

BOOK REVIEW

Review of *Criminal Justice at the Crossroads: Transforming Crime and Punishment* by William R. Kelly, Columbia University Press, 2015, 424 pp., \$35.00 (paperback)

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Finally, attention is being paid to America's "mass incarceration." But few realize that women constitute the nation's fastest growing prison population. According to the Sentencing Project the number of incarcerated women grew by 646% between 1980 and 2010 - nearly double the rate of growth for men. In 2010 more than one million women were under the supervision of the criminal justice system.

Reform is very much in the air. A Sentencing Reform and Corrections Act with substantial bipartisan support is before Congress. But with all that, is significant reform likely? That is not a sure thing. In a major turning point, in 2008 Congress passed the bipartisan Second Chance Act providing federal support for programs to help prisoners transition back into society. While still gun shy of the crime issue, state policy makers, even in some of the Deep South states, are busy enacting reforms that are beginning to chip away at the incredible growth of incarceration over the past 40 years. However, important as they are, these reforms and the others currently before Congress won't substantially reform the current system - even if most are fully implemented. Criminologist Michael Tonry's helpful "Remodeling American Sentencing: Ten-Step Blueprint for Moving Past Mass Incarceration" includes repeal of mandatory minimum sentences, narrowing or repealing life without parole, repeal of truth-in-sentencing laws, restoration of parole, and substantially lowering maximum sentences - all very important and necessary steps. But Tonry himself points out these "modest and partial" steps will cut incarceration rates in half but only "to a level that will remain 3 to 3.5 times those of other developed Western countries...."

In *Criminal Justice at the Crossroads: Transforming Crime and Punishment* University of Texas criminologist William Kelly argues that this moment is an opportunity for truly transformative change. "That opportunity," he writes, "is a product of three significant factors: (1) compelling scientific evidence indicating that punishment does not work and is a poor return on investment; (2) a wealth of scientific evidence demonstrating the effectiveness of a wide variety of interventions, programs, and policies that successfully change behavior, reduce recidivism and victimization, and save money; and (3) a nationwide recession that caused state, local, and federal officials and policymakers to pause and take a hard look at the cost of crime control and initiate discussion of alternatives."

Kelly begins with a discussion of how we got to this place - pointing out the bipartisan responsibility for this mess that finds the U.S. with roughly 5% of the world's population accounting for almost one fourth of all of the prisoners in the entire world. There was a sizeable

increase in violent crimes between 1960 and its high point in 1992/1993. While some politicians exploited the crime issue with calls for "law and order" that often had racial undertones, there also was a widespread demand for public safety. Politicians from both parties led us down a counter-productive path. Today criminologists agree that mass incarceration has played a very modest role, if any at all, in the sustained drop in crime that began in the early 1990s even before the huge increases in incarceration. In fact, according to Kelly, American crime reduction rates during those years were "remarkably similar" to those in most other industrialized nations

Today's mass incarceration numbers are staggering. Kelly points out that, "10 percent of all children in the United States have a parent in prison, in jail, on probation, or on parole." Since 1980s American states have spent more than a trillion dollars on corrections, yet, according to Kelly, the rearrest rate for people getting out of prison is somewhere between 55% and 65%. One in thirty-one persons in the U.S. is currently under some form of correctional control - for blacks it is one in eleven. From 1900 to 1975 incarceration rates were relatively stable and more or less in line with other industrialized countries - ranging between 100 and 200 incarcerated individuals for every 100,000 Americans. Today it is around 707 down a little from a high of 730 in 2011. The European average is around 100.

Not many policymakers pay close attention to the criminal justice system. But those who do have known for years that the system is badly broken. Whether serving on a city council or in Congress, most elected officials focus on how to fix a problem - what works, where is the evidence? It has been hard to find answers. Most reformers and many criminologists have largely worked on the important task of documenting the devastating impact of mass incarceration and the continuing role of racial bias. But most policy makers understood that years ago. What they needed was for criminologists to tell them what to do. Instead, as Kelly explains, many criminologists buried themselves in the basic research intended for other academics.

Kelly clearly presents the substantial research that supports a different "viable, evidence-based, cost-efficient path forward." He explains, "First, there is a remarkable lack of scientific support for the assertion that harsher punishment deters those who experience it. Second, compared to noncustodial sentences, incarceration is either no different in terms of future offending (that is recidivism), or has a crime-producing or criminogenic effect. Finally there is sufficient evidence to give scientific credibility to the common assertion that criminals who go to prison typically come out even worse."

About half of state prisoners are functionally illiterate. Childhood trauma abuse, neglect, and exposure to violence are clearly linked to criminal behavior. Most kids in poor, inner-city communities have witnessed violence and two-thirds have been victims of violence. Poverty has a destructive impact on neurocognitive functioning. About 25 percent of state prisoners and 65 percent of federal inmates are drug offenders. Between 60 and 80 percent of all prisoners meet the criteria for alcohol and/or drug dependence or abuse. Each year some 600,000 to 700,000 prisoners return to their communities. About 400,000 of those who needed substance abuse treatment did not receive it while incarcerated.

