

# Purposeful Probation: Resisting Mass Supervision

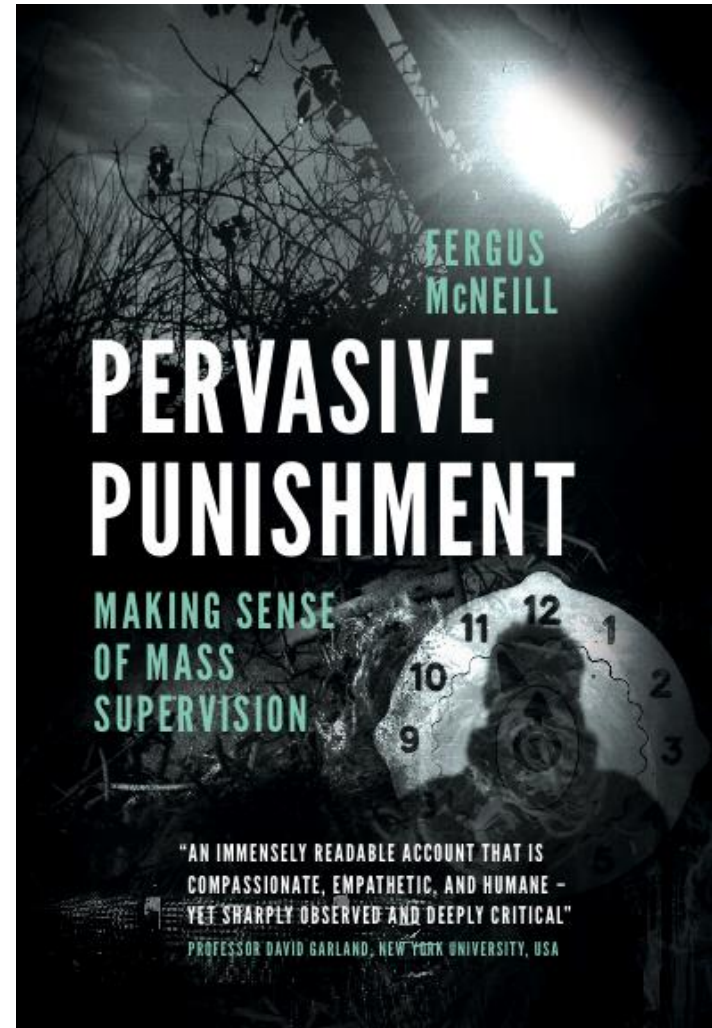
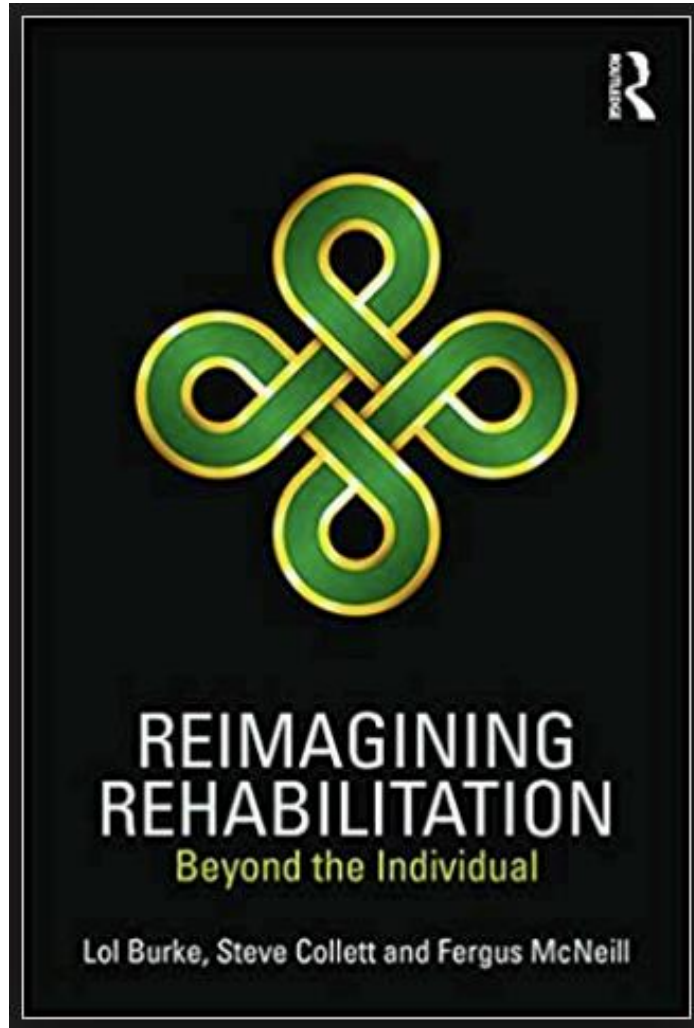


