

Shrinking the penal state: Principles, practices and priorities

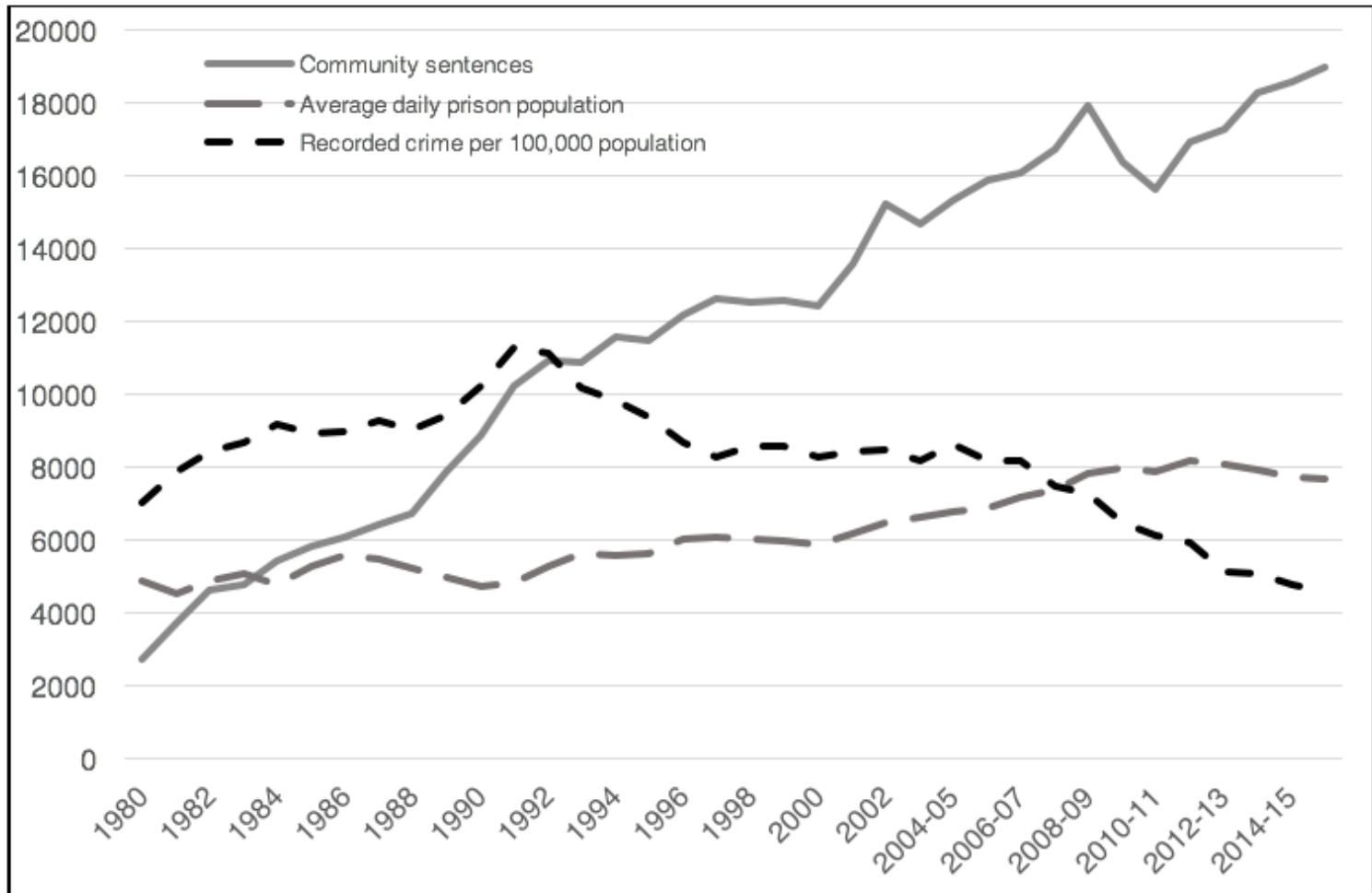


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What is the penal state?

