Reflections on Parole: Meeting the Challenges of Today

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I am grateful for the invitation to address you this morning as you begin this important conference.

For two reasons, I am particularly appreciative that you have invited me to deliver this keynote address. First, I realize, as I look at your program, that many experts will be speaking to you over the next two days—individuals who have spent the better part of their careers working on parole issues, serving on parole boards, running parole agencies, and thinking about ways the parole system can be improved. So, I am aware that by inviting me to address this conference, you have invited a relative newcomer to these issues.

Second, as you may know, in some of my writings and public comments, I have been critical of the state of parole in America. I have expressed my skepticism about the viability of parole boards as a method for making release decisions. I have suggested that parole supervision at the community level should be substantially reorganized. I have criticized our current approach to parole revocations as an unbridled contributor to the high levels of imprisonment in America. So, by inviting me to speak, you have invited a critic of many of the operational and philosophical underpinnings of current parole policies.

I trust you won’t rescind the invitation—that you hope this keynote address from a skeptical newcomer can raise issues and define perspectives that will stimulate fresh thinking over the next two days.

That is my hope as well. The theme for this meeting of the Association of Paroling Authorities International Conference is “Parole—Now Is Our Time.” Now is indeed the time to return to some fundamental questions about parole in American criminal justice practice. I firmly believe that our experience with parole—a powerful reform idea that began over a century ago, with experiments in Australia and Ireland, and defined the American approach to sentencing—can shed light on some of the pressing questions facing our country. I hope that your voices, representing that experience here in America and in the countries represented at this international conference, can be heard as those questions are addressed.

We are meeting today at an important time in the criminal justice field. Crime rates are at their lowest levels in a generation. Crime is no longer the number one concern of the public, having been replaced by education, health care, the economy, and, more recently, terrorism. Yet our prison population is at record levels. According to the recent report from the Bureau of Justice Statistics, the state prison systems have grown another 1 percent over the past year, the smallest rate of growth in decades. The federal prison system grew by a record 5.7 percent. Every year since 1995, the federal prisons have grown at a faster rate than the state systems, and now the Federal Bureau of Prisons houses more inmates than any single state. States are facing the most severe fiscal crisis in decades, with pressure to cut prison budgets, a category of discretionary spending that has grown faster than any other with the exception of Medicaid. Now is the time to test the principles and practices of our parole system to see whether they offer useful lessons
to policymakers struggling to keep crime rates low, reduce prison populations responsibly, and cut overall corrections costs.

To parse the lessons from our parole experience, I find it useful to think of the parole system as serving three critical functions in our sentencing and corrections system, each with different insights for our current situation. First, parole boards make decisions about who should be released from prison, when they should be released, and under what conditions they should be released. Second, parole agencies—under a variety of different names—operate a far-reaching network of supervision over those who have been released from prison, enforcing conditions of release and supporting and monitoring released prisoners as they return to society. Third, parole agencies and parole boards decide how to respond to violations of those conditions, and who should be returned to prison because their parole has been revoked.

Let’s take a closer look at each of these in turn. When we put the pieces of the parole puzzle back together, we see that parole in America has undergone a significant transformation over the past two decades. In presenting these trends, I am relying on a report published by the Urban Institute in November 2002, which I co-authored with Sarah Lawrence, entitled “Beyond the Prison Gates: The State of Parole in America.” I encourage you to download the report from the Urban Institute website, www.urban.org.

**The Decision to Release**

As you know well, prisoners can be released from prison through one of two mechanisms—either by the decision of a parole board (what we can call “discretionary” release) or by the operation of law (what we can call “mandatory” release). Over the past few decades, the balance between these two release mechanisms has shifted significantly, as you can see in figure 1. In 1976, 65 percent of prison releases were discretionary, decided by a parole board. By 1999, the share of discretionary prison releases had dropped to 24 percent. The remaining three-quarters of prison releases were mandated by the operation of law.
Over the same period, the number of prison releases continued to grow, as a result of the overall growth in the prison population in America. As we can see in figure 2, the total number of state prison releases per year grew from 144,000 to more than 500,000. As you can also see in figure 2, the absolute number of releases by parole boards grew slightly over this period of time, particularly in the late 1980s, then declined slightly during the 1990s, so that slightly fewer than 129,000 prisoners released in 1999 were released by decisions of parole boards. During the same period, the number of mandatory releases grew significantly, to the point where three out of four prisoners are now released by operation of law, not by decision of a parole board.
These national trends do not tell the whole story. As this association is well aware, there is tremendous state-level variation in parole release practices. In some states, such as California, Illinois, and New Hampshire, parole release has been virtually abolished, and less than 1 percent of released prisoners are released by parole board decisions. In other states, such as Florida, Pennsylvania, and Washington, more than 95 percent of persons returning to the community are released by parole boards.

