

# Extraordinary sentences and the proposed police surge

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**D**urlauf and Nagin (2011, this issue) argue that if we want both to reduce crime and to reduce imprisonment in the United States, then we need to redesign our sentencing policies and policing practices based on a keener understanding of deterrence. Channeling the 18th-century Italian philosopher Cesare Beccaria, they contend that the certainty of punishment is a far greater deterrent to crime than the severity of punishment. Their argument centers on the specific roles that sentence lengths and the police play in deterring criminal activities. They marshal considerable evidence demonstrating that increasing the severity of punishments by extending sentence lengths does little to deter crime, but more and smarter policing does. Providing the police with greater resources and changing how they operate increase the likelihood that an offender will be apprehended and punished. Doing so would alter potential offenders' calculations of risk, making them less likely to commit a crime. Durlauf and Nagin's first main policy prescription—repealing or greatly restricting lengthy mandatory minimum sentences—is sensible but too timid given the evidence they present. Their other main recommendation—reallocating more resources to the police to reduce crime and to reduce the imprisonment rate—is more problematic.

### **Sentence Lengths**

Based on their review of the research, Durlauf and Nagin (2011) contend that imprisonment and lengthy sentences do not necessarily deter offenders and would-be offenders from committing a crime. The most persuasive studies amid this admittedly small body of literature “suggest that increases in the severity of punishment have at best only a modest deterrent effect” (p. 31). All things being equal, the recidivism rate for people sentenced to prison, regardless of sentence length, is higher than for those who receive alternative

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sanctions (Nagin, Cullen, and Jonson, 2009). It also seems that increasing sentence lengths considerably does not deter crime. For example, sentencing enhancements for offenders who use a gun when committing a crime apparently have not reduced the use of guns.<sup>1</sup>

Durlauf and Nagin (2011) discuss several reasons why longer sentences do not necessarily deter criminal behavior and reduce crime. Although we still need to know much more about what determines criminal decision making, we do know that offenders tend to be present oriented. Thus, lengthening a sentence from, for example, 10 to 15 years for a certain crime is unlikely to have much of an effect on whether someone commits that crime or not. Mounting—but not airtight—evidence is growing that prisons are criminogenic for many offenders for a variety of reasons, so sending certain people to prison actually might increase the crime rate. Finally, compelling evidence indicates that people age out of crime. Researchers persistently have found that age is one of the most important predictors of criminality. Criminal activity tends to peak in late adolescence or early adulthood and then declines as a person ages (Laub and Sampson, 2003). Older inmates who have served lengthy sentences are much less likely to return to prison because of the commission of a serious crime than younger inmates who have served shorter sentences.

Because long prison sentences have such a minimal impact on reducing the crime rate, Durlauf and Nagin (2011) recommend that highly punitive mandatory minimum sentences like California's infamous three-strikes law be repealed or restricted to serious offenses. Given all the evidence they present and the enormity of the crisis of mass incarceration in the United States, this policy recommendation is surprisingly timid. It begs the pressing question of what to do about all the people now serving extremely long—in some cases, endless—sentences.

Faced with severe budget shortfalls, many states have begun talking about how to reduce their prison populations. Their attention primarily has been focused on how to shorten the prison stays of nonviolent offenders and on how to keep them out of prison altogether. However, approximately half the inmates in state prisons are there because they have been convicted of violent offenses. If the evidence is so compelling that most offenders age out of crime and that long sentences do not deter much crime, then why not recommend that the parole and commutation processes be revitalized so that even people who have committed serious crimes get a chance to prove they are rehabilitated and should be released? Why not make a forceful call to abolish life in prison without the possibility of parole and to make all life sentences parole eligible? And why not recommend a renewed commitment to releasing elderly or gravely ill inmates through geriatric or compassionate release provisions?

These suggestions are not as radical as they first seem. Until the early 1970s, even in a hard-line, retributive state like Louisiana, a life sentence typically meant 10.5 years. For

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1. Durlauf and Nagin (2011) do mention one important caveat here. Although gun use laws have increased the length of sentences on the books, they seem not to have increased the actual lengths of the sentences meted out.

almost 50 years, the 10/6 law, enacted in 1926, governed life sentences in Louisiana. All lifers, regardless of their crime, were routinely released in Louisiana after serving approximately 10 years if they had good conduct records and the warden's support. The years inmates spent in Louisiana's infamous Angola prison were often brutal and dehumanizing, but they nearly always had an end date. Almost overnight that changed. In 1973, lawmakers raised the minimum to be considered for clemency to 20 years. Three years later, they raised it to 40 years, and in 1979, they mandated that all life sentences meant life without the possibility of parole (Nelson, 2009: 17). In 1970, only 143 people were serving life without parole sentences in Louisiana. By 2009, it had mushroomed to 4,270 (Corley, 2009: 29), or approximately 11% of the state's entire prison population.

