



4-12-2024

Mass Incarceration, Violent Crimes, and Lengthy Sentences: Using the Race-Class Narrative As a Messaging Framework For Shortening Prison Sentences

Eric Petterson

Follow this and additional works at: <https://commons.stmarytx.edu/thestmaryslawjournal>



Part of the [Criminal Law Commons](#), [Jurisprudence Commons](#), [Law and Race Commons](#), [Law and Society Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Eric Petterson, *Mass Incarceration, Violent Crimes, and Lengthy Sentences: Using the Race-Class Narrative As a Messaging Framework For Shortening Prison Sentences*, 55 ST. MARY'S L.J. 475 (2024). Available at: <https://commons.stmarytx.edu/thestmaryslawjournal/vol55/iss2/3>

This Article is brought to you for free and open access by the St. Mary's Law Journals at Digital Commons at St. Mary's University. It has been accepted for inclusion in St. Mary's Law Journal by an authorized editor of Digital Commons at St. Mary's University. For more information, please contact sfowler@stmarytx.edu, egoode@stmarytx.edu.

ARTICLE

MASS INCARCERATION, VIOLENT CRIMES, AND LENGTHY SENTENCES: USING THE RACE-CLASS NARRATIVE AS A MESSAGING FRAMEWORK FOR SHORTENING PRISON SENTENCES

ERIC PETTERSON*

Introduction.....	477
I. A Brief History of Prisons and Sentencing Policy in America	480
A. Pre-Modern Prisons and Sentencing	481
B. The Civil War Era.....	482
C. “Tough on Crime” Racial Politics and the Rise of Mass Incarceration.....	483
II. International Comparison of Sentencing Policy and Crime Rates.....	487
A. America's "Tough on Crime" Policies Lead to Mass Incarceration.....	487
B. America Is a Unique Outlier in Our Use of Punitive Sentencing.....	489
III. Scandinavian Countries Show a Possible Path Forward.....	490
IV. Extremely Lengthy Sentences Don’t Work.....	493

*The Author thanks Professor Katheryn Russell-Brown, Nancy Dowd, Pamela Marsh, and Vanesa Miller for their insight and guidance. A special thanks to the team at the *St. Mary's Law Journal* for their help.

	A. Long Sentences Are Not Effective Deterrents	493
	B. People “Age Out” of Crime.....	493
	C. People Convicted of Violent Crimes Have Low Recidivism Rates.....	495
	D. Victims of Crime Prefer Shorter Sentences to Longer Sentences.....	496
V.	Two Proposed Reforms to Reduce Incarceration By 60%.....	498
	A. Capping Prison Sentences At Twenty Years	498
	B. Good-Time Credits	499
VI.	Using the Race-Class Narrative as a Messaging Framework.....	500
	A. Political and Media Elites Continue to Use “Tough On Crime” Playbook.....	500
	B. Structural Violence	502
	C. Alternative Crime Messaging Frameworks	503
	D. Race-Class Narrative Messaging Framework	506
VII.	Conclusion	509

INTRODUCTION

The United States of America incarcerates nearly two million people, more than any other country in the world, at a rate of 565 people per 100,000 residents.¹ Just fifty years ago, the incarceration rate was ninety-seven imprisoned people per 100,000 residents in the general population.² The rate of incarceration increased over 500% in fifty years. Many scholars and criminal justice reform advocates cited these statistics while advocating for the need to end the War on Drugs.³ The need for criminal justice reform to address mass incarceration has grown in popularity; however, many people focus on the War on Drugs to the exclusion of other issues in the criminal legal system, even though only twenty percent of the incarcerated population is incarcerated on drug charges.⁴ In contrast, nearly half of all people imprisoned in prisons and jails are imprisoned for violent offenses.⁵ Releasing all drug offenders would still not solve America's over-incarceration problem. Since four out of five incarcerated people are behind bars for non-drug related offenses, we must address how America punishes other crimes to end mass incarceration.

Too often, states implementing criminal justice reforms exclude violent offenses, focusing instead on people convicted of nonserious, nonviolent, and nonsexual offenses—or “non, non, nons.”⁶ The staggering number of violent crime incarcerations is not due to the crime-rate, but to the overly long sentences given to people convicted of violent crimes.⁷ Many crimes defined as “violent” in the criminal legal system do not involve *any* physical harm, including purse snatching, manufacturing methamphetamine,

1. Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2023*, PRISON POLY INITIATIVE, <https://www.prisonpolicy.org/reports/pie2023.html> [<https://perma.cc/YR9E-K8WY>].

2. MARGARET WARNER CAHALAN, U.S. DEP'T OF JUST., HISTORICAL CORRECTIONS STATISTICS IN THE UNITED STATES, 1850–1984 47 (1986).

3. *See generally* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 232–33 (2010) (providing an overview of the different efforts used to advocate for an end to the war on drugs).

4. *See generally* Sawyer & Wagner, *supra* note 1 (illustrating the various issues in the criminal justice system).

5. *But see id.* (explaining the term “violent crime” is usually unhelpful because legislation applies the term loosely to describe a variety of criminal acts).

6. ALEXI JONES, PRISON POLY INITIATIVE, REFORMS WITHOUT RESULTS: WHY STATES SHOULD STOP EXCLUDING VIOLENT OFFENSES FROM CRIMINAL JUSTICE REFORMS (2020).

7. *See* Sawyer & Wagner, *supra* note 1 (“False notions of what a ‘violent crime’ conviction means about an individual’s dangerousness continue to be used in an attempt to justify long sentences . . .”).

burglary of an unoccupied dwelling, and stealing drugs.⁸ Yet violent offense convictions result in severe repercussions, including triggering mandatory minimums and three-strikes laws.⁹ Addressing “non, non, non”¹⁰ offenses is politically easier to do than addressing violent offenses, but both must be addressed to end mass incarceration.

This Article will examine America’s unique use of extremely harsh and lengthy prison sentences and how these sentencing policies contributed to the rise of mass incarceration. First, this Article will examine the history of prisons and sentencing policy. It will explore how sentencing policy, “tough on crime” politics, and the mass media contributed to the rise of mass incarceration. Next, this Article will discuss how America’s overreliance on extremely lengthy sentences makes us an outlier to the rest of the world. This Article will examine the literature on incarceration and lengthy sentences, arguing that lengthy sentences are not effective because they do not effectively deter crime, do not promote public safety, do not prevent reoffending, are unnecessary because people age out of crime, and are not favored by crime victims. It will propose reducing the lengths of sentences and shortening sentences based on the good behavior of incarcerated people. Lastly, this Article will propose a political messaging framework to promote criminal justice reforms.

The criminal legal system needs many reforms, but this Article will focus on capping maximum prison sentences at twenty years for adult offenders, at fifteen years for people up to age twenty-five, and shifting sentences for all other offenses proportionately downward. This Article proposes combining these maximum sentences with an expert review board that may order continued incarceration if an inmate poses an ongoing safety threat. In addition, this Article will argue for a good-time reform policy reducing someone’s sentence by one day for every one day of good behavior while

8. Eli Hager, *When “Violent Offenders” Commit Nonviolent Crimes*, MARSHALL PROJECT, <https://www.themarshallproject.org/2019/04/03/when-violent-offenders-commit-nonviolent-crimes> [https://perma.cc/J3RX-YJV9]; JUSTICE POLICY INSTITUTE, *DEFINING VIOLENCE: REDUCING INCARCERATION BY RETHINKING AMERICA’S APPROACH TO VIOLENCE* 1, 13 (2016).

9. See generally Udi Ofer, *Politicians’ Tough-on-Crime Messaging Could Have Devastating Consequences*, TIME, <https://time.com/6227704/politicians-crime-messaging-mass-incarceration> [https://perma.cc/4V63-8A3T] (explaining how both major political parties are involved in increasing punishment for crimes and promoting harsher sentencing in general).

10. JONES, *supra* note 6.

incarcerated. A Vera Institute analysis found these two reforms alone reduce incarceration by fifty-five percent.¹¹

The rise in mass incarceration is primarily attributable to policy reform rather than changes in crime rates.¹² Politicians and the media brought about mass incarceration by using racist dog-whistle politics, fear mongering, and sensationalizing crime. As Michelle Alexander argued in *The New Jim Crow*, politicians and their enablers in the media used racism-based fear to facilitate mass incarceration and maintain a racial caste system.¹³ This effort was targeted towards controlling Black people, but once unleashed, has hurt people who are Black, white, and brown—especially if they are poor.¹⁴ Therefore, mass incarceration is more a political issue than a criminal issue and must be combatted with political messaging.

America's ruling elites historically use race-baiting as a divide-and-conquer tactic that ultimately hurts people of all races.¹⁵ "Tough on crime" politics is only one of many examples of this divide-and-conquer tactic. Such tactics must be countered by creating multi-racial coalitions across class lines to support the common good. This Article proposes using the Race-Class Narrative developed by Ian Haney Lopez, Heather McGhee, and Anat Shenker-Osorio to combat the fearmongering and divide-and-conquer tactics used to perpetuate our overly punitive criminal legal system.¹⁶ The Race-Class Narrative calls for a messaging framework identifying racism as a tool of division used by powerful elites that threaten all racial groups.¹⁷ The Race-Class Narrative project conducted polling and opinion research demonstrating the key to cross-racial solidarity and winning policy victories was addressing the connections between racial

11. SAMUEL FEINEH et al., VERA INST. OF JUST., A NEW PARADIGM FOR SENTENCING IN THE UNITED STATES 45 (2023).

12. JENIFER WARREN et al, PEW CTR. ON STATES, ONE IN 100: BEHIND BARS IN AMERICA 2008 17 (2008).

13. ALEXANDER, *supra* note 3.

14. *See generally id.* (theorizing the current criminal justice system was a new method to control and subdue black people, but it has hurt many more once implemented).

15. *See generally* HEATHER MCGHEE, THE SUM OF US: WHAT RACISM COSTS EVERYONE AND HOW WE CAN PROSPER TOGETHER (2021) (detailing how wealthy people use racial fearmongering as a political tactic to persuade lower socio-economic status white people to support tax cuts for the wealthy).

16. *See generally* DEMOS, RACE-CLASS: OUR PROGRESSIVE NARRATIVE (2018) (presenting research supporting methods for tackling racial and economic divisions).

