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## Robbery, Recidivism, And The Limits Of The Criminal Justice System

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# ROBBERY, RECIDIVISM, AND THE LIMITS OF THE CRIMINAL JUSTICE SYSTEM

RICHARD WRIGHT\*, WILLIAM J. SABOL\*\*, & THADDEUS L. JOHNSON\*\*\*

*The roughly 175,000 convicted robbers currently serving time in the U.S. eventually will be released. Over half of them will have been there before. Locked up as mostly young men and women, they will return to the communities they left behind, possessing little more than a criminal record and the clothes on their back. Many will find themselves owing supervision fees to the state; almost all will face legal barriers to employment, decent housing, political participation, and other sources of social inclusion. What can the criminal justice system—a system designed to prevent and deter lawbreaking—realistically do to keep them from returning to prison? This Article explores that question by drawing on published accounts from a sample of 86 individuals actively involved in committing armed robberies, many of whom have returned to crime after being released from prison. The emphasis throughout is on the ways in which pervasive social exclusion, both a cause and a consequence of their lawbreaking, challenges our ability to “reintegrate” such offenders who in reality were not integrated to begin with.*

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## I. THE FACTS OF ROBBERY

Robbery is one of the nation's most feared crimes.<sup>1</sup> Perhaps the quintessential predatory street crime, robbery involves the face-to-face taking of goods by force or threat of force, typically by an unknown assailant.<sup>2</sup> Firearms frequently are brandished by offenders during robberies, heightening the perceived risk of serious injury or death.<sup>3</sup> The racial dynamics of robbery also play a part in fueling the fear the offense engenders in the population.<sup>4</sup> In contrast to other types of criminal violence, robbery frequently is an interracial event involving a white victim and a black offender.<sup>5</sup> As such, the offense can instigate and reinforce racial stereotypes of blacks as being predatory and violent.<sup>6</sup> Indeed, Hacker argues that interracial robberies have served to exacerbate racial tensions and prejudice in America's cities: "For white victims caught in interracial robberies the loss of cash or valuables is seldom their chief concern. Rather, the racial character of the encounter defines the experience."<sup>7</sup>

Public fear of robbery has far-reaching consequences, powerfully influencing people's daily routines.<sup>8</sup> In this sense, robbery has come to symbolize the chilling effect that fear of crime has on urban conviviality. As Conklin has observed, "Although the public certainly fears murder and rape, it is probably fear of robbery . . . which keeps people off the streets, makes them avoid strangers, and leads them to lock their doors."<sup>9</sup> That fear, while sometimes overblown, is not wholly unwarranted. Roughly one third of

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1. Anthony A. Braga, David M. Hureau, & Andrew V. Papachristos, *The Relevance of Micro Places to Citywide Robbery Trends: A Longitudinal Analysis of Robbery Incidents at Street Corners and Block Faces in Boston*, 48 J. RES. CRIME & DELINQ. 7, 8 (2011).

2. RICHARD T. WRIGHT & SCOTT H. DECKER, *ARMED ROBBERS IN ACTION: STICKUPS AND STREET CULTURE* 3 (1997).

3. *Id.*

4. Craig St. John & Tamara Heald-Moore, *Racial Prejudice and Fear of Criminal Victimization by Strangers in Public Settings*, 66 SOC. INQUIRY 267, 270–71 (1996).

5. Philip J. Cook, *Robbery*, in THE OXFORD HANDBOOK OF CRIME AND PUBLIC POLICY 102, 107 (Michael Tonry ed., 2009). For a nuanced discussion of the racial dynamics of robbery, see BRENDAN O'FLAHERTY & RAJIV SETHI, *SHADOWS OF DOUBT: STEREOTYPES, CRIME, AND THE PURSUIT OF JUSTICE* 53 (2019).

6. WRIGHT & DECKER, *supra* note 2, at 7.

7. ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* 187 (1992).

8. Philip J. Cook, *Robbery Violence*, 78 J. CRIM. L. & CRIMINOLOGY 357, 357 (1987); James Q. Wilson & Barbara Boland, *Crime*, in THE URBAN PREDICAMENT 179, 191 (William Gorham & Nathan Glazer eds., 1976).

9. JOHN E. CONKLIN, *ROBBERY AND THE CRIMINAL JUSTICE SYSTEM* 4 (1972).

robbery victims are injured during the attack.<sup>10</sup> Most of those injuries are minor, but at the other extreme between five and ten percent of murders result from a robbery.<sup>11</sup>

Given all of the above, it is unsurprising that individuals convicted of robbery, especially armed robbery, can expect to receive a long prison sentence.<sup>12</sup> According to data from the National Corrections Reporting Program, about 30% of convicted robbers receive a maximum sentence of 5 to greater than 10 years; 25% receive 10 to more than 25 years, and another 20% get 25 years or more.<sup>13</sup> In our home state of Georgia, penalties for armed robbery range anywhere from a minimum sentence of 10 years to a maximum of life imprisonment.<sup>14</sup> Research shows that these lengthy sentences are sufficient to alter the criminal calculus of most individuals currently serving time for armed robbery—at least while they are locked up. A survey of incarcerated armed robbers conducted by Figgie International found that only 27% of them thought the offense was worth the risk, whereas presumably 100% of them believed it was worth the risk when they committed the stick-up that landed them in prison.<sup>15</sup>

The widely shared perceived pain of long-term imprisonment notwithstanding, we know that over three-quarters of robbers released from prison will return within five years; some for robbery, but most for drug or

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10. *NCVS Victimization Analysis Tool (NVAT)*, BUREAU OF JUSTICE STATISTICS, <https://www.bjs.gov/index.cfm?ty=nvat> [<https://perma.cc/MF3Q-3N4F>] [hereinafter *NCVS Victimization Analysis Tool (NVAT)*] (follow the “Custom Tables” hyperlink; select “Personal Victimization” as the Victimization Type; select the “Robbery” check box; select “Injury” as the First Variable; and select “Generate Results”).

11. *See generally* FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTING PROGRAM DATA: SUPPLEMENTARY HOMICIDE REPORTS, 2015 (2017), <https://www.icpsr.umich.edu/icpsrweb/NACJD/studies/36790/summary> [<https://perma.cc/MW8J-2BQV>]; FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTING PROGRAM DATA: OFFENSES KNOWN AND CLEARANCES BY ARREST, 2015 (2017), <https://www.icpsr.umich.edu/icpsrweb/NACJD/studies/36789> [<https://perma.cc/8DJU-Q5XT>] [hereinafter OFFENSES KNOWN AND CLEARANCES BY ARREST, 2015].

12. *See* Marc Mauer, *Racial Impact Statements: Changing Policies to Address Disparities*, CRIM. JUST., Winter 2009, at 16, 18.

13. *See generally* BUREAU OF JUSTICE STATISTICS, NATIONAL CORRECTIONS REPORTING PROGRAM, 1991–2016: SELECTED VARIABLES (2018), <https://www.icpsr.umich.edu/icpsrweb/NACJD/studies/37021> [<https://perma.cc/N88Y-8KYM>]. The data include all NCRP participating states, covering the period from 2000 to 2016.

14. GA. CODE ANN. § 16-8-41(b) (2011).

15. FIGGIE INT’L INC., THE FIGGIE REPORT PART VI: THE BUSINESS OF CRIME: THE CRIMINAL PERSPECTIVE, at VII (1988).

income-generating property crimes or for traffic and court-related offenses or for technical violations.<sup>16</sup>

Violent offenders, including those serving time for robbery, have been mostly left out of the recent decarceration movement.<sup>17</sup> Lamenting this state of affairs, offenders' rights activist and former felon Bruce Reilly told the New York Times, "The drug offender—that person should not even be in jail . . . The hard questions are reintegration for people the criminal justice system was actually designed for," by which he clearly meant those convicted of serious violence.<sup>18</sup> At some point, the over 175,000 convicted robbers currently incarcerated will be released from prison.<sup>19</sup> Over half of them will have been there before.<sup>20</sup> Locked up as young men and women, they will return

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16. MATTHEW R. DUROSE, ALEXIA D. COOPER, & HOWARD N. SNYDER, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010, at 7–9 (2014), <https://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf> [<https://perma.cc/MN7S-KA4G>]; PATRICK A. LANGAN & DAVID J. LEVIN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 1994, at 8–9 (2002), <https://www.bjs.gov/content/pub/pdf/rpr94.pdf> [<https://perma.cc/F7EL-R4XD>]. A substantial period of time has passed since this report was first published. Yet given the longitudinal stability in the national recidivism rates, see Joshua Hall, Kaitlyn Harger, & Dean Stansel, *Economic Freedom and Recidivism: Evidence from US States*, 21 INT'L. ADVANCES ECON. RES. 155, 156 (2015), scholars widely consider it among the most reliable assessments in circulation, see Francis T. Cullen, Cheryl Lero Jonson, & Daniel S. Nagin, *Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science*, 91 PRISON J. 48S, 53S (2011). Notably, this was the last BJS recidivism report to list violent offenses separately, making it difficult to discern current offending trends among persons formerly incarcerated for robbery. Despite the extant data structure challenges, estimates show that on the high end, no more than one third return to prison for another robbery or other predatory offense. LANGAN & LEVIN, *supra*, at 9. See generally *id.* for more details.

