

THE
SQUARE ONE
PROJECT

REIMAGINE JUSTICE

**EXECUTIVE SESSION
ON THE FUTURE OF
JUSTICE POLICY**

JANUARY 2019

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THE CHALLENGE OF CRIMINAL JUSTICE REFORM

The Square One Project aims to incubate new thinking on our response to crime, promote more effective strategies, and contribute to a new narrative of justice in America.

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Supported by the John D. and Catherine T. MacArthur Foundation

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After more than three decades of rising prison and jail populations, a new era of low crime rates and criminal justice reform has begun to reverse the U.S. trend in incarceration. Although violence has sometimes flared in a few cities, the national violent crime rate has for a decade remained at a level not seen since the early 1960s (Sharkey 2018).

Reforms have been wide-ranging. The federal government has supported local reentry initiatives, at least since 1999. Prison over-crowding was relieved through litigation. Legislation and ballot initiatives reduced drug sentences. Probation and parole agencies cut revocations for technical violations; legislation also reduced periods of community supervision and periods of incarceration for violations. At the entry-point to incarceration, some jurisdictions have reduced or eliminated the use of money bail. Others are re-examining the use of court-imposed fees. Prosecutorial reform is being pressed both through convenings among district attorneys, and at the ballot box in DA elections.

Beyond direct efforts at reducing incarceration, quantitative analysis is guiding criminal justice decision-making. Randomized controlled trials are being used to evaluate correctional programs. Quantitative risk assessment is increasingly used to decide pre-trial detention and classify levels of custody in prison.

Of the many reform efforts, some are fundamental, disrupting the logic of a system that has come to rely on harsh punishment. Others seem more superficial, unlikely to yield large reductions in imprisonment. The many efforts to reverse mass incarceration can be cacophonous, pushing in many directions at once. Often missing from this mounting wave of reform is an alternative vision of justice.

In this paper, I propose a framework for the future direction of criminal justice reform. The punishing effects of American criminal justice have become pervasive in communities challenged by racial inequality, poverty, and violence. Responding to violence in contexts of racial inequality and poverty is the fundamental challenge for reform. To meet this challenge, we must develop socially-integrative responses to violence that draw victims and offenders back into the social compact. Such responses will help restore social bonds and build pathways of opportunity for communities contending with poverty and racial exclusion. □

THE PUNITIVE REVOLUTION IN AMERICAN CRIMINAL JUSTICE

The scale of incarceration in the United States increased continuously from 1972 to 2007. Prison and jail populations both increased dramatically, and the incarceration rate rose to a level five times higher than that prevailing for most of the twentieth century (Figure 1).

In 2016, the latest year for which data are available, there were 2.17 million people incarcerated in jails, or in state or federal prisons, and the United States had the highest incarceration rate in the world (Kaeble and Cowhig 2018; Walmsley 2013). Community corrections populations also grew. Another 4.65 million people in 2016 were on probation or parole, and this community corrections population had increased with the growth in incarceration. The long time series in Figure 1 also shows that the incarceration rate has dipped down over the last ten years, falling from its peak of 762 people per 100,000 in 2007 to 695 people per 100,000 in 2016. Although the incarceration rate is no longer increasing, the fraction of the U.S. population behind bars remains historically high.

Figure 2 shows the growth of incarceration among minority men with little schooling. Each bar in the figure shows the percentage of men who have served time in prison by age 30 to 34, approximately equal to the lifetime risk of imprisonment. The figure also indicates a large racial disparity; black men are five to six times more likely to be imprisoned than white men. Importantly, the chances of imprisonment are low for those with college education, but much higher for men who have never finished high school. Among black men born 1945 to 1949, about 14 percent of those who never finished high school had been to prison by age 35. Among black men born 1975 to 1979, about 67 percent are estimated to have been imprisoned. Within a generation, prison time became common in the lives of black men with low levels of schooling. For black men as a whole, incarceration rates increased

