

FORUM REPORT 016

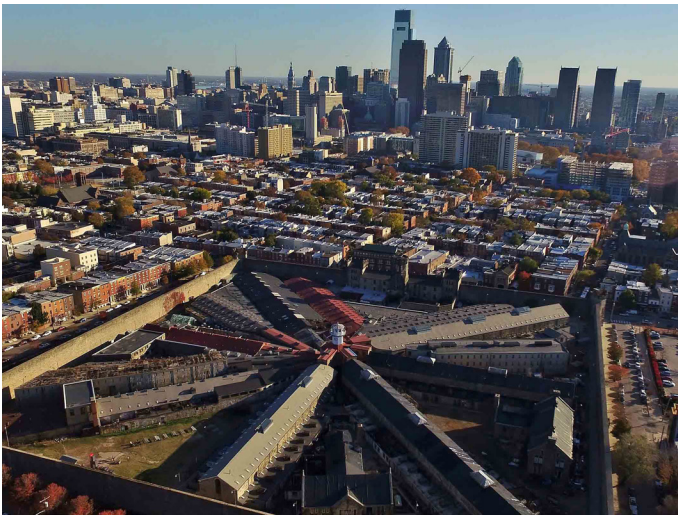
Criminal Justice

Reexamining Japan in Global Context Forum, Tokyo, Japan, October 25, 2019

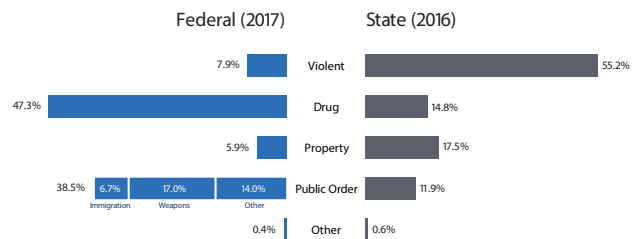
American Crime Trends and Opportunities for Penal Reform

Jordan Hyatt

Drexel University



State and federal prison population by offence



Source: Bronson, J. and Carson E.A. (2019). *Prisoners in 2017*. Washington, D.C.: Bureau of Justice Statistics.

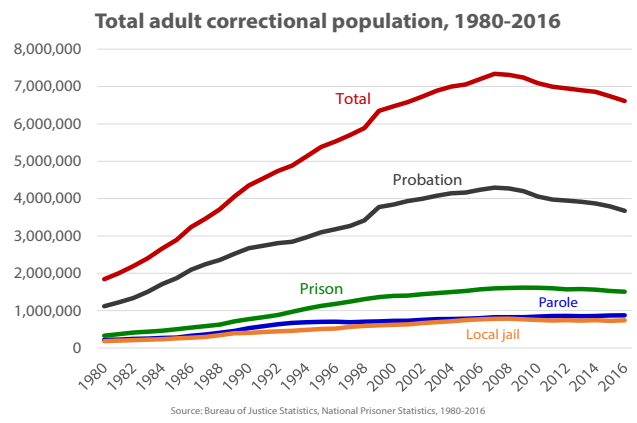
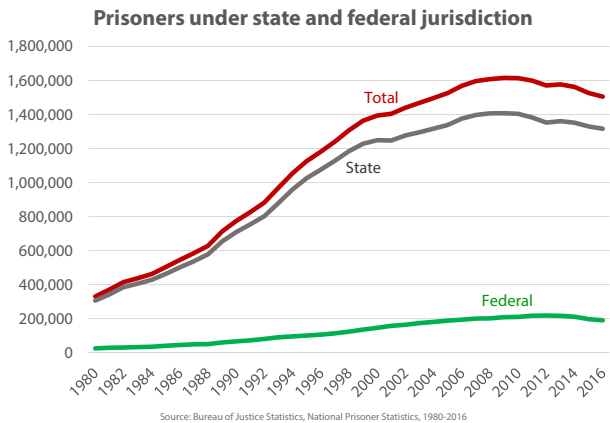
Philadelphia's Eastern State Penitentiary is one of the earliest prisons in the United States. Now a museum, it represents the punitive 'Pennsylvania Model.' However, although this model has been replicated widely, its limits and those of the United States' broader criminal justice culture have become painfully clear. Although different criminal justice systems operate in very different cultural, political, historical, and economic contexts, it is worth looking for areas of commonality in order to identify opportunities for knowledge exchange and reform.

The United States' criminal justice system is something of a 'layer-cake.' While many issues are dealt with in the federal system, others are dealt with at the state level. The country is home to a very large number of prisons. This is in part symptomatic of the high levels of incarceration in the United

States, but it also means that there are often widely different institutional cultures and practices from one prison to the next. Although many prisons are plagued by complex and deeply entrenched problems, their variety means they might also serve as laboratories for democracy. However, ideas tested in one area may or may not be generalizable to the broader national context.

In the United States, as in Japan, arrestees may or may not be subject to pre-trial detention. Criminal offences are categorized as either misdemeanors, which are low-level crimes, or felonies, which are more serious. Juvenile offenders (generally those under 18 years of age) are tried and dealt with under a separate system. The majority of violent crimes are dealt with through state prosecutions, so there are more violent criminals in state institutions. Drug crimes and im-





migration offenses, on the other hand, get dealt with at the federal level, and the federal prison population reflects this. In short, there are parallel criminal justice systems, each dealing with different kinds of issues across a large country.

On average, roughly 96% of cases are dealt with through a plea bargain. At the sentencing stage, a variety of punishments are available, including fines and incarceration. Many states also still have active capital punishment statutes, although not all such states still carry out executions.

On the whole, people spend more time in prison on average in the United States than they do in Japan, but there is growing recognition that prisoners need to be put in a position to return to society as productive members with low levels of recidivism, and that this requires an institutional commitment to rehabilitation.