17. *See generally id.* (demonstrating "racial and economic harms are intertwined").

divisions and economic hardship.¹⁸ The Race-Class Narrative offers a messaging framework guided by four messaging principles: (1) “leading with values explicitly shared across our races, backgrounds, and genders”; (2) introducing the problem by naming specific actors “whose decisions violate our values” and their “motivation[s] for scapegoating” certain people and spreading division; (3) “combat[ing] cynicism by characterizing how victory is possible with . . . collective action”; and (4) “clos[ing] with a unifying and positive vision for our future and how joining together gets us there.”¹⁹ This Article will propose a message using this framework to promote the two policy reforms mentioned earlier—capping sentence lengths and good-time reform—to move our country towards decarceration.

I. A BRIEF HISTORY OF PRISONS AND SENTENCING POLICY IN AMERICA

Beginning with workhouses in the sixteenth century, various forms of prisons focused on the social control of marginalized groups, including the poor, disabled, and racial minorities.²⁰ Prison reformers emphasize different goals for prisons, ranging from punishment to deterrence to incapacitation to rehabilitation. Today, people in the United States tend to view prison as a punishment for bad acts and to deter people to prevent them from committing future crimes.²¹ The history of prisons and sentencing demonstrates prisons serve a variety of purposes. Therefore, prisons are not immutable, and we can change the purpose of our current prison system to suit our society's needs better. We can re-constitute our current criminal legal system to repair the harm caused by crime, keep communities safe, and not incarcerate too many people for too long.

18. *See generally id.* (showcasing the results and solutions produced by the Race-Class Narrative to address racial and economic hardships).

19. Memorandum from ASO Communications, *Unlocked Voices: Messaging to End Mass Incarceration* (May 3, 2023).

20. *See generally* PIETER SPIERENBURG, *Preface* to *THE PRISON EXPERIENCE: DISCIPLINARY INSTITUTIONS AND THEIR INMATES IN EARLY MODERN EUROPE* (1991) (discussing the cross-cultural “history of crime and punishment”).

21. *But see* Jamie Santa Cruz, *Rethinking Prison as a Deterrent to Future Crime*, SOC'Y, <https://knowablemagazine.org/content/article/society/2022/rethinking-prison-deterrent-future-crime> [<https://perma.cc/WM3R-XJSR>] (“A large body of research finds that spending time in prison or jail doesn’t lower the risk that someone will offend again. In some instances, it actually raises the likelihood that they will commit future crimes.”).

For most of Western history, long-term incarceration was not used as punishment. Monarchs resorted to corporal and capital punishment.²² Peter Spierenburg, prison historian, argued Dutch workhouses in the sixteenth century were the first prisons in Europe.²³ England, Germany, the Netherlands, and Colonial America experimented with long-term confinement through workhouses, committing people in socially marginal groups—including beggars, vagrants, and people convicted of low-level crimes—to hard labor.²⁴ Initially, these workhouses did not resemble prisons and generally were not places of punishment, but over six decades, they began to be designed exclusively for criminals.²⁵ Serious offenders were not sent to workhouses but received corporal and capital punishment.²⁶ Similarly, Colonial America jails were designed to contain people for various reasons other than punishment, such as holding debtors to ensure they paid their debts, pre-trial detention for defendants, and witnesses, and holding convicts until they received their punishment.²⁷ According to scholar Ashley Rubin, “it would not be until the period during and after the American Revolution that something approximating a prison would be adopted and fully implemented in North America.”²⁸

A. *Pre-Modern Prisons and Sentencing*

Precursors to the modern prison arose shortly after the American Revolution, as several states authorized state prisons and relied less often on corporal and capital punishment.²⁹ Massachusetts authorized a state prison to house select criminals from across the state.³⁰ Connecticut authorized a state prison in 1790.³¹ The Walnut Street prison in Philadelphia began as a jail in 1773 and was repeatedly remodeled and reformed until it became a state prison in 1794.³² Approximately “more than a dozen other

22. Ashley T. Rubin, *Early U.S. Prison History Beyond Rothman: Revisiting the Discovery of the Asylum*, 15 ANN. REV. L. & SOC. SCI. 137, 139 (2019); see also Spierenburg, *supra* note 20 (discussing the shift from prisons being used for “vagrants and beggars” to “criminals”).

23. Spierenburg, *supra* note 20, at 2–3.

24. *Id.*

25. *Id.*

26. *Id.*

27. Rubin, *supra* note 22, at 141.

28. *Id.*

29. *Id.* at 142.

30. *Id.*

31. *Id.*

32. *Id.*

state prisons [were] authorized between 1796 and 1822”³³ “[B]y the 1830s, penitentiaries had spread to most states in the union”³⁴ Reformers viewed the move from capital and corporal punishment to incarceration as a progressive and humanitarian reform, but early critics of incarceration claimed incarceration was a form of complete despotism and violated republican principles.³⁵ Thus, the use of incarceration has been contested since its inception.

Sentences in the earliest days of prison were far shorter than modern-day prison sentences. Typically, prison sentences were only a few years, not excessively long sentences or life sentences.³⁶ The longest sentences were about eight to twelve years.³⁷

B. *The Civil War Era*

Racial disparities existed within the incarcerated population since the inception of the criminal legal system. Black people were generally not imprisoned in the antebellum South, but “they were heavily overrepresented in Northern prisons”³⁸ Before emancipation, 99% of Alabama prisoners were white.³⁹ By the 1870s, 95% of people incarcerated in the South were Black.⁴⁰ During this time, prisons, and laws “were explicitly redesigned to control newly freed . . . former slaves and other” Black people.⁴¹

By 1870, the rates of incarceration across all states more than doubled.⁴² By 1890, 30% of the nation’s incarcerated population was Black people, despite Black people making up only 12% of the nation’s general

33. *Id.* at 143.

34. Stephen D. Soble, *A Regime of Social Death: Criminal Punishment in the Age of Prisons*, 21 N.Y.U. REV. L. & SOC. CHANGE 497, 528 (1995).

35. GUSTAVE BEAUMONT & ALEXIS DE TOCQUEVILLE, ON THE PENITENTIARY SYSTEM IN THE UNITED STATES AND ITS APPLICATION IN FRANCE 79 (Herman R. Lantz et al. eds., Franz Lieber trans., 1964) (1883); MEMOIRS OF STEPHEN BURROUGHS 126 (1798).

36. Greg Miller, *The Invention of Incarceration*, KNOWABLE MAG., <https://knowablemagazine.org/article/society/2022/prison-history-ashley-rubin-qa> [<https://perma.cc/R7GL-6KXC>] (interviewing Ashley Kubrin about the history of criminal punishment).

37. *Id.*

38. Rubin, *supra* note 22, at 150.

39. ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? 29 (2003).

40. Christopher R. Adamson, *Punishment After Slavery: Southern State Penal Systems, 1865–1890*, 30 SOC. PROBS. 555, 565 (1982).

41. Rubin, *supra* note 22, at 149.

42. FEINEH ET AL., *supra* note 11, at 17.

population.⁴³ This statistic has remained currently stable as Black people make up 33% of the incarcerated population and 13% of the general population.⁴⁴ “From the 1890s through the 1950s, Black people received harsher and longer sentences than white people.”⁴⁵ During this time, intellectuals, social scientists, and reformers elevated the notion of “black criminality” to link crime to Black people.⁴⁶ This data suggests the presence of racial disparities in the criminal legal system since its founding and has remained remarkably stable throughout our history, with the lone exception of the antebellum South when Black people were controlled through chattel slavery rather than imprisonment.

C. *“Tough on Crime” Racial Politics and the Rise of Mass Incarceration*

From the 1920s to the 1970s, incarceration rates remained relatively stable, followed by the incarceration rate more than quadrupling from the early 1970s to today.⁴⁷ Many factors contributed to the rise of mass incarceration, including, but not limited to, a spike in violent crime beginning in 1961, politicians and the media engaging in race-baiting and fearmongering political tactics, and new sentencing laws.⁴⁸ Criminal justice stakeholders moved away from focusing on rehabilitation and crime prevention to focusing on punishment and incapacitation.⁴⁹ The new “tough on crime” politics and policy emphasized punishing and demonizing Black people as “welfare queen[s],” “superpredator[s],” and “thugs.”⁵⁰ Two different Republican political operatives bluntly summed up their strategy, with Nixon’s domestic policy adviser, John Ehrlichman, stating the Nixon White House lied about crime policy to disrupt Black and hippie communities,⁵¹ and the Republican consultant, Lee Atwater, admitting that

43. *Id.*

44. *Id.*

45. *Id.*

46. *See generally* KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS* (2011) (chronicling how the idea of Black people as an exceptionally dangerous class of criminals arose).

47. COMMITTEE ON CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION ET AL., *Summary to THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 1* (Jeremy Travis, Bruce Western & Steve Redburn eds., 2014).

48. *Id.* at 111.

49. *Id.* at 107.

50. FEINEH ET AL., *supra* note 11, at 18–19.

51. Dan Baum, *Legalize It All*, HARPER’S MAG., <https://harpers.org/archive/2016/04/legalize-it-all/> [<https://perma.cc/3CBA-2EZ9>].

Republicans used racist dog-whistle politics to attract white voters.⁵² Lee Atwater and the George H.W. Bush campaign created the infamous Willie Horton advertisement, blaming their opponent Michael Dukakis for a Black escaped convict raping a woman.⁵³ While running for President in 1968, Richard Nixon gave seventeen speeches on “law and order” and ran television ads depicting the civil rights movement as lawless and dangerous.⁵⁴ John Dean, White House Counsel, remarked about Nixon’s tough-on-crime rhetoric: “I was cranking out that bullshit on Nixon’s crime policy before he was elected. And it was bullshit, too. We knew it.”⁵⁵

These Republicans bluntly stated their strategy for using racist, dog-whistle politics, but Democrats were also guilty of race-baiting that fueled mass incarceration. Bill and Hillary Clinton referenced Black teenagers as “superpredators” further fueling fears.⁵⁶ Bill Clinton, “to raise his national profile and reverse the Democratic Party’s soft-on-crime image,” personally oversaw the execution of a Black man so intellectually disabled that he said he was going to save the dessert of his last meal for later.⁵⁷ Democrat Joe Biden infamously wrote the Violent Crime Control and Law Enforcement Act, bragging that the Democratic Party supported “‘60 new death penalties, ‘70 enhanced penalties,’ ‘100,000 cops,’ and ‘125,000 new state prison cells.’”⁵⁸ Thus, both Democrats and Republicans were more

52. Rick Perlstein, *Exclusive: Lee Atwater's Infamous 1981 Interview on the Southern Strategy*, NATION, <https://www.thenation.com/article/archive/exclusive-lee-atwaters-infamous-1981-interview-southern-strategy/> [https://perma.cc/6HG2-8D9Z].