17. Noam Scheiber, *He Committed Murder. Then He Graduated from an Elite Law School. Would You Hire Him as Your Attorney?*, N.Y. TIMES (Feb. 2, 2019), <https://www.nytimes.com/2019/02/02/business/bruce-reilly-murder-conviction-lawyer.html> [<https://perma.cc/WVS8-NQ7G>]; see also Paul J. Larkin, Jr., *Clemency, Parole, Good-Time Credits, and Crowded Prisons: Reconsidering Early Release*, 11 GEO. J.L. & PUB. POL'Y 1, 13 (2013).

18. Scheiber, *supra* note 17.

19. JENNIFER BRONSON & E. ANN CARSON, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PRISONERS IN 2017, at 22 (2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf> [<https://perma.cc/GC64-KFUG>].

20. See generally BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SURVEY OF INMATES IN STATE AND FEDERAL CORRECTIONAL FACILITIES, [UNITED STATES], 2004 (2018) [hereinafter SURVEY OF INMATES IN STATE AND FEDERAL CORRECTIONAL FACILITIES], <https://www.icpsr.umich.edu/icpsrweb/NACJD/studies/4572> [<https://perma.cc/2RCE-644Q>]; BRIAN A. REAVES, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2009 - STATISTICAL TABLES 10 (2013), <https://www.bjs.gov/content/pub/pdf/fdluc09.pdf> [<https://perma.cc/ZA4D-GW5Z>]. These are the most recent BJS data and reports containing information on prior convictions and incarcerations of robbery offenders.

to the communities they left behind, possessing little more than a prison record and the clothes on their back. Many will find themselves owing supervision fees to the state; almost all will face legal barriers to employment, decent housing, political participation, and other sources of social inclusion.<sup>21</sup> What can the criminal justice system—a system designed to prevent and deter lawbreaking—realistically do to keep them from returning to prison?

This Article explores the prospects of reducing recidivism among those convicted of robbery by drawing on published accounts from a sample of eighty-six individuals actively involved in committing such offenses, many of whom have returned to crime after being released from prison.<sup>22</sup> Where appropriate, these accounts are supplemented with those from active robbers interviewed in the course of other studies.<sup>23</sup> Offenders represent an important source of empirical data about the perceptual forces that shape their law-breaking. As Feeney has observed: “If headway is ever to be made in dealing with crime, we must access the information that offenders have and use this for purposes of prevention and control. Robbers know a lot about themselves and about robberies that no one else knows.”<sup>24</sup>

We begin by outlining the etiological cycle that produces the vast majority of violent predatory street crimes, including most forms of robbery, be it personal, low-level commercial, or carjacking. Next, we explore the ways in which this cycle influences offenders’ legal and moral decision-making. We then consider what all of this means for our attempts to reduce recidivism among those convicted of robbery. We conclude with policy considerations for reducing recidivism among this group of violent offenders. Our emphasis throughout is on the ways in which pervasive social exclusion, both a cause and a consequence of their law-breaking, serves to constrain would-be robbers’ perceived opportunities, which itself is anchored in a realistic appreciation of their immediate circumstances and prospects.

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21. David J. Harding, Jessica J. B. Wyse, Cheyney Dobson, & Jeffrey D. Morenoff, *Making Ends Meet After Prison*, 33 J. POL’Y ANALYSIS & MGMT. 440, 441 (2014).

22. See WRIGHT & DECKER, *supra* note 2, at 11 for a full description of the sample and methodology.

23. See Volkan Topalli & Richard Wright, *Affect and the Dynamic Foreground of Predatory Street Crime: Desperation, Anger and Fear*, in AFFECT AND COGNITION IN CRIMINAL DECISION MAKING 42, 42, 44, 46, 49, 51–52 (Jean-Louis Van Gelder, Henk Elffers, Danielle Reynald, & Daniel Nagin eds., 2014); Timothy Brezina, Erdal Tekin, & Volkan Topalli, “*Might Not Be a Tomorrow*”: A Multimethods Approach to Anticipated Early Death and Youth Crime, 47 CRIMINOLOGY 1091, 1110–18 (2009); Bruce A. Jacobs, Volkan Topalli, & Richard Wright, *Carjacking, Streetlife and Offender Motivation*, 43 BRIT. J. CRIMINOLOGY 673, 674–84 (2003).

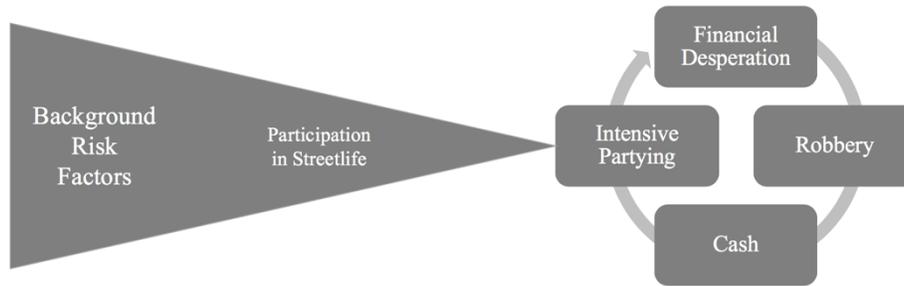
24. Floyd Feeney, *Robbers as Decision Makers*, in THE REASONING CRIMINAL: RATIONAL CHOICE PERSPECTIVES ON OFFENDING 53, 68 (Derek B. Cornish & Ronald V. Clarke eds., 2014).

## II. THE ETIOLOGICAL CYCLE OF ROBBERY<sup>25</sup>

In order to appreciate more fully the challenges of reducing recidivism among individuals convicted of robbery, it is useful to examine the macro and micro processes through which such offenses typically come to be contemplated and carried out.

Figure 1 outlines the journey that most offenders take on their way from birth to the commission of robbery.

FIGURE 1: THE ETIOLOGICAL CYCLE OF ROBBERY



Virtually all would-be robbers are born into deplorable social circumstances.<sup>26</sup> Their early years are marked by all manner of background risk factors for crime, such as material deprivation, poor educational opportunities, a lack of parental supervision, and day-to-day exposure to violence.<sup>27</sup>

I grew up with shootin' and fightin' all over. You grew up with books and shit. Where I'm from you never know if you gonna live one minute to the next. It's like a war out there. People die every day. You can go to sleep and hear gunshots all night man, all night. Bullets be lying on the street in the morning. Ambulances and police cars steady riding through my neighborhood, man.<sup>28</sup>

25. Portions of Parts II through IV draw on verbatim material originally published in WRIGHT & DECKER, *supra* note 2. Used by permission of Northeastern University Press.

26. BRUCE WESTERN, *HOMEWARD: LIFE IN THE YEAR AFTER PRISON* 63 (2018); ROSEMARY J. ERICKSON, ATHENA RESEARCH CORP., *TEENAGE ROBBERS: HOW AND WHY THEY ROB* 11 (2003), [http://athenaresearch.com/materials/prchs\\_trhwr.pdf](http://athenaresearch.com/materials/prchs_trhwr.pdf) [<https://perma.cc/FER8-Y635>]; JOHN M. MACDONALD, *ARMED ROBBERY: OFFENDERS AND THEIR VICTIMS* 132 (1975); TONY PARKER & ROBERT ALLERTON, *THE COURAGE OF HIS CONVICTIONS* 21–22 (1962).

