

**Book Review: William R. Kelly, *The Future of Crime and Punishment: Smart Policies for Reducing Crime and Saving Money*. Lanham, MD: Rowman & Littlefield, 2016. ISBN: 978-1-442-26481-6 (Hardcover). 258 Pages. \$38.00.**

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In his book, *The Future of Crime and Punishment*, criminologist William Kelly provides readers with detailed suggestions as to how policymakers can reduce crime and enhance public safety while simultaneously scaling down criminal justice expenditures. According to Kelly, American taxpayers spend more than \$260 billion dollars per year apprehending,

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prosecuting, and punishing offenders; however, this does little to keep us safe. He writes that 77 percent of inmates who are released from correctional facilities will be rearrested within a few years. Most of these offenders will, again, go through the adjudication process, only to be reincarcerated, which, in turn, costs taxpayers more money. Indeed, he notes that the United States currently has an imprisonment rate of 716 incarcerations per 100,000 residents, which even exceeds the most punitive countries, such as, China, Russia, Iran, Saudi Arabia, Pakistan, and South Africa. Kelly describes the mass incarceration movement as a colossal failure, an “experiment that bet the farm on punishment,” and as he states emphatically in his book, “We lost the farm” (51).

It is noteworthy that the expansion of the prison population, as described by Kelly, is unprecedented, not only in the history of the U.S., but in the history of virtually every other country in the world (see Alexander, 2012). As Wacquant (2009) reminds us, the United States has not always been hell-bent on punishment. In 1960, for instance, there were roughly 117 inmates per 100,000 people in 1960. By 1970, following President Lyndon B. Johnson’s War on Poverty, and amidst a backdrop of Keynesian economics, America’s prison population declined an additional eight percent. It was during this time that some scholars, such as, David Rothman (1971) and Norval Morris (1974), even went so far as to speculate that correctional facilities were in a perpetual state of decline.

While we know now that the above prediction (unfortunately) did not come true, only a handful of researchers have systemically examined why courtrooms across the United States transitioned (it would seem almost overnight) from doling out benevolent to malevolent punishments (see Clear, 2009; Worley and Mann, 2017). Kelly, in his book, contends that this radical transformation can be traced to a political strategy employed by Richard Nixon during the 1968 presidential campaign. He opines that Nixon, always the acute politician, played upon the racial anxieties of working-class whites who were suspicious of both the Civil Rights Movement and the judicial liberalism of the Warren Court. To illustrate this point, Kelly refers to a statement made by Nixon during the campaign where he said, “Doubling the conviction rate in this country would do more to cure crime in America than quadrupling the funds for Humphrey’s war on poverty” (18). Hubert Humphrey was, of course, the

Democratic presidential candidate, and he was handily defeated, thanks in part to the popularity of Nixon's *tough on crime* rhetoric.<sup>3</sup>

Even though Kelly demonstrates (quite convincingly) that Republican presidents, such as, Ronald Reagan and George H. W. Bush, would follow Nixon's strategy of politicizing crime, he maintains that after the election of President Bill Clinton, "Republicans no longer held the monopoly on *tough on crime*" (21, italics added). As the author illustrates in his book, Bill Clinton campaigned for more police and more prison expansion. He reminds readers that it was none other than President Clinton who signed into law the Violent Crime Control and Law Enforcement Act of 1994, which is regarded as the largest crime bill in the history of the United States. As Kelly notes, this bipartisan piece of legislation provided \$7 billion for crime prevention, and a combined \$14 billion for state and local law enforcement. It also resulted in unheard-of incarceration rates for young African-American men (Hattery and Smith, 2018; Wacquant, 2009). According to Kelly, "Today, one out of every nine young (twenty to thirty-four) black males is incarcerated; one in three black men can expect to be incarcerated at some point in their lives" (12).