53. See generally Rachel Withers, *George H.W. Bush's "Willie Horton" Ad Will Always be the Reference Point for Dog-Whistle Racism*, VOX, <https://www.vox.com/2018/12/1/18121221/george-hw-bush-willie-horton-dog-whistle-politics> [https://perma.cc/XGK8-WCJX] (illustrating the use of dog-whistle politics in the 1980s).

54. Ofer, *supra* note 9.

55. See Ta-Nehisi Coates, *The Black Family in the Age of Mass Incarceration*, ATLANTIC MAG., <https://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/> [https://perma.cc/SAW4-TKUH].

56. Michael Sainato, *Bill Clinton's Racist Defense of the 'Super Predator' Myth*, OBSERVER <https://observer.com/2016/04/bill-clintons-racist-defense-of-the-super-predator-myth/> [https://perma.cc/7NWT-HPW8].

57. Ron Fournier, *The Time Bill Clinton and I Killed a Man*, ATLANTIC MAG., <https://www.theatlantic.com/politics/archive/2015/05/the-time-bill-clinton-and-i-killed-a-man/460869/> [https://perma.cc/R2PJ-EKPK]; Nathan J. Robinson, *The Death of Ricky Ray Rector*, JACOBIN, <https://jacobin.com/2016/11/bill-clinton-rickey-rector-death-penalty-execution-crime-racism>.

58. German Lopez, *The controversial 1994 crime law that Joe Biden helped write, explained*, VOX, <https://www.vox.com/policy-and-politics/2019/6/20/18677998/joe-biden-1994-crime-bill-law-mass-incarceration> [https://perma.cc/2NW8-4K3X].

than willing to exploit racial fears to win elections and enact overly harsh “tough on crime” sentences that contributed to mass incarceration.

Violent crime spiked from 1960 to 1980, increasing by 126% from 1960 to 1970 “and by another 64% from 1970 to 1980.”⁵⁹ However, even as violent crime increased in the 1960s, the prison population fell throughout the 1960s.⁶⁰ The explosion in the prison population began in the 1970s but truly exploded in the 1980s when the crime spike was coming to an end.⁶¹ As violent crime rates decreased in the 1990s, the imprisonment rate continued to soar.⁶²

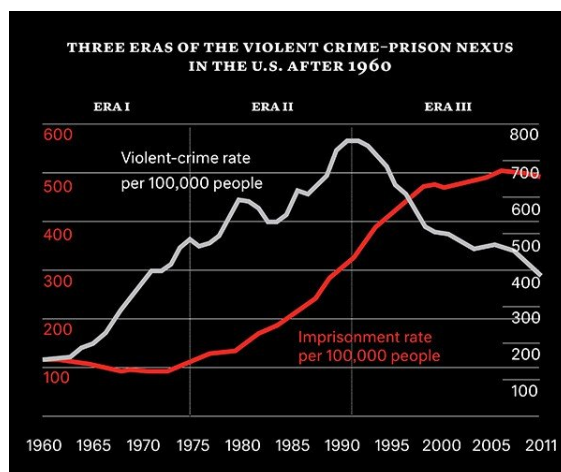


Chart: Three Eras of Violent Crime-Prison Nexus in the U.S. After 1960

63

The mainstream media was more than willing to fan the flames of racial politics by sensationalizing crime and echoing politicians’ fearmongering and race-baiting. The media sets the agenda and raises the salience of certain issues in the public’s mind by constantly emphasizing those issues. The news media’s emphasis on crime increases public concern and creates a

59. FEINEH ET AL., *supra* note 11, at 18.

60. *Id.*

61. *Id.* at 23.

62. Coates, *supra* note 55.

63. *Id.*

relevant factor in assessing political leaders.⁶⁴ Once setting the agenda, the emphasis of the media results in the adoption of more punitive views.⁶⁵

Despite falling crime rates in the 1990s, network news stations “dramatically increased their coverage of crime in their dinner-hour newscasts.”⁶⁶ In the 1990s, crime was the networks’ leading topic in their evening news shows.⁶⁷ This phenomenon is not restricted to the national news networks. In the 1990s, crime was the number one topic on local television news.⁶⁸ A study of 16,000 local news stories, across nineteen different media markets, determined the emphasis on crime depends on viewer interest in violent programming rather than actual crime in that area.⁶⁹

The media’s coverage of crime also stoked racial panic. Whites constitute 69% of people arrested for criminal activity but only 28% of the people who appear on crime reports on television.⁷⁰ The news media treats crime as gruesome entertainment stoking fear rather than a serious issue.⁷¹ Covering crime as entertainment, at the expense of other social and political issues, was an economic strategy carried out by news networks.⁷² Their incentives to continue to cover crime in this way have only increased with the proliferation of the Internet and an increasing interest in the “true crime” genre.⁷³

A violent spike in crime lasting from the 1960s through the 1980s likely contributed to the adoption of more punitive policies and higher rates of incarceration but cannot fully explain mass incarceration. More punitive policies were adopted *after* this spike in violent crime had occurred.⁷⁴

64. Sara Sun Beale, *The News Media's Influence on Criminal Justice Policy: How Market-Driven News Promotes Punitiveness*, 48 WM. & MARY L. REV. 397, 398 (2006).

65. *Id.*

66. *Id.* at 422.

67. Paul Farhi, *Nightly News Blues*, AM. JOURNALISM REV., <http://www.ajr.org/article.asp?id=41> [<https://perma.cc/SJB8-NQL4>].

68. Beale, *supra* note 64, at 430.

69. JAMES T. HAMILTON, CHANNELING VIOLENCE: THE ECONOMIC MARKET FOR VIOLENT TELEVISION PROGRAMMING 239 (1998).

70. MCGHEE, *supra* note 15 at 224.

71. Beale, *supra* note 64, at 402.

72. *Id.* at 401.

73. *Id.* at 427.

74. FEINEH ET AL., *supra* note 11 at 19.

Increased incarceration rates have minimal to no impact on crime rates.⁷⁵ A bipartisan alliance supporting the “tough on crime” playbook—fueling the mainstream media’s exploitation of crime as violent entertainment—contributed to mass incarceration. This push gained the support of the white public by demonizing Black people, especially Black men. However, what started as a policy and political playbook, aimed at punishing Black people, quickly swept up white and brown people in its wake. While mass incarceration disproportionately hurts Black people, mass incarceration hurts *everyone* whether they are Black, white, or brown.

II. INTERNATIONAL COMPARISON OF SENTENCING POLICY AND CRIME RATES

A. *America’s “Tough on Crime” Policies Lead to Mass Incarceration*

Politicians and the news media pushed for more punitive laws and policies through fearmongering and race-baiting.⁷⁶ Lawmakers pushed for more punitive policies and imprisonment even as violent crime rates dropped.⁷⁷ While a spike in violent crime from the 1960s to the 1980s may have contributed to public fear of crime and openness to more punitive policies, these policies largely were not enacted until *after* crime rates began to decrease.⁷⁸ Some credit mass imprisonment for the drop in crime rates, but research shows that incarceration was not the main driver of decreased crime rates.⁷⁹ Instead, increased incarceration rates declined as an effective crime control tactic for more than thirty years, evident by the non-existent effects of increased incarceration on crime rates since 2000.⁸⁰

Misguided changes in sentencing policies and laws, rather than crime, accounted for the increase in the incarcerated population.⁸¹ Between 1972

75. OLIVER ROEDER ET AL., WHAT CAUSED THE CRIME DECLINE? 8 (2015) (illustrating increased incarceration has no effect on violent crime and little effect on property crime).

76. *See generally* Perlstein, *supra* note 52 (showing the relation of fearmongering and race-baiting on politics).

77. *See generally* OLIVER ROEDER ET AL., *supra* note 75, at 7 (discussing the drop of violent crime rates and the increase in incarceration).

78. *See generally id.* at 3 (acknowledging the rise in crime in the 1960s).

79. *See generally id.* at 7 (discussing theories for decreased crime rates).

80. *Id.* at 10.

81. Katherine Beckett & Megan Ming Francis, *The Origins of Mass Incarceration: The Racial Politics of Crime and Punishment in the Post-Civil Rights Era*, 16 ANN. REV. L. & SOC. SCI. 433, 435 (2020) (asserting long prison sentences are not justified to prevent crime).

and 2000, the total prison population grew by 8% annually.⁸² Four categories of sentencing policies contributed to the explosion in incarceration: (1) “truth in sentencing” laws, (2) enhancements based on prior convictions, including “three-strikes” laws, (3) “mandatory minimums” and (4) laws to limit parole, including life without parole sentences.⁸³ Changing the sentencing policy led to more punitive laws drastically increasing the length of sentences and the time offenders actually serve. Criminal justice stakeholders accused indeterminate sentences—prison terms without definite duration and prisoner’s release determined by a parole board or judge—of being fundamentally flawed and argued that rehabilitation did not work.⁸⁴ The rejection of indeterminate sentencing led states to pass “truth in sentencing” laws requiring convicted offenders to serve at least 85% of their sentence.⁸⁵ From 1984 to 1999, more than forty states passed “truth in sentencing” policies, which more than doubled people’s expected time in prison in some states.⁸⁶ About 80% of states adopted “three-strikes” laws and about 60% of states adopted the even more punitive “two-strikes” laws.⁸⁷ Mandatory minimum laws changed prosecutor incentives, allowing prosecutors to pressure defendants into accepting plea bargains or risk a mandatory minimum sentence.⁸⁸

The most punitive of these new sentencing policy categories was life without the possibility of parole. Today, every single state, except Alaska, permits life without parole, and thirty-seven states permit life without parole for crimes short of homicide.⁸⁹ One in seven individuals incarcerated are

82. See COMMITTEE ON CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION ET AL., *supra* note 47, at 34 (describing the increase in the prison population during a set period).