27. WESTERN, *supra* note 26, at 63.

28. Brezina, Tekin, & Topalli, *supra* note 23, at 1113.

Of course, not everyone exposed to such conditions turns to crime—most do not—but for some it has the effect of loosening their ties to conventional society, essentially setting them adrift and making them vulnerable to the allure of street life.<sup>29</sup> A common refrain among urban mothers is that they fear losing their sons to the streets. The imperatives of street life dictate the hedonistic pursuit of illicit action, especially drug use, that feeds on itself and constantly calls for more of the same.<sup>30</sup> The idea is to live life literally as if there is no tomorrow:

Just get high, get high. I just blow money. Money is not something that is going to achieve for nobody, you know what I'm saying? So everyday, there's not a promise that there'll be another [day] so I just spend it, you know what I'm saying? It ain't mine, you know what I'm saying, I just got it, it's just in my possession. . . . It's a lot of fun.<sup>31</sup>

Would-be offenders are attracted to street life partly because they regard their legitimate prospects as grim and see no value in long-range planning.<sup>32</sup> Participating in street life offers them a semblance of personal identity, while allowing them to mask what Kornhauser has called their “abiding sense of failure.”<sup>33</sup>

I really don't dwell on things like that. One day I might not wake up. I don't even think about what's important to me. What's important to me is getting mine . . . .<sup>34</sup>

But street life participation can only be sustained via regular infusions of cash, thereby setting in motion the instigating conditions for predatory crime.<sup>35</sup> The problem is that as fast as offenders get their hands on more cash, they spend it with reckless abandon in a desperate attempt to, in their words, keep the party going. As a result, they are almost perpetually in need of additional funds.

Just got the money to blow, so fuck it, blow it. Whatever, it don't even matter. Whatever you see you get, fuck it. Spend

29. Tara M. Brown, “*Hitting the Streets*”: *Youth Street Involvement as Adaptive Well-Being*, 86 HARV. EDUC. REV. 48, 65–66 (2016). Brown goes so far as to assert that for many young men, the turn to street life is an adaptive measure aimed at promoting their well-being in the face of dire social circumstances. *Id.*

30. Jacobs, Topalli & Wright, *supra* note 23, at 677.

31. *Id.*

32. WRIGHT & DECKER, *supra* note 2, at 37.

33. RUTH ROSNER KORNHAUSER, SOCIAL SOURCES OF DELINQUENCY: AN APPRAISAL OF ANALYTIC MODELS 131 (1978).

34. WRIGHT & DECKER, *supra* note 2, at 37.

35. A long line of research has identified street life as productive of serious delinquency. *See, e.g.*, John Hagan & Bill McCarthy, *Streetlife and Delinquency*, 43 BRIT. J. SOC. 533, 555 (1992).

that shit. . . . Easy come, easy go. . . . I ain't trying to think about keeping nothing.<sup>36</sup>

Once this happens, the offenders are in danger of becoming encapsulated in what Lemert has described as a “dialectical, self-enclosed system[] of behavior”<sup>37</sup> that takes on a logic of its own to the exclusion of concerns external to the immediate social situation.<sup>38</sup> Seeking to prolong their hedonistic pursuit of illicit action, they are unlikely to look for a long-term solution to their predicament.<sup>39</sup> Instead, they are inclined to fall back on the most “proximate and performable”<sup>40</sup> option realistically available to them for dealing with their pressing need for cash, which in the case of robbers often means committing another stick-up.

This is the socio-cultural context within which most offenders decide to commit their robberies, with their motivation to offend emerging directly out of a period of intense self-indulgence, coupled with a realistic appreciation of their dire circumstances.

I'm walking around, sometimes if I have any money in my pocket I go get high, buy a bag of [marijuana], a forty-ounce . . . or something. Get high and then I ain't got no more money and then the highness makes you start thinking until you go out and do [a robbery]. It just makes me upset, angry, mad, jealous . . . cause I ain't got the stuff that [others] got. [I think about armed robbery when] I need some money. I like money in my pocket, I like going out and getting drunk. When I get drunk, I get to tripping off shit that been happening with me, shit that been going through my life and shit [that] ain't right. And [doing stickups] is just how I get my satisfaction, I guess. Just go out and just do it.<sup>41</sup>

Successfully committing a robbery, then, not only generates the wherewithal to continue partying, it also may represent a way for offenders to demonstrate criminal competence and expertise to themselves and others—a chance momentarily to transcend the challenges of their daily lives by taking control of the situation and directing the unfolding action.<sup>42</sup>

36. Jacobs, Topalli & Wright, *supra* note 23, at 677.

37. Edwin M. Lemert, *An Isolation and Closure Theory of Naive Check Forgery*, 44 J. CRIM. L. & CRIMINOLOGY 296, 304 (1953).

38. Neal Shover & David Honaker, *The Socially Bounded Decision Making of Persistent Property Offenders*, 31 HOW. J. CRIM. & JUST. 276, 283 (1992).

39. WRIGHT & DECKER, *supra* note 2, at 39.

40. JOHN LOFLAND, *DEVIANCE AND IDENTITY* 61 (1969).

41. WRIGHT & DECKER, *supra* note 2, at 36.

42. JACK KATZ, *SEDUCTIONS OF CRIME: MORAL AND SENSUAL ATTRACTIONS IN DOING EVIL* 198 (1988).

## III. THE THREAT OF LEGAL CONSEQUENCES

The threat of legal sanctions rests on an assumption that would-be offenders perceive themselves as having freedom to choose whether or not to commit any given crime. This assumption flies in the face of what we know about the immediate context in which robbers “decide” to offend, with most of them believing that their desperate need for cash cannot be deferred or met through more conventional means. This is not to say that such offenders are unmindful of the risk of arrest and prosecution, but rather that the perceived urgency of their immediate situation serves to attenuate the link between law-breaking and potential sanctions.<sup>43</sup> Convinced they have no realistic alternative to doing a robbery, offenders consciously employ various cognitive techniques to neutralize the power of threatened sanctions to deter the contemplated offense.<sup>44</sup> Most commonly this involves simply refusing to dwell on the possibility of being caught, which obviously precludes the need to worry about the contingent risks of prosecution and punishment.<sup>45</sup>

[The risk of getting caught is] just a reality. I know it’s a possibility. But I try not to think about that because if I dwell on it too much I may talk myself or scare myself out of doing [the robbery].<sup>46</sup>

Whereas some offenders reportedly find it easy to avoid thinking about getting caught,<sup>47</sup> others clearly have to work hard to keep such thoughts out of their minds.

I try to keep [thoughts about getting caught] out of my mind. I look at it more on a positive side: getting away. A lot of times it enters my head about getting caught, but I try to kill that thought by saying I can do it; have confidence in pulling the job off.<sup>48</sup>

Some offenders go so far as to drink or use drugs before an offense in a deliberate attempt to dull the impact of threatened sanctions, thereby allowing them to proceed without worrying about the potential consequences.

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43. GLENN D. WALTERS, *THE CRIMINAL LIFESTYLE: PATTERNS OF SERIOUS CRIMINAL CONDUCT* 145 (1990); WRIGHT & DECKER, *supra* note 2, at 129.

44. TREVOR BENNETT & RICHARD WRIGHT, *BURGLARS ON BURGLARY: PREVENTION AND THE OFFENDER* 115 (1984).

45. *Id.* at 116; Neal Shover, *Aging Criminals: Changes in the Criminal Calculus*, in *IN THEIR OWN WORDS: CRIMINALS ON CRIME* 57, 60 (Paul Cromwell ed., 1996).

46. WRIGHT & DECKER, *supra* note 2, at 119.

47. *See* BENNETT & WRIGHT, *supra* note 44, at 115.

48. WRIGHT & DECKER, *supra* note 2, at 119.

That's why [my partners and I] get high so much. [We] get high and get stupid, then we don't trip off of [the threat of apprehension]. Whatever happens, happens. . . . You just don't care at the time."<sup>49</sup>

Regardless of whether would-be offenders find it easy or difficult to avoid thinking about threatened sanctions, the important point is that at the time of actually contemplating a robbery, few of them see themselves as having any other realistic course of action and so "choose" simply to ignore the risks. As Wright and Decker observe: "Where no viable alternative to crime exists, there clearly is little point in dwelling on the potentially negative consequences of offending."<sup>50</sup>

Although in the minority, some would-be robbers do think about the possibility of getting caught but proceed anyway. Why does an awareness of this risk fail to deter them from offending? Here again, a large part of the answer can be found in their financial desperation, which encourages them to discount danger and concentrate instead on the anticipated reward. An active armed robber interviewed by Wright and Decker explained his lengthy prison record this way: "[I always think about the possibility of apprehension, but] I guess the need is greater than the fear of getting caught."<sup>51</sup>

Even offenders who, during their crimes, are attuned to the possibility of arrest and prosecution tend to regard that risk as so small for any given offense that it easily can be discounted in the face of their pressing need for quick cash—a process made easier still by the fact that many of them have an overblown opinion of their skill at avoiding detection.<sup>52</sup>

Definitely! It depends. I don't know. What I'm really trying to say [is that] if you good at what you doing, you don't care too much cause you figure nine times out of ten you not gonna get caught."<sup>53</sup>

Whether one in ten odds of getting caught are good or bad is open to debate, but surely it depends in part on the perceived severity of the resultant sanction—a calculation shaped by the individual's current circumstances and prospects. Most persistent robbers know full well that their law-breaking is going to land them in prison sooner or later. Yet they carry on despite the mounting risk of apprehension. Recall that most such offenders experience themselves as locked

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49. *Id.* at 120.