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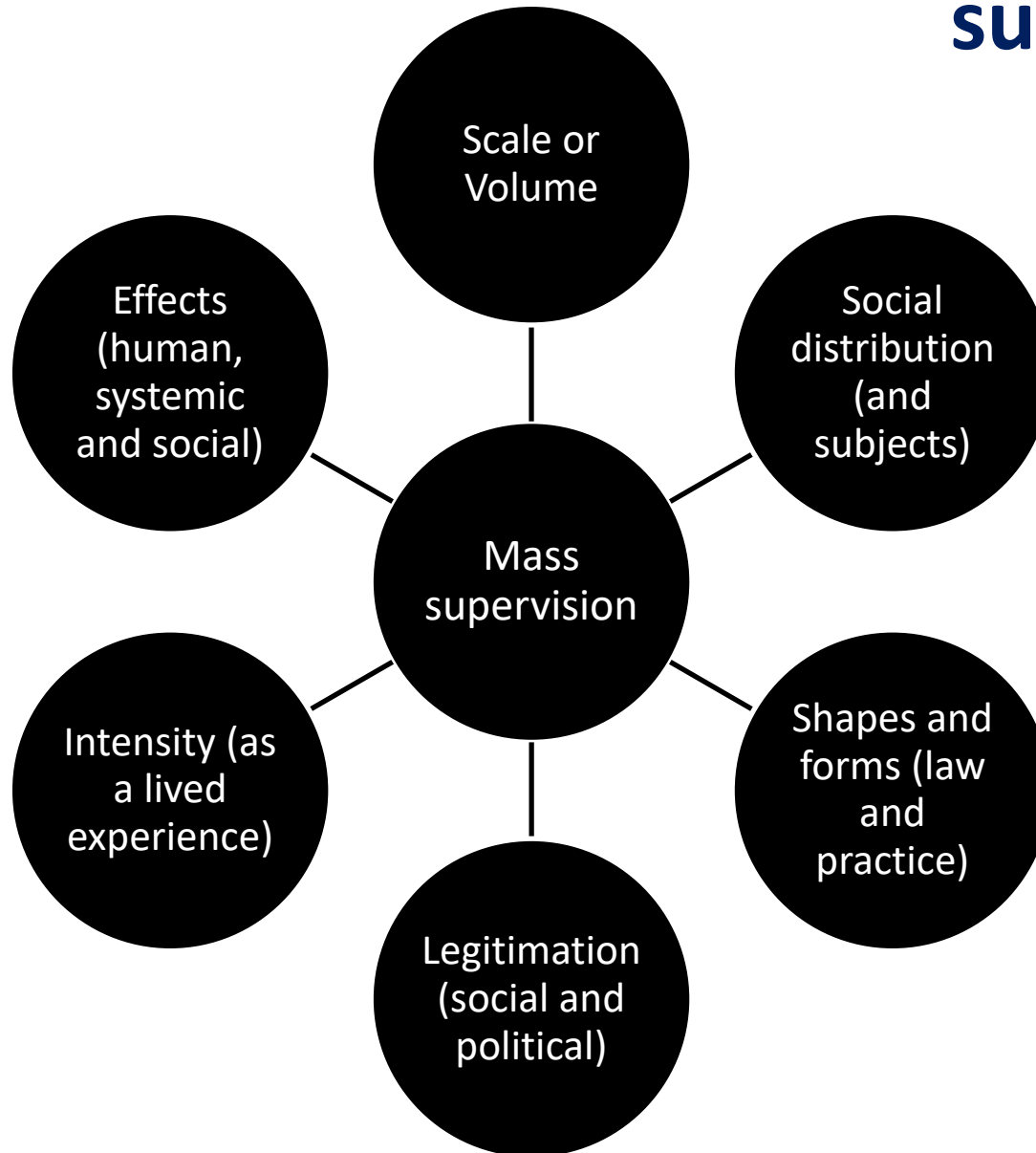
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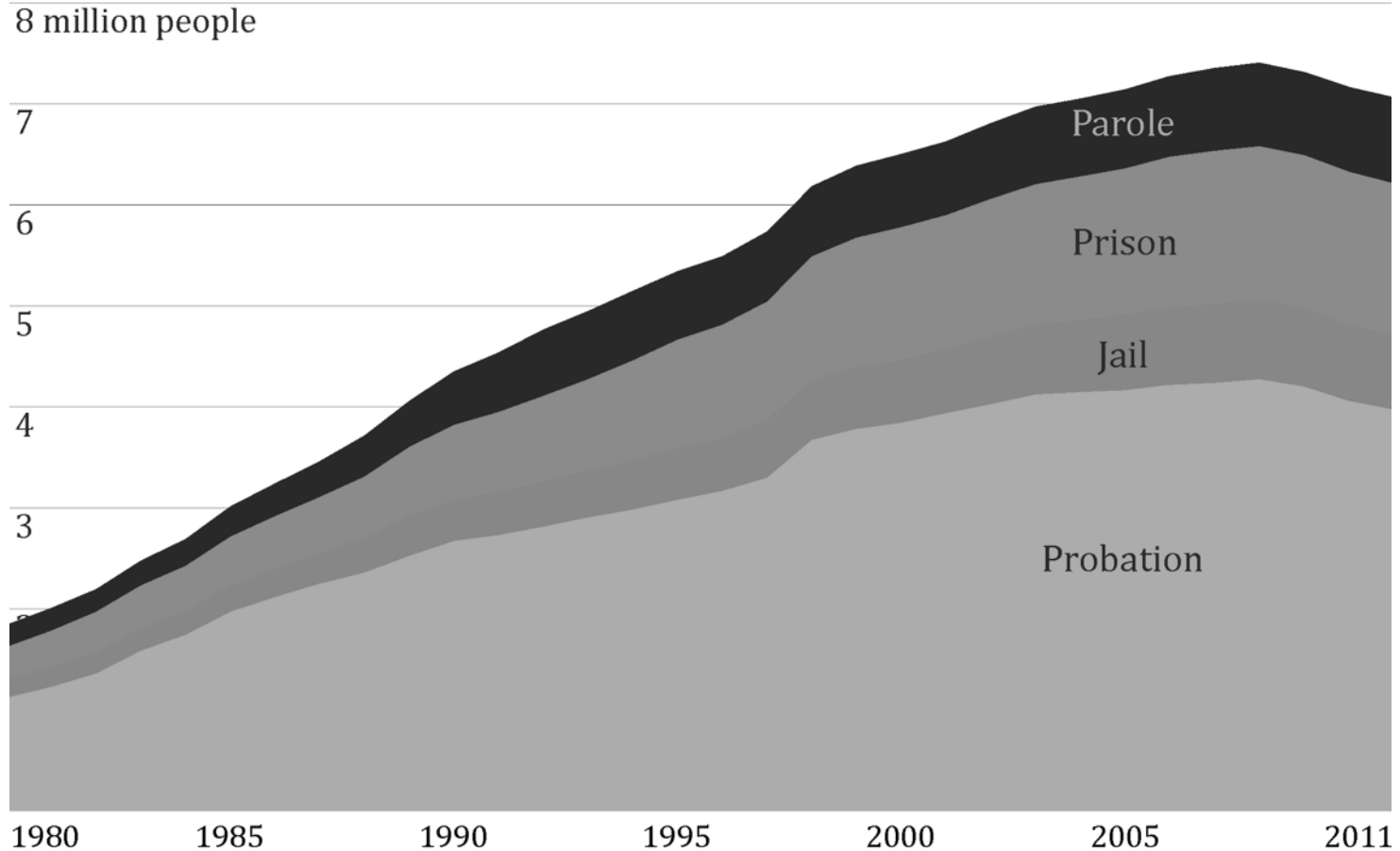


