Justice states that “addressing violent crime must be a special priority [and] disrupting and dismantling those drug organizations through prosecutions under the Controlled Substance Act can drive violent crime down” (Owen, 2017, p. 1).

The justice system asserts that rehabilitation is an important objective of punishment. The following statement from www.correctionalofficer.org14 suggests that this proposition is at least partially cosmetic: “Federal and state criminal justice systems hold ‘corrections’ as replacement for ‘penology’ that many find harsh and unforgiving” (correctionalofficer.org, 2017). Sadly, there is considerable evidence pointing to substantial deficiencies in providing rehabilitation for prisoners, that is, beyond the concealing rhetoric in mission statements. In addition, there is a great lack of support for prisoners upon release, leaving many vulnerable to recidivism due to lack of social bonds (not prison-related), housing, employment, and for some the necessary treatment or medication (Austin & Eisen, 2016). The lack of various forms of support is expected to be strongly correlated with high rates of recidivism; more than 30 percent will be rearrested within six month after release (Orrick & Vieraitis, 2015) and more than half is locked up again within three years (Durose, Cooper, & Snyder, 2014).

14 Correctionalofficer.org is an informative website for anyone considering employment as a correctional officer. The website provides information, personality tests, job requirements, procedures and more.
Mauer (2005) adds that in the wake of the ‘tough-on-crime’-politics, policymakers followed suit and devised sentencing enhancements that continue to thwart ex-prisoners’ life prospects through numerous ‘collateral’ sanctions and restrictions. Today, a disproportionate number of prisoners have low levels of education at entry and are not provided with sufficient educational opportunities, if any, in prison (Stafford, 2006). Chapter three will elaborate on collateral costs of imprisonment, for now suffice to say they constrain successful reentry for many ex-convicts.

Since 2009 the prison population has shown a marginal but steady decline hoovering around an annual 1% (Austin & Eisen, 2016). As mentioned, the number of people in prison increased and so did the length of sentences. The growing support base for justice reform has been emerging steadily in the last decade and one would expect to find a similar downward trend in sentencing length. However, between 1993 and 2009 the average stay for state inmates increased by 33 percent, hitting felons hardest by also increasing prison stays for property- and drug offences by 18- and 25 percent respectively. Federal prison stays more than doubled from 1988 to 2012, rising from an average of 1.5 years to 3.1 years (Austin & Eisen, 2016).

2.2.2 Public safety

Austin and Eisen (2016) assert that criminal justice policy should be premised on the principle of “protecting public safety and that sentences should levy the most effective, proportional, and cost-efficient sanction to achieve that goal (p.7). Crime levels reached historical height in 1991 and have fallen since then. It is tempting to assume that severe sentencing policies have caused this decline, but this obscures the truth. Rigorous science shows that the ferocious increase in incarceration played a very limited role in falling crime rates, social and economic factors (as well as policing to some extent) were found to be
strong predictors (Austin & Eisen, 2016). Moreover, longitudinal findings show that the current level of violent crime is equal to that of 1970; property crime rates match those of 1967 (Austin & Eisen, 2016). This makes the question of the effectiveness of mass incarceration particularly salient, given the costs of detaining one person in prison of $31,000 annually. The relationship between crime levels and incarceration is challenged empirically by 27 states that have achieved a reduction of both prison population and crime rates together in the last decade (Austin & Eisen, 2016).

Mauer (2005) argues that, in general, the unprecedented endeavor to imprison so many has probably had a small effect on crime—if any—but its effects have been unduly exaggerated and deceptively presented as effective by its proponents. Even if one assumes that incarceration deters crime, the prison population is well beyond the point of diminishing returns of increasing imprisonments. In other words, increasing imprisonment loses the, presumed, deterrent effect (Austin & Eisen, 2016). Moreover, the impact of imprisonment on individuals and communities remains unchanged, but “the scale of imprisonment now both magnifies those effects and expands their reach” (Mauer, 2005, p. 609).

One problematic trend caused by mass incarceration is the normalization of prison, particularly in poor communities. In these communities prison is increasingly perceived—even accepted—as an inevitable element of the maturation process (Mauer, 2005). The consequential polarization between communities and the police lead to the latter being viewed as public enemy nr1. This seriously subverts the efficacy of law enforcement in certain areas since trust and respect for the authorities have been deteriorating for decades. Mutual trust is harmed even further by the recent riots against law enforcement who, allegedly, resorted to racially charged violence that killed Freddie Gray and Trayvon Martin (among others).

2.2.3 Managing Risk

Driven by advances in social sciences (Austin & Eisen, 2016; Duus-Otterström, 2007) and technology (Holmes & Soothill, 2007), authorities are turning to risk calculation more and more. This involves calculating risks of reoffending by judges and parole boards, risk of extending sentences of allegedly dangerous individuals, risk of demonstrations, risk of places

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15 Not coincidentally most poor communities are comprised of mainly African American or ethnic minorities.
prone to violence, theft, burglary, etcetera (Austin & Eisen, 2016). Sparks (2007) argues that this ‘new penology’ diverts from the traditional concept of justice as a sanction to correct the trespasser and instead concerns itself with managing categories of risk that certain offenders pose. Feeley and Simon (1992) ascertain that “the new penology is markedly less concerned with responsibility, fault, moral sensibility, diagnosis, or intervention and treatment of the individual offender. Rather it is concerned with techniques to identify, classify and manage groupings sorted by dangerousness” (p.452).

The provisions for protective sentences were signed into law in various recent crime bills that have a potential impact on violent recidivists, sex offenders, alleged terrorists, and more. The scope of surveillance by authorities has been demonstrated in various recent examples of the intelligence agencies, law enforcement and maintaining public order. Holmes and Soothill (2007) point to the danger of a slippery slope because it opens the doors to interventions by the justice system before a crime has been committed. The public demand that authorities appease anxiety and satisfy feelings of safety is very powerful. Risk management in criminal justice must therefore be extremely cautious to refrain from preemptive sentencing, which is already featured precursory in anti-terrorism laws.

