THE SQUARE ONE PROJECT

REIMAGINE JUSTICE

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A CALL FOR NEW CRIMINAL JUSTICE VALUES

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Who are we? Ever since we could ponder such a question, we have looked to philosophers, theologians, and scientists for answers. And yet, maybe we don't need to apprehend the heavens or dissect the atom to understand our inner nature. Maybe the answer is simpler: we are what we value.

Accordingly, this paper seeks to answer the question: what does American criminal justice reveal about what we value and who we are? I first explain why our criminal justice values are so intertwined with our identity. I then briefly discuss the historical backdrop of the current values underlying criminal justice. And finally, I provide a revised set of values and argue that they better reflect who we are today. □

OUR VALUES ARE OUR IDENTITY

Laws are supposed to reflect societal values. For both good and bad, we have seen this throughout American history. For example, both the Constitution and the Bill of Rights reflect our desire for the recognition of inalienable rights and the need to safeguard them from government overreach.

Unfortunately, due to fear and intolerance from segments of our society, we also created laws, like those of Jim Crow, that failed to recognize the inalienable rights of black Americans. Law, however, has continued to evolve alongside new notions of justice, changing the mission of our criminal justice apparatus and shifting power to different players within these systems.

A rehabilitative notion of justice, justice focused on reforming individual behaviors, has traditionally awarded more authority to judges and parole officers; while notions of retributive justice, justice articulated as proportional punishment for those who commit wrongs, have awarded power to Congress and the greater public (Gertner 2010:691). Historical changes in values have led to the enactment of laws such as mandatory minimums and sentencing enhancements, and those laws have led to a change in justice outcomes. There are few better examples of this than the sharp increase in the use of incarceration over the decades following the passage of "tough on crime" legislation in the 1970s and '80s. Here, values directly impacted not only the diction of our criminal code, but also the mission of the justice system as demonstrated through the use of increasingly harsh enforcement and punishment—and the disregard of the collateral consequences of that punishment.

Individual and institutional values are also similarly displayed in the day-to-day rhetoric and decisions of lawmakers and practitioners who carry out their duties

LOCAL JUSTICE OFFICIALS HAVE SUBSTANTIAL ABILITY TO INFLUENCE AN INDIVIDUAL'S PATHWAY INTO OR EXIT FROM THE JUSTICE SYSTEM

within the criminal justice field. Compare the language used by U.S. Attorney General Jeff Sessions and U.S. Representative Mia Love, for example: Sessions often indiscriminately refers to those who commit crime as "hardened criminals" while Love describes individuals who are incarcerated as women and mothers (Associated Press 2018; Love 2017). These word choices perpetuate different images of people behind bars and can either reduce public stigmatization of those convicted of crime or increase it. Beyond rhetoric, however, values often translate into changes in practice. In an age of tight budgets and competing demands, criminal justice practitioners prioritize programming based on competing values. A 2009 study of criminal justice administrators, including prison wardens and probation and parole administrators, demonstrated that prison wardens who deemed substance abuse treatment to be highly valuable were more likely to report the adoption of evidence-based practices within their respective facilities (Henderson and Taxman 2009). They were also more likely to be located in the Northeast or Midwest (Henderson and Taxman 2009).

Moreover, local justice officials, such as police officers, prosecutors, and judges, have substantial ability to influence an individual's pathway into or exit from the justice system. A police officer, for example, may have the choice to arrest an individual having a mental breakdown or to escort them to a hospital or public health facility. Similarly, a reform-minded district attorney may decide to send a greater number of individuals to diversion programs instead of pursuing prosecution. Alternatively, a "tough on crime" judge may refuse to sentence any eligible individuals to a local community-based sentencing alternative and insist on giving them the maximum penalty allowed by law. Since agencies within criminal justice often operate within silos and are armed with divergent cultures and incentives, a coherent value structure is necessary to unify all policymakers and practitioners behind a common goal and to create a more effective, transparent, and cohesive apparatus.

