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Book Review

Criminal (In)Justice: What the Push for Decarceration and Depolicing Gets Wrong and Who It Hurts Most

Rafael A. Mangual
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Tate Fegley*

Rafael A. Mangual's *Criminal (In)Justice* is an engaging challenge to the dominant narratives regarding criminal justice reform in post-2020 America. It is very readable and compact enough to serve as a primer on the topic for the interested layman, yet also engages with current literature to such an extent to be useful to researchers. And, as an explicit challenge to dominant narratives, it has the advantage of giving the reader a more complete picture of competing views. It is unfortunately the case that in our current era the purveyors of "The Narrative" feel no need to even acknowledge, let alone address, competing viewpoints, other than to apply the litany of common labels (e.g., "racist," "sexist," "xenophobe") to those who hold them. As such, even if imperfect, Mangual's work

* Tate Fegley (tatefegley@protonmail.com) is assistant professor and chair of the Business and Economics department at Montreat College.

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is useful for those who wish to broaden their understanding of the current issues surrounding criminal justice reform, including "defunding" the police, qualified immunity, "decarceration," cash bail reform, and the so-called progressive prosecutors.

In the first chapter, Mangual contextualizes the current Overton window regarding criminal justice reform (in other words, how we got to a point where ideas such as not prosecuting theft under $950 and charging armed carjacking as a misdemeanor have been implemented as a matter of policy). He begins by noting the observed cyclical pattern in crime and criminal justice policies, where rising violence sparks crime control efforts but once crime decreases, control efforts are relaxed and the conditions that led to the initial upswing in crime return. Violent crime was in a sharp decline in the late 1990s, and therefore calls to relax certain controls became more politically palatable. Class action lawsuits against police departments and prisons became more common and mandatory minimum sentences for certain crimes were repealed. The media became more focused on publicizing police uses of force, aided by the growing prominence of cell phone cameras and social media. After 2014, progressive prosecutors with the explicit goal of reducing racial disparities in incarceration won races in several major metro areas around the country. In 2020, the deaths of Ahmaud Arbery, Breonna Taylor, George Floyd, and Rayshard Brooks broke the camel's back and led to a "slew of far-reaching policy shifts that . . . sharply raised the transaction costs of law enforcement while lowering the transaction costs of lawbreaking" and "the single-largest annual spike in homicides in American history" (pp. 20–21).[1]

Mangual argues against the common explanations for this uptick in crime. The pandemic seems an unlikely explanatory candidate given the lack of correlation between it and crime in similarly impacted countries, as well as the fact that crime in America is highly geographically and demographically concentrated. So concentrated, in fact, that 50 percent of murders in the US occur in just 2 percent of counties, while 54 percent of counties experience no murders in a given year (Crime Prevention Research Center 2017). This fact should give us pause when we are assured the fact that a number of cities are experiencing record numbers of homicides is

[1] I am unsure what the modifier "transaction" adds to "costs" in this context.

no big deal because the national crime rate is going down. Neither can poverty explain changes in criminal behavior. According to Mangual (p. 38), "What drives criminal violence has a lot more to do with the antisocial dispositions of violent criminals and a street culture that elevates violence as both a legitimate means of dispute resolution and a basis for respect. In other words, violent crime is a social problem we can't simply buy our way out from under."

Chapters 2 and 3 address the goal of mass decarceration (i.e., making the reduction of the incarceration rate a goal in and of itself) on two fronts, respectively: post-conviction incarceration and pretrial detention. Mangual attacks four arguments made in favor of decarceration:

1. It is problematic that the US has a significantly higher incarceration rate than other industrialized nations.
2. A large portion of those incarcerated are serving time for non-violent, low-level offenses.
3. It is unjustifiable that incarceration levels continued to rise during the decline in crime seen since the mid-1990s.
4. Any public safety benefits from incarceration are outweighed by its harms; incarceration is criminogenic and breaks families apart.

The section attacking this first argument is what I found to be the least satisfactory in the entire the book (and was, perhaps, the one to which I was most looking forward, given my own research on this very question (Fegley, 2015). The comparisons Mangual makes seem questionable. For example, to illustrate the point that the US has a higher rate and volume of serious violent crime, he makes the point that in 2018, four neighborhoods in Chicago, two districts in Baltimore, two precincts in Detroit, and 3 neighborhoods in St. Louis "saw more than 10.5 percent of the homicides seen in the whole of England and Wales and Germany that year, despite housing just 0.33 percent of the combined population of those countries" (p. 45). He also states, "as recently as 1992, Germany sentenced a slightly higher percentage of those convicted of willful homicide to lengthy prison sentences than did the US, with 14 percent of those convicted in Germany being sentenced to life versus just 9 percent being sentenced to life here" (pp. 45–46). There is also the fact that the US is very wealthy, and therefore can spend more on incarceration.

