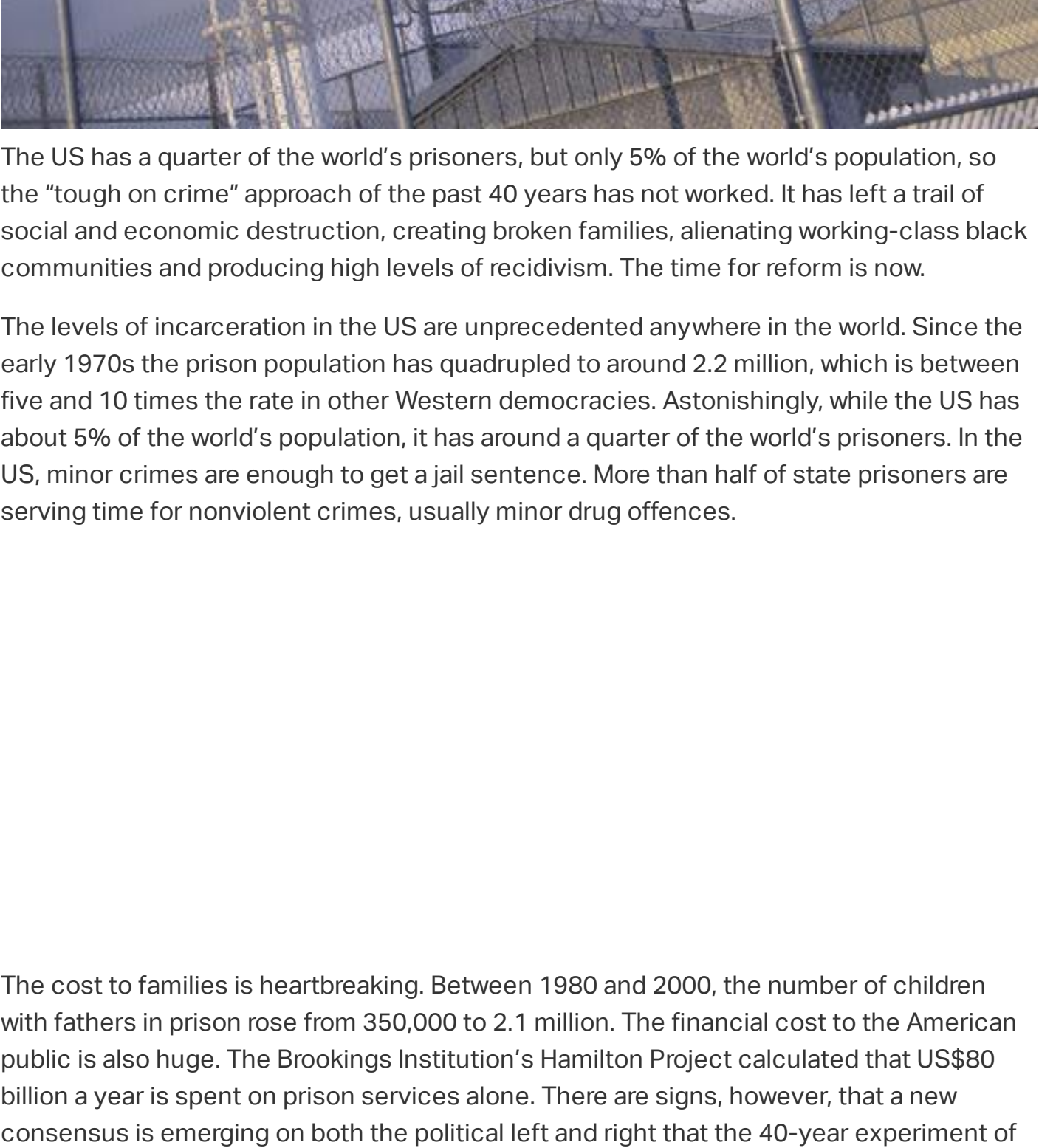


Democrats and Republicans unite in calls to rebuild brutal US penal system

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The US has a quarter of the world’s prisoners, but only 5% of the world’s population, so the “tough on crime” approach of the past 40 years has not worked. It has left a trail of social and economic destruction, creating broken families, alienating working-class black communities and producing high levels of recidivism. The time for reform is now.

The levels of incarceration in the US are unprecedented anywhere in the world. Since the early 1970s the prison population has quadrupled to around 2.2 million, which is between five and 10 times the rate in other Western democracies. Astonishingly, while the US has about 5% of the world’s population, it has around a quarter of the world’s prisoners. In the US, minor crimes are enough to get a jail sentence. More than half of state prisoners are serving time for nonviolent crimes, usually minor drug offences.