2.2.4 Mental hospitals
Correctional staff in prisons faces severe challenges in operating prisons in an orderly manner. Underfunding and overcrowding have had a deteriorating effect on prison conditions. Especially in maximum security facilities, the dynamics have become militarized and stringent to the extent that prison guards have no other options but coercion and force to ensure obedience (Crewe, 2007). Both aggression among prisoners and insufficient staff to de-escalate violence in humane ways, leads guards to resort to solitary confinement frequently, in spite of many organizations and health professionals who have denounced solitary confinement as a form of torture. Human Rights Watch (2000) argue that “state and federal corrections departments are operating supermax in ways that violate basic human rights because the conditions of confinement in these facilities are unduly severe and disproportionate to legitimate security and inmate management objectives; impose pointless suffering and humiliation; and reflect a stunning disregard of the fact that all prisoners . . . are members of the human community” (p. 2).
Correctional facilities are by and large indiscriminate of specific conditions of prisoners. Yet there are many who suffer from some form of psychological trauma or addiction, in both cases high-security prison environment has adverse effects on those prisoners. Guards are not trained to recognize or understand these sort of problems and interpret deviant behavior as willful defiance of prison regulations and signs of dangerousness, and respond in the only way they know: force and coercion (Haney, 2008). Austin and Eisen (2016) confirm that “recent data indicates that 79 percent of today’s prisoners suffer from either drug addiction or mental illness, and 40 percent suffer from both” (p.11). Haney (2008) asserts that the criminal justice system has become the default placement for the mentally ill. In 2014 the number of people in prisons suffering from a severe mental condition outnumbered the number in state psychiatric hospitals tenfold (Torrey et al., 2014). Not only are prisons ill-equipped to deal with mental illness, it also exposes prisoners with mental trauma to the raucous “prison conditions caused by overcrowding, poor medical care, isolation, violence, and sexual victimization” (Austin & Eisen, 2016, p. 13).

2.2.5 War on Drugs

Drug policy in the US has clearly opted to approach substance abuse from a criminal perspective, as opposed to taking a medical perspective. As a result, drug use was attributed with full culpability and minimum sentences were harsh, even for possession. As such policymakers chose to combat drugs by curtailing supply. It soon became clear that this strategy was doomed to fail for a number of reasons. Nevertheless supply-oriented drug enforcement persists nowadays (Mauer, 2005). Authorities arrest 1.3 million people annually for drug charges, which accounts for one out of nine of the total arrests. This makes drug crimes the single most arrested crime in the US (HumanRightsWatch, January 2017).

Despite vigorous efforts to curtail drug use, drugs are still widely available anywhere in the US. The drug market operates largely unhindered by law enforcement due to the ‘replacement effect’. This distinguishes drug incarcerations from others because once a street corner drug dealer is imprisoned, a substitute quickly steps in as long as demand for drugs continues to exist (Mauer, 2005). In other words, the drug market is inelastic and driven by demand, which is always met by suppliers in creative and innovative ways because drug cartels have evolved into highly sophisticated business-like operations.
Obama issued an executive order urging courts to refrain from sending low-level drug offenders to prison who were typically charged with possession only. This policy—among others—that tapered off rising levels of incarceration and began a slow reversal of the trend (Owen, 2017). At this moment, an estimated 364,000 low-level offenders are incarcerated when in fact alternatives, such as treatment, would arguably yield better results (Austin & Eisen, 2016).  

2.2.6 Economics of punishment

No matter which perspective one takes on punishment, the current financial burden leaves any observer flabbergasted. Soaring prison populations have an annual price tag of approximately $80 billion dollars, amounting to a staggering $1 trillion dollars when all indirect costs are included in the equation—such as fiscal burden on welfare, court cases and litigation, and monitoring prisons (Owen, 2017). Paraphrased more tangibly: one of every fifteen dollars of states’ general budget is currently spent on correctional expenditures, of which 90 percent is allocated to prisons (Kearney et al., 2014; Orrick & Vieraitis, 2015). The disillusion of any return on investment is indurated by the sobering conclusion that crime rates anno 2014 are back at the crime rates of 1970 (Austin & Eisen, 2016; Kearney et al., 2014).

Austin and Eisen (2016) published a recent study on mass incarceration, arguing that the current system is not only costly but also ineffective in preventing crime. The authors highlight the disproportionate impact of incarceration on African American individuals and communities, suggesting that the current approach to justice is not only financially unsustainable but also morally questionable. The study calls for a rethinking of the American justice system, advocating for more evidence-based and community-driven approaches to crime prevention and justice.
report in which the number of Americans being kept in prisons unnecessarily\textsuperscript{16} is analyzed. In reviewing many meta-analyses, their findings indicate that prison sentences longer than 20 months are ineffective with respect to recidivism; in fact, longer prison stays may even cause larger probabilities of reoffending. In sum, findings suggest that 39 percent of the total prison population is currently serving time without posing any significant threat to public safety. “If these prisoners were released, it would result in cost savings of nearly $20 billion dollars per year... This sum is enough to employ 270,000 new police officers, 360,000 probation offices, or 327,000 school teachers” (Austin & Eisen, 2016, p. 7). Orrick and Vieraitis (2015) report similar findings that show that the costs of detaining people in prison greatly exceed those of alternatives to incarceration. Annual costs for keeping one person in prison amount to $31,000 whereas costs for community supervision range from $1,250 for probationers to $2,750 for parolees.

The economic dimension is discussed briefly because of the existent literature that has discussed this aspect of mass incarceration extensively. The burden on state budgets has become severe to the extent that authorities are more or less obliged economically to curtail correctional expenditures—if not for any other reasons. However, even in the benign prospect that states achieve substantial reductions in prison populations, there is still a wide array of collateral consequences that countervail successful reentry. Those remain intact, even with declining prison rates, and so far research has failed to discuss these issues in detail (Mauer, 2005; Orrick & Vieraitis, 2015).

3. COLLATERAL CONSEQUENCES

\textit{“For many people convicted of crimes, the most severe and long-lasting effect of conviction is not imprisonment or fine. Rather, it is being subjected to collateral consequences involving the actual or potential loss of civil rights, parental rights, public benefits, and employment opportunities” (Chin, 2012, p. 1791)}

This chapter deals with the so called ‘collateral consequences’ of conviction, also referred to as ‘hidden consequences’. Collateral consequences seriously impair successful reentry of prisoners after they have completed their sentence. In fact, one could argue that punishment continues after release, only disguised as economic restrictions, political

\textsuperscript{16} For further explanation on how ‘unnecessary’ is determined, see Austin and Eisen (2016, pp. 6-7)
disenfranchisement or ‘civil death’, and social alienation. They are imposed automatically upon conviction, but since they are essentially non-judicial and outside the scope of the Miranda Rights of arrested suspects ("Miranda V. Arizona," 1966), many people are unaware of them (Demleitner, 1999). Since some collateral consequences are imposed automatically upon a plea of guilt, or conviction, they should be acknowledged as part of the proportionality of a sentence because they add to the severity (Demleitner, 1999; Jones, 2015). Collateral consequences restrict ex-convicts’ access to a large spectrum of rights and benefits and ought to be included in public debate over punishment policies (Chesney-Lind & Mauer, 2003).

Collateral consequences can be split roughly into three categories: economic impediments, denial of civil rights, and denial of social and welfare rights. Each category will be discussed from an individual perspective of the ex-convict supplemented, where relevant, with a broader societal perspective. Note that the scope of each consequence is limited to a particular group of prisoners for these reasons: most restrictions are enacted on state level and pertain only to prisoners in the respective states jurisdictions; state policies differ in the eligible types of crime that invoke a certain collateral consequence; some federal offences invoke collateral consequences applying to (groups of) federal prisoners.