# Dimensions of mass supervision



# Mass supervision

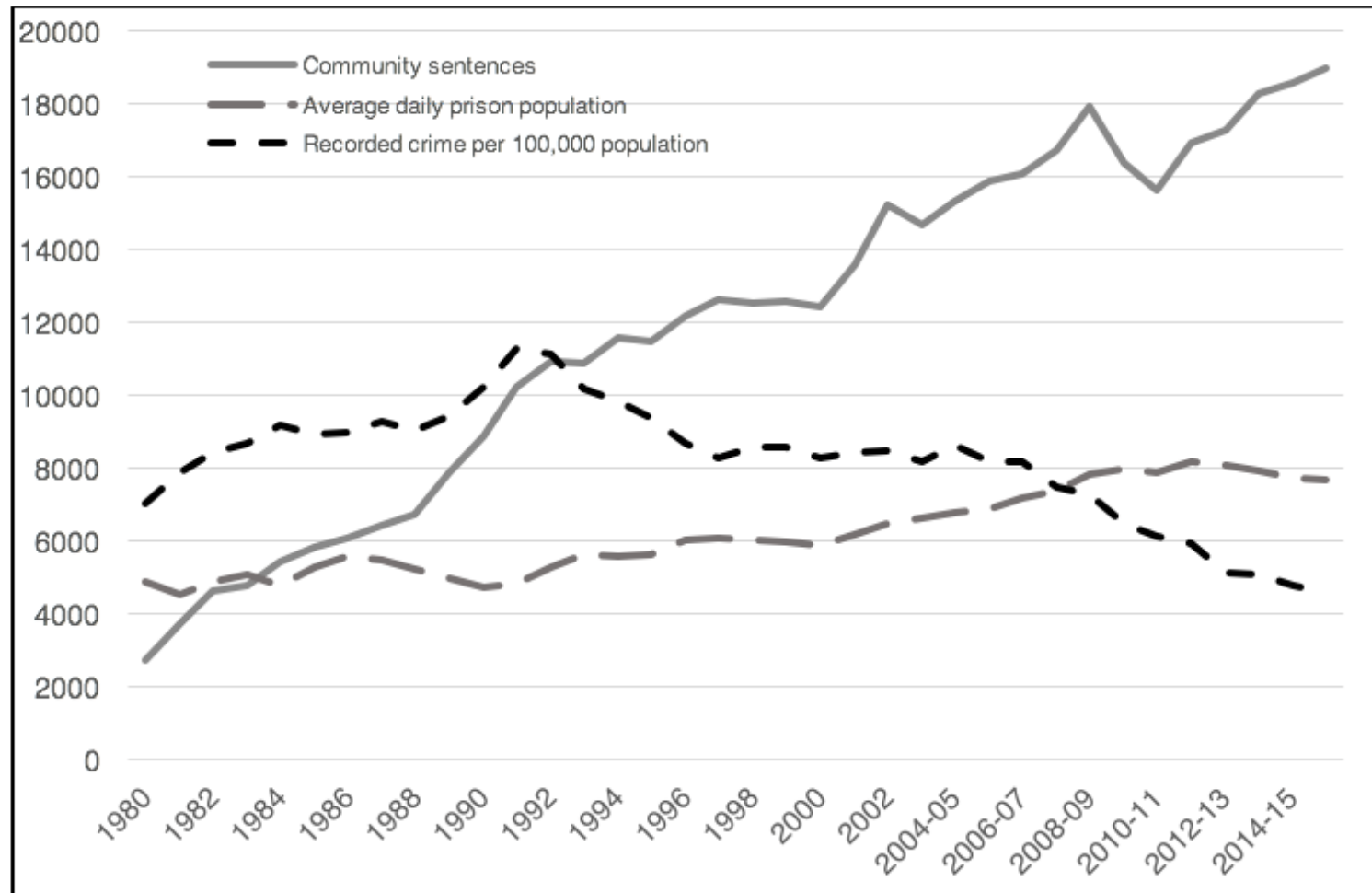
## U.S. Correctional Populations



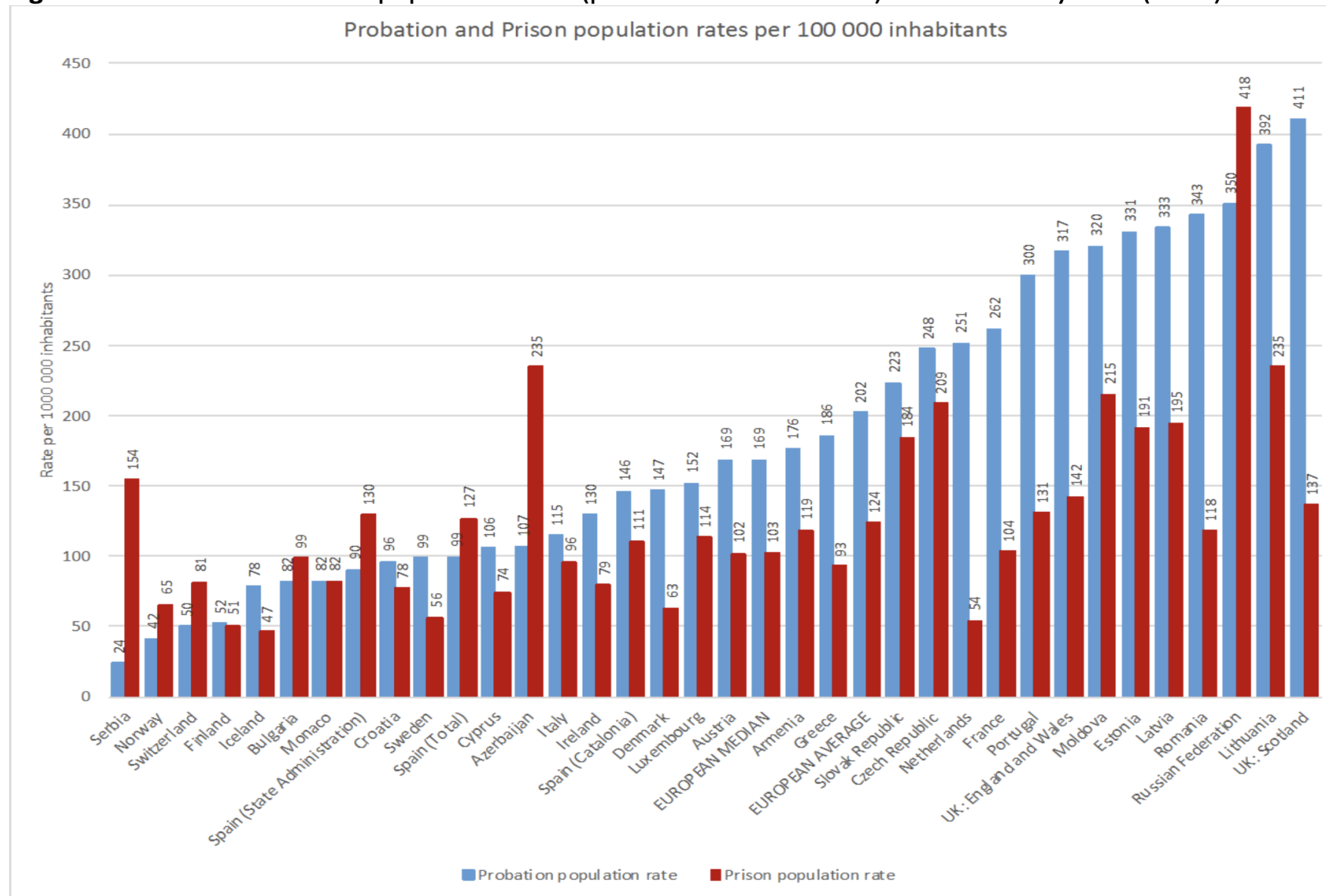
Sources: Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, Annual Survey of Jails, Census of Jail Inmates, and National Prisoner Statistics Program, 2000-2011.

