

Parole and Prisoner Release: Exploring Rationalities Across Time and Place

Nicola Carr, University of Nottingham

Ester Blay, University of Girona

This Special Issue focusses on prisoner release and parole in different European contexts. The starting point for looking at this issue was our involvement in the European Society of Criminology's Working Group on Community Sanctions and Measures and the COST Action on Offender Supervision in Europe¹, which explored the expanding use of community sanctions and measures across many European countries. These networks and subsequent publications (see for example: McNeill and Beyens, 2013; Robinson and McNeill, 2016; Boone and Maguire, 2017), have drawn attention to what was a previously relatively neglected aspect of penalty – sanctions imposed and served in the community. Part of the reason that community sanctions and measures have received less attention is because penological scholarship has tended to focus more closely on the prison, particularly in light of increases in prison populations and the attendant issues that arise from this (e.g. questions regarding utility, effectiveness and concerns regarding human rights, to name just a few). Of course, community sanctions and measures also encompass the requirements and conditions that are imposed upon people when they are released from prison. Therefore, a rise in prison numbers also leads to an expanded population of people subsequently made subject to supervision in the community, and this symbiotic relationship (or in some instances a feedback loop), is further evidenced by the return of people to prison for breaching the conditions of their release.

Jonathan Simon's (1993) book *Poor Discipline: Parole and the Social Control of the Underclass 1890-1990*, exploring the history of parole in California over the course of a century has been another important starting point in assembling this Special Issue. In this influential work, Simon (1993) traces the changing rationalities and techniques deployed to justify and govern prisoner release over time and critically relates these to the wider political economy, the changing role of the state and the increased salience directed towards governance through crime. Simon argues that given its juncture at the nexus between prison and the community, the study of parole provides a unique vantage point from which to explore wider penalty. We have therefore asked the contributors to the Special Issue to consider these wider themes in their analysis.

Any explorations of the processes of prisoner release and parole needs to first define what we mean by these terms. The word 'parole' has entered common parlance, but its precise meaning and its use in comparative analysis and academic literature varies (Padfield et al,

¹ COST ACTION IS1106 Offender Supervision in Europe.

2012; van Zyl Smit and Corda, 2017). ‘Parole’ is typically taken to mean the decision made regarding the point at which a prisoner is released prior to their maximum sentence and becomes subject to some form of conditionality. In some instances, the ‘decision’ to release a prisoner is ‘automatic’, while in others it is ‘discretionary’. The demarcation between automatic and discretionary systems has been the subject of comparative analysis (see for instance: Padfield et al 2012, Herzog-Evans, 2014). This literature has considered, amongst other things, the utility of discretion, processes of decision-making, the information used to guide decisions, and wider debates regarding legitimacy (both from the point of view of the subjects of decisions and the wider public). ‘Parole’ is also understood as a *measure*: the Council of Europe defines conditional release as such in its Recommendation (2003) on conditional release (parole).² This means that attention should also be paid to the varying content of the conditions imposed as well as the degree of control and/or support provided to released prisoners. These conditions and support vary widely across and within jurisdictions

The SPACE data, on the numbers of people imprisoned and subject to supervision in the community across Council of Europe member states, is an important information source. The most recent data published show the proportion of people who are subject to conditional release measures compared to the wider population under community supervision (typically as a result of a court sentence) varies widely across Member States (Aebi et al 2019). But we do not know the reasons for this variance. Therefore while we know that there has been a widening of the nets of penal control, and that post-release supervision is part of this net (Padfield and Maruna, 2006; Aebi et al, 2015), the picture regarding the role of parole in this process is less than complete. As well as a partial view of the quantitative dimension of parole across European countries, our view of the qualitative aspects is also limited (Armstrong and Durnescu, 2017). Increased attention towards the lived experience of supervision and the contingency of life at liberty but subject to restrictions, points toward the need for a greater focus on the weight, breadth and tightness of these conditions following release from prison (McNeill, 2019). This is particularly important in the contexts in which the range of controls within the community have expanded, evidenced in part by the growth in the use of technology such as electronic monitoring (Beyens, 2017). Of course, the changing contours of conditional release and post-custodial supervision also reflect different and sometimes oscillating rationalities.