50. *Id.* at 121.

51. *Id.* at 122.

52. WALTERS, *supra* note 43, at 88; WRIGHT & DECKER, *supra* note 2, at 122.

53. WRIGHT & DECKER, *supra* note 2, at 122.

into a grim cycle of events that is leading them nowhere.<sup>54</sup> Against that backdrop, the prospect of a stint in prison may come to be seen almost as a welcome break from the emotional turmoil and physical danger that are part and parcel of life on the street.

Basically jail fun for real. Most people look at jail [as a bad place]. I look at jail as another place to lay my head at. I might be safer in jail than on the streets.<sup>55</sup>

The bottom line is that virtually all robbers know full well that committing stick-ups carries the risk of apprehension and punishment. While actually engaged in an offense, however, most of them are able to avoid worrying about the potentially negative consequences simply by refusing to think about them. In doing so, they display a remarkable talent consciously to manipulate “the legal bind of the law.”<sup>56</sup> No doubt this ability is facilitated by their perceived desperate need for cash. Lofland has observed that all types of desperation have a tendency to produce “psychosocial encapsulation,” wherein individuals enter a “qualitatively different state of mind” in which the potentially negative consequences of their actions become attenuated.<sup>57</sup> Even offenders who, during their robberies, do think about the chance of getting caught often are encouraged by financial pressures to discount that risk and concentrate instead on the anticipated reward. As Wright and Decker remind us, “the reason for contemplating [an offense] in the first place often serves to diminish the perceived threat of official sanctions.”<sup>58</sup>

#### IV. CONSCIENCE AND ANTICIPATED FEELINGS OF GUILT

The risk of incurring legal sanctions is not the only perceptual mechanism that conceivably could deter would-be robbers from committing an offense.

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54. *Id.* at 36.

55. *Id.* at 123. Studies on the imprisonment-mortality link lend credence to such sentiments. Collectively, they demonstrate that former inmates are at higher risk for death after release from prison; mostly due to drug overdoses, suicide, violence, and a lapse in medical treatment for chronic health conditions. *See, e.g.*, Ingrid A. Binswanger, Marc F. Stern, Richard A. Deyo, Patrick K. Heagerty, Allen Cheadle, Joann G. Elmore, & Thomas D. Koepsell, *Release from Prison — A High Risk of Death for Former Inmates*, 356 N. ENG. J. MED. 157, 159–61 (2007); Mark Jones, Gregory D. Kearney, Xiaohui Xu, Tammy Norwood, & Scott K. Proescholdbell, *Mortality Rates and Cause of Death Among Former Prison Inmates in North Carolina*, 78 N.C. MED. J. 223, 226 (2017); Anne C. Spaulding, Ryan M. Seals, Victoria A. McCallum, Sebastian D. Perez, Amanda K. Brzozowski, & N. Kyle Steenland, *Prisoner Survival Inside and Outside of the Institution: Implications for Health-Care Planning*, 173 AM. J. EPIDEMIOLOGY 479, 483–85 (2011).

56. BENNETT & WRIGHT, *supra* note 44, at 116 (emphasis omitted).

57. LOFLAND, *supra* note 40, at 50.

58. WRIGHT & DECKER, *supra* note 2, at 124 (internal citation omitted).

Virtually everybody, robbers included, knows that sticking a gun in someone's face and ordering them to hand over their possessions is morally suspect. That being so, anticipated feelings of guilt also might serve to dissuade potential offenders from acting on their intentions, at least in theory. In practice, however, the overwhelming majority of robbers typically experience little guilt during their offenses.

I have never felt no pain for nobody. . . . That's how I was raised up. . . . My father always told me never to feel no pity for nobody. So I don't feel no pity for nobody. I just don't [feel any guilt]. Ain't no love on the streets. I don't care about nobody. I don't care about nothing but me and my family.<sup>59</sup>

Undoubtedly, the offenders' lack of guilt can be attributed in large part to situational pressures, namely a desperate need for quick cash to sustain the hedonistic action promoted by street life. But it also can be attributed to the predatory nature of street life itself, which profoundly shapes the moral universe of its members, serving to isolate them further still from the professed norms and values of conventional society.<sup>60</sup> In their view, getting robbed is just one of life's risks—it could (and sometimes did) happen to them too—and frankly is no big deal.

It's like this, you never know, somebody probably do me like that. That's why we don't feel guilty. It might happen to us. You know the chance you taking. You could get robbed just as quick as anybody else could. . . . So it's an even proposition, I think. . . . I just don't feel sorry [for my victims]. I been robbed before and I feel like, if somebody rob me, they ain't gonna feel sorry when they rob me, so I don't feel sorry for nobody.<sup>61</sup>

Whatever the reason, the fact remains that at the time of actually contemplating their crimes most would-be robbers cannot realistically be constrained by internalized moral beliefs—they simply do not feel guilty.

#### V. RECIDIVISM MEETS REALITY

What light does this brief summary of how would-be robbers think and act in real life settings and circumstances shed on our prospects for reducing recidivism among those convicted of such crimes? Obviously, the threat of another prison term is not sufficient to deter all of them. Many of the active

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59. *Id.* at 125.

60. *Id.* at 126.

61. *Id.*

robbers quoted above have served time in the past and yet returned to crime upon release.

The first thing to say is that robbers do not contemplate and carry out their offenses in a socio-cultural vacuum. Most of them come to the offending moment with a host of more or less static background risk factors that have severely limited their realistic life choices from the beginning.<sup>62</sup> Those who have been released after serving time for robbery share these same risk factors, plus another one in the form of a prison record for having committed a racialized and widely-feared violent crime, which further restricts their already scarce options.

As the name implies, risk factors are not causal, but they do serve to circumscribe the interactional environment within which potential robbers assess their current circumstances and prospects. Given that the odds of achieving conventional success are stacked so heavily against them, it is unsurprising that those released from prison are especially vulnerable to being seduced by the hedonistic imperatives of street life, which promise immediate gratification. Not all ex-convicts succumb to the temptation, but those who do must find a way to sustain the illicit action, so-called “partying,” that attracted them to street life in the first place. This can quickly lock them into a self-reinforcing criminogenic cycle—partying leads to financial desperation which leads to crime which leads to more partying.<sup>63</sup> In the process, they become isolated further still from the norms and expectations of conventional society, which in turn makes it increasingly harder for them to break out of the cycle.

In the immediate situation of their crimes, most robbers, with or without a prison record, perceive themselves as having little choice but to commit a stick-up, which is why it is so difficult to reduce recidivism among offenders already caught up in street life. Probably a better strategy is to prevent them from getting back into street life in the first place. Urban mothers long have sought to inoculate their sons against the dangerous allure of the streets; it is incumbent on us to try to do the same for ex-prisoners. They too can be lost to the streets, whereupon their odds of returning to crime rise correspondingly.<sup>64</sup>

The goal, then, is to undermine the seductive pull of street life among a group of serious violent ex-convicts, most of whom entered prison with few ties

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62. *See supra* Figure 1.

63. *See supra* Figure 1.

64. JEREMY TRAVIS, AMY L. SOLOMON, & MICHELLE WAUL, URBAN INST., JUSTICE POLICY CTR., FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY 1 (2001), [http://research.urban.org/UploadedPDF/from\\_prison\\_to\\_home.pdf](http://research.urban.org/UploadedPDF/from_prison_to_home.pdf) [<https://perma.cc/4DW8-2NWP>].

to conventional society and left it with fewer still.<sup>65</sup> But this is easier said than done. How do you reintegrate those who were not—and never have been—integrated to begin with? One thing is certain, the scale and scope of such an undertaking are beyond the remit of the justice system.

The justice system is tasked with reducing crime through the deterrence and incapacitation of lawbreakers, not by alleviating the socio-cultural conditions that gave rise to their lawbreaking. When it comes to countering the allure of street life for robbers released from prison, the justice system has few realistic options beyond surveillance, such as using the threat of random drug tests in an attempt to deter them. Those threats are backed up by the prospect of being sent back to prison for those who fail for reasons of technical violations, who account for almost 30% of all prison admissions nationwide.<sup>66</sup> Put differently, the justice system has some sticks with which to try to undermine the magnetic pull of street life, but as Freeman warns, that is the easy part.<sup>67</sup> The much tougher challenge is the carrot part; building sturdy links to legitimate others and activities, which is not something the criminal justice system is equipped to do. Western echoes Freeman's warning, but he goes further in arguing that criminal justice policy may actually make it harder to forge such links:

The mission of social integration in the aftermath of crime creates a broad test for criminal justice policy: does it encourage community membership or does it deepen social exclusion? Many staples of American criminal justice fail this test. Fines and fees for cost recovery, pretrial detention for want of bail, criminal record disqualifications for government benefits, revocations of probation and parole for technical violations—all fail the test of social integration.<sup>68</sup>

He concludes that, in the end, “[c]riminal justice is a poor instrument for social policy because at its core, it is a blaming institution.”<sup>69</sup>

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65. See Shover, *supra* note 45, at 60–61.