Source: <https://thesocietypages.org/papers/visualizing-punishment/>

# Community sentences in Scotland, 1980-2016

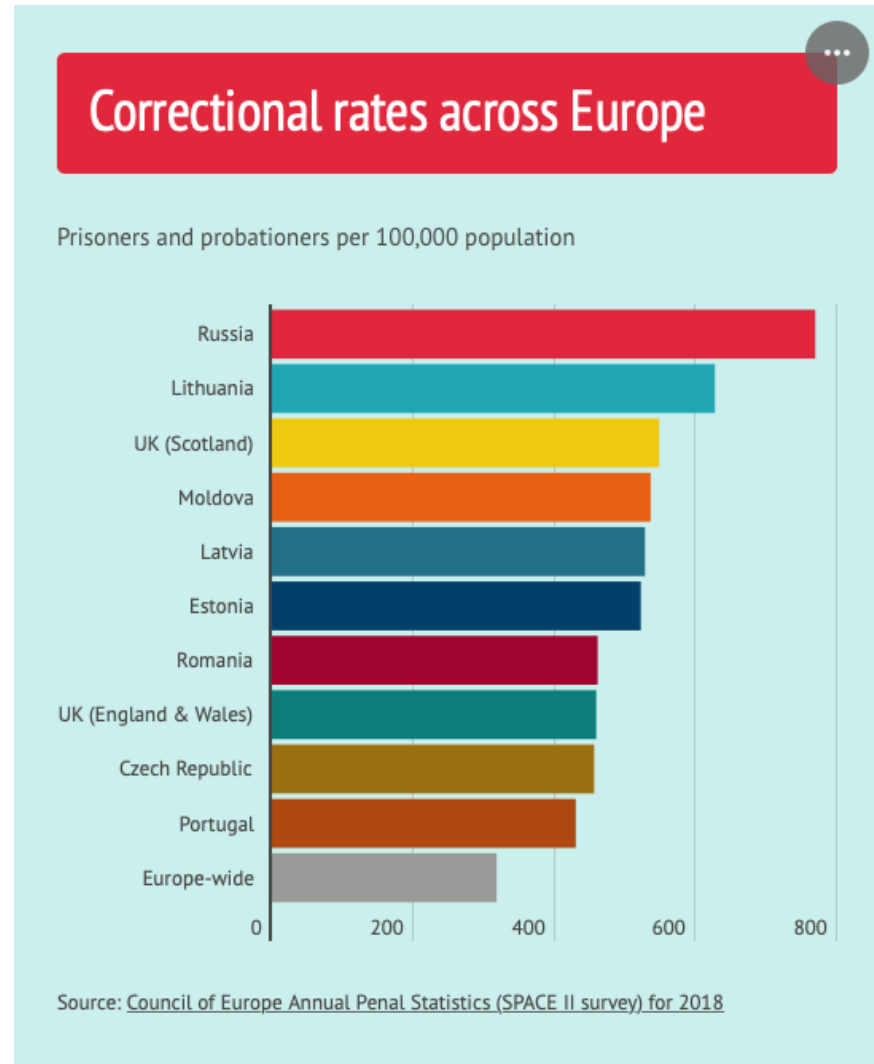


**Figure 3. Probation and Prison population rates (per 100 000 inhabitants) on 31<sup>st</sup> January 2018 (N=33)**



# Scotland's penal enthusiasm

- Scotland has 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 Europe-wide median was 318 (>1.8M now supervised)
- **Many of our penal systems are widening the net** and trawling in more and more of society's poorest and most marginalised people (even in states where crime is falling).





# Mis/imagining probation?

- [Some] Policymakers mis-imagine probation as cost-effective, benign diversion
- [Some] sentencers mis-imagine probation only as a mechanism for help and/or rehabilitation
- [Some] publics mis-imagine probation as an act of mercy, or a 'let off', or a 'joke'...
  - Cf. Lavinia Woodward who did not 'walk free from court having escaped a custodial sentence'...

