

## **No Second Chances: Perspectives on the Power of Parole Boards**

*A capstone submitted to the Faculty of the Anthropology and Archaeology Department in partial fulfillment of the requirements of the degree of Bachelor of Arts.*

**Abstract:** To millions of incarcerated Americans, parole is an opportunity to return to society and redefine themselves. But who decides if somebody is granted parole? In the United States, parole boards have the near absolute power to determine whether somebody can have a second chance—or if they are defined by their past. Through academic research and the firsthand perspectives of incarcerated people, it becomes evident that this system is fundamentally unfair and antithetical to the very idea of rehabilitation that it is based on. However, there are changes that can be made to make the process more just and faithful to its goal.

**Keywords:** Parole, Parole Board, Prison, Constitutional Law, Sentencing, Criminal Justice Reform, Prisoner's Rights

**Dylan Snow**

**Washington College**

**April 24, 2023**

*Revised August 20, 2023*

**Advisor:** Dr. Emily Steinmetz

*I pledge my word of honor that I have abided by the Washington College Honor Code while completing this assignment.*



## Contents

Acknowledgements	3
Introduction	5
Methodology	9
Part I. Problems with Parole Boards	
Chapter 1. Origins of American Parole	12
Rehabilitation or Retribution?	14
Chapter 2. Authority of Parole Boards	17
Goals of Parole Boards	19
Parole Boards: A Second Courtroom?	22
Chapter 3. Protections from Parole Boards	25
Due Process and Parole	25
Equality Before the Board	29
The Double Jeopardy Problem of Parole	31
Parole and the Sixth Amendment	35
Chapter 4. The Politics of Parole	36
Appointments and Executive Influence	37
Public Opinion and Parole Boards	38
Personal Political Bias	40
Part II. Perspectives on Parole Boards	
Chapter 5. No Second Chances	42
An Unclear Process	45
Falling on Deaf Ears	48

Due to the Nature of the Crime...	51
The Emotional Impact of Parole Hearings	55
Chapter 6. Power and Punishment	58
Hierarchy of Discourse in Parole Hearings	59
Personal Power and Identity	62
Other Power Dynamics in the Parole Process	64
Part III. Moving Forward	
Chapter 7. Policy Recommendations	67
Ideal Goal of Parole Boards	67
Parole Seeker's Bill of Rights	68
Conclusion	72
Limitations and Future Directions	73
Closing Thoughts	74

### **List of Figures**

Figure I. Dominant Sentencing Regime by State and the District of Columbia	18
Figure II. Percentage of Parole-Eligible People Granted Parole in Ohio (2011-2021)	44
Figure III. Is There a Difference? Ohio Parole Board Decision Sheet 2019 v. 2023	54
Figure IV. Hierarchy of Discourse in Parole Hearings	61

## Acknowledgments

Words cannot describe how grateful I am to all of my professors, teachers, peers, family, and friends who have contributed to my personal and scholarly growth. I would love to personally acknowledge all of those people, but that would take an entire thesis in and of itself. Thank you to everyone that helped me get here.

I want specifically to highlight and thank all of the professors I have had in the Anthropology and Archaeology Department at Washington College— Dr. Emily Steinmetz, Dr. Julie Markin, and Dr. Aaron Lampman. While I have only been a part of this department for a short time, the impact that each of these professors has had on me in the past two years is immeasurable, quite literally changing the way I think from accepting things at face value to “thinking like an anthropologist,” questioning, and thinking deeper. I am so glad I discovered the discipline of Anthropology, and I am so grateful for Dr. Markin and Dr. Steinmetz for working with me to figure out how to turn my interest into a major.

I would also like to acknowledge the 20 women serving life sentences interviewed by Dr. Steinmetz at Dayton Correctional Institution. While I am not able to personally express thanks to these women, it is their words at the center of this project and it would not be right to offer thanks without acknowledging them and thanking them for willingness to share their stories. I hope that through this project, these women’s words and stories can be heard, shared, and understood.

Finally, I want to specifically express gratitude to my advisor, Dr. Emily Steinmetz. I am so incredibly grateful for all that Dr. Steinmetz has done for me over the past several years. It is her Inside-Out class, along with her intro class, that made me fall in love with Anthropology. The experiential learning opportunities I have had because of Dr. Steinmetz, including the

Department's December 2022 trip to Baltimore and Spring 2023 Lobby Weekend in DC, have allowed me to use the skills I have developed and see the world from an anthropological perspective. Her guidance has been invaluable throughout the entire Senior Capstone process, providing me with ideas, connections, and research, including her research with women serving life sentences at Dayton Correctional Institution. This project would literally not be possible without the outstanding advising of Dr. Steinmetz. Thank you for everything.

### Introduction

Nearly 2 million Americans are incarcerated in America's prisons and jails, with 3.7 million additional people in probation or parole.<sup>1</sup> The United States imprisons more people per capita than any other nation, at a rate of more than 500 out of every 100,000.<sup>2</sup> Yet the effects of America's carceral state go far beyond those millions of Americans currently imprisoned. To the millions of Americans convicted of a felony, parole serves as an opportunity to prove that they have changed and are prepared to reenter society. But who determines whether someone is paroled?

For many Americans convicted of a felony, parole boards—not a court—determine how long they serve in prison.<sup>3</sup> The dominant contemporary regime of indeterminate sentencing places profound power in the hands of these parole boards. Parole boards have a unique status

---

<sup>1</sup> Wendy Sawyer and Peter Wagner, "Mass Incarceration: The Whole Pie 2022," Prison Policy Initiative, March 14, 2022, <https://www.prisonpolicy.org/reports/pie2022.html#:~:text=Once%20we%20have%20wrapped%20our,2.9%20million%20people%20on%20probation.>; Prison Policy Initiative, "Probation and Parole," Prison Policy Initiative, accessed January 14, 2023, [https://www.prisonpolicy.org/probation\\_parole.html#:~:text=3.7%20million%20people%20in%20the,in%20prisons%20and%20jails%20combined.](https://www.prisonpolicy.org/probation_parole.html#:~:text=3.7%20million%20people%20in%20the,in%20prisons%20and%20jails%20combined.)

<sup>2</sup> *Ibid.*

<sup>3</sup> Kimberly Thomas and Paul Reingold, "From Grace to Grids: Rethinking Due Process Protection for Parole," *The Journal of Criminal Law & Criminology* 107, no. 2 (2017): 213–52, <https://scholarlycommons.law.northwestern.edu/jclc/vol107/iss2/2.>

seemingly bearing the responsibilities of both a judicial and executive body—hearing evidence and determining how the rest of a person’s sentence will be served while also enforcing their own standards and the sentence handed down by the courts.<sup>4</sup> Due to the discretionary authority of parole boards, meaningful appeal processes do not exist in most states, with the only hope for those denied being that the board will change their mind in future years. There is little accountability and no guaranteed due process in this system. All of these factors contribute to a system in which the odds are stacked against those who have served time and are seeking parole.

But the problems in the parole process run deeper than that. In most states, parole boards—like judges—are politically appointed by the Governor. This may seem logical at first, but because of the quasi-judicial function of parole boards, this blurs the lines between separations of power and risks the independence of the boards. This is emphasized by the fact that there is evidence that parole boards are influenced by political concerns, whether from the governor or the public.<sup>5</sup> Theoretically, parole boards, like judges, should be as impartial as possible. All of that is not even touching on the hopelessness and emotional distress that parole hearings and structures can bring, and the power of parole boards to define one’s identity.

What can be done about these problems? There are a variety of proposed steps to reduce the unchecked power that parole boards have, level the playing field, and depoliticize the parole process. Whether it be rethinking constitutional protections during parole hearings, shifting the paradigm from risk to release, or changing qualifications or appointment methods to parole boards, it is clear that there are changes that need to be made to make the process more just and

---

<sup>4</sup> W. David Ball, “Heinous, Atrocious, and Cruel: Apprendi, Indeterminate Sentencing, and the Meaning of Punishment,” *Columbia Law Review* 109, no. 5 (June 2009): 893–972, <http://digitalcommons.law.scu.edu/facpubs/16>.

<sup>5</sup> Beth Schwartzapfel, “Parole Boards: Problems and Promise,” *Federal Sentencing Reporter* 28, no. 2 (December 1, 2015): 79–84, <https://doi.org/10.1525/fsr.2015.28.2.79>.

equitable. What is clear, though, is that the contemporary design and execution of parole boards unfairly and unjustly rigs the odds against incarcerated people seeking parole and is directly contradictory to the goal of rehabilitation.

This work, “No Second Chances: Perspectives on the Power of Parole Boards,” is all about just that—perspectives on the parole process. It is divided into two main “perspectives”: first, the perspectives of academics, and second, the perspective of incarcerated people who actually experience the process. Each of these can also be divided into “perspectives” of their own. The first part highlights understandings from a variety of disciplines: anthropology, criminology, sociology, political science, and law, among others. The second part highlights the experiences of incarcerated women serving life sentences, which, while they share that aspect of their lives, are dramatically different in terms of their experiences and identities. All of these voices come together to provide a contextualized image of the American parole process. With that in mind, this project is divided into three parts consisting of a total of seven chapters.

Part I. Problems with Parole Boards reviews and synthesizes prior literature on the subject of parole boards, and consists of the following four chapters:

Chapter 1. Origins of American Parole provides background on the establishment of the indeterminate sentencing system, its merits, and the constitutional principles underlying the system.

Chapter 2. Authority of Parole Boards examines the duties, goals and challenges of parole boards, including examining the argument that parole boards exist as both an executive and judicial body. This chapter also discusses some features of parole board procedures and where state-by-state differences lie. This is meant to address formal authority of parole boards and implications about their institutional power that derive from that. This is opposed to other

informal forms of power that boards may have, which are discussed in Parts II and III of this project.

Chapter 3. Protections from Parole Boards investigates case law related to parole boards and what protections are in place to ensure that parole hearings are fair for the person seeking release. This chapter examines several sections of the United States Constitution to see what legal arguments there are against some unjust contemporary processes. It also analyzes some of the principles set forth in the Constitution to inform recommendations in changes of parole board policy.

Chapter 4. The Politics of Parole highlights factors that may influence parole decisions and structures that allow this influence to occur such as appointment processes, party politics, and public opinion.

Part II. Perspectives on Parole Boards focuses on the perspectives that individual incarcerated people have on the parole process and parole boards. This part contains two chapters:

Chapter 5. No Second Chances centers the words of incarcerated women as they share their experiences with the parole process or their perspectives of the process. This serves to highlight these experiences and provide commentary and context throughout their stories to paint a fuller picture of the experiences of incarcerated people seeking parole.

Chapter 6. Power and Punishment ties the experiences of the women interviewed into broader theories of power, specifically focusing on discursive and personal power, and reflects on those theories and how they impact these women's experiences and identities.

Part III. Moving Forward proposes several policies that should be implemented to make the process fair and more rehabilitation-oriented and describes the conclusions of this work.



Chapter 7. Policy Recommendations proposes a series of policy changes that should be implemented in the parole process to uphold its goal of assessing rehabilitation. This includes protections for incarcerated parole-seekers, as well as a paradigm shift in the contemporary goal of parole boards.

Finally, this work ends with a conclusion, which will synthesize the other sections and highlight key points from this research that should be considered moving forward.

All of these perspectives and reflections demonstrate some of the various theories of power and justice present in the parole process, and establish that American parole boards are fundamentally unfair and contradictory to their original goal of assessing rehabilitation.

### **Methodology**

While statistics and literature can be important tools in describing broader trends and ideas, understanding the perspectives of individual people is essential to truly understanding the toll of these policies and decisions. Excerpts from interviews with incarcerated women serving life sentences are used to provide insight on points addressed in this paper and also used to address other concerns around the parole process that these women have experienced. Part II is centered on the words and experiences of the women interviewed, with context provided to fill in the gaps. Findings from these interviews are used to create and justify policy recommendations at the conclusion of this project. In addition, there are elements of analysis of government documents including Ohio Department of Corrections and Rehabilitation annual reports and statistics, Parole Board Decision sheets, judicial opinions, and legislation.

The interviews were conducted by Dr. Emily Steinmetz, advisor to this project. Dr. Steinmetz conducted 20 interviews with women at Dayton Correctional Institution in Dayton,

Ohio, along with several focus groups in 2019 and early 2020. The COVID-19 pandemic interrupted data collection, however. These interviews were then coded by Dr. Steinmetz and Kaitlyn Pritchard, her research assistant, using the software MAXQDA. Participants are referred to by pseudonyms.

For this current project, the coded interviews were analyzed by myself to categorize any mention of parole or the Ohio Parole Board. When any of the women being interviewed mentioned the process or Board, I took note and highlighted the transcript based on what related themes the person was discussing. Common themes included: problems with the Board as an institution and as individuals, the idea that the outcome was predetermined, that people were being unfairly defined by the crime, and finally, the toll on people's emotions and identity that the process takes.

The aim of this project is to 1) take theories and arguments by myself and prior scholars, and establish them using people's lived experiences and 2) contextualize people's experiences using a theoretical approach, answering in part: why things happened the way they did, and what some solutions are to make future parole processes more just. In this sense, the relationship between theory and experience is reciprocal, with each informing the other.

**Part I. Problems with Parole Boards**

## Chapter 1. Origins of American Parole

The modern idea of parole originated in Australia in the mid-1800s. Parole came to the United States with the socially-conscious Progressive Era in the early 20th century, when American penal philosophy turned from retribution to rehabilitation.<sup>6</sup> By 1907, New York had implemented parole and indeterminate sentencing, and in the next 20 years, nearly every state had implemented these policies.<sup>7</sup> By the end of the 20th century and beginning of the 21st, however, several states had moved back to systems of predominantly determinate sentencing.<sup>8</sup>

Understanding the merits and the problems with both sentencing regimes is essential to understanding the progression of changes and the variety from state to state. In a determinate sentencing regime, a judge sentences someone convicted of a crime to a specific amount of time in prison, which the person then serves and is released afterwards. In this system, there still may be parole for some crimes or sentences. There may be parole supervision after a sentence is formally ended, but generally, sentences are a specific time; once a sentence is done, it is done. In an indeterminate sentencing system, a person is sentenced to a range of time, either a range of years or a life sentence (i.e. 20 years to life). After serving a given amount of time, the person gets the option of parole— a supervised release with strict requirements.<sup>9</sup> The person then goes before a parole board to ask for parole. The board may either grant the person parole, or deny them, continuing their imprisonment. For this reason, nobody can truly predict the length of a sentence; it is decided by the parole board case by case.

---

<sup>6</sup> Kevin R. Reitz and Edward E. Rhine, “Parole Release and Supervision: Critical Drivers of American Prison Policy,” *Annual Review of Criminology* 3, no. 1 (January 13, 2020): 281–98, <https://doi.org/10.1146/annurev-criminol-011419-041416>.

<sup>7</sup> Schwartzapfel, “Parole Boards: Problems and Promise,” 80.

<sup>8</sup> Cassia Spohn, “The Sentencing Reform Movement” In *How do Judges Decide?: The Search for Fairness and Justice in Punishment*. 2nd ed. Los Angeles: SAGE Publications, 2009: 225-270.

<sup>9</sup> While parole grants an incarcerated person significantly more freedom than imprisonment, it is not a “get out of jail free” card. There are strict requirements, and often parole can be revoked.

Why would a state adopt either system? Indeterminate sentencing is, as already alluded to, based on the idea of rehabilitation. The original idea was that people were sentenced and only expected to remain in prison until they were rehabilitated, which often was a relatively short amount of time.<sup>10</sup> Parole boards would determine when the person was prepared to be released back to society – with the assumption that releasing people is better than keeping them incarcerated. Indeterminate sentencing is very much based on individual cases; no two crimes or people are identical, and because of that, no two sentences are identical. Individual characteristics such as education, programming, and good time credits would all be considered in determining when a person gets parole. This incentivizes rehabilitation, proponents would argue, because since a person may be released early for rehabilitation and good behavior, they are more likely to behave positively, reflect, and improve themselves. In addition, parole boards are in a better position to accurately understand how a person has behaved since being incarcerated than a courtroom having to predict when somebody would improve during initial sentencing. In addition, there is evidence that community corrections (probation and parole) lead to lower rates of recidivism compared to incarceration (31% to 50% respectively).<sup>11</sup> This is in part based on the idea that allowing someone to return to society and gain a footing will allow them an easier transition to a stable post-incarceration life with better access to employment, housing, and other resources. As the tough-on-crime movement began in the 1970s and 80s, though, a cynical view of rehabilitation became prominent—specifically, the idea that “criminals cannot be rehabilitated.” Because of this, longer sentences became seen as the only solution to crime, leading to parole boards denying parole at an increased rate.<sup>12</sup>

---

<sup>10</sup> Schwartzapfel, “Parole Boards: Problems and Promise,” 80.

