

The Fallacies of Mass Incarceration

By Mark Wayne [REDACTED]

America, the home of the free and land of the brave, has declared war on its own citizens by incarcerating the highest numbers of its own population, by far, than any other country in the world. Though containing only one fifth of the world's population, the United States holds twenty-five percent of the world's prisoners. Tens of millions of criminal records (estimates exceeding 65 million files) — enough to cover nearly one-fifth of the entire U.S. population of 325.7 million people — are stuffed into police files throughout the United States. Hundreds of billions of dollars have poured from taxpayers' checking accounts into penal institutions and the businesses that service them, and millions have become dependent on the criminal justice system for employment. But how have the fulcrums of the American justice system become so out of balance with the rest of the world, and does it decrease crime? Does increasing incarceration rates and stripping the rights normally enjoyed by U.S. citizens actually make Americans safer?

This sharp rise in America's correctional institutions began in the 1970's with the passage of new and stricter drug laws. Since 1980, with further passage of such laws including mandatory sentencing practices for both violent and non-violent offenders, the United States has engaged in the largest and most frenetic correctional buildup of any country in the history of the world. During this time the number of Americans in prisons and jails has exploded, more than quadrupling. For some minority groups, the rate of incarceration has increased more than tenfold.

The hidden side of the growth of the criminal justice system is its direct effect on how much less money Americans spend on education, parks, libraries, recreation centers, highways, and universities. With a significant percentage of the potential male work force in prison, our high rates of incarceration also act as a drag on economic growth. One estimate has the nation's

jobless rate rising as high as, or possibly higher than 7.5% if male prisoners were counted as part of the labor force.

One would think the extraordinary expansion of the criminal justice system would have made at least a small dent in the crime rate. However, the increase in the prison population did not reduce crime nor does it help Americans feel safer. In fact, some criminologists have argued that the overuse of the penal system for so many small-time offenders has actually created more crime than it has prevented. To better understand this anomaly and the effects of America's draconian laws and punishments, I believe we must retrace their origins, examine the foundations on which mass incarceration was built — voter suppression, systematic racism, structural poverty, and now with the ever increasing prison for profit industry, monetary greed.

Though President Ronald Reagan is credited with implementing the “war on drugs”, this war on American citizens actually began during the Nixon years (1969-73). President Richard M. Nixon was a man who notoriously taped nearly every conversation inside the Whitehouse, and these tapes reveal Nixon's constant and obsessive preoccupation with his demons, or “enemies,” as Nixon preferred to call them. They included politicians, journalists, entertainers, academics, and others who Nixon regularly portrayed as part of a conspiracy to undermine his administration's policies. These tapes are filled with Nixon scheming to attack and discredit his perceived “enemies.” Along the way, Nixon repeatedly refers to various individuals and groups (particularly African-Americans, Jewish Americans, and anyone involved in the “Hippie” movement), in harsh, disparaging terms, the same terms that led former Republican Senator Hugh Scott to declare what he heard in 1974 as, “shabby, disgusting, and immoral.”

One of Nixon's scheming attacks was revealed by John Ehrlichman, American attorney, author, and domestic policy adviser in the Nixon administration. Ehrlichman stated that Nixon's drug policies were a political ploy purposely put in place to strip voting rights from those Nixon found undesirable, namely the African-American population and those involved in the Hippie movement that was sweeping across America at the time. Some discredit Ehrlichman's description of Nixon's policies calling him disgruntled after serving time (18 months) in a minimum security federal prison for the Watergate Hotel break in. However, Nixon's own words and actions implicate the feasibility Ehrlichman's account.

After Nixon's resignation, Presidents Gerald Ford, and Jimmy Carter, did little or nothing to neither increase nor abolish Nixon's policies. After the election of 1980 however, President

Ronald Reagan declared an all-out war on American citizens by making his “war on drugs” a policy priority. Congress immediately granted the FBI concurrent jurisdiction with the Drug Enforcement Administration to investigate narcotics violations in the United States, and first lady Nancy Reagan implemented her “Just Say No” campaign. Later Presidents Gorge H. Bush and Bill Clinton further pushed the mass carceral bar, expanding prison populations by implementing longer sentences with mandatory minimums; something that Clinton later claimed was his greatest policy mistake. After the election of George W. Bush, prison populations further exploded with his policies favoring the private prison industry; though many credit these policies to Vice President Dick Cheney, the majority stock holder in the GEO Corp, the second largest private prison organization in the United States.