3.1 Economic impediments

When prisoners are released from custody, they face several challenges. After desisting reoffending and substance abuse, most report finding employment as the most difficult and urgent task. Statistics of the pre-arrest population show high rates of unemployment, low levels of education, and little significant experience in the labor market (Stafford, 2006). Post-release data convey even more troublesome rates of unemployment between 70 and 80 percent (Bell, 2014). Yet work inhibits a central position in liberal societies, who consider it the instrument par excellence for inclusion and full participation in society (Demleitner, 1999).

17 “You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you. Do you understand the rights I have just read to you? With these rights in mind, do you wish to speak to me?” (http://www.mirandawarning.org/whatareyourmirandarights.html).

18 Bureau of Justice Statistics: “36% graduated from high school, an additional 27% had received a GED” (Stafford, 2006, p. 263)
The impact of incarceration on economic prospects is huge: “serving time reduces hourly wages by approximately 11 percent, annual employment by 9 weeks and annual earnings by 40 percent” (Western & Pettit, 2010, p. 4). Some studies report that only one out of every five released prisoners is able to find and maintain a stable, secure and meaningful job (Stafford, 2006). The economic distress is not restricted to the ex-convict; it impairs family income significantly as well. With a father in prison, family income averaged over the years typically decreases by 22 percent compared to the year prior to incarceration. It is well-known that strong indicators of the future economic mobility of children are parental income and education (Western & Pettit, 2010).

3.1.1 Professional licenses

Many jobs require the applicant to obtain a professional license. Such licenses are virtually impossible for ex-felons to acquire. Justifications for denying professional licenses are manifold: ‘fostering high professional standards’, ‘good moral character’, or ‘good reputation’ (Demleitner, 1999). Framed in such general terms, ex-prisoners can be denied effortlessly since over two-thirds of the states permit disqualification based solely on criminal record (Bell, 2014). Consequentially, an ex-convict is effectively barred from a long list of professions, including “bartender, plumber, beautician, ambulance driver, health care worker, real estate appraiser, telephone solicitor, horse race worker, salvage dealer among many others” (Stafford, 2006, pp. 266-267). This collateral consequence of imprisonment casts a long shadow on prospects for employment as it blemishes offenders for life.

3.1.2 Background checks

The use of background checks by employers has proliferated in the recent decades. This upsurge was driven by two main reasons. First, employers have become more cautious since 9/11 and “the growing problem of workplace violence” (Bell, 2014, p. 13), thus spurring demand for background checks. Second, the expansion of the digital age has decimated costs of soliciting information and has made information widely available, thus galvanizing supply.

Recently, many states have limited the unrestricted use of background checks. Some have barred the use of criminal records in hiring decisions categorically (Stafford, 2006), some have followed recommendations of the Equal Employment Opportunity Commission
(EEOC) that employers “wait until the final stages of the hiring process to conduct a criminal background check” (as cited in: Bell, 2014, p. 15).

The following example is illustrative of the complexity of the American labor market. Since criminal records impede job prospects, one is inclined to welcome the prohibition of those records in the hiring process. Studies have revealed that this had unintentional adverse consequences for African Americans. When criminal records were permitted in hiring, there was a clear racial disparity\(^\text{19}\). After prohibition of criminal background checks, researchers were puzzled to find out racial disparity had actually exacerbated. Holzer, Raphael, and Stoll (2002) found out that in lieu of criminal background checks, employers simply assumed all black men had criminal records. By prohibiting background checks, many African Americans were restricted to provide proof of a clean slate. In fact, Pager (2003) found that the callback ratio for whites with a felony conviction was paralleled by African Americans without criminal record. The sobering conclusion is: “black men are essentially born with the stigma of a felony conviction” (Mauer, 2005, p.611).

3.1.3 Reluctant employers

Many employers are reluctant to hire ex-convicts under the presumption that a criminal record accurately predicts negative work behavior in the future, irrespective of the nature of the crime, age, or relevance to the vacant place (Chin, 2012). Arguably there can be a sound penological justification premised on prevention as long as the nature of the crime is relevant for the respective occupation (Demleitner, 1999). It is not generally acceptable that someone with a conviction for sexual abuse of children seeks employment in day care, nor is it controversial that banks and insurance companies reject applicants with convictions for large-scale fraud or money laundering. However, if the applicants swopped places so that the abuse-convicted felon applied for an office job at the bank and the larceny-convict applied for a job at day care, there is hardly any justification for a generic precautionary exclusion based on the criminal record with the stipulation that there can still be objections based on an individual case-to-case assessment.

\(^{19}\) Bell (2014) confirms the racial bias in an experiment: “each tester had identical credentials other than race and criminal record. The white non-offender tester received callbacks 34% of the time he applied, [the] white offender received callbacks for 17% of the applications; and black offender tester callback ratio plummeted to 5%” (p. 15).
Moreover, it is hardly defensible for state authorities to stimulate employers to hire ex-prisoners when by numerous restrictions felons are barred from public employment. In total, nineteen states have legislation imposing some restrictions on public employment opportunities. Seven states even exclude convicted felons indefinitely (Stafford, 2006).

A strong incentive for employers to refrain from hiring ex-prisoners is the risk of liability. Specifically, many statutes require the employer “to exercise reasonable care to ensure the safety of the public by hiring safe and competent employees ... failure of an employer to investigate an employee’s criminal record has resulted in liability for injuries” (Stafford, 2006, p. 270). Law suits in this respect have devastated businesses in several occasions (Stafford, 2006) and recently threats of legal action against companies hiring ex-prisoners who commit crimes at work were reasserted by the National Small Business Association (Bell, 2014). Furthermore, insurance companies simply deny fidelity bonding for companies employing former prisoners (Stafford, 2006).

### 3.1.4 Correctional educational services

“Reentry is a critical component of public safety, and preparation ... begins on the first day of incarceration”, said BOP-director Charles Samuels (Federal Bureau of Prisons, 2015, p. 2). Siding with him is Attorney General Loretta Lynch: “One of the greatest preventions of recidivism is to provide them an education while they are incarcerated” (Federal Bureau of Prisons, p. 12). Indeed, research shows that recidivism can be cut by 12 to 50 percent as a result of education and/or vocational training in prison. The dire need for schooling is illustrated by the startling fact that 70 percent of the incarcerated parents did not have a high school diploma (Colgan, 2006).

Yet, availability of educational programs is reduced significantly due to budget cuts for correctional educational services, resulting in a participation rate in education of less than 10 percent of the prison population (Stafford, 2006). Colgan’s (2006) case study on reentry programs in Washington DC reports: “between 1995 and 2006 the DOC prison population has risen 79.5 percent, while at the same time DOC education funding to the community college system ... has decreased by 10.4 percent (p. 299). Such systemic impediments seriously check preparation for reentry.