66. BRONSON & CARSON, *supra* note 19, at 13; David J. Harding, Jeffrey D. Morenoff, Anh P. Nguyen, & Shawn D. Bushway, *Short- and Long-term Effects of Imprisonment on Future Felony Convictions and Prison Admissions*, 114 PROC. NAT'L ACAD. SCI. U.S. 11103, 11103 (2017).

67. Richard B. Freeman, *Why Do So Many Young American Men Commit Crimes and What Might We Do About It?*, 10 J. ECON. PERSP. 25, 40–41 (1996).

68. WESTERN, *supra* note 26, at 185.

69. *Id.*

VI. PRIMUM EST UT NON NOCERE<sup>70</sup>

In terms of what the criminal justice system realistically might do to reduce recidivism among those discharged from prison for robbery, we believe that a guiding principle should be “first, do no harm.” It is true that one of that system’s primary responsibilities involves apportioning blame and meting out punishment to law-breakers, but this does not necessarily mean that it has nothing to offer when it comes to fostering the broader goal of social inclusion. It does so whenever it extends the benefits of justice to those previously left out. The police are the primary point of contact with the criminal justice system for individuals recently released from prison; they encounter police officers far more often than probation or parole officers. As such, the police have a potentially critical role in helping to build trust with them, especially when it comes to criminal victimization. The substantial overlap between offenders and victims is well-documented, though many such offenses go unreported because the police are perceived to be hostile or indifferent to crimes committed against individuals who themselves are involved in law-breaking.<sup>71</sup> One way to promote the social inclusion of ex-convicts is for the police to take them seriously as crime victims, even when the offense committed against them occurred in the context of their own criminal conduct.<sup>72</sup> At a minimum this means allowing them—perhaps even encouraging them—to make a police report without fear of legal repercussions.<sup>73</sup>

Recognizing that law cannot fully serve those who perceive it to be unavailable, several cities across the U.S. have worked to improve access to justice system services for criminally-involved victims. For example, given the high rates of street violence faced by sex workers,<sup>74</sup> civic leaders in San Francisco implemented a policy allowing them to report such offenses to the police without fear of being taken into custody, even if the crime occurred in

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70. THOMAS INMAN, FOUNDATION FOR A NEW THEORY AND PRACTICE OF MEDICINE 352 (2nd ed. 1861).

71. WRIGHT & DECKER, *supra* note 2, at 65–66.

72. See SUDHIR ALLADI VENKATESH, OFF THE BOOKS: THE UNDERGROUND ECONOMY OF THE URBAN POOR 175 (2006). Police have already displayed a willingness to secure justice for non-traditional victims and their families as all homicides, for example, are investigated, even if they occur in criminal contexts.

73. Richard Rosenfeld, Bruce A. Jacobs, & Richard Wright, *Snitching and the Code of the Street*, 43 BRIT. J. CRIMINOLOGY 291, 307–08 (2003).

74. For a review, see C. Gabrielle Salfati, Alison R. James, & Lynn Ferguson, *Prostitute Homicides: A Descriptive Study*, 23 J. INTERPERSONAL VIOLENCE 505, 506 (2008).

the course of their own law-breaking.<sup>75</sup> Similar measures have been employed in an attempt to reduce offenses committed against undocumented immigrants, a group highly susceptible to criminal victimization. Take the cases of Los Angeles and Houston, where fear of deportation was blamed for low levels of crime reporting among migrants.<sup>76</sup> This led local law enforcement to adopt a policy prohibiting officers from inquiring about the legal status of persons coming forward with information about a crime.<sup>77</sup>

Despite high rates of criminal victimization among those convicted of robbery,<sup>78</sup> garnering political support for an initiative that allows them to report crimes without putting themselves in legal jeopardy will not be easy.<sup>79</sup> The report of the President's Task Force on 21st Century Policing acknowledged this and recommended that police agencies take proactive steps to promote public trust by initiating positive, non-enforcement activities in communities that have been heavily policed.<sup>80</sup> Efforts such as the International Association of Chiefs of Police's (IACP's) Community-Police Relations, which aims to provide guidance to law enforcement agencies seeking to increase community confidence, recognize the role of policing in building trust with the communities they serve and thereby build political support for initiatives that would encourage victims to report crimes without fear of reprisal.<sup>81</sup>

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75. Hannah Albarazi, *San Francisco Sex Workers Reporting Violent Crimes Won't Face Arrest*, CBS (Jan. 11, 2018), <https://sanfrancisco.cbslocal.com/2018/01/11/san-francisco-sex-workers-wont-face-arrest/> [<https://perma.cc/6DFM-CY6Z>].

76. James Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of Police and Courts*, L.A. TIMES (Oct. 9, 2017), <https://www.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-20171009-story.html> [<https://perma.cc/H24Z-ZMTV>].

77. *Id.*

78. About half of robbery offenders held in state prisons in 2004 reported that someone had used a weapon against them prior to their admission into prison, 40% reported having been beaten up, and half had been injured. See generally SURVEY OF INMATES IN STATE AND FEDERAL CORRECTIONAL FACILITIES, *supra* note 20.

79. Kenneth Dowler, *Media Consumption and Public Attitudes Toward Crime and Justice: The Relationship Between Fear of Crime, Punitive Attitudes, and Perceived Police Effectiveness*, 10 J. CRIM. JUST. & POPULAR CULTURE 109, 111 (2003). The public generally supports "tough-on-crime" policies for offenses that elicit the greatest fear (e.g., robbery), making "no-arrest assurances" for those involved in criminal violence a tough sell.

80. OFFICE OF CMTY. ORIENTED POLICING SERVS., FINAL REPORT OF PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 14 (2015), [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf) [<https://perma.cc/HS3R-63JF>].

81. *Institute for Community-Police Relations*, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, <https://www.theiacp.org/projects/institute-for-community-police-relations> [<https://perma.cc/CZ4V-THCD>].

But these efforts are focused on long-run changes and improvements to police-community relations. In the short-run, we doubt that the armed robbers we have described, who are disconnected from mainstream society and distrustful of authority, would be willing to ask the police for help. Many such individuals subscribe to a strict “no snitching” code, preferring instead to deal with those who victimize them on their own.<sup>82</sup> Perhaps as a first step, law enforcement could simply refer aggrieved lawbreakers to victim services, thereby giving them a legitimate outlet for coping with the trauma of victimization without violating the “non-cooperation clause” of the street code. Not only might this further the cause of social inclusion for ex-convicts, it also might help to prevent their re-involvement in crime by lessening the desire to take matters into their own hands.

Staying with the principle of “do no harm,” it may make sense to scale back extralegal supervision stipulations for newly-released convicts, including those who have served time for robbery and other violent crimes. Intensive surveillance-based re-entry programs requiring things such as electronic monitoring and random urine testing are intended to help newly released prisoners transition to a crime-free lifestyle.<sup>83</sup> The effectiveness of these programs remains open to debate,<sup>84</sup> although the emerging view seems to be that increasing the intensity of community supervision has no public safety benefits and can lead to increases in recidivism.<sup>85</sup>

Intensive supervision also may carry a host of collateral consequences, including putting ex-convicts at higher risk of recidivism, with parole revocations accounting for more than a quarter of all prison admissions.<sup>86</sup> A substantial portion of these revocations involve non-criminal violations that

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82. ELIJAH ANDERSON, *CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY* 321 (1999); Volkan Topalli, Richard Wright, & Robert Fornango, *Drug Dealers, Robbery and Retaliation: Vulnerability, Deterrence and the Contagion of Violence*, 42 *BRIT. J. CRIMINOLOGY* 337, 340 (2002).

83. See Mary A. Finn & Suzanne Muirhead-Steves, *The Effectiveness of Electronic Monitoring with Violent Male Parolees*, 19 *JUST. Q.* 293, 294 (2002).