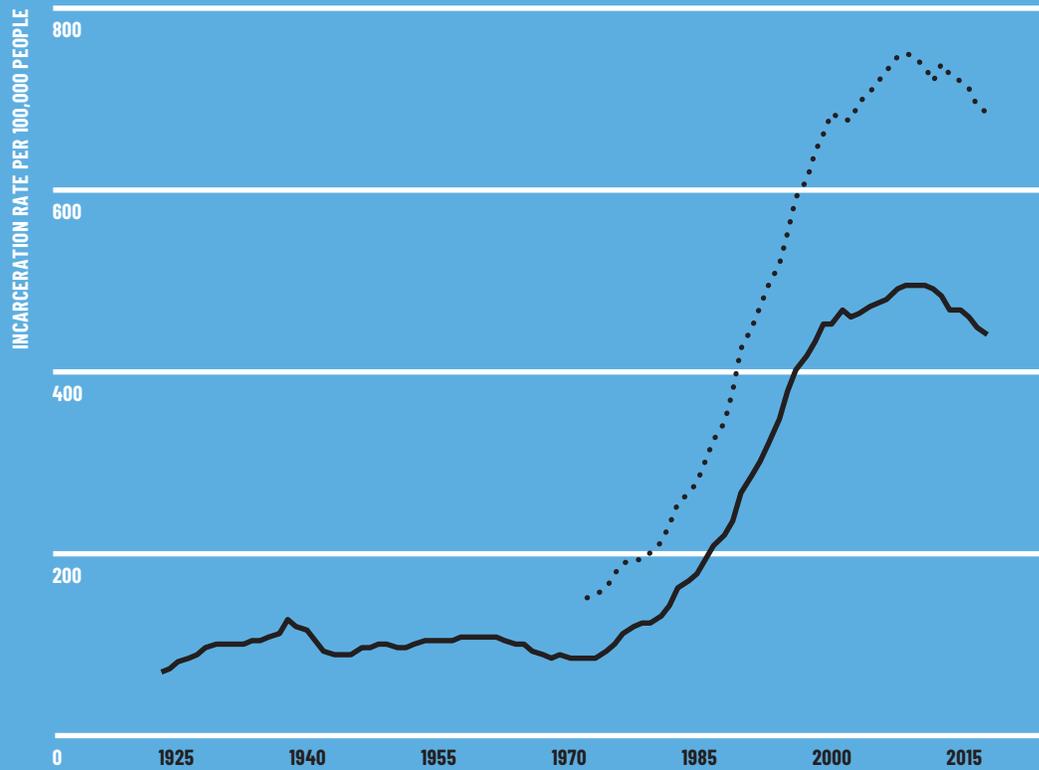


FIGURE 1

**Prison and jail
incarceration rates
per 100,000 people
in the United States,
1925 to 2016.**

Sources: Travis,
Western, and Redburn
(2014); Kaeble and
Cowhig (2018).

— Prison only
••• Prison and jail



THE CRIMINAL JUSTICE SYSTEM BECAME A VAST APPARATUS ORGANIZED TO PUNISH, EXCLUDE, AND CLOSE OFF OPPORTUNITIES

so much that serving time in prison became more likely than graduating college with a four-year degree (Western 2006).

High incarceration rates and pervasive incarceration among black men with little schooling came to be known as mass incarceration and was the most striking sign of a punitive revolution in American criminal justice. Conditions in prisons became more punishing as overcrowding became common and educational programming was cut (e.g., Haney 2006; Travis, Western, and Redburn 2014, chapter 5). As community correction populations swelled, probation and parole became surveillance agencies monitoring compliance with conditions of release and abandoning the historic mission of rehabilitation (Petersilia 2003). As states cut taxes, fines and fees proliferated, adding charges for incarceration, prosecution, and community supervision to cover the costs of a system for which voters were unwilling to pay (Harris 2016). Even after sentences were completed, millions of men and women were hamstrung by criminal background checks in applications for jobs, housing, and credit. Criminal records limited voting rights, eligibility for federal benefits, and access to licensed occupations. The criminal justice system became a vast apparatus organized to punish, exclude, and close off opportunities.

