Negative: Parole

By “Coach Vance” Trefethen

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

Case Summary: Parole in the federal criminal justice system was abolished in 1987 by an act of Congress (Sentencing Reform Act) passed in 1984. AFF plan will reinstate parole. This brief explains why whatever problems that’s supposed to solve can be solved by existing policies (like the First Step Act of 2018, which, although not reinstating parole, it did make some reforms that should work just as well). And it shows why parole is a bad thing. You may see a lot of the data in this brief (or the AFF evidence) coming from state prison statistics or comments. That’s the best evidence anyone can provide, since parole was phased out at the federal level 35 years ago. The only remaining prisoners eligible for federal parole are those who went to prison before 1987, of which there are only a few left. Evidence about federal parole in the 1980s or state parole today is all that’s available to discuss the effectiveness of parole in the U.S.
 Be careful to distinguish between parole and probation. Probation is a punishment given instead of jail time (although it functions very similar to parole). Parole occurs after a prisoner has served some percentage of his sentence behind bars and then is let out early (with strict conditions), subject to being reincarcerated if he violates the terms of his parole.

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Negative: Parole – bad idea

INHERENCY

1. The “First Step Act” of 2018

First Step Act (FSA) is evaluating federal inmates, reducing risk of recidivism, and determining who can be released early

Charles Stimson 2020 (attorney; Manager of the National Security Law Program in Heritage Foundation’s Institute for Constitutional Government) 8 June 2020 “The First Step Act’s Risk and Needs Assessment Program: A Work in Progress” <https://www.heritage.org/crime-and-justice/report/the-first-step-acts-risk-and-needs-assessment-program-work-progress> (accessed 29 June 2021)

One of the main goals of the FSA was to improve criminal justice outcomes, “as well as reduce the size of the federal prison population while also creating mechanisms to maintain public safety.” Given the size of the federal criminal justice system and the number of stakeholders involved in changing such a complex system, implementing the FSA is a time-consuming and complicated process. A key component of achieving those goals was the creation and implementation of a system to evaluate the risks and needs of each federal inmate. The FSA requires the U.S. Attorney General to “develop a risk needs assessment system to be used by the federal Bureau of Prisons (BOP) to assess the recidivism risk and criminogenic needs of all federal prisoners and to place prisoners in recidivism reducing programs and productive activities to address their needs and reduce the risk.” The tool is supposed to help correctional officials identify the risk and needs of each federal prisoner, make treatment referrals to the right program(s) for each person, and determine which prisoners might be suitable for early release from prison to serve the remainder of their sentences in home confinement or a halfway house.

First Step Act has numerous reform incentives, including reduced sentence time

Administrative Office of the United States Courts 2020. (Defender Services Office Training Division ) Helpful Chart of First Step Act Earned Time Credits 10 Jan 2020 <https://www.fd.org/news/helpful-chart-first-step-act-earned-time-credits> (accessed 1 July 2021)

The First Step Act, among other things, requires the Department of Justice (DOJ) to develop a risk and needs assessment system to be used by BOP to assess the recidivism risk of all federal prisoners and to place prisoners in programs and productive activities to reduce this risk. Prisoners who successfully complete recidivism reduction programming and productive activities can earn additional time credits (i.e., "earned time credits") that will allow them to be placed in prerelease custody (i.e., home confinement or a Residential Reentry Center) earlier than they were previously allowed. The act prohibits prisoners convicted of any one of dozens of offenses identified in the chart above from earning additional time credits, though these prisoners can earn other benefits, such as additional visitation time, for successfully completing recidivism reduction programming.

Federal prisoners can get 54 days/year off of their sentence for good behavior

Administrative Office of the United States Courts 2020. (Defender Services Office Training Division ) Helpful Chart of First Step Act Earned Time Credits 10 Jan 2020 <https://www.fd.org/news/helpful-chart-first-step-act-earned-time-credits> (accessed 1 July 2021)

Good time credit results in an actual reduction of an inmate's sentence and awarded for maintaining good behavior during incarceration.  All incarcerated persons, other than those serving a life sentence, are eligible for good time credit.  The First Step Act amended 18 U.S.C. Section 3624(b) so that federal prisoners can earn up to 54 days of good time credit for every year of their imposed sentence rather than for every year of their sentenced served.

HARMS / SIGNIFICANCE

1. A/T “Non-violent/Drug offenders aren’t dangerous”

They are when they’re released. 77% of drug offenders are re-arrested for a non-drug crime within 9 years after release. Average of 5 arrests per prisoner!