83. See *id.* at 70–73 (discussing how changes in sentencing policies increased the incarceration rate in the United States).

84. Melissa Hamilton, *Some Facts About Life: The Law, Theory, and Practice of Life Sentences*, 20 LEWIS & CLARK L. REV. 803, 809–10 (2016); see also FEINEH ET AL., *supra* note 11, at 66 (quoting “‘Law-and-order’ advocates—including district attorneys’ associations, police unions, and victim safety organizations—lobbied for determinate sentencing. They believed the rehabilitation ideology coddled incarcerated people and was ineffective in reducing crime”).

85. See COMMITTEE ON CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION ET AL., *supra* note 47, at 73 (discussing what states implemented instead of indeterminate sentences within the criminal justice system).

86. FEINEH ET AL., *supra* note 11, at 20.

87. *Id.*

88. *Id.* at 19.

89. Ashley Nellis, *Throwing Away the Key: The Expansion of Life Without Parole Sentences in the United States*, 23 FED. SENT’G REP. 27–28 (2010).

servicing a life sentence.⁹⁰ Today, more people are servicing life sentences than people servicing *any* sentence in 1970.⁹¹ According to scholar Ashley Nellis, “[t]he downward trend in violence in America that continues today was already underway when the country adopted its most punitive policies, including the rapid expansion of life sentences.”⁹²

Incarcerated individuals rarely served an entire life term until the mass incarceration age despite life sentences being a long-term sentencing option.⁹³ People were sentenced to life imprisonment, but generally expected to be released at some point.⁹⁴ Life sentences, with the possibility of early release, were used to encourage and incentivize imprisoned people to behave well while incarcerated.⁹⁵ Typically, inmates were released after serving between ten and fifteen years of a life sentence through clemency or parole.⁹⁶

B. *America is a Unique Outlier in Our Use of Punitive Sentencing*

The rise and fall of crime in the twentieth century was an international phenomenon. While crime rates in Canada closely matched those in the United States, Canada’s imprisonment rate remained steady.⁹⁷ A similar phenomenon occurred in Scandinavian countries, with imprisonment rates holding steady in Norway, Sweden, and Denmark, while falling in Finland, despite crime rates rising and falling in these countries.⁹⁸ In Germany, only 6% of offenders who are convicted are sent to prison while in the Netherlands only 10% were sent to prison.⁹⁹ These countries reactions to

90. ASHLEY NELLIS, THE SENT’G PROJECT, NO END IN SIGHT: AMERICA’S ENDURING RELIANCE ON LIFE SENTENCES 4 (2021).

91. *Id.*

92. *Id.*

93. *See generally* CHRISTOPHER SEEDS, DEATH BY PRISON: THE EMERGENCE OF LIFE WITHOUT PAROLE AND PERPETUAL CONFINEMENT (2022) (describing the changes in life sentences from the mass incarceration age).

94. Christopher Seeds, *Q&A with Christopher Seeds, author of Death by Prison*, UNL OF CAL. PRESS, <https://www.ucpress.edu/blog/58177/qa-with-christopher-seeds-author-of-death-by-prison/> [<https://perma.cc/3LCA-35T8>].

95. *Id.*

96. Tapio Lappi-Seppälä, *Penal Policy in Scandinavia*, 36 CRIME AND JUST.: A REV. OF RSCH 217, 217–88 (2007).

97. Coates, *supra* note 55.

98. *Id.*

99. ALISON SHAMES & RAM SUBRAMANIAN, SENTENCING AND PRISON PRACTICES IN GERMANY AND THE NETHERLANDS 9 (2013).

rising crime rates prove the United States could have taken a different path—and we still can.

Western European countries not only imprison people at far lower rates than the United States, but their prisoners serve shorter sentences.¹⁰⁰ As one study put it, “the United States generally imposes longer sentences on persons sentenced to incarceration than other industrialized nations.”¹⁰¹ In Germany, in 2006, 75% of prison sentences were for less than twelve months and 92% of sentences were two years or less.¹⁰² In the Netherlands, in 2012, 91% of sentences were for one year or less.¹⁰³

The United States criminal legal system is more punitive than other industrialized nations. As a review of dozens of studies noted, “[i]n the United States, the death penalty is virtually unique among industrialized nations, as is the expansive prevalence of sentences of life imprisonment.”¹⁰⁴ In 2016, an international analysis found the United States had more people serving life imprisonment than the *combined* total of the 113 other countries surveyed.¹⁰⁵ In contrast, European nations employ life imprisonment sparingly. Nine member nations of the Council of Europe have *no* provisions for a life sentence, and thirty-two nations have a fixed number of years—generally between seven and twenty-five years—after which someone sentenced to life is eligible for parole.¹⁰⁶ In addition, many Latin American nations—including “Brazil, Costa Rica, Colombia, El Salvador, Peru, and Mexico”—have banned any form of life imprisonment.¹⁰⁷

100. Michael Tonry, *Punishments, Politics, and Prisons in Western Countries*, 51 CRIME & JUST 10 (2022).

101. Ram Subramanian & Alison Shames, *Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States*, VERA INST. OF JUST., Oct. 2013, at 10.

102. SHAMES & SUBRAMANIAN, *supra* note 99, at 10.

103. *Id.*

104. Marc Mauer, *Incarceration Rates in an International Perspective*, THE SENT'G PROJECT (June 28, 2017), <https://www.sentencingproject.org/policy-brief/incarceration-rates-in-an-international-perspective/> [https://perma.cc/HJW6-5LBA].

105. German Lopez, *The Case for Capping all Prison Sentences at 20 Years*, VOX, <https://www.vox.com/future-perfect/2019/2/12/18184070/maximum-prison-sentence-cap-mass-incarceration> [https://perma.cc/3BCJ-AQUC].

106. Mauer, *supra* note 104.

107. JESSICA S. HENRY, LIFE WITHOUT PAROLE: AMERICA'S NEW DEATH PENALTY? 79 (Charles J. Ogletree & Austin Sarat eds., N.Y. Univ. Press) (2012).

III. SCANDINAVIAN COUNTRIES SHOW A POSSIBLE PATH FORWARD

Scandinavian countries, in particular, demonstrate the benefits of a less punitive approach to criminal justice.¹⁰⁸ Indeed, “[i]ntellectuals and experts are generally in agreement that the Scandinavian approach to criminal justice is much more effective” than the United States system.¹⁰⁹ Scandinavian countries have imprisonment rates between fifty and eighty per 100,000 residents, compared to the United States’ rate of 565 per 100,000 residents.¹¹⁰ Skeptics may contend the United States is so vastly different than Scandinavian countries that a comparison is unfair. But, as stated previously, the United States rate of imprisonment was only 93 per 100,000 residents fifty years ago, which would put us more in line with the Scandinavian countries.¹¹¹

While the United States began the path to historical imprisonment rates in the 1970s, Scandinavian countries underwent a period of “penal liberalization” rooted in “empirical research that emphasized the ineffectiveness of custodial treatment.”¹¹² From 1976 to 1978, Sweden, Finland, Denmark, and Norway all released reports formulating criminal justice reform based on reducing the severity of sanctions, replacing short prison sentences with community alternatives, restricting the use of indeterminate sentences, and a respect for proportionality and humanity.¹¹³ The United States, when moving away from indeterminate sentences, enacted “truth in sentencing” laws that *increased* the length of sentences.¹¹⁴ In contrast, Scandinavian countries eliminated indeterminate sentences and instituted automatic early release to *reduce* the length of sentences.¹¹⁵ In Scandinavian countries, prisoners are generally released automatically after serving two-thirds of their sentence.¹¹⁶ Additionally, these countries

108. See generally Lappi-Seppälä, *supra* note 96 (discussing penal policy in Scandinavia).

109. Sean K. Moynihan, *They Don't Do It Like My Clique: How Group Loyalty Shapes the Criminal Justice Systems in the United States and Norway*, 33 ARIZ. J. INT'L & COMPAR. L. 423, 424 (2016).

110. Lappi-Seppälä, *supra* note 96, at 217.

111. CAHALAN, *supra* note 2.

112. Tapio Lappi-Seppälä, *Nordic Sentencing*, 45 CRIME & JUST. 17, 20 (2016).

113. *Id.* at 21.

114. COMMITTEE ON CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION ET AL., *supra* note 47, at 80–81.

115. Lappi-Seppälä, *supra* note 112, at 22.

116. *Id.* at 44.

lowered their prison populations by offering alternatives to imprisonment including fines, suspended sentences, and community service.¹¹⁷

Scandinavian countries, despite taking a more punitive turn in the 1990s, still enact shorter sentences than the United States.¹¹⁸ Scandinavian countries have all abolished the death penalty.¹¹⁹ The most severe sentence imposed for a single offense in Sweden, Denmark, and Finland is “life,” meaning—in practice—a prison term of fifteen to eighteen years with early release.¹²⁰ The maximum sentences for single offenses, not eligible for a life sentence, are twelve years in Finland, sixteen years in Denmark, and ten years in Sweden.¹²¹ However, these limits may be exceeded in cases of recidivism or multiple offenses.¹²² Sentences, in practice, generally end up far shorter than the allotted time due to early release and remission allowances.¹²³ For murder, the average time served is less than twenty years.¹²⁴

Given the strategy of American prosecutors to “stack” offenses and charge defendants with multiple offenses and sentencing lengths,¹²⁵ my preferred method for lengthy sentences is the Norwegian method. In Norway, life sentences are abolished and replaced with a maximum twenty-one year sentence.¹²⁶ Norway abolished life sentences in 1981 as a reaction to the use of indeterminate sentences.¹²⁷ Critics may view this policy as overly lenient on the worst offenders, but it has proven to be effective. Norway has one of the lowest recidivism rates in the world, with only 20% of released prisoners re-offending within two years.¹²⁸ In contrast, the

117. *See id.* at 41–43 (discussing fines, suspended sentences, and community service).

118. *Id.* at 25, 30–31.

119. *Id.* at 44.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *See* LIZ KOMAR, SENT’G PROJECT, COUNT DOWN: PATHS A 20-YEAR MAXIMUM PRISON SENTENCE 7 (2023) (explaining stacked sentencing).