Life sentences have become so commonplace that approximately 1 out of 11 people imprisoned in the United States is serving one (Nellis and King, 2009: 3). The total life-sentenced population in the United States is approximately 141,000 people or roughly twice the size of the entire incarcerated population in Japan. Nearly one third of these life-sentenced offenders have been sentenced to life in prison without the possibility of parole (Nellis and King, 2009: 2). Approximately 1,755 people currently are serving life without parole sentences for offenses committed when they were juveniles, a sentencing practice virtually unheard of in the rest of the world (Nellis and King, 2009: 3). These figures on life sentences do not fully capture the extraordinary number of people who will spend all or much of their lives in prison. They do not include the huge number of prisoners serving so-called basketball sentences that exceed a natural life span.

The recidivism rate for lifers is much lower by far than for other offenders. A 2004 study by The Sentencing Project found that released lifers were less than one-third as likely to be rearrested within three years compared to all released prisoners (Mauer, King, and Young 2010: 24). Two-thirds of prisoners released in 1994 were rearrested within three years compared to only 1 in 5 lifers released that same year (Mauer, King, and Young 2004: 24). Only 7 of the 285 lifers in Pennsylvania who were released on parole between 1933 and 2005 after their sentences were commuted were recommitted to prison for a new crime. Of the nearly 100 commuted lifers who were ages 50 and older when they were released, only one was sent back to prison for a new crime (Advisory Committee on Geriatric and Seriously Ill Inmates, 2005: 77). These findings are consistent with other studies documenting the relatively low recidivism rate of people convicted of murder and of people on death row.<sup>2</sup> Bedau (1982: 173–74) found that less than 1% of released murderers were returned to prison for committing a subsequent homicide.

Keeping so many older prisoners incarcerated does not reduce crime and is extremely expensive. It vacuums up criminal justice dollars that might be spent more profitably on something else. The population of imprisoned elderly adults is growing rapidly. Between

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2. For a summary of these research findings, see Marquart and Sorensen (1989: 9–10).

1999 and 2007, the number of people ages 55 or older in state and federal prisons grew by nearly 77%, and those ages 45–54 grew by almost 68% (Vera Institute, 2010: 4). Because of their greater need for expensive health-care services, prisons spend two to three times more to incarcerate an elderly inmate than a younger one or, on average, approximately \$70,000 a year (Anno et al., cited in Vera Institute, 2010: 5).

Many public officials have expressed interest in releasing infirm elderly inmates who do not pose a threat to society. One of the major obstacles is that older prisoners are more likely to have been incarcerated for a serious violent offense. A 2006 report on North Carolina prisoners found that almost 60% of inmates ages 50 and older were serving time for violent or sex crimes. More than half of them were serving a sentence of life or 10 years to life (Price, 2006). By late 2009, 15 states and the District of Columbia had established provisions for geriatric release (Vera Institute, 2010: 2). However, these jurisdictions rarely released elderly inmates because of political considerations, public opinion, the narrow criteria for eligibility, Byzantine procedures that discourage inmates from applying for release, and the complicated and lengthy referral and review process that often drags on until the time an inmate dies in prison (Vera Institute, 2010: 2). Some of these jurisdictions have yet to release a single elderly inmate using the geriatric early-release provisions.

Governors and other public officials today remain deeply opposed to releasing serious offenders, no matter how many decades they have served behind bars, no matter how sick they are, no matter the pile of evidence that they have turned their lives around, and no matter the mounting evidence about deterrence and aging out of crime. In 2008, Governor Arnold Schwarzenegger and prosecutors in California vehemently opposed the compassionate release of Susan Atkins, a former follower of Charles Manson who was convicted in the infamous 1969 Tate-LaBianca murders. Atkins, who was paralyzed and dying of brain cancer, had become a model prisoner in her 40 years behind bars. In opposing her release, Schwarzenegger said, “I don’t believe in [compassionate release]. I think they have to stay in, they have to serve their time.” He went on to say, “[T]hose kinds of crimes are just so unbelievable that I’m not for compassionate release” (CNN, 2008).

By contrast, pardons and commutations were a vital feature of the U.S. criminal justice system throughout the 19th century and much of the 20th century (Whitman, 2003). Presidents and governors regularly invoked their powers of executive clemency to reduce prison sentences, remit fines, and spare the lives of prisoners on death row. Despite the widespread view that pardons and commutations were antidemocratic and a source of corruption, executive clemency was a key valve to manage the prison population, correct miscarriages of justice, and restore the rights of former offenders (Jensen, 1922; Whitman, 2003). Presidents Woodrow Wilson, Franklin D. Roosevelt, and Harry Truman issued hundreds, and in some cases thousands, of pardons. Woodrow Wilson, an ardent supporter of temperance but an opponent of the Volstead Act that imposed Prohibition, nonetheless pardoned hundreds of alcohol-related offenders (Ruckman, 2001: 8). The number of presidential pardons began to ebb during the Eisenhower years and severely dropped off

with President George H.W. Bush and his successors (Ruckman, 1997: 261, Table 1). As one commentator quipped, since becoming president, “Barack Obama has issued more pardons to Thanksgiving turkeys than to ex-offenders” (Grits for Breakfast, 2010).