The United States has a large population, a relatively low unemployment rate, a relatively high human development index (HDI), and growing income inequality. Poverty remains a persistent problem. Public trust in the criminal justice system is near a historic low, following a two decade downward trend. Although crime rates have been falling since the 1990s, the public perception is at odds with the data. People believe that there is more crime than there is, and this has a strong influence on public rhetoric and how the criminal justice system functions. In short, public policy is responsive to public fears about crime, whether or not this

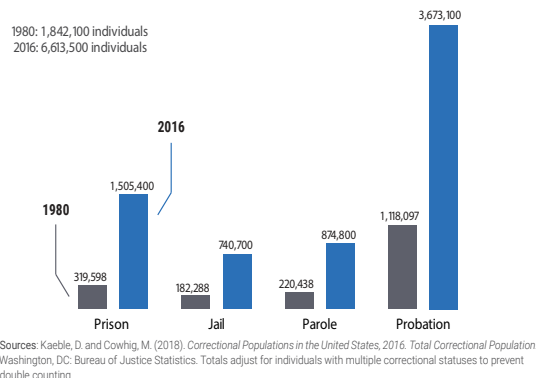
fear is tied to actual increases or decreases in the crime rate. These trends coincided with a massive and sustained growth in the prison population from the 1980s through 2010 and parallel growth in the population of those who are under state supervision out in the community.

The last ten years have seen a drop in these numbers, partly due to changes at the state level. For example, there have been mandated decreases in prison populations because overcrowding had made conditions so inhumane and unsustainable. This has led to a shift in favour of community supervision and the diversion of low-level offenders away from incarceration at the outset.

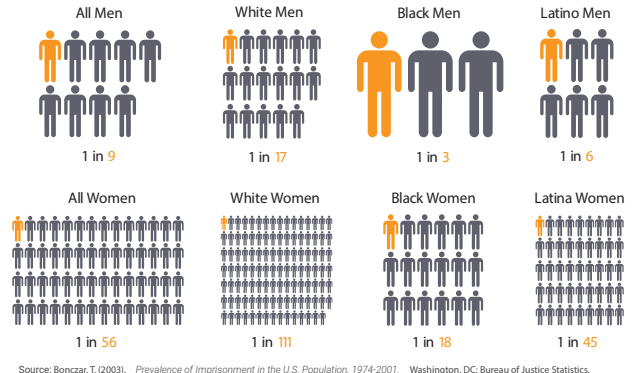
Nonetheless, the United States incarcerates a larger share of its population than any other country. Whereas Japan has some of the lowest fiscal expenditures on prison-related expenses, the United States has among the highest. African-American and Hispanic males are incarcerated at higher rates than any other group. As for prison conditions, the expenditures per person in the United States are relatively low. While overcrowding is a major concern, so too is the regular use of solitary confinement, generally as a disciplinary measure.

Overall, research suggests that the outcomes associated with these poor conditions are bad for everyone involved—for prisoners, for guards, and for the communities from which the prisoners come and to which they may eventually return. In light of this, there is a growing interest in reform

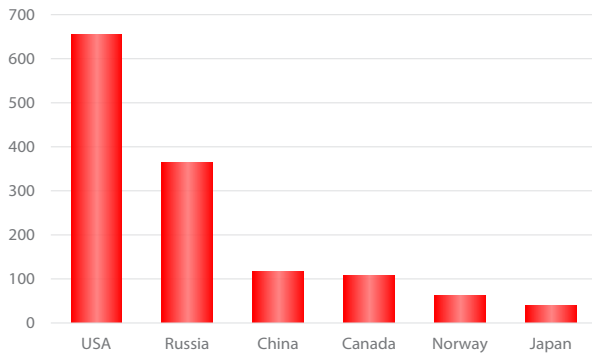
Population under control of the U.S. corrections system



Lifetime Likelihood of Imprisonment of U.S. Residents Born in 2001

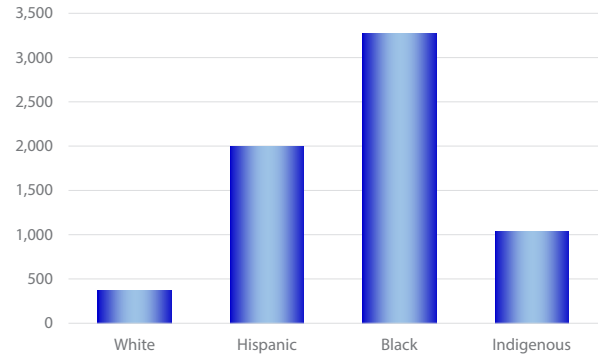


Incarceration rate per 100,000



Source: World Prison Brief, 2019

Pennsylvania incarceration rates, 2010 (per 100,000)



Source: U.S. Census 2010 summary file

and alternatives to incarceration.

Norway offers a compelling contrast to the United States and its criminal justice system. Norway has a relatively small population and has one of the highest HDIs in the world. In contrast to the United States, income inequality is less of an issue. Similarly, Norwegians' trust in their public institutions is comparatively high. This is partly to do with the country's strong social welfare system and social democracy, which provides services for a large number of people irrespective of their social standing.

Perhaps unsurprisingly, Norwegian prisons and prison populations look very different from those in the United States. Homicide rates are very low, for example, and there are only about 7 violent crimes per 1,000 people per year. Norwegian recidivism is also famously low. Where prison spending in the United States is high, Norway's total and per inmate spending are both a fraction of U.S. figures. Where there are approximately 4,000 beds in Norway, just one prison in Pennsylvania might house the same number.

Norwegian prisons deal with all aspects of supervision, including by providing services. There is a strong focus on re-entry into the broader society. This is consistent with the Normality Principle, which holds that anything an individual was entitled to while outside, they should also be entitled to while in prison. According to this view, the only punishment prisoners face should be the deprivation of their liberty, with all other things being constant. This reflects Norway's social democratic context, producing a prison model that is less harmful and restrictive than you would see elsewhere. Thus, Norwegian prisons will make significant efforts to provide a large number of services in the least restrictive way possible.