Kelly observes that the prison population escalated by 430 percent over the last four decades. He states that there were eighty federal lawsuits filed over allegations of prison overcrowding between 1969 to 1996. Inmate plaintiffs prevailed 87.5% of the time. One can imagine the rapid prison expansion has not only depleted precious tax resources but also made it virtually impossible for correctional administrators to provide prisoners with any truly meaningful opportunities for rehabilitation. It is also likely that prison overcrowding has contributed to the proliferation of inmate gangs and chaotic behavior behind the prison walls (Goodman, 2008; Lopez-Aguado, 2016; Worrall and Morris, 2012). Yet, in spite of the obvious caveats of mass incarceration, Kelly asserts that prosecutors have become more aggressive in their quest toward punishment. Prosecutors are more likely today to file felony charges (66% of the time they received a case in 2008); they also engage in *charge stacking* and commit Brady violations [not providing exculpatory evidence to the defense].<sup>4</sup> On top of this, lobbyists with

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<sup>3</sup> Hubert Humphrey carried Texas by a margin of less than 40,000 votes. This is the only southern state that Humphrey would win.

<sup>4</sup> Brady violations are very real and occur frequently. We remember the Duke lacrosse case where Durham County District Attorney, Mike Nifong tried to railroad three white student athletes in order to curry favor with African-American voters. The North Carolina State Bar found Nifong guilty of fraud, dishonesty, and withholding exculpatory DNA

private-sector financial ties to the prison industrial-complex make significant campaign contributions to policymakers who, in turn, advocate for more punishment and harsher sentences. After reading the first half of Kelly's book, it is no wonder that the United States has what Worley and Worley (2013) refer to as "the dubious distinction of incarcerating over 25% of the world's prisoners, despite comprising only 5% of the world population" (336).<sup>5</sup>

In his book, Kelly debunks the popular theory that mass incarceration resulted in the crime decline of the 1990s in the U.S. He argues that countries, such as, Canada, Australia, England, the Netherlands, Spain, Sweden, Switzerland, as well as many other Western democracies also experienced similar crime dips without necessarily raising incarceration rates. As the author points out, during the 1990s, Canada had a significantly lower violent crime rate than the U.S. (as it continues to have today). Kelly opines that Americans are two to four times more likely to be locked up than Canadians.<sup>6</sup> Moreover, Kelly notes that it is disconcerting that America's high incarceration rates have not had a significant impact on recidivism. He cites a 2012 study which found that two-thirds of prisoners released from California correctional facilities from 2002 to 2008 were re-incarcerated within three years. Kelly declares that going to jail is not an effective deterrent; in fact, it may even be a badge of honor, as some scholars have argued (see Anderson, 2000; Decker and Van Winkle, 1996). Aside from the fact that serving a stint in prison may provide some criminals with *street cred*, Kelly argues that roughly 35-40 percent of offenders have mental illnesses, as well as neurodevelopmental impairments, which prevent them from viewing a prison sentence as a meaningful deterrent. There is also a substitution or

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evidence (a Brady violation). In this case, the prosecutorial misconduct was likely exposed because the defendants came from privileged, highly educated families with adequate resources to launch a successful defense. Oftentimes, however, this is not the case. We know that many criminal defendants are poor, marginalized, and do not have access to resources which help keep prosecutors honest.

<sup>5</sup> According to the United Nations Office on Drugs and Crime (UNODC), St. Vincent and the Grenadines, a southern Caribbean country with a population just north of 100,000 people, actually holds the record for having the highest incarceration rate. While this beautiful chain of islands is a stunning tourist attraction, it has an incarceration rate of 3,235 inmates per every 100,000 people in the population (see Paxson and Watson, 2016).

<sup>6</sup> It is possible the author is even understanding this disparity between the United States and Canadian incarceration rates. According to a recent UNODC report, Canada has 118 prisoners per every 100,000 people compared to 698 prisoners per every 100,000 people in the U.S. (see Paxson and Watson, 2016). Assuming these figures are accurate, that means Americans are almost six times as likely to be locked up as Canadians!

replacement effect which occurs. For example, there is literature which suggests that every time police arrest a drug dealer, there is someone else who is only too eager to take his place (Venkatesh, 1997).