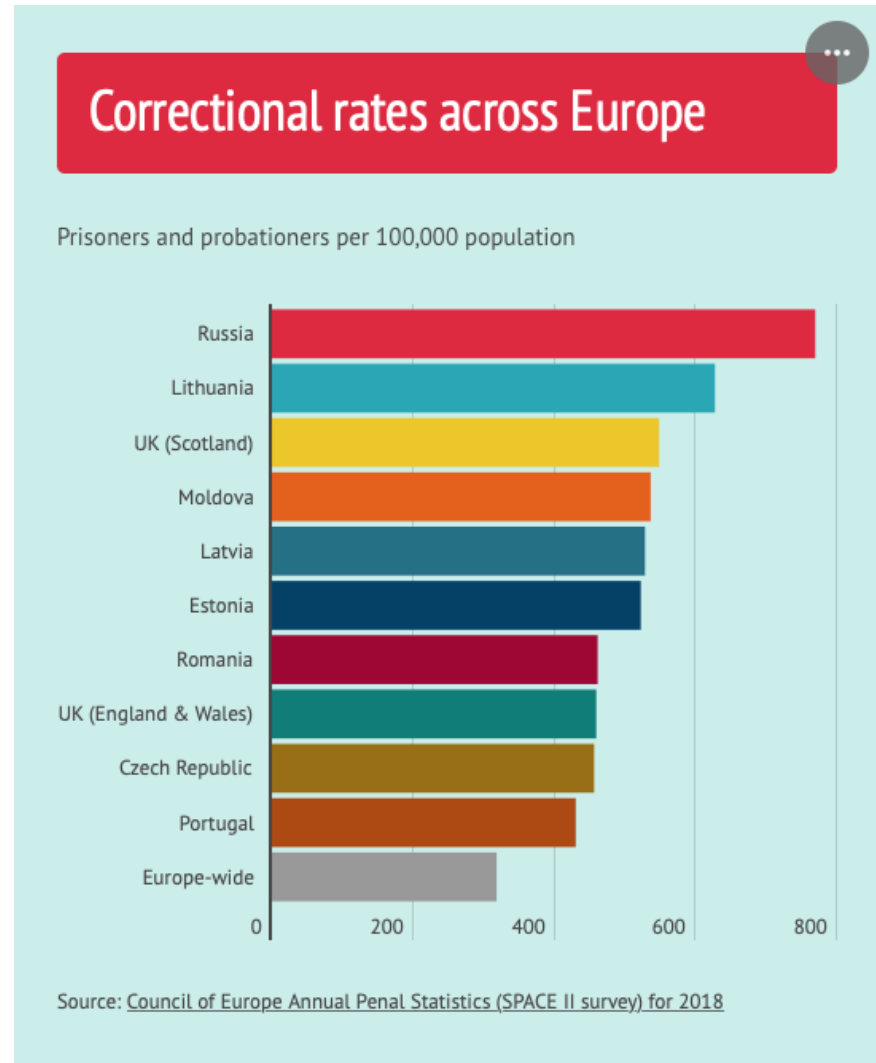
- Sometimes also described as the ‘carceral state’ (i.e. delivering ‘mass incarceration’ and ‘mass supervision’), not always well defined (see Rubin and Phelps, 2015)
- Generally a reference to the ‘neo-liberal’ shift: shrinking welfare states and expansive carceral or penal states.
- More narrowly and technically: Garland (2013: 495):
 - “those aspects of the state that enact penal law, shape penal policy, and direct penal practice”.
 - “those aspects of the state that determine penal law and direct the deployment of the power to punish”

Penal expansion in Scotland, 1980-2016



'The Texas of Europe'

- In 2018, Scotland had the highest 'probation rate' and third highest 'correctional rate' (i.e. proportion of people either in prison or on probation) across Europe, with 548 people per 100,000 (411 probation + 137 imprisonment);
- The correctional rate for England and Wales was 459
- The Europe-wide median was 318



How did this happen in a penal-welfarist state?