84. Joan Petersilia, *Community Corrections: Probation, Parole, and Prisoner Reentry*, in *CRIME AND PUBLIC POLICY* 499, 502 (James Q. Wilson & Joan Petersilia eds., 2011); see James Bonta, Tanya Rugge, Terri-Lynne Scott, Guy Bourgon, & Annie K. Yessine, *Exploring the Black Box of Community Supervision*, 47 *J. OFFENDER REHABILITATION* 248, 265–68 (2008); Finn & Muirhead-Steves, *supra* note 83, at 297, 307, 309; Cheryl Lero Jonson & Francis T. Cullen, *Prisoner Reentry Programs*, 44 *CRIME & JUST.* 517, 558 (2015).

85. JENNIFER L. DOLEAC, IZA – INST. OF LABOR ECON., *STRATEGIES TO PRODUCTIVELY REINCORPORATE THE FORMERLY-INCARCERATED INTO COMMUNITIES: A SYSTEMATIC REVIEW OF THE LITERATURE* 39 (2018), <http://ftp.iza.org/dp11646.pdf> [<https://perma.cc/NT5Q-QQMY>].

86. See generally OFFENSES KNOWN AND CLEARANCES BY ARREST, 2015, *supra* note 11.

often have nothing to do with the original charge (e.g., missing an appointment or drug use), ultimately creating a “separate path to prison for large numbers of former prisoners.”<sup>87</sup> On top of this, although a violent reputation might bolster a convict’s standing in prison, on the outside, such “carceral apparatus” serve only to extend the stigma of incarceration that fosters social exclusion, further diminishing his or her chances of successful social integration.<sup>88</sup>

Matters such as these assume particular salience when thinking about tackling recidivism among convicted robbers, given that their complex criminogenic profile has left them resistant to cognitive-behavioral therapy (CBT) and other highly-touted interventions. For example, a line of studies evaluating the crime-suppressing benefits of CBT consistently shows that the offending propensities of convicted robbers are unresponsive to treatment.<sup>89</sup> Wilson, Attrill, and Nugent maintain that along with problem-solving and self-management deficits, many convicted robbers have other criminogenic needs and urges, things like drug and alcohol dependency, that are far more consequential to their decision making.<sup>90</sup> Others have speculated that the questionable moral convictions, heedless pursuit of autonomy, and aspirations for a party lifestyle characteristic of such offenders also might dwarf the impact of CBT.<sup>91</sup> It is difficult to imagine that a well-intentioned risk-needs-responsivity model involving an hour or two a month of meetings with a parole officer could counter the allure of the streets and successfully integrate armed robbers into conventional society.<sup>92</sup>

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87. JEREMY TRAVIS & SARAH LAWRENCE, URBAN INST., JUSTICE POLICY CTR., *BEYOND THE PRISON GATES: THE STATE OF PAROLE IN AMERICA* 24 (2002), [http://webarchive.urban.org/UploadedPDF/310583\\_Beyond\\_prison\\_gates.pdf](http://webarchive.urban.org/UploadedPDF/310583_Beyond_prison_gates.pdf) [<https://perma.cc/AUY4-GA6T>]; see also Merry Morash, Deborah A. Kashy, Sandi W. Smith, & Jennifer E. Cobbina, *Technical Violations, Treatment and Punishment Responses, and Recidivism of Women on Probation and Parole*, 30 CRIM. JUST. POL’Y REV. 788, 789 (2017).

88. See Terri A. Winnick & Mark Bodkin, *Anticipated Stigma and Stigma Management Among Those to Be Labeled “Ex-Con”*, 29 DEVIANT BEHAV. 295, 296 (2008).

89. DAVID ROBINSON, CORR. SERV. CAN., *THE IMPACT OF COGNITIVE SKILLS TRAINING ON POST-RELEASE RECIDIVISM AMONG CANADIAN FEDERAL OFFENDERS* 73 (1995); Rosie Travers, Ruth E. Mann, & Clive R. Hollin, *Who Benefits from Cognitive Skills Programs?: Differential Impact by Risk and Offense Type*, 41 CRIM. JUST. & BEHAV. 1103, 1127 (2014); see Sally Wilson, Gill Attrill, & Francis Nugent, *Effective Interventions for Acquisitive Offenders: An Investigation of Cognitive Skills Programmes*, 8 LEGAL & CRIMINOLOGICAL PSYCHOL. 83, 96 (2003).

90. Wilson, Attrill, & Nugent, *supra* note 89, at 85–86.

91. ROBINSON, *supra* note 89, at 73; Travers, Mann, & Hollin, *supra* note 89, at 1125.

92. See, e.g., Francis T. Cullen & Cheryl Lero Jonson, *Rehabilitation and Treatment Programs*, in CRIME AND PUBLIC POLICY, *supra* note 84, at 293, 295; NATHAN JAMES, CONG. RESEARCH SERV., *RISK AND NEEDS ASSESSMENT IN THE CRIMINAL JUSTICE SYSTEM* 5–6 (2015). On parole officer caseloads and supervision, see THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF

In an attempt to minimize the collateral damage that can result from intensive supervision, advocates and practitioners have called for reducing the use and duration of community supervision, limiting and tailoring conditions of supervision to a parolee's risks and needs, giving community supervision officers greater authority to modify conditions as need to adjust to behavior, and adopting evidence-based practices in trustworthy ways.<sup>93</sup> In line with this theme of minimizing harm, the state of California, as one example, has implemented non-revocable parole (NRP), an alternative parole regime absent the standard post-release requirements responsible for landing scores of ex-inmates back in prison on technical violations (e.g., breaking curfew).<sup>94</sup> Significantly, however, those convicted of robbery are ineligible for NRP.<sup>95</sup>

## VII. THE LIMITS OF THE CRIMINAL JUSTICE SYSTEM

The criminal justice system has never operated under the principle of “first, do no harm” and few would regard social inclusion as part of its core mission. Getting the criminal justice system to function as such when it comes to the policing and parole supervision of robbery offenders is a tall order, with

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JUSTICE, CHARACTERISTICS OF PAROLE SUPERVISING AGENCIES, 2006, at 1 (2008), <https://www.bjs.gov/content/pub/pdf/cpspa06.pdf> [<https://perma.cc/5TQU-2HEV>], BILL BURRELL, CASELOAD STANDARDS FOR PROBATION AND PAROLE 1 (2006), [https://www.appa-net.org/eweb/docs/APPA/stances/ip\\_CSPP.pdf](https://www.appa-net.org/eweb/docs/APPA/stances/ip_CSPP.pdf) [<https://perma.cc/2XZT-J9PP>], and ERIN JACOBS VALENTINE, LOUISA TRESKON, & CINDY REDCROSS, MANPOWER DEMONSTRATION RESEARCH CORP., IMPLEMENTING THE NEXT GENERATION OF PAROLE SUPERVISION: FINDINGS FROM THE CHANGING ATTITUDES AND MOTIVATION IN PAROLEES PILOT STUDY, at iv (2018), [https://www.mdrc.org/sites/default/files/CHAMPS\\_full%20report\\_FINAL\\_0.pdf](https://www.mdrc.org/sites/default/files/CHAMPS_full%20report_FINAL_0.pdf) [<https://perma.cc/2J78-9BCC>].

93. HARVARD KENNEDY SCHOOL, TOWARD AN APPROACH TO COMMUNITY CORRECTIONS FOR THE 21ST CENTURY: CONSENSUS DOCUMENT OF THE EXECUTIVE SESSION ON COMMUNITY CORRECTIONS 3 (2017), [https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/Consensus\\_Final2.pdf](https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/Consensus_Final2.pdf) [<https://perma.cc/FGG6-32TT>]; WENDY STILL, BARBARA BRODERICK, & STEVEN RAPHAEL, NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, NEW THINKING IN COMMUNITY CORRECTIONS: BUILDING TRUST AND LEGITIMACY WITHIN COMMUNITY CORRECTIONS 4 (2016), <https://www.ncjrs.gov/pdffiles1/nij/249946.pdf> [<https://perma.cc/BV76-5WYP>]; MORRIS L. THIGPEN, THOMAS J. BEAULAIR, GEORGE M. KEISER, & CATHY BANKS, NAT'L INSTIT. OF CORR., U.S. DEP'T OF JUSTICE, PAROLE ESSENTIALS: PRACTICAL GUIDES FOR PAROLE LEADERS: THE FUTURE OF PAROLE AS A KEY PARTNER IN ASSURING PUBLIC SAFETY 1 (2011), <https://info.nicic.gov/nicrp/system/files/024201.pdf> [<https://perma.cc/H57L-4C6E>]; Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1020–21 (2013); Edward E. Rhine, Joan Petersilia, & Kevin R. Reitz, *Improving Parole Release in America*, 28 FED. SENT'G REP. 96, 96 (2015).