The author spends a considerable amount of time discussing diversion programs which provide alternatives to incarceration. He correctly credits the Memphis, Tennessee police department (PD) as one of the first agencies to develop a crisis intervention team (CIT) which pairs law enforcement officers with mental health professionals. He notes that other police departments throughout the country have followed suit and initiated similar programs. Kelly also writes that the Affordable Care Act (ACA) provides resources for mental health treatment. While both of these developments may signal a retreat from the criminalization of mental illness, we believe it is still too early to tell for sure (and Professor Kelly would most likely concur with us). We know that the city jail is the largest inpatient mental health facility in any given locality (Johnson, 2011). And, even though we wholeheartedly agree with Kelly that mental health interventions should be provided in a community setting (rather than a correctional facility), there are still social and political forces which may prevent this from occurring for many years to come.<sup>7</sup> Drug courts are also tools which have the potential to decongest prisons. In general, they are highly effective, and, depending on the jurisdiction, can reduce recidivism by up to 35%, and prevent individuals from going to jail. Yet, as Kelly observes, drug courts are often “largely symbolic,” and “the total capacity of these courts is able to meet about 10 percent of the need” (97). In any case, we strongly support the author’s notion that those involved in the administration of justice should have not only legal but also clinical expertise. As the author eloquently writes in his book:

We would not want a hospital administrator diagnosing what is wrong with us when we walk into the emergency department. Why would we want a judge or a prosecutor doing that for a criminal offender?” (100).

Inconsistent verdicts and judgments due to changing sentencing policies in deciding criminal cases have led to varied sentencing

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<sup>7</sup> For example, the California Correctional Peace Officers Association (CCPOA), one of the Golden State’s most powerful interest groups in the 1990s, added to the state’s enormous prison boom (Page, 2011). In the wake of the 2008 global recession, it became apparent to many taxpayers that the CCPOA had contributed to California’s financial crisis by lobbying legislators to build more prisons and hire more correctional officers.

outcomes, sometimes unnecessarily harsher, just to satisfy *tough on crime* policies. Prosecutors who represent the government in most cases are elected officials. They, therefore, want to appear *tough on crime* and base their decisions on the punishment philosophies, such as, retribution and incapacitation, that appear to be *tough on crime* (Clear, 2009; Tonry and Farrington, 2005). Meanwhile, current sentencing guideline changes have given prosecutors a considerable amount of discretion and power. Kelly contends that while police, judges, and correctional officials have discretion, those actors who represent the government in prosecuting criminal cases wield the greatest amount of power over other people's lives.

As Kelly further opines, the removal of discretion from judges and the introduction of mandatory minimum requirements have led to prosecutors having more power than judges and parole boards. Prosecutorial power often precludes judges from using mitigating factors in deciding cases and parole boards from making early release decisions. Furthermore, determinate and mandatory sentencing structures give prosecutors the power to choose which cases will be pursued, what charges to bring against the defendant, and what sentence to propose to the judges. Considering that 95% of cases are decided by a plea deal offered by a prosecutor, only about 5% of cases are decided by a judge or jury.

As Kelly states in his book, *problem solving prosecution* must be introduced, involving other professionals and experts in the fields of psychology, social work, psychiatry, and drugs and alcohol addiction treatment. Kelly is not suggesting that the issue of reoffending and community safety be abandoned. But, a collaborative effort going forward is needed, to ensure smart policies on crime are introduced that will both reduce recidivism and the risk of reoffending on the part of convicted persons. Kelly argues these changes must take place at the local level, and district attorneys must “muster the initiative, political courage and leadership skills necessary to implement *problem solving prosecution*” (115, italics added).

It is evident from reading this book that the author also strongly supports evidence-based sentencing (EBS) over risk-based sentencing (RBS). He asserts that RBS focuses on specific risk factors, which are determined based on prior criminal history, unemployment, family background, neighborhood where the offender lives, financial status, education, and criminal associates. Throughout the book, Kelly demonstrates how sentencing outcomes based on these risk factors are often discriminatory and punish the poor. He proposes that EBS, which

is broader in definition, should be utilized because it includes factors, such as, effective treatment, intervention and rehabilitative programs, using experts with skills to help with sentencing outcomes. EBS also aligns with smart initiatives for crime reduction proposed by Kelly because it includes considerations of intervention, treatment, and rehabilitation, the applications for which have been shown to reduce recidivism up to 30% (See Warren, 2007).<sup>8</sup> Of course, as Kelly points out, EBS is complex; it requires a collaborative effort to address sentencing outcomes based on mental health, substance abuse, neurocognitive deficiencies, and other social factors, which are outside the crime and harm done. He further opines the collaborative effort must be effective in identifying criminogenic problems, as well as which problems to be tackled first to ensure that criminogenic issues are addressed to reduce recidivism. It is evident from reading this book that there is a need to reach outside the criminal justice field to find the skills set that is lacking in making decisions on sentencing outcomes that will ultimately reduce recidivism.