Where the U.S. system is grounded heavily in values of retribution, Norway's is grounded in rehabilitation. The physical spaces embody these different ideologies and also reflect the broader economic and political system. For example, communal spaces in Norwegian prisons include couches with fabric and moveable items, whereas in the United States these spaces feature stainless steel furniture that is bolted into place. This sends very different messages to prisoners and guards alike about what prisons are, what they are de-

signed to do, and what the prison experience is expected to be. Similarly, in the United States, bathroom facilities are stainless steel and communal, with no toilet seat cover and no privacy, whereas in Norwegian prisons, bathrooms are not unlike what you might see in an apartment. In the United States, no-contact visitation between inmates and their families is the norm, whereas in Norway, it is relatively rare. Norwegian prisons often even have a special house for inmates with children to visit with their families and maintain a sense of normalcy.

Notwithstanding these highlights, Norway's system does have its challenges. It has been criticized, for example, for its over-use of isolation. Another challenge is that the overall population is growing less homogenous. Immigration has strained social cohesion and some of the ties that traditionally defined society. This has coincided with an increase in punitive sentiment among the population as a whole. Additionally, as the public sector has taken on a stronger market orientation, the criminal justice system has come under budgetary pressure. Symbolic 'tough on crime' rhetoric has been on the rise. Cases like that of Anders Breivik, the 2011 white nationalist mass murderer, have raised questions about whether the system is strict enough in the face of such events, infrequent as they may be.

Differences between the U.S. and Norwegian systems provide fertile ground for comparative justice research. It is challenging to compare apples and oranges such as the United States and Norway, but there is common ground, small though it may be, and ample opportunities for learning. Although prisons are to a large degree functions of the broader context in which they are embedded (for example, history, race relations, political values, and economic systems), there are still small areas of overlap worth exploring and learning from.

Beginning in 2000, there has been growing public discourse and interest in criminology around the relatively low crime rates in Scandinavian countries compared to Anglo-American countries. Although the cultural context is very different, the United States has made moves toward reform, and many have looked to Scandinavia for ideas that could be

adapted to confront some of the pressing challenges in the U.S. system.

One promising project has sent corrections officers from Pennsylvania to Norway. The staff were given the opportunity to immerse themselves in the Norwegian prison environment and think about what they could bring home. The exchange involved a one-week crash course, where guards got to know the Norwegian system, followed by two weeks of working in prisons in the Oslo area under supervision. This gave them practical knowledge for their return to the U.S. Guards shared meals with inmates and played video games with prisoners in solitary confinement.

While away, most guards reported an improved working environment relative to their experience back in the United States. They reported lower levels of stress, an increased sense of safety, and felt that they were doing a better job overall. The program offered corrections staff a chance to look through a different lens and suggest changes that could actually help to rehabilitate inmates. This project tests whether and to what extent Scandinavian penal values and practices can be exported to the United States, where recidivism is high, and what limits are imposed by the different cultural context.



The first commenter asked about the relationship between correctional culture and the background national culture in each country. Are these cultures related? If so, does this restrict our ability to draw lessons from one country and apply them to another? Relatedly, how much of these ‘cultural’ differences are really cultural, versus having to do with other background factors such as inequality, racism, and so on? Prof. Hyatt replied that these things are very tied together. Fiscally, the resources that prisons are able to offer are tied to the overall system of which the culture is a part. The money spent on prisons defines in part what their institutional culture looks like and what it can accomplish. Overall, although the Norwegian system is different, there are transferable pieces. For example, the more austere environment in the United States is partly because crime and incarceration rates are higher, but also partly because more people believe that prisons are supposed to be punitive.

The second commenter asked where the cultural differences around punitive versus rehabilitative expectations come from and how attitudes have changed over the years. Prof. Hyatt replied that in the United States, the 1980s were a key moment of change. With the advent of the ‘War on Drugs’ incarceration was deliberately used as a primary tool in that particular public policy challenge. Sentence lengths were increased. This strong shift in favour of punitive approaches continued and reached its apex in the early 2000s. Thereafter, prison population levels have increasingly come to be viewed as unsustainable, and there has been a gradual shift toward diversion of people away from the prison system and rehabilitation of those who enter it. Some people on the

political right, for example, have advocated reducing the size of prison populations due to fiscal concerns, whereas some people on the political left have advocated similar changes due to concerns about structural racism.

The third commenter asked about how recidivism varies across different types of crime, and whether there are particular areas in which Pennsylvania or Norway do relatively more or less well. Prof. Hyatt replied that it is difficult to identify the areas in which Norway does less well because the scale of crime is lower than in the United States. Overall, Norway has recognized that diversion away from the prison system is reasonable and appropriate. This is supported by the country’s strong social safety net, because the health and social welfare services required to make diversion and low recidivism meaningful are already in place. In the United States, there is growing recognition that low-level crimes are not going to be well dealt with by prisons, which in fact can increase recidivism. So diversion is an area where there is some convergence between the two countries.

The next question was about ‘broken windows theory,’ popularized by Rudy Giuliani when he was mayor of New York City, though it has become less popular since.¹ Is there an alternative theory? Prof. Hyatt replied that the emphasis on broken windows policing did contribute to over-criminalization, excessive arrests, and over time contributed to the increase representation of these communities in prison populations. Research has challenged the usefulness of broken windows policing as a broader crime reduction strategy. There has been an increased emphasis on hot-spot policing, focusing on where crime tends to happen.

