

# **Punishment, Probation and Parole**

It is increasingly recognized that punishment in the community is no longer the humanising and rehabilitative undertaking as was initially intended. Based on insights from nine different countries around the globe, this book identifies common trends of managerialism and massification. Starting from a deepening and critical understanding of McNeill's concept of mass supervision and taking a decolonizing perspective into account, this book offers an excellent and thought-provoking contribution to the scholarship on community punishment.

*Prof. Dr. Kristel Beyens Vrije, Universiteit Brussel*

Building off McNeill's (2018) *Pervasive Punishment*, this new edited volume asks how we "make sense" of mass supervision across time and place. The volume brings together some of the most thoughtful scholars working on community sanctions in Europe, the U.S., and less-well studied countries including Chile and Australia, and elsewhere, asking what purposes sanctions like probation and parole serve in the name of justice and how such supervision is experienced by individuals, families, and communities. Each chapter brings us a new location and focus, showing the complex and contradictory forces and experiences of community sanctions. And yet across all this diversity is a sense that community sanctions have strayed from their original purposes, growing more punitive and managerial. Taken together, the volume powerfully asks us to consider whether mass supervision itself can ever be rehabilitated away from punishment.

*Dr. Michelle Phelps, Associate Professor and  
Martindale Endowed Chair, University of Minnesota*

With contributors from around the globe, this powerful collection illustrates the chilling story of how probation has journeyed from a grassroots, localized initiative into 'mass supervision' run by the state. This cautionary tale should be widely read by those hoping to abolish or reform the current system.

*Shadd Maruna, President, American Society of Criminology*

# **Punishment, Probation and Parole: Mapping Out 'Mass Supervision' In International Contexts**

EDITED BY

**KATHARINA MAIER**

*The University of Winnipeg, Canada*

**ROSEMARY RICCIARDELLI**

*Memorial University of Newfoundland, Canada*

AND

**FERGUS MCNEILL**

*University of Glasgow, UK*



United Kingdom – North America – Japan – India – Malaysia – China

Emerald Publishing Limited  
Emerald Publishing, Floor 5, Northspring, 21-23 Wellington Street, Leeds LS1 4DL.

First edition 2024

Editorial matter and selection © 2024 Katharina Maier, Rosemary Ricciardelli and Fergus McNeill.

Individual chapters © 2024 The authors.

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**British Library Cataloguing in Publication Data**

A catalogue record for this book is available from the British Library

ISBN: 978-1-83753-195-0 (Print)

ISBN: 978-1-83753-194-3 (Online)

ISBN: 978-1-83753-196-7 (Epub)



INVESTOR IN PEOPLE

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## About the Editors

**Katharina Maier** is a criminologist and Associate Professor in the Department of Criminal Justice at The University of Winnipeg in Canada. Her research focuses on punishment and penal governance, drugs, urban poverty and violence, and the intersections between public health and criminal justice approaches to crime and social problems. Her research has been published in *Law & Social Inquiry*, *Punishment & Society* *Theoretical Criminology*, among other venues.

**Rosemary Ricciardelli** is Professor (PhD, Sociology) in the School of Maritime Studies and Research Chair in Safety, Security, and Wellness at Memorial University's Fisheries and Marine Institute. Elected to the Royal Society of Canada, her research centres on evolving understandings of gender, vulnerabilities, risk, and experiences and issues within different facets of the criminal justice system and among mariners. As a sex and gender researcher, her interests lay in the social health, identity construction, and lived experiences of individuals. She leads a longitudinal study on the mental health and wellbeing experiences of correctional officers employed by Correctional Services Canada.

**Fergus McNeill** is Professor of Criminology & Social Work at the University of Glasgow, where he is based in the Scottish Centre for Crime and Justice Research and in the subject area of Sociology. His work examines institutions, cultures, practices, experiences, and impacts of punishment and rehabilitation, especially in the community. His book *Pervasive Punishment: Making Sense of Mass Supervision* won the European Society of Criminology's book prize in 2021.