- + Longstanding concern about prison population, conditions, effects and litigation
- + Failure to reform sentencing itself
- + Uncritical promotion of community-based 'alternatives'
- + Failure to recognise their penal character
- + Insufficiently clear targeting
- = Penal expansion **not** contraction

Back to first principles...

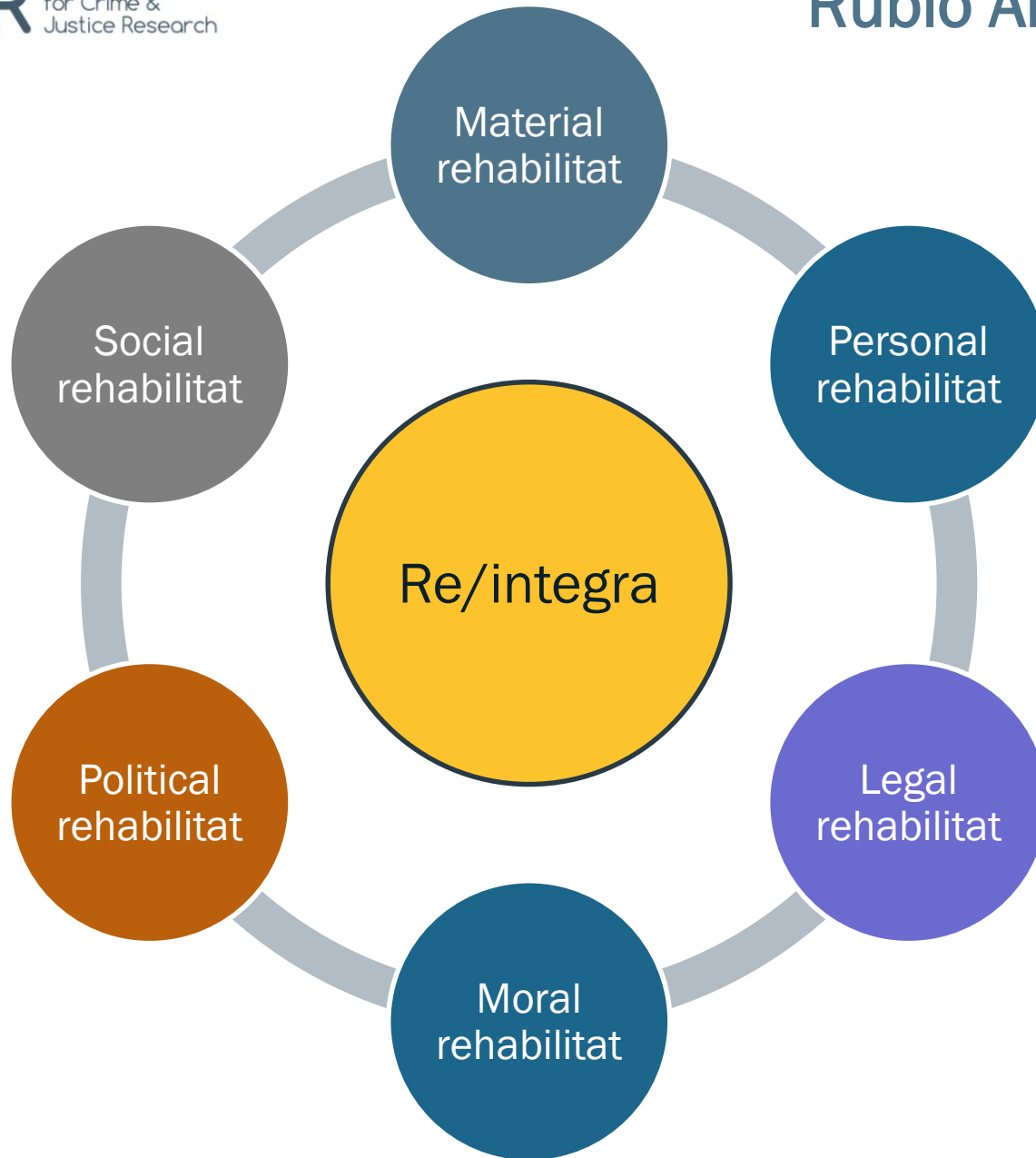
- The standard definition of punishment
 1. An intentional infliction of harm or hardship on a person, imposed...
 2. In order to reproach that person for a criminal wrong that that person is found to have committed...
 3. By someone entitled to make this wrong his or her business and to perform the punishing act.