The punitive revolution in American criminal justice has brought us to a unique point in history. Prison populations are extraordinarily large and criminal justice agencies are focused in myriad ways on the task of punishment. While the extent of punishment has come to feel normal, it is extreme, departing from historical and international standards. Beyond the scale of the system, there is deep social inequality in criminal punishment. African American men are much more likely to go to prison than any other demographic group, and incarceration is now pervasive among black men with little schooling and in the communities in which they live. Although disadvantaged communities must now cope with incarceration, community supervision, court fines and fees, and collateral consequences on a vast scale, fundamental change is on the horizon. The country has entered a period of reform. What should replace America's great experiment with punishment in its poorest communities of color? □

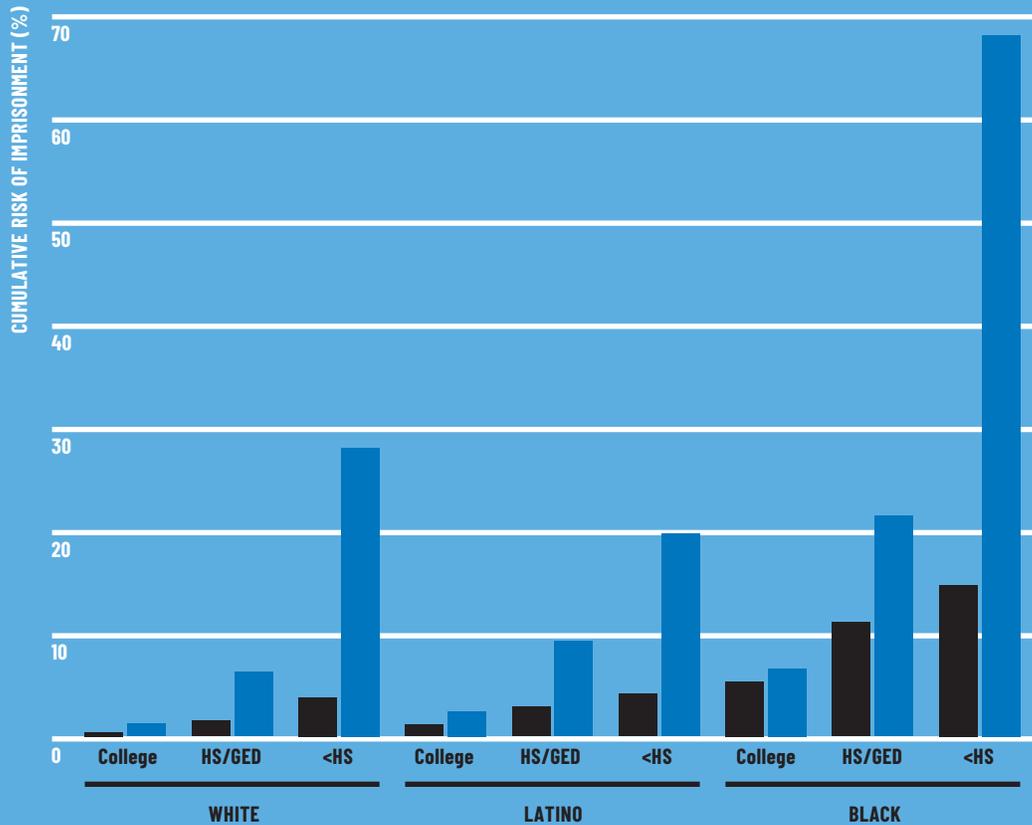


FIGURE 2

Cumulative risk of imprisonment in 1979 and 2009 for birth cohorts of men born between 1945-1949 and 1975-1970, by race and education.

College indicates college educated, HS/GED indicates high school graduates or equivalent, and HS indicates those who have not completed high school.

Source: Western and Pettit (2010).

■ Born 1945-1949

■ Born 1975-1979

THE CONTEXT OF INCARCERATION: RACIAL INEQUALITY, POVERTY, AND VIOLENCE

Understanding alternatives to pervasive incarceration involves understanding the social worlds in which punitive criminal justice currently operates. I argue that the social world of mass incarceration is defined by three characteristics: racial inequality, poverty, and a high level of violence (Western 2018).

RACIAL INEQUALITY

Racial inequality is a dominating reality for the criminal justice system. African Americans are five to six times more likely to be incarcerated than whites; Latinos are about twice as likely to be incarcerated as whites. Because of racial segregation in housing and the concentration of poverty in minority neighborhoods, jail time, parole appointments, and police interactions have become a regular part of life in disadvantaged communities of color.¹ Overt discrimination has played an

important role when, for instance, banks and landlords made decisions that excluded minority families from white neighborhoods. But racial inequality also has taken an institutionalized form, woven into police routines and penal codes, so disparities in punishment would endure even if discrimination were eliminated among line officers and sentencing judges.