94. Sara Mayeux, *The Origins of Back-End Sentencing in California: A Dispatch from the Archives*, 22 STAN. L. & POL'Y REV. 529, 532 (2011).

95. *Id.*; CAL. CODE REGS. tit. 15, § 3505(a)(2) (2020).

formidable and perhaps insurmountable obstacles to success. Such a change would require a fundamental reorientation of criminal justice policies and priorities, which place strong emphasis on enforcement, sanctioning, and public safety. We do not realistically see that happening anytime soon. For example, contrary to emerging evidence that intensive supervision is counterproductive, initiatives such as the Justice Reinvestment Initiative (JRI), the major effort in the U.S. over the past decade to address the growth of imprisonment, has embraced more supervision, especially for prisoners who “max out” or serve their entire term in prison and do not have a period of post-release community supervision.<sup>96</sup> The JRI also has not addressed the issue of violent offenders, except to acknowledge that prison should be reserved for serious and high-risk offenders such as armed robbers.<sup>97</sup>

Indeed, the U.S. experience over the past three decades has been one of increasing the severity of enforcement and sentencing for robbers, even as the robbery rate has declined by more than half since the early 1990s. Both of the national sources of data on crime—the National Crime Victimization Survey (NCVS) and the Uniform Crime Reports (UCR)—show that the number and rate of robberies declined considerably from the early 1990s through today. The NCVS reports fewer than 600,000 robbery victimizations in 2018, down by more than half from 1.75 million in 1993.<sup>98</sup> Put differently, over this period, the NCVS robbery victimization rate declined by more than one-third from 8.3 to 2.1 per 1,000, with most of the decline occurring between 1993 and 2002(04).<sup>99</sup> Trends in the UCR’s robbery offenses follow a similar pattern, but the UCR count is about half that of the NCVS, due in part to victimizations that are not reported to the police.<sup>100</sup> In 2017 for example, the UCR reported 320,000 robberies, and the UCR robbery rate stood at about 1 per 1,000.<sup>101</sup>

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96. NANCY LA VIGNE, SAMANTHA HARVELL, JEREMY WELSH-LOVEMAN, HANNA LOVE, JULIA DURNAN, JOSH EISENSTAT, LAURA GOLIAN, EDDIE MOHR, ELIZABETH PELLETIER, JULIE SAMUELS, CHELSEA THOMSON, & MARGARET ULLE, URBAN INSTIT., REFORMING SENTENCING AND CORRECTIONS POLICY: THE EXPERIENCE OF JUSTICE REINVESTMENT INITIATIVE STATES 24 (2016).

97. *Id.* at 19.

98. *NCVS Victimization Analysis Tool (NVAT)*, *supra* note 10.

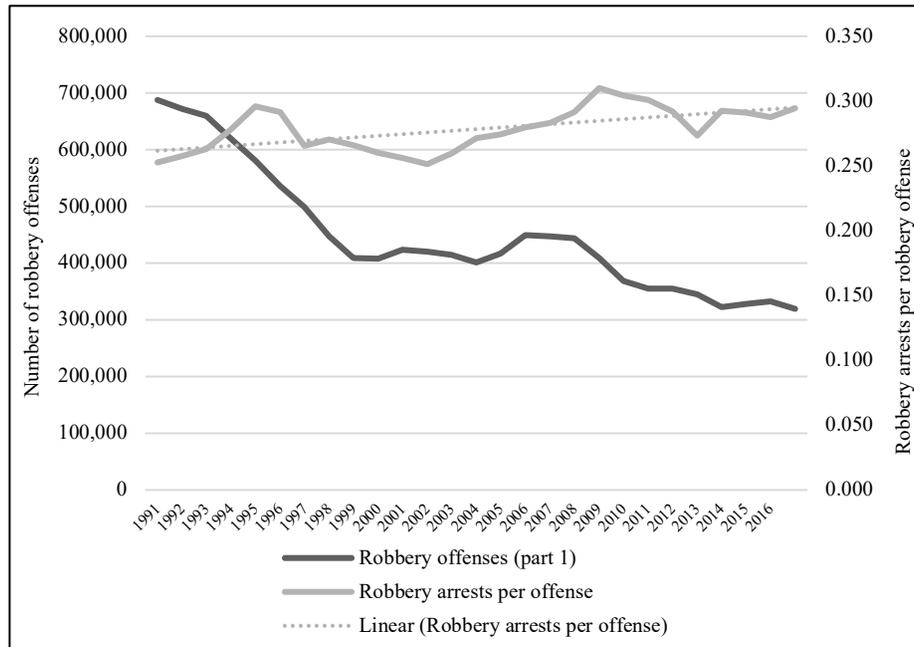
99. *Id.*

100. Unif. Crime Reporting Program, *Table 16: Rate: Number of Crimes per 100,000 Inhabitants by Population Group, 2017*, FED. BUREAU INVESTIGATION, <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/table-16> [<https://perma.cc/8BND-RBU2>].

101. *Id.*

As the robbery crime rate declined, enforcement increased. In 1993, about one-quarter of the UCR robberies resulted in arrest; by 2017, just under 30% did.<sup>102</sup>

FIGURE 2: NUMBER OF ROBBERY OFFENSES AND ARREST PER OFFENSE, 1991–2017<sup>103</sup>



Remembering that not all robberies are reported to the police, by 2017, robbery arrests as a percent of all NCVS robbery victimizations reached 15%, up from 10% in 1993.<sup>104</sup> If arrested, the chances that a robbery offender would be committed to state prison on a felony conviction for a new crime also

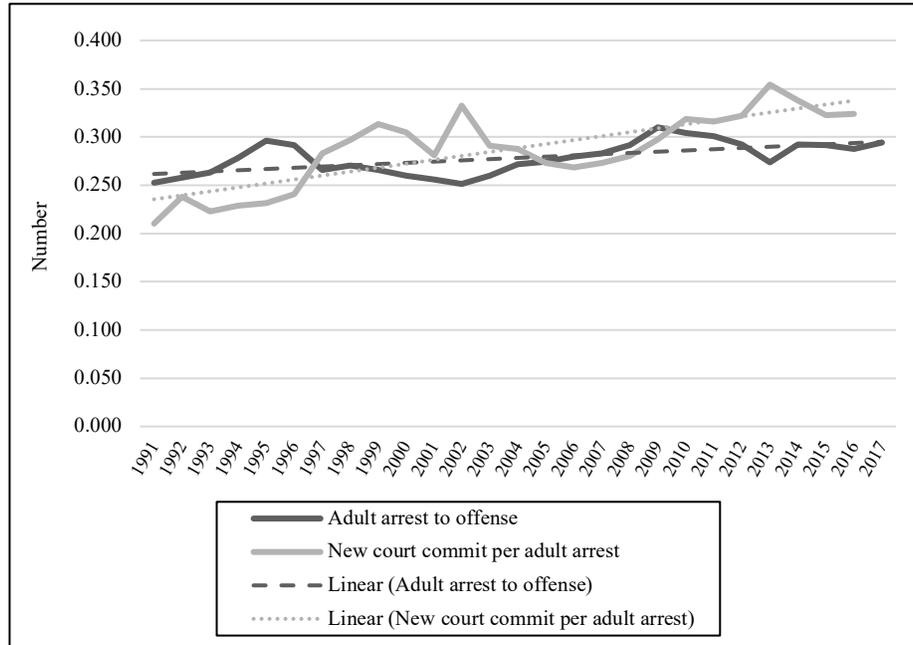
102. See *infra* Figure 2.

103. See *Arrest Data Analysis Tool*, BUREAU JUST. STAT., <https://www.bjs.gov/index.cfm?ty=datool&surl=/arrests/index.cfm#> [https://perma.cc/YCJ3-7X67] (follow the “National Estimates” hyperlink; select “Trend Tables by Sex” as the table type; select “All Ages” as the age category; select the “Both Sexes” check box; select “Robbery” as the offense type; select years “1990 through 2014”; and select the “Make Rates Table”) [hereinafter *Arrest Data Analysis Tool*]. Arrest rates for 2015 and 2016 were calculated by analyzing Uniform Crime Reports data. This information is on file with the authors and are available on request.

