Back to the Future : Reinstate Federal Parole

By “Coach Vance” Trefethen

***Resolved: The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction***

Congress abolished parole for convicted prisoners in the federal criminal justice system in 1987. This plan reinstates it.

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Back to the Future : Reinstate Federal Parole

Congress abolished parole for federal prisoners over 30 years ago. Since then the data makes it clear this was a mistake. With the benefit of hindsight, we can correct that mistake together by affirming that: The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction.

OBSERVATION 1. DEFINITIONS

Significant

Merriam Webster Online Dictionary copyright 2021. <https://www.merriam-webster.com/dictionary/significant> (accessed 26 June 2021)

2 a: having or likely to have [influence](https://www.merriam-webster.com/dictionary/influence#h1) or effect

Reform

Merriam Webster Online Dictionary copyright 2021 <https://www.merriam-webster.com/dictionary/reform> (accessed 28 May 2021)

**:**to put or change into an improved form or condition

Parole

Restore Justice Illinois 2018. (non-profit criminal justice advocacy group) “A Primer on Parole in Illinois” Apr 2018 <https://restorejustice.org/wp-content/uploads/2018/04/Restore-Justice-A-primer-on-parole-in-Illinois.pdf>

Parole describes the practice of releasing inmates before the completion of their maximum, court-appointed sentence. These released individuals—or parolees—then serve the remainder of their sentence under a period of supervised and conditional release, during which failure to follow certain rules may lead to the revocation of parole.

OBSERVATION 2. INHERENCY, the structure of the Status Quo. One key FACT:

No parole. Congress abolished parole for convicted federal prisoners in the 1980’s

Federal Bureau of Prisons 2020 (federal agency that manages federal prisons) “A storied past” <https://www.bop.gov/about/history/> (accessed 27 June 2021) (article is undated but internally references
“more than 90 years” since the Bureau of Prisons was established in May 1930)

As a result of Federal law enforcement efforts and new legislation that dramatically altered sentencing in the Federal criminal justice system, the 1980's brought a significant increase in the number of Federal inmates. The Sentencing Reform Act of 1984 established determinate sentencing, abolished parole, and reduced good time; additionally, several mandatory minimum sentencing provisions were enacted in 1986, 1988, and 1990.

OBSERVATION 3. We offer the following PLAN implemented by Congress and the President

1. Congress votes to reinstate the federal parole system

2. Funding from general federal revenues and money saved from reduced prison population
3. Enforcement through the Justice Department using the same procedures as were formerly used in federal parole until the 1980s.
4. Timeline: Plan takes effect one day after an affirmative ballot.
5. All Affirmative speeches may clarify

OBSERVATION 4. ADVANTAGES

ADVANTAGE 1. Behavior in prison

Making federal parole available would create incentives for convicts to behave better in prison

**Commenting on the case of Josue Portillo, a teenager convicted of murder and sentenced to 55 years in federal prison, Federal appeals court Judge Jon O. Newman in 2020 reluctantly upheld the 55 year sentence, but said he wished the federal government could offer parole. He said QUOTE:**

Jon O. Newman 2020 (federal judge on the Court of Appeals for the 2nd Circuit) opinion of the Court in the case of US vs. Portillo, Docket No. 19-2158 24 Nov 2020 <https://law.justia.com/cases/federal/appellate-courts/ca2/19-2158/19-2158-2020-11-24.html>

Third, and of particular pertinence to a case like Portillo’s, the elimination of parole means that this defendant, now nineteen years old, will serve his fifty-five year sentence until he is seventy-one years old (or slightly younger depending on the good time credits he earns in prison). We have ruled that the seriousness of his crime, considered along with his age and personal circumstances, permits that result. But if parole were available, there would be two consequences worth considering. On the one hand, Portillo’s custodians would have an effective means of encouraging his observance of prison regulations, resulting from his awareness that misconduct would jeopardize any hope of parole. On the other hand, Portillo would have an incentive to obtain an education, participate in rehabilitative programs, and just possibly demonstrate, at some point in the future, that he has matured beyond the seemingly incorrigible person of his youth to become an adult whom parole authorities might reasonably think should be permitted to rejoin society.