For much of U.S. history, presidents and governors continued to wield their powers of executive clemency even in the face of public uproars over particular pardons. On Christmas Day in 1912, Governor George Donaghey of Arkansas, a fierce opponent of convict leasing, “pardoned 360 state prisoners in one fell swoop” in a gesture that made national headlines (Oshinsky, 1996: 67–69). For years, a coalition of cotton planters, coal operators, corrupt judges, and anxious taxpayers had stymied his attempts to end the brutal system of convict leasing, which Donaghey considered a legalized system of murder in which the punishment so poorly fit the crime. In the 1930s at the height of Jim Crow era, Governor Mike Conner traveled to the infamous Parchman Farm to investigate the “forgotten men” of Mississippi’s legendary penal farm. He “offered a personal hearing to any convict who had severed a sentence of at least ten years.” At his “mercy courts,” Conner freed dozens of Black prisoners in the face of charges that he was granting “amnesty for ancient coons.” The governor was particularly affected by the sight of Black children wearing prison stripes at Parchman, where one out of five inmates was younger than 20 years of age. He sent many of these children home after giving them a lecture about honesty (Oshinsky, 1996: 196–200).

Compare that with the modern-day commutation record of Pennsylvania, which is one of six states where life means life. Between 1967 and 1994, Pennsylvania’s governors and pardon board commuted the life sentences of nearly 400 inmates. Since then, only three commutations have been granted. Democrat Ed Rendell has commuted only two life sentences since taking office in 2003. By contrast, Democrat Milton Shapp commuted 251 during his two terms in office (1971–1979), and Republican Raymond Shafer (1967–1971) commuted 95 during his single term (Advisory Committee on Geriatric and Seriously Ill Inmates, 2005: 78). Pennsylvania leads the nation—and indeed the world—in the number of juvenile lifers. Approximately 345 juvenile lifers are imprisoned in Pennsylvania, or one fifth of the country’s total. As in the case of juvenile lifers nationwide, approximately 25% of Pennsylvania’s juvenile offenders were not the primary assailant and, in many instances, were only minimally involved in the crime that sent them away for life. The state has been persistently unwilling to commute the sentences of juvenile lifers who have served decades behind bars, even in instances in which members of the homicide victim’s family have called for mercy and release (Liptak, 2005). A newly formed statewide coalition currently is engaged in an uphill battle to get legislators to consider a proposal that would make juvenile offenders eligible for a parole hearing after serving 15 years of a life sentence.

If the evidence that people age out of crime and that long sentences do not deter is so compelling, then what justification is there for refusing to consider releasing people who have been in prison for decades and those who are serving life sentences? Many of these prisoners committed violent offenses but are not necessarily violent offenders years later. However, the

widespread perception is that they still are violent despite stellar prison conduct records, ample evidence of rehabilitation through education, volunteering and other programs, as well as the mounting research about deterrence and aging out of crime. Mauer's claim 10 years ago that "[p]ublic policy has all but obliterated the distinction between a violent *offender* and a violent *offense*, with Charles Manson emblematic of the former and a battered wife who attacks her abuser the latter" remains true today (2001: 17). Witness the uproar in North Carolina after the North Carolina Supreme Court declined in October 2009 to review a 2008 decision by the appellate court that a life sentence is to be considered 80 years under the state's statutes. After the ruling, the state's Department of Corrections announced its intention to release dozens of lifers who were eligible for early release thanks to the good time and merit time credits they had accumulated (Reutter, 2010). Governor Beverly Perdue stepped in to stop the release amid reports that many "rapists and murderers" were about to go free (Associated Press, 2009). This brouhaha spurred a spate of news stories about outraged victims and their families, which recounted gruesome details of crimes committed decades earlier (WSCOTV, 2009). In August 2010, the North Carolina Supreme Court reversed course, ruling that the state did not have to release dozens of inmates sentenced to life in the 1970s (Locke, 2010).

With the ascendancy of law-and-order politics the past couple of decades, executive clemency has atrophied across the country. The American Bar Association's Justice Kennedy Commission (2004: 67) "reviewed the state of pardoning in the United States and found that in most jurisdictions the pardon power is rarely utilized to reduce sentences or promote reentry of individuals to the community." The Kennedy Commission wisely recommended that states and the federal government revitalize the clemency process. It urged them "to establish standards and provide an accessible process by which prisoners may request a reduction of sentence in exceptional circumstances," including but not limited to "old age, disability, changes in the law, exigent family circumstances, heroic acts, or extraordinary suffering" (2004: 64). The commission also called for ensuring that procedures are in place to aid prisoners who cannot advocate for themselves to seek clemency.