Kelly also addresses the issue of drugs, guns, and gangs, calling them the three greatest crime challenges of the current criminal justice system. Failure of the war on drugs, coupled with the interconnected implication of guns and gangs makes these issues more complicated. The war on drugs as a response to the drug problem was ineffective, as it did not address the underlying causes of drug dependence. Drug and alcohol dependence have since been identified as medical disorders. The introduction of the war on drugs made a medical problem, crime related. Kelly suggests that since incarceration does nothing to change behavior, there is a pressing need to move the drug issue out of the criminal justice arena to public health solutions.<sup>9</sup> Kelly points us to the success of the Portuguese experiment where the use of drugs was decriminalized, and the usage of illicit substances did not skyrocket.

The author also connects the issue of gangs, cartels, and organized crime syndicates to drug sales. He states that the FBI has identified more than 27,000 violent street gangs with 850,000 members in the United States. Most of these gang members are armed; yet, the National Rifle Association (NRA) continues to lobby Congress to pass laws which expand gun ownership. Kelly argues the political will to change the

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<sup>8</sup> Warren (2007) researched the use of evidence-based practices (EBP) to reduce recidivism and find solutions to long term incarceration. He found that a meta-analysis of studies based on EBP resulted in recidivism reducing by an average of 30%.

<sup>9</sup> Kelly asserts that only 1.9% of the \$467 billion dollars spent in 2005 by both the federal and state governments was devoted to the treatment and prevention of substance abuse.

status quo is currently unclear even after a noticeable uptick in active shooter incidences in the United States since 2014.<sup>10</sup> He suggests that the American public is generally in favor of stricter gun laws, yet legislators perceive that getting tough on guns is *political suicide* in upcoming elections.

Next, the author turns his attention to America's juvenile justice system and argues that it has transformed from a rehabilitation model to a more adversarial one, perhaps due to a series of Supreme Court decisions (*Kent*, *Gault*, and *Winship*) that formalized the adjudication process. Turning the juvenile justice system into a *just deserts* model, criminalizes the actions of children. In addition, Kelly argues (quite convincingly) that mandatory minimums, harsher sentences, zero-tolerance in schools, and the transfer of children to adult courts have had negative consequences for young people. According to the author, in 2013, 113,000 truant juveniles in Texas had adult criminal charges filed against them for failure to attend school. Kelly warns his reader that, unless Americans reexamine how to conduct juvenile justice, they will continue to see children thrust into the criminal justice juggernaut, or *school-to-prison pipeline*, as it is often referred to. We support the author's suggestion that efforts need to be made at intervention and diversion of children through early detection and treatment of the various factors that lead to delinquent behavior. The challenge will be finding the resources in terms of funds and skilled personnel to tackle the myriad of factors needed to create the "treatment infrastructure," as Kelly calls it.

Throughout *The Future of Crime and Punishment*, William Kelly demonstrates that the American justice system is broken and is in dire need of repair. As the author points out in the book, over two-thirds of people we incarcerate are rearrested within three years of release. And, as he emphatically states, "these are the ones we catch" (217). To make matters worse, criminal justice policies often put up barriers which limit employment opportunities for ex-cons. These restrictions damage the U.S. economy, erode the social fabric of communities, and increase criminal justice expenditures (Clear, 2009; Worley and Mann, 2017). Incarceration is rarely used in most European countries; however, it is apparent from reading Kelly's book, that, in the U.S., incarceration is *as American as apple pie*. Kelly opines that policymakers must make more of a meaningful effort to divert offenders to mental health clinics and drug and alcohol treatment centers, as is done in other countries, such as,

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<sup>10</sup> According to the Federal Bureau of Investigation (2018), there were 20 and 30 active shooter incidences in 2016 and 2017 respectively. This has increased from the 16.4 average reported between 2007 to 2013.



Germany and the Netherlands. More efforts should also be taken to resocialize and rehabilitate those who reside behind the prison walls. While there are some indications that criminal justice reforms are being advocated by both Democrats and Republicans alike, Kelly argues that much more needs to be done to end the crisis of overcriminalization. We wholeheartedly agree with the author that ending mass incarceration is a very important goal. The implementation of smart policies will save money and allow for social services which will result in a safer, more equalitarian, and humane society. We strongly recommend this book!

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