ADVANTAGE 2. Rehabilitation

**Commenting further in the same source on the Portillo case, Judge Jon Newman in 2020 advocates restoring federal parole because**

Parole would motivate rehabilitation

Jon O. Newman 2020 (federal judge on the Court of Appeals for the 2nd Circuit) opinion of the Court in the case of US vs. Portillo, Docket No. 19-2158 24 Nov 2020 <https://law.justia.com/cases/federal/appellate-courts/ca2/19-2158/19-2158-2020-11-24.html>

Third, and of particular pertinence to a case like Portillo’s, the elimination of parole means that this defendant, now nineteen years old, will serve his fifty-five year sentence until he is seventy-one years old (or slightly younger depending on the good time credits he earns in prison). We have ruled that the seriousness of his crime, considered along with his age and personal circumstances, permits that result. But if parole were available, there would be two consequences worth considering. On the one hand, Portillo’s custodians would have an effective means of encouraging his observance of prison regulations, resulting from his awareness that misconduct would jeopardize any hope of parole. On the other hand, Portillo would have an incentive to obtain an education, participate in rehabilitative programs, and just possibly demonstrate, at some point in the future, that he has matured beyond the seemingly incorrigible person of his youth to become an adult whom parole authorities might reasonably think should be permitted to rejoin society. Portillo’s sentence illustrates the unfortunate consequences of eliminating parole.

ADVANTAGE 3. Justice in sentencing

A. Longer sentences: Eliminating federal parole substantially lengthened average sentencing time served

Jon O. Newman 2020 (federal judge on the Court of Appeals for the 2nd Circuit) opinion of the Court in the case of US vs. Portillo, Docket No. 19-2158 24 Nov 2020 <https://law.justia.com/cases/federal/appellate-courts/ca2/19-2158/19-2158-2020-11-24.html>

Second, the elimination of parole contributed significantly to achieving one objective of many of the proponents of the Sentencing Reform Act, the substantial lengthening of the time served by federal prisoners. The average time served by all federal prisoners in 1986, the year before the repeal of parole became effective, was 14.6 months; in 2012, it was 37.5 months.

B. Injustice mitigated: Reinstating federal parole would solve many unjustly long non-violent offender sentences

Rory Fleming 2019 (attorney;formerly worked for the Law Enforcement Action Partnership, Harvard Law School Fair Punishment Project and the National Network for Safe Communications at the John Jay College of Criminal Justice ) Lindsey Graham Remarks Offer Hope for Reinstatement of Federal Parole 21 Nov 2019 <https://filtermag.org/lindsey-graham-federal-parole/>

Reinstating federal parole would almost certainly provide relief, for example, to a large number of people [unjustly incarcerated](https://www.rollingstone.com/culture/culture-lists/pot-prisoners-meet-five-victims-of-the-war-on-drugs-200055/) for decades—and [sometimes even life without parole](https://www.candoclemency.com/women-deserving-clemency/)—for nonviolent drug-law violations. Powerful advocates like [Amy Povah](https://www.candoclemency.com/amy-ralston-povah/) and [Anrica Caldwell](https://www.candoclemency.com/anrica-caldwell-vice-president/) of [CAN-DO Clemency](https://www.candoclemency.com/) have been fighting for clemency for this population for many years, even while large sectors of the criminal justice reform world have recalibrated their focus to [prosecutor elections](https://www.themarshallproject.org/2018/05/23/prosecutor-elections-now-a-front-line-in-the-justice-wars) and [shortening sentences for other crimes](https://slate.com/news-and-politics/2017/08/the-criminal-justice-system-treats-violent-offenders-as-irredeemable-theyre-not.html).

ADVANTAGE 4. Court clog reduction

A. Thousands of appeals. Lack of federal parole massively complicated the sentencing process and led to thousands of additional appeals

Prof. Douglas A. Berman 2017 (Newton D. Baker-Baker & Hostetler Chair in Law and Executive Director of the Drug Enforcement and Policy Center, Ohio State Univ.) Reflecting on Parole’s Abolition in the Federal Sentencing System Sept 2017 PAROLE’S ABOLITION IN THE FEDERAL SENTENCING SYSTEM <https://www.uscourts.gov/sites/default/files/81_2_3_0.pdf> (accessed 27 June 2021)