Several other factors contravene the success of education and vocational programs. Overcrowding has forcibly led to the implementation of a priority system for participating in
educational services (Colgan, 2006). In addition, in some cases vocational programs are nullified by other collateral consequences, the program teaches certain professional skills that require a license –unobtainable for felons. For example, “In Ohio, one can take a vocational program in heating, ventilation, and air conditioning work, and yet be prevented from ever practicing this profession once released” (Stafford, 2006, p. 273). Another obstacle is the requirement in some states that prisoners pay –or contribute significantly- to their desired program. Given the disparity that poor people are disproportionately represented in the prison population, such requirements can significantly impede participation in educational programs (Colgan, 2006).

3.1.5 Supervised release
Mandatory sentencing –and thus mandatory release dates- nullified the role of parole boards, who previously played an important role not only in when release was permissible, but also under which conditions (Stafford, 2006). Mandatory sentencing left conditions of parole and probation largely up to the individual discretion of the parole officer. Poor records combined with great variation in definitions make research into the effects virtually impossible. However, allocating responsibility and discretion to officers has led to a “massive increase in the rate of parole revocation … prison admissions due to parole violations have doubled from 17% in 1980 to 35% twenty years later” (Stafford, 2006, p. 274).

Today terms of release still vary greatly, but typically include “requirements to work, to obey the law, to submit to searches of person and property, to regularly report to the supervising officer or agent, to submit to drug or alcohol testing, and restrictions on travel and possession of weapons” (Bell, 2014, p. 4). Supervising officers are mandated to regulate mundane aspects of offenders’ lives such as whether they are permitted a cell phone, to intrusive on-site visits at the workplace, and planning drug tests during working hours (Gottschalk, 2011; Stafford, 2006).

3.2 Denial of civil rights
The prime example of civil rights denied to many felons is the right to vote. The denial of civil rights is arguably less problematic than employment restrictions in terms of primary needs (Demleitner, 1999). Yet, it perpetuates a vastly different understanding of civil society that impacts social identity far beyond ethics and morality. The concept of ‘civil death’ stems
from European societies in the era of Enlightenment, where criminal conviction meant that the offender was denied all legal rights, such as contracting, voting, marrying, holding property, and more (Stafford, 2006). By implication, a second-class of citizens was created. For having breached the social contract of the democratic community, offenders were ascribed insufficient virtues to participate any longer in civil society (Demleitner, 1999). In sum, the idea of ‘civil death’—and by extension the revocation of contemporary civil rights—distinguishes between those who deserve to enjoy the benefits of society, and the ‘undeserving’ whose intractable lack of virtue and morality is not only presumed to be permanent but also negates the notion that offenders can successfully rehabilitate (Demleitner, 1999; Gottschalk, 2011).

Today an estimated 5.8 million Americans have lost the right to vote due to felony convictions. State felony disenfranchisement laws vary in severity ranging from allowing prisoners to vote even while incarcerated\(^{20}\) to barring felons from the polls for life\(^{21}\) (Bell, 2014). Common additional sanctions can be ineligibility to serve as jurors (Stafford, 2006), or the inability to run for public office (Demleitner, 1999). These sanctions render nearly one third of African American men permanently ineligible for jury duty (Gottschalk, 2011).

Implications for some local counties and cities are particularly worrisome. Gottschalk (2011) contends that in some major cities 80 percent of the African American youth has criminal records and is subjected to “legalized discrimination and permanent social exclusion” (Alexander, 2010, p. 13).

### 3.3 Denial of social and welfare rights

In many states a felony conviction automatically imposes restrictions on various social and welfare rights. Gottschalk (2011) sums up that “former felons often must forfeit their pensions, disability benefits, and veterans’ benefit. Many of them are ineligible for public housing, student loans, or food stamps” (p. 489). For example, a drug conviction can cause an offender to lose federal benefits for up to five years\(^{22}\) (Mauer, 2005). In addition, the scope of some collateral consequences extends beyond the offender; families of drug offenders may also be barred from temporary state assistance or Social Security-funded

\(^{20}\) Maine, Vermont.

\(^{21}\) Iowa, Kentucky, Florida. Unless clemency is granted by the governor.

\(^{22}\) Five years for a first offence, ten years upon second conviction, and indefinitely after a third.
programs for food stamps (Stafford, 2006). In some states even a misdemeanor is sufficient to bar someone from public housing (Bell, 2014).

4. AMERICAN PENOLOGY REVISITED

This thesis set out to answer the research question: **How effective and efficient is the American penal system in realizing the societal objectives of criminal punishment?** As the previous chapters have demonstrated, attitudes towards punishment affect punitive severity and may propagate new (types of) sanctions. In other words, the penal system and public attitude on crime and punishment are interrelated and codependent. In acknowledgement of this dynamic codependency there is no clear-cut answer to the research question. Instead, the answer lies in close examination of current penal policy and effects, as well as historical traits, and making deducing principles and objectives, as is done in the next section. Then, the effectiveness and efficiency will be examined through various aspects.

4.1 Objectives of punishment

In America the attitude towards social policy and punishment remains relatively punitive and individualistic in global comparison (Mauer, 2005). Overall the notion of personal responsibility and culpability still prevails and holds criminals accountable for their actions (Brown, 2013; Salinas, 2009). Especially racial disparities have led American attitudes to slowly and grudgingly accept that contextual factors might also play a part in crime. Inferring from the previous chapters, the objective of contemporary criminal justice in America is twofold. As for the offender, it combines retributive efforts with rehabilitation and aims at satisfying desires for ‘just deserts’ to the degree that is justifiable in light of the potential for recidivism, as well as ensuring a fair chance of successful reentry in society (Hollin & Bilby, 2007). As for society, the justice system aims at protecting public safety (Mauer, 2005).

4.1.1 Resurgence of rehabilitation

In the last decade a bipartisan interest in justice reform spurred as it became widely acknowledged that the enormous carceral state was causing serious economic, political and social problems (Gottschalk, 2011). Republicans and conservatives are primarily concerned with the curtailing expenditure on corrections and the ‘waste’ of potential labor force; Democrats and social liberals favor the restoration of social justice (Brown, 2013).
The retributive orientation of the 80s and 90s has been fading away, as has public support for the highly punitive legislation enacted in the same period ("Jailhouse nation," 2015). Perhaps because of the eminent adverse effects of the prison boom, perhaps because lower crime rates give politicians some leeway (Austin & Eisen, 2016), fact is that politicians are increasingly speaking out in favor of reform. Bill Clinton recently accepted the adverse effect caused by his 1994 crime bill, which increased penalties and erected the militarized infrastructure that persists today, and even apologized publicly to jeopardized communities (DuVernay, 2016). Also former Texan governor Rick Perry boasted with his record of closing three prisons in Texas in his campaign for the GOP candidacy ("The right choices," 2015).

