

THE POWER OF PARSIMONY

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As our country comes to terms with the damage caused by our excessive reliance on punishment as a response to crime, the use of the criminal law to sustain racial hierarchies, and the ways the justice system has undermined our democracy and weakened communities, we must ask: **what principles should guide this fundamental reexamination of a seemingly immovable status quo?**

The **principle of parsimony** can serve as a powerful tool for interrogating the current operations of the U.S. criminal justice system. Under the classic definition of parsimony in traditional social contract theory, the state is only authorized

to exercise the lightest intrusion into a person's liberty interest that is necessary to achieve a legitimate social purpose. Any intrusion beyond what is necessary is inherently illegitimate and may even constitute state violence.

This definition translates into a two-prong parsimony analysis:

1. Does the limitation on liberty serve a "legitimate social purpose"?
2. If so, is the specific liberty deprivation "reasonably necessary" to achieve that purpose?

If either of these two tests is not met, then the practices are, in Cesare Beccaria's word, "unjust." Or, citing Norval Morris, "any punitive suffering beyond societal need is, in this context, what defines cruelty."

Three specific practices—long prison sentences, collateral consequences, and solitary confinement—serve as illustrative examples of our current system's failure to adhere to the principle of parsimony: each is a deprivation of liberty that fails one or both prongs of the two-pronged test. These examples are explored more fully in this paper, and they demonstrate how parsimony can provide an affirmative structure for challenging current realities and proposing meaningful change.

Parsimony can also be deployed as a critical framework to examine the state's decision to criminalize certain behaviors—e.g. drug use, sex work, or vagrancy—that pose little or no social harm; and to support inquiry into the application of state power to categories of people—e.g. youth who have committed a crime, or people suffering from mental illness or experiencing

homelessness—who may face challenges living up to the expectations of the social contract. Finally, the parsimony framework can be used to analyze the use of the criminal law to sustain systems of oppression throughout U.S. history.

Given the realities of the modern era of punitive excess, the unequal application of the social contract, and the racist underpinnings of the application of the criminal law throughout U.S. history, there are few examples of successful application of the parsimony principle. Yet, at a time when advocates are calling for fundamental reforms and activists are urging for the abolition of police and prisons, the principle of parsimony can provide more than merely a critique of current realities. In the reconstruction of a more equitable and more effective approach to criminal conduct, parsimony's simultaneous affirmation of the primacy of human liberty, the legitimacy of state power, and the principled limits on state power can provide new models for these core functions of the justice system.



Supported by the John D. and Catherine T. MacArthur Foundation



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