Does this sufficiently explain why even US states with the lowest incarceration rates still have rates several times that of comparable industrialized nations?

However, Mangual's case against the decarceration only gets stronger from this initial low point. Mangual gets deep into the nuances of the statistics regarding the charges against those who are convicted and incarcerated, how long they are confined, and the rates at which they reoffend when on probation or parole, disabusing the reader of the common notions that prisons are primarily warehouses of non-violent, low-level offenders. In doing so, he makes a compelling case that, other than for marginal offenders, decarceration will not likely come at a negligible cost to public safety.

In the chapter on pretrial detention reform efforts—particularly getting rid of cash bail—Mangual (p. 65). appears to agree with the reformers that cash bail can lead to unjust outcomes in terms of undue burdens on individual liberty, and "makes the question of pretrial release one of means rather than one of risk." He goes on to state that "a better approach is to structure reforms in such a way that empowers judges to remand dangerous or high-risk offenders to pretrial detention, irrespective of the charges they face" since it is "likely for a high-risk offender to be arrested for what would generally be regarded as a low-level offense" and then commit more serious crimes while awaiting trial (p. 69). For Mangual, ideally there would be a better funded system with more prosecutors, investigators, and judges in order to shorten pretrial detention.

The following chapter addresses the question of the effect on children of having a parent incarcerated, something both Republican and Democratic politicians increasingly lament. In addition to decrying the separation of illegal immigrant adults and children at the border, demanding that criminal parents not be separated from their children is one of those select cases where progressives loudly claim to care about intact families. Mangual highlights several papers, including Norris et al.'s (2021) paper published in the *American Economic Review*, measuring the beneficial effects incarceration of criminal family members can have on children. I note this paper in particular, given the journal's prominence in the field of economics, as well as the negative backlash the authors faced. The fact that they were willing to write it and the editors were

willing to publish it despite its non-PC findings (which may be the largest hurdle to peer-reviewed publication these days), suggests their results are quite convincing.

Chapter 5, "Use of Force and the Practical Limits of Popular Police Reforms," presents strong arguments in favor of the author's conclusions and that is fine as far as it goes; Mangual does not overpromise in his thesis of the chapter, which is that progressive reforms of policing are unlikely to lead to a large overall reduction in violence. But it can feel as though the issues facing police in America are framed in such a way that serious problems are ignored. For example, Mangual includes many statistics regarding fatal police shootings of suspects,[2] uses of force, injuries associated with use of force, and complaints filed against police officers. In percentage terms, one can make these issues seem rather small. For example, Mangual asks, "In the context of almost 700,000 officers making more than 10 million arrests and conducting tens of millions of traffic and pedestrian stops every year, can you honestly say that the data on uses of force establish an institutional police violence problem?"

A problem with making this inference is that, like crime, police misconduct is not uniformly distributed across the country. If Mangual is going to claim that it is misleading to dismiss concentrated upticks in crime over the last two years by pointing to overall crime rates, it seems incongruent to dismiss problems of police misconduct and violence by pointing to overall rates. Likewise, those who are convinced that policing is a dangerous job are unlikely to have their minds changed by someone citing the number of violently injured or killed police officers and then being told to contextualize those numbers in terms of a country with 700,000 officers conducting tens of millions of stops each year. Another problem is that Mangual's argument does not acknowledge or address the fact that officers engaging in reprehensible behavior frequently escape any meaningful punishment. Even if misconduct is not being detected at a rate that Mangual thinks is indicative of

[2] Including the fact that approximately 93 percent of the shootings in the *Washington Post's* database were of armed suspects. Many on the political right strangely tend to like to cite this figure, despite the facts that bearing arms is a recognized right in the US Constitution and that being unarmed is not necessarily indicative of being harmless or innocent.

an institutional problem, the impunity with which officers engage in it is certainly an institutional problem.