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## About the Contributors

**Emeritus Professor David Brown** taught Criminal Law, Criminal Justice, Crime Prevention, Community Corrections and Penology courses at the Faculty of Law and Justice, University of NSW, Sydney, Australia, from 1974 to 2008. He is Lead Co-author of *Criminal Laws*, now in its 7th edition (2020). He has widely published across the broad areas of criminal law, criminal justice, criminology and penology both in Australia and internationally. His co-authored or co-edited books include *Youth Justice and Penalty in Comparative Context* (with Goldson et al., 2021), *Justice Reinvestment: Winding Back Imprisonment* (Brown et al., 2016), *Penal Culture and Hyperincarceration* (with Cunneen et al., 2013), *The New Punitiveness* (with Pratt et al., 2005), *Prisoners as Citizens* (with Wilkie, 2002), *Rethinking Law and Order* (with Hogg, 1998), and *The Prison Struggle* (with Zdenkowski, 1982). He served as a part-time NSW Law Reform Commissioner on the Bail reference (2011–2012).

**Ryan Casey** is an Interdisciplinary Research Fellow in Digital Society & Economy at the University of Glasgow and Scottish Justice Fellow with the Scottish Centre for Crime and Justice Research. She has previously worked on several research projects in and around crime, justice and digital society. She was Co-I on a Scottish Government-funded project on public space CCTV in Scotland. She was also a Digital Ethnographer on an ESRC-funded study on everyday in/securities, concerns and place-making with a team of researchers from Oxford, Keele, Edinburgh and UCL. She has previously been an RA on a pilot project around digital connectivity and home life and on a Chief Scientist Office-funded study on lockdown experiences for people in the criminal justice system. She completed her PhD in Criminology at the University of Glasgow in 2021. Her thesis was an ethnographic study of penal electronic monitoring in Scotland.

**Ioan Durnescu** is a Professor at the University of Bucharest, Faculty of Sociology and Social Work. He teaches and conducts research in probation, prison and deradicalization fields. His special interest is comparative probation, staff skills and re-entry. He is one of the Editors of the Probation in Europe collection available on the CEP website at <https://www.Cep-probation.org/knowledgebases/probation-in-europe/>. He is currently Co-editor of the *European Journal of Probation*, a journal published by the University of Bucharest in partnership with SAGE Publishing, and Co-chair of the RAN Rehabilitation Working Group. His recent book *Core Correctional Skills. The Training Kit* can be found at [www.corecorrectional.eu](http://www.corecorrectional.eu).

**Martine Evans** (aka Herzog-Evans) (PhD) teaches Penology and Criminology at *Université de Reims-Champagne Ardennes*, France. Her research interests range from legitimacy of justice, sentences, problem-solving courts, offender treatment, prisons and re-entry. She has published extensively (see <http://herzog-evans.com>). Her latest publication as Co-editor with Massil Benbouriche is *Evidence-Based Work with Violent Extremists. France as a case example* with Lexington Books, 2019. She is currently working on an EBP Probation Treaty with French publisher Dalloz and on two co-edited books, respectively, with Springer (with Stephen Morewitz – terrorism case studies) and Routledge (with Dr Jerome Thomas – prisoners' vote). She also develops offender treatment programmes for the third sector and trains Criminal Justice practitioners.

**Gillian Foley** is a graduate student at Memorial University of Newfoundland. She is currently finishing her master's degree in Applied Psychological Science and will start her PhD in Health and Wellness Psychology in the fall of 2023. She works as a Graduate Research Assistant at the Fisheries and Marine Institute of Memorial University of Newfoundland, researching public safety personnel mental health. Her research interests also include social support and programme evaluations.

**David J. Hayes** is a Lecturer in the University of Sheffield School of Law (UK). His research focuses on questions of measurement in punishment, especially the extent to which the subjective experiences of penal subjects affect our understanding of how punitive a penalty is (e.g. for the purposes of proportionality judgements at sentencing). He is the Author of *Confronting Penal Excess: Retribution and the Politics of Penal Minimalism* (2019, Hart), which explores the asserted connection between the excessive use of the criminal justice system and the adoption of retributive policies in Anglo-American liberal democracies.