(du Bois Pedain, 2017)

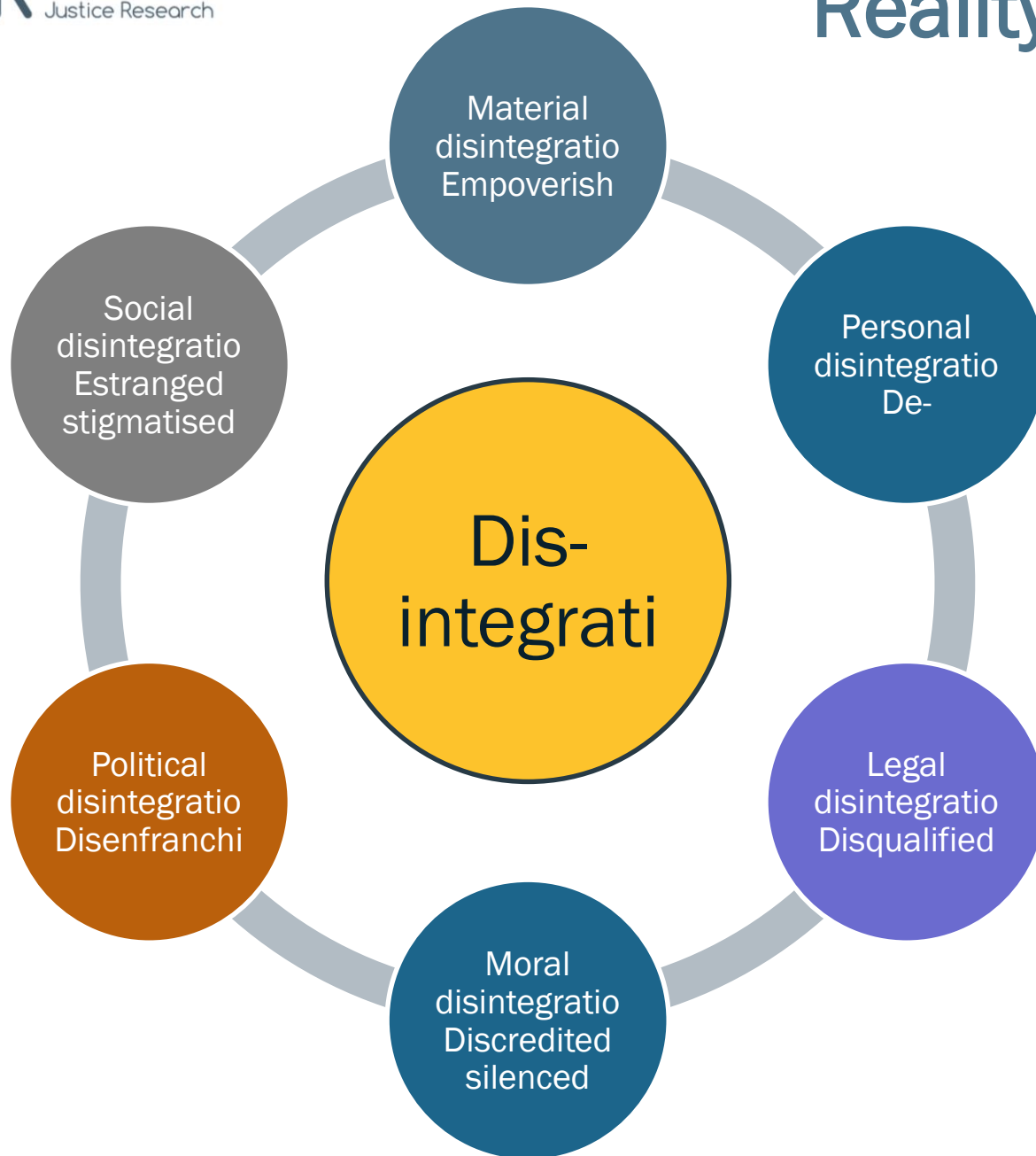
[Note that community sanctions and measures also meet this definition, for the most part.]