However, given that police violence can be considered an insignificant problem from a statistical standpoint, any effort to further reduce it is unlikely to lead to a massive reduction. Mangual argues against defunding the police, citing the literature regarding the relationship between more police and less crime (and, relatedly, even if more police lead to more police violence, it will be dwarfed by the reduction in deaths caused by non-police).

Mangual (p. 103) also argues that police militarization is not driving police use of force, given that "SWAT officers took suspects under fire in just 342 of the *tens of thousands* of operations they undertook" [emphasis added]. Again, while Mangual's argument—that SWAT teams account for a very small percentage of the documented uses of force[3]—is fine as far as it goes, it seems to ignore a bigger question: if violence is so infrequently used, why are SWAT teams used so frequently? It won't do to say that it is the presence of the SWAT teams themselves that deter violence, given the fact that so many of their deployments are in the form of no-knock raids.

Mangual rounds out his chapter on police reform addressing the calls to get rid of qualified immunity and to send out mental health professionals, rather than police officers, to certain calls for help. Regarding the former, the effect on police behavior is likely to be small for the simple fact that police officers are almost always indemnified even when qualified immunity does not apply (Schwartz 2014). Though there are some efforts to increase the involvement of civilian crisis intervention teams, such as the Crisis Assistance Helping Out on the Streets (CAHOOTS) program in Eugene, Oregon, they respond to a relatively small proportion of emergency calls (and most of those to which they do respond being welfare checks, providing transportation, or assisting police already on the scene). The idea that mental health professionals can significantly replace police officers in responding to calls is unrealistic given the size of the labor pool with the skills to fill such positions.

[3] Though the force used to break down people's doors in the middle of the night is not counted as a "use of force."

Chapter 6, "The Other Side of the 'False-Positive Problem,'" addresses the issue of racial profiling in the context of stop-and-frisk. Mangual discusses his own experience, growing up as a Latino in New York City, with the "Code of the Street" in which individuals intend to look like they are capable of and willing to use violence as a form of self-protection. Unfortunately, this behavior can also draw the attention of police. Mangual acknowledges that the false-positive problem is a difficult issue, but just as racial disparities in incarceration are largely a function of differential crime rates, so is the larger police presence in minority communities (which leads to differential rates of stops).

The penultimate chapter before the conclusion is "Race: The Elephant in the Room." Mangual rightfully attacks the anti-concept of "systemic racism," which defines a system as racist if it results in statistical disparities, even if no racial animus is present. Mangual presents the side of the argument in defense of the criminal justice system as not systemically racist from a standpoint of individual animus. He also emphasizes the other side of the ledger: the increase in public safety due to increases in incarceration rates and enforcement. Critics focus exclusively on the on racial disparities in enforcement outcomes—arrests, incarceration rates, sentence lengths—but neglect the massive declines in crime over the last three decades, which disproportionately benefit racial minorities.

Criminal (In)Justice is recommended for anyone interested in learning about current criminal justice policy debates, especially from a conservative, yet thoughtful, perspective. While it is limited in mainly being a challenge to dominant progressive narratives on criminal justice rather than proposing a detailed positive program of reform, it does its job effectively. So, although a reader may leave the book with many questions on how to improve criminal justice in the United States, he will at least be assured that it could be much worse.

REFERENCES

Crime Prevention Research Center. 2017. Murders in US Very Concentrated: 54% of US Counties in 2014 had Zero Murders, 2% of Counties Have 51% of the Murders. *Crime Prevention Research Center*. April 25. Available at https://crimeresearch.org/2017/04/number-murders-county-54-us-counties-2014-zero-murders-69-1-murder/

Fegley, Tate. 2015. "Land Of The Free, Home Of The Imprisoned: A Comparison Of Incarceration Rates Among The US And Other Industrialized Nations." *Dialogi Polityczne* 19: 21–32. https://dx.doi.org/10.12775/DP.2015.014

Mangual, Rafael A. 2022. *Criminal (In)Justice: What the Push for Decarceration and Depolicing Gets Wrong and Who It Hurts Most*. New York: Center Street.

Norris, Samuel, Matthew Pecenco, and Jeffrey Weaver. 2021. "The Effects of Parental and Sibling Incarceration: Evidence from Ohio." *American Economic Review* 111, no. 9 (September): 2926–63. https://doi.org/10.1257/aer.20190415

Schwartz, Joanna C. 2014. "Police Indemnification." *NYU Law Review* 89, no. 3 (June): 885–1005.