**Andrada Istrate** holds a PhD in Sociology from the University of Bucharest and EHESS, Paris. Her previous work investigates the recent history of financial fraud in post-socialist Romania. She was involved in several research projects dealing with marginality and precarity: prisoners and former prisoners; people with disabilities; women and men living off social welfare; gamblers and addicts; immigrants and subsistence farmers. Currently, she is involved in research on crime and delinquency in contemporary Romania, focusing on how re-entry policies (or lack thereof) determine ex-prisoners' trajectories.

**Katharina Maier** is a criminologist and Associate Professor in the Department of Criminal Justice at The University of Winnipeg in Canada. Her research focuses on punishment and penal governance, drugs, urban poverty and violence, and the intersections between public health and criminal justice approaches to crime and social problems. Her research has been published in *Law & Social Inquiry*, *Punishment & Society Theoretical Criminology*, among other venues.

**Fergus McNeill** is Professor of Criminology & Social Work at the University of Glasgow, where he is based in the Scottish Centre for Crime and Justice Research and in the subject area of Sociology. His work examines institutions, cultures, practices, experiences, and impacts of punishment and rehabilitation, especially in the community. His book *Pervasive Punishment: Making Sense of Mass Supervision* won the European Society of Criminology's book prize in 2021.

**Ana María Morales** completed BA in Law and PhD in Criminology. Her doctoral dissertation, obtained at the University of Leicester, explored the so-called 'penal subjectivities', based on penological approaches that propose broadening the fields of investigation to understand the contexts in which penalty practices are based, developing knowledge about how penal philosophies are conceived by a sample of Chilean judges, supervision workers and offenders. She teaches undergraduate courses in Criminology at University Alberto Hurtado Law School and postgraduate courses in Applied Criminology at the School of Government at the Universidad de Chile. She is the Author of numerous articles and book chapters based on her research on Chile's criminal justice policy, prisons, juvenile justice and riots. Between 2016 and 2019, along with her colleagues, she was awarded a 'Fondecyt Regular' (a very competitive research grant given by the Chilean government) to explore the new regimen of alternatives to prison implemented in 2013 by the government. As a product of that three-year study she published six publications with her research colleagues on the history, comparative regulation, criminal justice policy justifications, sentencing, implementation and impact of alternatives to prison. The latter was published in the *Journal of Quantitative Criminology* in 2022 where Moraga et al. explored the 'Impact of the Reform to Non-custodial sanctions in Chile'. She recently joined the Chilean Prosecution Service as Director of Studies and Evaluation.

**Rosemary Ricciardelli** is Professor (PhD, Sociology) in the School of Maritime Studies and Research Chair in Safety, Security, and Wellness at Memorial University's Fisheries and Marine Institute. Elected to the Royal Society of Canada, her research centres on evolving understandings of gender, vulnerabilities, risk, and experiences and issues within different facets of the criminal justice system and among mariners. As a sex and gender researcher, her interests lay in the social health, identity construction and lived experiences of individuals. She leads a longitudinal study on the mental health and wellbeing experiences of correctional officers employed by Correctional Services Canada.

**John Todd-Kvam** is a Postdoctoral Researcher working on the projects *AgeSUD: Promoting Healthy Longevity Among People With Substance Use Disorders* and *ULTPEN: The Implementation and Impact of the Ultimate Penalty in Norway*. His PhD focused on understanding desistance from crime in Norway and he has published work on desistance, the work of probation and problems with so-called 'punishment debt' in Norway. In addition, he has researched populism and Euro-scepticism, including authoring the book *The UK's Relationship with Europe: Struggling over Sovereignty* (Palgrave, 2016).

**Michael Weinrath** is Professor and Founding Chair of the Department of Criminal Justice and Director of the Justice Research Institute at the University of Winnipeg. He teaches corrections, programme evaluation and criminal justice policy, and his research includes drug and mental health treatment courts, diversion and restorative justice, prison-based therapeutic communities, adult- and youth-intensive supervision probation programmes, victimisation and drunk-driving. Prison environments and probationer experiences are the focus of his most recent research. He worked previously as a Probation Officer and Prison Manager.