The cost to families is heartbreaking. Between 1980 and 2000, the number of children with fathers in prison rose from 350,000 to 2.1 million. The financial cost to the American public is also huge. The Brookings Institution’s Hamilton Project calculated that US\$80 billion a year is spent on prison services alone. There are signs, however, that a new consensus is emerging on both the political left and right that the 40-year experiment of imprisoning high numbers has been socially and economically destructive.

Professor Glenn Loury, a social economist at Brown University and the author of *Race, Incarceration, and American Values*, is cautiously optimistic that attitudes to imprisonment are softening.

“Even political conservatives like Newt Gingrich and the libertarian senator Rand Paul have begun to speak out against high incarceration rates. They say they are inconsistent with the conservative principle of limited government. It’s anything but limited when so many police and prisons are involved in confining so many people. They are also looking at the massive expense and at the racial disparity with so many black Americans in prison.”

Professor Loury admires the initiatives of Eric Holder, President Obama’s outgoing attorney general. Holder has been outspokenly critical of the US penal system and in 2013; he unveiled a prison reform package called ‘Smart on Crime’. Low-level nonviolent drug offenders with no ties to gangs or large-scale drug organizations were no longer charged with offences that impose severe mandatory sentences. As a result, the federal prison population has declined by about 5,000 from a year ago.

The movement for reform received authoritative intellectual ammunition with the recent release of a voluminous 444-page study prepared by the National Academy of Sciences for the Justice Department. The New York Times said it provided “such overwhelming evidence” of social damage that it was analogous to scientific demonstrations of climate change. The report ended all debate about the prison experiment.

Despite the change in the political climate, however, many politicians still fear being seen as “soft on crime” and there is a long road to travel to reduce incarceration rates to the levels seen in other Western democracies. Basically, the US would need to return to 1975, when its criminal justice system was in line with much of Europe’s. For 50 years preceding 1975, the US incarceration rate was around 100 inmates per 100,000. Around 1975, however, the US started to become vastly more punitive. In 35 years, the rate ballooned to over 700 per 100,000 as being “tough on crime” became a political mantra and mandate. Severe policies became the norm. State and federal legislatures imposed mandatory minimum sentences, radically restricted parole and adopted “three strikes” laws that exacted life imprisonment for a third offence as minor as stealing pizzas.

After President Reagan declared his “war on drugs” in 1982, the federal states emulated him. From 1980 to 1997, Professor Loury says, the number of people incarcerated for drug offences increased by 1,100%. Drug convictions alone account for more than 80% of the total increase in the federal prison population from 1985 to 1995.

“There’s a strong connection between politics and the rising incarceration rates. In the Ronald Reagan era and post-Reagan, the anti-crime rhetoric influenced political discourse at both national and local level,” said Professor Loury. “At elections for district attorneys and local judges, or other state representatives, opponents would bandy about the charge that ‘my opponent is soft on crime’.

“But the Democrats have had their hand on the tiller just as much as the Republicans in terms of steering us towards high incarceration rates. Clinton presided over extending federal death penalties to areas where they were never seen before. He endorsed the Violent Crime Control and Law Enforcement Act of 1994, which was the largest crime bill in the history of the US. It was a draconian measure and provided billions of dollars in federal money to state and local jurisdictions to enhance their incarceration capacity. It was about paying state governments to build prisons.”

The neoliberal economic revolution of Reagan, and beyond, has produced ever greater income disparities in the US. Research suggests that a widening income gap is correlated with higher rates of incarceration globally. The work of Tapio Lappi-Seppälä, director general of Finland’s National Research Institute of Legal Policy, suggests that more equal societies, such as the Scandinavian ones, have the lowest rates of imprisonment, whereas societies with high inequality have greater levels of imprisonment. In Scandinavia as a whole there are around 65 prisoners per 100,000 people compared to over 700 in the US. Around 100 years ago, the US and Finland had the same rate of incarceration, but the US level is 10 times higher now.

Although Lappi-Seppälä says the high income differentials and relatively low investment in welfare in the US would lead naturally to high rates of incarceration, the US levels are still three times higher than his data would predict.

Professor Loury argues that there is another factor at play in the US, which is race. He argues that racial prejudice against African-Americans is a major cause of the incredibly high imprisonment levels. Black Americans make up 13% of the general population, but 50% of the prison population. An African-American child under the age of 14 has a 50% chance of having his father go to prison. Harvard sociologist Bruce Western, the author of *Punishment and Inequality in America*, says the likelihood of incarceration for African-Americans has soared over time.