<sup>11</sup> Dean J. Champion, *Probation, Parole, and Community Corrections*, 4th ed. (Upper Saddle River: Prentice Hall, 2002), 38-39.

<sup>12</sup> Schwartzapfel, “Parole Boards: Problems and Promise,” 80.

As those other policies were being implemented, the determinate sentencing movement also emerged as a reaction to the indeterminate sentencing regime, which led to longer prison terms.<sup>13</sup> Determinate sentencing is different from indeterminate sentencing in that people are sentenced to a specific amount of time and released at that point rather than a range with the release date dependent on a parole board. This also encapsulates the “truth-in-sentencing movement,” in which incarcerated people are required to serve more of their original sentence before even becoming parole-eligible.<sup>14</sup> This shift towards determinate sentencing had political support on both the left and the right and, to some extent, still does.<sup>15</sup> Liberals believed that indeterminate sentencing left too many doors open for discrimination since sentences could vary so dramatically despite the crime being the same; factors like race, age, gender, etc. may be used consciously or subconsciously by parole boards to extend some people’s sentences but not others. Conservatives argued, however, that indeterminate sentencing led to too much lenience, parole allowed “criminals” to walk free, and sentences should be standardized and stricter. While both systems have their strengths and weaknesses, the majority of states use a mix of both sentencing systems, most of which with parole boards that hold total authority over parole decisions.

### *Rehabilitation or Retribution?*

As alluded to earlier in this chapter, parole as a tool for corrections is based on rehabilitation. But what does that actually mean? In criminology and penology, several theories describe the philosophy of criminal punishment, as well as the goals of punishment. Among them are deterrence of further crime, incapacitation of people who may be a threat, rehabilitation

---

<sup>13</sup> Paula M. Ditton and Doris James Wilson, “Truth in Sentencing in State Prisons” US Department of Justice, Office of Justice Programs, January 1999.

<sup>14</sup> *Ibid.*

<sup>15</sup> Spohn, *How do Judges Decide?*, 226.

of people who have committed crimes, and retribution for a crime.<sup>16</sup> How much emphasis should be put on each goal of punishment is arguably the fundamental question of penology.

When it comes to the discussion of sentencing regimes, however, the debate seems to focus on retribution and rehabilitation. In the rehabilitation model, crime is viewed as a behavior that should be fixed.<sup>17</sup> Programs such as addiction treatment and counseling all share the aim of rehabilitating the person by addressing the problems or reasons that they committed a crime. Some argue that this view is somewhat condescending; blaming somebody's actions on problems such as mental illness or substance abuse without blaming the person removes agency from those people and insisting on "helping them" views them as less of an equal.<sup>18</sup> Other criticisms of rehabilitation have more to do with the fundamental belief that people should primarily be punished for their actions rather than rehabilitated, or that rehabilitative systems (education, etc.) hinder the deterrence and incapacitation aspects of incarceration.

The retributive view of crime, on the other hand, is based on the idea that somebody should be punished for, and in proportion to, the crime that they have been convicted of. Under this approach, rehabilitation is secondary to punishing somebody for their actions. Crime is an action that the individual has control and agency over, and while there may be other factors, they are ultimately responsible and should be punished. In post-tough-on-crime America, this seems to be the cultural attitude—to punish instead of support.<sup>19</sup>

---

<sup>16</sup> Albert W. Alschuler, "The Changing Purposes of Criminal Punishment: A Retrospective on the Past Century and Some Thoughts about the Next," *The University of Chicago Law Review* 70, no. 1 (2003): 1, <https://doi.org/10.2307/1600541>.

<sup>17</sup> *Ibid.*

<sup>18</sup> R. A. Duff, "Responsibility, Restoration, and Retribution," *Retributivism Has a Past, Has It a Future?*, December 12, 2011, 63-64, <https://doi.org/10.1093/acprof:oso/9780199798278.003.0004>.

<sup>19</sup> *Ibid.*

While this seems to be the attitude in a variety of cultures throughout history—whether it be Hammurabi’s Code or the Hebrew Bible and their “eye for an eye” mentality—there are a variety of different perspectives worldwide. In the Māori culture, for example, there are the concepts of *muru* and *utu*, which are based on the idea of restoring balance to the society. People would have to compensate the community in order to repay their actions, with the overall goal to right the wrong and reunite the person with the rest of their community.<sup>20</sup> This in turn would be considered “restorative justice,” another theory of justice. That is not even to mention other ideas, like “popular justice,” in which people take the law into their own hands, which in the American context is associated with lynching. Regardless, in the contemporary American criminal justice system, the discourse seems to be between rehabilitation and retribution.

However, both rehabilitation and retribution have one inherent flaw: they focus on the individual rather than the broader societal causes of crime. Retribution is punishing the individual for their actions while rehabilitation is seeking to “help” an individual who committed a crime. This puts all the blame on the individual, and in those frameworks, the state is considered the victim.<sup>21</sup> Both of these philosophies, in turn, overlook the root causes of crime and make individuals the perpetrators rather than describing their actions as the symptom of a broader systemic failure.

For instance, take a hypothetical situation: a person is being abused by their significant other, and they eventually fight back and kill their abuser. The person pleads guilty, believing it will give them a lesser punishment, and they are sent to prison. Under a rehabilitation framework, the person is treated as if they need to be “helped” or “changed,” even if their actions

---

<sup>20</sup> John Pratt, “Colonization, Power and Silence: A History of Indigenous Justice in New Zealand Society,” in *Restorative Justice: International Perspectives* (Criminal Justice Press, 1996), 137–55.

<sup>21</sup> Donald A. Dripps, “Fundamental Retribution Error: Criminal Justice and the Social Psychology of Blame,” *Vanderbilt Law Review* 56, no. 5 (October 2003): 1424–25.



may be understandable and justified. In a retributive lens, their action was a crime regardless of the reason, and they should be punished for it— although because of the situation, the punishment may be less than an unjustified killing in proportion to the crime. Both of these frameworks do not do anything to address domestic violence, better the family or personal circumstances of the person, question the society’s failure to prevent domestic violence, or account for the fact that while the person’s actions may have been criminal, they may also have been justified. In the American system, the person who commits a crime is just *a criminal*. There is no space or framework to consider that they may also be a victim of another person or societal failure. In addition, the contemporary system is antagonistic to individuals by putting all of the responsibility on them.

Regardless of the merits and faults of rehabilitation theory, America’s parole system was rooted in it, and while it is based on rehabilitation, it has largely been used for the opposite purpose. Parole boards keep people incarcerated largely because of the original crime, as will be discussed in the next chapter. In this regard, parole boards are deciding for themselves to exact retribution on an individual rather than prioritize rehabilitation as they originally intended to.

## **Chapter 2. Authority of Parole Boards**

As mentioned in Chapter 1, every U.S. state and territory predominantly uses either determinate or indeterminate sentencing.<sup>22</sup> In 34 indeterminate sentencing states, parole boards have discretion in determining how long people serve in prison.<sup>23</sup> In the other 16 states and the

---

<sup>22</sup> For the purposes of this paper, the District of Columbia and US territories will not be discussed at length, but it is important to highlight that they too have sentencing systems that fall into these categories.

<sup>23</sup> Robina Institute of Criminal Law and Criminal Justice, “Parole Boards within Indeterminate and Determinate Sentencing Structures,” Robina Institute of Criminal Law and Criminal Justice, April 3, 2018, <https://robinainstitute.umn.edu/articles/parole-boards-within-indeterminate-and-determinate-sentencing-structures>; although it should be noted that because of different definitions of discretionary parole, other sources suggest that the number of parole boards with complete discretion is closer to 26. See: Beth Schwartzapfel, “How Parole Boards

federal government, discretionary parole has either been discontinued or limited (see Figure I).<sup>24</sup> Among those 16, there is variety in the authority of parole boards. Some of them still maintain discretionary parole as an option for those sentenced before the date determinate sentencing was implemented, and in others, discretionary parole is still an option for certain serious offenses.<sup>25</sup> It is important to note, though, that even in states that have abolished indeterminate sentencing, parole generally still exists as “mandatory parole,” where people are released on parole at a specific point in their sentence but still subject to supervision and return to prison for violations. This differs from the indeterminate sentencing states with “discretionary parole” in that discretionary parole is based on the discretion of the parole board and the factors they deem important in deciding whether to grant someone parole. Most literature has focused on states

---

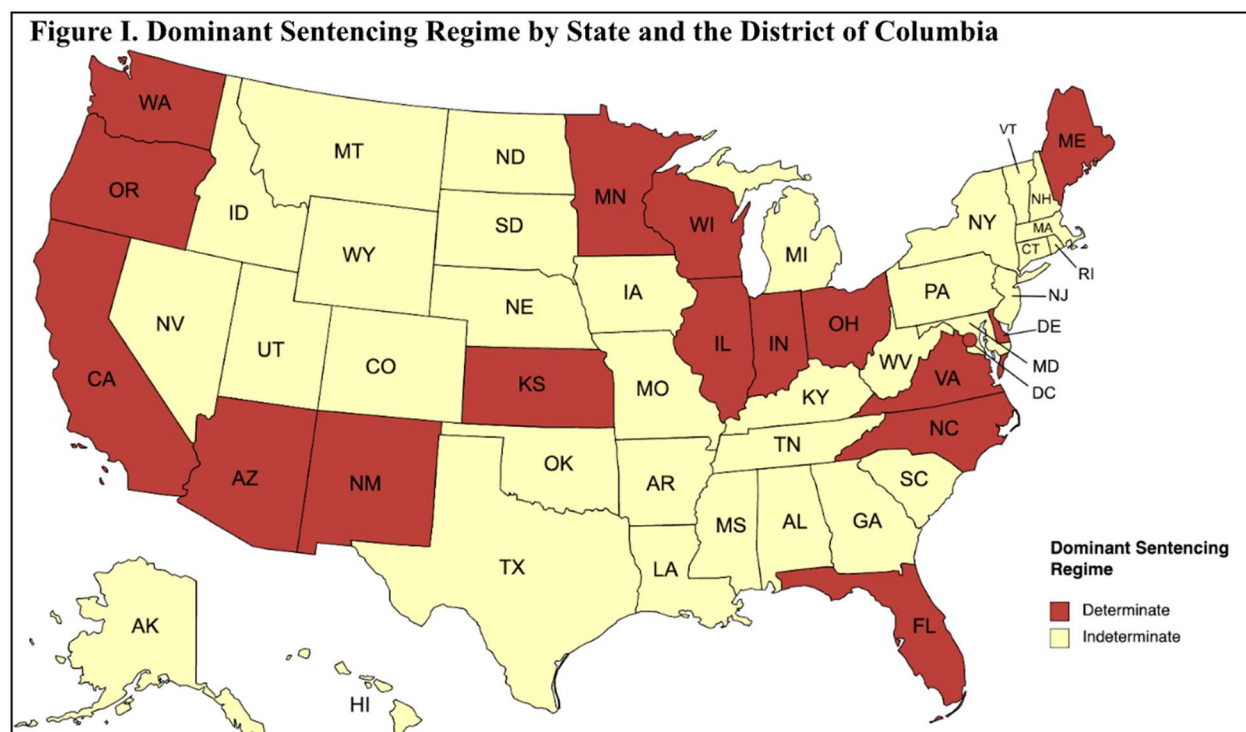
Keep Prisoners in the Dark and behind Bars,” *Washington Post*, July 11, 2015, sec. National, [https://www.washingtonpost.com/national/the-power-and-politics-of-parole-boards/2015/07/10/49c1844e-1f71-11e5-84d5-cb37ee8eaa61\\_story.html](https://www.washingtonpost.com/national/the-power-and-politics-of-parole-boards/2015/07/10/49c1844e-1f71-11e5-84d5-cb37ee8eaa61_story.html).

<sup>24</sup> *Figure I source*: Robina Institute “Parole Boards within Indeterminate and Determinate Sentencing Structures,” 2018. Figure created using mapchart.net.

<sup>25</sup> *Ibid.*

using indeterminate sentencing systems with parole boards having wide jurisdiction, but there are some broad strokes that are relatively consistent nationwide regardless of sentencing system.

Ohio, where this work's interviews were conducted, is an interesting example when it



comes to parole. Ohio is predominantly a determinate sentencing system, but there are still several ways for an incarcerated person to become eligible for discretionary parole.<sup>26</sup> First, if somebody was incarcerated and eligible for parole before 1996 (when the state adopted determinate sentencing) they are still eligible for parole. In addition, life sentences for serious offenses like murder generally still retain parole as an option.<sup>27</sup> While by and large the state uses determinate sentencing, discretionary parole is still an option for many people incarcerated in

<sup>26</sup> For the rest of this work, “parole” will generally refer to discretionary parole rather than mandatory parole when not clearly distinguished.

<sup>27</sup> Ohio Revised Code section 2967.13

Ohio. This goes to show the complexities of history and policy from state to state, and that these policies and ideas are not necessarily cut and dry.

Regardless of the extent of indeterminate sentencing in a given state, parole boards tend to function the same way. People are convicted of a crime and then sentenced to a maximum imprisonment by a judge. For many people, their time in prison is spent working, taking part in educational programs, and preparing to reenter society without making the same mistakes as before. It is then, after serving some set amount of time in prison, that people eligible for parole go before parole boards who will determine whether the person should be released or remain in prison. That is where the parole board's power truly exhibits itself.

### *Goals of Parole Boards*

The parole process varies from state to state, but there are some common threads. First is the inherent goal of the parole boards. Parole boards are primarily designed to assess the risk that releasing somebody poses to the community.<sup>28</sup> This makes sense in theory—parole boards are oftentimes dealing with people who have committed violent offenses—but in practice, it means that parole boards tend to focus on the wrong things. Parole boards may focus on the offense that got people imprisoned in the first place rather than how much people have reformed while incarcerated. This is in part because there is no way to accurately predict future risk. Asking people to predict risks can include personal biases, and software to predict risks also maintains the biases of its creators, as is the case with emerging risk assessment technology.<sup>29</sup> Parole boards may be overcautious, whether by virtue of the job, bias, or politics, as will be discussed later. By focusing on the *risks*, parole boards ignore the *rewards* that releasing somebody who is

---

<sup>28</sup> W. David Ball, "Normative Elements of Parole Risk," *Stanford Law and Policy Review* 22, no. 2 (January 2011): 395–412, <https://digitalcommons.law.scu.edu/facpubs/479/>.

<sup>29</sup> Julia Angwin et al., "Machine Bias," ProPublica (ProPublica, May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

incarcerated can bring to the individual, state, and society. For example, prisons are expensive to run, and keeping more people incarcerated is more expensive for the state, which means less money can be used on other social programs that may prevent crime in the first place. Therefore, release would be more beneficial than risky.

Obviously, this risk-oriented view also has a detrimental impact on incarcerated people who believe they have been rehabilitated and are prepared to reenter society. Parole boards may focus on the person's bad qualities, or assume they are a threat because of an action that occurred years prior, rather than the benefits that the person may have to society. Parole boards have the power to decide what the most important aspect of the person's life is. Is it the crime that they committed in the past, or is it what they have done since then? Are they a *criminal*, or are they a *person* that committed a crime in the past?

The reality is that there will always be some people who commit another crime after they are released, but that does not mean the parole board should reject everyone seeking parole. Even if incarcerated people are no more likely than non-incarcerated people to commit a crime, they are still treated as more of a threat because of their past.<sup>30</sup> In fact, according to a 1999 survey of all parole board members in America, 90.6% of parole board members consider "the nature and circumstances of an inmate's offense" to be "very important" in parole decisions.<sup>31</sup> This is compared with only 47.1% who view the "adequacy of the inmate's parole plan" as very important, 29% who view "the inmate's community support" as very important, and 53.6% who view "the inmate's insight into the causes of his or her past criminal conduct" as very important.<sup>32</sup> This difference indicates that parole boards are primarily concerned with the

---

<sup>30</sup> Ball, "Normative Elements of Parole Risk," 404.

<sup>31</sup> Ronald Burns et al., "Perspectives on Parole: The Board Members' Viewpoint," *Federal Probation* 63, no. 1 (December 1999): 20.

<sup>32</sup> *Ibid.*

original crime and the risks associated with the person and less concerned with the full picture of support, reflection, and rehabilitation. Parole boards should be geared towards analyzing whether or not the risks outweigh the rewards, rather than focusing primarily on just the risks of releasing somebody because of their past. As institutions rooted in the theory of rehabilitation, parole boards should evaluate the extent to which a person has rehabilitated. The reality is, however, that parole boards do not focus on that; they focus on the original crime that was committed.