**Robert Werth** is an Associate Professor of Teaching in the Department of Sociology at the University of Southern California (USC). His research interests focus on state-based punishments, post-prison experiences, penal logics and knowledge production techniques and algorithms in the penal realm. His work has been published in various academic journals, including *Sociology Compass*, *Social & Legal Studies*, *Punishment & Society*, *Theoretical Criminology* and the *British Journal of Criminology*, as well as an edited volume, *Parole and Beyond: International Experiences of Life After Prison* (edited by Armstrong and Durnescu).

## Chapter 1

# Punishment, Probation and Parole: Introduction

*Fergus McNeill<sup>a</sup>, Katharina Maier<sup>b</sup> and Rosemary Ricciardelli<sup>c</sup>*

<sup>a</sup>*University of Glasgow, Glasgow, UK*

<sup>b</sup>*The University of Winnipeg, Winnipeg, MB, Canada*

<sup>c</sup>*Memorial University of Newfoundland and Labrador, St. John's, NL, Canada*

### Abstract

This book brings together an international group of scholars whose chapters, analytically and/or empirically, engage with, challenge, and further advance our understanding of ‘mass supervision’ across jurisdictions. In this introductory chapter, we describe the impetus for and purpose of this book and briefly outline each chapter’s contribution. Together, contributors to this book provide contextualised insight into what ‘mass supervision’ is, how it works, and what effects it has on individuals and communities. The chapters span macro-examinations of the socio-political origins and developments of probation and community-based supervision across jurisdictions and micro-examinations of how people perceive and experience punishment in the community both as its practitioners and as its subjects.

*Keywords:* Supervision; punishment; parole; probation; ‘mass supervision’; conceptualisation

### Introduction: Looking Beyond the Cage

Undoubtedly, the prison casts a long shadow, not just in the lives of formerly incarcerated people, their families, and their communities, but also in the public imagination of what punishment is and what punishment does. Even those who

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**Punishment, Probation and Parole:**

**Mapping out ‘Mass Supervision’ in International Contexts, 1–10**

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**doi:10.1108/978-1-83753-194-320231001**

spend their lives studying punishment tend to stay in that shadow; pre-occupied with imprisonment and its effects. It's true that the shadow often distorts the reality; prisons and life inside them are often hidden from public view, discussed only when challenges arise, and the society that exists within prison is often misunderstood or negatively conceptualised. Even where punishment scholars seek to address these distortions, it remains necessary to further expand our horizons. It's not just that we need to think about 'the carceral' in a wider sense either; too often studies of punishment remain wedded to the idea that punishment happens in cages and that caging is what punishment does. In this sense, our own penal imaginaries can also remain locked down, contained, and constrained.

The origins of this collection lie in a developing transatlantic dialogue about an aspect of penal systems and practices that has been surprisingly neglected until recently. We refer, of course, to supervisory forms of punishment which are based not in cages but in communities, even if they do often produce carceral effects, constraining people's lives in very significant ways. All three editors – and all our contributors – share an interest in addressing this neglect.

One of the problems we face in centring supervisory forms of punishment is that whereas imprisonment as a form of punishment can be defined in large part by its fundamental architectures (the cage, the cell, the jail, the prison), supervision in the community is delivered through very diverse institutions, technologies, and practices that make it impossible even to agree to a common or settled language (Robinson, 2016). Supervisory forms of punishment have evolved in diverse ways; they seem very different in different places, further complicating their study.

As the title of our collection suggests, the Anglophone terms 'probation' and 'parole', and the associated systems and practices, can serve as useful starting points. More broadly though, our focus is on sanctions or measures imposed by criminal courts that involve some form of supervision in the community, whether instead of a custodial sentence (as in certain forms of suspended or conditional sentences), as community-based sentences in their own rights (like probation, in some jurisdictions), or as part of a sentence that begins with imprisonment but extends beyond it (as in parole). It is important to note that many experiences of incarceration include a community supervision component; as we will see in what follows, this is one of the reasons why 'mass incarceration' often has a symbiotic relationship with 'mass supervision' in the community.