+ Reintegrative momentum?

- ‘As a general social practice, punishment does not merely mark out the punishee’s actions as wrong and blames him for engaging in this wrongful act. It also defines how both punishee and punisher will move forward from here. **The penal agent lays down the terms of his or her future co-existence with the offender in a shared social world.** Because this is punishment’s central social function, **there is reintegrative momentum inherent in punishment** that gives the offender himself an interest in being punished. Far from threatening or challenging an offender’s membership in the community, punishment reasserts or reinforces it’ (du Bois-Pedain, 2017: 203).

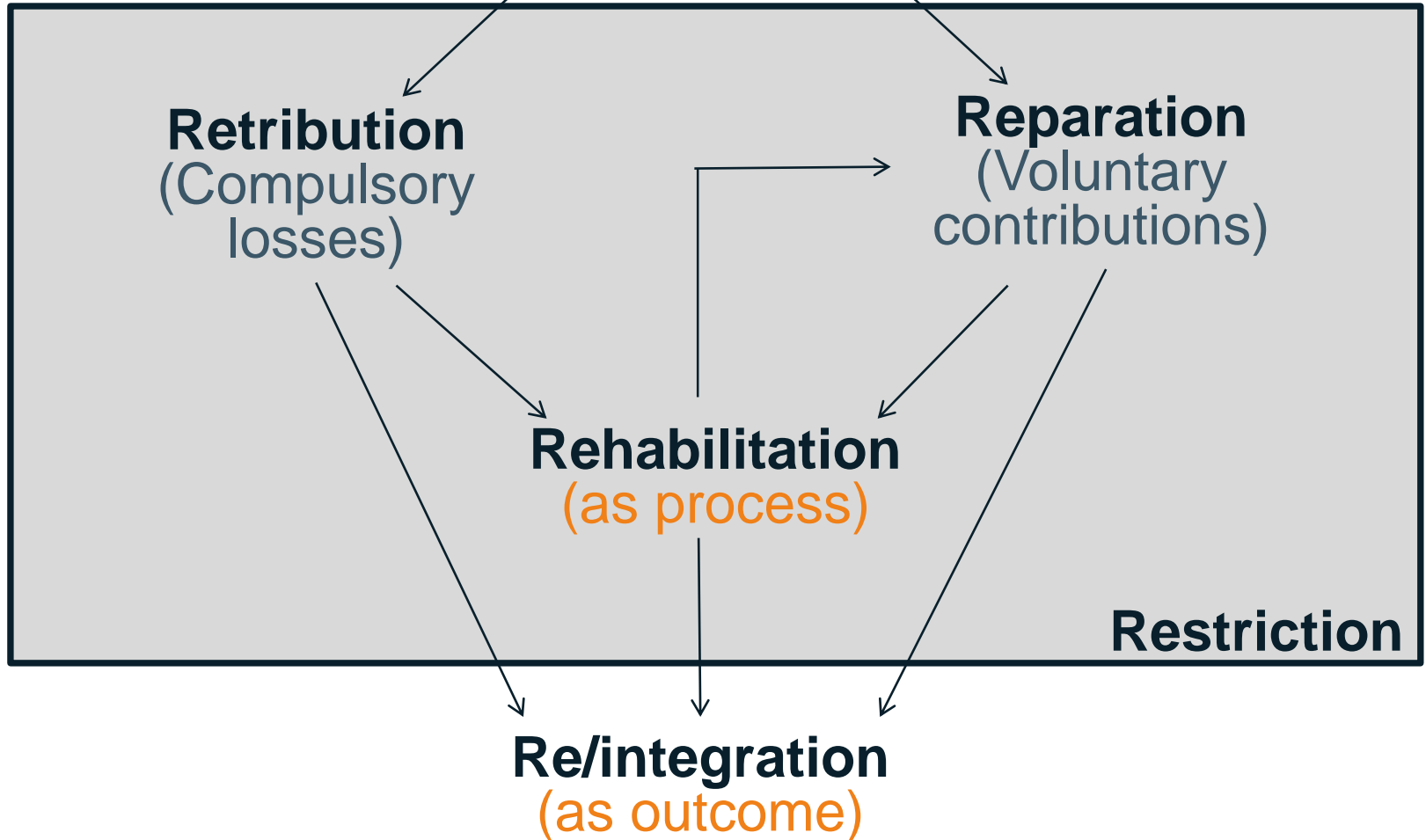


Reality check?



Taking the wrong track?

Sanctions as Censure and Redress

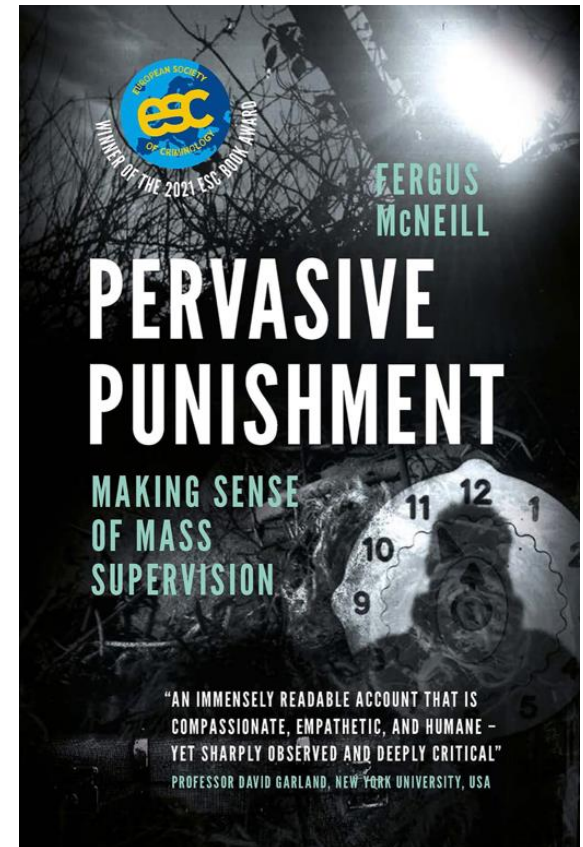


Contrasts

	'Merely Punitive'	Reparative
Mode of Power	Coercive	Negotiated
Form of Sanction	Imposed losses	Elicited goods
Type of Communication	Didactic	Dialogical
Underlying disposition to 'offender'	Disrespectful	Dignifying
'Victim' engagement	Indirect/optional/ extractive	Directly sought and valued
'Victim' impact	Alienation?	Recognition
Likely effects on 'offender'?	Diminution & Disintegration > Reoffending?	Development & Reintegration > Desistance?

Shrinking the penal state

- Parsimony:
 - Scaling down mass supervision, mass penal control, and even criminalisation itself
- Proportionality:
 - Clarifying and circumscribing the legitimate purposes and intrusions of all criminalisation and of all sanctions
 - Targeting them carefully
- Productiveness:
 - In the application of all sanctions, developing and delivering the most restrained, legitimate, helpful and constructive approaches



Productive sanctions? (recalling Rubio Arnal 2021)



Conclusion

- Judge your penal system by its effects on (re)integration... if you dare?
- We need less criminalisation, less penalisation, less ‘merely punitive’ punishment of all sorts.
 - These are very poor investments in social and fiscal terms.
- If we must criminalise and sanction, then we need more productive sanctions, more reparation, more reintegration support.
 - At the very least, this might reduce the footprint of the penal state.
- But what really need, as almost every criminologist would agree, is more welfare and less inequality.