What are we to make of these trends? First, we can easily see there is no national consensus over the best way to make release decisions. Compared to a generation ago, when the indeterminate sentencing model was dominant in the United States, today’s model seems helter-skelter, a melange of mandatory minimums, truth-in-sentencing, structured sentencing, sentencing commissions, parole abolition, three strikes, and other sentencing reforms. There is no longer a single American approach to sentencing.

The second conclusion is that discretionary release by parole boards is an idea that has lost significant market share in the competition for ideas. As we look into the future, as truth-in-sentencing laws take hold, it seems likely that the current market share for parole releases—about one in four—will decline further. If there is a new sentencing idea on the horizon in today’s debate over sentencing policy, it does not include making significantly greater use of parole boards to make release decisions. That is, unless there is a new logic developed for the revival of discretionary parole releases.

This trend is unfortunate, particularly in an era of fiscal constraints. One role that parole boards have played in the past has been to help the state manage the size of the prison population. There are many critics—and I consider myself one—who think it is inappropriate to make release decisions based on available space. But today, with extraordinarily tight budgets, many states are looking for ways to reduce their prison
populations. Some, like Kentucky, have simply released prisoners, with little apparent logic to the decisions.

Perhaps this association, working with other groups interested in criminal justice reforms, could develop a new logic for parole release, a logic tied to the realities of the current fiscal crisis. Certainly there are groups within every state’s prison population that could be released with little risk to society and with great cost savings. We could imagine a program of compassionate releases for prisoners who are aged, suffer from serious diseases, or are at the end of their sentence and are needed to care for a loved one. Couldn’t a parole board, or a similar body, make these recommendations to the governor or the judiciary? We could imagine a program of releasing low-level offenders with histories of drug abuse to a reentry drug court, as is now possible in Nevada. Couldn’t a parole board, or a similar body, make these recommendations? We could imagine a program of releasing women who are in prison for assaulting or even murdering a man who subjected them to a life of abuse but who were convicted before we really understood the experience of battered women. Couldn’t a parole board, or a similar body, review these cases?

For states that have abolished their parole boards, legislation would be required to create these separate review panels. Even in states that have retained their parole boards, the statutory authorization may need expansion to cover these new responsibilities. But the central lesson from the American experience with parole release is that these quasi-judicial bodies, with expertise in the criminal justice system, can review individual cases carefully, assess risk, and make balanced recommendations regarding the release from prison. Their decisions are never 100 percent perfect—predicting human behavior is not a foolproof activity. The public is guaranteed to object to some of their decisions—as we would expect when prisoners are released before their sentences are complete. And the decisionmaking process of parole boards has never been as open and equitable as it might be. But these shortcomings can easily be overcome. The larger point is that parole boards have served the important historical purpose of helping to manage the size of the prison population. In these tight fiscal times, we may have to rediscover the value of discretionary release mechanisms, originally developed by parole boards. But these mechanisms, in my view, should be updated to be more transparent, more focused on subgroups within the prison population, clearly tied to the fiscal constraints of correctional budgets, and with open public engagement on the issues of risk, benefit, and careful plans for postrelease supervision.
The Decision to Supervise

Let’s now take a look at the shifts in postrelease supervision in America. As you can see from figure 3, the percentage of prisoners released to a period of supervision in America has grown significantly over the past four decades. From the early 1920s until 1960, the percentage remained fairly constant—about 6 in 10 prisoners released from our prisons were supervised, what we term “conditional release.” The rest were simply released, with no parole officer, no special legal status, and no restrictions other than those that flow from their criminal convictions, such as prohibitions against certain kinds of employment. Beginning in the early 1960s, that percentage began to change, and change dramatically. Between 1960 and 1990, the share of prison releases that were conditional grew from 56 percent to a high of 87 percent before declining somewhat to 82 percent in 1999. Now, about 100,000 prisoners per year are released from American prisons without any form of supervision.

Figure 3.
In recent decades, the share of prison releases to parole supervision has reached historically high levels.

Percentage of prison releases, 1923, 1930-1990, 1999

Source: National Prisoner Statistics: (NPS-1) series, Bureau of Justice Statistics.