104. These statistics were calculated by analyzing National Crime Victimization Survey and the Uniform Crime Reports data. This information is on file with the authors and is available upon request.

increased.<sup>105</sup> Nationwide, the ratio of new court commitments of adult robbery offenders to arrests of adult robbery offenders increased from 21% in 1991 to 35% in 2014, after which it declined slightly.<sup>106</sup>

FIGURE 3: ROBBERY ENFORCEMENT RATIOS: ARRESTS TO OFFENSES AND NEW COURT COMMITMENTS TO ADULT ARRESTS, 1991–2017<sup>107</sup>



The mean length of time that robbery offenders entering state prison on a new court commitment could expect to serve increased from 1990 to 2010. In 1990, it was about three years; by 2005 it was more than five years.<sup>108</sup> Mean time for all robbery offenders released from prison from a new court

105. COMM. ON LAW AND JUSTICE, NAT'L ACAD. OF SCI., THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 51 (Jeremy Travis, Bruce Western, & Steve Redburn eds., 2014).

106. See *infra* Figure 3. The aggregate, national-level pattern in the probability of a prison commitment given arrest is consistent with the patterns in the Nation's 75 largest counties. There, 59% of robbery arrestees are convicted of a felony and of these, 71% are sentenced to prison. The probability that a robbery arrestee in these counties was sentenced to prison was 42%. This is slightly higher than the 35% we calculated as the new court commitment to arrest ratio. Differences in samples used can account for the higher probability in large urban vs. all other jurisdictions.

107. *Arrest Data Analysis Tool*, *supra* note 103.

108. COMM. ON LAW AND JUSTICE, *supra* note 105, at 54.

commitment was 4.7 years in 2016.<sup>109</sup> This equaled the expected time served on a new court commitment, indicating some stability in the robbery prison population.<sup>110</sup>

These changes in enforcement practices occurred both as the number of robberies declined and the severity of robbery did not increase, as measured by weapon use and victim injury. Rather, these attributes of robbery victimizations remained as relatively constant proportions of all robbery victimizations. For example, in 1993, 49% of robbery victimizations involved a weapon, according to victims' accounts; while the percentage fluctuated during the intervening years, by 2017 51% of the robbery victimizations involved a weapon. The percent reporting injury increased from 29% to 33%, but these point estimates were not statistically significant.<sup>111</sup>

This all adds up to a 70% increase in the number of sentenced robbery offenders in state prisons, from 99,200 in 1990 to 168,800 in 2016.<sup>112</sup> The 2016 number of robbers reflects a 9% decrease from the 186,000 held in 2009.<sup>113</sup> The decline in robbery offenders in state prisons since 2009 occurred as admissions fell faster than releases.<sup>114</sup> In sum, the criminal justice system response to a fall in robbery offending rates (as measured by both the UCR and NCVS) has been to increase the scale of enforcement, as measured by the arrest to offense rate and the likelihood of going to prison given an arrest, with relatively little change in the severity of punishment.

When you stop to think about the scale of robbery offending and the number of robbery prisoners, it is difficult not to conclude that the enforcement efforts directed at robbery offenders have been driven largely by incapacitation. This could reflect the fact that trying to deter robbery offenders by increasing

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109. DANIELLE KAEBLE, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, TIME SERVED IN STATE PRISON, 2016, at 2 (2018), <https://www.bjs.gov/content/pub/pdf/tssp16.pdf> [<https://perma.cc/D899-9KU4>].

110. Evelyn J. Patterson & Samuel H. Preston, *Estimating Mean Length of Stay in Prison: Methods and Applications*, 24 J. QUANTITATIVE CRIMINOLOGY 33, 38 (2008).

111. *NCVS Victimization Analysis Tool (NVAT)*, *supra* note 10.

112. JAN M. CHAIKEN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 1995, at 9 (1997), <https://www.bjs.gov/content/pub/pdf/cpius951.pdf> [<https://perma.cc/D8VP-GCS4>]; BRONSON & CARSON, *supra* note 19, at 22.

113. E. ANN CARSON & WILLIAM J. SABOL, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PRISONERS IN 2011, at 27 (2012), <https://www.bjs.gov/content/pub/pdf/p11.pdf> [<https://perma.cc/9G2Z-N77H>].

114. These statistics were calculated by analyzing the Bureau of Justice Statistics National Prisoners Statistics and National Corrections Reporting Program data. This information is on file with the authors and is available upon request.

sanctions does little or nothing to affect their decision-making at the moment of the crime. Rather, through incapacitation, the temptation and opportunity for them to make such a decision are removed altogether for the period of incarceration, at least outside the confines of the prison's walls.<sup>115</sup> What is more, the lengthy sentences associated with incapacitation may positively influence the robbery offenders' criminal calculus by holding them long enough to begin to age out of crime.

The scale of the enforcement and sanctioning of robbery relative to the number of offenses and offenders also makes an incapacitation strategy a particularly seductive approach to the prevention of robbery. For example, if the mean number of robberies committed by robbers in prison was three per year, that would amount to more than half a million robberies prevented per year.

What would make incapacitation less seductive was if the rate of replacement of robbery offenders by new entrants was high. But this does not seem to be the case. Despite the enhanced intensity of enforcement and sanctioning of robbery described above, the composition of new versus repeat robbery offenders has remained reasonably stable over time, at least in the large, urban counties.<sup>116</sup> BJS data show that in 1992 and 2009, about 30% of robbery arrestees charged in court had no prior arrests, and in both years, roughly 40% had no prior felony arrests.<sup>117</sup> The percent of robbery arrestees with no prior convictions increased from 42% to 48%.<sup>118</sup> Using either prior arrests or prior convictions as a measure of new entrants into robbery, the composition of new entrants and repeat robbery offenders has remained fairly constant over time, even as the total number of robbery offenders apprehended has declined along with the decline in the number of robbery offenses.

Before closing, it is worth pointing out that despite increases in enforcement and sentence severity, recidivism rates for robbery have remained constant. According to BJS reports, for example, robbery offenders released from prison in 1983, 1994, and 2005 and then tracked for at least three years had

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115. WRIGHT & DECKER, *supra* note 2, at 60. Many offenders remain committed to the criminogenic norms and values of street culture while incarcerated, leading them to commit offenses against fellow inmates.

116. *See supra* notes 108–15 and accompanying text.

117. BRIAN A. REAVES & PHENY Z. SMITH, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 1992, at 10–12 (1995), <https://www.bjs.gov/content/pub/pdf/Feldef92.pdf> [<https://perma.cc/7FTK-CTFR>].

118. *Id.* at 12–13.

comparable, three-year post-release re-arrest rates of between 66% and 70%.<sup>119</sup> Reconviction rates for the 1983 and 1994 cohorts also were comparable at about 47%–48%.<sup>120</sup> We do not intend to draw conclusions about the effectiveness of programs designed to reduce recidivism among robbery offenders during these years. We simply observe that despite the changes that have occurred, aggregate robbery recidivism rates have remained constant.

To end, we have argued that the justice system can help to integrate offenders into mainstream society by extending the benefits of justice to armed robbers. But we also have admitted that doing this presents huge challenges that are unlikely to be overcome in the foreseeable future. At the same time, we have suggested that enhanced enforcement and incapacitation have inherent appeal as a social control strategy for robbery, one of the nation's most feared crimes. If we juxtapose enhanced social inclusion with enhanced social control as competing ways in which we might respond to offender recidivism in robbery, we have little doubt that representatives of the criminal justice system would opt for incapacitation. But this conclusion merely points to our central thesis, that the justice system is not primarily an institution of social inclusion. Putting aside questions of whether it should continue to respond to robbery through the incapacitation strategy described herein, we cannot think of a way to dissuade justice officials from choosing to do so.

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119. ALLEN J. BECK & BERNARD E. SHIPLEY, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 1983, at 5 (1989), <https://www.bjs.gov/content/pub/pdf/rpr83.pdf> [<https://perma.cc/PB5B-Y4JJ>]; LANGAN & LEVIN, *supra* note 16, at 8; DUROSE, COOPER, & SNYDER, *supra* note 16, at 8.

120. BECK & SHIPLEY, *supra* note 119, at 5; LANGAN & LEVIN, *supra* note 16, at 8. The BJS report on recidivism of prisoners released in 2005 only reported reconviction rates for broad classes of offenses, such as all violent offenders, but it did not report the rates for robbery offenders, as the prior two BJS recidivism reports did. *See generally* DUROSE, COOPER, & SNYDER, *supra* note 16. However, the 3-year reconviction rate for violent offenders released in 2005 was 45%, up from the 40% rate of the 1994 cohort. *Id.* at 14; LANGAN & LEVIN, *supra* note 16, at 8. Meanwhile the 3-year rearrest rate for robbery offenders released in 2005 was 67% as compared to 70% for those released in 1994. DUROSE, COOPER, & SNYDER, *supra* note 16, at 8; LANGAN & LEVIN, *supra* note 16, at 8. If a comparable 67% of rearrested robbery offenders in 2005 were reconvicted, the robbery reconviction rate for the 2005 cohort would be about 47% also.