Our values can also be examined through how we fund priorities. Indeed, if a core value of the justice system is rehabilitation, one would expect to see increased investment in public defense, alternatives to incarceration, rehabilitative programming, re-entry services, and treatment. In comparison, if a core value is incapacitation, one would expect increased funding for prosecution, policing, and incarceration. If the lawmakers who fund the various justice agencies do not hold similar values as the practitioners who run them, the latter may find themselves without the funding or resource support necessary to accomplish their respective missions, making reform all the more difficult. □

VALUES OF THE PAST AND PRESENT: REHABILITATION, RETRIBUTION, DETERRENCE, AND INCAPACITATION

The origins of the American criminal justice system in colonial times were marked by a belief in retribution (Gertner 2010:694). Punishments were often binary, and the legal code was simple and easily understood. However, if jurors believed the consequences of guilt too severe, they were allowed to show mercy by arriving at a decision of "not guilty" (Gertner 2010:692-693).

Rehabilitation emerged as the predominant value of the criminal justice system during the early 1900s (Gertner 2010:695). In 1959, esteemed legal scholar Francis Allen asserted that the current "rehabilitative ideal" was based upon a couple of presumptions: (1) that preexisting and environmental factors influence how humans behave, and that (2) justice serves a "therapeutic function" when it engages with those who commit crime (Allen 1959:226; Gertner 2010:696). Allen noted that this research and belief was permeated by the idea "that such measures should be designed to effect changes in the behavior of a convicted person in the interests of his own happiness, health, and satisfactions and in the interest of social defense" (Allen 1959:226). Thus, judges and the broader correctional system sought to uphold these ideals. For much of the 20th century, American judges had largely determined sentences with broad discretion and little oversight from legislatures or appellate courts (Gertner 2010:695-696). However, in practice,

this system created large disparities in sentencing outcomes, and rehabilitative programming was "often poorly implemented and funded," which undermined the chance for positive results for people who offended (Mackenzie 2001:7-8).

THE VALUE OF RETRIBUTION GAINED PROMINENCE DURING THE 1970S AND REMAINS ONE OF THE MOST STRONGLY HELD VALUES IN CRIMINAL JUSTICE

In the 1970s and 1980s, rehabilitation was increasingly replaced by the penal theories of retribution, deterrence, and incapacitation (Allen 1981). The value of retribution gained prominence during the 1970s and remains one of the most strongly held values in criminal justice. During this time, Andrew Von Hirsch presented a new articulation of retribution that replaced the concept of an "eye for an eye" with the theory of "just deserts," which featured punishment scaled according to the severity of one's crime (Von Hirsch 2007:414-415). In contrast to rehabilitation, which focuses on correcting criminal behavior and, thus, minimizing future harm, retribution looks at past behavior (i.e. the crime itself and past crimes committed by the individual) when determining punishment (Von Hirsch 2007:415). Believers in proportional punishment, a key component of retribution, found error with the disproportional, severe penalties that would come to be enacted in the name of deterrence. The value of "just deserts" and proportional punishment informed the enactment of sentencing guidelines in the 1970s and 1980s, which, in turn, helped reduce sentencing disparities among those who committed similar offenses and promoted a more consistent form of punishment (Travis, Western, and Redburn 2014:325).

However, the value of deterrence resulted in the enactment of new legislation that contradicted the aim of retribution and proportional punishment. Those who claimed deterrence as a key value of the criminal justice system believed that foreseen consequences influence the rational individual's choice of action (Paternoster 2010:782). Therefore, the criminal justice apparatus should invoke fear of punishment in order to deter future criminal activity.[1] In this pursuit, laws, courtroom tactics, and policing practices evolved in an effort to increase the certainty, severity, and celerity of punishment. Scholars credit this belief, along with the more present-oriented value of incapacitation, with the enactment of mandatory minimums, "three strikes" laws, and preventative techniques such as "hot spots" policing (Paternoster 2010:766; Travis et al. 2014:322). According to scholars Jeremy Travis, Bruce Western, and Steve Redburn (2014:325), new deterrence

THE CERTAINTY OF PUNISHMENT MAY BE A MORE EFFECTIVE MODE OF DETERRENCE, WHILE THE SEVERITY OF PUNISHMENT IS A LESS OR COMPLETELY INEFFECTIVE DETERRENT

penalties often corroded the previous intent of proportionality: "Low-level drug crimes often were punished as severely as serious acts of violence. Under three strikes laws, some misdemeanors and minor property felonies were punished as severely as homicides, rapes, and robberies."