Standardizing procedures for seeking clemency and providing prisoners more assistance to navigate the clemency process will not revitalize the clemency process on their own. Public officials once again need to be willing to assume the political risks that come with releasing offenders early. In the past, governors and presidents were willing to weather charges of being antidemocratic or corrupt when they invoked their clemency powers. Now that crime has become such a persistent political tripwire in the United States, they need to steel themselves—and prepare the public—for the rare but inevitable instance when a released prisoner goes on to commit a front-page crime.

Although the recidivism rate for older inmates who have served lengthy sentences is comparatively lower, it is not—and will never be—zero. Despite all the attention these days on developing better risk-assessment tools, we will never be able to predict with complete certainty who will commit a serious crime if released and who will not. Serious offenders are not likely to kill or assault in prison or after release. However, some will. Of the 558

inmates (excluding those in Illinois) on death row awaiting execution whose sentences were commuted as a result of the 1972 *Furman* decision, six went on to commit murder in prison over the next 15 years (Marquart and Sorensen, 1989: 21). The 239 *Furman*-era capital offenders who were released on parole to the community, who as a group were more than 40 years old when they got out, committed 12 violent offenses. Notably, one killed again and two raped again (Marquart and Sorensen, 1989: 23). Those who went on to commit additional violent acts apparently were indistinguishable from those who did not in terms of their previous offense characteristics, race, age, and criminal history (Marquart and Sorensen, 1989: 22, 28). A more recent survey of the 322 former death row inmates released on parole from the “class of ‘72” found that five went on to kill again. They had served an average time of approximately 18 years. Of the 164 who were not released, 9 committed homicides while in prison (Cheever, 2006: 206).

If public officials are going to revitalize executive clemency and parole, then they need to reconcile themselves to “the fact that release procedures, like all other human practices, are not infallible” (Bedau 1982: 175–180). They need to improve their rehabilitation programs and risk-assessment tools, but they also must do more to educate the public that inmates who have served lengthy terms are unlikely to commit violent offenses—but they are not risk free.

Governors willing to assume that risk remain the exception today. Governor Janet Granholm of Michigan is on pace to commute more sentences than her three predecessors combined. Nearly all of these commutations came after she ran for reelection in 2006 (Bell, 2010). The commutation and pardon record of Mike Huckabee came under national scrutiny and spurred a spate of political obituaries for the former governor of Arkansas after a man he granted clemency to years ago later killed four police officers in Tacoma, Washington, in 2009.

Released long-time offenders do not pose a widespread public threat, but they do pose a significant risk to political careers. Changes in the institutional structure of parole and pardon boards could provide public officials with some important political insulation from potentially controversial release decisions. States need to stop the widespread practice of staffing these boards with political appointees who are so vulnerable to the wrath of public opinion. These boards should comprise psychologists, social workers, corrections officials, and other professionals with specialized training and expertise to evaluate offenders’ suitability for release. Forty years ago, the President’s Commission on Law Enforcement and the Administration of Justice made a similar recommendation, which remains largely unrealized today. In nearly every state, governors appoint all members of the parole board (Petersilia, 2009: 191). Two thirds of the states have no professional qualifications for parole board membership. A notable exception is Ohio, where all parole board members “are appointed by the director of the state department of corrections, serve in civil service positions, and must have an extensive background in criminal justice” (Petersilia, 2009: 191).

As Senator James Webb (D-Va.) said at a recent conference on reentry sponsored by the Hamilton Project, “The real question is about fear. And I think it invades the political process” (Hamilton Project, 2008). Politicians and public officials can help neutralize that fear by educating the public about the nuances of deterrence, the limited utility of lengthy sentences for fighting crime, the phenomenon of aging out of crime, and the strengths and limits of risk-assessment tools. However, they cannot guarantee that releasing offenders will be risk free. As Glenn Martin of the Fortune Society said at the Hamilton Project conference, “[W]e need to increase our appetite for risk . . . we have to at least accept the fact that some people are going to fail and some people are going to fail pretty significantly” (Hamilton Project, 2008).

### **The Police Surge**

Durlauf and Nagin’s (2011) other main policy recommendation is to reallocate more resources to the police and change how those resources are deployed. In short, they recommend a police surge. Presumably, if sentence lengths were reduced and more offenders received alternative sanctions, then the prison population would drop, freeing up resources now going to sustain the world’s largest penal system. Durlauf and Nagin propose shifting these resources to the police because “larger resource commitments to policing are associated with lower crime rates” (p. 26). In their view, the police are the frontline in making “the risks of crime clearer and the consequences of crime faster and more certain” (p. 14). If would-be offenders perceived that their chances of being apprehended by the police were increasing, then this fact would deter them from committing a crime. According to Durlauf and Nagin, putting more police on the beat, concentrating officers on “hot spots” responsible for a disproportionate amount of crime, and focusing on problem-solving policing that targets a specific issue, such as open-air drug markets or teenagers victimized on their way to and from school, increases their perception of risk.