In order to ensure that there is a standard, fair, and considerate process, parole boards often use guidelines or lists of factors to assess rehabilitation. One notable example is the Structured Parole Decision Making Framework, which focuses on whether or not a factor increases or decreases the likelihood of recidivism, rather than the risk that factor brings.<sup>33</sup> Having a place to live or employment lined up if parole is granted, for example, is seen as a factor that would decrease the chance of recidivism, and in turn, the board would consider it in their decision as supportive of parole. In this framework, reducing recidivism is the goal, rather than highlighting the risks of some people from being released. In states that have implemented this idea, outcomes have improved. Incarcerated people who are determined to have more factors that reduce recidivism are in fact less likely to have parole revoked or reoffend.<sup>34</sup> This is evidence that having clear guidelines with that aim do in fact work at more accurately predicting recidivism. If states move back towards an anti-recidivism and rehabilitation-based framework, outcomes may improve for both the state and the individuals.

### *Parole Boards: A Second Courtroom?*

---

<sup>33</sup> Kaitlyn Wardrop, Ralph C. Serin, and David Rentler, "Evaluating the Structured Parole Decision Making Framework in Three U.S. States," *American Journal of Forensic Psychology* 37, no. 2 (April 2019): 4.

<sup>34</sup> Wardrop et al., "Evaluating the Structured Parole Decision Making Framework in Three U.S. States," 13.

However, the parole decision is far more complicated than a checklist. Parole boards essentially act as a second courtroom for those seeking parole. The goals and procedures are even similar in some regards. Parole boards establish facts and enact sentences similar to a court. Instead of establishing facts with the goal of determining “guilt” or “innocence,” parole boards establish facts with the goal of determining “too risky to release” or “not too risky.”<sup>35</sup> The same way courts have the power to sentence people after conviction, parole boards also have the de facto power to sentence people. A parole board rejecting an applicant is essentially sentencing them to however many years they have left in their original sentence, or at least until their next board hearing. This is true because of the indeterminate sentencing system. Courts have largely deferred some sentencing power to parole boards. Courts assign sentences, but the true length of the sentence is determined by the decision of parole boards, which essentially makes courts and parole boards co-sentencers. Theoretically, then, parole boards should be as fair as possible, emulating a Court. However, in the ways previously discussed and as will be elaborated on further, parole boards are far from fair. In fact, parole boards act as both a judge and prosecutor, fighting against the person seeking parole while also deciding the outcome and structure.

Unlike in the judicial system, though, there is no uniformity. While in the judicial system there is some variety from state to state, procedures, standards, and burdens of proof are relatively uniform. Parole hearing procedures, on the other hand, are dramatically different from state to state. Some states allow incarcerated people to bring an attorney, whereas others do not. Some states allow prosecutors and victims to speak or issue statements, whereas others prohibit

---

<sup>35</sup> Ball, “Heinous, Atrocious, and Cruel,” 913.

it. There are broad differences in the process from state to state.<sup>36</sup> In many cases, this is to the detriment of the incarcerated person seeking parole.

Policies such as mandating prosecutor and victim statements reinforce the idea that the incarcerated person will always be a criminal. They define the person by the action that landed them in prison in the first place. They describe the crime in detail to try to convince the parole board that the person should remain in prison. Research has shown that there is a correlation between victim statements and parole denials; if a victim submits a statement, it is more likely that parole will be denied.<sup>37</sup> The whole purpose of parole should be to encourage rehabilitation and to give people a second chance to not be defined by the crime that got them convicted. Policies like prosecutor and victim statements are contrary to that goal as they overlook rehabilitation in favor of retribution, allowing prosecutors and victims to convince the parole board to further punish the individual.

Most parole boards do allow the individual seeking parole to submit personal statements as well as statements in support of their claim from corrections officers, supervisors, or other people with a day-to-day relationship with the applicant. This allows the person seeking parole to present a more well-rounded image of themselves to the board and show that they have changed, but these are often treated with less weight than victim and prosecutor statements.

Interestingly, the manner of parole board meeting even varies from state to state, which may also influence the process. Of the 34 states with discretionary parole release, 10 states do not require parole board members to even interact with people seeking parole, sending

---

<sup>36</sup> Jorge Renaud, "Parole Release Policies Scoring Table," [www.prisonpolicy.org](http://www.prisonpolicy.org), February 26, 2019, [https://www.prisonpolicy.org/reports/parole\\_grades\\_table.html](https://www.prisonpolicy.org/reports/parole_grades_table.html).

<sup>37</sup> Kathryn Morgan and Brent L. Smith, "Victims, Punishment, and Parole: The Effect of Victim Participation on Parole Hearings," *Criminology & Public Policy* 4, no. 2 (May 2005): 355, <https://doi.org/10.1111/j.1745-9133.2005.00025.x>.



investigators in their place.<sup>38</sup> Only 10 states require there be in-person hearings, which best allow the person the chance to represent themselves. There are a variety of policies in between, with some states requiring in-person meetings only if the person is likely to be denied—or the opposite—and some states requiring phone calls or video, which have their own problems. There is evidence that video hearings reduce the ability of judges to interpret body language and tone, which may lead to assumptions and less sympathy.<sup>39</sup> Video messages and phone calls make the person no more than an abstract idea of a voice on a device rather than a human being. There is evidence that hearings held via video rather than in person lead to more negative outcomes for people asking leniency.<sup>40</sup>

While there is a great variety of policies, one thing remains clear: the structural disadvantages that parole-seekers face is so great that even the most progressive policies may be in vain for some people. All of these processes, though, share the same purpose. They establish the facts about a person—whether they pose a risk to society or not—with the ultimate goal of deciding how the remainder of someone’s sentence is spent.

### **Chapter 3. Protections from Parole Boards**

Despite the similarities to a judicial body, parole boards are dramatically different for one reason: there are almost no constitutional protections for people facing parole boards. There has been an abundance of litigation related to the rights of parole petitioners before parole boards

---

<sup>38</sup> Jorge Renaud, “Parole Release Policies Scoring Table.”

<sup>39</sup> Christina Goldbaum, “Videoconferencing in Immigration Court: High-Tech Solution or Rights Violation?,” *The New York Times*, February 12, 2019, sec. New York, <https://www.nytimes.com/2019/02/12/nyregion/immigration-court-video-teleconferencing.html>.

<sup>40</sup> *Ibid.* It should be noted, however, that this research referred to immigration courts, not parole hearings. While similar trends may be implied, the research did not explicitly examine the application of video hearings in parole boards or a criminal context.

and their legality and constitutionality at the state level. Examining the merits of challenging the state constitutionality of parole boards' actions is an important and worthwhile endeavor, but for the purposes of understanding parole in America as a whole and discussing whether it is compatible with the US Constitution, examining Federal case law is key.

Because of the discretionary authority of parole boards and their dramatic variety by state, it is likely that there are processes or actions taking place that may be unconstitutional or unjust by denying incarcerated people rights or a voice. If a parole board discriminates against a person or denies them a right, for example, there are legal arguments that an incarcerated person could feasibly use to remedy the situation and ensure that they are being given a fair chance in the process.

#### *Due Process and Parole*

Litigation surrounding the rights of people seeking parole has largely centered on the 14th Amendment. The Due Process Clause of the 14th Amendment establishes that no state shall “deprive any person of life, liberty, or property, without due process of law.”<sup>41</sup> This language is at the root of legal discourse regarding rights of parole petitioners. One of the first notable cases regarding due process in parole was *Morrissey v. Brewer*. In *Morrissey*, a number of people who had their parole revoked with no hearing argued that the revocation violated the Due Process Clause since their liberty—meaning specifically freedom from imprisonment—was taken away without a fair, adequate process in place. The Court ruled in their favor, with the majority ruling that parolees are not entitled to the full amount of rights granted to criminal defendants, but they are entitled to some level of due process because their right to liberty was at risk.<sup>42</sup> However, this

---

<sup>41</sup> U.S. Const. amend. XIV. Sec. 1. cl. 3; It also should be noted that the Fifth Amendment also has a Due Process Clause, but that applies to the Federal Government whereas the 14th applies to the states— where most criminal trials and punishment occur.

<sup>42</sup> *Morrissey v. Brewer*, 408 U.S. 471 (1972).

interpretation led to questions. Was it only people outside of incarceration that maintained due process rights? *Morrissey* argued that parolees—people who are no longer imprisoned despite serving a sentence—do maintain those rights, but what about people still in prison?

Two years later, in *Wolff v. McDonnell*, the Supreme Court ruled that people maintain some of their constitutional rights during incarceration, among them the right to limited due process in administrative hearings in prisons as it relates to their liberty.<sup>43</sup> While not explicitly about parole, it does answer the implied questions of *Morrissey*. People in prison do in fact maintain due process rights the same way that parolees do, albeit not the same amount as defendants in court have—a concept that will be examined later. This then brings up the question: if incarcerated people are entitled to some due process rights and people in parole are entitled to due process rights when their parole is revoked, are incarcerated people seeking parole also entitled to due process protections?

In 1979, the Supreme Court addressed that very question in *Greenholtz v. Nebraska Penal Inmates*. Incarcerated people seeking parole at Nebraska Penal and Correctional Complex argued that the procedures of Nebraska's Board of Parole denied them due process. They argued that since the parole board determines whether they are imprisoned or released, their liberty was at stake, and the board's ability to arbitrarily deny parole or a second hearing was not adequate due process. The US Supreme Court disagreed, determining that the incarcerated Nebraskans were not entitled to due process rights in this circumstance because the idea of liberty was abstract, and they did not have a tangible interest or reason to believe they were owed liberty; since the state was not taking away their right to liberty, they were not owed any due process.<sup>44</sup> The Court established that having a system of discretionary parole does not automatically mean

---

<sup>43</sup> *Wolff v. McDonnell*, 418 U.S. 539 (1974).

<sup>44</sup> *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1 (1979).

somebody is entitled to parole. If the state's statute establishing parole is worded in a way that does imply an expectation of parole, then people have a valid reason to believe they are entitled to parole.

For example, a statute may state "the parole board *shall* grant parole to people who have served half of their sentence." In this case, if an incarcerated person has served half of their sentence, they are entitled to parole (and liberty), and denial of parole to that person (or denial to a fair process to prove they meet the requirement) is a violation of their 14th Amendment right to due process since their liberty is being arbitrarily denied. Contrast this with an alternative example. If a statute says "the parole board *may* grant parole to people who have served half of their sentence," there is no expectation of parole. A person who has served half of their sentence may *hope* that the parole board grants them parole, but they cannot reasonably assume that they will get it. Therefore, if the parole board denies them their request for parole, or denies them a full hearing, it does not violate the Due Process Clause because the idea of the person getting released is what they *hope*, not what they are *guaranteed*. This is in contrast to *Morrissey*, where because the people were free—albeit under parole supervision—they had an expectation and entitlement to maintain their present liberty and therefore revoking their parole without a process in place would be illegally taking their liberty.

Does this really make sense, though? If somebody is in prison facing a parole board, they do inherently have an interest in their liberty. Parole boards are so fundamental to the way sentencing works in America that people should be protected the same way they are in judicial proceedings. In the early indeterminate sentencing systems, people were assumed to be released by parole with over 70% of prison releases being from parole, and judges handing down long

sentences under the assumption that the person would be paroled before their sentence ends.<sup>45</sup>

Over time, parole came to be seen as a privilege rather than an assumption with the aforementioned cases and the tough-on-crime movement of the 1990s. When examining parole from this lens as something that is assumed to be the case, denying parole and keeping people in prison longer seems like an arbitrary denial of an individual's liberty.<sup>46</sup>

In his dissent in *Greenholtz*, Justice Thurgood Marshall reasoned that “liberty interest [can be] derived solely from the existence of a system that permitted criminal offenders to serve their sentences on probation or parole.”<sup>47</sup> Since the parole system gives the real option for incarcerated people to have more liberty, they clearly have an interest in obtaining that liberty. Since there is a liberty interest, the processes to provide that must have adequate due process. Liberty, Marshall argues, is so fundamental that it should outweigh the inconveniences states experience in establishing adequate due processes. In the post-*Greenholtz* world, the due process rights of incarcerated people are treated as less important than the state's interest to save time and money. This presents a problem, because if the state is not willing to cede rights to parole-seeking people, it creates an uneven playing field where the odds are stacked against the person seeking parole.

For instance, many states do not have processes in place where people can challenge incorrect information made in parole hearings, essentially meaning that people cannot argue or defend themselves, and that a parole board can base decisions entirely off of incorrect information. Under the current regime, however, that does not matter. There is no need for there to be an appeal process for that because there is no “liberty interest.” In addition, there is no

---

<sup>45</sup> Schwartzapfel, “Parole Boards: Problems and Promise,” 80.

<sup>46</sup> Donna Chu, “Due Process and the Parole Release Decision,” *Kentucky Law Journal* 66, no. 2 (January 1, 1977), <https://uknowledge.uky.edu/klj/vol66/iss2/6>.

<sup>47</sup> *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1 (1979). (Marshall J. dissenting opinion).

guarantee for hearing transcripts to be available to the person or public record. This clearly shows a system where parole boards are rigged against parole-seekers because parole-seekers do not have the rights and tools to advocate for themselves.

### *Equality Before the Board*

Another notable clause in the 14th amendment is the Equal Protection clause, which immediately follows the Due Process clause. This phrase, that no state shall “deny to any person within its jurisdiction the equal protection of the laws,” has been crucial in protections for civil rights and liberties over the years.<sup>48</sup> Specifically, it has been critical in cases such as *Brown v. Board of Education* and *Loving v. Virginia*. In those cases, it was ruled that policies that divide or deny rights to people based on their race were violating the Equal Protection Clause.

But how does this manifest in the parole process? There are several ways equal protection may be violated in the parole process. First is the simple issue of whose voice is taken into account. As alluded to with the discussion of victim and prosecutor statements, some people have outsized voices during parole hearings. Protest letters from victims, prosecutors, or other opponents of the incarcerated individual are often accepted and recorded without any fact-checking procedures, or opportunity for the incarcerated person to refute them. Deciding based on erroneous information or without taking an incarcerated person into account may not necessarily violate the Due Process Clause, but it *does* deny that incarcerated person equal protection, as they are refusing them input or the ability to defend themselves, scholars argue.<sup>49</sup> In states where there is no liberty interest in parole statutes per *Greenholtz*, using this Equal

---

<sup>48</sup> U.S. Const. amend. XIV. Sec. 1. cl. 4.

<sup>49</sup> J. S. Bales, “Equal Protection and the Use of Protest Letters in Parole Proceedings: A Particular Dilemma for Battered Women Inmates,” *Seton Hall Law Review* 27, no. 1 (1996): 33–69.

Protection argument that incarcerated people are being unequally treated at parole hearings based on their status could be critical in arguing for the rights of incarcerated individuals.

Another instance where Equal Protection arguments could feasibly be applied is through racial disparities in parole decision-making. Race is generally agreed to be considered a “suspect class” in Equal Protection arguments. What this means is that people classified into groups by race have historically been discriminated against.<sup>50</sup> For example, a statute that discriminates against a racial group is unconstitutional based on Equal Protection because it is discriminating against a suspect class. While incarcerated people are not considered a suspect class, as will be discussed later, racial groups *are* and therefore strict or intermediate scrutiny may be applied to laws or policies outlying the parole process to assess if they discriminate against people based on their race.

There is evidence that shows that Black people who are incarcerated are often forced to wait for parole longer than white incarcerated people.<sup>51</sup> While much of this is likely based on the biases of parole board members, if there are specific policies that are found to cause Black people to be denied at a higher rate, an incarcerated Black person could make an argument that they are being discriminated against unconstitutionally. This includes selective enforcement of the law. If only Black people are denied parole for a given reason compared to white people, for example, it is likely that the policy or actions of the parole are discriminatory and violate Equal Protection. Under current law, in order for an action to be considered a violation of equal protection, though, there needs to be proven intent to discriminate, which makes it more difficult

---

<sup>50</sup> “Suspect Classification,” LII / Legal Information Institute, n.d., [https://www.law.cornell.edu/wex/suspect\\_classification#:~:text=Under%20Equal%20Protection%2C%20when%20a](https://www.law.cornell.edu/wex/suspect_classification#:~:text=Under%20Equal%20Protection%2C%20when%20a)

<sup>51</sup> Beth M. Huebner and Timothy S. Bynum, “The Role of Race and Ethnicity in Parole Decisions,” *Criminology* 46, no. 4 (November 2008): 907–38, <https://doi.org/10.1111/j.1745-9125.2008.00130.x>.

to argue that a policy or decision was unconstitutionally racially motivated— although some scholars argue that the standard of intent should be changed to account for unconscious biases.<sup>52</sup> While the equal protection argument may be difficult to establish, it is a rational framework to use the Equal Protection Clause to protect incarcerated individuals when necessary.

