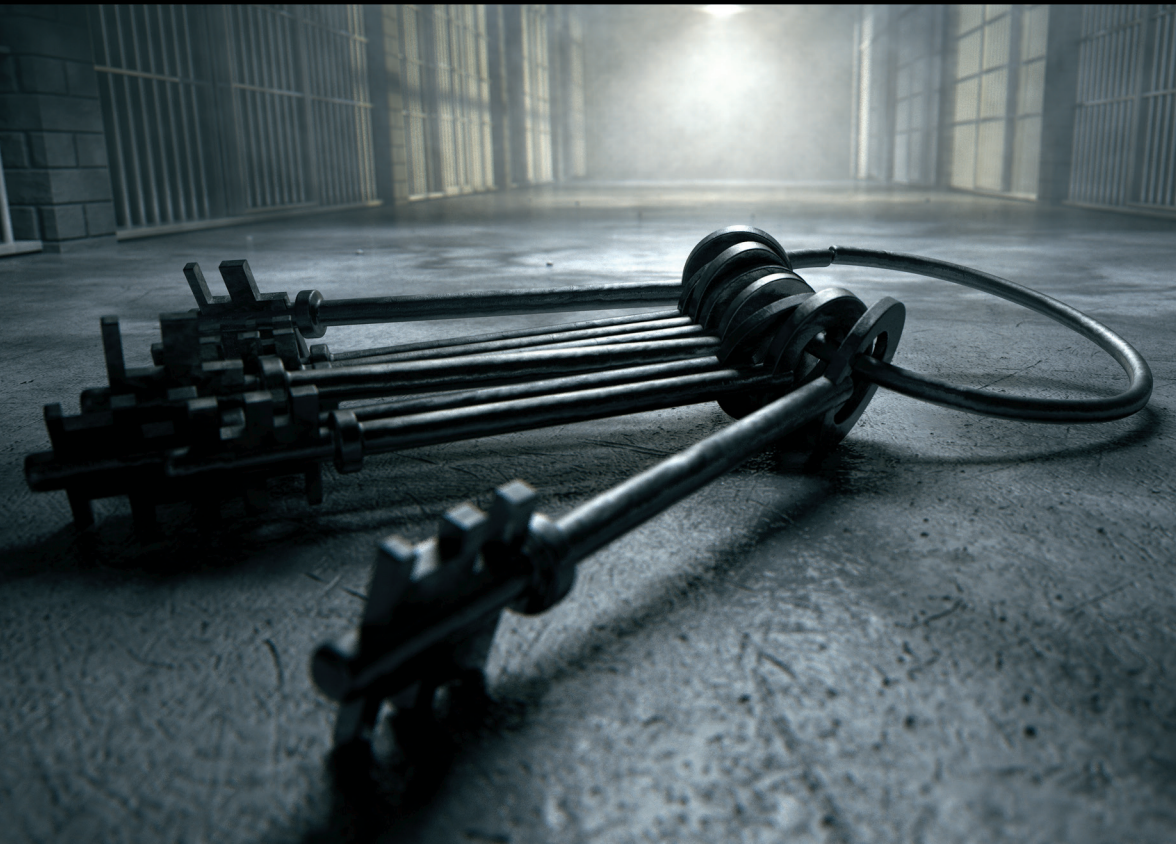


# Smart on Crime

The Struggle to Build a Better  
American Penal System



Garrick L. Percival



CRC Press  
Taylor & Francis Group



# Smart on Crime

The Struggle to Build a Better  
American Penal System



# Smart on Crime

The Struggle to Build a Better  
American Penal System

Garrick L. Percival



CRC Press

Taylor & Francis Group

Boca Raton London New York

---

CRC Press is an imprint of the  
Taylor & Francis Group, an **informa** business

CRC Press  
Taylor & Francis Group  
6000 Broken Sound Parkway NW, Suite 300  
Boca Raton, FL 33487-2742

© 2016 by Taylor & Francis Group, LLC  
CRC Press is an imprint of Taylor & Francis Group, an Informa business

No claim to original U.S. Government works  
Version Date: 20150601

International Standard Book Number-13: 978-1-4987-0314-7 (eBook - PDF)

This book contains information obtained from authentic and highly regarded sources. Reasonable efforts have been made to publish reliable data and information, but the author and publisher cannot assume responsibility for the validity of all materials or the consequences of their use. The authors and publishers have attempted to trace the copyright holders of all material reproduced in this publication and apologize to copyright holders if permission to publish in this form has not been obtained. If any copyright material has not been acknowledged please write and let us know so we may rectify in any future reprint.

