

# Reflecting on Parole's Abolition in the Federal Sentencing System

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**NEARLY ALL DISCUSSIONS** of the Sentencing Reform Act of 1984 (SRA) focus on what the landmark legislation created, and rightly so, because the SRA created so much that has come to define the modern federal criminal justice system. The SRA created the U.S. Sentencing Commission, which then created U.S. Sentencing Guidelines, which thereafter engendered an elaborate federal sentencing jurisprudence. But in this essay, I wish to reflect on what the SRA abolished, namely parole.

With ever-growing concerns about prison growth and about prisoner recidivism and reentry, parole and related "back-end" sentencing mechanisms are garnering renewed attention. My modest goal here is to bring some of that attention to the federal system, even though parole was formally abolished in this system three decades ago. After briefly reviewing parole's history, I will suggest how the SRA's complete elimination of parole may have, at least indirectly, exacerbated some of the most problematic aspects of modern federal sentencing. I will then highlight a few notable recent federal sentencing developments that have functioned as a kind of "parole light." Against that backdrop, this essay closes by suggesting that advocates for federal sentencing reform consider whether recreating a modest, modern form of parole might now prove an especially efficient and effective means to improve the federal sentencing system.

## Revisiting the Rise and Fall of Parole

Through the latter half of the nineteenth

century, progressive criminal justice reformers championed a move away from capital and corporal punishments toward the use of imprisonment as a primary punishment for all offenders.<sup>1</sup> As new prisons were constructed from coast to coast, American criminal justice systems embraced rehabilitation as the central punishment concern and transformed sentencing policies and practices in numerous ways. Most fundamentally, prison sentences became indeterminate: sentencing judges were now to impose imprisonment terms in ranges with prison and parole officials subsequently deciding exactly how long an offender would remain incarcerated.<sup>2</sup> Through a system pioneered by penologist Zebulon Brockway, offenders sentenced to prison terms of whatever duration could, through good behavior and other means of demonstrating rehabilitation, earn early release on parole.<sup>3</sup> While on parole, offenders would then be closely supervised in the community and violations of the terms of parole could result in a return to prison.

Indeterminate sentencing with broad

<sup>1</sup> See generally David Rothman, *Perfecting the Prison: United States, 1789-1865*, in *THE OXFORD HISTORY OF THE PRISON: THE PRACTICE OF PUNISHMENT IN WESTERN SOCIETY* 100, 111-29 (Norval Morris & David Rothman eds., 1995); Edgardo Rotman, *The Failure of Reform: United States, 1865-1965*, in *THE OXFORD HISTORY OF THE PRISON*, *supra*, at 169.

<sup>2</sup> See generally JEREMY TRAVIS & SARAH LAWRENCE, *BEYOND THE PRISON GATES: THE STATE OF PAROLE IN AMERICA* (2002).

<sup>3</sup> See Edward Lindsey, *Historical Sketch of the Indeterminate Sentence and Parole System*, 16 J. AM. INST. CRIM. L. & CRIMINOLOGY 9, 20-40 (1925).

parole authority was intended to serve, as the Supreme Court would put it, the "prevalent modern philosophy of penology that the punishment should fit the offender and not merely the crime."<sup>4</sup> This model of sentencing and corrections was embraced by nearly every state in the early 1900s,<sup>5</sup> and parole officially became a part of the federal sentencing system in June 1910.<sup>6</sup> While the forms and functioning of federal parole decision-making evolved over time,<sup>7</sup> nearly all federal prisoners throughout most of the twentieth century received sentences that included parole eligibility after serving just one-third of the prison term imposed by federal judges. Just before the SRA's passage, the average federal prisoner was being released on parole after serving less than half of the prison sentence that a federal judge had imposed.<sup>8</sup>

But the 1970s ushered in, as one leading commentator explained, a "wide and

<sup>4</sup> *Williams v. New York*, 337 U.S. 241, 247 (1949).

<sup>5</sup> See Joan Petersilia, *Parole and Prisoner Reentry in the United States*, 26 CRIME & JUST. 479, 489 (1999) ("By 1927, only three states (Florida, Mississippi, and Virginia) were without a parole system, and by 1942, all states and the federal government had such systems.").

<sup>6</sup> See Parole Act, ch. 387, § 1, 36 Stat. 819 (1910).

<sup>7</sup> See generally U.S. DEP'T OF JUSTICE, U.S. PAROLE COMMISSION, *HISTORY OF THE FEDERAL PAROLE SYSTEM* (May 2003).