Next, Prof. Hyatt was asked about whether his study had looked into differences between Norway and the United States in terms of capital punishment. The European Union has abolished this practice, but Japan and the United States have not. Prof. Hyatt replied that his study did not look into this because there is a complete divergence on this issue. The United States is not going to meaningfully abolish capital punishment in the next few years, nor is Norway going to institute it. So without policy overlap or common ground, there are no similarities to work with in this area.

The next commenter asked about the effect of the federal system in the United States. Sometimes, competition among states leads to a race to the bottom. However, Norway does not have this kind of system. Does this help account for differences between the countries? Prof. Hyatt replied that it is true that in the past there is been competition with re-

¹According to Wikipedia, ‘The broken windows theory is a criminological theory that states that visible signs of crime, anti-social behavior, and civil disorder create an urban environment that encourages further crime and disorder, including serious crimes. The theory suggests that policing methods that target minor crimes such as vandalism, public drinking, and fare evasion help to create an atmosphere of order and lawfulness, thereby preventing more serious crimes.’

gard to which jurisdiction can appear to be the toughest on crime. However, it might be possible to shift this approach and begin a race to be the most humane, or to have the lowest recidivism and best rehabilitation. Certainly, the federal/state system creates enormous variation, but this also creates opportunities for local units of government to be more reactive to shifting social norms.

The next commenter expressed surprise that incarceration rates in Pennsylvania are so high. Prof. Hyatt responded that there are multiple factors, including tougher sentencing and poverty. A lot of it has to do with the nexus between poverty and crime. Historically, the state also had sentencing practices that were higher than the U.S. average. Until recently, there were a large number of mandatory minimum sentences, which increased the amount of time people spent in prison. Pennsylvania's prison population has recently been decreasing because there is been a pushback against these earlier trends. The diversion of low-level drug offenses has been the hallmark of this new approach.

Next, Prof. Hyatt was asked about whether the limits on the ability to transfer values and ideas between jurisdictions. For example, sentencing is very different between Norway and the United States. Most Norwegian prisoners will be released, since they have to be rehabilitated, however in the United States, natural life and other long sentences mean people do not have to be rehabilitated at all. Also, some countries have preventative systems, but the United States does not. Prof. Hyatt replied by pointing out that the average sentence in Norway is less than a year. In Pennsylvania, it is less than one might expect, but still significant at just under seven years. This is still an incredibly long time, but most people will come out. The difference may be the recognition that in Norway that the time in prison should be spent preparing you for recovery and reintegration. In some ways, it is easier to do this when the timeframe is a year instead of a decade or longer. For unusual cases, like that of the white nationalist mass murderer who attacked a Norwegian summer camp in 2011, although he only has a 21-year sentence, in practice it will be reviewed every five years and he may never be released. There are fewer than 100 people in Norway under this kind of preventative detention regime, where sentences are extended indefinitely, but this would be completely unconstitutional in the United States,

since the state has no authority to continue to detain someone after their sentence has ended. This reflects the United States' individualist values. In the United States, detention is tied to the crime committed in the past, rather than preparing the prisoner and their community for what will happen in the future. In Scandinavia and other countries, the focus on rehabilitation and reintegration—including preventative detention in rare cases—reflects a more collectivist approach.

Next, a participant suggested that in looking at these cases, it is hard to deny that the Scandinavian model is better. Are there possible negative reactions to the model? In Japan, there is been discussion about abolishing capital punishment, but people often express concern about the interests of the victims and their families. What kinds of reactions do students and the public show in the United States when learning about the Norwegian model? Prof. Hyatt replied that people's reactions depend on who and where they are. Students are generally more accepting of reformist ideas, but the general public, aside from small interest groups, is not really interested or ready to spend money on rehabilitative models. The punitive sentiment in the United States is still strong. Many officers also believe that prison should be a punishment and should not be perceived to be a nice place to visit. Incremental change may offer hope to shift this ideology by creating space and showing that there is room for a less punitive environment.

The next commenter asked whether there are any groups in Scandinavia that advocate a more punitive approach. Prof. Hyatt replied that there is already been a turn toward being more punitive in Norway. In the United States, 'an eye for an eye' is still the prevailing sentiment, and one project is not going to wash that away. However, by working at the margins where things can change, it may be possible to demonstrate that alternatives exist. However, there are stakeholders who will push back in any context, not just in the United States.

Finally, a participant asked whether religion was responsible for differences in corrections culture between the two countries. Prof. Hyatt responded that while religion has played a strong role, it has not been determinative. 'Penitentiary' comes from the word 'penitent,' and there is as strong religious undertone at the core of the U.S. system. In Norway, the culture appears to be much less religious overall but more egalitarian.

Trends in Crime and the Prevention of Re-Offending in Japan

Tatsuya Ota

Keio University

There has been substantial debate about how to reform the Japanese penal system over last decade. The current system was introduced in the 1900s. Although there have been some recent changes—for example, to the criminal procedure laws and the law on victim support—the broader debates are ongoing, and it is possible that further, significant reforms will be undertaken in the near future.

While Japan has been occasionally subject to international criticism—for example, for long pre-trial detentions—Japan is also known and celebrated for its low crime rate. Recent trends in the number of offences show a peak in the early 2000s, following by a multi-year decline. There has been a particularly large drop in the incidence of theft, while rates of rape, arson, and murder have been comparatively stable.

Observers have often asked why Japan’s crime rate is relatively low. A number of explanatory factors have been proposed, although it is difficult to ascertain the specific relationship between these factors and the crime rate.

Many of these factors are clearly socio-cultural. For example, Japan is a relatively group-oriented society with a strong culture of shame. This tends to deter crime. Similarly, the relatively low rates of unemployment, substance abuse, and divorce also act to suppress crime rates.

However, although the crime rate is relatively low and stable, Japan is not without its problems. For example, with Japan’s aging society, there are growing numbers of elderly offenders. In particular, the proportion of prisoners over the age of 65 has grown dramatically since 1990, such that many prisons are coming to resemble nursing homes.