Some commentators saw little injustice in the racial disparities in incarceration. High rates of incarceration among African Americans were simply a reflection of racial disparities of crime. As John Dilulio (1996) wrote, “If blacks are overrepresented in the ranks of the imprisoned, it is because blacks are overrepresented in the criminal ranks—and the violent criminal ranks, at that.” But this naturalizes the link between crime and incarceration. Of all the different ways that policymakers could have responded to the problem of crime, a course was chosen that greatly curtailed the liberty of a segment of the population who have had to fight for their freedom from the beginning.

Successive eras of forced confinement for African Americans are not just an historical abstraction. One legacy of a history of racial oppression is segregation in housing, in which black residents are largely confined to black neighborhoods. Because the poverty rate is so much higher for blacks than whites, black residents are much more likely to live in high-poverty neighborhoods. High-poverty minority neighborhoods became focal points of punitive criminal justice policy, facing the

highest rates of arrest and incarceration (Sampson 2012; Clear 2007; Simes 2016). The spatial concentration of policing and incarceration is not lost on community residents, who have often grown alienated and cynical about the true intentions of the justice system (Bell 2016).

The spatial concentration of incarceration in poor communities of color meant that the negative consequences of incarceration were also spatially concentrated in those communities. Research shows that incarceration is associated with diminished earnings and employment, family disruption, and poor health (Wakefield and Uggen 2010; Wildeman and Muller 2012). Even without mass incarceration, there were large racial inequalities in labor market outcomes, family structures, and health statuses. Mass incarceration has added to the disadvantages of communities of color along all those dimensions.

POVERTY

Although there are large racial disparities in incarceration, inequalities in criminal punishment have grown most along economic, not racial lines. Incarceration rates increased most among those who had the worst economic opportunities, among those with the lowest levels of education. Because poverty rates are so high among African Americans, astonishing rates of incarceration emerged in poor black neighborhoods.

The term poverty usually refers to low income, and by itself fails to capture all the accompanying social problems that are closely correlated with incarceration. Three correlates are particularly important for connecting poverty to incarceration: untreated addiction and mental illness, housing insecurity and homelessness, and life histories of trauma and victimization. In earlier work, I used the term “human frailty” to describe the cluster of maladies that accompany the harsh conditions of American poverty (Western 2018). High rates of mental illness and drug addiction are well-documented in correctional populations. Low-income families confronting addiction and mental illness can also struggle to find adequate

treatment. Untreated addiction and mental illness can draw people into conflict with the law, and jails and prisons become health care providers of last resort. For example, in the Boston Reentry Study, an interview study with a sample of men and women newly released from state prison, two-thirds reported histories of mental illness, drug addiction, or both (Western 2018).

The connections between poverty, homelessness, and incarceration have been found in a range of research sites (Metraux, Roman, and Cho 2007; Herbert, Morenoff, and Harding 2015). More of private life is conducted in public for those who are insecurely housed or homeless. Private life in public space exposes poor people to police scrutiny. Buying and using drugs, quarreling, and fighting all become risk factors for arrest when unfolding on the street instead of in private homes (Duneier 1999). Housing insecurity is also acute after incarceration, so unstable housing comes to contribute to the process of repeated incarceration.

Life conditions of poverty, marked by untreated mental illness, addiction, and housing instability, have often formed the context for a chaotic home life. The social dynamics of poor neighborhoods are unable to guard against street violence and other crime. Growing up in such homes and neighborhoods, men and women who have been incarcerated have often experienced serious trauma in childhood, and have serious histories of violent victimization. In the Boston Reentry Study, 40 percent of the sample had witnessed someone being killed in childhood, and a similar percentage had grown up with family violence (Western 2018).

Poverty is not just low income, but a cluster of life adversities that reflect failures of state support as much as material hardship. Addiction and mental illness become

corrosive without adequate treatment. Housing is unstable without affordable alternatives. Trauma in childhood arises in chaotic homes and disorderly neighborhoods in which adult guardians are themselves buffeted by economic insecurity. Young people, especially men, who are not productively occupied as spouses, parents, and breadwinners, get into trouble in neighborhoods that lack resources for recreation, education, and employment.