<sup>8</sup> See U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *HISTORICAL CORRECTIONS STATISTICS IN THE UNITED STATES, 1850-1984*, Table 6-17 (December 1986) (reporting that federal prisoners in 1979 served on average 48% of their prison sentences, and in 1983 served on average 45% of their prison sentences).

precipitous decline of penal rehabilitationism” as a foundational theory for sentencing systems and practices.<sup>9</sup> Judges, politicians, academics, and advocates became increasingly suspicious of the efficacy of efforts to rehabilitate offenders and increasingly concerned about discretionary sentencing procedures giving short shrift to defendants’ individual rights and to the value of equal treatment across cases.<sup>10</sup> Researchers highlighted and criticized the unpredictable and disparate sentences that often resulted from discretionary sentencing systems focused on offender rehabilitation; reformers urged the development of structured sentencing laws requiring judges to impose sentences that were more fixed, certain, and consistent.<sup>11</sup>

Indeterminate prison sentences and parole review, often the most tangible manifestation of the rehabilitative model of sentencing and corrections, were among the first targets of sentencing reform efforts. Maine eliminated parole in 1976, and many other states in subsequent years followed suit by abolishing parole for all or many offenses and offenders.<sup>12</sup> During this same period, as criticisms of discretionary sentencing practices dovetailed with concerns about increasing crime rates, “tough on crime” policies and politics began to draw adherents to the view that only fixed mandatory sentencing terms could help deter criminal offenses and that lengthy prison terms were needed to incapacitate offenders and promote public safety.<sup>13</sup>

<sup>9</sup> See FRANCIS A. ALLEN, *THE DECLINE OF THE REHABILITATIVE IDEAL* 7–20 (1981).

<sup>10</sup> See, e.g., AMERICAN FRIENDS SERVICE COMMITTEE, *STRUGGLE FOR JUSTICE* (1971); KENNETH CULP DAVIS, *DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY* (1969); MARVIN E. FRANKEL, *CRIMINAL SENTENCES: LAW WITHOUT ORDER* (1971); Robert Martinson, *What Works?—Questions and Answers About Prison Reform*, 35 PUB. INT. 22 (1974).

<sup>11</sup> See DAVID FOGEL, *WE ARE THE LIVING PROOF: THE JUSTICE MODEL FOR CORRECTIONS* (1975); TWENTIETH CENTURY FUND TASK FORCE ON CRIM. SENTENCING, *FAIR AND CERTAIN PUNISHMENT* (1976); ERNEST VAN DEN HAAG, *PUNISHING CRIMINALS* (1975); ANDREW VON HIRSCH, *DOING JUSTICE: THE CHOICE OF PUNISHMENTS* (1976); JAMES Q. WILSON, *THINKING ABOUT CRIME* (1975).

<sup>12</sup> See JOAN PETERSILIA, *WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY* 65–67 (2003).

<sup>13</sup> See generally Gary T. Lowenthal, *Mandatory Sentencing Laws: Undermining the Effectiveness of Determinate Sentencing Reform*, 81 CALIF. L. REV. 61 (1993); Marc Mauer, *Why are Tough on Crime Policies So Popular?*, 11 STAN. L. & POL’Y REV. 9 (1999).

Through the enactment of the SRA and mandatory minimum sentencing statutes in the 1980s, Congress joined the ranks of many state legislatures embracing determinate sentencing laws that eliminated parole and called for fixed and lengthy prison terms for many offenses and offenders. At the time the SRA was being developed—a time of diminished faith in any rehabilitative programming and growing “get tough” sentiments—the vices of parole were especially salient. The Senate Report supporting the SRA stressed that parole was premised on an “outmoded” and “failed” rehabilitation model for criminal sentencing and contributed to uncertainty and inconsistencies in federal sentencing outcomes.<sup>14</sup> To the drafters of the SRA, abolition of parole seemed a sensible and simple way to help create clearer and more certain and consistent federal sentencing decision-making. Without parole officials deciding when to release prisoners early, the sentencing judge, the defendant, victims, lawyers, and the community could all know that any prison term announced in court at sentencing was the prison term that a defendant was going to serve.

As explored in the next section, the SRA’s elimination of parole altered the institutional dynamics of sentencing decision-making in ways that have long echoed through modern federal sentencing policies and practices. Determinate schemes, by firmly fixing prison terms at initial sentencing, necessarily increase the power and impact of all “front-end” sentencing decision-makers—i.e., the policymakers who write and revise sentencing rules, the lawyers who advocate in the application of these rules, and the judges who make individual sentencing decisions. Moreover, not only does the elimination of parole inherently “raise the stakes” for all the actors involved in front-end sentencing decisions, it also tends to calcify the consequences of—and compound any problems resulting from—the sentencing decisions made by these front-end actors.