Studies have since suggested that the certainty of punishment may be a more effective mode of deterrence, while the severity of punishment is a less or completely ineffective deterrent (Kovandzic, Sloan, and Vieraitis 2004; Kleck 2005; Tonry 2018; Von Hirsch 1999).[2] However, even the effectiveness of punishment that is certain has been questioned and is thought to differ widely based on an individual's offense, peer network, and previous experiences with crime and the justice system (Matthews and Agnew 2008:109; Tomlinson 2016:35).[3] Research has also significantly challenged the power that celerity has as a deterrent, suggesting that deterrence altogether may be ill-suited as the sole value of our criminal justice system (Miranne and Gray 1987; Zettler et al. 2015).[4]

Some scholars have argued that the newly enacted deterrence policies were responsible for a portion of the subsequent drop in the national crime rate throughout the 1990s. Others, including Raymond Paternoster, Alfred Blumstein, and Richard Rosenfeld, have asserted that this crime reduction may have been due to the incapacitation of individuals rather than simple deterrence (Pasternoster 2010:802–803; Blumstein and Rosenfeld 2008:22). While deterrence utilizes the threat of punishment, incapacitation restricts an individual's freedom, which limits his or her ability to commit a criminal offense. The value of incapacitation is predominantly seen in the practice of incarceration or supervision. In the time period following the enactment of deterrence and incapacitation policies, the number of incarcerated individuals increased substantially.

Aside from policies aimed at deterrence and incapacitation, Paternoster and other scholars suggested other factors that may have influenced this crime drop—during the same decade, Canada's national crime rate and use of incarceration decreased concurrently (Pasternoster 2010; Blumstein and Rosenfeld 2008:22, 34; Rosenfeld and Messner 2009:447). Thus, while incapacitation may prevent an individual from committing crime temporarily (although narrative accounts demonstrate that criminal activity often continues throughout prisons or jails), it is hardly a tenable, or just, long-term solution. Indeed, in a society in which the value of incapacitation is paramount, the time period in which government should restrict an individual's freedom is seemingly limitless; there is almost always room to argue that the release of convicted individuals carries the risk of future harm, justifying incapacitation in the name of public safety. Yet perpetual incapacitation is not an equal or just punishment for all or most crimes, nor does locking individuals up forever address the underlying circumstances which may promote criminal activity. Such a society would be constrained to an increasingly costly chain of action in which more individuals sit in prisons, their communities are left broken, and society is only marginally—if at all—safer. Therefore, although a possible temporary fix to crime, incapacitation should not be a principal value to which we should aspire.

These values have continued to evolve amidst societal changes. Modern-day scholars differentiate between contemporary retributive theorists, who believe "punishments may or must be imposed because they are deserved, but to be just they must be closely apportioned to the seriousness of the crime," and contemporary consequentialist theorists, who believe "punishments may or must be imposed if doing so will achieve valid preventative goals, but to be just they must be no more severe than is needed for them to be effective" (Travis et al. 2014:322).[5] The value of rehabilitation has returned to the center of the criminal justice reform movement, followed by a call for more effective rehabilitative, reentry-focused programming, and increased evaluation and awareness of implementation integrity.[6] However, the American criminal justice system lacks a core—and agreed upon—system of values from which respective agents of justice may derive aligned missions and purpose. Accordingly, individuals across the political spectrum agree that the current values and principles of our criminal justice system need to be redefined and our institutions reformed to match these values (Atkinson 2018; Rizer and Trautman 2018). □

REDEFINING OUR VALUES: THE NEED FOR LIMITED GOVERNMENT, PARSIMONY, AND LIBERTY

A LIMITED GOVERNMENT

Our nation was founded on the principle of inalienable rights, with government's primary purpose to secure and protect those rights – namely, life, liberty, and the pursuit of happiness.

In exchange for this protection, individuals give government the power to regulate human activity, "so far as is required for the preservation of himself and the rest of society," and the power to enforce such regulations (Locke 1689). This Lockean articulation of limited government is perhaps the foremost value of our criminal justice system, because it is the value upon which every other value is built. Yet, current criminal justice policies display rampant irreverence for this principle. The overcriminalization of human behavior, the infliction of arbitrary collateral consequences after punishment, and the subsequent disregard for an individual's life, liberty, and happiness following involvement in the process of justice all conflict with the principle of limited government. The simple truth is a government that acts arbitrarily and capriciously against its people, by definition, cannot claim to be a limited government.