126. Lappi-Seppälä, *supra* note 112, at 44.

127. *Id.* at 46.

128. Ragnar Kristoffersen, *Relapse Study in the Correctional Services of the Nordic Countries. Key Results and Perspectives*, 2 EUROVISTA 168, 170 (2013).

United States has one of the highest recidivism rates in the world, with 43% of released prisoners re-offending within one year.¹²⁹

There are major differences between Scandinavian countries and the United States that make comparisons difficult. The United States has far higher rates of racial inequality and class inequality than Scandinavian countries.¹³⁰ These differences also contribute to the various countries' support for welfare policies and a social safety net that can address the root causes of crime and support people re-entering society after imprisonment.¹³¹ One possible path to overcome these structural obstacles is to create a multi-racial coalition in the United States to pass policies bringing incarceration rates more in line with other industrialized nations.

IV. EXTREMELY LENGTHY SENTENCES DON'T WORK

A. *Long Sentences Are Not Effective Deterrents*

Extremely lengthy sentences are ineffective in promoting public safety by failing to serve as effective deterrents because young people “age out” of crime, and violent offenders have lower recidivism rates than other offenders. Numerous studies show certainty of punishment is a more effective deterrent than the severity of punishment.¹³² Put another way, potential lawbreakers are more likely not to commit a crime if certain they will be apprehended, rather than if they know they will be punished severely. As Daniel Nagin, a deterrence scholar, stated, “it is clear that lengthy prison sentences cannot be justified on a deterrence-based, crime prevention basis.”¹³³ Nagin’s scholarship specifically states policies including three-strikes laws, life without the possibility of parole, and laws mandating lengthy prison sentences are not justified by a deterrence rationale.¹³⁴

The notion of a lengthy sentence serving as a deterrent also assumes that potential lawbreakers are rational actors conducting a cost-benefit analysis before committing a crime—intuitively, this is absurd. Imagine a potential

129. MATTHEW R. DUROSE ET AL., BUREAU OF JUST. STAT., RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010 7 (2014).

130. See generally Moynihan, *supra* note 109, at 438–44 (discussing race in the United States).

131. See generally *id.* at 439–43 (discussing the root causes of crime and re-entering society after incarceration).

132. See generally Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 CRIME & JUST. 199 (2013) (describing the impact of certainty of punishment).

133. *Id.* at 202.

134. *Id.* at 201.

criminal opening a criminal law book to determine the severity of a prison sentence before deciding to rob a convenience store. Most people act far more impulsively and do not weigh their options in this manner. Someone committing a crime is more likely to act under the influence of drugs or alcohol, seek social approval, or seek economic gain.¹³⁵ In sum, lengthy prison sentences are an ineffective crime deterrent and cannot be justified on a deterrence basis.

B. *People “Age Out” of Crime*

Long prison sentences are sometimes justified by reasoning that they incapacitate offenders and prevent them from committing crimes in the future. However, research shows people “age out” of crime and are less likely to commit crimes as they grow older.¹³⁶ Scientific research demonstrates young peoples’ brains do not fully develop until their mid-twenties and therefore are less able to inhibit inappropriate behavior than older adults, are more susceptible to peer influence, are more impulsive, are less able to manage emotions, and are less able to fully consider the consequences of their actions.¹³⁷ This phenomenon is partially responsible for criminal activity peaking during the late teen years and early twenties.

People age and are less likely to engage in crime, especially violent crimes.¹³⁸ Peak arrest rates for violent crimes occur at ages eighteen to twenty.¹³⁹ The rate of arrest for violent crimes falls steeply after this peak and is nearly halved once people age into their mid-thirties.¹⁴⁰ Research conducted found even the vast majority of “chronic offenders” stop committing crimes by their forties, and their crimes committed later in life were often low-level “nuisance crimes.”¹⁴¹ Moreover, criminal “careers”

135. See JENNIFER BROWNSON ET AL., DRUG USE, DEPENDENCE, AND ABUSE AMONG STATE PRISONERS AND JAIL INMATES 1 (Bureau of Just. Statistics ed., 2020) (describing between 2007 and 2009, nearly 58% of state prisoners were under the influence of some type of drug at the time of offense).

136. See generally HOWARD N. SNYDER, BUREAU OF JUST. STAT., ARREST IN THE UNITED STATES, 1990–2010 (2012) (discussing the relation of age to various crimes).

137. See Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE AND TREATMENT 449, 450 (2013) (discussing the impact of undeveloped brains in younger people).

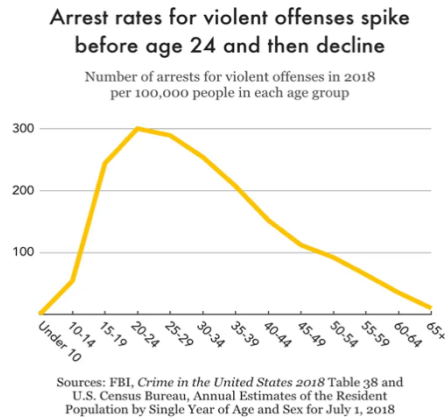
138. See generally HOWARD N. SNYDER, *supra* note 136 (discussing the relation of age to various crimes).

139. See generally *id.* (discussing various crimes and the age rate often peaking at eighteen for violent crimes).

140. See generally *id.* (discussing various crimes and the ages of the offenders).

141. ASHLEY NELLIS, A NEW LEASE ON LIFE THE SENT’G PROJECT 8 (2021).

typically last between five and ten years.¹⁴² Despite these facts, other research found two of every three people serving a state prison sentence for violent crimes were at least fifty-five years old.¹⁴³



144

Therefore, lengthy prison sentences are not likely to prevent people from committing crimes, because people are less likely to be committing crimes as they age. Lengthy prison sentences have diminishing effects as young offenders mature and their brains fully develop. Incarcerating people for long periods of time, past the end of their criminal “career,” therefore serves little public safety purpose. Incarcerated individuals, serving state prison sentences, could likely be released with minimal to no effect on public safety because of aging out of crime. Holding people for long sentences is unnecessarily costly, separates prisoners from their families and community, deprives society and the individual of a person’s potential, and does not meaningfully contribute to public safety.

C. *People Convicted of Violent Crimes Have Low Recidivism Rates*

People convicted of violent offenses have some of the lowest recidivism rates within the criminal legal system.¹⁴⁵ Two studies determined people convicted of violent offenses are less likely to be re-arrested within three

142. *Id.*

143. E. ANN CARSON & WILLIAM J. SABOL, BUREAU OF JUST. STATISTICS, *AGING OF THE STATE PRISON POPULATION, 1993–2013* 1 (2013).

144. JONES, *supra* note 6.

145. *Id.*

years for any offense than people convicted of nonviolent offenses.¹⁴⁶ People convicted of violent offenses were only marginally more likely to be re-arrested for a violent offense than people who had been convicted of property or drug crimes.¹⁴⁷ Furthermore, there is little evidence to suggest that most people who engage in acts of violence “specialize” in violence—the majority are one-time violent offenders.¹⁴⁸ An act of violence represents a single moment in someone’s life rather than a lifelong commitment to acts of violence.

Because offenders age out of crime and are unlikely to commit another violent crime upon release, lengthy sentences keep them imprisoned long past the time they pose a threat to public safety. Sentencing someone who commits a violent act under specific circumstances to decades of imprisonment does not promote public safety because this violence is not endemic to such an individual and is unlikely to recur.¹⁴⁹

Certain environments create the conditions that make violence more likely to occur rather than individual motivations.¹⁵⁰ Poor communities that have high rates of unemployment, low high school graduation rates, unstructured and chaotic family life, and unstable housing are associated with increased violence.¹⁵¹ Due to these conditions, perpetrators of violence are likely to be victims of violence themselves. Acts of violence should be placed in context and viewed as a reaction to specific circumstances rather than a personal character trait or mode of being that will guide an individual in their life. Therefore, lengthy sentences fail to serve their purported purpose to promote public safety and prevent harm.

146. See DUROSE ET AL., *supra* note 129, at 1 (2018) (illustrating recidivism rates among violent offenders); see generally JONES, *supra* note 6 (discussing individuals re-arrested after committing various crimes).

147. MARIEL ALPER & MATTHEW DUROSE, 2018 UPDATE ON PRISONER RECIDIVISM: A 9-YEAR FOLLOW-UP PERIOD (2005–2014) 10 (May 2018); see also JAMES AUSTIN ET AL., RECONSIDERING THE “VIOLENT OFFENDER” 26 (2019) (“[P]eople convicted of murder and sexual assault or rape have the lowest rates of recidivism.”).

148. Alex R. Piquero et al., *Violence in Criminal Careers: A Review of the Literature from a Developmental Life-Course Perspective*, 17 *AGGRESSION & VIOLENT BEHAV.* 171, 176–77 (2012) (“[A]mong those persons who have a violent offense (according to official records) in their criminal careers, the majority are only one-time violent offenders.”).

149. See DAVID ALAN SKLANSKY, A PATTERN OF VIOLENCE: HOW THE LAW CLASSIFIES CRIME AND WHAT IT MEANS FOR JUSTICE 233–36, 237 (2021) (discussing lengthy sentences for situational violent crimes will not enhance public safety).

150. See *id.* at 234 (separating police violence into two categories—dispositional and situational—to show that violence can be circumstantial).

151. AUSTIN, *supra* note 147, at 8.

D. *Victims of Crime Prefer Shorter Sentences to Longer Sentences*

A common refrain among prosecutors and law enforcement officials is that they are advocates for carrying out the wishes of crime victims and their families. The argument goes that people convicted of crimes must be punished and sentenced harshly to fulfill the victims and their families' wishes. However, survey data on the opinions of crime victims tell a different story.¹⁵²

Victims of crime overwhelmingly support policies that emphasize crime prevention, rehabilitation, and shorter prison sentences to more punitive public policies.¹⁵³ According to a 2016 survey of crime victims, “6 in 10 victims prefer shorter prison sentences and more spending on prevention and rehabilitation to prison sentences that keep people incarcerated for as long as possible.”¹⁵⁴ The survey also suggests, “By a margin of 3 to 1, victims prefer holding people accountable through options beyond prison, such as rehabilitation, mental health treatment, drug treatment, community supervision, or community service.”¹⁵⁵ Victims of nonviolent, nonserious, and nonsexual crime do not just hold these views. Despite being the most impacted by violent crime and the most vulnerable to future crime, violent crime survivors still support shorter prison sentences and increased investments in the root causes of crime.¹⁵⁶

The groups who experience the most crime are people of color, young people, and people in low-income communities.¹⁵⁷ Victims of violent crime support crime prevention more than increased investment in prisons and jails by overwhelming margins: 85% of violent crime victims prefer investing more in creating jobs than in prisons and jails, and 82% prefer investing more in programs for at-risk youth and crime prevention.¹⁵⁸ This included

152. See ALLIANCE FOR SAFETY AND JUSTICE, CRIME SURVIVORS SPEAK: THE FIRST EVER NATIONAL SURVEY OF VICTIMS' VIEWS ON SAFETY AND JUSTICE 4 (2016) (“Perhaps to the surprise of some, victims overwhelmingly prefer criminal justice approaches that prioritize rehabilitation over punishment and strongly prefer investments in crime prevention and treatment to more spending on prisons and jails.”).