As a last note on Equal Protection, it is very interesting that incarcerated people, or formerly incarcerated people, are not generally considered a suspect class. With policies such as banning formerly incarcerated people from employment, housing, or other services, there is an argument to be made that incarcerated and formerly incarcerated people are discriminated against similarly to other suspect classes. Why are they not considered a suspect class then? If incarcerated/formerly incarcerated people were considered a suspect class, stricter scrutiny could be applied to policies that discriminate against them. Considering incarcerated people a suspect class opens up an assortment of new opportunities for prisoner's rights arguments. Perhaps that is something that should be considered. American law and society accept the argument that once somebody is convicted of a crime, they are sacrificing some of their rights—but even after people serve their time, they are still doomed to be treated as lesser.

#### *The Double Jeopardy Problem of Parole*

While the 14th amendment has historically been the most common argument used in litigation for challenging parole processes, that overlooks other areas in the Constitution that seem equally relevant. While the Fifth and Sixth Amendments are geared towards judicial criminal proceedings, perhaps using the principles of these amendments is relevant in understanding how the parole board process could be made more just.

---

<sup>52</sup> Alyson Grine and Emily Coward, "Recognizing Implicit Bias within the Equal Protection Framework," *Trial Briefs Magazine*, April 2017, 26–30.



As briefly discussed in the previous section, parole hearings are essentially a quasi-judicial second courtroom. They take evidence and statements to determine whether the person applying is suitable for parole, and determine the sentence of the person— although instead of giving a specific sentence length, they tacitly sentence the person to however many years remain in their original sentence. Trials alone do not determine sentencing; a judge or jury may sentence a person to a given amount of time in prison, but parole boards—for those eligible—determine how much time people truly serve in prison. They are two parts of one whole justice and sentencing system. While attention and litigation has been paid mostly to trials and sentencing, there has been little shown to parole processes. Judicial sentencing and parole board passive sentencing are treated as completely separate entities rather than the two parts of determining a person’s sentence.<sup>53</sup> They should be considered as a broader sentencing regime and each part should receive the same legal scrutiny.

If parole hearings are viewed in the same light as initial sentencing and trials, then the same legal and constitutional requirements and processes should be in place. Specifically, rules governing the rights people have during trials should be present during parole hearings as well, specifically Fifth and Sixth Amendment protections.

The Fifth Amendment is critical for the rights of defendants in the United States. The Fifth Amendment, while better understood for its right against self-incrimination, also includes the Double Jeopardy Clause. This clause establishes that one cannot be *prosecuted* for the same offense twice at the same level of government. However, the language of that clause could imply that no person can be *punished* for the same crime twice. “[No person shall] be subject for the same offense to be twice put in jeopardy of life or limb,” the Constitution says.<sup>54</sup> “Subject for the

---

<sup>53</sup> Thomas and Reingold, “From Grace to Grids,” 215.

<sup>54</sup> U.S. Const. amend. V. Sec. 1. cl. 2.

same offense to be twice put in jeopardy of life or limb” has been interpreted to mean someone cannot be prosecuted twice for the same crime, which risks punishment. A reasonable alternative interpretation could be “no person shall be *punished* for the same offense twice.” This is implied by the original letter of the law; if somebody cannot be tried for the same crime, they cannot be punished for the same crime twice, but it has thus far not been interpreted to explicitly refer to punishment rather than prosecution. In fact, this argument has been rejected by some courts in the past.<sup>55</sup>

For the sake of argument, consider the second interpretation that one cannot be punished for the same offense twice. How does this apply to parole boards? While in theory, parole boards are meant to consider the risks that releasing someone presents based on their current risk factors, people are often considered risky because of the crime that got them imprisoned in the first place. Parole boards may reject somebody’s application for parole because they believe the original crime that got somebody arrested was too extreme and that the person should never be released. But in this case, by rejecting the person’s request for parole, they are extending their sentence and thus punishing them for actions that they have already been punished for. The first punishment was the time they have already spent in prison, and the second is the additional time they are being given. In this hypothetical interpretation of the Fifth Amendment, this would be a violation.

As already mentioned, though, current case law insists that the Double Jeopardy Clause is intended to mean criminal trials. Scholars suggest that despite that, parole boards using evidence from acquittals or non-convictions to justify extending a sentence likely *do* violate Double

---

<sup>55</sup> H. A. Harrison, “Violations of the Double Jeopardy Prohibition under the Federal Parole Release System,” *Boston University Law Review* 63, no. 3 (1983): 673–716.

Jeopardy.<sup>56</sup> In short— using the original conviction as a reason to punish somebody more is acceptable, but using actions that the person was acquitted of to judge whether someone deserves punishment is not acceptable. This seems antithetical to the intent of the Fifth Amendment, and there could be further argument over the extent of Double Jeopardy and parole.

#### *Parole and the Sixth Amendment*

While the Fifth Amendment has been *interpreted* to apply to criminal trials, the Sixth Amendment *explicitly states* that it is only intended for criminal trials. While this means that it is not a suitable argument for legal action related to parole boards, the principles are important. The purpose of the Sixth Amendment is to provide rights to criminal defendants. In a parole board hearing, there is no criminal defendant, but rather someone who has already been convicted of a crime. However, as somebody at the will of the justice system whose freedom is on the line similarly to a defendant, parole-seekers should have some protections.

The Sixth Amendment is divided into five rights that defendants have. First is the right to a speedy and public trial, followed by the right to an impartial jury, the right to know the charges against them, the right to confront and call witnesses, and finally the right to an attorney.<sup>57</sup> Again, while these specific rights do not apply to parole boards, their presence in the Constitution suggests that the framers of the Constitution believed 1) that those whose liberty is at stake deserve a fair hearing and protections to ensure that and 2) that these specific rights are how to make hearings fair. While not Constitutionally binding, these principles can be applied to a parole hearing as well. The next section will take these five rights of criminal defendants and translate them to the context of a parole board hearing.

---

<sup>56</sup> *Ibid.*

<sup>57</sup> U.S. Const. amend. VI.

First is the right to speedy and public hearing. This principle could be applied in several ways. If somebody is eligible for parole, they deserve to have the process begin in a timely manner so that they are not potentially spending more time incarcerated than necessary. In addition, hearings, or at least transcripts or decisions, should be open to public scrutiny. While it is debatable whether or not this would be just or in the parole-seeker's favor—the pros and cons will be weighed in the next chapter of this project—having more transparency and public scrutiny is what the framers intended for criminal trials, and translating those rights to parole boards clearly leads to that interpretation. Furthermore, there should be the option for the incarcerated person to be present at parole hearings. While this seems obvious that the person asking for parole should be present at the hearing, it is not the reality everywhere. In fact, only 10 states require that decision hearings be in person. As was already discussed, some states do not even allow the incarcerated person to talk to the parole board at all, only an investigator. This is essential to evening the playing field and giving the person a fair chance.

The second right is the right to an impartial jury of peers. Translating this from a criminal trial to a parole hearing could take several forms. It could mean literally that parole-seekers should be allowed to ask for a jury to rule on their parole status, something that has actually been proposed by some scholars.<sup>58</sup> It could also be translated more narrowly that parole board members should be from the state or area that the original crime was committed in or that the sentence is being served.

Third is the right to know the charges against a defendant. In the context of parole boards, this could mean the right to know facts or evidence that could be used to deny parole before the

---

<sup>58</sup> Ball, "Normative Elements of Parole Risk," 396.

hearing so it can be countered. It could also mean the right to know why parole was denied if that is the case so they can improve their case in the future.

Fourth is the right to call witnesses and cross-examine witnesses. This one, for the most part, seems to be implemented in some senses. Most parole boards allow for the person seeking parole to have statements issued in favor of their case, and many allow survivors and prosecutors the ability to issue statements as well. Allowing the parole-seeker the right to bring witnesses is critical in allowing the person to demonstrate their rehabilitation. For example, some states allow correctional employees, educators, coworkers, or others that have closely worked with the incarcerated person to issue statements in support of the person.<sup>59</sup> People who know the person well can speak for the positive qualities of the person, how they have changed, or how keeping them incarcerated would be detrimental. Furthermore, parole-seekers should be allowed to challenge statements issued by victims, prosecutors, or board members. Whether this be through themselves or an attorney, parole-seekers should have a right to challenge things said by people opposing them either in person or in writing. This is especially true if there are false statements or statements that are irrelevant being used to sway the board. There must be accountability and equality in statements if the process is to be fair.

Fifth is the right to an attorney. This is rather straightforward; people facing parole boards should have the right to legal representation. This is important because while an incarcerated person may not know what is and is not allowed to be considered or done during a hearing, an attorney—or even a caseworker for that matter—would have more knowledge of procedures and rules, and of course would help argue for the person seeking parole. This helps level the playing field and ensures that rules and standards are upheld. While the Constitution

---

<sup>59</sup> Jorge Renaud, “Parole Release Policies Scoring Table.”

does not mandate that any of these protections are in place for parole hearings, they can be used to get a sense of what a fair hearing would look like, which is not the status quo.

#### **Chapter 4. The Politics of Parole**

One of the key reasons why parole hearings are fundamentally unfair is because parole boards are political institutions. They are influenced by political leaders in the state, as well as public opinion, and the personal opinions of the board members. As institutions that are meant—or rather, *should be* meant—to give people a fair hearing and fair chance at parole, it is somewhat concerning the role that politics can play in the decisions they make.

##### *Appointments and Executive Influence*

Just like with elected judges, parole board members should be expected to be impartial with their decision making, focused on finding the facts and upholding the law. However, in another similarity between parole boards and courts, neither are truly impartial. In 44 states, parole board members are appointed by the governor to the board.<sup>60</sup> This could be used to reward political allies. As of 2015, 18 states had former legislators on their boards.<sup>61</sup> While appointments for boards and courts are commonplace, appointments allow an opportunity for the governor to influence parole boards. This has been observed, with key examples of notorious people being paroled leading to the dismissal of board members.<sup>62</sup> Governors punish parole board members whose decisions lead to bad press. In New York, for example, several parole board members were not reappointed because, “the Governor was upset they let out Kathy Boudin [notoriously involved with the murder of police officers], and he’s not going to reappoint

---

<sup>60</sup> Schwartzapfel, “Parole Boards: Problems and Promise,” 79.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

them.”<sup>63</sup> How many more cases are like this? Governors, as directly elected officials, can directly pay the price for the decisions of parole boards they appoint— meaning that it is in their interest for parole decisions to align with their politics.

While by and large this incentivizes parole boards to reject parole applications, it also does the opposite, reinforcing the idea that this system is politically influenced. Following the 2023 conviction of Daniel Perry for the murder of a Black Lives Matter protester in 2020, Texas Governor Greg Abbott called for the Texas Board of Pardons and Paroles to recommend a pardon for Perry after being called on by conservative leaders to do so.<sup>64</sup> If Abbott believes that the Board can be so easily influenced, that just furthers the risk of injustice and retribution on incarcerated people that could be used as political targets.

Parole boards default to keeping people in prison because of the feigned risk-based assessment they take. Nobody on the board wants to be responsible if someone they parole commits another crime, and the governor does not want to be seen as soft on crime because of the people they appoint to the parole board.

#### *Public Opinion and Parole Boards*

The reason governors and parole boards are so concerned about releasing someone who will go to reoffend is not because of their own morals, but rather public opinion. Public opinion has been shown time and time again to influence the way sentencing is handled. In a study of elected judges, a correlation was found between punitiveness and time to an election.<sup>65</sup> The

---

<sup>63</sup> *Ibid.*

<sup>64</sup> Alisha Ebrahimji, “What We Know about the Daniel Perry Case and What Happens next after Texas’ Governor Says He Wants to Pardon Him,” CNN, April 11, 2023, <https://www.cnn.com/2023/04/11/us/daniel-perry-greg-abbott-pardon-case-explained/index.html>.

<sup>65</sup> Gregory A. Huber and Sanford C. Gordon, “Accountability and Coercion: Is Justice Blind When It Runs for Office?,” *American Journal of Political Science* 48, no. 2 (March 3, 2004): 247–63, <https://doi.org/10.1111/j.0092-5853.2004.00068.x>.

public is more likely to react to under-sentencing than over-sentencing, so judges account for that by issuing harsher sentences. It is logical to assume that a similar phenomenon occurs for parole boards; as their term expires and reappointment approaches, it is possible and even likely that parole boards would reject more parole applications.

The American public is ultimately responsible in part for the mass incarceration crisis—after all, the public did elect leaders who created the policies leading to the crisis.<sup>66</sup> It is the public's opinions on punishment that pressure parole boards into keeping people imprisoned. When people convicted of infamous crimes are released, the media jumps on it, describing the crime and suggesting that the parole board or other releasing authority is supporting crime. Just look at the New York example. After that case, tabloids and news exploded, with some calling the parole board “Cop-killer’s pal.”<sup>67</sup> Another example is that of Sirhan Sirhan, the person who killed Robert Kennedy. He is nearly 80 years old, an age where the likelihood of recidivism is incredibly slim— and he had been recommended for parole in the past. However, he was denied parole for the 15th time. It is clear that he is not a threat, but the notoriety of the original crime denied him. In fact, in 2022, he was recommended for parole, but California governor Gavin Newsom reversed that decision, likely due to the public backlash during an election year.<sup>68</sup> The media and public define incarcerated people by their crime. When parole boards actually *are* fair, considerate, and support release, the public punishes them for it.

Is this a bad thing? It really depends on the perspective the issue is looked at from. If the goal is to make the system as participatory democratic as possible, public opinion is important to

---

<sup>66</sup> Peter K. Enns, “The Public’s Increasing Punitiveness and Its Influence on Mass Incarceration in the United States,” *American Journal of Political Science* 58, no. 4 (2014): 857–72. <http://www.jstor.org/stable/24363530>.

<sup>67</sup> Schwartzapfel, “Parole Boards: Problems and Promise,” 81.

<sup>68</sup> Taylor Romine and Steve Almasy. “Sirhan Sirhan, RFK’s Assassin, Denied Parole by Board Whose Members Had Recommended It in 2021.” CNN. March 1, 2023. <https://www.cnn.com/2023/03/01/us/sirhan-sirhan-parole-decision/index.html>.



follow. With the current system, the public does not have access to information to understand the nuances of a case. Even if they did, there is the risk of mob justice, hence why these structures are in place. If the goal is democratic equality and prisoner's rights, following public opinion can be detrimental to that goal. If the goal is public safety, it may be somewhere in the middle. Ultimately, though, the goal of the parole system is to assess rehabilitation, as already described. If somebody is being defined by their past by not just parole boards, but the public and politicians too, then it is nearly impossible to move past that original crime.

### *Personal Political Bias*

One last interesting point to note is that there may be correlation between parole boards' reluctance to release and the political views of their members. Again, in theory a parole board should be unbiased and open-minded. However, it would be naïve to assume that a person's political views have no impact on decisions. In fact, people's attachment to their political affiliation has been shown to be more important than other identities.<sup>69</sup> While there has not been much clear research on party affiliation and its role on parole decisions, in part because both parties tend to be concerned with being perceived as weak on crime, things can be inferred.

In Burns' 1999 study of parole board members, 65% of parole board members identified as conservative, whereas only 35% identified as liberal.<sup>70</sup> The American population as a whole that year identified as approximately 40% conservative, 20% liberal, and 40% moderate.<sup>71</sup> While this may not be a fair comparison, since it is unclear whether the surveyed parole board members even had "moderate" as an option, it may be implied that parole boards are more conservative

---

<sup>69</sup> Milenko Martinovich, "Political Party Identities Stronger than Race or Religion | Stanford News," Stanford News (Stanford University, August 31, 2017), <https://news.stanford.edu/2017/08/31/political-party-identities-stronger-race-religion/>.

<sup>70</sup> Burns et al., "Perspectives on Parole: The Board Members' Viewpoint," 17.

<sup>71</sup> Lydia Saad, "U.S. Political Ideology Steady; Conservatives, Moderates Tie," Gallup.com (GALLUP, January 17, 2022), <https://news.gallup.com/poll/388988/political-ideology-steady-conservatives-moderates-tie.aspx>.

than the general public. Even common sense implies that—data notwithstanding—the 65-35% difference seems rather stark and likely not representative, although individuals' definitions of conservative and liberal may be different. Regardless, it interesting to note that the ideology of parole boards may not be in line with that of the general population.