“What’s striking in the US is not only the size of the correctional populations, but the unequal distribution across the population, especially among minority men with low levels of schooling,” Western said.

“If we look at the birth cohort of people born after World War II, one in eight African Americans who didn’t go to college will go to prison. For a non-college educated African-American man born in the late 1970s - who would have grown up during the prison boom - the likelihood of going to prison is 36%. If he dropped out of high school it is 70%. For these men it has become an utterly normal life event.”

Many end up trapped forever in an unrelentingly harsh system. After prison, they are sent back to their poor districts, but are prevented from re-entering society, or the workplace. Often they are not allowed to vote, or receive public benefits like subsidized housing. Most quickly re-offend.

“All of the ways we think prisons control crime become significantly undermined at these high levels of incarceration when incarceration itself becomes a source of the social and economic disadvantage which contributes to crime, family instability and diminished economic opportunity. In turn, this helps to sustain these very high incarceration rates. So we are in danger of a cycle in which high rates of penal confinement become self-sustaining,” said Western.

Professor Loury says the high number of black Americans in prisons has dissuaded lawmakers from acting to redress their heavy-handed policies.

“Because the people most affected by the mistaken policies are not white, but are black and brown, there’s been less of a tendency to slap your forehead and say ‘my, what have we done here, let’s reconsider,’” he said.

The theory that racial prejudice is at the root of the perpetuation of the repressive US penal system has been elaborated by Dr Khalil Gibran Muhammad, the executive director of the Schomburg Center for Research in Black Culture. In his book *The Condemnation of Blackness: Race, Crime and the Making of Modern America*, Dr Muhammad points out that a similarly punitive regime emerged in the early 20th century, culminating with the prohibition of alcohol and all the surrounding criminal activity.

But the laws were repealed because white children were on the receiving end. “They had similar three strikes and you’re out policies in 1930s New York, but a lot of white Italian-Americans, Jewish-Americans and Irish-American boys were being sent to prison for 20 years for stealing loaves of bread from their tenements,” said Professor Loury. “The lawmakers came to see that was wrong and backed off from it. But a similar reality has not happened this time and race has a lot to do with that. We are beginning to see some stirrings in that direction now, but we’ve gone 30 years down that road.”

One of the most powerful cases against the high imprisonment rate is the high level of recidivism. Bureau of Justice statistics suggest that out of 404,638 state prisoners released in 2005, some 67.8% were re-arrested within three years and 76.6% within five years.

“For a long time, the idea of rehabilitation died in the mind of the administrators. It became deeply unpopular to argue that money would be spent for educating prisoners, and encouraging literacy, or on the acquisition of a marketable skill, or a craft, or even investing in the edification of the spirit so that prisoners could leave with a different imagination about the meaning of their lives,” said Professor Loury. “This kind of idea has come to be seen as soft-headed idealism. The idea that people who are in prison ‘deserve’ any such help has been denigrated. They are being punished, so if we invest in a gym, a classroom, a library, internet access, counselling from outside, it’s a waste of taxpayers’ money and the budget is already strained.”

Yet, a more humane approach to prison life has borne remarkable results in Norway. At Bastøy Prison Island, a couple of miles off the coast in the Oslo fjord, cells are equipped with TVs, computers, showers and sanitation. The majority of prisoners are offered education, training and skill-building programmes. Instead of wings and landings, they live in small “pod” communities, limiting the spread of the damaging prison subcultures. The importance of Bastøy is that it helps to reintegrate prisoners after they leave. At just 16%, it has the lowest re-offending rates in Europe. In Norway, the rate of recidivism is just 30%. “In the US that sort of thing could never happen,” said Professor Loury. “It would face the barrier of people feeling such ‘pampering’ of criminals is a long way from punishing them.”

Professor Loury, however, says the Administration’s National Drug Control Strategy is a move in the right direction. The strategy calls for supporting re-entry efforts by assisting in job placement, facilitating access to drug-free housing, and providing other supportive services.

“Across the political spectrum activists are saying we need to think about how we can make it more possible for people who have paid their debt to society to reintegrate into their family and social lives. So re-entry programming is a big deal and foundations are funding different programmes. There’s also pressure from the Ban the Box civil rights initiative to pass a law prohibiting employers from having a box to check on application forms if you have a criminal record. They are aware of the deleterious consequences for people who have been in prison. It’s a real stigma, like the Scarlet ‘A’ in *The Scarlet Letter*, making it extraordinarily hard to get a job.”

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