## **From 'Transcarceration' to 'Mass Supervision'**

Despite the relative neglect we are seeking to address in this volume, it is worth recalling how concern about the expansion of penal forms of supervision first emerged in the 1970s. Scull (1977, 1983), Mathieson (1983), and Cohen (1983, 1985), among others, warned of the 'dispersal of discipline' beyond the prison. In particular, Cohen's (1985) *Visions of Social Control* cautioned that a policy rhetoric of diversion and decarceration was cloaking the emergence of more expansive and penetrating forms of 'deviance control'. He argued that these new forms were serving to widen the penal net at the

same time as thinning the net's mesh, dredging more people into, rather than diverting more people out of, the penal system. For both Cohen and Scull, the growth of 'community corrections' (meaning probation and parole systems and other forms of 'intermediate punishments') was an important part of this alarming picture.

More recently, [Robinson \(2016\)](#) has reminded us that these sorts of analyses crystallised by the late 1980s to such an extent that Lowman et al. (1987) produced an edited collection on *Transcarceration*. Rather than accepting the logic of probation, parole, and other measures as *alternatives* to imprisonment, the concept of transcarceration stressed the symbiotic rather than substitutionary relationship between imprisonment and its supposed community-based 'alternatives'.

However, [Robinson \(2016\)](#) goes on to argue that, during the 1990s and 2000s, scholarly preoccupation with the advent of mass incarceration (Garland, 2001) prevented much further development of analyses of transcarceration. She suggests that what little sociological interest there has been in community-based penal supervision has tended to focus on those forms of supervision most closely related to imprisonment, that is, parole and electronic monitoring. This leads [Robinson \(2016\)](#) to characterise the subject of 'community sanctions and measures' as the 'Cinderella' of 'Punishment and Society' studies:

[...] a neglected and under-theorised zone – despite the fact that, as we have seen, several scholars in the 1980s foresaw the expansion and diversification of forms of non-carceral control in many Western jurisdictions, and the empirical reality that offenders subject to some sort of supervisory sanction in the community have, in many jurisdictions, come to substantially outnumber those subject to custodial confinement. (p. 101)

We concur with [Robinson \(2016\)](#), noting that it is only in the last decade that Cinderella started to take tentative steps towards the Ball. The rapid rise, particularly around the turn of the 21st century, in both the numbers *and* forms of community-based penalties, such as probation and parole, has compelled some scholars, on both sides of the Atlantic, to begin to employ and reflect on the meanings of 'mass probation' or 'mass supervision' as pervasive forms of social control (Beyens & McNeill, 2013; [McNeill, 2013, 2018, 2019](#); Phelps, 2017, 2013).

For example, in *Pervasive Punishment: Making Sense of Mass Supervision*, [McNeill \(2018\)](#) argued 'mass supervision' is an increasingly important but largely invisible form of punishment. Fundamentally, this invisibility limits our ability to imagine what supervision entails, and thus, we are poorly placed to debate its legitimacy and effectiveness as a way of delivering justice. Focusing on examples from the UK, the USA, and Europe, [McNeill \(2018\)](#) argued that, even while crime rates have been stable or falling, there have been huge increases in the scale of supervision (and therefore of penal control) and that it is most often highly concentrated within disadvantaged communities. The evidence suggests

those who are most disadvantaged are drawn deepest into the penal net. In his own country, Scotland, for example, between 1980 and 2016, the number of community sentences imposed in the courts increased seven-fold, while the prison population also grew by 60 per cent and areas with greater social deprivation had the higher rates of both imprisonment and supervision (McNeill, 2018).

Other scholars, too, have drawn attention to the scale and nature of community supervision in other countries. In the USA, Phelps (2017) developed the concept of ‘mass probation’ as a state form of punishment, drawing attention to the roughly 3.7 million adults on probation. In Canada, Maier (2020, 2021) illuminated the nature and workings of halfway houses as a hybrid and liminal form of punishment that works in ex-prisoners’ lives in both helpful and hurtful ways. In Canada, too, probation calls for more academic attention as it presents the most common form of punishment. Around 85,000 people are currently on probation, compared to roughly 40,000 people who are incarcerated (Malakieh, 2020). To date, however, probation in Canada has yet to receive academic attention and only a handful of studies have focused on parole supervision (e.g. McKendy & Ricciardelli, 2021).