## **Part II. Perspectives on Parole Boards**

## Chapter 5. No Second Chances

All of the factors described in Part I—the goal and duties of all-powerful parole boards, the lack of Constitutional protections for incarcerated people seeking parole, and the political motivations of parole boards—create a system that rigs the process against incarcerated people and promotes retribution over rehabilitation. But how do these issues actually manifest in people’s lives? What do incarcerated people, the people most directly impacted by the parole board, think about them? Do they see a fair chance? Do they see a system designed to rehabilitate?

Chapter 5 will share the words of incarcerated women serving life sentences and use these experiences to reflect on further problems and powers of parole boards. The women featured in this chapter are all incarcerated at Dayton Correctional Institution in Ohio. Like every state, Ohio has its own unique parole process. The Ohio Parole Board, as of April 2023, consists of 9 members. Unlike several other states, Ohio *does* have requirements for people to serve on the Board. Parole Board members must have education or work experience in corrections, prosecution, law enforcement, victims’ rights, probation or parole, or social work.<sup>72</sup> Notably absent is experience in prisoners’ rights work, defense law, or civil rights law. Even in the types of people allowed on the Parole Board, it seems like the odds are already stacked against the person seeking parole.

A number of the current processes and structures were implemented by Governor Mike DeWine’s administration following scandals in 2019, including the experience requirements and backgrounds of the Board. “Number one reform, I think, is diversifying the Parole Board,”

---

<sup>72</sup> Ohio Revised Code section 5149.10

DeWine said.<sup>73</sup> In addition, DeWine and Department of Rehabilitation and Corrections Director Annette Chambers-Smith implemented other reforms in 2019, including: allowing parole-eligible incarcerated people the ability to participate in and witness full Board hearings, which was disallowed before, increasing participation by victims and prosecutors, changing guidelines for tickets while incarcerated, streamlining the process when parole is recommended, creating new reentry programs, and increased training for Board members related to communications skills.<sup>74</sup> It may be too soon to tell if any of these changes or proposed changes have impacted parole decisions, and some of these changes may have a detrimental impact on incarcerated people's rehabilitation, such as increased powers for victims and prosecutors. Nevertheless, it is still interesting to note the changes that were incentivized by public outcry following scandal, again going back to the role of the public in parole processes.

For reference, fewer than a quarter of parole-eligible people are granted parole every year in Ohio, although the exact percentage does vary from year to year. These structures, guidelines, and changes may in theory have an impact on the amount of people granted parole. In future research, seeing if there is a correlation between policy changes and hearing outcomes could be interesting in assessing the merits of these proposed policies. Figure II shows the percent of parole-eligible people granted parole from 2011-2021 per the Ohio Parole Board.<sup>75</sup> Interestingly, the release rate post-2019 is slightly higher than before, but whether this trend will continue remains to be seen.

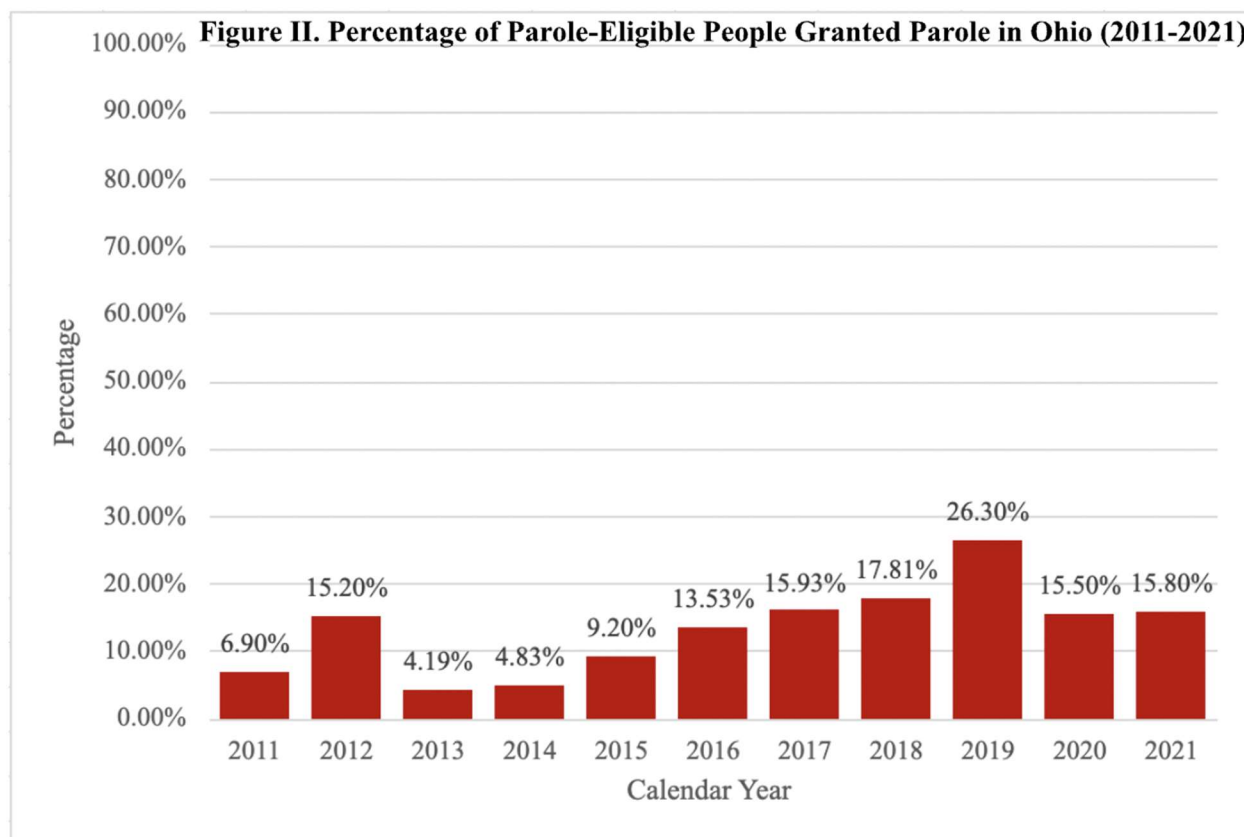
---

<sup>73</sup> Laura A. Bischoff, "Gov. DeWine Calls for Reform of Ohio Parole Board after DDN Story," *dayton-daily-news*, May 1, 2019, <https://www.daytondailynews.com/news/gov-dewine-calls-for-reform-ohio-parole-board-after-ddn-story/U7iZPk6DMoFZVD8Om4OdbO/>.

<sup>74</sup> Office of the Governor, "Parole Board Reform, New Parole Board Members Announced," *Ohio.gov*, 2019, <https://governor.ohio.gov/media/news-and-media/050119>.

<sup>75</sup> For 2011-2018, *Source*: Ohio Department of Rehabilitation and Correction, Parole Board Annual Report(s) CY 2011-2018 ; 2019-2021 *Source*: Ohio Department of Rehabilitation and Correction Annual Report(s).

Many of the aforementioned policy changes are still being implemented, or were in the process of implementation in 2019 and 2020, when interviews with incarcerated people were conducted. Because of that, some of the specific experiences described by women in their



interviews may no longer occur under new policy, but by and large most of the processes remain fundamentally the same, or at least share the same foundations. Also, policy changes do not minimize their past experiences. The fact that there were unjust policies in the first place is problematic. In addition, while Ohio may have changed some policies in the ensuing years, many of the policies the state has amended are still in use in other states, so highlighting people's experiences with them here is still important. It should be noted, however, that since the interviews were conducted, three more of the women interviewed have been denied parole, in addition to two who were denied prior to interviews.

While many of the women interviewed touched on a number of aspects in the parole process, there were several common themes that emerged, including structural or procedural problems, apathy from Board members, the idea of being defined by the crime, and emotional distress and trauma incarcerated people feel when going before the Board.

### *An Unclear Process*

Many of the institutional issues discussed in Part I of this work are seen in the case of the Ohio Parole Board. Many of the women interviewed shared experiences of the structures and systems of the Board failing at providing them an equal chance. “The system doesn’t offer you any support,” said Katie, who has not yet been to the Board.

Among the many factors that hinder people’s chances of parole is the issue of petty tickets, which are tickets written by a correctional officer for a minor violation, like being late or out of your room. Katie describes this as one example of the system failing to support her.

They can literally write me a ticket for bein’ out of place. Those are very bad strikes against you when you go to the Parole Board, which, a lot of lifers are-- not me personally-- but I know of a lot of people that have had petty tickets and it has hindered them when they went to the Parole Board. Cuz the Parole Board looks at every ticket as a big huge violation, like you've committed a crime all over again, and they tax you for it.

Something as minor as standing in the wrong place can doom somebody’s chances at parole. In fact, this issue was a part of the 2019 scandal that incited reforms.<sup>76</sup> Board Member Shirley Smith resigned at the end of 2018 and exposed a variety of practices of the Board, including rejecting people based solely on minor tickets like hanging a towel on a bed.<sup>77</sup> Somebody could take numerous classes, work diligently, and make a positive impact on the prison community, but putting a towel on their bed could deny them their chance to start anew.

---

<sup>76</sup> Laura A. Bischoff, “Ohio Parole Board under Fire from Victims, Inmates and Lawmakers,” Dayton Daily News, April 7, 2019, <https://www.daytondailynews.com/news/state--regional-govt--politics/ohio-parole-board-under-fire-from-victims-inmates-and-lawmakers/v3iPhe6kmV9wTm8SOxCpzO/>.

<sup>77</sup> *Ibid.*

That problem is compounded by the fact that many incarcerated people were simply not even informed about the process. “I don’t know nothin about the parole process,” Natasha bluntly said when asked what she knew. She is not alone in this; other women express the same sentiment.

In the six months prior to a person’s first parole hearing, they are assigned a case manager to assist them with the process. Case managers can be critical, especially for those without access to family or outside resources to create a release plan and organize housing and work. However, people’s experiences with case managers are often subpar. Hannah describes her thoughts about the role of her case manager, and the apathy of her case manager:

I don’t know what they do. I know they’re supposed to answer questions for us, and they’re supposed to help us with stuff like that, but they really don’t. When we go talk to them—at least mine is very like she’s not very approachable. She doesn’t really like to be bothered with stuff like that. She’ll shoot you down really quickly, so I just don’t really bother.

Hannah is not alone in that experience; other women also describe their interactions with their case managers as ineffective. After all, case managers’ duty is to help the women understand and prepare for the parole process. Courtney describes one of these ineffective interactions:

I have talked to her um, one time about the Parole Board and, um, things that I need to, like, really look into doing and all that stuff. Um, she gave me some aspects of what I should look for... But other things about the Parole Board, I’ve heard bits and pieces of things from other, um, older women that have been through it. But I really don’t know much about the Parole Board... The case managers, they don’t really talk to you about [preparation]. Um, case managers, they really talk to the short termers or people going on TC about it. Um, but other than that, like for us gettin’ ready to go to the Parole Board, they don’t really talk about it at all. That’s more of us just go and do it on our own, I guess. And I feel like we should be prepared for it. Because that’s a big decision for our lives.



Courtney describes several key parts of the problem with preparations for the process: first, people are not provided the resources or information to prepare for their Board, second, the perceived apathy of the case managers for this life changing event, and third, incarcerated women are forced to rely on each other rather than the system in place designed to help them through the process.

When asked what help she had preparing for the Board, Beverly repeated the same point about being helped by other incarcerated women.

Um. Well I actually have, uh, some of the inmates here helping me... You know, they've told me what to expect. Um, how to handle it, you know. What all to have ready, you know, do it on my own. I can't expect no one to do it for me. So, yeah. Like, [NAMES OF OLDER LIFERS]-- they are, you know, helping me get prepared.

While there is much that could be said about relationships and solidarity among the women incarcerated together, the fact that they are forced to lean on each other because they are under-informed is symptomatic of broader failures in that system.

Chantel describes her idea on how to remedy this and provide more information to women who need it through workshops to inform about the process.

I would think that they could maybe start that parole workshop to where they teach you things about what they're gonna want to know and, just general things to help you prepare. I think would be very helpful, very helpful. To not just lifers, to anybody who's gonna have to live on parole. Cuz if you just kick 'em out and they have no understanding of, you know, what to do and, you know. Most people are-- they need help.

Another issue along these same lines of lacking information is the fact that the Board expects people to complete certain tasks and check off certain boxes without explicitly describing what should be done. "There's this, um, unwritten criteria that we just know exists. That the Parole Board wants to see you having achieved before they can consider you ready for parole," Laura explains. "Before you go to parole instead of like them telling you well, this is

why you're getting rejected. It'd be nice to know what we're supposed to be doing, something to work for," Hannah also describes.

The fact that the process and requirements are so unclear ties back into issues with the authority of parole boards and due process. How can somebody reasonably accomplish what the Board wants, if they are not told what the Board wants? This makes it impossible for the person to satisfy the Board. It should be clear what people are expected to do to prove they have changed, rather than them having to guess. Even then, after a hearing, a person may have no idea why they were denied. Mary explains this:

It's just how it is. But as far as the Parole Board people, you can pretty much do anything you choose to do unless they tell you to do something specific, which sometimes they do, and then you have to do that. But that doesn't mean you, you're gonna continue to do it. A person like myself continuing to do what I know is the next right thing, you do nothing about it but give me time. That's not fair either.

People are expected to guess what is wanted, and if they are wrong, they are imprisoned for longer. This sense of futility is a common thread among many of the women's experiences. It is a guessing game with no right answer, and there is no prize, only punishment.

### *Falling on Deaf Ears*

While the structural issues and lack of information seem insurmountable on their own, that is not even accounting for the issues of Board hearings and members themselves. Regardless of how many boxes a person checks, the discretion is ultimately the Board's as to whether or not to parole somebody. While every person's Board hearing is different, many women report experiencing the same thing: apathy from the members. Mary is one of the two women interviewed who has been before the Board. She recalls her experience:

I went to the Board about two and a half, three years ago and it was two ladies. Actually it was seven people altogether. It was totally different. There was like four of them that didn't say a word. One was on his cell phone, another one was drinking some coffee and doing some filing. There was a couple of them sitting in the background, they all were

like in different places. There was a couple of them sitting in the background and when she asked if they had anything to say, they just shook their head. It was like I was wasting their time.

The Parole Board members, who are being paid approximately \$100,000 a year, could not be bothered to even pay attention to the hearings.<sup>78</sup> In fact, this is another thing brought up in the 2019 scandal; the apathy is recognized by other Board members, but nobody cares.<sup>79</sup>

Interestingly, though, Shirley Smith, in her exposé on the Parole Board, claimed that the Board *would* pay attention during death penalty clemency hearings because the public could see them. Margaret, who has also been through the process expands on Mary's observation, saying "you have people having little sidebars and rummaging around down in their desks and having lunch and answering phones, and again, you get that feeling like I'm talking to the air." She elaborates: "Previous experiences with the Ohio Parole Board have always made me come away feeling I probably got the same response if I looked at the wall and talked to it."

Apathy from the Board reinforces this theme of futility, that no matter what, the process is already rigged, and that nothing the person does can change that. At least, that is the perception. Hannah, who has yet to go before the Board, describes what she has heard about the experience:

I've only heard that nothing concrete, just that they say no matter what you do, you're going to get denied. If you don't get tickets, they say that you are sneaky and that you still have criminal behavior, because you're fooling them. If you do get tickets, even if it was years and years and years ago, they're going to hold them against you. Really the only thing I've heard is that there's really no winning. You're going to get flopped regardless no matter how good you are, no matter how much you achieve or accomplish, you're going to get flopped. That's the only thing I've really heard.

---

<sup>78</sup> Cleveland.com Editorial Board, "Ohio Parole Board Needs to Be Fully Staffed and It Needs to Hold Its Meetings in Public: Editorial," cleveland.com, February 1, 2019, <https://www.cleveland.com/opinion/2019/02/ohio-parole-board-reforms-are.html>.

<sup>79</sup> Jeremy Pelzer, "Ohio Parole Board Is Secretive and 'Frighteningly Unfair,' Former Member Shirley Smith Says," cleveland.com, January 23, 2019, <https://www.cleveland.com/politics/2019/01/ohio-parole-board-is-secretive-and-frighteningly-unfair-former-member-shirley-smith-says.html>.

This idea that people *will* be rejected may leave them feeling helpless, wondering what they could possibly do. People believe they may be doing everything they can, and just want to know what they need to do to get out. Mary again describes this feeling:

Well the Parole Board people said keep doing what you're doing. That could be a lot of things. But what they meant was don't get in trouble, thank God for that. I didn't have tickets and I'm doing positive things with my life, okay. You told me that when you gave me ten years, you told me that again when you gave me five years. Can't you see nothing's changing but the better and why are you constantly saying "I'm gonna give you time." That doesn't make sense to me.