Except as permitted under U.S. Copyright Law, no part of this book may be reprinted, reproduced, transmitted, or utilized in any form by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying, microfilming, and recording, or in any information storage or retrieval system, without written permission from the publishers.

For permission to photocopy or use material electronically from this work, please access [www.copyright.com](http://www.copyright.com) (<http://www.copyright.com/>) or contact the Copyright Clearance Center, Inc. (CCC), 222 Rosewood Drive, Danvers, MA 01923, 978-750-8400. CCC is a not-for-profit organization that provides licenses and registration for a variety of users. For organizations that have been granted a photocopy license by the CCC, a separate system of payment has been arranged.

**Trademark Notice:** Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

**Visit the Taylor & Francis Web site at**  
**<http://www.taylorandfrancis.com>**

**and the CRC Press Web site at**  
**<http://www.crcpress.com>**

*For Mary, Ethan, and Andrew. Let the future be bright.*





---

# Contents

---

Preface .....	xi
Acknowledgments .....	xiii

## SECTION I Rise of the Smart on Crime Movement

<b>Chapter 1</b> Smart on Crime Politics .....	3
Introduction .....	3
Washington, DC.....	3
Ohio .....	4
California .....	4
Crime Politics in the American Political System.....	10
Coalition Politics and Reform in the Criminal Justice Subsystem.....	13
Rise of the Smart on Crime Coalition.....	17
Explaining the Emergence of the Smart on Crime Coalition...22	
Policy Learning .....	22
Bringing Policy Back into the Picture .....	26
When Is Reform <i>Really</i> Reform? .....	28
 <b>Chapter 2</b> Collapse of the Rehabilitative Model and Rise of the Tough on Crime Coalition.....	31
Calm before the Storm .....	32
The Storm: The Rehabilitative Model Gets Blown Away.....	35
Politicalization of Rehabilitation Research.....	42
Sagging Support for Rehabilitation on the Left .....	49
Building an Institutional Legacy.....	52
Tough on Crime Coalition .....	55
 <b>Chapter 3</b> Crisis and Opportunity in the American Penal System... 59	
To the Victors Go the Spoils.....	60
Problems on the Ground: Consequences of the Tough on Crime Regime.....	64

The Penal System and Inequality.....	67
Diminishing Marginal Returns of Mass Incarceration.....	68
Conditions Facilitating the Search for Alternatives and Policy Learning.....	69
Economic Crisis.....	69
The Contemporary Prison System Is a Different Beast .....	71
Examining Changes in Public Attitudes on Crime and Punishment.....	72
Fear of Crime.....	72
Saliency of Crime.....	74

## SECTION II The Smart on Crime Movement in National Politics

<b>Chapter 4</b> Prisoner Reentry and the Politics of the Second Chance Act .....	81
Pressure from the Bottom Up .....	82
Conceptualizing Prisoner Reentry.....	83
Ohio Plan.....	86
Developments in Corrections Policy Research.....	89
Conservatives Begin the Push for Prisoner Reentry.....	93
Introduction of the SCA .....	97
Prison Fellowship Ministries.....	98
Fight to Protect Inmates’ Religious Freedom.....	99
Framing the Meaning of the SCA.....	103
Correctional Associations .....	105
Second Chance Advocacy in the Senate .....	108
Sam Brownback.....	109
Political Progress in the House .....	112
Roadblocks in the Senate.....	113
Closing the Deal.....	115
 <b>Chapter 5</b> Fair Sentencing Act of 2010.....	 119
Policy Context.....	119
Challenging the Unique Dangers of Crack Cocaine.....	122
Proposals for Change .....	126
Legal Challenges to the Federal Sentencing Process.....	127

New Proposals for Crack Sentencing Reform.....130  
 Mobilizing Support for Crack Sentencing Reform.....132

**SECTION III The Smart on Crime  
 Movement in the United States**

**Chapter 6** Texas..... 147  
     Introduction to the Problem Environment.....147  
     Bringing an Engineer’s Perspective to the Texas Penal  
         System.....150  
     Emergence of New Organized Groups .....152  
     Justice Reinvestment .....157  
     Broad-Based Smart on Crime Coalition .....159  
     Texas Penal System and the Shifting Dimensions  
         of Political Debate .....160  
     Appendix .....166