Important though these numbers are, our interest in supervision extends beyond scale to include qualitative and experiential dimensions of ‘mass supervision’. To fully grasp the human and social impacts of this rapid expansion of punishment into the community, McNeill (2018) examined the nature of supervision as a lived experience, drawing on innovative empirical work in several European states using creative methods to elicit and examine how supervisees themselves chose to represent their experiences of supervision (Fitzgibbon et al., 2017; McNeill, 2019). While community-based penalties are often officially promoted as a relatively benign ‘rehabilitative’ sentencing option or an ‘alternative’ to incarceration, the evidence suggests a wide range of punitive effects of community penalties on the lives of those subject to them and on those around them (e.g. Durnescu, 2011; Durnescu et al., 2013, 2018; Hayes, 2015; McNeil, 2018, 2019; see also King, 2013, Miller, 2021). By introducing the language of ‘pains’ into the realm of community penalties, researchers in this field have problematised the notion that community penalties constitute a ‘soft’ sentencing option, presenting instead a method of penal intervention that can be both painful and productive (see also Turnbull & Hannah-Moffat, 2009).

Beyond its scale, social distribution, and impacts, McNeill (2018) also analysed the history of probation in his own country (Scotland) to explore how the rapid expansion and diversification of supervisory sanctions has been justified and legitimate. He argued that, in Scotland, a commitment to reducing imprisonment had been discursively interwoven with rehabilitation, reparation, and managerialism at different times in the history of supervision. But the Scottish case, McNeill warns, is a salutary tale of ‘successful failure’; producing penal expansion even while pursuing reductionism, partly because, in the long shadow of the prison and its harms, policy makers and practitioners (and other publics) had failed to recognise the penal (and painful) character of supervision and had therefore failed to grasp the harms that attend its growth.

## Conceptualising ‘Mass Supervision’

As may already be obvious, the ‘mass’ in mass supervision is an allusion to the related and more familiar terms ‘mass incarceration’ and ‘mass imprisonment’. In recent years, mass incarceration, in the USA at least, has become a concern not just of a wider range of scholars but also of both social movements (Alexander, 2010) and policy makers (Travis et al., 2014).

Nonetheless, the meaning of ‘mass’ in these phrases has rarely been clearly articulated (though see Garland, 2001; Weisberg & Petersilia, 2010; see also Hayes, this volume). Sometimes, ‘mass’ is used simply to refer to the increasing number of people incarcerated. But to talk of the volume of supervision (and imprisonment) necessarily begs questions about the scale against which one is measuring and to which one is comparing. We might compare the scale of supervision in the past and the present, or compare between different places, or we might judge supervision relative to the scale of imprisonment or financial penalties. However, a thorough analysis of scale also requires an analysis of supervision’s socio-spatial distribution *within* a jurisdiction to see where we find it most concentrated in time and place and across social strata related, for example, to ‘race’, class, and gender. We need to understand which social groups in which locations are most and least subject to supervision, and why.

The ‘mass’ in mass incarceration also invokes the notion of aggregation and the failure to differentiate, to distinguish, to recognise, and to respond to difference. Here, the suggestion is that upscaling requires or is the corollary of a failure to individualise people subject to punishment. When the penal system processes ‘masses’, the system processes them, at best, as ‘types’ and not as unique human beings. To borrow Deleuze’s (1992) term, the subjects of mass supervision are ‘dividuals’ rather than individuals, allocated to standardised responses based on some kind of typification or classification, for example, through risk assessment.

In relation to mass incarceration, the most common visual representation of aggregation is the image of the ‘warehouse prison’, ‘packing them in and stacking them high’. Of course, while it may make sense to speak in some contexts of supervision as ‘community warehousing’ and to speak of ‘probation overcrowding’ (Solomon & Silvestri, 2008), in another sense supervision itself is – or at least *can* be – highly variegated. For example, even within a single legal instrument like the Suspended Sentence Order in England, supervision can involve a very diverse range of conditions in an even more diverse array of combinations. That said, even if the official legal forms and penal functions of supervision have diversified, whether people *feel* they are processed as mere dividuals or engaged with as individual human subjects is, of course, a different matter.