Rounding out this reflection of what might have been, consider finally the last three decades of guideline development and resulting jurisprudence. The size, structure, and substance of the initial guidelines prompted many federal sentencing judges to complain about “a mechanistic administrative formula” that converted them into “judicial accountants” in the sentencing process. But the initial guidelines now look modest compared to their current iteration: After nearly 800 amendments, the Guidelines Manual has grown to more than 500 pages of sentencing instructions. And the size and scope of the Commission’s official rules are modest still when compared to the tens of thousands of federal court opinions which have interpreted and expounded upon the meaning and application of the guidelines—a jurisprudence compelled not only by complicated, often-changing guideline provisions, but also by thousands of federal defendants each and every year choosing to appeal guideline calculations and resulting sentences. Because sentencing judges had such unfettered discretion before the SRA, some jurists surely would have complained about new guidelines no matter their initial form. But the severity of the guidelines has been an enduring judicial concern, no doubt in part because there is no possibility for parole to “soften the blow” of mandated or suggested prison terms. Moreover, the determinate nature of sentences has surely contributed to the Commission repeatedly revising the guidelines and to federal defendants regularly appealing every adverse sentencing determination. In a system with parole, smaller problems with general sentencing rules or individual sentencings can be at least partially remedied through the usual work of parole boards; in a system without parole, sentencing rules must be ever modified through guidelines amendments and claims of sentencing error must be ever addressed through appeals.

B. Clogged courts. Federal appellate court caseloads have doubled since 1971

Prof. Peter S. Menell & Prof. Ryan Vacca 2020. (Menell - Professor of Law and Director, Berkeley Center for Law & Technology, University of California. Vacca - Professor of Law, Univ of New Hampshire School of Law) Revisiting and Confronting the Federal Judiciary Capacity “Crisis”: Charting a Path for Federal Judiciary Reform 1 Jully 2020 CALIFORNIA LAW REVIEW <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1438&context=law_facpub>

The number of filed cases per year grew 292% between 1971 and 2017, from 14,761 to 57,872. The number of cases terminated on the merits grew from 13,015 in 1971 to 36,851 in 2017, a 183% increase. As previously discussed, Congress authorized additional circuit court judgeships during this time. The number of appellate judges is based on data from Habel and Scott. These data show how many active and senior circuit court judgeships are actually filled and, as with district judges, treat senior circuit court judges as one quarter of an active-duty circuit court judge. Figure 14 illustrates how many cases were filed, on average, per appellate judge from 1971 through 2017. The average number of cases filed per judge increased from 148 (active judges only) or 142 (active and senior judges) in 1971 to 324 (active judges only) or 278 (active and senior judges) in 2017. Counting only active circuit court judges, this is a 119% increase in filings per judge. Counting active and senior judges results in a 96% increase in filings per judge. Thus, the caseload per judge has roughly doubled since 1971.

C. Justice Denied. The impact to court clog is judges making decisions in inconsistent ways that deny justice

Dr. Cristoph Engel and Prof. Keren Weinshall 2020. (Engel - Chair of the Advisory Board, Amsterdam Center for Law and Economics; Director of Max Planck Institute for Research on Collective Goods.. Weinshall is Edward S. Silver Chair in Civil Procedure, Hebrew University, Jerusalem) 24 Nov 2020 “Manna from Heaven for Judges: Judges’ Reaction to a Quasi-Random Reduction in Caseload” JOURNAL OF EMPIRICAL LEGAL STUDIES <https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12265> (“heuristics” – in this context, it refers to deciding things based on past personal experience rather than looking independently at the facts of the present case)

Judges are not only rational actors striving to optimize their use of time. Although most of the aforementioned studies focus on judges’ strategic choices of the less time-consuming legal outcome, their decisions may also be affected by the physical and emotional fatigue, decline in cognitive performance, and elevated stress levels associated with high workloads.  Research has shown that under time pressure, judges are more vulnerable to heuristics and biases. For example, rulings were found to be more inconsistent when judges face a high caseload (Norris [2018](https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12265#jels12265-bib-0055)) and busy judges were found to expend less effort by according higher weight to non-legal cues, such as litigants’ race or gender, to determine case outcomes (Guthrie et al. [2000](https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12265#jels12265-bib-0030), [2007](https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12265#jels12265-bib-0031); Rachlinski et al. [2008](https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12265#jels12265-bib-0061)).