### Federal Sentencing’s Modern Struggles, Untempered by Parole

With the benefit of hindsight and three decades of federal sentencing developments after the passage of the SRA—a period defined by extraordinary controversy over the operation of the federal criminal justice system and enormous growth in the federal

prison population—one can reasonably wonder if federal sentencing has ultimately been disserved by the complete abolition of parole. The front-end actors shaping the modern federal system have produced sentencing laws and related jurisprudence marked by considerable and problematic complexity, rigidity, and severity. If parole had persevered in some form through the enactment of the SRA, perhaps some of the most controversial and criticized aspects of the modern federal sentencing system would have developed differently or at least had their most harmful consequences tempered.

Consider, for example, Congress’s disconcerting enactment of a series of severe and rigid mandatory minimum sentencing statutes after the passage of the SRA.<sup>15</sup> Researchers and practitioners have documented that mandatory sentencing laws regularly produce unjust outcomes and functionally shift undue sentencing power to prosecutors when selecting charges and plea terms.<sup>16</sup> The U.S. Sentencing Commission has detailed in multiple reports that federal mandatory minimum sentencing statutes have not achieve their purported goals and that statutes linking lengthy prison terms to certain drug quantities have had a disproportionate and unduly severe impact on minority defendants.<sup>17</sup>

Congress likely would have enacted an array of mandatory minimum sentencing statutes even if parole had been preserved in the SRA. But the import and impact of these statutes would not have been quite so problematic if federal parole officials could and did regularly

<sup>15</sup> See *Federal Mandatory Minimums*, FAMILIES AGAINST MANDATORY MINIMUMS, <http://famm.org/wp-content/uploads/2013/08/Chart-All-Fed-MMs-NW.pdf> (last visited July 2, 2017).

<sup>16</sup> See BARBARA S. VINCENT & PAUL J. HOFER, FED. JUDICIAL CTR., *THE CONSEQUENCES OF MANDATORY MINIMUM PRISON TERMS: A SUMMARY OF RECENT FINDINGS* (1994); Michael Tonry, *The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings*, 38 CRIME & JUST. 65, 65–66 (2009) (“Experienced practitioners, policy analysts, and researchers have long agreed that mandatory penalties in all their forms . . . are a bad idea . . . It is why nearly every authoritative nonpartisan law reform organization that has considered the subject . . . have opposed enactment, and favored repeal, of mandatory penalties.”)

<sup>17</sup> See U.S. SENTENCING COMM’N, *SPECIAL REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM* (1991); U.S. SENTENCING COMM’N, *SPECIAL REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY* (1995).

<sup>14</sup> See S. Rep. No. 98-225 (1983).

release early lower-level offenders based on their prospects for reentering society safely. Advocating against the abolition of parole in this very publication back in 1975, Maurice Sigler, then the chairman of the U.S. Board of Parole, warned of the modern “legislative temper” while explaining how parole helps ameliorate problematic sentences resulting from “penal codes [that] are typically a mish-mash of conflicting penalties, some of them savage in their severity.”<sup>18</sup> Sigler’s words seem prophetic four decades later as the federal system continues to struggle with a modern mish-mash of conflicting and severe mandatory minimum sentencing provisions enacted by Congress since the SRA.

Turning to the sentencing guidelines, one can also imagine how the preservation of parole might have influenced the work of the U.S. Sentencing Commission for the better. The Sentencing Commission, doggedly pursuing consistency and uniformity, produced intricate guidelines designed to limit judicial discretion through a focus on quantifiable offense harms and by precluding consideration of mitigating offender characteristics like past employment and family ties.<sup>19</sup> And while the Supreme Court’s landmark *Booker* decision made the guidelines advisory and thereby softened their rigidity,<sup>20</sup> the current guidelines still incorporate problematic facets of Congress’s mandatory minimum statutes and still require judges to adjudicate offense conduct never formally charged or proven. These problematic elements of guideline sentencing reflect continuing efforts to moderate the significance and impact of prosecutorial charging and plea choices at sentencing.