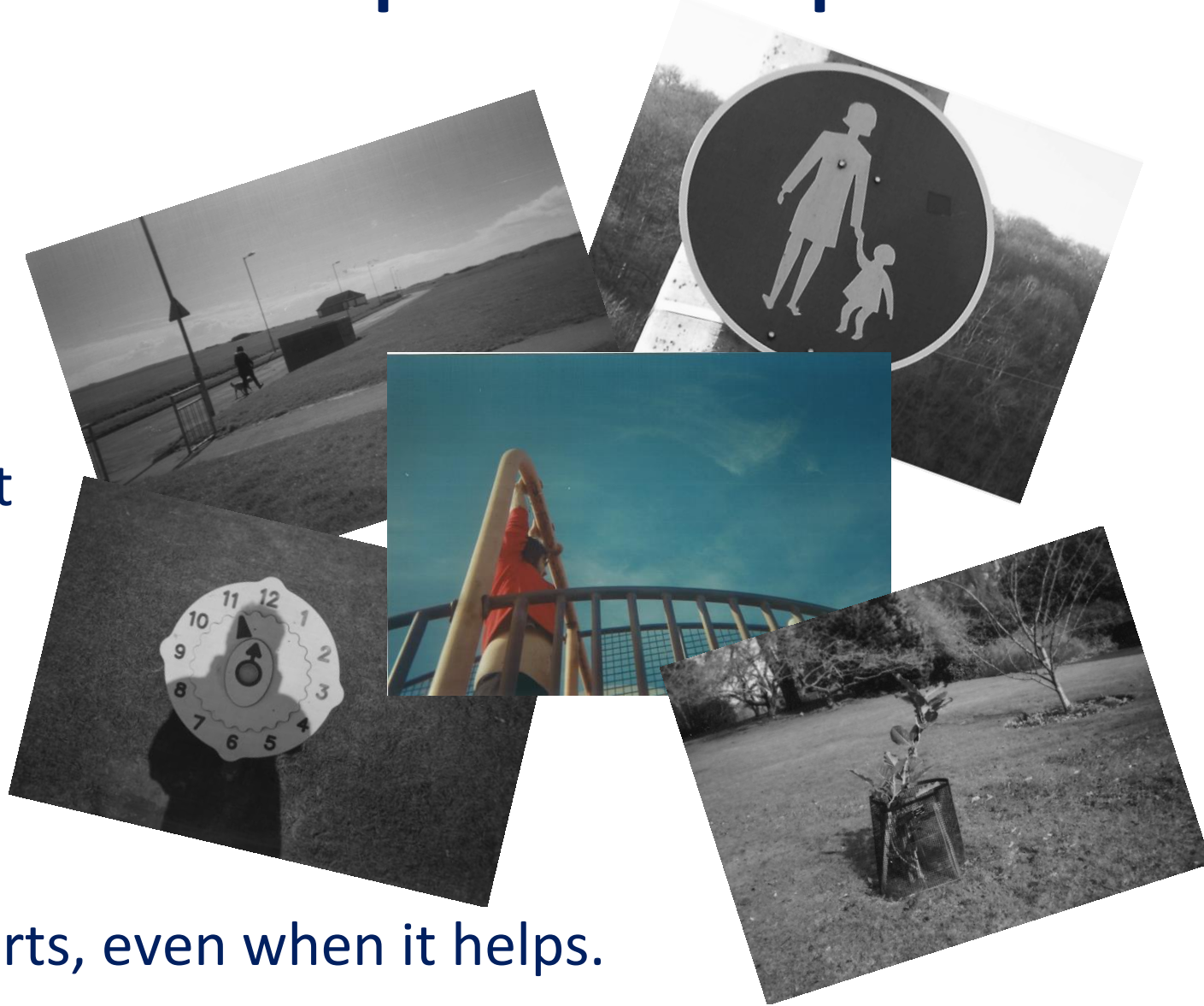




# How is probation experienced?

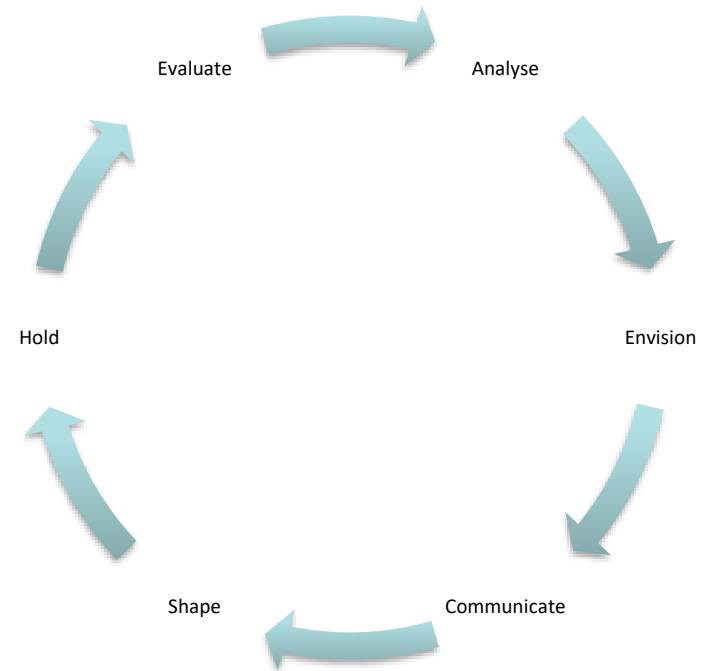
- Constraint
- Time
- Waste
- Judgement
- Growth

- It really hurts, even when it helps.



# Priorities for probation leaders?

- Confront the realities and analyse the challenges
- Co-create and promote a clear vision and strategy (including a theory of change)
- Communicate, engage and inspire
- Re-shape organisational structures and cultures and develop a capable and committed workforce
- Manage and hold boundaries: engage politicians, partners and communities
- Reflect and evaluate (together), and then improve the analysis, strategy and implementation, and repeat...



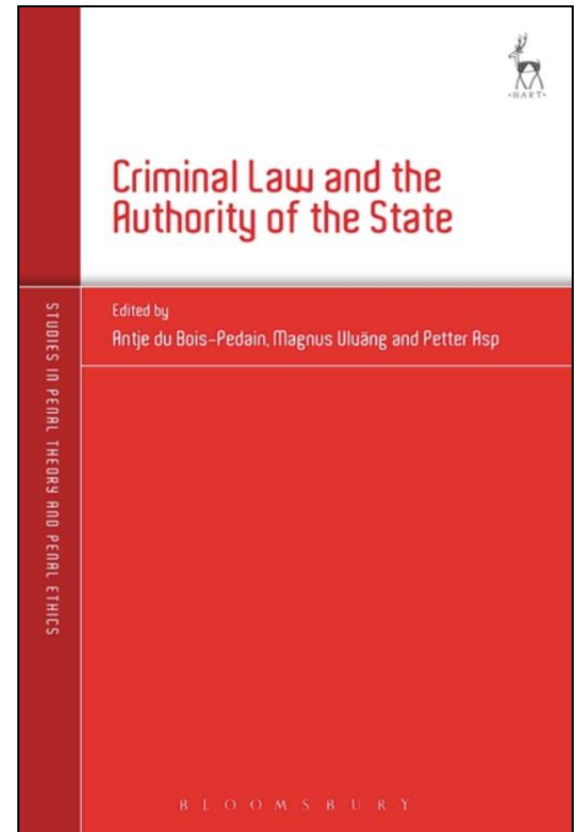
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# What constitutes punishment?