SOLUTION: https://www.californialawreview.org/wp-content/uploads/2020/06/8-Slobogin-EIC-Edits.pdf

2A Evidence: Case Title

BACKGROUND

History of federal parole. The last year before federal parole was abolished (1986), 8,749 prisoners were paroled

Jon O. Newman 2020 (federal judge on the Court of Appeals for the 2nd Circuit) opinion of the Court in the case of US vs. Portillo, Docket No. 19-2158 24 Nov 2020 <https://law.justia.com/cases/federal/appellate-courts/ca2/19-2158/19-2158-2020-11-24.html>

In the federal criminal justice system, the use of parole began in 1910, when parole boards were established at three federal penitentiaries. The United States Board of Parole, renamed the United States Parole Commission in 1976, began making parole release decisions in 1930. In 1986, the year before the Sentencing Reform Act became effective, 8,749 federally sentenced defendants were paroled. Two types of parole eligibility were available. Typically, a federal prisoner, sentenced to more than one year, was eligible for parole after serving one-third of the sentence. Alternatively, a sentencing judge had the discretion to make such a federal prisoner eligible for parole at any time.

INHERENCY

Sentencing Reform Act phased out federal parole in 1987 and substantially increased average prison time for offenders

Pew Charitable Trusts 2015. (global non-partisan NGO research organization) Nov 2015 “Prison Time Surges for Federal Inmates” <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/11/prison-time-surges-for-federal-inmates>

The Sentencing Reform Act also eliminated parole and required all federal prisoners, regardless of offense type, to serve a minimum of 85 percent of their sentences behind bars before becoming eligible for release—a policy shift known as “truth in sentencing.” This change, which was phased in over several years beginning in November 1987, had a dramatic impact: Those entering prison in 1996 could expect to serve 87 percent of their sentences behind bars, compared with 58 percent a decade earlier. (See Figure 3.) The percentage of sentence served by federal offenders has not significantly changed since 1996.1

SOLVENCY / ADVOCACY

Lots of advocacy for reinstating federal parole, based on success at the state level

Prof. Douglas A. Berman 2017 (Newton D. Baker-Baker & Hostetler Chair in Law and Executive Director of the Drug Enforcement and Policy Center, Ohio State Univ.) Reflecting on Parole’s Abolition in the Federal Sentencing System Sept 2017 PAROLE’S ABOLITION IN THE FEDERAL SENTENCING SYSTEM <https://www.uscourts.gov/sites/default/files/81_2_3_0.pdf> (accessed 27 June 2021) (brackets added)

In addition, though terms like “parole” and “rehabilitation” may still carry political baggage three decades after the SRA’s [Sentencing Reform Act] passage, the recent political discourse around federal statutory sentencing reform has suggested that parole-like corrections reforms may be among the SRCA’s least controversial elements—in part because many SRCA provisions are modeled on state reform efforts that have succeeded in reducing crime rates and prison populations through enhanced prison-based rehabilitation-oriented programming, expanded geriatric and medical parole, and use of risk assessment tools to inform release decisions. The correctional reform provisions of the SRCA show that many federal policymakers not only respect, but are eager to replicate in some form, the parole reform activity in many states. In light of that reality, federal sentencing reform advocates can and should consider whether the time has come to make bringing back parole an integral part of their advocacy efforts.

40% of federal life-without-parole sentences are for drugs – excessive punishment justifying reinstating parole

Marc Levin 2019 (attorney; vice president of criminal justice at the Texas Public Policy Foundation and Right on Crime) May 2019 Ten Tips for Policymakers for Improving Parole <http://rightoncrime.com/wp-content/uploads/2019/05/Ten-Tips-for-Policymakers-for-Improving-Parole.pdf>

In the federal system, which no longer has parole, more than 40 percent of federal life sentences involve drug crimes (Ingraham). Undoubtedly, many of these individuals have a long record of criminal activity, but recidivism declines markedly with age (Hunt and Easley). At a minimum, life without parole should be abolished for nonviolent offenses.

Parole costs 1/10 of the expense of keeping an inmate in prison

Restore Justice Illinois 2018. (non-profit criminal justice advocacy group) “A Primer on Parole in Illinois” Apr 2018 <https://restorejustice.org/wp-content/uploads/2018/04/Restore-Justice-A-primer-on-parole-in-Illinois.pdf>

According to a 2015 spokesperson from the Illinois Department of Corrections, it costs Illinois roughly $22,000 to house an inmate for one year, compared to the $2,000 it costs annually to place that person on parole. This lines up with national data from a Pew study that put the cost of placing a person behind bars for a single day is on par with 10 days of parole supervision.