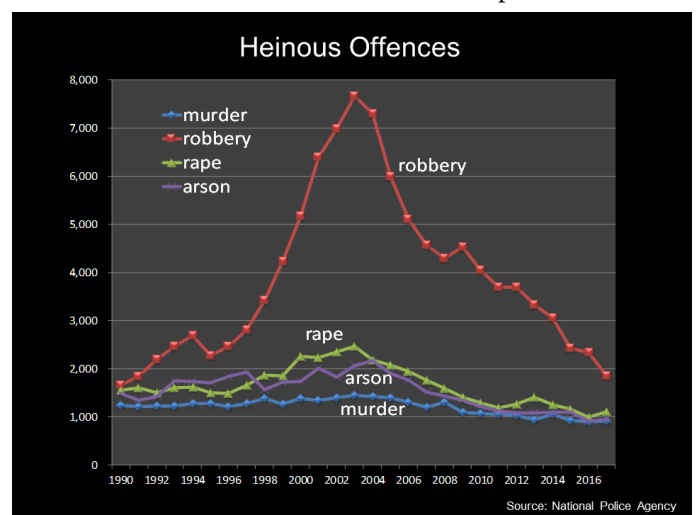
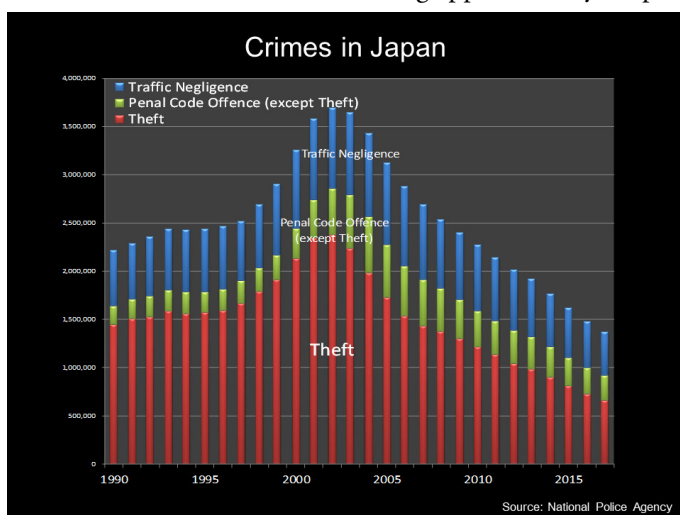
Recidivism is also increasing. After some 30 percent of offenders were found to be committing approximately 60 per-

cent of all offences, the Ministry of Justice took some steps to prevent re-offending, however recidivism has been increasing again, and today approximately 60 percent of inmates are repeat offenders with a criminal career.

Imprisonment as penalties in Japan can be placed in two broad categories: with and without labour. Almost all prisoners are sentenced to imprisonment with labour. Other criminals are subject to fines, or limited detention of up to 30 days. However, some say that two types of imprisonment represents an outdated model based on 19th century ideology. However, abolishing the distinction between types of imprisonment prison labour and modernizing the penal system takes a long time and requires much debate among Japanese scholars and the public.

As far as sentencing is concerned, there are several forms. Those prisoners facing indeterminate sentences are eligible for parole after 10 years. Determinate sentences range from one month to 30 years. However, there are no life sentences in Japan; 30 years is the maximum. Furthermore, there are no cumulative or consecutive sentences. Those facing determinate sentences are eligible for parole after serving one third of their prison time. Periods of imprisonment of less than three years can be suspended for up to five years under certain circumstances, in what is known as a suspended execution of imprisonment. Finally, Japan still has an active death penalty for the most serious crimes, although only a small number of people are sentenced to death.

The treatment of inmates is governed by the Act on Criminal Institutions and Treatment of Inmates, 2008, which replaced the previous Prison Act, 1908. Although prisoners of indeterminate sentence are released on parole after serv-

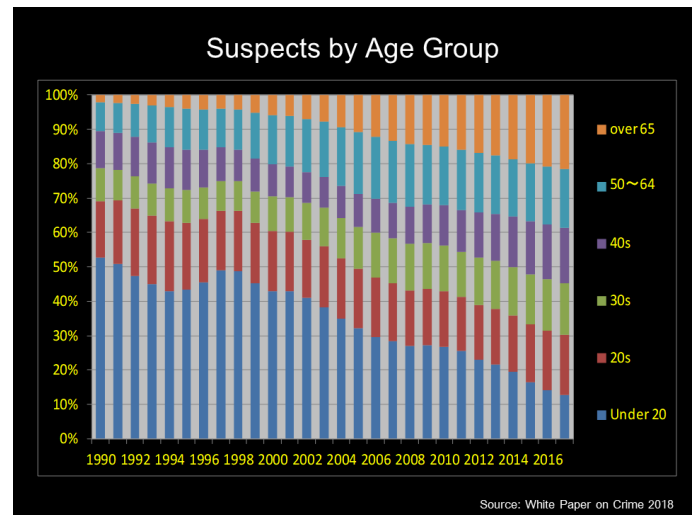


ing 30 to 35 years on average, the vast majority of prisoners will be released sooner or later. Thus, rehabilitation or the ‘prevention of re-offending’ is very important. As in other countries, victims in Japan sometimes become angry when talk turns to the rehabilitation of criminals. It is natural that victims and their advocates often wish for tougher sentences. However, at the same time, they also expect the prevention of re-offending and understand its importance. Our choice of language matters in helping to walk the line between these impulses and needs. For example, framing ‘rehabilitation’ as ‘prevention of re-offending’ can help to de-politicize rehabilitative policies and make rehabilitation less painful for victims.