We depict these different dimensions of mass supervision below in Fig. 1.1.

## Challenging Mass Supervision

In his book’s final two chapters, McNeill (2019) turned his attention to whether and how we might restrain and reform mass supervision, arguing that the greater use of creative and sensory methods to expose supervision’s lived realities might

change the nature and quality of civic and political dialogue about punishment by helping us to better imagine and re-imagine punishment. He concluded by suggesting that any project of challenging mass supervision requires at least three inter-related strategies: scaling down supervision, clarifying and circumscribing its legitimate purposes and role, and (within these constraints) developing and delivering it constructively.

Writing within the context of the USA, [Lopoo et al. \(2023\)](#) argue for the ‘extensive downsizing’ of probation on the basis that probation fails to meet core sentencing goals, such as diversion and rehabilitation. Former Commissioner of New York Probation, Vinnie Schiraldi (2020) went further in questioning the general utility of probation; whether ‘we need to employ government workers to watch those who have broken the law’. Studying mass supervision provides an opportunity to question and re-imagine criminal justice policies and practices beyond the prison.

## The Contribution of this Book

One important limitation of work to date on ‘mass supervision’ is the lack of attention to jurisdictions beyond mainland Europe, the UK, and the USA. While at one time this neglect might have been justified with reference to the scale and stage of development of probation and parole systems in these places, in our

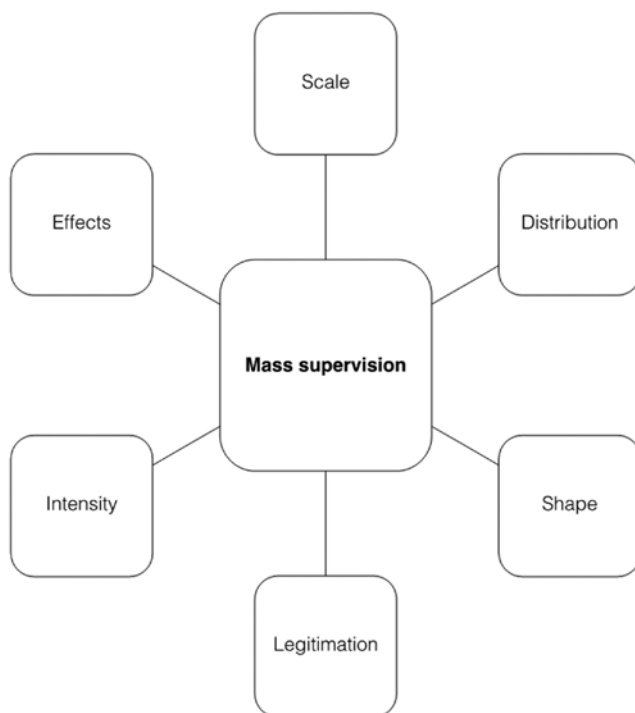


Fig. 1.1 Dimensions of Mass Supervision.

assessment, recent arguments about the need to decolonise criminology cannot and should not be resisted in this context either.

Fonseca (2018) has argued that decolonising our approaches to punishment and society requires one to engage in ‘thinking *through* the global-south’ (emphasis added). When we do so, we are confronted both with the limited reach of existing theories, and with the degree of interconnectedness, we will find across national boundaries. For example, Fonseca (2018) suggests rising inequalities in the global north have brought back to the fore more repressive, exclusionary, and punitive practices; practices originally developed as part of the colonial enterprise. Conversely, he also notes:

[...] while many peripheral countries went through a process of late industrialisation, they faced a rise in the public perception of crime, and the consequent increase in incarceration rates, which was prompted by the erosion of informal social controls and the expansion of the criminal justice apparatus that resulted from a modernization drive. (Fonseca, 2018, p. 56).