POVERTY IS NOT JUST LOW INCOME, BUT A CLUSTER OF LIFE ADVERSITIES THAT REFLECT FAILURES OF STATE SUPPORT AS MUCH AS MATERIAL HARDSHIP

VIOLENCE

For those who have been incarcerated, childhood trauma is often just one part of a larger social environment in which the risks of violence have been sustained over a lifetime. Violence in the lives of men and women who go to prison is often strongly contextual, arising under conditions of poverty. (For research on the links between violence and poverty, see Evans 2004, Sampson 2012, Sharkey 2018). Under these conditions, social psychologists have found that home life may lack routine, adult guardians may be away at work, and unrelated men may pass through the households of children who are later at risk of imprisonment as adults. Such chaotic homes are rooted not in the bad character of their residents, but in material circumstances of poverty. In such homes that lack predictability, routine and stable guardianship invite victimization and offer little safety in the event of trouble.

Poor neighborhoods also contend with violence. Violence can flourish where poverty has depleted a neighborhood of steady employment, community organizations, and a stable population that can monitor street life. What criminologists call the informal social controls of family and employment are in short supply. Community groups that can engage young men and provide adult supervision bring structure to social life and reduce the possibility of crime.

Violence rooted in the social environments of poverty—chaotic homes and disorderly neighborhoods—is more a product of unchosen circumstances than individual dispositions or character. A key implication is that those living in those circumstances come to play many roles in relation to violence: victim, offender, and witness. Often, those who have committed violence have also witnessed and been victimized by it.



VIOLENCE CAN FLOURISH WHERE POVERTY HAS DEPLETED A NEIGHBORHOOD OF STEADY EMPLOYMENT, COMMUNITY ORGANIZATIONS, AND A STABLE POPULATION THAT CAN MONITOR STREET LIFE

Incarcerated men and women have lived with serious violence, but has the growth in incarceration made communities safer? The social costs of mass incarceration might be justified if the punitive revolution significantly reduced violence. It is true that crime rates fell dramatically from the early 1990s while incarceration rates increased. By 2015, the murder rate was at a historically low level. The great decline in American violence significantly improved the quality of life in disadvantaged communities. But the growth in incarceration appears to have played only a small role. Researchers have been unable to find compelling evidence that high and demographically concentrated rates of incarceration produced large and long-term reductions in violent crime. Given the great fiscal cost, prison has failed to clearly yield a positive return on investment.

Dozens of studies have tried to calculate the effects of the prison boom on crime, yet there is little evidence of a large effect. Estimating the effects of prison population growth on crime is difficult because crime itself is a cause of incarceration. There are several excellent summaries of this research, but most conclude that the fourfold growth in incarceration rates from the 1970s to the 2000s produced only a small reduction in

crime, perhaps around just 10 percent of the 1990s crime decline. (See the review of research on the effects of incarceration on crime in Travis, Western, and Redburn 2014, chapter 5, and Durlauf and Nagin 2011).

Assessments of the effects of incarceration on crime also overlook the unemployment that comes with prison and its aftermath, the costs to family of visitation and reentry, the separation of children from parents, or the cynicism that grows in heavily policed communities. Neither does the research weigh the injustice of imprisonment that is concentrated among people who themselves have been seriously victimized by crime, who are poor, and mostly African American or Latino. Finally, even the crime reductions that incarceration can take credit for should be judged against alternative approaches, not the politically impossible option of doing nothing. For all these reasons, the punitive revolution failed to clearly bring justice and safety to America's poorest and most troubled communities. □

IMPLICATIONS FOR REFORM

Under conditions of racial inequality and poverty, which formed a context for violence in homes and neighborhoods, incarceration became the ready answer to a range of challenging social problems.

Sentencing policy relied on long terms of imprisonment for people convicted of violent offenses who themselves had histories of serious victimization. For poor people facing joblessness, untreated addiction, and homelessness, prisons and jails designed for punishment and detention became de facto shelters, detox units, and mental health facilities.