Japan is home to a variety of rehabilitative programs for criminals. Prison labour is one traditional form. Prisoners are also able to receive vocational training. Prisoners are also able to receive treatment, including cognitive behavioural therapy. There are also special treatment programs for drug offenders, Yakuza, sex offenders, traffic offenders, and so on. However, Yakuza members, who account for approximately 6 percent of the prison population, generally reject treatment and rehabilitation and do not want parole. Instead, they want to serve their whole sentence so they can be released with no conditions or supervision.

The classification of prisons is different in Japan than in the United States, where, for example, prisons are classified based on their security level—minimum, maximum, or super-maximum. In Japan, all prisons are type A or B. This is not based on the security level of the prison, but on the level of criminality of the inmates. Thus, A-type prisons are for relatively low levels of criminality—for example, first-time offenders who are not Yakuza members. B-type prisons are for individuals with very high levels of criminality—for example those with a long criminal career, Yakuza members, and so on. These A and B type prisons have sub-types, including W-type (for women), L-type (for long-term/indeterminate sentences); F-type (for foreigners); Y-type (for offenders under 26); and J-type (for juvenile offenders).

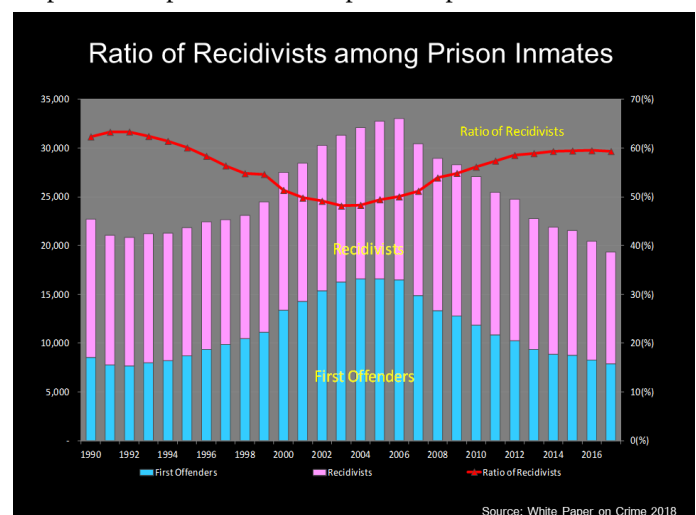
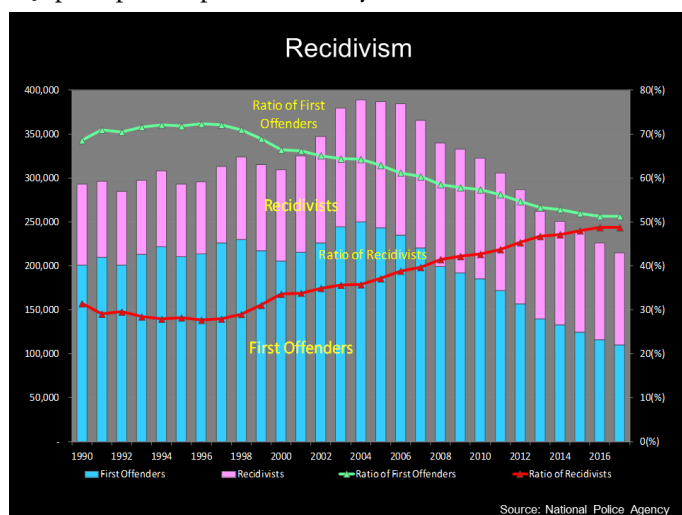
Japan’s private prison industry is much smaller than in the



United States. Japan has four semi-private prisons, which are run by security companies. This is completely different than in the United States, where prison operations can be outsourced. In Japan, these semi-private prisons are run by the government and private companies who provide training, security, and so on.

In total, approximately 58 percent of inmates are given conditional release (parole), while others serve out the entire term of their sentence. The risk of re-offending is the main metric in determining eligibility for parole. Individuals can be re-detained if their conditions are broken or they re-offend. However, one challenge is that the period of parole supervision is limited to the remaining term of the prisoner’s sentence. This is known as the ‘remaining term model.’ For example, if an individual faces three years’ imprisonment and is released on parole after two and a half years, they would only be subject to supervision for 6 months.

The parole revocation rate is around 4 percent, but this does not mean that parole is successful, because the parole period tends to be very short. This 4 percent figure only captures re-offences that occur during supervision. Parole typically lasts for 2–6 months, because parole usually occurs after 80–90 percent of a sentence has been served. Approximately 40 percent of parolees receive parole supervision of 3 months



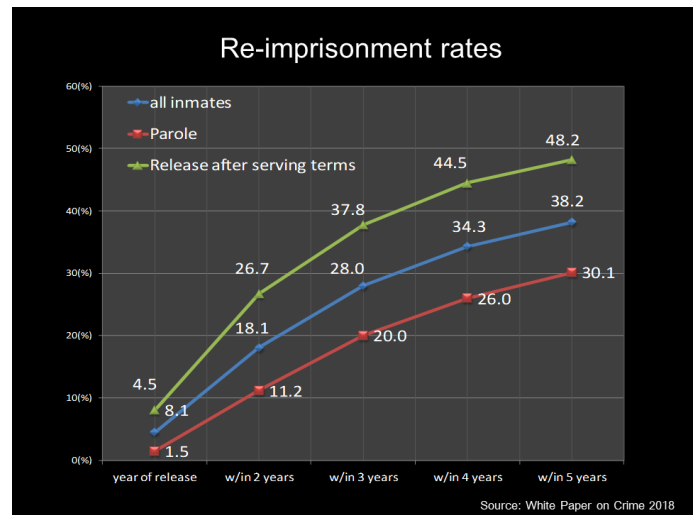
or less, and approximately 40 percent receive 6 months or less. Thus, roughly 80 percent of parolees receive supervision for 6 months or less. In such a short period of time, a parolee does not necessarily have enough time to commit a new offence, but they may not have the chance or support to meaningfully re-integrate into society either.