The extent to which prisoner release is bound to wider policy concerns is illuminated in a number of articles in this Special Issue. This is of course linked to broader penal politics, whether this is discourses about ‘truth in sentencing’, where the vagaries of prisoner release come under the spotlight (see Beyens in this issue) or in attempts to alleviate pressures on the prison population, where penal populism has been one of the drivers of the rise

² Recommendation Rec (2003) 22 of Committee of Ministers to Member States on conditional release (parole).

in prison numbers. Prison release mechanisms can be caught in the bind of competing and oscillating penal logics, the pressure to send more people to prison for longer and the resulting pressure to release 'reformed' people from prison more quickly (or at least more effectively). This is one of the reasons why focusing on prisoner release shines a light on broader penal logics. As the papers in this Special edition show, such penal logics mutate across and within jurisdictions, and often have unintended consequences in practice.

The papers included in this Special Issue focus on a small range of European countries: Ireland, England and Wales, France and Belgium, but there are a number of common themes and areas of interest that we hope will inspire further research on this topic. In his analysis of the changes to the parole system in England and Wales over time, Thomas Guiney points to parole policies and practices as 'a key site of policy contestation'. He notes the development of penal bifurcation policies to address the issues of prisoner release within an expanded population – i.e. the emergence of different systems for determinate and indeterminate prisoners over time. While such bifurcatory strategies may have had a certain logic, he argues that they have reached their apogee. This theme of bifurcation, also arising from the need to manage expanded prison populations, and to provide a justificatory logic for prisoner release, is also very much evident in Kristel Beyens' description of changes to the Belgian system of prisoner release, and Martine Herzog-Evans' consideration of the French system. Indeed, it is striking that in different legal systems, similar logics, practices and 'solutions' arise.

With her distinction between three historical phases of parole in England and Wales Nicola Padfield clearly illustrates the changing aims of parole, from an early focus on rehabilitation and penal pragmatism (1967-1991), to the subsequent concern on the control of risky offenders (1991-2003), and the current situation whereby parole has mutated into a form of management of *delayed* released for an increasing number of prisoners (2003-onwards). As various of the papers show, penal aims pursued by parole are not always realized in practice. In Belgium, for example, the aim of reintegration is key in the context of sentence implementation, but the lack of resources, prison and professional dynamics that prioritise risk and shortcomings in the implementation of measures in prison to facilitate early release mean that this aim cannot be realized in the practice of parole.

Beyond declared penal and legitimating aims, the pragmatic need to alleviate prison overcrowding has been a driving force for development of early release in different historical moments and in most jurisdictions, as the present issue reflects. In her exploration of recent changes to prison-release mechanisms in France, Herzog-Evans highlights how attempts to fast-track the process to alleviate pressure on the prison population, through the introduction of a more automated (or what she characterises as 'McDonalidised' processes), lacked necessary legitimacy in the eyes of both the penal actors (judiciary, lawyers, probation officers) and the prisoners who were its subjects. In empirical research

focusing on these changes, she identifies how the policy intention was usurped by the lack of attention given to meaning and materiality of the process, not least the fact that prisoners opting to participate in the new and 'quicker' system, were not afforded necessary resettlement supports. An element of pragmatism related to the need to alleviate prison overcrowding is also present in the Belgian release mechanism for short term prisoners. However, as Beyens shows, this back door mechanism to relieve prison overcrowding is not a genuine reductionist policy but a useful and much resorted to administrative/political tool of prison management.

Herzog-Evans' work and other contributions to this Special Issue highlight the important role of penal actors in early release / parole processes, where in the case of the French system actors worked to subvert a policy intention. The point that penal actors have been often neglected in grand narratives of penality has been well made (see McNeill et al, 2010 for instance on the 'governmentality gap'), and the contributions to this Special Issue from a number of countries serve to strengthen the argument about the need to focus more on actors to make sense of *penality in practice*. In their exploration of the application of parole processes to life-sentences in the Republic of Ireland, Griffin and Healy also observe the subjectivities of decision-makers, in this case Parole Board members, who draw on both penal and 'common sense' logics to support their decisions regarding prisoner release.