Despite a climate conducive to justice reform, current penal policies are inherited from previous decades and they are not so easily rolled back (see §4.4). Therefore the harsh punitive orientation has left public discourse but still pervades the system; examples can be found in the steady increase in average sentence length (Austin & Eisen, 2016), the consistently high incarceration rate (Gottschalk, 2011), and the persistence of a patchwork of collateral consequences (Jones, 2015).

### 4.1.2 Public safety

The prime objective of the penal regime is to protect public safety from crime (Federal Bureau of Prisons, 2015; Mauer, 2005). The upsurge of imprisonment was in part a reaction to the rising crime levels in the 80s and public demand for harsher sentences. However, the trend of incarceration continued to rise after crime levels began to decline steadily from 1991 onwards (Austin & Eisen, 2016). The expansion of imprisonment caused experts to examine punitive policies and evaluate their effectiveness in fostering public safety, particularly given the high rate of non-violent low-level offenders serving time behind bars (Kearney et al., 2014). Some studies show that the incarceration rate is—at best- modestly related to crime rates (Austin & Eisen, 2016; Clear & Austin, 2009; Spelman, 2009), others find no statistically significant proof of a correlation (Colgan, 2006; Kearney et al., 2014; Payne et al., 2004; Western & Pettit, 2010).

In America the prison population has reached such magnitude that the gains of more incarceration start to diminish and result in exponentially increasing losses to society as well.

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23 Crime rates have been falling steadily since the early 1990s
as the budget; the longer the sentence, the harder it is to reenter ("Jailhouse nation," 2015). Austin and Eisen (2016) estimate a substantial 39 percent of the prison population to be incarcerated unnecessarily (p. 17). Moreover, longer sentences tend to lose their effectiveness because they are subject to inflation; the deterrent effect of fifty years imprisonment is not five times as high as the deterrence of ten years. An estimated 14 percent of the prison population has spent sufficient time incarcerated to be released without significant risks for public safety, whereas meta-studies find that longer sentences are associated with a substantial increase of reoffending (Austin & Eisen, 2016). It is asserted that “one of the prison ... system’s clearest (and most successful) outcomes is ‘creating criminals’ (Maruna, 2007, pp. 661-662).

With that in mind, the point at which more incarceration starts to have a negative impact on public safety has been surpassed years ago (Austin & Eisen, 2016). The extra dollars that were invested in more prisons and more guards during the last two decades, could have been used more effectively to deter crime through enhanced guidance upon release and in-prison education (Colgan, 2006). In sum, the current penal policy is not efficient in fostering public safety.

4.1.3 Collateral consequences
The unfathomable patchwork of discretionary sanctions, regulatory statutes, and other restrictions has a profound influence on the lives of former inmates. Demleitner (1999) describes that the lack of penological justification is most disturbing: “they merely add to the overall severity of the sentence without being grounded in theories of retribution, prevention, deterrence, of rehabilitation” (p. 154). Jones (2015) adds that “as legally and socially significant as a term in prison is, for most people convicted of crimes, collateral consequences will generate the most significant effects” (p. 247). Collateral consequences perpetuate the idea that trespassing society’s normative boundaries is a malicious flaw ingrained in the trespasser’s DNA and that one can never fully rehabilitate. The offender has proven to be unworthy of the benefits and virtues that society beholds for the ‘deserving’, and is relegated to society’s margin (Demleitner, 1999).

The disenfranchisement of voters is starting to have ample consequences for the ballot, displacing black communities in particular; “nationwide one in 13 African Americans of voting age have lost the right to vote” (Bell, 2014, p. 9). The right to vote symbolizes all
the virtues and freedoms that America is proud of; political rights are perceived to “confer a minimum of social dignity upon their recipient (Demleitner, 1999, p. 157).

The current scattered framework of collateral sanctions poses a significant threat to the successful reentry into society, which is one of the official objectives according to the Department of Justice (https://www.justice.gov/). Given that between 95 and 97 percent of the prison population eventually returns to society, the incoherent structure of obstacles and restrictions is even more poignant. Add to that the budget cuts on supervision after release –including programs that supported ex-prisoners to find jobs and housing- and “the released offender confronts a situation ... that virtually ensures his failure” (Maruna, 2007, p. 651).

4.2 Disruption of family and community
A major disadvantage –however inevitable- is that incarceration often disrupts family life, and with the magnitude of incarceration in America, indeed communities as a whole (“Jailhouse nation,” 2015). As mentioned, incarceration of a parent almost certainly leads to severe economic drawback. Over half of the male inmate population sustained the family financially prior to conviction (Kearney et al., 2014). The brunt of reductions in wage, working hours and employment opportunities resulting from imprisonment is borne by “offenders’ families and communities, and they reverberate across generations” (Western & Pettit, 2010, p. 3).

4.3 Prison conditions
Conditions in prisons have deteriorated as the prison population grew without corresponding funds –in some cases even budget cuts- to cater for the influx of inmates. Prisons were already sober, but overcrowding and understaffing aggravated prison conditions to appalling warehouses, especially in the maximum security facilities, or ‘supermax’, “mental deterioration is almost assured” asserts a former supermax warden (cited in: Haney, 2008, p. 957). Criticism of supermax confinement generally encompass “the extreme levels of material deprivation, the lack of activity and other forms of sensory stimulation, and especially, the absence of normal or meaningful social contact” (Haney, 2008, p. 957). Supermax prisons operate with militarized security procedures and 24/7
surveillance, prisoners spend 23 hours a day confined in a windowless cell, illuminated 24 hours a day ("The right choices," 2015).

Atrocious excesses of abuse by guards were reported in newspapers. Many cases report dehumanizing subjugation and excessive violence; prison guards “have ready access to and rely heavily on handcuffs, belly chains, leg irons, spit shields, strip cells, four-point restraints, canisters of pepper spray, batons, and rifles” (Haney, 2008, p. 970). In another case prison guards admitted that ‘gladiator fights’ were staged between rival gang members. One officer declared that “it was common practice for guards to pair off rival inmates like roosters in a cockfight, complete with spectators and wagering, then sometimes shoot those who wouldn’t stop fighting” (Arax, 1996, p. A1). Horrid cases of abuse continue to surface as recently guards in a women’s penitentiary were convicted for “routinely raping the inmates –and punishing who complained with solitary confinement or threats of violence” ("The right choices," 2015, p. 4). Indeed, conditions have been characterized by several federal judges as hauntingly similar to caged felines in a zoo. Haney (2008) worked with Zimbardo in the infamous Stanford Prison Experiment in 1974 and has first-hand experience of the obfuscating behavior that can be triggered: “there is an unfortunate tendency for environments characterized by such dramatic imbalances of power to become even harsher and less forgiving –more cruel- over time” (p. 969). The prisoners in supermax confinement are categorically portrayed as ‘the worst of the worst’. The dehumanizing terminology perpetuates the notion that supermax inmates are indeed undeserving of humane treatment, thereby relegating them to a realm of social degenerates –stripped of every constituent element of personal identity they are merely unfixable problems (Haney, 2008).