Perhaps unsurprisingly, approximately 30 percent of former inmates are detained in prison again within 5 years of their release. This means that under the remaining term model, the risk of re-offending among parolees is relatively high, especially during the initial few years following release. However, parole supervision cannot cover this high-risk period because the period of supervision is too short.

In contrast, the ‘extended term’ model has been adopted in some European countries. Under this model, individuals can be subject to supervision for longer than the remaining term of their sentence. For example, in Germany, it is possible to have supervision for 2–5 years after a prisoner’s release. Such a term can cover a longer period, over which there is a higher risk of re-offending. Unfortunately, this model has not yet been adopted in Japan. Some commentators, including bar associations, have criticized the extended term model because prisoners can be placed on parole supervision for longer than their original sentence, which could violate their rights.

42 percent of inmates are released after serving their entire term. Since the predominant model is one in which inmates are granted parole, those who are released after the expiry of their entire sentence have had problems with rehabilitation. This means that 42 percent of inmates—the most problematic ones—are released without supervision or treatment. Unsurprisingly, the re-imprisonment rate is very high for those inmates who served their entire original term. Some suggest that mandatory parole should be adopted (for example after two thirds of a sentence has been served), but the government does not like this approach.

Most Japanese scholars believe that the only way to place ex-inmates under supervision is through preventative measures. There has been debate over the last 10 years about what kind of punishment should be adopted to address these challenges. In 2016, a new type of punishment, the ‘Partially Suspended Execution of Imprisonment’ was introduced. This is not a conditional release but a new type of punishment, under which the court is empowered to suspend the final period of imprisonment by setting a certain period of suspension with or without community supervision. This period might last from one year to five years. The inmate can be detained again for the period of suspended imprisonment if they commit a crime or otherwise violate their conditions. This sentence type can secure a certain period of community supervision after release without using parole or a conditional release. This is similar to split sentencing or supervised releases in the United States. Split sentencing is a type of sentence that consists of two parts—detention in



prison and community supervision.

The effects of this new penalty have not been ascertained yet, but it is expected to lower recidivism rates. This approach is currently limited to first timers and those sentenced to three years’ imprisonment or less, but some commentators think the measure should be expanded to include more criminals.



Following the presentation, the first commenter pointed out that Japan is safe—the crime rates are low. This may or may not be related to the Japanese justice system, but there are many contextual factors involved, as seen in the first presentation. There is also a degree of leniency in the criminal justice system. What accounts for this? Regarding organized crime, the United States has its own organized criminals. How do they compare with the Yakuza? In a sense, the Yakuza are tightly institutionalized in Japanese society. There is even a degree of tacit understanding with the authorities—so long as they do not cross certain lines, they have a degree of ‘peaceful coexistence.’

Prof. Hyatt noted that in the United States, finding a single metric to capture anything, whether ideological or practical, is difficult if not impossible, especially because of the diversity of the system across different jurisdictions. It would be helpful to plot the relationship between different cultural indicators and the relative leniency of different countries’ criminal justice systems. In the United States, the relationship with organized crime, setting aside the old Cosa Nostra, is very different. There is little interaction between organized crime and law enforcement in the United States. Some groups—for example, on the west coast—are cross-border, but the large majority of organized criminals in the United States are involved in small neighbourhood gangs. This presents very different structural challenges than those facing Japan.

In terms of retribution and rehabilitation, Prof. Ota pointed out that the Japanese government has maintained its commitment to the idea of rehabilitation because it prevents

reoffending, but this is also related to Japan's culture. For example, Japan has a lot of cultural homogeneity and family ties are strong. Diversion systems function well in Japan, in part because if a person is found guilty and sentenced, they are considered 'outsiders' and 'criminals' and can easily be ostracized and excluded from mainstream Japanese society. However, this also makes rehabilitation more difficult, because it makes it difficult for former inmates to live a normal life.

The next question was about the relationship between social intolerance and the crime rate. Is there a relationship between social tolerance, Japan's low crime rate, and Japan's low length of sentencing? Prof. Ota replied that social tolerance and intolerance are factors that can help to establish what kind of punishment is deemed to be appropriate for a particular crime or how we should treat our prisoners and former inmates. We know that people with strong social bonds do not commit as many crimes. When intolerance of criminals is high, society can informally punish people by excluding and shaming them. Relatedly, social isolation is another factor. When people are isolated, they are also more likely to commit crimes.

The next commenter asked two questions. First, how should we think about Japan's system from a comparative perspective? There are many differences, but it seems like Japan took cues from old Europe, but Europe's system has changed a lot since the 19th and early 20th century. Are there similar places to Japan in the world? Second, regarding legal populism, it seems like penalties are formally getting stricter for certain crimes, but it has also been said that court decisions have not changed enough in the face of new laws. Prof. Ota responded that Japan is modeled after the old European criminal justice system before the Second World War. After the war, it was modeled after the U.S. system, with some modifications. For example, a new criminal code was adopted, but not a jury system. It was thought that a jury system would not work as well in Japan as in the United States. Much later, Japan finally adopted a panel system, consisting of judges and laypeople, but this is different from the US jury system. Similarly, Grand Juries have been deemed to be inappropriate in Japan. Instead, Japan has a 'Prosecution Inquest System,' which is quite different. Whereas in a Grand Jury, laypeople decide whether or not to indict an individual, in the Prosecution Inquest System, laypeople decide on the appropriateness of a non-prosecution decision made by the prosecutor. In a word, the Japanese system is unique, because it has selected, modified, and rejected various parts of the European and American systems.

The next commenter asked about how influential the Japanese system is. For example, due to Japanese colonial activity before the Second World War, elements of the Japanese justice system were exported to other countries, such as South Korea. In a sense, the Korean system was modeled after Japan's. Have other countries tried to adopt elements of the

Japanese criminal justice system? Prof. Ota responded that Japan and South Korea share many similarities in terms of their criminal justice systems, so it can be very useful to compare them. When South Korean legislators are involved in drafting a new criminal law or amendment, they will sometimes look for similar laws in Japan.