Matthew Clarke 2019. (journalist)  Long-Term Recidivism Studies Show High Arrest Rates, PRISON LEGAL NEWS, May 2019 (accessed 1 July 2021) <https://www.prisonlegalnews.org/news/2019/may/3/long-term-recidivism-studies-show-high-arrest-rates/> (his numbers are cited from a May 2018 US Dept of Justice study)

Seventy-seven percent of drug offenders were arrested for a non-drug crime within the nine-year study period. During each year of the study, releasees who had nonviolent convictions were more likely than those with violent convictions to be arrested. Over the entire period, there were an average of five arrests per former prisoner, with 23% of the releasees accounting for over half the arrests. These included new criminal charges as well as arrests for alleged parole violations.

Study methodology

Matthew Clarke 2019. (journalist)  Long-Term Recidivism Studies Show High Arrest Rates, PRISON LEGAL NEWS, May 2019 (accessed 1 July 2021) <https://www.prisonlegalnews.org/news/2019/may/3/long-term-recidivism-studies-show-high-arrest-rates/>

A May 2018 U.S. Department of Justice report on state prisoner recidivism followed a sample of the 412,731 prisoners released by 30 states in 2005 – about 77% of all state prisoners released that year. Of those releasees, 89% were male, 18% were under age 24 and 54% were between 25 and 39. Blacks and whites each made up about 40% of the releasees. Of the entire study group, 32% had been convicted of drug offenses, 30% of property offenses, 26% of violent crimes and 13% of public order offenses.

Very high re-arrest rates for federal prisoners after release: 39.8% for non-violent, 64% for violent over 8 years

Matthew Clarke 2019. (journalist)  Long-Term Recidivism Studies Show High Arrest Rates, PRISON LEGAL NEWS, May 2019 (accessed 1 July 2021) <https://www.prisonlegalnews.org/news/2019/may/3/long-term-recidivism-studies-show-high-arrest-rates/>

Two reports on long-term recidivism among prisoners released from state and federal prisons showed very high arrest rates. The rate for state prisoners was 83% over a nine-year study period, while it was 39.8% for nonviolent and about 64% for violent federal prisoners over an eight-year period.

SOLVENCY

1. No rehabilitation: Parolees end up back in prison

Parolees just end up back in prison anyway. Large percentage of state prison population are parole violators

Dolan & Zimmerman 2019. (law firm, attorneys in Boulder, Colorado) 18 Oct 2019 Are parole and probation rules setting people up for failure? <https://www.dolanzimmerman.com/blog/2019/10/are-parole-and-probation-rules-setting-people-up-for-failure/> (accessed 29 June 2021)

Parole and probation were created as alternatives to prison, but in many cases the rules are so easy to violate that the system simply reincarcerates huge numbers of people. And, according to [new research](https://csgjusticecenter.org/confinedandcostly/) from the Council of State Governments (CSG) Justice Center, many of the violations are technical in nature. In other words, states are spending billions locking up people because of repeated minor violations, including missed appointments, missed drug tests, or curfew violations. The new research represents the first time this type of data has been collected in all 50 states. Nationally, the CSG Justice Center estimates the cost of incarcerating people for technical violations at approximately $2.8 billion. Overall, the cost of incarcerating people for parole and probation violations is around $9.3 billion. In Colorado, people who have violated parole or probation make up about 52% of new admissions to prison and about 19% of the overall prison population.

Already tried & failed. We’ve used parole on a wide scale, and it doesn’t rehabilitate or re-integrate prisoners

Allison Frankel 2020 (Aryeh Neier Fellow with the US Program of Human Rights Watch and the Human Rights Program at the American Civil Liberties Union) Revoked - How Probation and Parole Feed Mass Incarceration in the United States 31 July 2020 [https://www.hrw.org/report/2020/07/31/revoked/how-probation-and-parole-feed-mass-incarceration-united-states#](https://www.hrw.org/report/2020/07/31/revoked/how-probation-and-parole-feed-mass-incarceration-united-states) (accessed 2 July 2021)

Probation, parole, and other forms of supervision are marketed as alternatives to incarceration in the United States. Supervision, it is claimed, will keep people out of prison and help them get back on their feet. Throughout the past 50 years, the use of probation (a sentence often imposed just after conviction) and parole (served after incarceration) has soared alongside jail and prison populations. As of 2016, the last year for which supervision data is available, 2.2 million people were incarcerated in United States jails and prisons, but more than twice as many, 4.5 million people—or one in every 55—were under supervision. Supervision rates vary vastly by state, from one in every 168 people in New Hampshire, to one in every 18 in Georgia. Over the past several decades, arbitrary and overly harsh supervision regimes have led people back into US jails and prisons—feeding mass incarceration. According to the Bureau of Justice Statistics (BJS), in the late 1970s, 16 percent of US state and federal prison admissions stemmed from violations of parole and some types of probation. This number climbed to a high of 36 percent in 2008, and, in 2018, the last year for which data is available, was 28 percent. A different set of data for the previous year from the Council of State Governments, which includes all types of probation violations—but is limited to state prison populations—shows that 45 percent of all US state prison admissions stemmed from probation and parole violations.