In somewhat similar vein, Aliverti, Carvalho, Chamberlen, and Sozzo (2021) argue that the decline of empires ‘did not dismantle the colonial roots of the cultural, social, and political mechanisms informing contemporary punishment ...’ (p. 297). To decolonise then requires attention to three dimensions.

First, in the ‘temporal dimension’, criminology needs to address its neglect of the ‘recursive history and the uneven sedimentation of colonial practices’ in the penal practices of our ‘colonial presents’ and to explore their durability and impacts (p. 302). Second, we need to attend to the ‘spatial dimension’; looking across and past ‘the north and south’, ‘the west and the rest’, ‘the centre and periphery’, and attending to the policy and practice transfers between them. In so doing, we must consider the analytical problems created by Anglo-American dominance in criminology, reflected both in economic power and in the position of the English language as the ‘lingua franca’ of the discipline. Third, as well as looking back (historically) and looking across (geographically), we must attend to the ‘subjective dimension’, looking within, as it were, at the construction of otherness, difference, threat, and danger, as reflected in the criminalisation of racialised people and of migrants:

In sum, attention to the colonial and imperial formations underpinning the social construction of the Other is imperative to for understanding the roots, development and effects of technologies and apparatuses of crime control and punishment. (Aliverti et al., 2020, p. 307).

In a limited sense, some of the recent research on how people experience ‘mass supervision’ – particularly in its creative and ethnographic forms – perhaps has begun to decolonise our approaches, at least in so far as it insists on taking penal subjects and subjectivities seriously rather than starting with the epistemic framings of the state, of law, and of policy. In part, this reflects Aliverti et al.’s (2020) suggestions of how we might proceed:

A crucial next step in the effort to decolonize the criminal question thus involves diversifying the voices, the locales and the methods in its study and investigation. In pursuing this goal, it is imperative that we do not circumscribe future analyses to particular sites and topics. We understand the decolonizing project to encompass not only the shifting of the criminological gaze ‘southwards’ and the expansion of the geopolitical realms of the field, but also the questioning and reassessment of the sites, topics, identities and subjectivities, and methods that pervade the study of the criminal question in the North. (Aliverti et al., 2020, p. 308)

As editors, we hoped to at least edge our field in this direction. Even if we failed to find many contributors from the global south, we did at least ask our contributors to critically engage with the dimensions of ‘mass supervision’ developed by [McNeill \(2018\)](#), questioning its applicability in varying contexts and developing other missing elements. Our intention in this collection, then, has been to broaden the scope and depth of punishment scholarship, by centring on these different quantitative and qualitative dimensions of punishment in different community contexts and approaching the task via different methods.

We deliberately allowed our contributors latitude to focus on a wide range of topics and contexts that seemed important to them, from the proliferation of community-based penalties in different places, to their construction in practice, and to their possible spill-over effects even on the lives of people legally outside these penalties’ purview. Overall, we hope that the book offers a compact yet nuanced analysis of the various contours of community-based penalties within and across different jurisdictions, by exploring the application, significance, meaning, and limitations of emerging concepts like ‘mass supervision’.

The collection starts with David Hayes’ conceptual analysis of mass punishment/supervision in the English and Welsh context. Hayes explores the promises and pitfalls of using conceptual categories such as mass supervision. He develops McNeill’s conceptual approach to mass supervision by using and developing the concept at a policy level.

Next, Martine Herzog-Evans’ chapter turns the focus to parole supervision in France. Drawing attention to penal reforms regarding early release in France, Herzog-Evans provides conceptual and empirical insight into what she describes as ‘McReentry’ and ‘mass nothingness’; a re-entry process and outcome that lacks rehabilitation support and due process.

John Todd-Kvam provides insight into community supervision in Norway. Using McNeill’s dimensions of mass supervision, his chapter discusses the implications of policy and penal changes in Norway for three little-explored aspects of penalty: the serving of short sentences at home on electronic monitoring, supervision of people under 18, and ‘punishment debt’ enforcement.

Turning to Scotland, Ryan Casey extends our understanding of punishment’s reach by analysing the development of electronic monitoring policy over the last decade in Scotland. Casey speaks to the latent consequences of electronic monitoring and calls for a reframing of electronic monitoring policy and regulation in