Incarceration should be limited, says Kelly, to "...serious violent offenders, habitual offenders, and others for whom it is determined that diversion/rehabilitation will be ineffective.... For those... that are not incarcerated, the direction that the evidence indicates is appropriate is an approach emphasizing a balance between behavioral change on the one hand and risk management, compliance, and accountability on the other." Low risk offenders do not need extensive and intensive treatment and case management, but medium and high-risk offenders can greatly benefit. Some offenders can be diverted to probation without verdict (deferred prosecution) in which they participate in community-based treatment while under probation supervision. According to Kelly, "Research indicates that recidivism is reduced when offenders' families are engaged in their activities and when offenders have positive, meaningful connections to prosocial environment."

Experience with drug and other problem-solving courts shows forms of diversion from incarceration are very effective. One in six in American prisons is mentally ill, often with serious disorders. Use of crisis intervention teams, specially trained police, mental health courts, other diversion programs, and creation of Crisis Care Centers have been shown to be much more cost effective than incarceration. Today around 40 percent of prison admissions result from revocations of probation and parole. The probation population alone is almost twice that in prisons and jails. According to Kelly, "revoking a probationer to prison does nothing to enhance behavioral change in a positive direction and further heightens the probability of recidivism upon release." Hawaii's HOPE program and others like it rely on swift consequences and milder proportional sanctions with graduated stays in jail when a probationer violates their conditions of probation rather than revocation and imprisonment. In one study HOPE probationers were 55 percent less likely to be arrested for a new crime compared to those in a control group.

Truth-in-sentencing laws, mandatory minimum sentences and the like are all aimed at harsher punishment and taking discretion away from judges. Instead, Kelly says the sentencing process must change to "(e)stablish crime and recidivism reduction as an explicit goal" using "problem-solving concepts in the sentencing process based on collaborative decision making." All courts need the use of evidence-based practices in sentencing. Sensible use of risk assessment can inform sentencing decisions. Collaboration and use of a problem solving approach among criminal justice, social service, mental health, and treatment agencies leads to higher rehabilitation numbers. Conventional courts must adopt the problem solving approach that is working so well in drug courts. "Keeping sentencing generally indeterminate," according to Kelly, "allows for more deliberate decision making on a case-by-case basis, and gets us away from the unnecessary incarceration of offenders. Indeterminate sentencing can facilitate the collaboration of multiple interests in the sentencing process, which generally reduces the likelihood of an overly significant impact of discretion by any one individual. Indeterminate sentencing places discretion back in the court, but ... with a very different collaborative approach in which sentencing is more of a collective decision."

Kelly makes the important point that when it comes to community-based treatment versus incarceration, the financial incentive is to incarcerate. The state pays for most incarceration while most of the costs for diversion and community services fall on local communities. So in the short term it saves communities money to ship offenders off to state prisons. Financial incentives as used now in California redirect savings from reduced recidivism of probationers back to counties

to reward them when fewer offenders are incarcerated. He also points out that the public supports a more balanced approach to one of punishment only. Americans believe rehabilitation will significantly reduce crime.

“It is time for a fundamental change in the culture of crime and justice,” according to Kelly. He makes a compelling case. But policy makers also want to know where this approach has been successfully implemented. Are there countries that focus, as Kelly suggests, on reducing recidivism, using a balanced evidence-based approach, cost-effectiveness, harm reduction and problem solving? Does a criminal justice system based on all these proposed reforms work? No country is perfect, but what Kelly advocates is largely the model Europeans are using. Some European nations go much further down this road than does Kelly. Their way better protects public safety. Violent crime is rare in many of the European countries that use incarceration far less and have substantially shorter sentences.

A 2013 Vera Institute of Justice report "Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States" found that, “In most cases - even for relatively serious crimes such as burglary, aggravated assault, and other crimes considered felonies in the United States - prosecutors divert offenders away from prosecution or judges sanction offenders with fines, suspended sentences, or community service.” According to Vera, while 70 per cent of U.S. offenders are incarcerated, in Germany only six percent are imprisoned.

Some say that American policy makers have no interest in the practices of other countries. In 2008, not long after passage of the Second Chance Act, a House subcommittee held an extraordinary four day hearing on the criminal justice system. A senior Republican, Frank Wolfe of Virginia, stated at the hearing that the criminal justice system is completely broken. We need, he said, to look at what other countries are doing. When his turn came, Republican Jo Bonner of Alabama agreed saying we should look at Germany, Australia and others. Around that same time, Democratic Senator Jim Webb of Virginia organized a hearing on criminal justice practices in Japan. Unfortunately, seven or eight years after members of Congress sought guidance about the experience of other countries, that little 20 page report on Germany and the Netherlands remains, as far as I know, the only useful information to answer their questions - representing a real failure on the part of American criminologists to engage with policy makers who very much need their help. Dr. Kelly's work is a very useful beginning. Hopefully other criminologists will pitch with additional policy research that will help policy makers fully implement the measures Kelly suggests so we can create a criminal justice system that no longer will be a terrible shame.

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