From Mary's perspective, she has done everything she could; she did not have tickets, she stayed out of trouble, and she did positive things. She has done everything that could be asked to prove she has rehabilitated. But still, she keeps being told the same thing every Board, that her efforts are not good enough for some reason. Perhaps this is due to the alleged biases that the Board is accused of having towards people formerly on death row and people incarcerated under the old law.<sup>80</sup> She does offer advice for other people on their way to face the Board:

But for a person that's going to the Parole Board, I would say the same thing: just stay out of trouble and do positive things. But then after seeing people that don't do positive things stay in what we call the jail here inside of the prison, but they got their freedom. It's like we're fighting and we're not winning.

While somebody cannot control the Board's decision, they can control what they do while incarcerated—to some extent, that is. While access to programming may be out of the hands of an incarcerated person, they still have agency as to how they deal with the circumstances. They can make the best of the opportunities they do have, at least based on Mary's description. Also, more pessimistically, they have to fall in line and stay out of trouble in

---

<sup>80</sup> Laura A. Bischoff, "Ohio Parole Board Facing Lawsuit over 'Unwritten' Policies to Deny Release," The Columbus Dispatch, July 28, 2021, <https://www.dispatch.com/story/news/2021/07/28/ohio-parole-board-faces-new-lawsuit-over-its-practices/5398880001/>.

order to be even perceived as suitable for parole. On the other hand, people who seemingly do worse in prison are granted parole. The inconsistency, lack of standards and information, and perception of injustice present a system which is again fundamentally unfair.

*Due to the Nature of the Crime...*

Another experience described by incarcerated women in their interviews that echoes scholarly research is that of being defined by their original crime. The Ohio Parole Board, in this regard, is similar to much of the rest of the nation. No matter how much people try to move on and change from their crimes, the Board overlooks that progress and only focuses on the original crime. "They basically just asked about the crime itself," said Mary when asked about what the Board discussed. This is, as discussed in Chapter 2, contradictory to the very goals of parole; it emphasizes the original action rather than rehabilitation or change.

The purpose of a parole goal is to assess the whole person and if they are prepared and safe enough for release. But through the methods and actions of the Board, that is far from the reality. By asking about only that one event in their life, the Board is deciding that nothing else is as important, and they are making that criminal action the defining part of somebody's life.

Amelia is serving a sentence of life without parole, so she will never have the opportunity to try to earn her freedom. But still, does that not mean she does not deserve a second chance, nor does that aspect of her life fully define her. She says:

If I was given a chance to speak to the Parole Board or judge even, yes, I would say I deserve or anyone serving a life sentence or life without parole should be able to have a chance for a second chance at life. I understand that my worst time in my life, the worse thing that I've done doesn't define the person that I am as a whole, and I would explain that. I am a good person. I made a mistake that day. I have family, I have children, and it doesn't take away what I feel for my victim, because she had children as well and everything; however, in that moment, when I caught my case and committed that crime overall it doesn't take away the fact that I have a gentle heart. I'm not a monster that you would just throw away and just discount me. I can give society and my family so much more now if allowed the opportunity... it's like that's it, you're done, whatever, because

they look only at what you done. Yes, I take that. I did that. It's horrible what happened, but it's not me as a whole person.

Amelia describes some of the complex dynamics and intersectional aspects of incarceration. Most people do not *want* to commit a crime. To many people, it is because of specific circumstances, acting on impulse, mental health issues, or substance abuse. In fact, that is why rehabilitation theory is so prominent; people should be helped from these factors that cause crime. In turn, they will better themselves. Regardless of the reasoning or the theory behind an action, though, nobody deserves to be defined by one action alone, and as a body designed to promote rehabilitation, parole boards should prioritize getting a fuller picture of the person.

This is not just Amelia's perspective. A number of other women described feeling the same way, that their actions do not define them or paint a full picture of them. Chantel discusses the role mental health and addiction play in committing a crime, and the idea that it should not define her or anyone:

I think most people deserve-- I think everybody deserves a second chance whether it be us having to be in here or potentially getting to go home. We deserve a second chance. A lot of people have mental health issues that were never recognized... And then before you know it you have an addiction. It happens before you even know it, you know?... And I just want the public to know that sometimes decisions can be made in a split second that we regret for the rest of our lives. And if we had it to do again we would not choose that way.

Chantel continues her perspective on focusing on the full person, although rather than focusing on what incarcerated people deserve, she puts the onus on the Board to learn about the individual, saying, "I believe that they should at least go in depth about learning about the *individual* -- not *what they did* -- not just look at that. We were already trialed, we were judged for that already. We've already been sentenced on that. I think this is: 'What have you done with that time that you were given, and what do you plan on doing?'" I think that should be a major

factor.” It is clear that to Chantel, rehabilitation and assessing change is the focus. Another notable thing that she mentions is this idea of already being on trial, which was previously discussed in Chapters 2 and 3. She does not think it is right to be judged for the same crime she was already sentenced for. To Chantel, that is punishing somebody more for the same thing.

This perception is not unique to Chantel. When making decisions, the Parole Board is required to fill out a decision sheet with the reason for denying someone. In the case of Ohio, as of 2019-2020, when interviews were conducted, this decision sheet listed “the serious nature of the crime” as a reason to reject a parole application. This catch-all reasoning effectively serves as a blank check to deny somebody. If somebody is serving life in prison, after all, the nature of that crime is probably pretty serious. But that does not mean people cannot change, or that their plea should be disregarded. The two women interviewed for this project who have been before the Parole Board, Mary and Margaret, were both denied due to this reasoning. Margaret describes why this is flawed reasoning in determining whether to parole someone:

Their favorite catch-phrase in the past is "due to the nature of the crime, the inmate is not suitable, it would lessen the severity of the crime," or there are other ones that there is outside concern from the community. I've never been hit with that one, mine was always due to the nature of the crime. And there's nothing I or any other human being can do to change the nature of something. So I've always felt that no matter what you do or don't do, it didn't make a lot of difference.

Circumstances of a crime do not change over time. Holding someone in prison because of that is unfair to them. If somebody has spent their time in prison learning to be a “better” person, treating addiction, or working on underlying issues, they are not really the same as they were when they committed the crime. By using the nature of the crime as the justification for denying parole, the Parole Board is stating that people cannot do anything to change, that their entire parole hearing and life is defined by the nature of a crime they may have committed decades ago.

Interestingly, by 2023, the Ohio Parole Board decision sheet had been changed, likely in part due to criticisms of that very issue. As of 2023, the new wording reads: “There is substantial reason to believe that as the unique factors of the offense of conviction significantly outweigh the Incarcerated Individual rehabilitative efforts.” While this may seem different—after all, it is promoting rehabilitative efforts and weighing costs and benefits (re: Chapter 2)—is this really all that different? Theoretically, the Board should have been considering those rehabilitative efforts already. The impact that this reasoning has is essentially the same as before. It is still impossible for someone to change the “unique factors of conviction.” When this is the reasoning—something out of the hands of the incarcerated person—it removes all agency from them. They can do anything to try to change and make a positive impact, but defining them based on this means that they have no true power to make an impact on the parole decision.

Figure III. Is There a Difference? Ohio Parole Board Decision Sheet 2019 v. 2023<sup>81</sup>

4. The above-indicated factors support one or all of the following reasons cited in AR 5120:1-1-07 for continued incarceration.

A.  There is substantial reason to believe that the inmate will engage in further criminal conduct, or that the inmate will not conform to such conditions of release as may be established under AR 5120:1-1-12.

B.  There is substantial reason to believe that due to the serious nature of the crime, the release of the inmate into society would create undue risk to public safety, or that due to the serious nature of the crime, the release of the inmate would not further the interest of justice or be consistent with the welfare and security of society.

C.  There is substantial reason to believe that due to serious infractions of division level 5120:9-06 of the Administrative Code, the release of the inmate would not act as a deterrent to the inmate or to other institutionalized inmates from violating institutional rules.

D.  Not applicable.

---

4. The above-indicated factors support one or all of the following reasons cited in AR 5120:1-1-07 for continued incarceration.

A.  There is substantial reason to believe that the Incarcerated Individual will engage in further criminal conduct, or that the Incarcerated Individual will not conform to such conditions of release as may be established under AR 5120:1-1-12.

B.  There is substantial reason to believe that as the unique factors of the offense of conviction significantly outweigh the Incarcerated Individual rehabilitative efforts, the release of the Incarcerated Individual into society would create undue risk to public safety and/or would not further the interest of justice nor be consistent with the welfare and security of society.

C.  There is substantial reason to believe that due to serious infractions of division level 5120:9-06 of the Administrative Code, the release of the Incarcerated Individual would not act as a deterrent to the Incarcerated Individual or to other institutionalized Incarcerated Individual from violating institutional rules.

D.  There is need for additional information upon which to make a release decision

E.  Not applicable.

<sup>81</sup> Source: Ohio Department of Rehabilitations. Public information.



### *The Emotional Impact of Parole Hearings*

One further dimension present in parole hearings is that of emotion, both emotions that hearings can bring, and this idea that there are elements of performance or manipulation during hearings. While parole can provide hope to incarcerated people seeking release, the hearing itself can bring dread and anxiety. To many people, the parole process can bring up trauma, and hearing from others who have been through the process can create apprehension for a person who is about to have a hearing. Katie has not been to the Board yet, but hearing others talk about it has caused anxiety, as she describes:

Well, I am nervous about it, I do have, like -- When I think about it I have, I get really bad anxiety. Because I know that it's a very bad experience. It's never been a positive experience for anyone that I know that's went over the years. So it's very frightening to even [inaudible] for having to go there. I wish I didn't have to. I wish they'd just open the gate in six years and say, "Okay, go!" You know, but, yeah. I'm definitely gonna have to go. But laws are changing so hopefully things'll go well and in six years I'll go free. I know it's like going through trial all over again, which is gonna be hard.

Katie's anxiety is not because she is afraid of being rejected, but because of the *process*. Katie sees the Board as just as emotionally impactful as her trial. Hearing experiences from other women, who have all had bad experiences, has created this sense of fear and anxiety. All of the structures described in Part I—the “second courtroom,” lack of protections, and political motivations—all have direct emotional impacts on women who experience the parole process.

This is not just a moment of anxiety. To many of these women serving life sentences, parole is their only chance to reenter society and redefine their lives. Whether somebody gets parole or not is a decision that influences the rest of their life, if they have the opportunity to be free or spend the rest of their days in prison. The significance of that decision can create a huge emotional toll on a person. That, compounded with the stress of an unclear process and the sense

of hopelessness, is a huge burden on a person and creates an existential dread. Veronica describes this:

For me it's frightening. I lay awake at night sometimes just wondering what's gonna happen when I go because I've seen, you know, a lot of women go and they come back devastated because they've been torn apart at the Parole Board and made to feel very small really... I don't want to have my hopes up to like go home to my family and then look up at ten more years. Like I've seen that happen to two people that I'm okay with, I've been doing time with. So it's just a scary thing, and I don't want to really have to relive my crime all over again. I do it every day already so to have somebody sit in my face and tell me I'm a terrible person, I already deal with anyway so I already feel like that and I'm trying to not feel guilty about everything that I did and so to have to anticipate going up and explaining it all over again, it's tough. It's frightening. I'm sorry, I'm sorry.

Veronica's thoughts illustrate a number of factors that create that emotional burden. First are the stories of the Board "tearing apart" women—digging up dirt, reminding them of their crime, berating them, or treating them as subhuman. In addition is that theme of reliving the crime and going to trial again. She does not want to relive actions she has already been punished for. Finally, there is the idea of being told how terrible she is. This, obviously, is detrimental to one's self image and identity but is also detrimental to the core goal of rehabilitation. How can someone be expected to better themselves while being told how terrible and small they are?

The anxiety associated with the process is not solely because of other people who have gone through the process; some of it comes from the very structures and procedures of the hearing. In Ohio, victims and the public can make statements to oppose paroling a person which can be emotionally triggering by reminding people of past trauma. While, usually, trauma from crime is associated with the victim, these events can also be traumatizing to the person who committed the crime; after all, many people who are convicted of crimes suffer from substance abuse, domestic violence, or mental illness. Even for those who may not, that event can be traumatizing. Katie further describes how she feels about the parole process:

You know, I'll have to see the victim's family again, so that's gonna be hard. You know, despite her anger-- it's his daughter. It was my significant other who, I took his life. And his daughter was 17 at the time, so-- And her and I had a really good relationship, despite her sayin' otherwise in court. Which, we really did. We had a really good relationship. So it's really hard to look at her and know that I brought her so much pain because I did care about, you know, and um-- So, but anyway, going through the experience is going to be really hard, cuz it's reliving every-- All that pain all over again, stuff that I just pushed down over the years, just tryin' to move forward and survive everyday.

In all of these ways, the parole process can be traumatizing and emotionally degrading to incarcerated people seeking parole. While there are various structural issues with the parole process, the emotional toll may be just as, if not more, important to understanding the way the process impacts people.

One thing to note is that everybody handles emotions differently. While this may seem obvious, this is a fact that appears to be overlooked by Parole Boards. Some of the women interviewed describe the Board as having expectations on how to react and behave. They expect everyone to be guilty and remorseful, and they expect guilt and remorse to manifest the same way in every person. Margaret, who has been to the Board and been "flopped" (denied parole), describes how there is no right way to behave, as nothing will ever be what the Board wants:

If you go into a hearing and you are extremely emotional and you're flailing around and sobbing, they're looking at you like you're a bad movie. If you go in and you are composed, then you don't appear to have any remorse. To be very honest... when you have told your story as often as I have to as many different people, and I was raised in a very non-demonstrative family, you didn't do a lot of touching and hugging and kissing, you certainly didn't cry in front of strangers-- I do tear up. As you know, I feel guilt. But again, it's like a two-edged sword with you show too much emotion, you don't show enough emotion, so you try to compose yourself. When I talk about my son, I do tear up. But again, it's like what do they want to see? Obviously they want the truth. They want to see someone that has remarkably changed. But I didn't come into prison a flailing, cooing, slobbering monster, so I don't know what they want from me.

This process does not assess how much somebody has changed. Rather, it expects incarcerated people to act and behave exactly as the Board wants them to. There is no right answer; the Board only judges the person based on how they feel the person should behave.

People are therefore incentivized to perform a certain way, acting in the way they believe the Parole Board expects them to. “You know she, she told us, like, how we should react to certain things because they’re going to make you try to react a certain way,” Katie says, describing a formerly incarcerated woman who serves as a liaison to help her through the process. “They wanna pull, they wanna make you angry, you know. They wanna make you look like the bad guy all over again. So, you know, there’s different things that you really need to prepare for.”

At the end of the day, all that these people want is another chance at life. They believe that they have changed, and that their past should not define them. They do not want to relive the trauma of the moment that led to their incarceration or the trial. They want to be heard and taken seriously as people who want to redefine themselves. All of these factors described by incarcerated women illustrate a system where the women are being defined by the past, being ignored and treated as a lesser in the present, and not being given a fair chance. This system is not a fair system, and it is not a system to assess rehabilitation.

## **Chapter 6. Power and Punishment**

While much of this project has been focused on theories of justice—specifically the theory of rehabilitation in corrections—it would be an incomplete analysis of the parole process without discussing the different ways power manifests itself throughout the process, both formally and informally. While there are a variety of forms of power present, including institutional power and structural power, which have already been alluded to in this work, this section primarily seeks to discuss the themes of discursive power and identity that are made evident by the experiences of the incarcerated women.

### *Hierarchy of Discourse in Parole Hearings*

As decision makers, parole boards have some inherent power over incarcerated people seeking parole. As an institution, they can set the rules of procedures and decide whether a person remains imprisoned or paroled. In this regard, there is immense structural and institutional power. While that may be obvious, the discursive power that parole boards have is taken for granted.

Parole boards, as bodies that largely have the sole discretion and absolute authority to make decisions, are generally not bound to which factors they can and cannot consider when making a decision. While theoretically, new laws and policies could be implemented that describe what they can and cannot consider, it is largely up to the board to decide what they care about. Even if there were limits on what could be considered, because of the lack of Constitutional protections described in Chapter 3, there is little that can be done if the parole board considers more than they should legally be allowed. Even if there were legal remedies, it would be impossible to prove the board is acting outside of their mandate; members may subconsciously violate those rules and restrictions. For example, if the state of Ohio passed a law saying that the Ohio Parole Board may not consider somebody's original offense in parole hearings, they would simply remove the "serious nature" part of their decision sheet and continue business as usual. Perhaps they would stop discussing that in formal meetings, but if a Board member knows about the original crime, bases their decision on it, and keeps that to themselves instead of discussing it during a hearing, no one can do anything. Ultimately, the absolute authority of parole boards shows itself again.