Durlauf and Nagin narrowly construe their policy proposals to solve the crime and punishment dilemma. They are preoccupied with finding solutions premised on recalibrating the criminal justice system. They seem to eschew the emerging movement to reconceptualize the crime and punishment problem as part of a larger social-welfare or public health issue. Durlauf and Nagin acknowledge the mounting evidence that investing in certain childhood development programs reduces criminality. Nonetheless, they explicitly choose to ignore social-welfare alternatives to reduce crime and reduce imprisonment and focus instead on making the case for reallocating more resources to the police.

Their two main justifications for doing so are not convincing. First, they claim that non-sanction-related alternatives to reduce crime and reduce the incarceration rate already have received considerable attention elsewhere. However, even a cursory look at the main criminology journals and the public debate over crime and punishment reveals that the lion’s share of research and public attention has been on criminal justice solutions—not on social-welfare or public-health approaches. Moreover, Durlauf and Nagin (2011) claim that any

call to shift resources from the criminal justice system to the social-welfare system to fund, for example, education or early childhood development programs, “would pose far more daunting institutional and political challenges to justify to policy makers.” Here, Durlauf and Nagin underestimate the daunting political challenges to forging a new direction in criminal justice policy premised primarily on channeling even more resources to the police.

During the past few decades, the resources available to many police departments and law enforcement agencies have increased dramatically. Between 1980 and 2006, spending per capita on police quadrupled (Bureau of Justice Statistics, 2003: 11, Table 1.7; 2006, Table 1.8). This has occurred largely without a commiserate increase in the accountability of the police to the communities they are supposed to serve. Police and their political benefactors have stridently resisted creating independent civilian review boards with real teeth to monitor and discipline their activities. Many prosecutors have been loath to pursue charges aggressively of police brutality and other criminal activities by the police. Thanks to the C.O.P.S. program inaugurated by President Bill Clinton, the Byrne Justice Assistance Grants established under the Anti-Drug Abuse Act of 1988, lucrative and highly permissive forfeiture laws, and other provisions, police departments have acquired a variety of paramilitary equipment and have expanded their paramilitary operations, their antidrug task forces, and other controversial operations (Alexander, 2010: 77–83; Kraska, 2001). The police also have been the front-line foot soldiers in the War on Drugs and in carrying out massive stop-and-frisk campaigns in certain communities. Furthermore, they are becoming important players in the local enforcement of federal immigration policies.

As a consequence, the police are widely viewed in many inner-city neighborhoods and elsewhere in the country as an occupying army unaccountable to the local citizens. Blacks in particular widely mistrust the criminal justice system, especially the police, and see it as biased against them (Bobo and Thompson, 2006: 456–458). The *Wire*-esque behavior of the police and prosecutors in many cities coupled with the hyper-incarceration of African Americans has “created a deep crisis of legitimacy for the legal system in the eyes of black Americans and a real threat to the promise of equality before the law,” Bobo and Thompson (2006: 446) concluded in their analysis of the enormous Black–White differences of opinion on criminal justice issues. Durlauf and Nagin (2011) concede that heightened police presence may aggravate longstanding community grievances, but their policy proposals do not directly address how to make the police more accountable.

Durlauf and Nagin (2011) note that certain types of policing, notably rapid response to calls for service, apparently do little to deter crime and should be deemphasized. However, the fact is that a substantially lower proportion of Blacks than Whites expect the police to respond quickly when they report a crime and to take the report seriously (Bobo and Thompson, 2006). This has enormous political and policy consequences. It is hard to see how a call for a police surge without simultaneously calling to make the police more responsive to requests for help from the local community will reduce crime and reduce incarceration in the long run. Such an approach is unlikely to win over the hearts and minds

of the citizens of the most crime-ridden and most heavily policed (and yet underpoliced) communities in the United States. These also tend to be the most socially, economically, and politically disadvantaged communities. As Bobo and Thompson (2006: 467) noted in their discussion of the work of the social psychologist Tom Tyler, “legitimacy matters, both for the practical goal of the effective functioning of law enforcement and for the profoundly moral goal of ensuring a government that treats all of its citizens with an equal measure of respect.” Proposing to throw more resources at the police while only tinkering with rather than radically reforming their role in the community will not address the deep-seated legitimacy crisis in many urban neighborhoods that is an impediment to deterring crime. This approach also is likely to reinforce the social and political exclusion of these neighborhoods.