**Chapter 7** Ohio..... 171  
     Diffusion of Smart on Crime Policy Ideas.....171  
     Ohio Seeks Technical Assistance .....175  
     Policy Learning among Conservatives in Ohio .....177

**Chapter 8** California..... 185  
     Shifting Political Environment.....188  
     Return of the Structural Injunction .....196  
     Prison Realignment in California.....197

**Chapter 9** Evaluating the Smart on Crime Movement..... 209  
     De-Incarceration and Crime..... 209  
     Is the Glass Half Full or Half Empty?.....212

References..... 227



---

# Preface

---

This book is the product of a long intellectual journey. I became engrossed in criminal justice issues while writing my doctoral dissertation at the University of California, Riverside, in 2004 and 2005. My dissertation examined the politics and implementation of California's Substance Abuse and Crime Prevention Act—Proposition 36—which diverted nonviolent drug offenders from the state's prison system. The original idea behind Proposition 36 was the right one; the problem was in the program's flawed design. It mostly succumbed to California's multiple budget crises during the Schwarzenegger years.

Yet Proposition 36, adopted in 2000, served as one of the earliest signs that voters were willing to begin turning back the worse aspects of the tough on crime era. I know now, however, that I failed then to sufficiently grasp the terrible injustices the criminal justice system waged on minorities, the poor, and the most marginalized Americans in the name of fighting crime and drugs.

Bruce Western's *Punishment and Inequality in America* and Loïc Wacquant's 2001 "Deadly Symbiosis" article in *Punishment and Society*, I credit with helping me begin to better understand how the growing tentacles of America's justice system became a merciless tool for black subjugation. But curiously, the *political* story they and others told seemed mostly absent from political science circles. The politics of the modern penal system involves so many issues and forces political scientists putatively care about—race, class, inequality, organizational power, and institutional constraints. Why were so few in my discipline paying attention?

Yet even as researchers from other academic disciplines became focused on "mass incarceration" and the worst aspects of the tough on crime regime, I also began to ask myself whether we were missing something. As I completed my graduate studies and prepared for my first teaching assignment at the University of Minnesota, Duluth, in 2005, I began reading about a growing movement to help released prisoners return successfully to their communities. "Prisoner reentry" seemed innovative; it seemed different. Were we, as a community of scholars, overlooking meaningful criminal justice reform unfolding beneath our collective noses?

The *meaning* of social movements and social change varies across time and space. The messiness of the here and now can, with a bit of distance, mark clear points of departure. With the passing of time, I became more convinced than ever that my initial thought—that something different *was* brewing out there—was correct. After securing a generous Grant-in-Aid of Research, Artistry, and Scholarship from the University of Minnesota in 2009, I conducted field research to see for myself. Prison officials, lawmakers, researchers, and reform advocates—people directly working on the problem—what did they think? Did they see change? If so, why? Even if practitioners (and indeed many lawmakers) failed to grasp the “big picture”—even if they and I did not speak the same professional language, I was convinced talking with people “on the ground” was a worthwhile pursuit.

Much of what I learned from this work is found in different parts of the book. I am indebted to the more than two dozen people who took time out of their busy schedules to speak with me in person about what they knew and saw. Some of them are explicitly mentioned in the chapters ahead, but I use many of their experiences and insights to inform the book’s broader narrative. Of course, any misreading or misjudgment of my interviewees’ perceptions, beliefs, or positions is my fault alone.

Over time, I grew frustrated with the pace of my writing. I confronted a puzzle that, for me at least, not only had too many pieces but acted as if someone routinely reorganized the pieces I left on the table. How does one make sense of a penal reform movement that in many ways is just getting started and one that involves a complex web of activities and decisions made by actors at all levels of our government? Peace of mind finally came with the recognition that the political story I tell is an ongoing one. There will be much more to say and do after the last word of this book.

---

# Acknowledgments

---

I was the beneficiary of so many people's support and encouragement. My wife, Mary, and I met in graduate school at San Diego State University (SDSU) in 1998. Since then we've been on a life journey filled with tremendous joy and our share of heartache along the way. She is without doubt my favorite political scientist. If not for her continued interest in the book and encouraging me to work longer and harder, even if it meant time away from "us," I would have never finished. I just hope the final product befits the costs. My son Ethan is my greatest source of pride. At home, I often wrote at the kitchen table. This offered a place close enough to hear the sounds of family while my mind focused on the screen in front of me. Ethan proved an inspiration when I often watched him, seated next to me at the table, pound away on an old family laptop, writing his own "books." My parents, Thornton and Elaine Percival, and my brother, Todd, have offered me strength and stability. They've always taken an interest in my pursuits. Whatever successes I've had are a testament to their love and guidance. My stepson Andrew is now well on his way to adulthood. Only a bright future awaits. It's with great pride that I've watched him grow.