ADVANTAGES

Parole reduces hopelessness and promotes rehabilitation

Marc Levin 2019 (attorney; vice president of criminal justice at the Texas Public Policy Foundation and Right on Crime) May 2019 Ten Tips for Policymakers for Improving Parole <http://rightoncrime.com/wp-content/uploads/2019/05/Ten-Tips-for-Policymakers-for-Improving-Parole.pdf>

There are several justifications for parole. First, as Maconochie and Crofton realized, it provides an incentive for self-improvement in a setting where hopelessness can fester. Second, as all major faith traditions recognize, people can change over time. As Friedrich Hayek urged, we must recognize our own imperfect knowledge, which is especially limited in predicting at sentencing how a person will change over many years (Richman).

If we’d had federal parole over the last 3 decades, we could have reduced the problems of excessively severe sentences

Prof. Douglas A. Berman 2017 (Newton D. Baker-Baker & Hostetler Chair in Law and Executive Director of the Drug Enforcement and Policy Center, Ohio State Univ.) Reflecting on Parole’s Abolition in the Federal Sentencing System Sept 2017 PAROLE’S ABOLITION IN THE FEDERAL SENTENCING SYSTEM <https://www.uscourts.gov/sites/default/files/81_2_3_0.pdf> (accessed 27 June 2021) (brackets added)

With the benefit of hindsight and three decades of federal sentencing developments after the passage of the SRA [Sentencing Reform Act] —a period defined by extraordinary controversy over the operation of the federal criminal justice system and enormous growth in the federal prison population—one can reasonably wonder if federal sentencing has ultimately been disserved by the complete abolition of parole. The front-end actors shaping the modern federal system have produced sentencing laws and related jurisprudence marked by considerable and problematic complexity, rigidity, and severity. If parole had persevered in some form through the enactment of the SRA, perhaps some of the most controversial and criticized aspects of the modern federal sentencing system would have developed differently or at least had their most harmful consequences tempered.

The Dept. of Justice and the US Sentencing Commission have been trying to find non-parole ways to reduce excessive drug sentences that should be solved by Parole

Prof. Douglas A. Berman 2017 (Newton D. Baker-Baker & Hostetler Chair in Law and Executive Director of the Drug Enforcement and Policy Center, Ohio State Univ.) Reflecting on Parole’s Abolition in the Federal Sentencing System Sept 2017 PAROLE’S ABOLITION IN THE FEDERAL SENTENCING SYSTEM <https://www.uscourts.gov/sites/default/files/81_2_3_0.pdf> (accessed 27 June 2021)

Though parole has never been designed to serve as a remedy to problems elsewhere within a sentencing system, parole mechanisms historically have and institutionally can serve as a kind of “back-end safety valve” in the operation and administration of a sentencing system. Once parole was abolished in the federal sentencing system, this “back-end” safety valve role would have to be filled in other ways, and the last decade has seen this void filled in a variety of notable ways in the federal system. Specifically, in recent years there have been (1) repeated reductions in guideline sentences for drug offenses made retroactively applicable to current prisoners, (2) an unprecedented U.S. Department of Justice initiative to encourage the submission of clemency applications by certain federal prisoners, and (3) a landmark corrections reform bill proposing various means for certain prisoners to secure early release. As explained below, these notable recent sentencing developments all can be viewed as a kind of “parole light.” Three significant reductions in guideline sentences for drug offenses over the last decade have been implemented to benefit federal prisoners in parole-like manner. In 2007, the United States Sentencing Commission amended the guidelines for offenses involving crack cocaine to reduce by two offense levels the recommended sentencing ranges associated with particular amounts of crack; in 2011, the Commission amended the guidelines to implement the Fair Sentencing Act’s further reduction of sentences tied to particular crack amounts; in 2014, the Commission voted to reduce offense levels for all drug amounts by two levels. The Sentencing Commission ultimately voted to give retroactive effect to all of these drug guideline amendments, which authorized judges to review motions to reduce sentences for all those serving prison terms based on the previous guidelines. Demonstrating the parole-like import and impact of these retroactive guideline changes, the Commission made plain that its vote for guideline retroactivity authorized only a “discretionary reduction” to which the defendant had no right or entitlement, and the Commission instructed judges to “consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant’s term of imprisonment.”