After the election of President Barack Obama, the only sitting U.S. President to visit a prison, the numbers of prisoners dropped nationally between the years of 2009 thru 2012 for the first time since the Carter years of the late 70’s. Obama and his administration took a serious look at prison reform, commuting sentences and/or pardoning more than 2,500 inmates, outlawing holding federal inmates in private prisons, and doing away with the mandatory lifetime sentences for federal three-strikes offenders. Obama’s Attorney General, Eric Holder also grabbed some new handles — Champion of employment access for people with felony convictions and promoter of lighter sentences for those with drug offences. Some *New Jim Crow* discourse even crept into his rhetoric. Obama and Holder also supported States right to choose the legalization of both medical and recreational marijuana.

To further the “softer on crime” approach, some right wingers joined Obama and Holder’s reform campaigns. Grover Norquist and Newt Gingrich sparked a conservative anti-imprisonment drift through their Right on Crime organization which decried the excessive use and cost of punishment. Then Rand Paul followed suit, standing side by side with Cory Booker to back a Redeem Act which would ease criminal penalties for juveniles. This steady stream of popular advocacy combined with legislative and financial re-thinks appeared to be making major inroads into the criminal justice orthodoxy. But in September of 2014, carceral optimism gave way to a much harsher reality. The Bureau of Justice Statistic’s annual report on national prison populations revealed that incarceration numbers were up for the first time since 2009. The rise a mere 0.3%, but even that slight uptick seemed to have burst the bubble of the new paradigm.

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Author and activist Ruthie Gilmore, an associate director at the Center for Place, Culture, and Politics at CUNY attributed the reform shortcomings to, “the delusion that it’s possible to cherry pick some people from the prison machine rather than undertake a broad restructuring of the communities which have been divested by mass incarceration.” Believing the problems of mass incarceration deep-seated and solutions multifaceted, I agree in part. Nevertheless, since the election of Donald J. Trump, he and his administration, led by Attorney General Jeff Sessions, have reversed all of Obama’s efforts, stifling reform. Since then incarceration rates have taken a sharp upturn, in part due to Trump’s hard stance on immigration.

Of course using crime as a political ploy goes beyond the federal level. Elected officials have often used the debate over crime and the cost of prison conditions to distract voters from the real problems facing the criminal justice system. Mississippi once passed a law banning individual air conditioners for inmates, though not a single inmate had an air conditioner. A Louisiana law forbids inmates from taking classes in karate or martial arts, even though there was no such training or classes available. The governor of Connecticut once blasted a prison for providing “country club” landscaping on the outside of the facility, when, in reality, the planting had been done at the request of nearby residents annoyed by the ugly prison walls. It appears other laws are simply intended to humiliate inmates. In the mid 90’s Mississippi began requiring inmates to wear striped prison suits with the word “convict” on the back. About this same time period, an Arizona sheriff forced inmates to live in tents scattered across the stifling heat of the Mojave Desert, and an Alabama governor reinstated prison chain gangs. Inmates warehoused in sweltering heat or shackled together in groups of five to “work” on state roadways chipping away at rocks, with no apparent purpose except to convince passersby’s something is being done about the crime problem.

Many politicians preach this tough on crime rhetoric to their constituents; causing many Americans believe convicted criminals get off easy. And herein lays the problem, because, in part, they are preaching the truth. Some offenders do get off lightly for serious crimes while others pay too great a price for lesser offenses. A vivid illustration of this phenomenon can be seen by comparing the time served of murderers to first-time drug offenders in the federal system. In 1992, federal prisons held about 1,800 people convicted of murder for an average time served of 4 1/2 years. That same year, federal prisons held 12,727 nonviolent first-time drug offenders for an average time served of 6 1/2 years, and these numbers have grown more

off kilter since. No other nation in the world treats people who commit nonviolent crimes as harshly as the United States.

Many, especially the victims of crime, want inmates to feel the sting of punishment and loss of freedom. For those concerned with public safety as well as vengeance, the issue of jail and prison conditions does not seem complicated. On the other hand, it does not serve public safety to so frustrate inmates that they return to the streets un-rehabilitated, embittered, and angry. Jail and prison conditions exert a significant influence on whether an inmate becomes productive upon release or resumes criminal behavior. A majority of inmates, more than 90% currently in prison will be released at some point. Inmates leaving prison facilities already face what seems insurmountable obstacles; many have lost most if not all of their possessions, personal relationships are often in hardship or have ended, finding employment, especially employment paying a livable wage with criminal records is often difficult, many owe court fines, court cost, restitution, and accumulating child support payments on top of their monthly cost of supervision payments. And although prisons cannot become "country clubs" without losing their deterrent effect, they also cannot become gulags which release inmates who know no other life than lives of crime and prison without jeopardizing public safety.