After decades of harsh sentencing and mounting incarceration rates, criminal justice reforms are gaining momentum around the country. The gathering criminal justice reform conversation is propelled by three impulses. First, a libertarian impulse seeks to shrink the system and make government less intrusive in the lives of its people. Appetite for downsizing prisons was sharpened by the 2008 recession, when correctional budgets threatened to plunge states into fiscal crisis. According to the libertarian impulse, if we could dial

back criminal sentences to their 1980 level, the scale of incarceration would return to historical standards. Second, a scientific impulse resists crime policy populism and seeks to bring data analysis and other systematic evidence to bear on policy and correctional management. Evidence-based policy are the watchwords of the scientific impulse. Third, an ethical impulse has elevated values of redemption, fairness, and human dignity as counterweights to punitive crime policy that divides the moral universe between good and bad, victim and offender.



FUNDAMENTAL REFORM MUST ALSO GRAPPLE DIRECTLY WITH THE SOCIAL CONDITIONS IN WHICH MASS INCARCERATION EMERGED

Each of these impulses has shifted crime policy in a less punitive direction, but fundamental reform must also grapple directly with the social conditions in which mass incarceration emerged. Violence, poverty, and racial inequality are deep challenges to our politics and public policy. Significantly reducing incarceration will require reducing sentences for violent offenses, and this will ultimately involve new ways of thinking about the problem of violence and responding to it. The moral outrage that activates our punitive instincts understands violence as the strong preying on the weak. But violent contexts produced under conditions of poverty and racial inequality dissolves the bright line between victims and offenders. The ethics of punishment must weigh this moral complexity.

If poverty produces chaotic homes and disorderly neighborhoods, threats of violence and bodily harms are related less to the individual dispositions of offenders than to social environments. Justice is then found more in the abatement of violent environments than in the punishment of violent people. A re-imagined criminal justice will concede some jurisdiction to other agencies—departments of housing, child services, public health, education, and labor. Here, criminal justice becomes

social justice, and the goals of promoting safety and reducing the harms of violence are continuous with providing order, predictability, and material security in daily life. If today's racial inequality—marked by neighborhood segregation, discrimination, and racial disparity in incarceration—is the residue of historical contests over black freedom and citizenship, then justice reform will also involve settling accounts with history. Creating justice institutions that are widely esteemed and belonging to all involves acknowledgement of the historic and collective injuries of mass incarceration.

The challenge of justice reform is one of social and political imagination—envisioning how justice institutions might help extinguish rather than fan the flames of poverty, racial inequality, and violence in heavily disadvantaged communities. Mass incarceration failed as public policy precisely because it was divisive, eroding the social bonds of family and community. Public safety does not depend mostly on the work of police, courts, and prisons. Instead, it is produced by a raft of social institutions—families, schools, employers, churches and neighborhood groups, and the bonds of community—that regularize social life and promote daily routine.

Social institutions activate the attention of neighbors, co-workers, spouses, teachers, and employers who monitor, conduct, and stand as a normative reminder of order. The social institutions of community life are age graded. As children grow into adolescence and then adulthood, they are socialized into the roles of spouse, worker, and citizen that help maintain regularity and routine in daily life. Movement through the life course has an important material component, where growing up confers not just independence from family and school, but also the means to sustain oneself and others. Communities rich in institutions and social connection enjoy a thick kind of public safety that provides predictability and material security in everyday life. Community residents aren't just free from bodily threats. They are materially secure in their housing, intimate relationships, and livelihoods. Thick public safety lengthens people's time horizons, allowing them to imagine a future in which it makes sense to invest in themselves and their children.

Harsh and narrowly concentrated punishment, particularly the community-eroding instrument of incarceration, offers little to such a re-imagined criminal justice. Instead, in the aftermath of violence, our courts and correctional agencies should help rebuild the social membership of victims and offenders alike—both of whom have been alienated from the social compact by violence. In part, this will involve recognizing histories of victimization and trauma of those who were most recently offenders. In part, it will involve attending to the needs of victims directly, instead of hoping that victims might find relief and restoration from the offender's punishment.

In short, responses to violence that emerge in contexts of poverty and racial inequality must be socially integrative, helping to build the conditions of opportunity and social connection that underpin thick public safety. With social integration as a basic principle of justice reform, we can revisit the libertarian, scientific, and ethical reform impulses of the current period.