I would like to extend thanks to my colleagues in the Department of Political Science at San Jose State University (SJSU). I moved to the department in the middle of writing this book, and I cannot think of a more inspiring and nurturing place to work. Larry Gerston took a special interest in the project, taking time out of his hectic schedule to read several chapters. Charles Andrain, not of SJSU but my alma mater SDSU, is my longtime mentor and friend. Charles read chapters and offered invaluable feedback. I owe tremendous credit to Max Neiman, my advisor at the University of California, Riverside, who piqued my interest in criminal justice policy. I thank Max for his continued friendship and interest in my career. I am also indebted to California State Senator Jim Beall and his staff, who invited me on fact-finding and policy-related trips inside a number of California's prison facilities. For far too long, too many of California's elected officials simply gave up caring about the men and women serving long sentences inside California's overstuffed prisons. But for my money, there is no stronger advocate for building a more humane and just California prison system than Senator Beall. Several half-baked

chapters were presented at the American Political Science Association meeting in Seattle and State Politics and Policy conferences at Dartmouth College and Rice University. I thank all the panelists and conference participants who offered constructive feedback that helped improve the manuscript. Finally, I would like to express my thanks to my editor, Lara Zoble, at Taylor & Francis. She believed in the project and brought it to print in such a professional and timely manner. Again, any errors in the final product are mine alone.



## **Section I**

# **Rise of the Smart on Crime Movement**



# 1

---

## *Smart on Crime Politics*

---

---

### INTRODUCTION

#### Washington, DC

“I was wrong. I repent!” So declared Mark Earley, one of the most successful evangelical Christian politicians to emerge out of the Virginia Commonwealth in recent years (Suellentrop 2006). He spoke these words at a 2006 gathering of the Congressional Black Caucus in reference to his record on crime while serving in the Virginia legislature. Virginia, like many other states over the years, adopted nearly all the hallmarks of the tough on crime era. It enacted three-strikes-and-you’re-out laws, eliminated parole, and lowered the age for trying juveniles as adults. Earley saw himself as one of the toughest lawmakers in the bunch. “I was elected to the Virginia legislature and served 10 years ... and quite frankly, spent most of my time in the legislature working on how to put more people in jail and keeping them there longer. I’m 52 years old,” he said, “and for the first 48 years of my life, I didn’t think much about prisoners. And when I did, it went something like, I’m glad I’m not one, and I’m glad they are where they are. And I really pretty much had the view that prisoners were at the end of the line. That if you were in prison, you had no hope, you’d made a mess of your life, and it was better for me that you were there, because my family could be safe” (Suellentrop 2006, pp. 47–48).

Of course critics of the policies he helped enact would say Earley’s repentance came too little too late. The damage was done, and he is not making laws anymore to make things right. But what is important is that he was speaking in his role as director of the policy arm of the Prison Fellowship Ministries, an evangelical organization that has become a major part of a remarkable and much larger fight evangelicals and conservatives have waged in the name of reforming the nation’s penal system.

## **Ohio**

In 2011, after signing HB 86, Ohio Republican Governor John Kasich remarked, “This kind of reform legislation sat idle for 25 years, maybe. Nobody wanted to touch it ... it will result in the saving of many, many lives” (Fields 2011). One could be excused for accusing the governor of hyperbole. After all, politicians are guilty of it all the time. Yet, in this case, Kasich was on the level. The governor, despite fierce opposition from the state’s prosecutors association, had just signed a sweeping set of criminal justice reforms not seen in that state in a generation. The reform package in HB 86 gave judges in Ohio newfound discretion to send a variety of nonviolent felons to community halfway house facilities and treatment instead of prison. It increased offenders’ earned credit off their sentences after they completed education courses or drug treatment while incarcerated. It equalized penalties between crack and powdered cocaine, and allowed the release of nonviolent offenders who have served 80 percent of prison term of one year or more (Wyler 2011). All hold the promise of reducing the size of the state’s prison population and making the system far more just.