For too long has America condemned each prisoner as the problem, rather than an individual –fellow citizen- with a problem ("The right choices," 2015). One can hardly expect those ‘problems’ to be healed by the ‘transformative potency’ of a lengthy stay in an overcrowded supermax penitentiary and return to society with an auspicious propensity to respect and contribute to a society that continues to deny them full participation. It is imperative to recognize that prisoners are not devoid of a moral compass, few prisoners dispute the justifiability of their imprisonment. However, prisoners do protest how their sentence is discharged and “they recognize the difference between treatment that is fair, humane and respectful or brutal, inconsistent and dehumanizing” (Crewe, 2007, p. 142).
4.4 Incarceration vs. Recidivism

There is consensus among politicians and policymakers that the prison population needs to be reduced. The question of how to roll back the immense penal apparatus remains open to debate. Local concerns complicate matters; prisons are ingrained in societies and in certain counties a prison can be the single largest employer, which leads to local protests when plans emerge to close the prison ("The right choices," 2015).

One important step forward is to eradicate the politically charged mandatory sentences and place judicial discretion where it belongs; at the judiciary (Austin & Eisen, 2016). Approaching each case in context and with the possibility to consider potential danger to society leaves incarceration open as one of the sentence possibilities, but opens up other options as well (Bell, 2014). Austin and Eisen (2016) evaluate numerous studies and draw the conclusion that “prison stays longer than 20 months had close to no effect” (p. 5) and that each additional year beyond this length correlated with an increased probability to reoffend of four to seven percent (p. 36). A large body of research examines different sanctions and their effect on recidivism. Suffice to mention that results range from no significant difference in recidivism rates, to alternatives to incarceration yielding lower rates of reoffending. In sum, the “evidence conclusively weighs in favor of expanding the use of alternatives to incarceration as a more effective crime reduction technique, especially for lower-level crimes” (Austin & Eisen, 2016, p. 22). Another point of attention is the large number of elderly (>55 years) that are currently imprisoned. Virtually without exception they no longer pose a threat to public safety (Maruna, 2007), yet incarcerating an elderly person requires $68,000 per year, more than double the expenditure on an average young adult ($31,000) (Austin & Eisen, 2016).

4.5 Cost-effective policy

In the most conservative estimates that there is no effect on recidivism, whether sanctions entail incarceration or alternatives, even then alternatives to incarceration are to be preferred because it reduces expenditure drastically. The Washington State Institute for Public Policy evaluated costs and benefits of a variety of crime reduction programs (see appendix #1). These are noteworthy findings that could potentially reduce prison levels

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24 For a detailed review, see: Austin & Eisen (2016).
substantially. “drug treatment ... costs on average $3,100, but produces a net costs savings of $5,230 per inmate [which] results in a benefit of $2.69 for every $1 of taxpayer money spent” (Aos, Phipps, Barnoski, & Lieb, 2001, p. 1 ('Summary May 2012')). The cost-benefit ratio per $1 invested in in-prison vocational education ($7.13), corrections industries ($6.65), and basic education for adults ($5.65) which means all programs yield significant returns on investment combined with enhanced future prospects for inmates.

CONCLUSION

One of the defining duties of the nation-state is punishment; the sovereign power is mandated to exercise its monopoly on violence to incarcerate discretionarily for purposes of protecting public safety (Sparks, 2007). “Incarceration is among the most severe and intrusive manifestations of power the state exercises against its own citizens. ... it strips offenders of their liberty and dignity and consigns them for extended periods to conditions of severe regimentation and physical vulnerability” (Dolovich, 2005, p. 443). It stands to reason that such deprivation should not be imposed remiss. The ideology that underpins penology implies certain intentions and objectives that a state pursues by virtue of public mandate. Today, the justice system faces the challenge to resolve the excessively punitive products of the ‘tough-on-crime’ era. In particular, it needs to reconcile soaring racial disparities before poor communities become completely obliterated from legitimate—and foremost trustworthy—law and order.

In the United States, consequences for prisoners and society have aggravated due to the vigorous proliferation of mass imprisonment. The justifications for maintaining such an expansive prison system should clearly be subject to scrutiny as the startling prison population compels proper (re)consideration of its gains and losses.

The sheer magnitude of the prison system diminishes the effectiveness of incarceration as it becomes a natural part of growing up, especially in poor communities. The deterrent potential of imprisonment cannot be extrapolated indefinitely without causing adverse effects that harm the very public safety it set out to protect. Adding insult to injury is the derailment of many prisoners at reentry due to budget cuts for supervision and assistance at release, combined with numerous collateral consequences that infringe successful reentry.
In light of the punitive attitude of the early 1980s to increase severity and get tough on crime, effective legislation and policy has accomplished this mission to punish very efficiently. Yet, as the winds of politics and public opinion have changed and brought about a new penology, America faces the difficult challenge of reversing the trend it initiated decades ago. Supposing that Dostoyevsky would one day visit an American prison, one can only speculate what inferences he would make about the degree of civilization.

**BIBLIOGRAPHY**


The Bar-Spangled Manner. Rethinking the American Justice System.


## Appendix #1

**Washington State Institute for Public Policy**

*Benefit-Cost Results*

The WSIPP benefit-cost analysis examines, on an apples-to-apples basis, the monetary value of programs or policies to determine whether the benefits from the program exceed its costs. WSIPP’s research approach to identifying evidence-based programs and policies has three main steps. First, we determine “what works” (and what does not work) to improve outcomes using a statistical technique called meta-analysis. Second, we calculate whether the benefits of a program exceed its costs. Third, we estimate the risk of investing in a program by testing the sensitivity of our results. For more detail on our methods, see our [Technical Documentation](#).

Current estimates replace old estimates. Numbers will change over time as a result of model inputs and monetization methods.