IN THE AFTERMATH OF VIOLENCE, OUR COURTS AND CORRECTIONAL AGENCIES SHOULD HELP REBUILD THE SOCIAL MEMBERSHIP OF VICTIMS AND OFFENDERS ALIKE

First, libertarianism. Shrinking correctional populations will contain government policy run amok, but by itself will not do enough to restore the social bonds of community in the aftermath of violence. Instead, public investments are needed to address the harms suffered by victims, and to create a path back to community for those who have hurt others. In communities that are poor and isolated by segregation, public investment is itself a type of social integration, knocking down barriers to mobility and sharing opportunity more widely.

Second, the scientific impulse. The use of systematic quantitative evidence is an indispensable answer to the hot emotions that have driven harsh sentencing policy. But in practice, the authority of quantitative precision has been bestowed on individualized assessments of risk and retribution that can threaten social integration. Improved predictions of future conduct have long been an elusive goal through experiments in selective incapacitation and intensive parole supervision that date from the 1970s and 1980s. Today's predictive analytics for risk assessment are the latest tours on this journey. For these predictive efforts, criminal conduct is regarded as a personal attribute

capable of individualized assessment and management, unyielding to changing social environments. Race and class disparities in crime and law enforcement are imprinted on the estimation of individual risk, singling out poor people of color for intensive attention. Quantitative prediction used in this way offers little to the project of fundamental justice reform

Finally, the ethical impulse. Elevating values of redemption, compassion, and human dignity affirms the sense of common humanity that motivates the project of social integration. Often these values are enlisted to justify mercy or leniency that moderate harsh punishment. But even the ethical impulse is an incomplete response, unless it also provides the opportunity for moral action among those who have harmed others. Just as incarceration asks no moral agency from prisoners, leniency can also be morally disengaged without a dialogue about the perpetrator's role in harm and acknowledgement of the pain suffered by victims.

Beyond the impulses of libertarianism, scientism, and human values, the principle of social integration offers two ready guides for justice reform. First, penal policy that adds to poverty and racial inequality is a self-defeating strategy for community health and safety. Instead, fundamental reform efforts should cut the connections between incarceration, poverty, and racial inequality. Elimination of money bail and legal financial obligations, education and training, reentry programs providing treatment, housing, and employment are all examples of reforms that erode the criminalization of socioeconomic disadvantage.



PROVIDING MATERIAL SECURITY AND PREDICTABILITY IN DAILY LIFE WILL ESTABLISH A VIRTUOUS CIRCLE THAT PROMOTES SAFETY AND REDUCES THE HARMS OF VIOLENCE, WHILE STRENGTHENING THE BONDS OF FAMILY AND COMMUNITY

Second, a re-imagined criminal justice will actively draw victims and offenders back into the social compact and offer avenues of opportunity to social and material security. Socially integrative measures that support communities to provide housing, health care, and education build opportunity and human capacity. In this vision, social integration will replace punishment, and much of this work will be done outside of traditional criminal justice agencies. Providing material security and predictability in daily life will establish a virtuous circle that promotes safety and reduces the harms of violence, while strengthening the bonds of family and community. In such a world, those facing the challenges of violence, harsh poverty, and historically embedded racial inequality might find a level of safety and well-being that allows them to better imagine a future for themselves and for their children. □

ENDNOTES

1 Trends in racial and ethnic disparities in incarceration are discussed in the National Academy of Sciences report on the causes and consequence of high incarceration rates in the United States (Travis et al. 2014, chapter 2).

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ACKNOWLEDGEMENTS

The author is grateful to fellow Executive Session colleagues Vinny Schiraldi, Abbey Stamp, Elizabeth Trejos Castillo, Kris Steele, Jeremy Travis, Katharine Huffman, and Anamika Dwivedi for their comments on an earlier draft of this paper.

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REIMAGINE JUSTICE

The Executive Session on the Future of Justice Policy, part of the Square One Project, brings together researchers, practitioners, policy makers, advocates, and community representatives to generate and cultivate new ideas.

The group meets in an off-the-record setting twice a year to examine research, discuss new concepts, and refine proposals from group members. The Session publishes a paper series intended to catalyze thinking and propose policies to reduce incarceration and develop new responses to violence and the other social problems that can emerge under conditions of poverty and racial inequality. By bringing together diverse perspectives, the Executive Session tests and pushes its participants to challenge their own thinking and consider new options.



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