A return to our founding principle of limited government, therefore, would be marked by the eradication of laws that greatly infringe on personal liberties and yield little or no benefit to public safety. Currently, the nation's penal systems often inflict punishments upon individuals for acts that cause little harm to others. This system of "overcriminalization" has created a large expanse of laws about which the majority of individuals are unaware, but for which they may be prosecuted. Of this phenomenon, former U.S. Attorney General Edwin Meese III (2010) warned: "We are making and enforcing far too many criminal laws that create traps for the innocent but unwary, and threaten to turn otherwise respectable, law-abiding citizens into criminals."

A simple, widely understood set of laws clarifies the principles of the nation, makes it easier to identify right from wrong, and limits government power to enforce the laws that matter most to public safety (Meese 2010). In contrast, today's legal system, in which a 12-year-old may be arrested for eating junk food on the subway or an elderly grandmother may be criminally charged for not trimming her hedges, fails to be widely understood or to limit government involvement to matters that protect others from harm (Meese 2010).

Limited government should also be illustrated in policies that impact how an individual is held accountable. For example, the shackling of pregnant women, particularly during labor and birth, greatly reduces a mother's personal liberty and human dignity, and causes potential harm both to her and her child while providing little benefit to public safety (Ferszt et al. 2018:19). This abhorrent practice has already been limited in several states, but has yet to be eradicated throughout the country (Ferszt et al. 2018:20). Similarly, the use of solitary confinement, if used at all, should be minimized to situations in which an individual presents a severe, credible harm to the safety of others and should also be limited only to the amount of time absolutely necessary to prevent such harm. Placing individuals in solitary confinement has been shown to have numerous ill effects, and harrowing accounts from those who have experienced months, years, and even decades in solitary confinement bring to light its degradation of human dignity and mental health (Haney 2018; Penn 2017). If the goal of punishment is to bring about justice for victims and keep society safe, then the ways in which we punish must respect and restore the integrity of the human mind rather than destroy it.

Moreover, a society that values limited government as a key principle of criminal justice would call for a system of accountability that intervenes at the lowest level of authority first, with the power of enforcement as proximate to the people as possible. So, for example, when a teenager runs away or is truant, parents or guardians should be the authority figures involved in dealing with the consequences of such behavior, rather than the justice system. This is also reflected today in the concept of community-based programming, which by design, tailors programming to the individual's needs within their own community instead of removing individuals to incarcerate them in state prisons or local jails. Pre- and post-arrest diversion programs allow for a similar concept; local prosecutors can assess whether an individual is better suited for punishment at the state level or for help through community-based programs. Thus, to the extent possible, government involvement

is more limited, and the decision-making power is in the hands of the localities that typically bear the consequences of whether or not a given punishment is successful. If rehabilitation is achieved, the community prospers due to reduced crime and increased safety, better local labor activity, and greater numbers of re-unified families. If policies are poorly implemented, the community suffers from the opposite trends.

Finally, the concept of limited government should be demonstrated in the pursuit and implementation of the most cost-effective manner of accountability possible—a return on investment.

A SOCIETY THAT VALUES LIMITED GOVERNMENT AS A KEY PRINCIPLE OF CRIMINAL JUSTICE WOULD CALL FOR A SYSTEM OF ACCOUNTABILITY THAT INTERVENES AT THE LOWEST LEVEL OF AUTHORITY FIRST, WITH THE POWER OF ENFORCEMENT AS PROXIMATE TO THE PEOPLE AS POSSIBLE

The overcriminalization and overincarceration of justice-involved individuals has resulted in the depletion of state coffers across the nation. Indeed, it has been the high cost of failed policies that first awakened reform in states such as Texas. Policies that limit an individual's ability to become a productive, contributing citizen upon reentry should be eliminated. For example, occupational licenses that restrict employment due to a criminal record unrelated to the duties of the position should be removed and unnecessarily lengthy or ill-suited supervision requirements reassessed. Moreover, data collection and program evaluation should be the hallmarks of criminal justice, not the exception to the rule. Local, state, and federal policymakers should be continuously seeking to perfect their accountability methods to increase an individual's likelihood of rehabilitation and, therefore, to reduce crime while wisely stewarding taxpayer dollars. Thus, tracking the outcomes of criminal justice policies and programs and measuring their corresponding return on investment is imperative to promoting a cost-effective, limited justice apparatus.