## **California**

In Orange County, California, Marvin Thomas decided to turn his life around. After being released from jail, Thomas wanted to earn his high school diploma and enter the job market. Thomas enrolled in Orange County’s Center for Opportunity, Reentry, and Education (or CORE), a joint program run by the county’s probation and education departments. To enroll, students have to commit to at least 30 days, 8 a.m.–2:30 p.m., Monday through Friday. Once there, participants tackle math, reading, and life skills. Upon nearing completion of his program Thomas told the Orange County Register that he looked forward to studying automotive or motorcycle technology at the college level (Emery and Hernandez 2012). CORE’s programming has been viewed positively enough that it is serving as a model for future day reporting centers in the county.

While perhaps unremarkable at first glance, what makes Thomas’s personal story important from a public policy perspective is that he is one of thousands of felons affected by California’s historic prison realignment plan adopted in 2011 after the federal courts ordered California to reduce its overflowing prison population.

California's Prison Realignment (or commonly referenced as AB 109 after the assembly bill that authorized it) produced major changes to the state's criminal sentencing and, perhaps most important, how postprison supervision is carried out. Statutorily defined "nonviolent, nonserious, and nonsex offenders" are now being incarcerated in county jails or other types of community supervision (such as house arrest) instead of state prison. Released prisoners who had previously been placed on parole and supervised by state parole agents are now placed on "postrelease community supervision," which is under the control of county probation departments.

Realignment is reallocating thousands of low-risk felons from state prison to county jails or some other alternative form of community supervision. The plan gives all counties control to implement a host of data-driven or evidence-based practices designed to more effectively fight crime and stop repeat offending. These strategies combine a mix of new risk assessment tools, probation practices that impose swift and certain sanctions for offenders, and the use of drug treatment and social service programs that reduce recidivism.

There are many challenges and uncertainties surrounding realignment, but both supporters and critics agree that it represents the end of mass incarceration as the Golden State has practiced it.

While separated by time and geographic distance, these brief vignettes all represent important components of a slowly building, but no less important, "smart on crime" movement in America. The movement, as we will see ahead, is dramatically changing criminal justice politics and policy for the better.

For the past generation, the U.S. penal system has been dominated by a "tough on crime" governance that fought crime using policy instruments overwhelmingly focused on punitiveness and custodial control. The politics of crime made a dramatic turn in the 1960s when, for a variety of reasons, the issue became defined in emotionally and morally laden terms: crime, criminals, drugs and drug users all became understood as clear-cut matters of good versus evil. As the politics shifted, the U.S. prison population swelled dramatically beginning in the mid 1970s—a period that began a trend toward mass incarceration that today has ensnared a record number of Americans, a disproportionate number of whom are racial minorities and the urban poor. By 2006 the U.S. incarceration rate reached about 750 per 100,000 population, a distinction that placed the country in the unenviable position of the world's incarceration leader. For black men, the

rate was 3,000 per 100,000. For poor uneducated black men, conditions are even bleaker. Those without a high school degree have nearly a 70 percent chance of going to prison in their lifetime (Western 2006).

Paradoxically, despite all the punishment handed down, the United States still suffers from crime rates that are too high. Violent crime rates have steadily declined since the 1990s—a fact that can be attributed at least in part to the increase in incarceration—yet still remain five times higher than other industrialized economies in the world (Kleiman 2013). Crime, or fear of crime, is still too much a part of people’s everyday lives, especially for those living in poor neighborhoods of color. People in these neighborhoods, it turns out, bear the twin tragedies of being at greater risk of victimization as well as seeing more and more of their young men carted off to prison. In short, the penal system is terribly broken.

This book seeks to demonstrate that the most punitive era in American history reached its apex in the 1990s and to explain how and why the trend has begun to reverse itself in recent years. As noted above, it emphasizes the rise in the 2000s of a “smart on crime” movement in U.S. politics and policy making. The term “smart on crime” is certainly not original. Elected officials, criminal justice practitioners, and journalists now commonly use the term (Harris and Hamilton 2009). It symbolizes the ongoing shift in thinking about crime and penal policy that is at the center of this book. At its core, “smart on crime” is a movement about constructing a penal system more *rational* and *humane*. In this case, the concept of *rational* means governments adopting smarter (empirically based) alternatives that are more effective at reducing crime rather than simply locking up more people. They are also demonstrably less expensive. And by *humane*, it is a movement for a penal system that puts far fewer people behind bars and does a lot less harm on the lives of individual offenders, their families, and communities.