There are enormous differences among the states. Some states, such as Oregon, Rhode Island, and California, place virtually all of their released prisoners under some form of post-prison supervision. Others, such as Massachusetts, Florida, and Oklahoma, release more than half of their prisoners without any supervision requirements.

We should view these two trends together—the decline in discretionary release by parole boards and the rise in postrelease supervision. As state legislatures reduced the discretion of judges to determine the length of a prison term and reduced or eliminated the discretion of parole boards to decide the actual release date, they simultaneously expanded the supervisory reach of the criminal justice system over hundreds of thousands of former prisoners and extended the power of parole officers to monitor their conditions of release.
These two trends have important implications for prisoner reentry. Proponents of parole boards argue, with considerable logic, that the existence of a discretionary approach to release has considerable benefits for prison management and for prisoner reentry. They argue that prisons and prisoners benefit when individual prisoners know that their behavior in prison—their willingness to abide by the rules of the prison, their participation in prison programs—will be considered by a parole board in making decisions regarding the timing of their release from prison. They argue that the chances of successful reentry are enhanced when a prisoner is expected to develop a postrelease plan to present to the parole board, including lining up a job, securing housing, and arranging for community-based programs. If these assertions are true, then the fact that only one in four prisoners is now released by a parole board has had negative effects for prison management, program participation, and prisoner reintegration. In essence, more prisoners are coming out without being required, by the existence of a parole board, to make preparations for life on the outside.

Of course, not all prerelease planning happens simply because a parole board is making release decisions. Corrections agencies offer a range of programs to assist prisoners in making those plans. Not all program participation is tied to development of a parole package. And supervisory agencies can develop effective reintegration plans in the absence of a release decision by a parole board. But these twin trends should focus our attention on the need for strong links between prison management and supervision management. For example, the agencies that manage supervision should be asking hard questions of their colleagues who manage prisons. How are prisoners actually prepared for release? What provisions are made, before the release date, for housing, continuing medical care, substance abuse treatment, enrollment for Medicaid coverage, work, and family reunification? What information on individual prisoners is passed from the institution to the parole officer or agent? What is known about program participation, public safety risks such as gang involvement, family visits, medical care, substance abuse treatment, and other factors that are directly related to successful reentry?

I have been encouraged over the past few years to see a renewed focus on release planning within the corrections profession. The National Institute of Corrections is developing a model release planning protocol, through grants awarded to Abt Associates and the Center for Effective Public Policy. The Vera Institute of Justice is managing an important demonstration project in New York City, working with the Department of Correctional Services and the Division of Parole, called Operation Greenlight, which is testing new strategies for connecting returning prisoners to community services. Many corrections agencies are rethinking their approach to transition planning, but we have a long way to go. According to a report released by the Urban Institute in 2001, just over 10 percent of released prisoners participate in a prerelease program—about 70,000 out of the 600,000 who are released each year.¹ So, one challenge for the parole experts and practitioners in this room is to shine a powerful spotlight on the importance of prerelease planning. With half a million prisoners released each year to post-prison supervision, there is a broad social obligation—to them, their families, their communities, and the

parole staff who supervise them—to ensure that every effort is made to connect them to
the basics of life after prison.

The Decision to Revoke Parole

From my perspective, the most dramatic, and troubling, trend in the operation of our
parole system over the past 25 years has been the increase in parole revocations. As you
can see from figure 4, the number of parole violators returned to prison has increased
sevenfold since 1977.

Figure 4.
The number of parole violators returned to prison has increased sevenfold.

Parole violators returned to prison, 1977-2000

Source: National Prisoner Statistics (NPS-1) series, Bureau of Justice Statistics

In 1980, state prisons admitted approximately 27,000 parole violators. In 2000, those
same states admitted approximately 203,000 parole violators, more than the total number
of state prison admissions in 1980. Here is another way of looking at this phenomenon: In 1980, only 17 percent of prisoners admitted to state prisons were parole violators—by the turn of the century, that percentage had grown to 35 percent, twice the rate of two decades earlier.

We have, in essence, created a system of what I have called “back-end sentencing.” We are depriving hundreds of thousands of Americans of their liberty by sending them to prison for parole violations. In nearly one-third of these cases, the parole violation occurs because the parolee was convicted of a new crime; the remaining two-thirds are for “technical” violations.

We know very little about how this system of parole revocation actually works. There is shamefully little research on the topic, a disturbing fact given the extensive deprivation of liberty, the staggering costs of housing these parole violators in our prisons, and the untested assertions that this system of massive parole revocation is good for the safety of the public.