153. *Id.*

154. *Id.* at 5.

155. *Id.*

156. See *id.* at 7 (“People who have been the victim of a violent crime are more than four times as likely to have been victimized four or more times [and] . . . are the most likely to experience repeat victimization.”); *id.* at 16 (presenting data that suggests victims are in favor of rehabilitative practices for offenders, such as shorter prison sentences).

157. *Id.* at 16.

158. *Id.* at 18.

overwhelming majority support for these programs across people from different races, ethnicities, and political parties.¹⁵⁹ In 2022, another survey reaffirmed the findings of the 2016 survey, reporting that the policies most supported by victims of crime included expanded mental health treatment and violence prevention programs, with the least popular policies being longer prison sentences and expanding prisons and jails.¹⁶⁰ Thus, if we determine criminal justice policies based on the views of those most impacted by crime, we should invest more in prevention programs, reduce prison sentences, and hold people accountable through community supervision rather than just prison.

V. TWO PROPOSED REFORMS TO REDUCE INCARCERATION BY 60%

A. *Capping Prison Sentences at Twenty Years*

I am advocating two reforms to the criminal legal system developed and promoted by the Vera Institute and the Sentencing Project, among others. The first proposed reform is to cap prison sentences at twenty years for adults and fifteen years for people aged twenty-five and younger.¹⁶¹ Sentences for people who are convicted of crimes they committed before reaching the age of twenty-six should be shorter due to the lack of brain development in young people and their susceptibility to peer pressure discussed earlier.¹⁶² A twenty-year sentence would be the new maximum sentence for the most serious crimes—including murder—rather than the death penalty or life imprisonment. A twenty-year sentence serves its public safety purpose, and the offender will likely age out of committing future crimes.¹⁶³ In the rare instance of an ongoing safety threat, an expert review board may order continued incarceration of an individual in three-year

159. *Id.* at 5.

160. ALLIANCE FOR SAFETY AND JUSTICE, CRIME SURVIVORS SPEAK 2022: NATIONAL SURVEY OF VICTIMS' VIEWS ON SAFETY AND JUSTICE 23 (2022).

161. LIZ KOMAR, ASHLEY NELLIS & KRISTEN M. BUDD, COUNTING DOWN: PATHS TO A 20 YEAR MAXIMUM PRISON SENTENCE 3 (2023); *see also id.* at 8 (explaining the District of Columbia's approach to capping a prison sentence to 15 years for individuals under the age of 25).

162. *See* Joshua Rovner, *Juvenile Life Without Parole: An Overview*, SENT'G PROJECT (Apr. 7, 2023), <https://www.sentencingproject.org/policy-brief/juvenile-life-without-parole-an-overview/> [<https://perma.cc/QA58-JEV9>] ("Research on adolescent brain development confirms the commonsense understanding that children are different from adults in ways that are critical to identifying age-appropriate criminal sentences."); Arain et al., *supra* note 137.

163. KOMAR ET AL., *supra* note 161, at 3.

increments.¹⁶⁴ Similarly, Norway caps sentences at twenty-one years and allows extensions in five-year increments if someone is an ongoing safety threat.¹⁶⁵ Given America's history of mass incarceration, I recommend the shorter three-year increment to prevent the expert review board from re-enacting harsh and extreme sentencing through the overuse of sentence extensions. In rare circumstances, extending sentences should be subject to strict standards to ensure that it is only used occasionally and minimally.¹⁶⁶

In conjunction with a twenty-year maximum sentence for the most serious offenses, other less serious offenses should have their sentences proportionately adjusted downward. Each class of less serious offenses must have descending maximum sentences. This policy will prevent people from being incarcerated for extreme sentences despite committing relatively less serious offenses. A proportionate downward adjustment for all crimes is necessary to ensure that sentences do not remain longer than necessary to promote public safety. The Vera Institute's proposed model language—based on the American Law Institute Model Penal Code's sentencing section 6.06—would cap sentences for first-degree felonies at twenty years, second-degree felonies at ten years, third-degree felonies at five years, fourth-degree felonies at three years, and fifth-degree felonies at one year.¹⁶⁷ Wherever possible, felonies should also be downgraded to misdemeanors.

B. *Good-Time Credits*

The second reform I am proposing is allowing incarcerated individuals to earn one day off their sentence for every day they follow prison rules and participate in rehabilitative programming. Rewarding good behavior during incarceration incentivizes prisoners to engage in rehabilitative programs and repair harm through volunteering, mentoring, and therapy.¹⁶⁸ However, shortening sentences for good behavior is often limited for people convicted of violent crimes despite theoretically requiring the most rehabilitation and repair.¹⁶⁹ This creates an incentive for violent offenders to avoid rehabilitative programs in prison. Moreover, lengthy sentences

164. *See id.* at 9–11 (discussing guidelines for an expert review board if someone poses an ongoing safety risk and should have their sentence extended).

165. Lappi-Seppälä, *supra* note 112, at 47.

166. *See* KOMAR ET AL., *supra* note 161, at 9 (explaining conditional sentencing in Norway and Denmark is rare).

167. FEINEH ET AL., *supra* note 11, at 38.

168. *Id.* at 30–31.

169. *Id.* at 39.

strip offenders of hope for potential release back into the community, further incentivizing them to avoid rehabilitative programs while incarcerated.

To craft such a policy, the Vera Institute points to Illinois's existing good-time law as a strong example, with some notable additions.¹⁷⁰ Illinois law allows inmates to earn one day off their sentence for one day of good behavior but—much like many criminal justice reforms—excludes all serious offenses.¹⁷¹ Excluding serious offenses shuts out people with the longest sentences, who we should most strongly incentivize to engage in good behavior while behind bars. Such a carveout continues the American propensity to treat incarceration as retribution rather than as an opportunity for offenders to repair the harm they caused, work on themselves, and re-enter society as better citizens. Creating incentives for good behavior for violent offenders must be encouraged and prioritized.

In proposing these reforms along with other reforms, the Vera Institute analyzed the decarcerative effect of each reform.¹⁷² It analyzed five different reforms that, in total, would reduce the incarcerated population by 78%.¹⁷³ The two reforms I have emphasized here would decrease the incarcerated population the most. Capping sentences at twenty years and shifting other sentences proportionately downward is the reform with the largest decarcerative effect, decreasing the incarcerated population by 32%.¹⁷⁴ The good time reform would decrease the incarcerated population by 28%.¹⁷⁵ Combined, the two policies decrease the incarcerated population by approximately 55%.¹⁷⁶

VI. USING THE RACE-CLASS NARRATIVE AS A MESSAGING FRAMEWORK

A. *Political and Media Elites Continue to Use "Tough on Crime" Playbook*

Democrats and Republicans continue to use the "tough on crime" playbook today, with Republicans engaging in racist rhetoric and

170. *Id.*

171. *Id.*

172. *Id.* at 45.

173. *Id.*

174. *Id.*

175. *Id.*

176. *See id.* at 45 (discussing the methodology used to determine the decarcerative effect of each proposed reform and the effect on the median length of prison sentences).

fearmongering about crime.¹⁷⁷ Political advertisements have become more pointed and aggressive, making the infamous Willie Horton advertisement look like a model of civil discourse in comparison. After viewing an onslaught of Republican advertisements decrying Democrats for supposedly being weak on crime before the recent 2022 midterm elections, 60% of voters said crime would play a major role in choosing a candidate for the upcoming elections.¹⁷⁸ Democrats reacted to these advertisements by reflexively trying to be tougher on crime than their Republican counterparts.¹⁷⁹ Unfortunately, history appears to be repeating itself and may lead to the two dominant political parties trying to compete to enact more punitive policies.

This phenomenon played out recently when Washington, D.C. attempted to update its criminal penal code. After sixteen years of deliberation, the D.C. Council passed the Revised Criminal Code Act of 2022, modernizing the criminal code and decreasing penalties for certain crimes while increasing penalties for others.¹⁸⁰ The mayor vetoed the bill, and the Council overrode the veto.¹⁸¹ Then Congress got involved, and for the first time in thirty years, the House, the Senate, and the President came together in a bipartisan effort to overturn a local law passed by Washington, D.C.¹⁸² The stated rationale for overturning the law was that it lowered penalties for crimes, especially lowering the maximum penalty for carjacking from forty years to twenty-four years.¹⁸³ Rather than harnessing the energy and passion for criminal justice reform spurred on by the largest civil rights protests in

177. Elena Schneider, *Midterm Voters Key in on Crime*, POLITICO, <https://www.politico.com/news/2022/10/05/midterm-voters-crime-guns-00060393> [https://perma.cc/AWE9-LLCC].

178. *Id.*

179. *Id.*

180. Emily Davies & Meagan Flynn, *What to Know About the (Apparently Doomed) D.C. Criminal Code*, WASH. POST (Mar. 7, 2023, 5:29 PM), <https://www.washingtonpost.com/dc-md-va/2023/03/07/what-is-dc-criminal-code-bill/> [https://perma.cc/Y6FR-HV37]; see also Mark Joseph Stern, *The Pundits Are Wrong About D.C.'s Crime Bill*, SLATE (Jan. 21, 2023, 5:55 AM), <https://slate.com/news-and-politics/2023/01/washington-dc-crime-reform-sentencing-fox-news.html> [https://perma.cc/UW95-2ZR4] (describing the sixteen-year stretch it took to implement criminal reform to reduce prison sentences).