Had some form of parole remained in place after the SRA, perhaps the Sentencing Commission would not have been so inclined, either conceptually or practically, to produce an intricate and rigid sentencing guidelines structure. Conceptually, if parole persevered, the Commission might have been drawn to a guideline framework that better reflected the

reality that sentencing uniformity was only one of a number of competing goals the SRA sought to advance in a reformed federal sentencing system.<sup>21</sup> Practically, if parole persevered, the Commission would have known its guidelines could not possibly dictate final sentencing outcomes through rules seeking to micromanage judicial decision-making and mute prosecutorial decision-making. In other words, parole’s preservation in the SRA might have altered the Sentencing Commission’s entire approach to developing sentencing guidelines and might have ultimately led to a federal guideline structure that, like many state guideline systems, proved less controversial by being more modest in ambition and implementation.<sup>22</sup>

Rounding out this reflection of what might have been, consider finally the last three decades of guideline development and resulting jurisprudence. The size, structure, and substance of the initial guidelines prompted many federal sentencing judges to complain about “a mechanistic administrative formula” that converted them into “judicial accountants” in the sentencing process.<sup>23</sup> But the initial guidelines now look modest compared to their current iteration: After nearly 800 amendments, the Guidelines Manual has grown to more than 500 pages of sentencing instructions.<sup>24</sup> And the size and scope of the Commission’s official rules are modest still when compared to the tens of thousands of federal court opinions which have interpreted and expounded upon the meaning and application of the guidelines—a jurisprudence compelled not only by complicated, often-changing guideline provisions, but also by thousands of federal defendants each and every year choosing to appeal guideline calculations and resulting sentences.

Because sentencing judges had such

unfettered discretion before the SRA, some jurists surely would have complained about new guidelines no matter their initial form. But the severity of the guidelines has been an enduring judicial concern, no doubt in part because there is no possibility for parole to “soften the blow” of mandated or suggested prison terms. Moreover, the determinate nature of sentences has surely contributed to the Commission repeatedly revising the guidelines and to federal defendants regularly appealing every adverse sentencing determination. In a system with parole, smaller problems with general sentencing rules or individual sentencings can be at least partially remedied through the usual work of parole boards; in a system without parole, sentencing rules must be ever modified through guidelines amendments and claims of sentencing error must be ever addressed through appeals.

This extensive imagining of a modern federal sentencing world significantly recast by the preservation of parole is meant to be more of a thought experiment than a serious prediction of an alternative federal sentencing history. I do not wish to claim that parole would have been a magic elixir that miraculously remedied all of modern federal sentencing’s ills. Most critically, I do not believe the increase in the severity of federal sentences and the growth in the federal prison population could or should be attributed wholly or even in large part to the abolition of parole. Many state sentencing systems that preserved parole as they reformed their sentencing systems in modern times also experienced significant prison population growth; it is not a given that preservation of parole ensures a more moderate sentencing scale or a more moderated prison population.<sup>25</sup>

While not meaning to portray parole as a panacea, this section of my article has sought to spotlight an all-too-often forgotten reality about parole—namely that, conceptually and institutionally, parole mechanisms and parole boards can serve as an important bulwark against the kind of impersonalized severity that has come to define much of the modern federal sentencing experience. Put another way, I do not think it mere coincidence that the entire federal sentencing system became problematically complex, rigid, and severe

<sup>18</sup> Maurice H. Sigler, *Abolish Parole?*, FEDERAL PROBATION, June 1975, at 42, 47.

<sup>19</sup> See generally Douglas A. Berman, *Distinguishing Offense Conduct and Offender Characteristics in Modern Sentencing Reform*, 58 STAN. L. REV. 277 (2005); Ronald F. Wright, *Complexity and Distrust in Sentencing Guidelines*, 25 U.C. DAVIS L. REV. 617, 632 (1992) (noting that “the way that the Sentencing Commission read its statute and defined its task . . . made uniformity the key objective of the guidelines”).

<sup>20</sup> *United States v. Booker*, 543 U.S. 220 (2005).

<sup>21</sup> See generally Marc Miller, *True Grid: Revealing Sentencing Policy*, 25 U.C. DAVIS L. REV. 587 (1992).

<sup>22</sup> See generally Richard S. Frase, *State Sentencing Guidelines: Diversity, Consensus, and Unresolved Policy Issues*, 105 COLUM. L. REV. 1190 (2005).

<sup>23</sup> See, e.g., *United States v. Bogle*, 689 F. Supp. 1121, 1163 (S.D. Fla. 1988) (Aronovitz, J., concurring); *United States v. Russell*, 685 F. Supp. 1245, 1249 (N.D. Ga. 1988); Stanley A. Weigel, *The Sentencing Reform Act of 1984: A Practical Appraisal*, 36 UCLA L. REV. 83, 99-100 (1988) (calling guidelines “a complex parlor game”).