Perhaps we should not be surprised by this development. After all, we have placed many more people under supervision after they leave prison. We have increased the number and reach of the conditions of release. And we have many new technologies, such as drug testing and electronic surveillance, that can detect violations of release conditions. But I still find this unexamined aspect of parole a critical area for new focus, particularly at this time of fiscal constraints.

As noted with other dimensions of the parole system, there are substantial state variations. California stands out from the rest of the country. Eighteen percent of all parolees in America live in California. That state accounts for 42 percent of all parole violators returned to prison in the United States. Sixty-five percent of California’s prison admissions are parole violators, compared to 35 percent nationally. That state, according to reliable estimates, spends about $1 billion a year to house its parole violators.\(^2\) Certainly this is one state that would benefit from a closer look at its parole supervision policies, and I am encouraged to see that the Little Hoover Commission of California has recently launched a broad inquiry into these policies and practices.

But the same issue, on a smaller scale, affects many other states. In Louisiana and Utah, for example, more than half of prison admissions are parole violators. By contrast, states such as Florida, Mississippi, Indiana, West Virginia, and Alabama admit less than 10 percent of prisoners as parole violators. Clearly, states have made quite different policy choices in this arena.

These differences underscore one of the immutable laws of parole: A person not on parole can’t violate parole. Someone released from prison without supervision can be arrested for a new crime, but he or she can’t be sent back to prison for violating a release condition because there are none. So, those states that place a smaller percentage of

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released prisoners on supervision and keep them on supervision for shorter periods of time, tend to admit fewer prisoners who are parole violators.

I refer to this immutable law of parole not because I believe that more prisoners should be released without supervision—in fact, I have argued elsewhere that a short period of supervision should be required for everyone leaving prison. Rather, I wish to highlight the fact that parole revocation rates are, to a large extent, a function of policy choices made by state legislatures and parole supervision agencies.

With the high costs of housing parole violators, and the uncertain benefits, what policy reforms should be pursued? I have been an advocate for the idea of reentry courts as a new way of managing the period of post-prison supervision. Borrowing lessons from our successful experiment with drug courts, these reentry courts are a new way of bringing the supervision process out into the open, providing both incentives and sanctions to support successful reintegration, and allowing for the development of a fair and proportionate system of graduated sanctions. I am watching with interest the dozen experiments with reentry courts around the country and am particularly impressed with the legislation in Nevada, which allows early release for prisoners with histories of drug addiction who agree to participate in a reentry court program.

But my more ambitious hope is that criminal justice professionals, particularly those of you who are experts on the parole system, will focus the attention of our legislators, judges, corrections managers, civil rights advocates, and the general public on the hidden system of back-end sentencing. Why shouldn’t we apply the lessons from our experiments with sentencing guidelines and structured sentencing to develop and codify, after public debate, simple revocation guidelines that specify the range of sanctions that are proportionate to the underlying offense? Why should a parolee serve months in prison for dirty urine results, even for multiple dirty urine results, when the research on drug courts shows that a combination of sanctions, testing, and treatment, with little use of imprisonment as a sanction, can significantly reduce drug use and crime? Why should serious crimes be diverted from the traditional criminal justice system and result in short back-end sentences as parole violations, thereby avoiding the due process protections that we value so highly? Why should some prisoners, including some who have been in solitary confinement leading up to their discharge, be released with no supervision, while others are on parole long after they have proved that they pose no risk to society?

In short, I think, as your conference title suggests, that now is the time for a total reexamination of the American approach to parole. Our parole system has undergone significant shifts over the past decades. Parole as a release mechanism has dwindled in significance, with little hope of a revival, unless convincing arguments can be made that discretionary release has a role in the current fiscal crisis. Parole as a form of supervision


has grown substantially, with insufficient attention to the importance of prerelease planning. And parole revocations have skyrocketed, with enormous fiscal implications and far-reaching consequences for hundreds of thousands of individuals, their families, and the communities that bear much of the social costs of our new system of back-end sentencing. Now is the time to articulate a new jurisprudence of parole, perhaps with new language and certainly with new operational constructs, that recognizes the reality that almost everyone we send to prison comes home. The important question is how they are prepared for that inevitable journey and whether they come home to stay.

I thank you for inviting a critic to address your conference. I am eager to watch your work over the coming years, and I encourage you to be fearless in asking the tough questions and providing the honest answers that our country so desperately needs.