DISADVANTAGES

1. The Rehabilitation Model

Link: Serving prison term in full guarantees all offenders are treated equally for the same crime

Dr. Steven A. Simon 2021 (J.D.; PhD; Associate Professor of Political Science, and Coordinator of the Program in Philosophy, Politics, Economics, and Law, Univ. of Richmond ) RE-IMPRISONMENT WITHOUT A JURY TRIAL: SUPERVISED RELEASE AND THE PROBLEM OF SECOND-CLASS STATUS, CLEVELAND STATE LAW REVIEW 19 Apr 2021 (accessed 29 June 2021) <https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=4131&context=clevstlrev>

In the period shortly after the Constitution’s ratification, the predominant view of criminal penalties was that they served a retributive purpose: to mete out the punishment that criminals deserved based on the offenses committed. This view about the aim of punishment had implications for the manner in which sentences were determined. If the penalty was intended as retribution for the offense committed, then it made sense to link the determination of the sentence tightly to the nature of the offense. The relevant variables were those differentiating one kind of crime from another. This conception of punishment’s aim, then, did not focus attention on variables differentiating one perpetrator from another. Since, unlike individual human beings, the facts of an act already committed cannot change, this view of punishment’s aim did not require an updating of the time to be served in prison based on events transpiring after the sentencing. As a result, those sentenced to prison commonly served their terms in full.

Link: Purpose of parole is to promote the Rehabilitation Model of managing offenders

Dr. Steven A. Simon 2021 (J.D.; PhD; Associate Professor of Political Science, and Coordinator of the Program in Philosophy, Politics, Economics, and Law, Univ. of Richmond ) RE-IMPRISONMENT WITHOUT A JURY TRIAL: SUPERVISED RELEASE AND THE PROBLEM OF SECOND-CLASS STATUS, CLEVELAND STATE LAW REVIEW 19 Apr 2021 (accessed 29 June 2021) <https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=4131&context=clevstlrev>

By the end of the nineteenth century, however, a major shift had occurred in attitudes regarding the principal aims of punishment. By this time, the prevailing view was that punishment should aim to rehabilitate criminals, reforming their character and reintegrating them into society. This shift in attitudes regarding the aim of criminal penalties played a critical role in the adoption of parole as an overarching approach to punishment. The guiding idea behind parole was that sentences should be administered in a manner tailored to the circumstances of particular individuals in an effort to reintegrate them into society as law-abiding members of society.

Impact: Justice abandoned. As soon as we talk about rehabilitation or anything other than giving the offender what he deserves, we abandon justice

Dr. Stuart B. Babbage 1973 (PhD theology) “C.S. LEWIS AND THE HUMANITARIAN THEORY OF PUNISHMENT” (Spring 1973) <https://biblicalstudies.org.uk/pdf/churchman/087-01_036.pdf> (accessed 29 June 2021)



2. More crime

Parole increases crime: 1) because longer sentences deter crime from being committed; 2) because criminals can’t commit crimes while they’re locked up

Hans Bader 2021 (attorney in Virginia) Is Abolition of Life Without Parole Next? 15 Jan 2021 (accessed 30 June 2021) <https://www.baconsrebellion.com/wp/is-abolition-of-life-without-parole-next/>

By reducing the amount of time inmates serve, parole could harm public safety. Studies indicate that longer periods of incarceration [deter many crimes](https://www.nber.org/papers/w6484) from being committed; they don’t merely prevent people who are already inmates from committing more crimes — although they do that, too. (See, e.g., Daniel Kessler & Steven J. Levitt, Using Sentence Enhancements to Distinguish Between Deterrence and Incapacitation, National Bureau of Economic Research Working Paper #6484 (1998)).