- The standard definition
  1. An intentional infliction of harm or hardship on a person, imposed...
  2. In order to reproach [or **censure**] 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)



# What constitutes punishment?

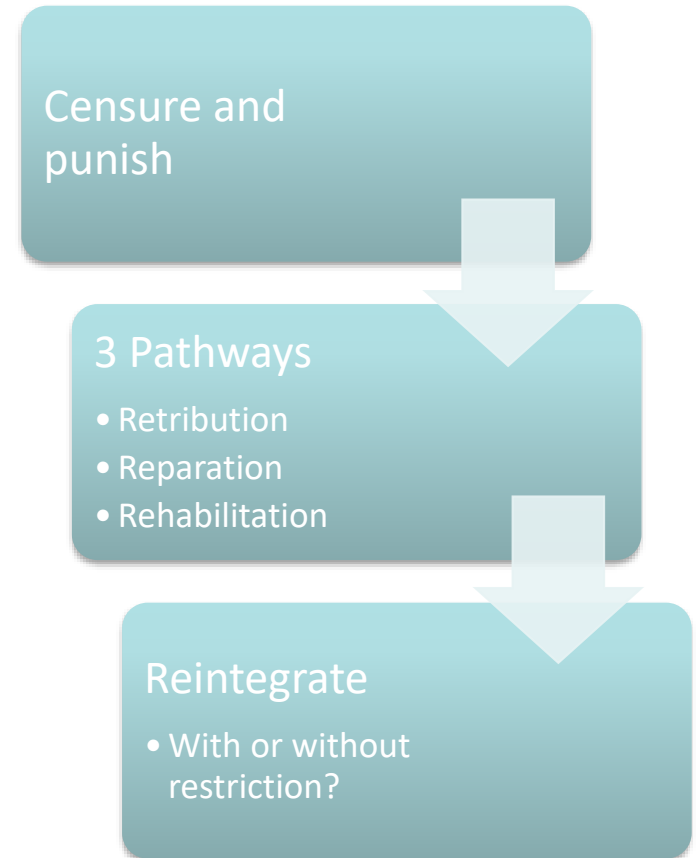
- The standard definition
    1. We can't usually inflict such harms on one another
    2. The reason we can punish refers back to the wrong and what we must communicate about it
    3. The punisher must have the authority to do this unusual thing; the punished person is rightly subject to that authority
- (du Bois Pedain, 2017)

# A gap in this account: 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, emphasis added).

# Reintegrative momentum, in practice?

- Both retribution and reparation entail reintegration; via different routes
  - Harm or repair
- Rehabilitation also aims at the same goal, but often adds practical efforts to enable return.
  - Prepare the person, clear the path.
- In criminal justice practice, reintegrative momentum is very hard to generate and very easily lost:
  - When we sentence
  - When we implement sentences
  - When sentences end





# A purpose for probation

- The legitimate aim of probation (and parole) should be to contribute to just societies by striving for the re/integration of people who have offended.
- When courts CENSURE, probation agencies implement and:
  - PUNISH: but only by properly and fairly applying court-imposed penalties (and the **retribution** they represent)
  - REPAIR: by creatively supporting constructive **reparation, restoration or reconciliation**, wherever possible
  - REHABILITATE: by effectively offering and providing help that encourages and supports **desistance**.
  - RESTRICT: only insofar as **restriction** is necessary to safely enable reintegration.
- In other words, while like prison, probation both hurts and holds, it should also help generate and sustain reintegrative momentum

# Supporting desistance and reintegration

## ***Expanded conceptions of EBP***

1. Desistance is a process of personal, human development
2. That takes place in and is shaped by its social and cultural contexts; hence also a social transition
3. That involves movement away from offending (volume, frequency, severity)
4. ***And momentum towards successful social integration and participation, enjoying citizenship rights and fulfilling responsibilities.***

Primary (Act)

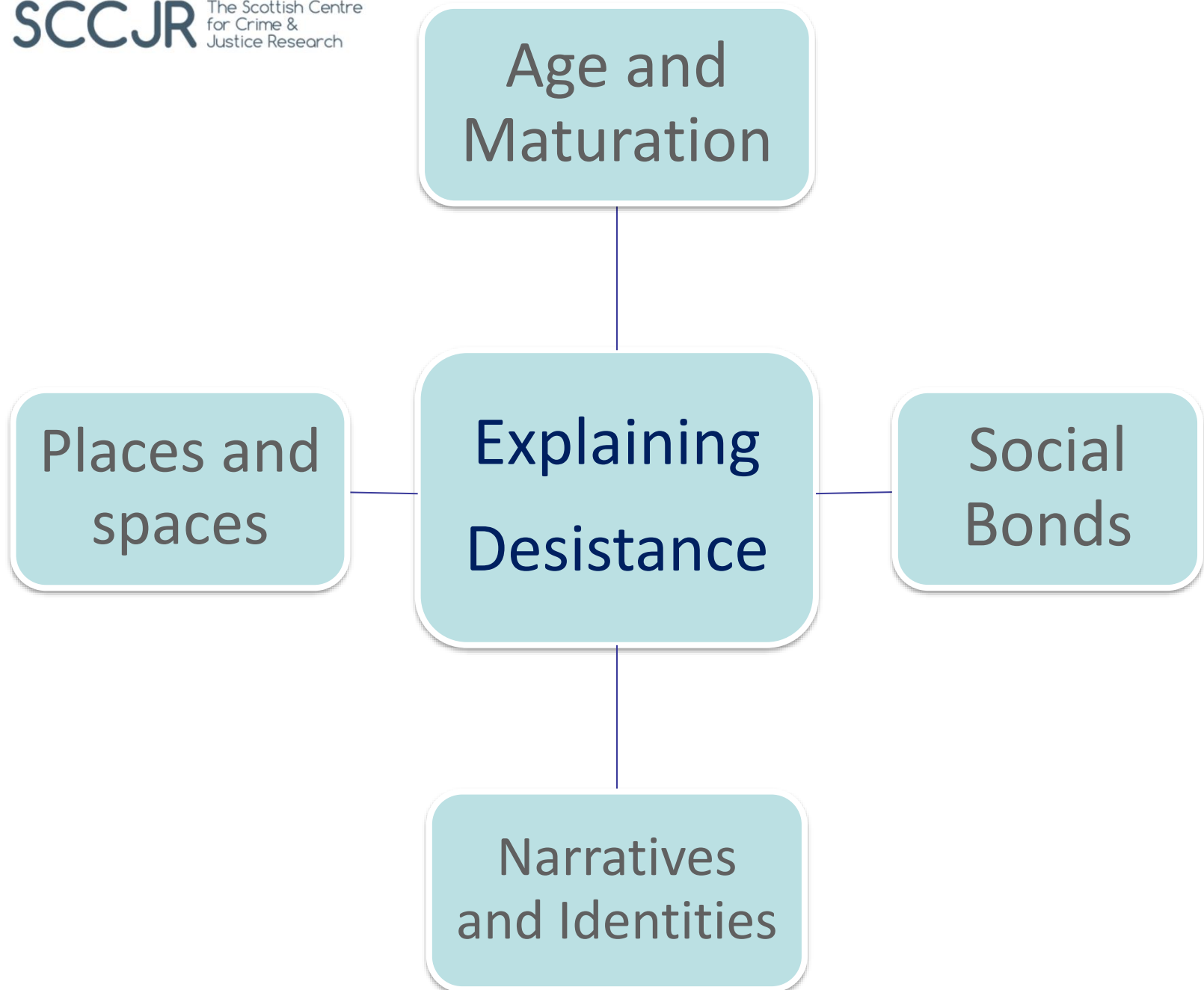
- Behaviour

Secondary  
(Identity)