WHILE LIMITED GOVERNMENT SEEKS TO SCALE BACK AND LOCALIZE ENFORCEMENT OF THE LAW, PARSIMONY FOCUSES ON SCALING BACK THE HARMFUL IMPACT OF PUNISHMENTS ON THE INDIVIDUAL

PARSIMONY

Parsimony, a principle that respects the concept of self-restraint and limited government, may also present a unifying value for our criminal justice system. Parsimony is delineated by Travis et al. (2014:326) as the belief that "[a]ny punishment that is more severe than is required to achieve valid and applicable purposes is to that extent morally unjustifiable." This principle is infused by "the normative belief that infliction of pain or hardship on another human being is something that should be done, when it must be done, as little as possible" (Travis et al. 2014:326). Although longstanding, this belief was built upon the recent arguments of those such as Norval Morris and Michael Tonry (1990), who articulated the need for parsimony in choosing whether or not to use incarceration as a form of punishment. The choice to incarcerate, they argued, should only be made "to affirm the gravity of the crime, to deter the criminal and others who are like-minded, or because other sanctions have proved insufficient" (Morris and Tonry 1990:13). Parsimony contrasts with the value of proportionality in that it "requires an active search for non-coercive ways of restoring dominion," and does not necessitate equally applied punishment among those who commit similarly severe crimes (Walgrave 2012:143). Instead, parsimony requires an understanding of the individual and the best, least-severe method of accountability.

Parsimonious punishment would result in monetary and resource savings as states concentrate their resources on holding persons accountable in the least detrimental manner possible. Moreover, Jamie Fellner (2014), former senior advisor of the U.S. program of Human Rights Watch, asserts that parsimony is critical to sentencing reform as "unnecessarily harsh sentences make a mockery of justice." Parsimony may, therefore, reduce the current concentration of the collateral consequences following incarceration among impoverished and minority communities, while also restoring the legitimacy of criminal justice (Travis et al. 2014:327). Daryl Atkinson (2018), a senior fellow with the Center for American Progress, articulates the process of arriving at parsimonious punishment: "[S]ociety must consider whether the state's intrusion on an individual's liberty is the minimum necessary intervention to achieve public safety and wellness."

Thus, while limited government seeks to scale back and localize enforcement of the law, the concept of parsimony focuses on scaling back the harmful impact of punishments on the individual. In light of the fact that 95% of those who are currently incarcerated in state prisons will return to society at some point in their lives, parsimony begets the question of whether or not the given form of punishment prepares the individual for that reality or whether, due to unnecessarily severe punishment, it simply makes their reentry more difficult (Bureau of Justice Statistics 2018).

LIBERTY

There is perhaps no better way to judge our values than through our criminal justice system. As Russian novelist Fyodor Dostoyevski wrote, "The degree of civilization in a society can be judged by entering its prisons" (Shapiro 2006:210). Precisely because it's the system that, among other functions, was designed to protect our cherished liberty.

The word "liberty" is used frequently but seldom understood in the United States. It is written on the tombs of our respected men and women, etched on our great buildings, and perhaps no other word evokes as much emotion and political reaction. Indeed, it was the word of power for both the slave chained to a post, as well as the master who seceded from the "oppressive union." But because of the power of this word, it can serve as a common thread in the attempt to define our values. Indeed, this thread is intertwined with the concepts of limited government and parsimony. Liberty represents a core principle of America's founding and American civil society. There are many interpretations, but for the purposes at hand, we will rely on five articulations of liberty presented by Carl Eric Scott (2014): (1) "natural rights liberty" – the natural rights we expect government to protect; (2) "classical-communitarian liberty" – i.e. self-governance; (3) "economic-autonomy liberty;" (4) "progressive liberty" – articulated by Scott as "the social justice of the national community;" and (5) "personal-autonomy liberty" – the right for an individual to make decisions according to one's own mores.

AN INDIVIDUAL'S LIBERTIES SHOULD NOT BE PERMANENTLY FORSAKEN DUE TO AN INFRACTION OF THE LAW

In its current form, criminal justice broadly oversteps the bounds of liberty in several ways. "Natural rights liberty" is violated when the right of private property is desecrated by practices such as civil asset forfeiture. "Classical-communitarian liberty" is forsaken when those who commit crime are permanently barred from casting a vote for their elected officials. "Economic-autonomy liberty," also known as economic individualism, is prevented when a criminal record seals off opportunity for those returning to society, as when occupational licensing boards arbitrarily ban individuals from practicing their skillset. It is similarly prevented when other necessities for employment—such as stable housing and a driver's license—are unable to be obtained. "Progressive liberty" fails to be realized when large racial disparities prevail in the system, both in whom we choose to prosecute and in how we punish individuals for their actions. Finally, "personal-autonomy liberty" is disregarded when the criminal code evolves to include a litany of crimes that do not warrant government enforcement but should remain in the hands of private decision makers and public norms.