With regard to legal populism, it is impossible to say that it has never influenced a judge's opinion. However, judges still must consider the sentencing guidelines. These are not as strict as in the United States, but judges must respect them nonetheless. They also have strong respect for the principle of equality before the law and strongly hesitate to deviate from the standard. That said, in some areas—such as child abuse—sentencing has become tougher. This may be the result of the involvement of laypeople in panel trials.

The next commenter asked about the case of Carlos Ghosn, the former chairman of Nissan Motor Co. who was arrested in Tokyo for violations of financial law. When he was detained, there was international criticism from Europe and North America. For example, Japan was criticized for so-called 'hostage justice' due to the practice of holding suspects for up to 23 days and questioning them without their lawyers being present. There have also been concerns about the fact that the Japanese legal system did not presume innocence. There has also been criticism of prison conditions. In the face of these criticisms, prosecutors have argued that their job is to make sure that Japan's laws are being enforced; if there is to be change, it must come from legislators. Is there any way that we can change or improve this detention system in the face of this international criticism? Prof. Ota responded by pointing out that many would say that pre-trial detention in Japan is not as long as in some other countries. The Japanese government has also signed international human rights treaties. The United Nations has conducted inspections, and Japan has often been criticized for the length of pre-trial detention, as well as the practice of detaining suspects in police stations, which is said to lead to forced confessions. However, prosecutors are not the ones who decide where or for how long suspects will be detained. These decisions are made by the judges. Statistically speaking, the pre-trial detention rate in Japan is very low. If a suspect is arrested by the police, they can be detained for 48 hours. After that, prosecutors apply to the court for a longer detention. However, the arrest rate in Japan is very low, and many suspects await investigative dispositions at home. In this sense, pre-trial detention in Japan is actually very limited.

The next commenter asked about individuals with intellectual disabilities in the Japanese criminal justice system. There are approximately 20,000 new prisoners per year, and approximately 30 percent of them have intellectual disabilities. Presumably, they have special needs and need specific treatment, especially to support rehabilitation. Do individuals with special needs receive special treatment? Prof. Ota re-

plied that in Japan, there are many mentally ill and disabled offenders. Rehabilitation is a very serious challenge with these individuals. Of course, medication is administered and treatment is provided. However, the challenge comes after release from prison. Most of these prisoners are released after serving their entire sentences; due to their risk of re-offending, they rarely receive early release. Prison wardens are also authorized to report to the government when mentally ill offenders are scheduled to be released, and the governor can send doctors to conduct a medical exam. In turn, the doctors can recommend further treatment or hospitalization. However, overall this system does not work very well. Most mentally ill individuals in prison are very stable, since they are receiving medication, so the doctors often report that they do not require further treatment.

The final question was about community supervisors. Re-

cent reforms expand the responsibility of the community supervisors. Are they happy with this and are they prepared to undertake their new responsibility? Prof. Ota responded that the burden is getting heavier for these supervisors with the growth in community supervision programs. Japan has only 1,200 probation officers dealing with 50,000 cases per year. This is not easy. Every time a new system or practice is adopted, they require more training. The average age of volunteer probation officers is also increasing and now stands at 65 years. About 15 years ago, Japan adopted a retirement system that mandates retirement at 77 years of age. Since half of the volunteer probation officers will have to retire within 12 years, so the Ministry of Justice is eager to recruit. This is difficult, not least because in Japan, volunteer probation officers invite people into their own homes for interviews, which imposes a burden on their family members.

Reexamining Japan in Global Context

Criminal Justice

Friday, October 25, 2019, International House of Japan, Tokyo, Japan

Keynote Speakers

- Professor Jordan HYATT, *Drexel University*
- Professor Tatsuya OTA, *Keio University*

Project Directors

- Professor Masayuki TADOKORO, *Keio University*
- Professor David WELCH, *Balsillie School of International Affairs*

Project Member

- Professor Yusashi WATANABE, *Keio University*

Guest Members

- Mr. Kiyotaka AKASAKA, *Foreign Press Center Japan*
- Professor Rieko KAGE, *University of Tokyo*
- Mr. Ryuichi KANARI, *Asahi Shimbun*
- Professor Fumiaki KUBO, *University of Tokyo*
- Professor Naoko KUMAGAI, *International University of Japan*
- Professor Koichi TANIGUCHI, *Tokyo Metropolitan University*

Suntory Foundation

- Mr. Katsuyoshi OZAKI, *Executive Director*
- Ms. Miyuki MAEBA, *Secretary General*
- Ms. Noriko YAMAUCHI, *Chief Program Officer*
- Ms. Keiko KAMINAGA, *Associate Program Officer*
- Dr. Nobuyoshi ITO, *Torii Fellow*

Project Assistants

- Mr. Aladdin DIAKUN, *McMillan LLP*
- Dr. Kazuki FUJIYAMA, *Kyoto University*



Professor Jordan M. Hyatt is an assistant professor in the Department of Criminology and Justice Studies at Drexel University. His research in corrections and reentry focuses on the evaluation of innovative criminal justice interventions with an emphasis on randomized experiments. Through program assessments with practitioner partners, he works to develop effective and actionable criminal justice policies. His work is relevant for agencies with policy agendas focused on improving reintegration and public safety, and implementing evidence-based policies.

Professor Tatsuya Ota is a professor in Faculty of Law at Keio University specializing in criminology, victimology, and Asian legal systems. He has published extensively on issues relating to penology, offender treatment, and victim support. His recent research has focused on the reentry of inmates through coordination of correction and community supervision such as parole and partial suspended execution of imprisonment.



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