### Adult Criminal Justice

<table>
<thead>
<tr>
<th>Program name</th>
<th>Date of last literature review</th>
<th>Total benefits</th>
<th>Taxpayer benefits</th>
<th>Non-taxpayer benefits</th>
<th>Costs</th>
<th>Benefits minus costs (net present value)</th>
<th>Benefit to cost ratio</th>
<th>Chance benefits will exceed costs</th>
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</thead>
<tbody>
<tr>
<td>Employment &amp; job training assistance during incarceration</td>
<td>Sep. 2015</td>
<td>$34,860</td>
<td>$10,092</td>
<td>$24,768</td>
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<td>$34,396</td>
<td>$75.04</td>
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<td>Electronic monitoring (probation)</td>
<td>Dec. 2014</td>
<td>$25,739</td>
<td>$7,160</td>
<td>$18,579</td>
<td>$1,124</td>
<td>$26,863</td>
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<td>Therapeutic communities for offenders with co-occurring disorders</td>
<td>Nov. 2014</td>
<td>$25,848</td>
<td>$7,975</td>
<td>$17,872</td>
<td>($3,738)</td>
<td>$22,109</td>
<td>$6.91</td>
<td>99 %</td>
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<tr>
<td>Correctional education (basic or post-secondary) in prison</td>
<td>Oct. 2015</td>
<td>$21,788</td>
<td>$6,449</td>
<td>$15,339</td>
<td>($1,187)</td>
<td>$20,601</td>
<td>$18.36</td>
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<td>Offender Re-entry Community Safety Program</td>
<td>Apr. 2012</td>
<td>$55,488</td>
<td>$22,404</td>
<td>$33,083</td>
<td>($36,283)</td>
<td>$19,204</td>
<td>$1.53</td>
<td>90 %</td>
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<tr>
<td>Day reporting centers</td>
<td>Mar. 2015</td>
<td>$22,482</td>
<td>$6,958</td>
<td>$15,551</td>
<td>($3,940)</td>
<td>$18,549</td>
<td>$5.71</td>
<td>92 %</td>
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<td>Vocational education in prison</td>
<td>Aug. 2015</td>
<td>$20,064</td>
<td>$6,017</td>
<td>$14,048</td>
<td>($1,953)</td>
<td>$18,411</td>
<td>$12.13</td>
<td>100 %</td>
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<td>Drug Offender Sentencing Alternative (for drug offenders)</td>
<td>Apr. 2012</td>
<td>$19,867</td>
<td>$5,875</td>
<td>$13,993</td>
<td>($1,610)</td>
<td>$18,257</td>
<td>$12.34</td>
<td>98 %</td>
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<td>Mental health courts</td>
<td>May. 2014</td>
<td>$19,080</td>
<td>$5,941</td>
<td>$13,140</td>
<td>($3,067)</td>
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<td>Electronic monitoring (parole)</td>
<td>Dec. 2014</td>
<td>$14,342</td>
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<td>Outpatient/non-intensive drug treatment (incarceration)</td>
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<td>Swift and Certain sanctions for offenders on community supervision</td>
<td>Oct. 2015</td>
<td>$13,356</td>
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<td>Inpatient/Intensive outpatient drug treatment (incarceration)</td>
<td>Nov. 2014</td>
<td>$15,445</td>
<td>$4,682</td>
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<td>($1,599)</td>
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<td>100 %</td>
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<td>Sex offender treatment in the community</td>
<td>Dec. 2013</td>
<td>$14,464</td>
<td>$3,478</td>
<td>$10,987</td>
<td>($1,664)</td>
<td>$12,800</td>
<td>$8.69</td>
<td>93 %</td>
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<td>Risk Need &amp; Responsivity supervision (for high and moderate risk offenders)</td>
<td>Dec. 2013</td>
<td>$17,125</td>
<td>$5,642</td>
<td>$11,483</td>
<td>($5,009)</td>
<td>$12,121</td>
<td>$3.42</td>
<td>100 %</td>
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<td>Jail diversion programs for offenders with mental illness (post-arrest programs)</td>
<td>Mar. 2015</td>
<td>$5,044</td>
<td>($3,760)</td>
<td>$8,803</td>
<td>$5,618</td>
<td>$10,661</td>
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<td>Cognitive Behavioral Therapy (CBT) (for high- and moderate-risk offenders)</td>
<td>Aug. 2014</td>
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<td>$3,079</td>
<td>$7,405</td>
<td>($433)</td>
<td>$10,050</td>
<td>$24.19</td>
<td>100 %</td>
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<tr>
<td>Therapeutic communities for chemically dependent offenders (community)</td>
<td>Nov. 2014</td>
<td>$11,503</td>
<td>$3,499</td>
<td>$8,004</td>
<td>($1,562)</td>
<td>$9,941</td>
<td>$7.37</td>
<td>100 %</td>
</tr>
<tr>
<td>Case management: swift &amp; certain/graduated sanctions for substance abusing offenders</td>
<td>Dec. 2012</td>
<td>$14,263</td>
<td>$4,762</td>
<td>$9,501</td>
<td>($4,996)</td>
<td>$9,267</td>
<td>$2.85</td>
<td>95 %</td>
</tr>
<tr>
<td>Drug Offender Sentencing Alternative (for property offenders)</td>
<td>Dec. 2012</td>
<td>$10,627</td>
<td>$3,249</td>
<td>$7,378</td>
<td>($1,609)</td>
<td>$9,018</td>
<td>$6.60</td>
<td>70 %</td>
</tr>
<tr>
<td>Drug courts</td>
<td>Aug. 2014</td>
<td>$13,015</td>
<td>$4,098</td>
<td>$8,917</td>
<td>($4,984)</td>
<td>$8,031</td>
<td>$2.61</td>
<td>100 %</td>
</tr>
<tr>
<td>Employment &amp; job training assistance in the community</td>
<td>May. 2015</td>
<td>$8,441</td>
<td>$2,469</td>
<td>$5,972</td>
<td>($464)</td>
<td>$7,977</td>
<td>$18.17</td>
<td>99 %</td>
</tr>
<tr>
<td>Work release</td>
<td>Aug. 2015</td>
<td>$6,456</td>
<td>$1,959</td>
<td>$4,492</td>
<td>($693)</td>
<td>$5,757</td>
<td>$9.30</td>
<td>99 %</td>
</tr>
<tr>
<td>Correctional industries in prison</td>
<td>Aug. 2015</td>
<td>$6,437</td>
<td>$2,071</td>
<td>$4,366</td>
<td>($1,493)</td>
<td>$4,945</td>
<td>$4.31</td>
<td>100 %</td>
</tr>
<tr>
<td>Therapeutic communities for chemically dependent offenders (incarceration)</td>
<td>Nov. 2014</td>
<td>$9,892</td>
<td>$3,590</td>
<td>$6,303</td>
<td>($5,004)</td>
<td>$4,888</td>
<td>$1.98</td>
<td>94 %</td>
</tr>
<tr>
<td>Outpatient/non-intensive drug treatment (community)</td>
<td>Nov. 2014</td>
<td>$4,712</td>
<td>$1,461</td>
<td>$3,251</td>
<td>($195)</td>
<td>$3,858</td>
<td>$5.52</td>
<td>91 %</td>
</tr>
<tr>
<td>Sex offender treatment during incarceration</td>
<td>Dec. 2013</td>
<td>$8,813</td>
<td>$2,602</td>
<td>$6,212</td>
<td>($5,222)</td>
<td>$3,591</td>
<td>$1.69</td>
<td>75 %</td>
</tr>
<tr>
<td>Intensive supervision (surveillance &amp; treatment)</td>
<td>Apr. 2012</td>
<td>$11,508</td>
<td>$4,440</td>
<td>$7,069</td>
<td>($8,231)</td>
<td>$3,278</td>
<td>$1.40</td>
<td>73 %</td>
</tr>
<tr>
<td>Restorative justice conferencing</td>
<td>Oct. 2015</td>
<td>$3,767</td>
<td>$1,224</td>
<td>$2,543</td>
<td>($1,081)</td>
<td>$2,686</td>
<td>$3.49</td>
<td>70 %</td>
</tr>
<tr>
<td>Inpatient/intensive outpatient drug treatment (community)</td>
<td>Nov. 2014</td>
<td>$1,233</td>
<td>$501</td>
<td>$732</td>
<td>($1,045)</td>
<td>$188</td>
<td>$1.18</td>
<td>51 %</td>
</tr>
</tbody>
</table>
## The Bar-Spangled Manner: Rethinking the American Justice System