Shorter sentences would be bad because the “tough on crime” approach since the ‘90s has helped bring down crime rates

Prof. BARRY LATZER 2020. (emeritus professor at John Jay College of Criminal Justice, New York) 17 Feb 2020 “Democrats Prefer ‘Reforming’ the Criminal-Justice System to Punishing Criminals” (accessed 1 July 2021) <https://www.nationalreview.com/2020/02/democrats-prefer-reforming-criminal-justice-system-to-punishing-criminals/>

 The United States is still in a crime trough, with violent crime rates [down 51 percent since 1991](https://ucrdatatool.gov/Search/Crime/Crime.cfm). When crime is low, pressures mount to reduce especially punitive measures, such as long prison sentences or the death penalty. Meanwhile, progressives are also motivated by the belief that the criminal-justice system is biased against African Americans, as a disproportionate number of them are in prisons and jails. Though blacks are roughly 13 percent of the United States population, they are [31 percent](https://www.bjs.gov/content/pub/pdf/p17.pdf) (see table 3 of the BJS report) of state prison inmates. (No one has convincingly demonstrated that this gap is the result of anything other than [a disparity in](https://ucrdatatool.gov/Search/Crime/Crime.cfm) crime rates, so the racism allegation is unsupported.) The truth is that we are already in a period of retrenchment in criminal justice, a cutting back on arrests, prosecutions and incarceration. Imprisonment rates have fallen steadily since 2007, dropping by 15 percent. For African Americans the decline was 31 percent. The Democratic candidates for president have latched on to the cutback trend, some a lot more aggressively than others, whereas President Trump, to the extent that he takes a stance at all, has chosen a more traditional road, aiming at crime control rather than system reform. The risk in the Democrats’ leniency approach is that it may fuel another crime wave, a long-term crime boom, such as the terrible ordeal the country endured from the late 1960s to the early 1990s. The weakening of the system (fewer arrests and imprisonments, shorter sentences) was a major factor in the late 60s rise in crime. On the other hand, however, past crime booms have had multiple causes in addition to a weak criminal-justice system, such as a rise in the young male population. So far at least, these other crime correlates are not currently present.

3. Harms victims’ and their families

Parole hearings are painful to victims and their relatives. Example: The Blackwell family in Maryland

Kevin Blackwell 2015 (relative of 2 murder victims in Maryland) 26 Jan 2015 BALTIMORE SUN <https://www.baltimoresun.com/opinion/bs-ed-parole-letter-20150126-story.html>

When the convicted murderer was up for parole, my mother and I had to testify three times in order to have him spend as much time in prison as possible. This is the part of the criminal justice process that no one speaks of as to how difficult it is for the victim's family. We had to sit in a room at the prison, literally feet away from the murderer of our loved one, and try to convince the parole board that he should remain in jail. During the first two hearings in our case, the murderer denied committing the crime even though he pleaded to the crime in court. At the third hearing, he finally admitted doing the crime but placed the blame on my brother. Words cannot describe how it feels to sit in the room and listen to the denials and then listen to an explanation of the event that in no way matched the evidence.

4. Perverts justice

Link: Offenders should serve their full term because that’s what the jury decided

**[Referring in context to the abolition of parole in Virginia]**

Rusty Bishop 2015. (family of murder victim; former deputy sheriff and court bailiff) FOR VICTIMS' FAMILIES, PAROLE ADDS TO THE PAIN 10 July 2015 <https://www.pilotonline.com/opinion/letters/article_95967817-c724-5beb-ba4b-243ae78da6af.html> (accessed 1 July 2021)

On Jan. 5, 1985, my dear cousin Julie Crockett was murdered at the Oceanfront while she worked at my uncle's small hotel. The convicted killer was sentenced to 50 years in prison. This was before the 'no parole' law referred to by Davis, which was enacted by Gov. George F. Allen in 1994. Even though my cousin's killer had a criminal record dating back to his juvenile days, he had a mandatory release date after 22 years and has been out of prison about eight years. He served less than half his sentence for first-degree murder. My faith has moved me to forgive the killer for what he did, but he should have served the entire 50 years, because that is what a jury gave him.

Impact: Perverts justice by insulting crime victims, deceiving juries, damaging the legal system and harming communities

**[Referring in context to the abolition of parole in Virginia]**

Rusty Bishop 2015. (family of murder victim; former deputy sheriff and court bailiff) FOR VICTIMS' FAMILIES, PAROLE ADDS TO THE PAIN 10 July 2015 <https://www.pilotonline.com/opinion/letters/article_95967817-c724-5beb-ba4b-243ae78da6af.html> (accessed 1 July 2021) (brackets added)

As a deputy sheriff and a bailiff in circuit court for several years, I saw firsthand how parole worked before [Virginia Gov. George] Allen changed it. When a jury asked the judge how long a convicted criminal would actually serve based on a given sentence, jury members were told that they could only consider a sentence as if the criminal would serve the whole sentence. This was an insult to all of us and a disservice to crime victims, who couldn't even trust the legal system. Any change to the 'no parole' law would be a slap in the face to all crime victims and would serve as another example of why we cannot trust our elected officials to defend and support the best interests of the community.