The two tenets of the smart on crime movement share a common bond in that they both require far less use of prison and place fewer people behind bars, many of whom should never have been (or should never go) there in the first place. Reform occurs in new statutes, regulations, practices, and legal decisions that reduce criminal penalties for drug use, divert offenders away from prison, and place them into community corrections programs. Marked new investments emerge in prisoner rehabilitation and human capital development. New probation and parole practices impose swift and certain (but not severe) sanctions that cut recidivism and reduce crime.

Remarkably, reform now arises in states long considered to be those “toughest” on crime as well as vertically in the federalism system where national-level actors and institutions in both their political discourse and action led the cheers for get-tough politics and policy. In addition to Ohio and California mentioned earlier, policy makers in Texas, a state with one of the highest imprisonment rates in the nation, recently made new investments in drug treatment, adopted a variety of alternative sentencing statutes designed to divert nonviolent offenders from prison, and revamped its probation and parole systems. These states are not alone. A report by the National Conference of State Legislatures found that in 2009, there were twenty-eight major correctional policy revisions adopted across the United States (Lawrence 2013). That number has continued to grow since then, reaching forty-one in 2012 (Porter 2013).

Change is evident in federal policy making as well. Congress adopted the Fair Sentencing Act in 2010 that reduced a mandatory minimum drug sentence. In so doing the Act limited the reach of one of the country’s most draconian drug policies and reversed a punitive trend of the past forty years. Congress has also taken steps to incentivize prisoner reentry efforts in the states, most notably with the adoption of the Second Chance Act in 2008, a bill that has authorized a new federal infrastructure to disseminate best (rehabilitation)-practices research while targeting new funding for prisoner rehabilitation and successful reentry.

In the executive branch, President Obama’s Office of Drug Control Policy has quietly, but no less importantly, eliminated the “war on drugs” rhetoric. Federal law enforcement budgets, which serve as better indicators of policy priorities, show real signs of change. In its first three years, the Obama administration spent more on drug prevention and treatment than on domestic law enforcement and incarceration (the 2011 fiscal year, \$10.4 billion was spent on prevention and treatment, and \$9.2 billion for domestic drug enforcement and incarceration) (Office of National Drug Control Policy 2011). Federal funding for drug courts increased, and the number of drug courts grew by nearly 400 between 2009 and 2012 to a number that now totals more than 2,700 (Office of National Drug Control Policy 2012). The Justice Department is working to scale up “smart probation” strategies showing evidence of effectiveness by funding research studies and start-up grants (Office of National Drug Control Policy 2011). Perhaps most overlooked are dramatic changes coming from legislation that superficially has nothing to do with criminal justice policy. The Affordable Care Act, the biggest piece of social legislation since the advent

of Medicare and Medicaid, requires health insurance companies to cover substance abuse disorders in the same manner as other chronic diseases. This requirement raises the prospect of intervening before an individual's drug use becomes a crime issue, but also encourages offenders who need substance abuse treatment to get more assistance as they are released back to their communities.\*

In the federal judiciary, the Supreme Court has ruled in recent years against severe prison overcrowding, sentences of life imprisonment without parole for juvenile offenders (imprisoned for nonhomicidal offenses), and death sentences for capital crimes committed by juveniles and the severely mentally impaired—all hallmarks of the get-tough era. According to rulings, all these practices violate the Constitution's Eighth Amendment protections against cruel and unusual punishment.

As a result of these changes the rate of incarceration in America has recently declined. After increasing every year since the mid-1970s, the U.S. incarceration rate and the number of people under custodial supervision (i.e., those on probation and parole) have now declined for five straight years. After the U.S. Supreme Court mandated California to reduce its prison population, inmate numbers declined nearly 18 percent. Nine other states, including Hawaii, Michigan, New York, and South Carolina, have all experienced a prison population decline of at least 10 percent over the past five years ("States Cut Both Crime and Imprisonment" 2013).

The smart on crime movement seeks to reshape criminal justice policy. Taking readers on a journey through the American federalist system in the 2000s, *Smart on Crime* explains the forces and processes that have propelled criminal justice reform onto the governing agenda.† A key motivating question is this: How has this unlikely set of penal policy reversals managed to reach governing agendas when too many policy makers for the past generation have largely rejected less punitive alternatives because of a pervasive fear of being labeled "soft on crime"? The puzzle becomes all the more intriguing when one considers that few people (except for professional criminals) view crime as legitimate behavior. Crime produces deleterious effects; no one is *for* criminals in the way they might be *for* guns

---

\* This is important because more than a third of those arrested in the United States are under the influence of alcohol or an illegal drug (or both). Many of those incarcerated have a diagnosable substance use disorder. See Humphreys (2012b).