181. Davies & Flynn, *supra* note 180.

182. Li Zhou, *Congress's Attempt to Overturn a Crime Law Makes the Case for DC Statehood*, VOX (Mar. 7, 2023, 1:24 PM), <https://www.vox.com/politics/2023/3/7/23629158/congress-crime-law-dc-statehood-city-council> [https://perma.cc/L46P-K7K5].

183. Davies & Flynn, *supra* note 180.

history after the police murder of George Floyd,¹⁸⁴ Democrats retreated to their corners and reflexively adopted “tough on crime” rhetoric to strengthen their position in the 2024 elections. Democrats claim they care about racial justice and mass incarceration, but they succumb to fear and try to “out-tough” Republicans’ rhetoric on crime to win elections. But what is the point of winning elections if only to enact policies that hurt millions of people?

B. *Structural Violence*

Before delving fully into the messaging framework, I must discuss the second principle in more depth to demonstrate how politicians, the media, and corporations scapegoat certain people and spread division to maintain the status quo that benefits them. Politicians and the news media are quick to exploit sensational crimes of physical violence, such as murder and assault, to stir up fear, drive television ratings, and pursue punitive policies, but are unwilling to address issues of structural violence.¹⁸⁵ Structural violence refers to the “harm and suffering that occurs when social structures and institutions prevent people from meeting their basic needs.”¹⁸⁶ The United States is an outlier among modern industrialized nations in the degree that we inflict structural violence, with inequality and poverty being more pronounced here than in comparable countries.¹⁸⁷ A study conducted at Columbia University’s School of Public Health found that 133,000 deaths—4.5% of all United States deaths in a year—were attributable to poverty in the year 2000.¹⁸⁸ Thus, violence is more than murder and assault, but also the violence of poverty, which includes a “lack of access to health care, forced homelessness, children forced to drink water poisoned with

184. Larry Buchanan et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [https://perma.cc/8ASZ-TQH3].

185. Katherine Beckett, *Violence, Mass Incarceration, and the Myth of Monstrosity*, AM. PROSPECT (Aug. 18, 2016), <https://prospect.org/justice/violence-mass-incarceration-myth-monstrosity/> [https://perma.cc/ATK6-WCBA].

186. *Id.*

187. *Id.*

188. Sandro Galea et al., *Estimated Deaths Attributable to Social Factors in the United States*, 101 AM. J. PUB. HEALTH 1456, 1462 (2011).

lead, a pregnant woman unable to afford proper nutrition, or a family (often illegally) evicted from their home.”¹⁸⁹

In addition to structural violence, many actions by corporations and wealthy elites cause more harm than violent crime but are not treated as crimes. For example, tobacco kills 480,000 people in the United States every year,¹⁹⁰ and tobacco executives knowingly lied about the addictive quality of cigarettes, but there has yet to be a criminal conviction of any tobacco executive.¹⁹¹ “[W]ater pollution, air pollution, and fraudulent home foreclosures” are all also linked to high mortality rates and are perpetrated by corporations and wealthy elites, but are not treated as crimes.¹⁹² Wage theft by employers is estimated to cost low-wage workers \$50 billion per year—more than all robberies, burglaries, larcenies, and motor vehicle thefts combined—but is almost never prosecuted or investigated as a crime, and is instead treated as a civil legal matter.¹⁹³ Similarly, the police steal more through the use of civil asset forfeiture than burglars.¹⁹⁴ However, if an employee steals from their employer they are likely to be prosecuted, separated from their family, and forever branded a criminal.

This is not to suggest that physical violence, such as physical assault and murder, is not an incredibly serious harm that greatly damages people’s lives; rather, this demonstrates the different ways that certain types of harm are treated in our society based on who perpetrates the harm and how much power they possess. This system serves the interests of corporations and wealthy elites who may cause vast amounts of harm with impunity.

189. Alec Karakatsanis, *Why “Crime” Isn’t the Question and Police Aren’t the Answer*, CURRENT AFFS. (Aug. 10, 2020), <https://www.currentaffairs.org/2020/08/why-crime-isnt-the-question-and-police-arent-the-answer> [https://perma.cc/55SW-ZRMY].

190. *Tobacco-Related Mortality*, CDC ARCHIVE, https://archive.cdc.gov/#/details?url=https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm [https://perma.cc/W4N9-PL82].

191. Kelsey Romeo-Stuppy et al., *Criminal Liability for Tobacco Corporations and Executives*, 31 TOBACCO CONTROL 355, 356 (2022).

192. Karakatsanis, *supra* note 189.

193. See Chris Hacker et al., *Wage Theft Often Goes Unpunished Despite State Systems Meant to Combat It*, CBS NEWS, <https://www.cbsnews.com/news/owed-employers-face-little-accountability-for-wage-theft/> [https://perma.cc/BFC8-7P3Q] (identifying the lack of accountability concerning wage theft).

194. See generally Christopher Ingraham, *Law Enforcement Took More Stuff from People Than Burglars Did Last Year*, WASH. POST (Nov. 23, 2015, 6:00 AM), <https://www.washingtonpost.com/news/wonk/wp/2015/11/23/cops-took-more-stuff-from-people-than-burglars-did-last-year/> [https://perma.cc/39NL-MSR9] (“In 2014, for the first time ever, law enforcement officers took more property from American citizens than burglars did.”).

C. *Alternative Crime Messaging Frameworks*

There are alternative messaging frameworks that politicians and the media can use to avoid entering an era of more mass incarceration. Rather than repeating the old lines and messages from decades past, politicians can embrace new messages that provide a new vision for safety, including investing in impoverished communities and eliminating the socioeconomic conditions associated with violence. The new message calls for crime prevention strategies addressing the root causes of crime by investing in an increased social safety net, including employment opportunities, housing, mental health treatment, schools, and community supervision, rather than increased incarceration.

Vera Action researched one alternative to the traditional “tough on crime” message in a national survey that polled nearly 4,000 likely voters in June of 2022.¹⁹⁵ When asked what factors contribute to being safe in one’s neighborhood and community, potential voters listed the top factors as jobs, housing, schools, quick first responders, and well-lit streets and parking lots.¹⁹⁶ When the survey tested catch-phrases, the catch-phrase that tested the best across *all* audiences was “[p]reventing crime, not just responding after it happens,” followed by “[s]olutions, not scare tactics.”¹⁹⁷ When potential voters were asked to pick between two different messages on crime, they supported messages that emphasized funding good schools, jobs with livable wages, and affordable housing over messages that emphasized increased police funding, stricter sentencing laws, and preventing people from being released on bail.¹⁹⁸ Voters supported the community safety message over the “tough on crime” message across all regions in the United States, including the South and Midwest.¹⁹⁹ These results demonstrate that people are receptive to a new message on crime and safety, and are more willing to buy into a message emphasizing crime prevention and solutions over scare tactics and dog-whistle politics.

Another poll by Democratic and Republican firms in October of 2022 surveyed 1,400 potential voters and found bipartisan support for reforms to

195. VERA ACTION, PUBLIC SAFETY ON OUR OWN TERMS: PROACTIVE MESSAGING AND EFFECTIVE RESPONSES TO WEAPONIZED ATTACKS ON CRIME AND SAFETY 8 (2022).

196. *Id.*

197. *See id.* at 12 (listing the tested catch-phrases such as “[l]aw and order,” “[s]upporting police,” and “[s]topping the violence”).

198. *Id.* at 18.

199. *Id.* at 19.

reduce incarceration.²⁰⁰ The survey found that “66% of voters believe the criminal justice reform system needs either a complete overhaul or major reform, including 3 in 5 Republicans.”²⁰¹ The survey tested specific criminal justice reforms and found that the most popular individual reform was “[a]llowing people in prison to earn additional time off their sentence for following prison rules and participating in rehabilitation programs,” with the support of 81% of all likely voters.²⁰² “Eliminating mandatory minimums and other sentencing laws that require a long prison sentence rather than allowing judges to determine . . . punishment” based on the circumstances of each criminal defendant garnered the support of 69% of all likely voters.²⁰³

Despite these encouraging results on changing “tough on crime” political messaging to a new message focused on crime prevention strategies and anti-poverty measures, some other surveys demonstrate that Americans are still hesitant to shorten prison sentences, especially for violent offenders. In 2021, the Pew Research Center surveyed approximately 10,000 United States adults and found that 28% believe prisoners spend too much time in prison, 32% believe prisoners spend too little time in prison, and 37% believe prisoners spend about the right amount of time in prison.²⁰⁴ A survey conducted in 2016 by Vox and Morning Consult found that only 29% of survey respondents supported reducing prison time for “people who committed a violent crime and have a low risk of committing another crime.”²⁰⁵ Only 27% of survey respondents supported reducing prison time for violent offenders who “have a high risk of committing another crime.”²⁰⁶ Notably, no majority of any demographic surveyed—race or religion included—supported reduced sentencing for violent offenders with

200. See BENENSON STRATEGY GRP. & OPINIONPUB. OP. STRATEGIES, NEW NATIONAL POLLING ON SUPPORT FOR CRIMINAL JUSTICE REFORM 1 (2022) (presenting results of a survey demonstrating bipartisan support among voters for reforming lengthy prison sentences).

201. *Id.* at 3.

202. *Id.* at 4.

203. *Id.*

204. John Gramlich, *U.S. Public Divided Over Whether People Convicted of Crimes Spend Too Much or Too Little Time in Prison*, PEW RSCH. CTR. (Dec. 6, 2021), <https://www.pewresearch.org/short-reads/2021/12/06/u-s-public-divided-over-whether-people-convicted-of-crimes-spend-too-much-or-too-little-time-in-prison/> [<https://perma.cc/C6V4-MGFH>].

205. German Lopez, *Want to End Mass Incarceration? This Poll Should Worry You.*, VOX (Sept. 7, 2016, 11:30AM), <https://www.vox.com/2016/9/7/12814504/mass-incarceration-poll> [<https://perma.cc/CL2R-GDK6>] [hereinafter Lopez, *Mass Incarceration*].