<sup>24</sup> See U.S. SENTENCING COMM’N, GUIDELINES MANUAL (2016) (Appendix C).

<sup>25</sup> See generally NATIONAL RESEARCH COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 79-83 (2014) (discussing research on the relationship between abolition of parole and prison growth).



right after parole was abolished in the SRA. In turn, I suggest that policymakers and advocates who would like to see a federal sentencing system that is less complex, rigid, and severe now consider whether parole could and should be returned to this system. And in making this suggestion, I note that in recent years federal sentencing policymakers have ushered in an array of recent federal sentencing reforms and proposals that can be viewed as a kind of “parole light.”

### Noticing Forms of “Parole Light” and Considering Advocacy for Parole’s Return

Though parole has never been designed to serve as a remedy to problems elsewhere within a sentencing system, parole mechanisms historically have and institutionally can serve as a kind of “back-end safety valve” in the operation and administration of a sentencing system. Once parole was abolished in the federal sentencing system, this “back-end” safety valve role would have to be filled in other ways, and the last decade has seen this void filled in a variety of notable ways in the federal system. Specifically, in recent years there have been (1) repeated reductions in guideline sentences for drug offenses made retroactively applicable to current prisoners, (2) an unprecedented U.S. Department of Justice initiative to encourage the submission of clemency applications by certain federal prisoners, and (3) a landmark corrections reform bill proposing various means for certain prisoners to secure early release. As explained below, these notable recent sentencing developments all can be viewed as a kind of “parole light.”

Three significant reductions in guideline sentences for drug offenses over the last decade have been implemented to benefit federal prisoners in parole-like manner. In 2007, the United States Sentencing Commission amended the guidelines for offenses involving crack cocaine to reduce by two offense levels the recommended sentencing ranges associated with particular amounts of crack; in 2011, the Commission amended the guidelines to implement the Fair Sentencing Act’s further reduction of sentences tied to particular crack amounts; in 2014, the Commission voted to reduce offense levels for all drug amounts by two levels.<sup>26</sup> The Sentencing Commission ultimately voted to give retroactive effect

to all of these drug guideline amendments, which authorized judges to review motions to reduce sentences for all those serving prison terms based on the previous guidelines. Demonstrating the parole-like import and impact of these retroactive guideline changes, the Commission made plain that its vote for guideline retroactivity authorized only a “discretionary reduction” to which the defendant had no right or entitlement, and the Commission instructed judges to “consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant’s term of imprisonment.”<sup>27</sup>

Another parole-like sentencing development recently emerged in the form of unique clemency activity during the final years of the presidential term of Barack Obama. In April 2014, the deputy attorney general announced an initiative to “encourage qualified federal inmates to petition to have their sentences commuted”: the Department of Justice would prioritize clemency applications from inmates who meet a series of criteria including having been “non-violent, low-level offenders” who had “served at least 10 years of their prison sentence” and did “not have a significant criminal history” and had “demonstrated good conduct in prison.”<sup>28</sup> Unsurprisingly, the announcement of this “Clemency Initiative” resulted in a huge influx of clemency petitions. The Department of Justice ultimately made recommendations to the White House on tens of thousands of petitions, and President Obama ultimately reduced the prison sentence of 1,715 federal offenders.<sup>29</sup> The criteria used by the Justice Department to screen and prioritize clemency petitions plainly reflected parole-like concerns and decision-making, and one leading official stressed the role that prison behavior and related public-safety concerns played in the Justice Department’s clemency petition review process.<sup>30</sup>

Last but not least, Congress has recently considered what would be landmark legislation involving correctional reforms that have

an array of parole-like features. The proposed Sentencing Reform and Corrections Act of 2015 (SRCA) would have enabled prisoners to earn credits for completing rehabilitative programs in prison, allowing for earlier release to a halfway house or home confinement or community supervision.<sup>31</sup> Under the SRCA, the amount of available “earned time” would be determined by prison officials using modern risk assessment tools designed to gauge each prisoner’s risk of reoffending as part of plans for prisoner involvement in “recidivism-reducing programming” and “productive activities.” Under this bill, prisoners who commit new offenses or violate prerelease conditions can be sent back to prison, just as parolees historically can get sent back to prison for violating the term of parole. The SRCA also includes provisions that would allow some elderly and terminally ill prisoners to be released from prison early to serve the remainder of their sentences through home confinement if prison officials decided their release would not endanger the public and they meet other (parole-like) criteria.