- Identity

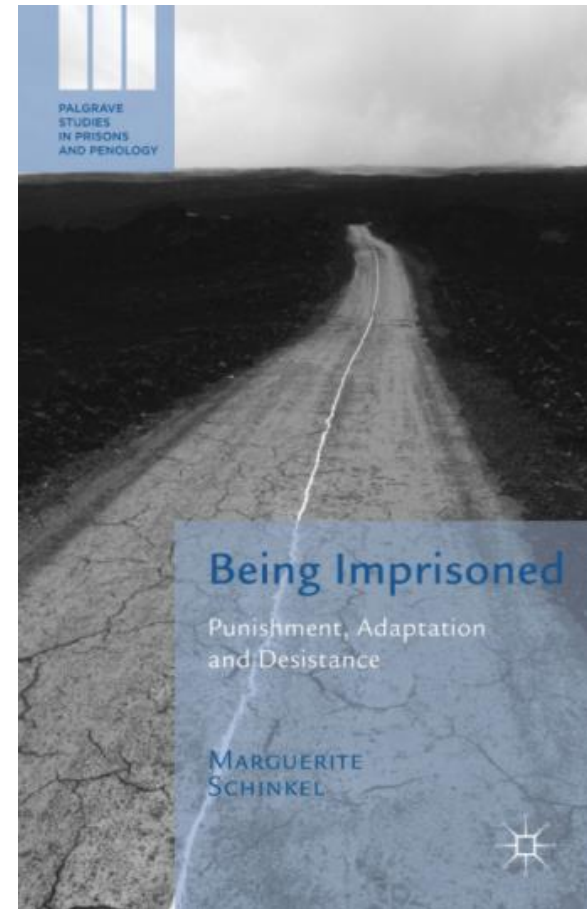
Tertiary  
(Relational)

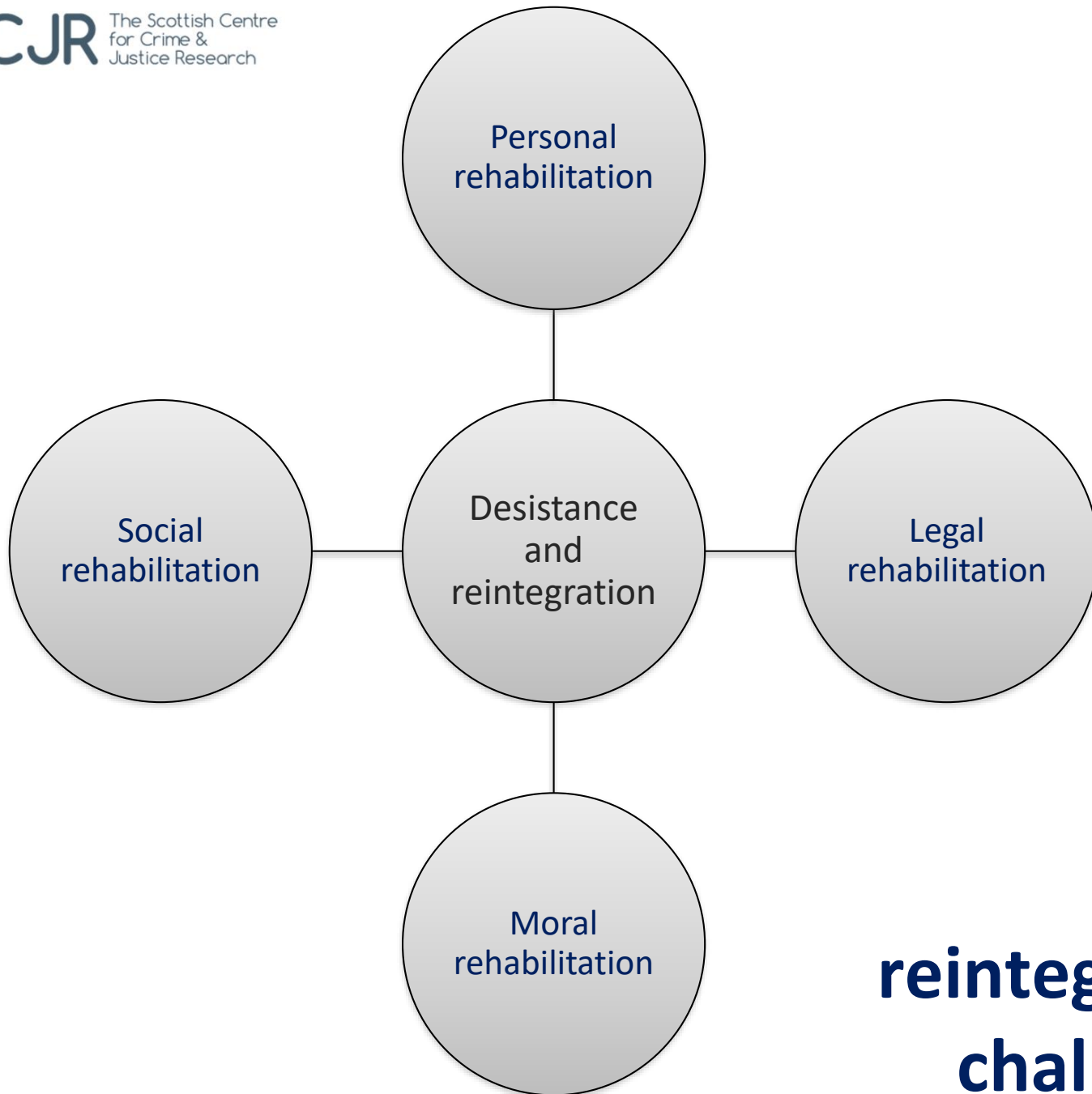
- Belonging



# The pains of desistance

- Schinkel and Nugent (2016)
  - Two very different samples... similar experiences
  - The pains of isolation
  - The pains of goal failure
  - The pains of hopelessness
- Structural and cultural barriers to desistance and reintegration