### Case management: not swift and certain for substance abusing offenders
- **Date of last literature review**: Nov. 2015
- **Total benefits**: $3,183
- **Taxpayer benefits**: $1,614
- **Non-taxpayer benefits**: $1,569
- **Costs**: $5,000
- **Benefits minus costs (net present value)**: $(1,817)
- **Benefit to cost ratio**: $0.64
- **Chance benefits will exceed costs**: 33%

### Intensive supervision (surveillance only)
- **Date of last literature review**: Apr. 2012
- **Total benefits**: $(3,116)
- **Taxpayer benefits**: $(326)
- **Non-taxpayer benefits**: $(2,990)
- **Costs**: $(4,330)
- **Benefits minus costs (net present value)**: $(7,646)
- **Benefit to cost ratio**: $(0.77)
- **Chance benefits will exceed costs**: 5%

### Domestic violence perpetrator treatment (Duluth-based model)
- **Date of last literature review**: Aug. 2014
- **Total benefits**: $(8,000)
- **Taxpayer benefits**: $(2,074)
- **Non-taxpayer benefits**: $(5,925)
- **Costs**: $(1,434)
- **Benefits minus costs (net present value)**: $(9,433)
- **Benefit to cost ratio**: $(5.58)
- **Chance benefits will exceed costs**: 17%

### Prison
- **For lower risk offenders, decrease prison average daily population by 250, by lowering length of stay by 3 months**
  - **Date of last literature review**: Oct. 2013
  - **Total benefits**: $(4,140)
  - **Taxpayer benefits**: $(790)
  - **Non-taxpayer benefits**: $(3,350)
  - **Costs**: $5,614
  - **Benefits minus costs (net present value)**: $1,673
  - **Benefit to cost ratio**: n/a
  - **Chance benefits will exceed costs**: 71%

- **For moderate risk offenders, decrease prison average daily population by 250, by lowering length of stay by 3 months**
  - **Date of last literature review**: Oct. 2013
  - **Total benefits**: $(14,510)
  - **Taxpayer benefits**: $(2,237)
  - **Non-taxpayer benefits**: $(12,273)
  - **Costs**: $5,618
  - **Benefits minus costs (net present value)**: $(8,693)
  - **Benefit to cost ratio**: n/a
  - **Chance benefits will exceed costs**: 11%

- **For high risk offenders, decrease prison average daily population by 250, by lowering length of stay by 3 months**
  - **Date of last literature review**: Oct. 2013
  - **Total benefits**: $(40,980)
  - **Taxpayer benefits**: $(5,272)
  - **Non-taxpayer benefits**: $(35,708)
  - **Costs**: $5,818
  - **Benefits minus costs (net present value)**: $(35,163)
  - **Benefit to cost ratio**: n/a
  - **Chance benefits will exceed costs**: 1%

### Police (results per-officer)
- **Deploy one additional police officer with hot spots strategies**
  - **Date of last literature review**: Oct. 2013
  - **Total benefits**: $569,197
  - **Taxpayer benefits**: $70,385
  - **Non-taxpayer benefits**: $(498,811)
  - **Costs**: $(95,560)
  - **Benefits minus costs (net present value)**: $473,637
  - **Benefit to cost ratio**: $5.96
  - **Chance benefits will exceed costs**: 100%

- **Deploy one additional police officer with statewide average practices**
  - **Date of last literature review**: Oct. 2013
  - **Total benefits**: $491,414
  - **Taxpayer benefits**: $60,352
  - **Non-taxpayer benefits**: $(431,062)
  - **Costs**: $(91,001)
  - **Benefits minus costs (net present value)**: $400,413
  - **Benefit to cost ratio**: $(5.40)
  - **Chance benefits will exceed costs**: 100%

### Other Adult Criminal Justice topics reviewed:

<table>
<thead>
<tr>
<th>Program name</th>
<th>Date of last literature review</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dialectical Behavior Therapy</td>
<td>Sep. 2015</td>
<td>Click for meta-analytic results</td>
</tr>
<tr>
<td>Domestic violence perpetrator treatment (Non-Duluth models)</td>
<td>Aug. 2014</td>
<td>Click for meta-analytic results</td>
</tr>
<tr>
<td>Driving Under the Influence (DUI) court</td>
<td>Feb. 2014</td>
<td>Click for meta-analytic results</td>
</tr>
<tr>
<td>Housing supports for offenders returning to the community</td>
<td>Apr. 2012</td>
<td>Click for meta-analytic results</td>
</tr>
<tr>
<td>Ignition interlock devices for alcohol-related offenses</td>
<td>Mar. 2014</td>
<td>Click for meta-analytic results</td>
</tr>
<tr>
<td>Parenting programs (during incarceration)</td>
<td>Nov. 2014</td>
<td>No rigorous evaluation measuring outcome of interest.</td>
</tr>
<tr>
<td>Veteran’s courts</td>
<td>Nov. 2014</td>
<td>No rigorous evaluation measuring outcome of interest.</td>
</tr>
<tr>
<td>Adult boot camps</td>
<td>Oct. 2006</td>
<td>See previous WSIPP publication for past findings.</td>
</tr>
<tr>
<td>Life skills education programs</td>
<td>Oct. 2006</td>
<td>See previous WSIPP publication for past findings.</td>
</tr>
<tr>
<td>Sex offender community notification and registration</td>
<td>Jun. 2009</td>
<td>See previous WSIPP publication for past findings.</td>
</tr>
</tbody>
</table>