While the commission of crime is naturally followed by enforcement of the law and thus the removal of several aspects of one's liberty, criminal justice can re-institute the value of liberty by reinstating those freedoms unnecessarily taken from justice-involved individuals during their period of punishment and by restoring the full rights of citizenship after punishment is served. For example, criminal justice can promote economic autonomy by training individuals in new skillsets through work-release programs, removing criminal records via expungement, and helping individuals secure stable housing, appropriate transportation, and the documentation necessary to find stable employment. Moreover, classical-communitarian liberty can be granted through the restoration of voting rights, and progressive liberty through the critical assessment and reform of policies and norms resulting in the disparate treatment of races. An individual's liberties should not be permanently forsaken due to an infraction of the law. Rather, our methods of accountability should uphold the value of liberty by removing only those liberties conflicting with the necessary, parsimonious punishment and by preparing and granting individuals all the duties of citizenship upon their release.

THIS IS ONLY THE START OF THE CONVERSATION

Who we are and the values tied to that question have some distinct characteristics in the United States. They are defined by our incredible and storied past. We are a nation born from a revolution of ideals and out of a civil war rooted in the oppression of those very ideals. We looked evil in the face and stopped the Nazi empire but, at home, subjected many of our citizens to a regime of hate and intolerance. Indeed, America is not a monolith, and can be, at times, a paradox of itself.

But a core set of values can weave together different segments of society with diverse perspectives and biases. The values have to be shared across the top levels of policy-making power and must have buy-in from practitioners in order to be successfully implemented. And ultimately, they must also have public backing to enjoy longer-term stability.

In today's America, criminal justice lacks a cohesive set of values from which policymakers and practitioners may define their missions and align their purpose. During various stages of history and with varying levels of support for each individual value, scholars have argued for and assessed the efficacy of instituting rehabilitation, retribution, deterrence, and incapacitation as the core values from which laws and practice should be derived. Yet research demonstrates that, in many cases, these values have failed to uphold the truest notions of justice, to respect human dignity, and to restore public safety. Instead of solely embracing these principles of old, those looking to redefine the core values of the criminal justice system should integrate the values of limited government, parsimony, and liberty into a new mission – one in which society is safer, those who commit crime are transformed, and liberty is preserved. □

ENDNOTES

1 Deterrence theory is thought to have evolved from the works of Cesare Beccaria (1764) and Jeremy Bentham (1789). For a recent overview of deterrence theory, see Tomlinson 2016.

2 Tomislav Kovandzic et al. (2004) found that three strikes laws did not reduce crime rates, and Gary Kleck et al. (2005) found that surveyed individuals' perceptions of punishment depended little on the actual levels of punishment seen in the aggregate community. This is in direct contradiction to a core tenet of deterrence theory which assumes individual perceptions of punishment are formed, in part, based on how individuals are punished in the aggregate; and therefore, if aggregate punishment is marked by severity, celerity, and certainty, individuals will take notice and be deterred from committing crime. Michael Tonry (2017) provides a summarized account of research regarding the impact of severity on deterrence in an online article to be published in a forthcoming book.

3 Shelley Matthews and Robert Agnew (2008) find that the impact certainty of punishment has as a deterrent of future crime depends on youth's peer groups. Those with few or no peers engaged in delinquent behavior are more likely to curtail future criminal activity due to certain punishment.

4 In an older general deterrence study among male college students, Alfred Miranne and Louis Gray (1987) found that the celerity of punishment was not an effective general or specific deterrent. In a more recent study, Zettler et al. (2015) assessed whether the celerity of arrest (i.e. swiftness of punishment following a criminal act) impacted 3-year recidivism rates among criminal defendants; scholars found that celerity only had a small, significant effect as a deterrent with an increasingly diminished impact the longer the time period between the criminal act and arrest.

5 Other scholars, such as Mark Tunick (1992), have argued for a form of consequentialist retribution, in which society "is to take the retributive ideal as far as it goes, and only when it can go no further, to invoke considerations normally taken as utilitarian."

6 For a review of literature evaluating current reentry plans see Doleac 2018.

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