† For reasons of readability and style, I use criminal justice reform, penal reform, and prison reform interchangeably.



in a debate about the meaning of the Second Amendment, or pro-choice in relation to the abortion issue. Moreover, many groups who directly gain from reform, African Americans and the poor, have little influence in the power centers of criminal justice politics and policy making (Miller 2008).

Many recent journalistic accounts of reform offer a short-run economic explanation. Deep state budget deficits caused by the Great Recession force states to take drastic austerity measures. State and local governments have shed over 3 percent of their public workforce since 2009, 265,000 jobs in 2011 alone (Shierholz 2014). The move to cut correctional expenditures can be understood through this broader lens of state and local governments trying to reduce budgetary deficits in difficult economic times.

Economic calamity in the states, the most commonly offered culprit, indeed forms an important part of the story. But an economics story alone is too disconnected from political institutions that debate and decide criminal justice policy. It fails to sufficiently answer the question of why policy makers are taking significant steps toward reform *now*, yet when the country faced a variety of economic recessions in the past, no reductions in the inmate population occurred (U.S. Bureau of Labor Statistics 2012). In fact, in many recession years over the tough on crime period, the inmate population increased unabatedly, seemingly irrespective of what it cost in dollars or lives. The economic lens overlooks critical processes associated with agenda setting and policy change.

The central explanation reflects the argument that a meaningful shift in the nature of group conflict on crime arose in the 2000s; this change has formed a new “smart on crime” coalition that allied political actors from the left, center, and most counterintuitively the conservative right of American politics. The book contends that significant opportunities for reform are opening and policy is changing because the smart on crime coalition has successfully organized across multiple criminal justice policy-making institutions within the federalist system. At the same time the scope and dimensionality of the crime policy debate has broadened.

With the emergence of the smart on crime coalition, policy makers are asking far different questions: Are extremely punitive sanctions effective? Is the imprisonment of more people, for more types of activities, worth the financial and human cost? How can empirical analysis and evidence-based, “smartly” designed policies improve public safety but also give offenders a second chance? Whereas policies that once diverted offenders from prison or invested in human capital were largely understood as “coddling criminals,” lawmakers increasingly understand smart alternatives as

good public policy. Politicians have begun moving past the soft on crime label, allowing them to approach issues of criminal justice reform from a position of electoral strength rather than weakness.

---

## CRIME POLITICS IN THE AMERICAN POLITICAL SYSTEM

To explain crime politics, we must recognize the importance and complexity of criminal justice policy-making institutions. Political scientists have long recognized that political institutions—the formal rules and structures of government—have major consequences for policy makers, organized interest groups, and citizens alike by encouraging certain choices and strategies while discouraging others (Donovan et al. 2010).

Indeed, when we consider scholarship about the rise of the prison boom, numerous persuasive accounts have stressed changes in national politics, namely, how conservative presidents and members of Congress blocked civil rights advances and used crime and drugs as symbolically potent racial wedge issues that heightened whites' (particularly southern whites) support for punishment (Alexander 2010; Tonry 1995; Wacquant 2002; Weaver 2007). However, these compelling accounts that have made generalizations about the "American" criminal justice system pay too little attention to American federalism and ignore the fact that the bulk of criminal justice activities are concentrated at the subnational level (Lynch 2011). The president certainly has some control over law enforcement efforts because he has authority over agencies like the Federal Bureau of Investigation, the Drug Enforcement Administration, and Bureau of Alcohol, Tobacco, Firearms, and Explosives. But these agencies and the federal prison population account for only a small fraction of the entire criminal justice apparatus. Examining policy at the subnational level, where almost all activity takes place, one finds more variation. Political scientists have documented that even in the tough on crime era, which has seen the prison population explode, there remains significant variation among the states (Nicholson-Crotty 2004). Texas, California, Florida, and Georgia, for example, all practiced tough on crime politics with earnestness. Minnesota or Washington, however, have faced a growing prison population but not to the same degree.

Accounts that paint big generalizations using a lens of national crime politics or viewing at the subnational level are incomplete. Both perspectives