206. *Id.*

a low risk of recidivism.²⁰⁷ That said, the Vox and Morning Consult poll was taken in September of 2016—before the level of renewed interest and commitment to criminal justice reform following the murder of George Floyd. Nevertheless, opinions on reducing prison time for violent offenders have not likely changed so drastically to have achieved majority support since 2016. Therefore, a new political messaging framework is necessary to encourage criminal justice reform that tackles the extremely lengthy sentences given to violent offenders.

D. *Race-Class Narrative Messaging Framework*

The Race-Class Narrative emphasizes the connections between racial division and economic hardship.²⁰⁸ Wealthy elites exploit racial fears with divide-and-conquer tactics to pit working-class people against each other, fueling racial resentment and blocking policies that would benefit working-class people of all races. Wealthy elites—through politicians and media—created mass incarceration through policy choices fueled by racial fearmongering, sensationalizing violent crime, and stripping criminal offenders and prisoners of dignity and humanity. This campaign is so effective that the majority of Americans do not support reducing prison sentences for violent offenders, even if they have a low risk of re-offending.²⁰⁹ To combat this effective campaign, the Race-Class Narrative offers a messaging framework guided by four messaging principles: (1) “leading with values explicitly shared across races, backgrounds, and genders;” (2) “[i]ntroduc[ing] the problem . . . by naming specific [actors] whose decisions violate our values [and their] motivation[s] for scapegoating [certain] people . . . and spreading . . . division;” (3) “[c]ombat[ing] cynicism by characterizing how victory is possible with . . . collective action;” and (4) closing with a positive and unifying “vision for our future and how joining together gets us there.”²¹⁰

The group, We Make the Future, was founded to implement the Race-Class Narrative and has developed many messaging guidelines, toolkits, and other materials for campaigns, activists, and organizers.²¹¹ They lay out

207. *Id.*

208. DEMOS, *supra* note 16.

209. Lopez, *Mass Incarceration*, *supra* note 205.

210. Memorandum from ASO Communications, *supra* note 19.

211. *About, WE MAKE THE FUTURE*, <https://www.wemakethefuture.us/about> [<https://perma.cc/QV2Z-3R2B>].

examples and guidelines for the aforementioned four messaging principles to allow people to craft their own message for whatever topic or campaign they are advocating for.²¹² Importantly, We Make the Future also provides resources for organizers on the ground, rather than just communications professionals who may be more likely to be isolated from the people.²¹³

The Race-Class Narrative exposes the divide-and-conquer messaging strategy of the ruling class, while building cross-racial support for more progressive policies. In addition to the framework outlined above, a March 2018 survey found three core insights for Race-Class Narrative messaging: (1) “[d]iscuss race overtly,” (2) “[f]rame racism as a tool to divide and harm all of us,” and (3) “[c]onnect unity to racial justice and economic prosperity.”²¹⁴ Conservatives villainize Black people, immigrants, and others to create a wedge between working class people of different ethnicities and races. Directly pointing out this strategy, and tying it to wealthy elites’ class war, helps create cross-racial solidarity in the working class by identifying the way wealthy elites manipulate the system to benefit themselves at the expense of everyone else.²¹⁵ The March 2018 survey found that combating this intentional division with calls for unity across racial differences proved effective at moving people toward support for more progressive policies.²¹⁶ The survey also found that the Race-Class Narrative was more persuasive and effective than a colorblind narrative that did not mention race.²¹⁷

The Race-Class Narrative has been successfully used across the United States. In 2018, activists in Minnesota used the Race-Class Narrative to combat anti-immigrant and anti-Islam fearmongering.²¹⁸ In the spring of

212. *Race Class Narrative Example Messaging Language*, WE MAKE THE FUTURE, https://drive.google.com/file/d/1DL3D8_RWiwc73nQSzIB2xgu3wNRpdcLK/view [<https://perma.cc/H82R-CM76>]; *Race Class Narrative Messaging Checklist*, WE MAKE THE FUTURE, <https://drive.google.com/file/d/1AkujYmjNrlNHVvSNbjx9elwEJzGAw4Zs/view> [<https://perma.cc/Y9QH-VRDP>].

213. *Amplifying Organizing*, WE MAKE THE FUTURE, <https://www.wemakethefutureaction.us/resources-documents/amplifying-organizing> [<https://perma.cc/Q9S8-7Z24>].

214. DEMOS, RACE-CLASS: A WINNING ELECTORAL NARRATIVE (2018).

215. *Id.*

216. *Id.*

217. *Id.*

218. Anika Fassia & Tinselyn Simms, *The Race Class Narrative Can Win*, DISSENT MAG. (Summer 2021), <https://www.dissentmagazine.org/article/the-race-class-narrative-can-win/> [<https://perma.cc/7FH3-EJWT>].

2019, a group called People's Action used the Race-Class Narrative in Pennsylvania, North Carolina, and Michigan to increase support for expanded health care for undocumented immigrants by 20%.²¹⁹ The Race-Class Narrative was also successfully employed to expand Medicaid in the conservative state of Missouri.²²⁰

The group, ASO Communications, has released many messaging guides for various issues, including mass incarceration and justice and safety.²²¹ As part of these messaging guides, they suggest specific phrases to use in place of commonly used phrases. For instance, they suggest saying "private prison lobbyists profit off of separating families" rather than the more academic "prison industrial complex" because this phrasing illustrates the problem was created by people and, therefore, is correctable by people.²²² Common phrases to refer to incarceration are "putting people behind bars," or "caging," but the messaging guidance suggests a more effective phrase is "separating people from family" because it does not play into the dehumanization of people in prison.²²³ Instead, activists and organizers should emphasize language and imagery that positions people within communities and families to demonstrate the humanity of people in prison and emphasize that imprisonment also impacts people beyond the individual who is incarcerated.²²⁴

Various groups have conducted opinion research and created messaging guidance based on the Race-Class Narrative project's principles and framework. I reviewed messages from these groups across various issues related to criminal justice, policing, and protests. I combined the most effective language from these multiple narratives and adapted them to the reforms I have proposed in this Article. Below is a potential message narrative using the Race-Class Narrative to advocate for reforms to the criminal legal system:

No matter what we look like or where we come from, we all want to know we can make it home to our families at the end of the day. We all want to overcome challenges, care for our families, and be seen for all we are, not just our worst moments. But today, our criminal legal system is not delivering

219. *Id.*

220. *Id.*

221. Memorandum from ASO Communications, *supra* note 19.

222. *Id.* at 5.

223. *Id.*

224. *Id.*

justice or keeping our communities safe. Certain politicians try to hold onto power by making us fear each other and locking more and more of us up while protecting their corporate donors who poison our drinking water and steal our wages. We know what keeps us safe: living in communities where we have the resources to be well, overcome our challenges, and find redemption for our mistakes across race and place. Separating families and locking away loved ones is a choice we do not need to keep making. Imagine a world where people are not endlessly punished for their mistakes but offered a way to address harm and heal. Together, we can rewrite the rules to address wrongdoing in a way that keeps our communities safe, helps survivors heal, and keeps our families whole.

This is a sample message that criminal justice activists can use to advocate for changes to the criminal legal system that de-prioritize incarceration and lengthy prison sentences. Using this message or a similar message rather than falling back into the habit of using “tough on crime” messaging may be a way to gradually change the public’s views on lengthy sentences for violent offenders. Messages can be tweaked for specific policies or reforms. Still, the guiding principles of the Race-Class Narrative provide a framework for mobilizing and persuading people to re-imagine public safety as best achieved through investments in the needs of communities—such as housing, health care, and education—rather than further investments in prisons and jails.

VII. CONCLUSION

The United States has reached a crisis point by incarcerating more people than any other country in the world.²²⁵ Well-intentioned reformers advocate for scaling back mass incarceration by changing how this country treats nonviolent offenders.²²⁶ To truly end mass incarceration, however, violent offenders cannot be excluded from criminal justice reforms since they make up nearly half of the people locked up in state and local jails and prisons. Lengthy sentences do not promote public safety because they lock up people beyond the age they are likely to commit another crime; they do not effectively deter crime; people convicted of violent offenses have low

225. SAWYER & WAGNER, *supra* note 1

226. *See* JUST. POL’Y INST., *DEFINING VIOLENCE: REDUCING INCARCERATION BY RETHINKING AMERICA’S APPROACH TO VIOLENCE* 30–31 (2016) (discussing how certain programs, such as the Enforcement Assisted Diversion program, were developed specifically to reform the criminal justice system for nonviolent offenders).

recidivism rates; and, lengthy sentences are not responsive to the actual wishes of victims of violent crimes.²²⁷ Capping prison sentences at twenty years for adults and at fifteen years for people under the age of twenty-five, and allowing incarcerated people to earn one day off their sentence for every day of good behavior are two reforms that can potentially reduce the incarcerated population by 60%.²²⁸ Other countries across the world incarcerate far fewer people for far shorter periods than the United States, with no decrease in public safety.²²⁹

Skeptics may argue that reducing prison sentences for violent offenders is a naïve fantasy that will never happen in the United States. The current justice system seems intractable and immune to change. However, the history of prisons and sentencing in the United States demonstrates that things are not the way they have always been or will be. The purpose of incarceration has changed over time, and therefore, we can change the purpose of our current prison system to suit our society's needs better. Ursula K. Le Guin aptly noted the ability of a society to change itself: “[I]ts power seems inescapable—but then, so did the divine right of kings. Any human power can be resisted and changed by human beings.”²³⁰

227. See NELSON ET AL., *supra* note 11, at 29 (“Sentencing a person who engaged in an act of violence compelled by moments of conflict or a specific circumstance to a lengthy term of incarceration does not further public safety . . .”); see also ALL FOR SAFETY AND JUST., *supra* note 152, at 4 (“Perhaps to the surprise of some, victims overwhelmingly prefer criminal justice approaches that prioritize rehabilitation [and prevention] over punishment.”).

228. See NELSON ET AL., *supra* note 11, at 45 fig.3 (stating sentencing caps would reduce the federal prison population by 32% and the goodtime reform would decrease the population by 28% in ten years).

229. SAWYER & WAGNER, *supra* note 1.

230. Betsy Reed, *Ursula K Le Guin's Speech at National Book Awards: 'Books Aren't Just Commodities'*, GUARDIAN, <https://www.theguardian.com/books/2014/nov/20/ursula-k-le-guin-national-book-awards-speech> [<https://perma.cc/4JLK-JQMR>] (discussing capitalism).