Some sound reasons exist to advocate expanding the number of police officers in high-crime areas. Historical and cross-national evidence seems to buttress claims that more police means less crime and that the United States is underpoliced. Jurisdictions with the most police officers today tend to have the lowest imprisonment rates and the smallest rates of increase in imprisonment (Stuntz, 2008: 1993). This relationship has held, more or less, since the Gilded Age. In his analysis of cross-regional variations in police per capita, murder rates, and imprisonment, Stuntz found that the South, where police and other government services were historically underfunded, has had a much lower number of police per capita and generally has had much higher imprisonment levels and murder rates.

The resources available to the police and other law enforcement agencies have increased markedly in the United States the past few decades, but the number of police officers per capita has increased only modestly, from 204 per 100,000 in 1970 (Stuntz, 2008: fn. 209) to 240 per 100,000 in 2009 (Federal Bureau of Investigation, 2009: Table 74). Behind these national averages are enormous variations between jurisdictions in police per capita. For example, New York (417) and Philadelphia (434) have nearly 75% more police per capita today than Houston (236) and Los Angeles (259) (calculated from Federal Bureau of Information, 2009: Table 78). New York City’s crime rate has fallen dramatically even though its police force is down approximately 6,000 officers from its peak 10 years ago. Philadelphia’s crime rate is down from what it was 10 years ago, but it is still much higher than New York City’s, despite their comparable number of police per capita. Although the size of the public police force has not grown enormously, the number of private security personnel has increased exponentially in the United States (Garland, 2001: 17–18, 160–163), which complicates claims that the United States is underpoliced.

Cross-national data on police per capita does have its problems. Nonetheless, it seems that the United States is relatively underpoliced. President Clinton promised to put an additional 100,000 police officers on the streets through his C.O.P.S. program. This would have brought the number of police per capita in the United States up to 310 per 100,000 (Stuntz, 2008: 2034), which is slightly below the European Union (EU) rate of 337 per 100,000 (Barclay and Tavares, 2001: Table 3). However, C.O.P.S. ended up only adding

approximately 18,000 officers, and the federal government picked up their tab for only a few years (Stuntz, 2008: fn. 296).

Any police surge has to be accompanied by a quid pro quo to increase the accountability of the police and prosecutors to the local community and to expand the social-welfare and education programs that have been proven to prevent and reduce crime. EU countries have many more police, but they also have far more expansive social-welfare programs that reduce crime by ameliorating poverty and inequality and by providing high-quality day care, good schools, universal health care, and other critical social and economic programs (Currie, 2008: 80–85). Specific law enforcement reforms should include establishing civilian review boards with real oversight powers, ending prosecutors' hands-off approach to police misconduct, and addressing the widespread perception in inner-city neighborhoods that police do not respond to their complaints of crime quickly and do not take them seriously. In addition, more criminal cases need to be tried before juries drawn from the neighborhoods where the crime took place. Because most metropolitan counties encompass vast suburbs, "high-crime city neighborhoods have little control over the juries that try crimes committed on their streets" (Stuntz, 2008: 1995).

Finally, if certainty of punishment deters more than severity of punishment, then we cannot focus only on the role of the police. As Durlauf and Nagin (2011) note, successful programs like Hawaii's Project HOPE depend on the tightly coordinated efforts of the police, judges, and probation and parole officers. When it comes to meting out punishment, prosecutors are arguably the preeminent players in the criminal justice system and have legitimacy problems comparable with those that vex the police (Davis, 2007; Forst and Bushway, 2010; Sabol, 2010). "In a lot of communities, the D.A. is seen as the enemy," Seth Williams, Philadelphia's new district attorney, conceded recently as he announced the opening of the first of six planned community action centers intended to break down the barriers between law enforcement and the public (KYW Newsradio, 2010). District attorneys like Williams and state attorneys general have enormous authority to set "the tone and culture of the office" and to determine the direction in which prosecutors working under them exercise their discretion in individual cases (Davis, 2007: 97). They have wide discretion to determine the charges, structure the plea-bargaining process, decide whether to divert a case to alternative sanctions, and make sentence recommendations. It is a well-established fact that prosecutorial behavior can vary enormously from one jurisdiction to the next and from one seemingly similar case to the next. A recent report by the Justice Project made several laudable recommendations to improve prosecutorial accountability, including requiring prosecutors to enforce clearly defined policies and procedures spelled out in a written manual to reduce the arbitrariness and apparent biases of their decision making, to create open-file discovery in criminal cases, and to document all agreements with witnesses and jailhouse informants. The report also recommended that judges be required to report all cases of prosecutorial misconduct (however trivial), preferably to an

independent review board rather than to state bar associations, which have been notoriously ineffective in policing prosecutorial misconduct (Davis, 2007; Franks, 2010).