Parole is the right solution to excessively punitive sentences

Prof. Douglas A. Berman 2017 (Newton D. Baker-Baker & Hostetler Chair in Law and Executive Director of the Drug Enforcement and Policy Center, Ohio State Univ.) Reflecting on Parole’s Abolition in the Federal Sentencing System Sept 2017 PAROLE’S ABOLITION IN THE FEDERAL SENTENCING SYSTEM <https://www.uscourts.gov/sites/default/files/81_2_3_0.pdf> (accessed 27 June 2021) (brackets added)

In a recent article on “The Future of Parole Release,” three leading scholars have noted that “paroling authorities are well positioned to play crucial roles in engineering new approaches” to the modern problems of mass incarceration and enduring sentencing severity. Building on the wisdom of state experiences in recent decades, these scholars have set forth an astute blueprint in the form of a “a 10-point program for the improvement of discretionary parole release systems in America.” In so doing, they note that jurisdictions will be required to “develop new or expanded release capacities to help unwind the punitive policies of the past.” The goal of this essay has been to highlight reasons why I think reformers who have been troubled by the punitive policies that the SRA [Sentencing Reform Act] helped usher into the federal system ought to think about talking up the concept of federal parole anew.

Court clog undermines economic, social and political decision-making, reduces ability to make sound decisions

Prof. Peter S. Menell & Prof. Ryan Vacca 2020. (Menell - Professor of Law and Director, Berkeley Center for Law & Technology, University of California. Vacca - Professor of Law, Univ of New Hampshire School of Law) Revisiting and Confronting the Federal Judiciary Capacity “Crisis”: Charting a Path for Federal Judiciary Reform 1 Jully 2020 CALIFORNIA LAW REVIEW <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1438&context=law_facpub>

The bottleneck at the top of the judiciary pyramid has become more constricting. The lack of clarity of the law, in conjunction with the high stakes of litigation and relatively low cost of appeal, fuels spiraling litigation and undermines economic, social, and political decision-making and institutions. Perhaps most disconcerting, the salience of judiciary reform has dimmed. Access to the judiciary, fragmentation of national law, and problems of speed and cost plaguing the judiciary no longer garner sustained legislative attention. Even Judge Friendly, who steered the nation away from structural reform in the 1970s, candidly acknowledged that the time may come when more drastic judiciary reforms would be needed. Yet little has been heard about these issues since the 1990s. The argument might be made that the crises of volume and fragmentation were overblown. But even if Professors Estreicher and Sexton were correct nearly four decades ago that the Supreme Court was granting certiorari in nearly all of the “intolerable” intercircuit splits, the system is far more overloaded today by their own measure. If the ratio of grants to petitions was approximately correct in the early 1980s, then there is reason to believe that nearly half of the certiorari-worthy petitions are being denied review today. Thus, there is good reason to believe that the interrelated and growing challenges of volume and fragmentation in the judiciary would have been better addressed had Congress established the Intercircuit Tribunal. At a minimum, the nation would have obtained valuable experimental results at minimal cost. At this stage in American history, vital judiciary arteries have clogged, reducing the ability of the system to process cases based on sound and consistent interpretations of the law.

DISAD RESPONSES

A/T “Truth in sentencing”

Ending federal parole didn’t solve “truth in sentencing” because only 1% of criminals are under federal jurisdiction

Jon O. Newman 2020 (federal judge on the Court of Appeals for the 2nd Circuit) opinion of the Court in the case of US vs. Portillo, Docket No. 19-2158 24 Nov 2020 <https://law.justia.com/cases/federal/appellate-courts/ca2/19-2158/19-2158-2020-11-24.html>

Our concern is the consequences of the provision of the Sentencing Reform Act that eliminated parole. First, we note that ending parole did not achieve the expected “truth in sentencing.” The reason is that federal court criminal cases are less than one percent of state court criminal cases8 and, although some states have ended or curtailed parole, many have retained it, and the American public frequently reads, hears, or sees reports of state prisoners released on parole. Such reports gain notoriety if the paroled prisoner commits another crime. The prevalence of parole in state criminal justice systems has substantially diminished the possibility that the public would understand that federal sentences will be served in full.

“Truth in sentencing” sounds good but problems outweigh benefits. Need parole to incentivize reform and fix unjustly long sentences

James Cullen 2018 (Research and Program Associate at the *Brennan Center* for Justice at NYU School of Law) 5 Oct 2018 “Sentencing Laws and How They Contribute to Mass Incarceration” <https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration>

“Truth-in-sentencing laws” eliminate those opportunities for early release, requiring people to serve (for example) 75 percent of their prison term physically behind bars. The goal is to ensure that the sentence the judge imposes is what a person will actually serve in prison — in other words, “what you see is what you get.”  That may seem like a reasonable goal, but eliminating early release options actually gives people less of an incentive to comply with prison rules or take advantage of education or training opportunities. It also means that there’s no way around prison sentences that are already too long.