This relates to Foucault's theory of discourse and discursive power in several ways. Parole boards are parts of broader power structures and also have discursive power in and of

themselves. Discursive power can be understood as the power to determine discourse and in turn what is considered important or unimportant to discuss, which can further reinforce power dynamics and social inequalities.<sup>82</sup> First, parole boards are a part of the broader power structure of the American prison system, and they are influenced by *prison discourse*, a linguistic system which creates a “prisoner” and people in authority over them who can define what relationships they are allowed to have. This discourse can be used for social control of incarcerated people and reinforce their lack of power in this system.<sup>83</sup>

One term in prison discourse that is interesting to note, for example, is calling an incarcerated person an “offender.” This implies that the person has offended someone, and that they are solely an offender and not a victim of structural failure or even a full person. Who have they offended? The state? The victim? People offend other people all of the time, so why this choice? It seems so sanitized, cleansed of any offense and yet still inherently creating a power dynamic. Nevertheless, people like correctional officers and parole board members use it constantly.

In addition, parole hearings have their own discourse. Parole boards get to define their own structures, rules, and priorities. They get to decide what factors they consider or prioritize when making decisions. More often than not, they decide to focus on risk and fear, rather than rehabilitation and justice, as discussed in Chapter 2. The discourse of parole hearings is defined by parole boards. If the discourse of parole hearings centers around a person’s original crime, then this discursive power is being used to define a person as a criminal and lesser than the board or outside members of society. The parole board’s power to define the narrative can be used to

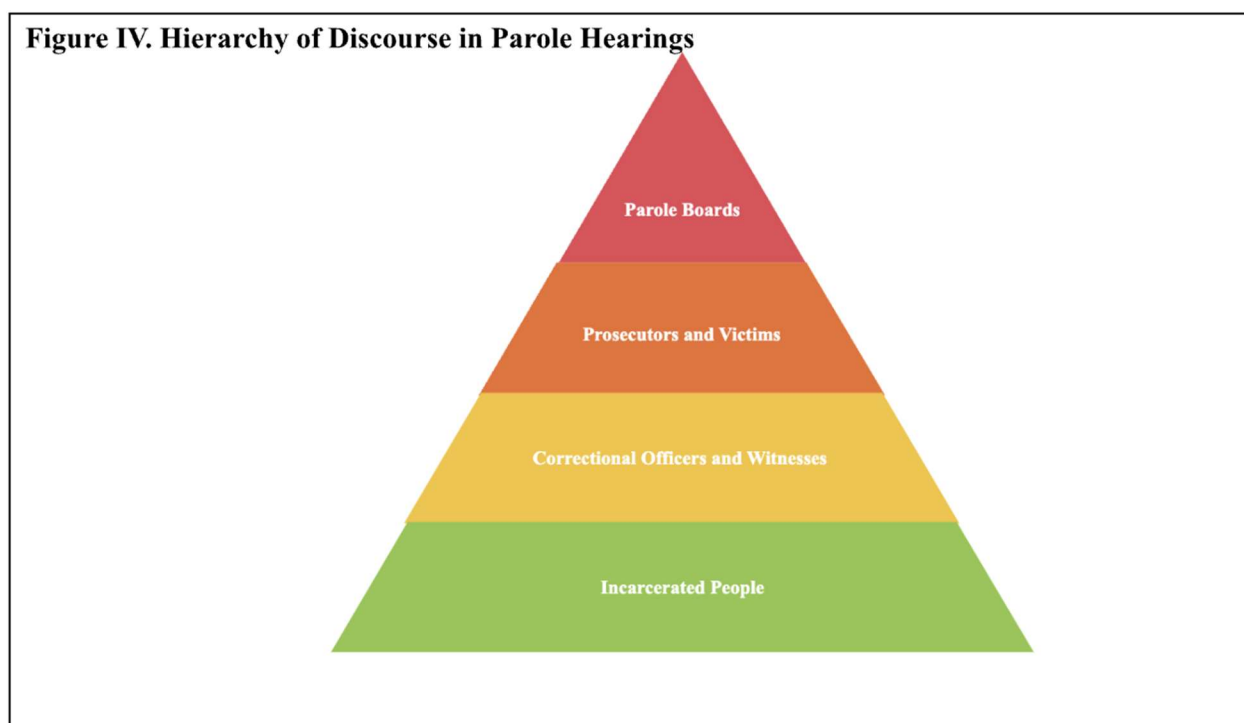
---

<sup>82</sup> Victor Pitsoe and Moeketsi Letseka, “Foucault’s Discourse and Power: Implications for Instructionist Classroom Management,” *Open Journal of Philosophy* 03, no. 01 (2013): 23–28, <https://doi.org/10.4236/ojpp.2013.31005>.

<sup>83</sup> Andrea Mayr, *Prison Discourse: Language as a Means of Control and Resistance*, Palgrave Macmillan UK EBooks (Palgrave Macmillan, 2004), <https://doi.org/10.1057/9780230511965>.

define a person's identity and establish hierarchy as to whose voice matters more, demonstrated in Figure IV.<sup>84</sup>

In this parole hearing hierarchy, because of the weight the board gives some statements over others, they are essentially creating a power structure where parole boards, despite contributing the least to the conversation, hold the ultimate power to decide the outcome. Parole



boards may not directly contribute to discussions but, their influence is outsized. They may not talk much, but when they do, they define the conversation, structure, and rules. Next would be prosecutor and victim statements, which contribute more than the board and have more power than the other groups to influence parole decisions because of what the board has decided to focus on. Because parole boards focus on the original crime, victim and prosecutor statements

<sup>84</sup> Figure created with smartdraw.com; This figure demonstrates whose statements are valued more in parole hearings because of what is prioritized in parole discourse. The top denotes those whose opinions bear oversized influence, while the bottom is groups who have less influence in the decision-making process.

get more attention and influence in this hierarchy; victims may craft a narrative that is taken at face value, whereas the view of the incarcerated person is critiqued and questioned. Victims and prosecutors are given more power in the parole process. The next level of hierarchy would be statements from other people including prison staff, corrections officers, or other witnesses, and arguably including incarcerated people's attorneys. Their statements, which in the purpose of this argument could be assumed to be favorable to the incarcerated person, are treated as less important than victims' and prosecutors', but they are viewed with more respect and legitimacy than statements from incarcerated people, as if having a certain profession or title makes them more qualified to define a person's story. At the bottom of the hierarchy that parole discourse creates in hearings are incarcerated people. Their statements are treated as less important than the other groups'. They may be perceived as lying or be inherently ignored because they are viewed as "criminals" or "offenders." By choosing to focus on the original crime, parole boards have created a power dynamic in which they and the victims have more power than incarcerated people. While victim's rights advocates may support this, the debate as to whether this is *right* or *just* is more of a normative and political debate. It is clear that because of what is emphasized in parole discourse, some people are given more power than others.

#### *Personal Power and Identity*

As important as discursive power is in understanding the parole process, there is one more power dynamic in parole processes that should be brought to light. That is the idea of personal power. While the concept of personal power has conflicting—and often contradictory—definitions, for the purpose of this section, personal power will be defined loosely as “the power to determine one's own outcome and independence from others,” based on Lammers, Stoker, and



Stapel's psychological definition.<sup>85</sup> This is in contrast to what is often used by others to define personal power: the power of an individual person to influence others or their followers, which Lammers et al. describe as "social power."<sup>86</sup> When personal power is understood in this context, it is clear that incarcerated people have *no* personal power in the parole process.

The experiences incarcerated women describe with the parole process emphasizes this; defining somebody by the crime committed removes personal power from people in two ways. First, it means that no matter what the person does, they will be defined how the parole board defines them. They have no ability to influence the outcome of the hearing. No matter what they do—how many programs they are in, or how much they have rehabilitated—they have no ability to change the board's thinking or influence the decision of the board. Their choices and actions cannot help them get parole. They have no power to better themselves enough to influence the decision-making process or be independent from the board's expectations of them.

This lack of power delves even deeper than that, however. The second aspect of removing personal power is disempowering them from determining their own identity. Under this contemporary parole regime, the person does not even have the personal power to define their own identity as a human being. Identity in this context can be understood as both an idea within oneself, as aspects of an individual that contribute to make them unique, and shared social identities that make a person a part of a shared group.<sup>87</sup> Oftentimes, a person's social identity is determined by social or structural power. Think of gender classifications, for example. A person

---

<sup>85</sup> Joris Lammers, Janka I. Stoker, and Diederik A. Stapel, "Differentiating Social and Personal Power: Opposite Effects on Stereotyping, but Parallel Effects on Behavioral Approach Tendencies," *Psychological Science* 20, no. 12 (December 2009): 1543–48, <https://doi.org/10.1111/j.1467-9280.2009.02479.x>.

<sup>86</sup> *Ibid.*

<sup>87</sup> Martin Sökefeld, "Debating Self, Identity, and Culture in Anthropology," *Current Anthropology* 40, no. 4 (August 1999): 417–48, <https://doi.org/10.1086/200042>.

may be assigned a gender socially, but they also have the personal power to define their own gender expression and identity.

Parole boards can define somebody as a “criminal,” lumping them into that social group of “criminals” and all the baggage that comes with it, including stereotypes, misconceptions, and formal discrimination. While this is a clear example of structural power, focusing on personal power is just as important. In an ideal system, a person would be empowered to distance themselves from this social group and prove that they should not be defined as being a part of this group. Their actions and rehabilitation should allow them to be seen as more than just a “criminal.” But the processes and structures in place deny them that ability. They disempower a person to define their social and individual identity. Parole boards, by only focusing on the crime, are telling people that they are defined by that. Not only is their social identity impacted by the structural power of parole boards and lack of individual power, but their perception of themselves is impacted by the lack of individual power as well.

#### *Other Power Dynamics in the Parole Process*

This section has focused primarily on discursive and personal power, but this does not mean there are no other aspects of power involved in the parole process. Clearly, there is the role of structural power and state power. After all, the structures and state are inherently responsible for these problems. Much of this has been alluded to or discussed already in conversations around this issue. Frankly, the scope of this project is not to touch on *every single* issue in American parole processes, but rather to touch on *some of* the issues in the process, specifically those that have been under-discussed or that were specifically brought up by the women interviewed in this project, hence the issues of identity and discourse.

In addition, it would be naïve to assume that there is no influence of racial, gender, age, or sexuality power dynamics. As alluded to earlier in this work, there is evidence that there are racial disparities in parole decisions.<sup>88</sup> Therefore, further research on other forms of social inequality manifesting in parole decisions is necessary to truly understand the full picture of parole. Regardless, the dynamics discussed in this work contribute to an understanding of some of the personal impacts that the process has on incarcerated people.

---

<sup>88</sup> Huebner and Bynum, “The Role of Race and Ethnicity in Parole Decisions,” 907–38.

### **Part III. Moving Forward**

## Chapter 7. Policy Recommendations

This project has summarized a variety of structural problems with parole boards in the United States. This final section articulates a series of broad policy recommendations that states should adopt to make a fairer, more rehabilitation-based process—empowering incarcerated people while also recognizing the need for parole boards and their duty.

### *Ideal Goal of Parole Boards*

As repeated throughout this work, indeterminate sentencing and parole boards were both established to determine whether someone was adequately rehabilitated, not how risky they are. Indeterminate sentencing systems, because of their ability to assess individuals' rehabilitation and preparedness to reenter society, are beneficial to incarcerated people—at least more so than the alternative, which is keeping them in prison. However, this is only if processes are fair and focused on the right things. The first key in determining aspects of an improved parole system is to shift the paradigm from risk to rehabilitation. The goal of parole boards should be to assess whether someone has successfully rehabilitated, and when they are ready to reenter society, with the ultimate goal of reducing recidivism, finding alternatives to incarceration, and encouraging rehabilitation for incarcerated people.

In line with that goal, parole boards should consider, in this order:

- 1) to what extent the person has rehabilitated,
- 2) what factors are in place to prevent recidivism and encourage the reentry of the person into society,
- 3) what costs there are—financially, psychologically, socially, etc.—to keeping the person in prison,

- 4) aspects of the person's life and/or parole plan that have a significant risk of recidivism,
- 5) benefits and need of keeping the person incarcerated, and
- 6) if the risks outweigh the benefits of paroling the person.

Ultimately, the goal of these considerations is to put the person first and focus on giving them the opportunity for a second chance and preventing recidivism risks, rather than defining them based on their past actions. With these considerations in mind, there are tangible policy changes that may be warranted.

#### *Parole Seeker's Bill of Rights*

The priority of these goals is to ensure fairness in hearing and review processes, while again prioritizing rehabilitation. While structural changes are necessary from the top down in order to best demonstrate a commitment to the incarcerated people, there must be rights and expectations that they should have, and some state policies need to be changed to fulfill those rights.

- 1) Parole should be presumptive. Statutes enabling parole should be amended to reflect this and so that federal legal accountability based on due process is applicable per *Greenholtz*. Parole boards should go into hearings with the intention to release the person, unless there is a glaring or legitimate reason not to. This shifts the burden from the incarcerated person to the state. People do not need to fight against the odds to prove they deserve parole; the state should need to argue if they think a person should not be paroled.

- 2) There should be clear decision-making frameworks in place.<sup>89</sup> These frameworks should assess rehabilitation primarily, but there may also be consideration of the risks of releasing the person if rehabilitation is the priority. Frameworks should be clearly outlined and available to the person so that they can articulate their case in accordance with the frameworks, and they must be binding; the parole board cannot ignore them. This may include a list of factors the board is assessing for, and how they will be assessed; for example, are they basing it off of recidivism risk or looking for reasons the person may be a risk to society?
- 3) Hearings and decisions should be based on future plans and risks, not the crime that got the person incarcerated originally. The purpose of parole is to allow somebody a second chance and judge how rehabilitated someone is. Defining somebody by their crime is detrimental and contrary to their rehabilitation. Input from prosecutors and victims, if allowed, should be restricted from discussing the original crime.
- 4) Hearings must be fair and allow incarcerated people rights similar to those seen in criminal trials.<sup>90</sup> Hearings should happen face-to-face and allow incarcerated people the right to challenge statements or provide rebuttals to claims. People should be notified in a reasonable amount of time of their hearing and be granted logistics to participate.
- 5) Hearings must allow the applicant the opportunity to prove their case as to why they deserve parole, or in the case of presumptive parole, to counter any

---

<sup>89</sup> Recommendation based on: Edward E. Rhine, Joan Petersilia, and Kevin R. Reitz, "The Future of Parole Release," *Crime and Justice* 46, no. 1 (January 2017): 283, <https://doi.org/10.1086/688616>.

<sup>90</sup> *Ibid.*

objections by the state. This includes allowance of statements from people in proximity to the person, as well as character statements. In addition, there should be a right to an attorney to assist the applicant in compiling materials and ensuring hearing procedures are followed.

- 6) Outcomes must be transparent. If an application is rejected, there should be a clear reason based on the framework of what it was, and there should be recommendations as to how to reach the level of rehabilitation the board expects so that they have a clear path to work toward. People should not have to guess what to do better or feel helpless. There should also be a reasonable amount of time before the next parole process can begin if the previous one was rejected.
- 7) There must be accountability to the public and the incarcerated person. Hearings should be open to the public and have transcripts available. There should be removal processes in place for members who violate procedures or are shown to have biases or ethical concerns. There should also be an appeal structure in place both within the board and also judicially. Applicants should have access to all records related to the case, including their prison record, programming, or any other factors that may be used for or against their case. While parole decisions to release are often scrutinized, decisions to keep people imprisoned are often not scrutinized.
- 8) The parole board must be fairly composed. Parole boards should be appointed in a non-partisan, non-political fashion. This may include public recruiting or appointment by a non-partisan committee. In Hawaii, for example, members are nominated by a board which includes members of both political parties, including



the chief justice of the Hawaii supreme court, president of the bar association, president of the state National Association of Social Workers, and others.<sup>91</sup>

Members should be considered civil servants and cannot be fired by the governor for retaliation. They should be as independent as feasibly possible. Even an outside-the-box concept like a “parole jury,” where random people are selected to make parole decisions, could depoliticize the process.<sup>92</sup>

- 9) Requirements should be standardized—everyone in a state must face the same framework. People should have a reasonable expectation of what they are walking into, and so should their representation. While parole boards are very individualized, the standards should be the same. Likewise, there must be appeal processes for violations of equal protection laws— if a board acts in a way that could be seen as discriminatory, there must be objection processes and protections in place.
- 10) The rights should be continually updated as time changes. While policies and politics may change, these expectations should become rights, even if only in an administrative sense. In addition, there should be more resources for incarcerated people. Access to mental health care, addiction treatment, or other resources that could help rehabilitate someone should be expanded.<sup>93</sup>

While these recommendations are very broad, that is by design. This paper is limited in that it cannot assess in depth specific state policies and provide specific recommendations state

---

<sup>91</sup> Schwartzapfel, “Parole Boards: Problems and Promise,” 82.