Durlauf and Nagin (2011) focus primarily on the front end of mass incarceration or on how to keep more men and women out of the system by decreasing sentence lengths and increasing the number of police. Those already in the system serving lengthy sentences are the forgotten men and women of their analysis. In promoting a police surge, Durlauf and Nagin are pushing policy solutions designed to be politically palatable to elite public officials and policy makers. The needs and views of the alienated citizens living in high-crime communities that have borne the brunt of the hyperincarceration of their family members, friends, and neighbors were largely forgotten.

## References

- Advisory Committee on Geriatric and Seriously Ill Inmates. 2005. *Report of the Advisory Committee on Geriatric and Seriously Ill Inmates*. Harrisburg, PA: Joint State Government Commission, General Assembly of the Commonwealth of Pennsylvania.
- Alexander, Michelle. 2010. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Press.
- American Bar Association Justice Kennedy Commission. 2004. *Reports with Recommendations to the ABA House of Delegates*. Chicago, IL: American Bar Association.
- Anno, B. Jayne, Camelia Graham, James E. Lawrence, and Ronald Shansky. 2004. *Correctional Health Care: Addressing the Needs of the Elderly, Chronically Ill, and Terminally Ill Inmates*. Washington, DC: U.S. Department of Justice, National Institute of Corrections.
- Associated Press. 2009, October 16. Rapists and murderers going free under old law. *MSNBC*. Retrieved September 24, 2010 from [msnbc.msn.com/id/33340592/](http://msnbc.msn.com/id/33340592/).
- Barclay, Gordon and Cynthia Tavares. 2001. *International Comparisons of Criminal Justice Statistics*. Retrieved October 5, 2010 from <http://proxychi.baremetal.com/csdp.org/research/hosb1203.pdf>.
- Bedau, Hugo Adam (ed.). 1982. Recidivism, parole, and deterrence. In *The Death Penalty in America*, 3rd Edition. New York: Oxford University Press.
- Bell, Dawson. 2010, February 7. Gov. Granholm releases prisons at record rate. *Freep.com*. Retrieved October 2, 2010 from [capps-mi.org/material%20to%20put%20up/Gov.%20Granholm%20releases%20prisoners%20at%20record%20rate.htm](http://capps-mi.org/material%20to%20put%20up/Gov.%20Granholm%20releases%20prisoners%20at%20record%20rate.htm).
- Bobo, Lawrence D. and Victor Thompson. 2006. Unfair by design: The war on drugs, race, and the legitimacy of the criminal justice system. *Social Research*, 73: 445–472.
- Bureau of Justice Statistics, U.S. Department of Justice. 2003. Justice system per capita expenditures. In *Sourcebook of Criminal Justice Statistics*. Retrieved October 5, 2010 from [albany.edu/sourcebook/pdf/t17.pdf](http://albany.edu/sourcebook/pdf/t17.pdf).
- Bureau of Justice Statistics, U.S. Department of Justice. 2006. State and local justice system per capita expenditures. In *Sourcebook of Criminal Justice Statistics Online*. Retrieved October 5, 2010 from [albany.edu/sourcebook/csv/t182006.csv](http://albany.edu/sourcebook/csv/t182006.csv).