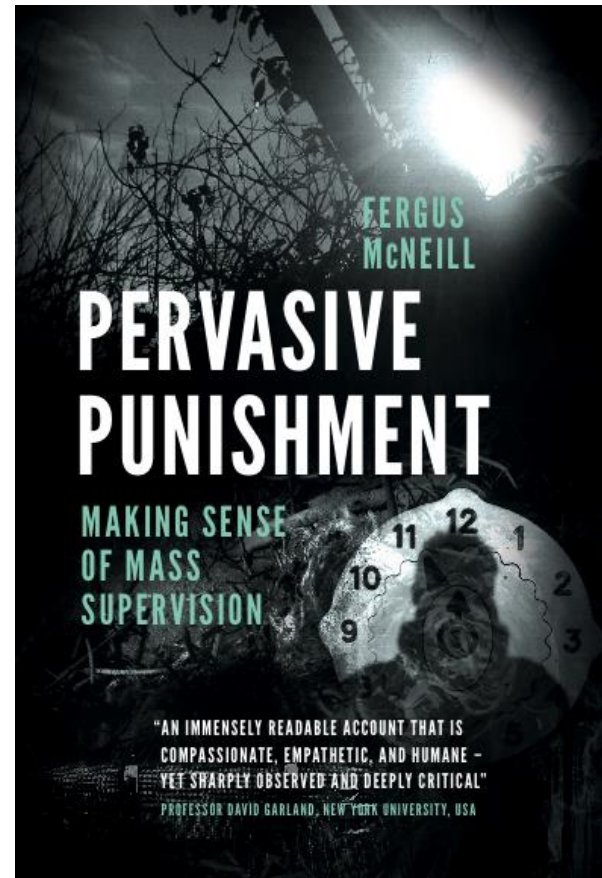




**Four  
reintegrative  
challenges**

# Purposeful probation

- Confront *and* educate the public's need for censure; make probation a just response, but distinguished from prison by its primary focus not on harm but on repair.
  - Parsimonious probation (in its use)
  - Proportional probation (in its demands)
  - Productive probation (in its pursuit of repair and re/integration)





# Preventive probation

- As much as possible, keep people and conflicts out of the criminal justice system altogether.
  - Maximum diversion
  - Community conflict resolution
  - Inter-personal mediation
  - Restorative justice
  - Building a strong civil society



# Parsimonious probation

- Restrain punishment (at its imposition and in its execution)
  - No unnecessary order
  - No unnecessary curtailment of liberty
  - No unnecessary restriction of autonomy
  - No unnecessary invasion of privacy
  - No unnecessary disqualification from ordinary citizenship
  - No unnecessary interference with other human rights



# Parsimonious supervision

- Limit punishment by making it end
  - Positive rights to re/integration through and beyond supervision
  - Equal access to services to develop human potential and citizenship capabilities
  - Equal access to opportunities
  - Timely access to requalification



# Proportionate probation

- Requires restraining the...
  - Length of time subject to supervision
  - Depth of supervision's interference with autonomy
  - Weight of supervision's burdens
  - Tightness of supervision's control
  - Degradations of supervisee's status

[All informed by evidence about the lived experience]
- Plus taking due account of collateral consequences.



# Productive probation

- Is built upon...
  - Respect for the dignity of supervised persons
  - Pursuit of the development of human potential and human capacities
  - Advocacy for access to equal opportunities (this is *social work*)
  - Commitment to fairness/procedural justice
  - Maximising voluntarism



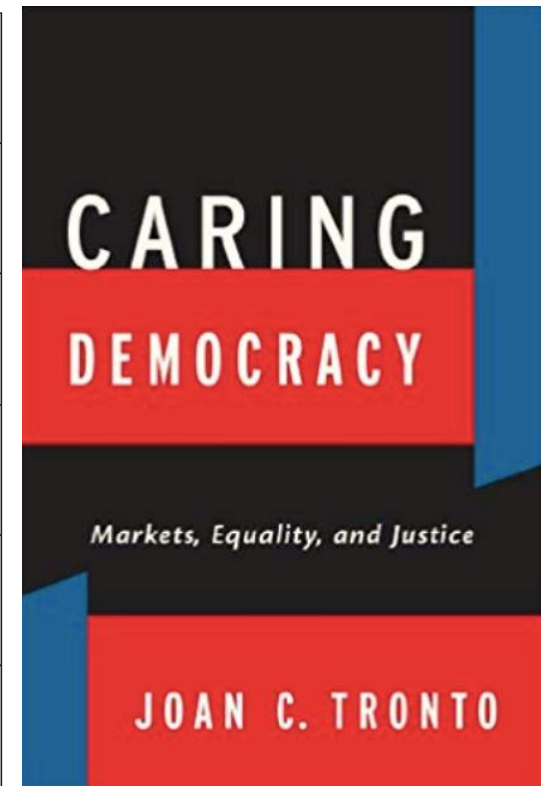


# Productive probation: Within Justice, towards Care, *for* Change

- Tronto (1993, 2013)
  - Interdependency, mutuality, reciprocity

Table 2: Stages of Caring

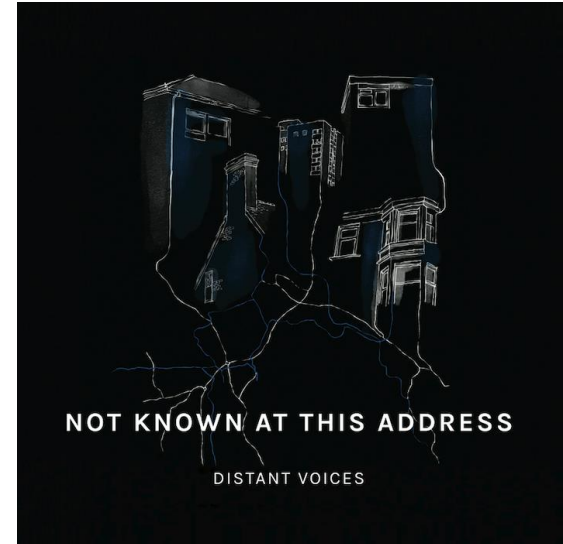
Stage of Caring	Value
Caring about	Attentiveness
Caring for	Responsibility
Care-giving	Competence
Care-receiving	Responsiveness
Caring with	Solidarity and trust



(from Macgregor 2019)

# Purposeful probation

- Ultimately, integration in a just social order is what protects, but probation cannot and should not reintegrate on its own:
  - Integration is a challenge for all citizens and for many arms of government: So share the responsibility (and the credit).
- Probation shouldn't be about screwing down the lid (prisons do that); it should be about turning down the gas.
  - 'Without justice, there can be no peace'.



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