<sup>92</sup> Ball, “Normative Elements of Parole Risk,” 396.

<sup>93</sup> While there is debate whether rehabilitation should be the principal framework to base the American justice system, that is the basis for the parole system and therefore these recommendations are based on most effectively meeting that ideal.

by state. In fact, some of these proposals have already been implemented in places. That is why this “Parole-seeker’s Bill of Rights” takes that format. These should be expectations and standards guaranteed to any person seeking parole nationwide, and it is up to states to implement the specifics. These “rights” were designed to address the issues of unfairness, ambiguity, politics, bias, and secrecy, which are all the contemporary realities in America’s parole boards. The decision was also made to provide nationwide recommendations rather than Ohio-specific recommendations because of some of the limitations described in the final chapter, as well as the fact that most of the literature on the issue revolves around national statistics and federal caselaw. In future research, delving deeper into Ohio state caselaw and legislation could be beneficial to inform more specific policy recommendations.

### **Conclusion**

This project, by assessing parole boards from multiple perspectives, has found several significant themes and topics. The academic perspective on parole boards primarily highlights structural problems with parole boards, including their history as rehabilitation-assessing bodies, the authority and duty of parole boards, legal protections for incarcerated people in the process, and political influences of parole. The person-first, ethnographic perspective alludes to these topics and also discusses lack of transparency, apathy from board members, defining people as a “criminal,” and the emotional impacts these processes have.

All of this is contextualized with understandings from several theories of justice and power. The American parole system is based on the criminological theory of rehabilitation, standing in contrast to retribution, which seems to manifest itself in the current iteration of American parole boards. Parole boards are also the key parts of several power structures

including state power, and boards also have inherent discursive power because of their absolute authority. In addition, parole processes in the United States disempower incarcerated people from having personal power to influence their own fate or identity.

All of this analysis can be used to inform various policy recommendations for parole boards across the nation to create processes that are fairer, more rehabilitation-based, and more centered on the experience of incarcerated people.

### *Limitations and Future Directions*

As much as this project touches on different dynamics of parole processes, it is far from a complete analysis. In terms of the academic perspective, there are, of course, things that have been overlooked. One of the biggest limitations in this project is simply its timing. The limited amount of time spent on this project prevented extended fieldwork by the author, instead choosing to focus on original analysis delving deeper into interviews that were already conducted, analysis into policy, government statistics, and case law. Timing limitations and choices made by the author inherently limited some theoretical analysis.

Tying into that are the choices made—both with the literature/academic analysis and policy recommendations—to focus on broad strokes rather than being more specific about Ohio or any state's policies, which provides less depth in analysis of the process in Ohio. However, this allows the findings of the project to be more applicable, understandable, and universal in spirit. Another theoretical limitation is that this work did not go deeper into theories of justice. Theories other than retribution and rehabilitation were barely discussed, for example. In addition, the section examining power in parole hearings does not focus on the countless other dimensions of power that were not described in this work. In this regard, future scholars could build that theoretical understanding of the parole process.

Another limitation is the lack of information or discussion of the role of race, sex, and gender in parole processes. Much like most other structures in the criminal justice system, parole boards exacerbate racial inequality and disparities. This project is not intended to appear as a “colorblind” discussion of parole, but discussing the role of race and gender in parole hearings would be other projects in and of themselves. If this project were to be repeated with fewer constraints, examining the differences of people’s experiences based on demographics like age, race, ethnicity, and gender would be incredibly fascinating and help further provide a more thorough understanding of parole hearings. All of these limitations serve as a reminder that as much as this work may have touched on a variety of aspects of the parole system, it is far from a complete analysis.

### *Closing Thoughts*

There are still so many unknowns about American parole processes; all of these systems are in place, but people rarely question *why* they are the way they are or *what* the reality is rather than the theory. This project in particular had the express purpose to establish that American parole boards are contradictory to their original purpose, and that they can disempower people who were previously empowered. This can be seen through all the different dimensions and perspectives discussed in this project, including structural flaws and the real, lived experiences of incarcerated people. Ultimately, the current system is *not* one based on rehabilitation; it is based on punishing people for a past they cannot change when all they want is another chance at life. With that in mind, there is a final question to consider moving forward, posed by Cara:

“When is enough enough, and at what point does someone deserve a second chance?”

## Bibliography

Alschuler, Albert W. "The Changing Purposes of Criminal Punishment: A Retrospective on the Past Century and Some Thoughts about the Next." *The University of Chicago Law Review* 70, no. 1 (2003): 1. <https://doi.org/10.2307/1600541>.

Angwin, Julia, Jeff Larson, Surya Mattu, and Lauren Kirchner. "Machine Bias." ProPublica. ProPublica, May 23, 2016. <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

Bales, J. S. "Equal Protection and the Use of Protest Letters in Parole Proceedings: A Particular Dilemma for Battered Women Inmates." *Seton Hall Law Review* 27, no. 1 (1996): 33–69.

Ball, W. David. "Heinous, Atrocious, and Cruel: Apprendi, Indeterminate Sentencing, and the Meaning of Punishment." *Columbia Law Review* 109, no. 5 (June 2009): 893–972. <http://digitalcommons.law.scu.edu/facpubs/16>.

Ball, W. David. "Normative Elements of Parole Risk." *Stanford Law and Policy Review* 22, no. 2 (January 2011): 395–412. <https://digitalcommons.law.scu.edu/facpubs/479/>.

Bischoff, Laura A. "Gov. DeWine Calls for Reform of Ohio Parole Board after DDN Story." Dayton Daily News, May 1, 2019. <https://www.daytondailynews.com/news/gov-dewine-calls-for-reform-ohio-parole-board-after-ddn-story/U7iZPk6DMoFZVD8Om4OdbO/>.

Bischoff, Laura A. "Ohio Parole Board Facing Lawsuit over 'Unwritten' Policies to Deny Release." The Columbus Dispatch, July 28, 2021. <https://www.dispatch.com/story/news/2021/07/28/ohio-parole-board-faces-new-lawsuit-over-its-practices/5398880001/>.

Bischoff, Laura A. "Ohio Parole Board under Fire from Victims, Inmates and Lawmakers." Dayton Daily News, April 7, 2019. <https://www.daytondailynews.com/news/state--regional-govt--politics/ohio-parole-board-under-fire-from-victims-inmates-and-lawmakers/v3iPhe6kmV9wTm8SOxCpzO/>.

Burns, Ronald, Patrick Kincade, Matthew C. Leone, and Scott Phillips. "Perspectives on Parole: The Board Members' Viewpoint." *Federal Probation* 63, no. 1 (December 1999): 16–22.

Champion, Dean J. *Probation, Parole, and Community Corrections*. 4th ed. Upper Saddle River: Prentice Hall, 2002.

Chu, Donna. "Due Process and the Parole Release Decision." *Kentucky Law Journal* 66, no. 2 (January 1, 1977). <https://uknowledge.uky.edu/klj/vol66/iss2/6>.

Cleveland.com Editorial Board. "Ohio Parole Board Needs to Be Fully Staffed and It Needs to Hold Its Meetings in Public: Editorial." cleveland.com, February 1, 2019. [https://www.cleveland.com/opinion/2019/02/ohio\\_parole\\_board\\_reforms\\_are.html](https://www.cleveland.com/opinion/2019/02/ohio_parole_board_reforms_are.html).

Ditton, Paula M., and Doris James Wilson. "Truth in Sentencing in State Prisons." US Department of Justice Office of Justice Programs, January 1999.

Dripps, Donald A. "Fundamental Retribution Error: Criminal Justice and the Social Psychology of Blame ." *Vanderbilt Law Review* 56, no. 5 (October 2003): 1424–25.

Duff, R. A. "Responsibility, Restoration, and Retribution." In *Retributivism Has a Past, Has It a Future?*, edited by Michael Tonry, 63–85. Oxford: Oxford University Press, 2011. <https://doi.org/10.1093/acprof:oso/9780199798278.003.0004>.

Ebrahimji, Alisha. "What We Know about the Daniel Perry Case and What Happens next after Texas' Governor Says He Wants to Pardon Him." CNN, April 11, 2023. <https://www.cnn.com/2023/04/11/us/daniel-perry-greg-abbott-pardon-case-explained/index.html>.

Enns, Peter K. "The Public's Increasing Punitiveness and Its Influence on Mass Incarceration in the United States." *American Journal of Political Science* 58, no. 4 (March 5, 2014): 857–72. <https://doi.org/10.1111/ajps.12098>.

Goldbaum, Christina. "Videoconferencing in Immigration Court: High-Tech Solution or Rights Violation?" *The New York Times*, February 12, 2019, sec. New York. <https://www.nytimes.com/2019/02/12/nyregion/immigration-court-video-teleconferencing.html>.

Grine, Alyson, and Emily Coward. "Recognizing Implicit Bias within the Equal Protection Framework." *Trial Briefs Magazine*, April 2017, 26–30.

Harrison, H A . "Violations of the Double Jeopardy Prohibition under the Federal Parole Release System." *Boston University Law Review* 63, no. 3 (1983): 673–716.

Huber, Gregory A., and Sanford C. Gordon. "Accountability and Coercion: Is Justice Blind When It Runs for Office?" *American Journal of Political Science* 48, no. 2 (March 3, 2004): 247–63. <https://doi.org/10.1111/j.0092-5853.2004.00068.x>.

Huebner, Beth M., and Timothy S. Bynum. "The Role of Race and Ethnicity in Parole Decisions." *Criminology* 46, no. 4 (November 2008): 907–38. <https://doi.org/10.1111/j.1745-9125.2008.00130.x>.

Jeremy Pelzer, Jeremy. "Ohio Parole Board Is Secretive and 'Frighteningly Unfair,' Former Member Shirley Smith Says." cleveland.com, January 23, 2019.

<https://www.cleveland.com/politics/2019/01/ohio-parole-board-is-secretive-and-frighteningly-unfair-former-member-shirley-smith-says.html>.

Lammers, Joris, Janka I. Stoker, and Diederik A. Stapel. “Differentiating Social and Personal Power: Opposite Effects on Stereotyping, but Parallel Effects on Behavioral Approach Tendencies.” *Psychological Science* 20, no. 12 (December 2009): 1543–48. <https://doi.org/10.1111/j.1467-9280.2009.02479.x>.

Martinovich, Milenko. “Political Party Identities Stronger than Race or Religion | Stanford News.” Stanford News. Stanford University, August 31, 2017. <https://news.stanford.edu/2017/08/31/political-party-identities-stronger-race-religion/>.

Mayr, Andrea. *Prison Discourse: Language as a Means of Control and Resistance*. Palgrave Macmillan UK EBooks. Palgrave Macmillan, 2004. <https://doi.org/10.1057/9780230511965>.

Morgan, Kathryn, and Brent L. Smith. “Victims, Punishment, and Parole: The Effect of Victim Participation on Parole Hearings.” *Criminology & Public Policy* 4, no. 2 (May 2005): 333–60. <https://doi.org/10.1111/j.1745-9133.2005.00025.x>.

National Research Council of the National Academies. “Policies and Practices Contributing to High Rates of Incarceration National Academies of Sciences, Engineering, and Medicine. 2014. The Growth of Incarceration in the United States: Exploring Causes and Consequences. Washington, DC: The National Academies Press. <https://doi.org/10.17226/18613>.” In *The Growth of Incarceration in the United States*, edited by Jeremy Travis, Bruce Western, and Steve Redburn, 70–91. Washington, D.C.: National Academies Press, 2014. <https://doi.org/10.17226/18613>.

Office of the Governor. “Parole Board Reform, New Parole Board Members Announced.” Ohio.gov, 2019. <https://governor.ohio.gov/media/news-and-media/050119>.

Pitsoe, Victor, and Moeketsi Letseka. “Foucault’s Discourse and Power: Implications for Instructionist Classroom Management.” *Open Journal of Philosophy* 03, no. 01 (2013): 23–28. <https://doi.org/10.4236/ojpp.2013.31005>.

Pratt, John . “Colonization, Power and Silence: A History of Indigenous Justice in New Zealand Society.” In *Restorative Justice: International Perspectives*, 137–55. Criminal Justice Press, 1996.

Prison Policy Initiative. “Probation and Parole.” [www.prisonpolicy.org](http://www.prisonpolicy.org). Accessed January 14, 2023. [https://www.prisonpolicy.org/probation\\_parole.html#:~:text=3.7%20million%20people%20in%20the](https://www.prisonpolicy.org/probation_parole.html#:~:text=3.7%20million%20people%20in%20the).

Reitz, Kevin R., and Edward E. Rhine. "Parole Release and Supervision: Critical Drivers of American Prison Policy." *Annual Review of Criminology* 3, no. 1 (January 13, 2020): 281–98. <https://doi.org/10.1146/annurev-criminol-011419-041416>.

Renaud, Jorge. "Parole Release Policies Scoring Table." [www.prisonpolicy.org](http://www.prisonpolicy.org), February 26, 2019. [https://www.prisonpolicy.org/reports/parole\\_grades\\_table.html](https://www.prisonpolicy.org/reports/parole_grades_table.html).

Rhine, Edward E., Joan Petersilia, and Kevin R. Reitz. "The Future of Parole Release." *Crime and Justice* 46, no. 1 (January 2017): 279–338. <https://doi.org/10.1086/688616>.

Robina Institute of Criminal Law and Criminal Justice. "Parole Boards within Indeterminate and Determinate Sentencing Structures." Robina Institute of Criminal Law and Criminal Justice, April 3, 2018. <https://robinainstitute.umn.edu/articles/parole-boards-within-indeterminate-and-determinate-sentencing-structures>.

Romine, Taylor, and Steve Almasy. "Sirhan Sirhan, RFK's Assassin, Denied Parole by Board Whose Members Had Recommended It in 2021." CNN, March 1, 2023. <https://www.cnn.com/2023/03/01/us/sirhan-sirhan-parole-decision/index.html>.

Saad, Lydia. "U.S. Political Ideology Steady; Conservatives, Moderates Tie." Gallup.com. GALLUP, January 17, 2022. <https://news.gallup.com/poll/388988/political-ideology-steady-conservatives-moderates-tie.aspx>.

Sawyer, Wendy, and Peter Wagner. "Mass Incarceration: The Whole Pie 2022." [www.prisonpolicy.org](http://www.prisonpolicy.org), March 14, 2022. <https://www.prisonpolicy.org/reports/pie2022.html#:~:text=Once%20we%20have%20wrapped%20our>.

Schwartzapfel, B. "Parole Boards: Problems and Promise." *Federal Sentencing Reporter* 28, no. 2 (December 1, 2015): 79–84. <https://doi.org/10.1525/fsr.2015.28.2.79>.

Schwartzapfel, Beth. "How Parole Boards Keep Prisoners in the Dark and behind Bars." *Washington Post*, July 11, 2015, sec. National. [https://www.washingtonpost.com/national/the-power-and-politics-of-parole-boards/2015/07/10/49c1844e-1f71-11e5-84d5-eb37ee8eaa61\\_story.html](https://www.washingtonpost.com/national/the-power-and-politics-of-parole-boards/2015/07/10/49c1844e-1f71-11e5-84d5-eb37ee8eaa61_story.html).

Sökefeld, Martin. "Debating Self, Identity, and Culture in Anthropology." *Current Anthropology* 40, no. 4 (August 1999): 417–48. <https://doi.org/10.1086/200042>.

Spohn, Cassia. *How Do Judges Decide? : The Search for Fairness and Justice in Punishment*. 2nd ed. Los Angeles: SAGE, 2009.

LII / Legal Information Institute. "Suspect Classification," n.d. [https://www.law.cornell.edu/wex/suspect\\_classification#:~:text=Under%20Equal%20Protection%2C%20when%20a](https://www.law.cornell.edu/wex/suspect_classification#:~:text=Under%20Equal%20Protection%2C%20when%20a).



Thomas, Kimberly, and Paul Reingold. "From Grace to Grids: Rethinking Due Process Protection for Parole." *The Journal of Criminal Law & Criminology* 107, no. 2 (2017): 213–52. <https://scholarlycommons.law.northwestern.edu/jclc/vol107/iss2/2>.

Wardrop, Kaitlyn, Ralph C. Serin, and David Rentler. "Evaluating the Structured Parole Decision Making Framework in Three U.S. States." *American Journal of Forensic Psychology* 37, no. 2 (April 2019): 1–26.