- Cheever, Joan M. 2006. *Back from the Dead: One Woman's Search for the Men Who Walked off Death Row*. New York: Wiley.
- CNN. 2008, July 15. Ailing Manson follow denied release from prison. Retrieved October 4, 2010 from [articles.cnn.com/2008-07-15/justice/release.denied.1\\_charles-manson-follower-compassionate-release-terminally-ill-inmates/2?\\_s=PM:CRIME](http://articles.cnn.com/2008-07-15/justice/release.denied.1_charles-manson-follower-compassionate-release-terminally-ill-inmates/2?_s=PM:CRIME).
- Corley, John. 2009. A matter of life. *The Angolite*. September/October, 28–35.
- Currie, Elliott. 2008. *The Roots of Danger: Violent Crime in a Global Perspective*. Upper Saddle River, NJ: Prentice Hall.
- Davis, Angela J. 2007. *Arbitrary Justice: The Power of the American Prosecutor*. New York: Oxford University Press.
- Durlauf, Steven N. and Daniel S. Nagin. 2011. Imprisonment and crime: Can both be reduced? *Criminology & Public Policy*. This issue.
- Federal Bureau of Investigation, U.S. Department of Justice. 2009. *Crime in the United States: Police Employee Data*. Retrieved October 5, 2010 from [fbi.gov/ucr/cius2009/police/index/html](http://fbi.gov/ucr/cius2009/police/index/html).
- Forst, Brian and Shawn D. Bushway. 2010. *Discretion, Rule of Law, and Rationality*. Paper presented at the Symposium on Crime and Justice: The Past and Future of Empirical Sentencing Research. SUNY at Albany. September 23–24.
- Franks, Jimmy. 2010. In support of ending prosecutorial misconduct. *Prison Legal News*. March, 32.
- Garland, David 2001. *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago, IL: University of Chicago Press.
- Grits for Breakfast. 2010. Public tired of Willie Horton? Whither 21<sup>st</sup> century clemency? January 10. Retrieved April 17, 2010 from [gritsforbreakfast.blogspot.com/2010/01/public-tired-of-willie-horton-whither.html](http://gritsforbreakfast.blogspot.com/2010/01/public-tired-of-willie-horton-whither.html).
- Hamilton Project. 2008. *From Prison to Work: Overcoming Barriers to Reentry*. December 5. Washington, DC: Brookings Institution. Retrieved October 8, 2010 from [brookings.edu/~media/Files/events/2008/1205-prison/20081205-prison.to.work.pdf](http://brookings.edu/~media/Files/events/2008/1205-prison/20081205-prison.to.work.pdf).
- Jensen, Christen. 1922. *The Pardoning Power in the American States*. Chicago, IL: University of Chicago Press.
- Kraska, Peter B., ed. 2001. *Militarizing the American Criminal Justice System: The Changing Roles of the Armed Forces and the Police*. Boston, MA: Northeastern University Press.
- KYW Newsradio. 2010. DA opens 'Community Action Center' in Northern Liberties. September 21. Retrieved October 6, 2010 from [cbskywam.wordpress.com/2010/09/21/da-opens-community-action-center-in-northern-liberties/#](http://cbskywam.wordpress.com/2010/09/21/da-opens-community-action-center-in-northern-liberties/#).
- Laub, John H. and Robert J. Sampson. 2003. *Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70*. Cambridge, MA: Harvard University Press.
- Liptak, Adam. 2005. To more inmates, life term means dying behind bars. *New York Times*. October 2.
- Locke, Mandy. 2010. Ruling affirms 1970s life sentences. *Charlotte Observer*. August 27. Retrieved September 24, 2010 from [charlotteobserver.com/2010/08/27/1647108/nc-supreme-court-life-sentences.html](http://charlotteobserver.com/2010/08/27/1647108/nc-supreme-court-life-sentences.html).

- Marquart, James W. and Jonathan R. Sorensen. 1989. A national study of the *Furman*-commuted inmates: Assessing the threat to society from capital offenders. *Loyola of Los Angeles Law Review*, 23: 5–28.
- Mauer, Marc. 2001. The causes and consequences of prison growth in the United States. *Punishment & Society*, 3: 9–20.
- Nagin, Daniel S., Francis T. Cullen, and Cheryl Lero Jonson. 2009. Imprisonment and reoffending. In (Michael H. Tonry, ed.), *Crime and Justice: A Review of Research*, vol. 38. Chicago, IL: University of Chicago Press.
- Nellis, Ashley and Ryan S. King. 2009. *No Exit: The Expanding Use of Life Sentences in America*. Washington, DC: The Sentencing Project.
- Nelson, Lane. 2009. A history of penal reform in Angola, part I: The immovable object. *The Angolite*. September/October, 16–27.
- Oshinsky, David M. 1996. *“Worse Than Slavery”: Parchman Farm and the Ordeal of Jim Crow Justice*. New York: The Free Press.
- Petersilia, Joan. 2009. *When Prisoners Come Home: Parole and Prisoner Reentry*. New York: Oxford University Press.
- Price, Charlotte A. 2006. *Aging Inmate Population Study*. Raleigh: North Carolina Department of Correction, Division of Prisons. May.
- Reutter, David M. 2010. Political uproar follows NC court ruling that life sentence is 80 years. *Prison Legal News*, May, 34–35.
- Ruckman, P.S. 1997. Executive clemency in the United States: Origins, development, and analysis (1900–93). *Presidential Studies Quarterly*, 27.
- Ruckman, P.S. 2001. *The Pardoning Power: The Other Civics Lesson*. Annual Meeting of the Southern Political Science Association. Atlanta, GA. November 7–10.
- Sabol, William J. 2010. *Implications of Criminal Justice System Adaptation for Prison Population Growth and Corrections Policy*. Paper presented at Symposium on Crime and Justice: The Past and Future of Empirical Sentencing Research. SUNY at Albany. September 23–24.
- Stuntz, William J. 2008. Unequal justice. *Harvard Law Review*, 8(121).
- Vera Institute. 2010. *It’s About Time: Aging Prisoners, Increasing Costs, and Geriatric Release*. New York: Author.
- WSCOTV. 2009. Victims, families outraged by N.C. inmates’ release. October 20. Retrieved September 24, 2010 from [wsoctv.com/news/21350656/detail.html](http://wsoctv.com/news/21350656/detail.html).
- Whitman, James Q. 2003. *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe*. New York: Oxford University Press.

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