Nonetheless, those who take this hard stance on crime fail to recognize the wide ramifications of sending such high numbers of Americans through the revolving doors of jails and prisons each year. Anyone who has been handcuffed by police knows how deeply humiliating the experience can be. Imagine the effects of spending even a night in the bizarre and violent sub-culture of most jails. Literature abounds with examples of people traumatized by the experience. Each person booked is fingerprinted and photographed for their criminal record (the record remains with them even if the charges are later dropped). Basic survival tactics are necessary to endure even a short stay in a jail or prison facility. Inmates learn to strike first and seek strength in gangs often comprised of dangerous offenders. Sexual assaults are frequent and usually go unpunished. As more young men and women are socialized to the cell blocks and then returned to the streets, the violent subculture of the correctional facility increasingly acts as a vector for crime in our communities. Prisons and jails thus have a dual effect: they protect society from criminals, but they also contribute to crime by transferring their violent subculture to our community once inmates are released. Nevertheless, the question remains, what are the answers to solving this seemingly unsolvable dilemma?

Mainstream reformers point to countries like Spain and the Netherlands for answers. The local government in Madrid confronts the same issues of urban crime and drugs as other cities throughout the world. In particular, tourists were often the target of petty crime. Spain also had harsh laws and punishments for drug trafficking, and much like the United States, Spain's prison population began to expand beyond capacity. However, Spain has since then relaxed their drug laws and harsh punishments in favor of treatment and community service over incarceration. The Netherlands, renowned for its liberal approach to social policy, is an even better example.

In 1976, the Netherlands effectively decriminalized the possession of small amounts of marijuana and cannabis-related substances. They lowered crime and carceral numbers by simply legalizing substances, and in some cases, activates that had once been outlawed. But as of late, the Netherlands has taken their liberal approach even further by investing in their inmates, and it is working better than expected. By providing education and job training to their incarcerated they have dramatically lowered the number of inmates re-offending, lowered crime, and now have closed over half of their prisons. Through these common sense reforms, the Netherlands has struck a balance between punishment and the opportunity for inmates to become self-sufficient after incarceration. Now it seems their worries are of not how to fund their prison institutions, but of what to do with the empty buildings.

Judy Greene, director of the anti-mass incarceration research group, Justice Strategies, argues that it boils down to serious sentencing reform which would go beyond merely those with drug convictions, but those convicted of other crimes, including some violent crimes as well. The need, she argues, is "both to sharply reduce the number of people we send to prison and to shorten the inordinate amount of time those sent to prison have to serve before they are released." I however, only believe she is right in part. I believe that doing away with disproportionate and excessive sentencing practices to only be a temporary solution to the revolving doors of incarceration. Without real reform, without investing in our most troubled citizens, our incarcerated populations, the rotating doors of justice will only find those released returning a short time after release, perpetuating the wheels of mass incarceration. I believe that Spain and the Netherlands have the right approach, that the true answers lie in investing in education and job training that will enable convicted felons to become self-sufficient after incarceration. Cost of such programs could be offset by allowing all inmates about to be released to work in community work centers before release, with a portion of their pay deducted

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to pay for education, training, and housing. Further expenses could be handled much the same way student loans are handled.

I am not suggesting we turn our penal institutions into country clubs. I am merely suggesting we quit dehumanizing citizens convicted felonies; that we quit throwing lives away and decimating entire generations and populations of people, especially with archaic laws that were purposely designed to do just that, take the voice and freedoms away from the very people in question. One must remember that our rate of incarceration is the highest in the world. Two percent (or more) of the potential male work force is behind bars. In some areas, close to half of young African American men are in the criminal justice system. America, after all, is a nation founded on the basic principles of freedom, a nation consisting of a government by the people and for the people. All the laws, technologies, and good in our society amount to nothing if they do not further the lives of people, including those incarcerated. By doing so, we will lower crime rates and free up hundreds of billions in tax dollars wasted on the revolving doors of mass incarceration, allowing us to invest in schools, parks, libraries, recreation centers, highways, and universities, improving the lives of all.