My description of these recent notable federal sentencing developments as a kind of “parole light” is not meant as a criticism, nor do I wish to demean or minimize their significance. My goal, rather, is to note and highlight how many of the most consequential reforms and proposals in the federal sentencing system over the last decade are, in ways both subtle and obvious, echoing much of the essential philosophy and practical decision-making that defines the mission and work of parole. In so doing, I am drawn back again to the prophetic words of Maurice Sigler, then-chairman of the U.S. Board of Parole, in this very publication back in 1975. He closed his commentary with these final sentences:

To those who say “let’s abolish parole,” I say that as long as we use imprisonment in this country, we will have to have someone, somewhere with the authority to release people from imprisonment. Call it parole—call it what you will. It’s one of those jobs that has to be done.<sup>32</sup>

Recent federal sentencing developments highlight and reinforce Sigler’s point that a sentencing system always “will have to have

<sup>26</sup> See U.S. SENTENCING COMM’N, GUIDELINES MANUAL, Appendix C, Amendments 706, 750 & 782 (2016).

<sup>27</sup> See U.S. SENTENCING COMM’N, GUIDELINES MANUAL, Appendix C, Amendments 713, 759 & 788 (2016).

<sup>28</sup> See U.S. Dep’t of Justice, Office of Pardon Attorney, *Clemency Initiative* (Feb 2017), available at <https://www.justice.gov/pardon/clemency-initiative>.

<sup>29</sup> See *id.*

<sup>30</sup> See Sari Horwitz, *Obama to Commute Hundreds of Federal Drug Sentences in Final Grants of Clemency*, WASH. POST, Jan. 16, 2017.

<sup>31</sup> See The Sentencing Reform and Corrections Act of 2015, S. 2123.

<sup>32</sup> Maurice H. Sigler, *Abolish Parole?*, FEDERAL PROBATION, June 1975, at 42, 48.

someone, somewhere with the authority to release people from imprisonment.” With the federal prison population growing from roughly 35,000 in 1984 when parole was abolished to 220,000 prisoners in 2014, it is hardly surprising that recent years have led to reforms and proposals that, in varied ways, expand federal prisoner release authority and function as a kind of “parole light.” But what I find a bit surprising is the absence of any major advocates for federal sentencing reform making any full calls for recreating at least a modest, modern form of parole.

Though a full-throated case to restore parole in the federal system is beyond the scope of this essay, the discussion above should highlight ways parole might serve as an efficient and effective means to at least partially ameliorate long-standing concerns about mandatory minimum statutes and dysfunctional guidelines. In addition, though terms like “parole” and “rehabilitation” may still carry political baggage three decades after the SRA’s passage, the recent political

discourse around federal statutory sentencing reform has suggested that parole-like corrections reforms may be among the SRCA’s least controversial elements—in part because many SRCA provisions are modeled on state reform efforts that have succeeded in reducing crime rates and prison populations through enhanced prison-based rehabilitation-oriented programming, expanded geriatric and medical parole, and use of risk assessment tools to inform release decisions. The correctional reform provisions of the SRCA show that many federal policymakers not only respect, but are eager to replicate in some form, the parole reform activity in many states. In light of that reality, federal sentencing reform advocates can and should consider whether the time has come to make bringing back parole an integral part of their advocacy efforts.

In a recent article on “The Future of Parole Release,” three leading scholars have noted that “paroling authorities are well positioned to play crucial roles in engineering

new approaches” to the modern problems of mass incarceration and enduring sentencing severity.<sup>33</sup> Building on the wisdom of state experiences in recent decades, these scholars have set forth an astute blueprint in the form of a “a 10-point program for the improvement of discretionary parole release systems in America.”<sup>34</sup> In so doing, they note that jurisdictions will be required to “develop new or expanded release capacities to help unwind the punitive policies of the past.”<sup>35</sup> The goal of this essay has been to highlight reasons why I think reformers who have been troubled by the punitive policies that the SRA helped usher into the federal system ought to think about talking up the concept of federal parole anew.

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<sup>33</sup> See Edward Rhine, Joan Petersilia, & Kevin Reitz, *The Future of Parole Release*, 46 *CRIME AND JUSTICE* 279 (2017).

<sup>34</sup> *Id.* at 279.

<sup>35</sup> *Id.* at 338.