From the standpoint that "individuals have shaped parole" Padfield explains the expansion and changing composition of the Parole Board in England and Wales. The very dynamics of decision-making have changed over time and there has been a shift of the Parole Board towards a quasi-judicial body. It is not only those actors directly involved in the granting of parole that are relevant, so too are other decision makers. Research has shown that sentencers anticipate parole decisions and resist policy by imposing longer sentences that ensure that offenders serve a minimum time in prison and are not automatically released, as Beyens describes in the Belgian context. Directing attention towards actors must also include a focus on the subjects of the penal process – prisoners and the circumstances of their release. The extent to which early release processes vary across countries and even within jurisdictions is illuminated in a number of articles. Griffin and Healy explore the pains associated with indeterminacy; particularly acute for life-sentenced prisoners who do not know when they will be released from prison, nor in some instances what they are expected to do within the prison environment to demonstrate their 'redeemability'. Both Beyens and Herzog-Evans show how changes to prisoner release systems have profound effects on penal subjects, who not surprisingly also try to exercise their agency in this process, learning to navigate the system or in Padfield's words, "play the 'game'" without necessarily engaging genuinely in a process of change. This wider legitimacy of the process is also linked to the political dimensions of prisoner release in all of the papers in this Special Issue.

The contributions to this Issue reflect a further development present across jurisdictions: the intertwining and adaptation of conditional release with other penal mechanisms that come after or instead of a prison sentence, such as electronic monitoring (often used as a transitional phase between prison and release) or extended unconditional penal control in the community. The continuum of penal control (Cohen, 1979) thus becomes more complex. The papers in this Special Issue draw attention to the different rationalities, technologies and practices, actors and subjects in parole and prisoner release processes across a small number of European countries with diverse legal systems. A number of common threads are evident in these accounts, not least the sense in which decisions regarding parole and prisoner-release are often a response to wider penal crises and systemic concerns. We hope that the contributions provoke discussion and provide an impetus for further comparative research on this important topic.

REFERENCES

- Aebi, M.F., Delgrande, N. & Marguet, Y. (2015) 'Have community sanctions and measures widened the net of European criminal justice systems?' *Punishment and Society*, 17,5: 575-597.
- Aebi, M.F., Hashimoto, Y.Z. & Tiago, M.M. (2019) 'Probation and Prisons in Europe, 2018: Key Findings of the SPACE Reports. Strasbourg: Council of Europe. Available at: http://wp.unil.ch/space/files/2019/05/Key-Findings_SPACE-II_190520-1.pdf (Accessed on: 31.10.19).
- Armstrong, R. & Durnescu, I. (Eds.) (2017) *Parole and Beyond. International Experiences of Life Prison*. London: Palgrave MacMillan.
- Beyens, K. (2017) 'Electronic monitoring and supervision: A comparative perspective.' *European Journal of Probation*, 9,1:3-10.
- Boone, M. M., & Maguire, N. (Eds.) (2017). *The enforcement of offender supervision in Europe. Understanding breach processes*. London: Routledge.
- Cohen, S. (1979) 'The punitive city. Notes on the dispersal of social control'. *Contemporary Crises*, 3:339-363.
- Herzog-Evans (2014) (Ed) *Offender Release and Supervision: The Role of the Courts and the use of Discretion*. Oisterwijk: Wolf Publishers.
- McNeill, F. & Beyens, K. (2013) (Eds.) *Offender Supervision in Europe*. Basingstoke: Palgrave MacMillan.

McNeill, F., Burns, N., Halliday, S., Hutton, N. & Tata, C. (2009) 'Risk, responsibility and reconfiguration. Penal adaption and misadaption.' *Punishment and Society*, 11,4: 419-442.

McNeill, F. (2019) *Pervasive Punishment: Making sense of mass supervision*. Bingley: Emerald.

Padfield, N. & Maruna, S. (2006) 'The revolving door at the prison gate: Exploring the dramatic increase in recalls to prison.' *Criminology & Criminal Justice*, 6,3: 329-352.

Padfield, N., van Zyl Smit, D. & Dunkel, F. (2012) *Release from Prison: European Policy and Practice*. London: Routledge.

Robinson, G. & McNeill, F. (2017) *Community Punishment. European Perspectives*. London: Routledge.

Simon, J. (1993) *Poor Discipline: Parole and the Social Control of the Underclass, 1890-1990*. Chicago: University of Chicago Press.