A/T “Longer sentences reduce crime”

Longer sentences don’t reduce recidivism and we need parole to incentivize self-improvement

Marc Levin 2019 (attorney; vice president of criminal justice at the Texas Public Policy Foundation and Right on Crime) May 2019 Ten Tips for Policymakers for Improving Parole <http://rightoncrime.com/wp-content/uploads/2019/05/Ten-Tips-for-Policymakers-for-Improving-Parole.pdf>

The existence and effectiveness of parole is not without controversy. However, given that research has found that longer prison terms do not reduce recidivism (Pew 2013b), parole offers an important off-ramp that incentivizes self-improvement while people are incarcerated.

Longer federal sentences have had no impact on reducing crime, and reducing them causes no harm

Pew Charitable Trusts 2015. (global non-partisan NGO research organization) Nov 2015 “Prison Time Surges for Federal Inmates” <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/11/prison-time-surges-for-federal-inmates>

The average length of time served by federal inmates more than doubled from 1988 to 2012, rising from 17.9 to 37.5 months. Across all six major categories of federal crime—violent, property, drug, public order, weapon, and immigration offenses—imprisonment periods increased significantly.  (See Figure 1.) For drug offenders, who make up roughly half of the federal prison population, time served leapt from less than two years to nearly five. Mandatory minimum sentencing laws, the elimination of parole, and other policy choices helped drive this growth, which cost taxpayers an estimated $2.7 billion in 2012 alone. Despite these expenditures, research shows that longer prison terms have had little or no effect as a crime prevention strategy—a finding supported by data showing that policymakers have safely reduced sentences for thousands of federal offenders in recent years.

A/T “Parolees return to crime”

NJ and Urban Institute studies found parole reduces crime compared to convicts who finish their full sentence

Restore Justice Illinois 2018. (non-profit criminal justice advocacy group) “A Primer on Parole in Illinois” Apr 2018 <https://restorejustice.org/wp-content/uploads/2018/04/Restore-Justice-A-primer-on-parole-in-Illinois.pdf>

When state legislatures across the nation began abolishing parole in the late 1970s, their rationale was often that parole failed to increase public safety or reduce repeat offenses. And indeed, old data plus a few isolated cases of parolees committing new serious crimes did seem to suggest the inefficiency of parole. More up-to-date research now shows discretionary parole can effectively reduce the likelihood of new crimes. The Pew Charitable Trusts found that parolees in New Jersey were 36 percent less likely to commit new crimes and return to prison compared to “maxouts,” or individuals released at the end of their term and without parole supervision. Separately, a 2005 study by the Urban Institute compared the benefits of discretionary parole to both unconditional releases and mandatory parole. The authors of the Urban study found that for black men with few prior arrests and women, parole could reduce the predicted likelihood of their rearrest by up to 20 and 34 percentage points, respectively, compared to unconditional release.

Studies claiming “parole doesn’t reduce recidivism” are flawed because they count “technical” (non-criminal) violations as if they were committing new crimes

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Some studies suggest parole does not effectively reduce recidivism. These studies point to the comparable rates of recidivism between parolees and individuals released without supervision at the end of their prison terms. But recidivism definitions are inconsistent. Some sources of data fail to differentiate technical violations from new crimes, rearrests from returns to prison, or new felony convictions from new misdemeanor convictions (for more on the topic of recidivism, you can check out our resource on understanding recidivism). Only parolees and other individuals under parole-like supervision may be arrested and returned to prison for technical violations. This can include missing an appointment with a parole officer, alcohol consumption, or failing to find a suitable home.

Bureau of Justice/Illinois Study: After screening out “technical” violations, rates of crime by parolees are very low

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When data sources distinguish between technical violations and other offenses, the benefits of parole become clearer. For instance, in their 2015 report, the Bureau of Justice Statistics (BJS) reported that while 34 percent of Illinois’ over 24,300 individuals exiting mandatory supervised release (MSR) or parole returned to prison, only 1 in 5 of these individuals were re-imprisoned for new crimes. That means that for all individuals in Illinois exiting parole-like supervision in 2015, only about 7 percent were reincarcerated for new offenses.

NEGATIVE

<https://journals.sagepub.com/doi/full/10.1177/0032885518814719>

https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12265