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The Conservative Case Against More Prisons



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# The Conservative Case Against More Prisons

*Higher incarceration rates aren't making us safer—and there are better, smaller-government alternatives.*

By VIKRANT P. REDDY AND MARC A. LEVIN • March 6, 2013

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Since the 1980s, the United States has built prisons at a furious pace, and America now has the highest incarceration rate in the developed world. [716](#) out of every 100,000 Americans are behind bars. By comparison, in England and Wales, only [149](#) out of every 100,000 people are incarcerated. In Australia—famously founded as a prison colony—the number is [130](#). In Canada, the number is [114](#).

Prisons, of course, are necessary. In *The Scarlet Letter*, Nathaniel Hawthorne observed that “The founders of a new colony, whatever Utopia of human virtue and happiness they might originally project, have invariably recognized it among their earliest practical necessities to allot a portion of the virgin soil... as the site of a prison.” As long as there are people, there will be conflict and crime, and there will be prisons. Prisons, however, are not a source of pride. An unusually high number of prison cells signals a society with too much crime, too much punishment, or both.

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There are other ways to hold offenders—particularly nonviolent ones—accountable. These alternatives when properly implemented can lead to greater public safety and increase the likelihood that victims of crime will receive restitution. The alternatives are also less costly. Prisons are expensive (in some states, the cost of incarcerating an inmate for one year approaches [\\$60,000](#)), and just as policymakers should scrutinize government expenditures on social programs and demand accountability, they should do the same when it comes to prison spending. None of this means making excuses for criminal behavior; it simply means “thinking outside the cell” when it comes to punishment and accountability.

This argument is increasingly made by prominent conservatives. Bill Bennett, Jeb Bush, Newt Gingrich, Ed Meese, and Grover Norquist have all signed the [Statement of Principles](#) of Right On Crime, a campaign that advocates a position on criminal justice that is more rooted in limited-government principles. They are joined as signatories by the conservative criminologist John Dilulio and by George Kelling, who helped usher in New York City’s successful data-driven policing efforts under Mayor Rudolph Giuliani. Some groups, like Prison Fellowship Ministries, approach the issue from a socially conservative perspective. Others, like the American Legislative Exchange Council and the State Policy Network, have fiscal concerns top of mind. Regardless, a sea change is underway in sentencing and corrections policy, and conservatives are leading it.

\*

Between 1992 and 2011, the U.S. prison population increased by nearly [73](#) percent. To the extent that the recent rise in incarceration incapacitated violent offenders, it was valuable. For nonviolent offenders who are not career criminals, however, incarceration can be counterproductive. As is sometimes said, prisons are graduate schools for crime. This is more than apparent in numerous states where recidivism rates exceed 60 percent.

Unnecessary incarceration of nonviolent, low-level offenders also destroys families. [Mitch Pearlstein](#) at Minnesota’s Center of the American Experiment has pointed out that incarcerated men “are less attractive marriage partners, not just because they may be incarcerated, but because rap sheets are not conducive to good-paying, family-supporting jobs.” It is common sense that neighborhoods suffering from high incarceration rates also suffer a plague of single-parent homes and troubled children.

This, in turn, leads to dysfunctional communities that are mistrustful of law enforcement. Most American children are taught that they may always ask the police for help. In some American neighborhoods, however, children are taught never to engage with the police.

For this—high recidivism rates, ravaged families, and maladjusted neighborhoods—Americans pay dearly. In 2011, Americans spent over [\\$63 billion](#) on corrections, a 300 percent increase since 1980. Prisons are the second-fastest growing component of state budgets, trailing only Medicaid.

This might be acceptable if evidence indicated that growing incarceration rates made Americans substantially safer. That is not the case, however. Because more incarceration incapacitates more people, increasing incarceration can indeed lower crime, but it can also reach a point of diminishing returns where spending the next dollar on better law enforcement or probation reduces more crime than spending it on incarceration.

Consider the recent drop in crime rates. Although a general rise in incarceration over the last few decades has partly coincided with a nationwide crime decline, evidence in recent years calls into question the extent of the correlation and whether we have reached or exceeded that point of diminishing returns. From 1998-2007, crime rates fell in 48 states. Incarceration rates increased in 40 of the states, and they decreased in eight. Increased incarceration could not have been responsible for crime falling in the eight states that reduced incarceration. To criminologists, the bottom line is that once incarceration reaches a level necessary to incapacitate dangerous and violent offenders, it is hard to posit a clear correlation between further increases in incarceration rates and reductions in crime.

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Most criminologists believe that America's costly increase in incarceration over the last several decades is responsible for about 25 to 30 percent of the drop in the national crime rate. The rest is attributed to a variety of factors hotly debated among social scientists. These include demographic changes (moves to the suburbs and the aging of the population), improved law enforcement strategies such as COMPStat and "[broken windows](#)" policing, and even [reduced levels of lead](#) in household products.

In short, some of the increase in incarceration was necessary, but the pendulum may have swung too far.

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From the 1960s through the early 1990s, crime was perhaps the dominant issue in American domestic politics. Bernie Goetz, an armed citizen who shot four subway muggers in 1984, became a vigilante icon. The 1988 presidential election was arguably over after Michael Dukakis responded haplessly to George Bush's "Willie Horton ad," which identified a Massachusetts felon serving life in prison who committed armed robbery and rape on a weekend furlough. In 1990, a story in *Time* was titled "[The Rotting of the Big Apple](#)," and the [cover](#) ruefully depicted the muggings, robberies, and murders for which New York City had become notorious.

Academics like James Q. Wilson and Steven Pinker have suggested that abrupt changes in cultural norms sparked in the 1960s may have caused the increase in crime during this period. Whether cultural liberalism caused the problem is debatable. What is not debatable is that cultural liberalism did everything it could to ignore the problem. Many liberals averred that crime stemmed from social problems like poverty and racism, and for this reason, law-enforcement responses were pointless. Sometimes the liberal attitude was downright silly. [Norman Mailer](#) suggested that graffiti—which is nothing more than the vandalism of someone else's property—was actually academic commentary on architecture.

Conservatives put their foot down and insisted on more incarceration: build new prisons, increase sentence lengths, and enact truth-in-sentencing laws to limit parole. As the argument gained steam, liberals fretted about appearing "soft on crime" in elections, and in due course increasing incarceration became a bipartisan cause. Governor Ann Richards, a Democrat, built a bevy of new prisons across Texas, and Willie Horton's name was actually floated by Al Gore in the 1988 Democratic primary long before Bush ever raised it.

Predictably, labor unions interested in maximizing the number of jobs for corrections officers also joined in the cause. The most notorious mandatory minimum law in the country, California's "Three Strikes," was supported by California's powerful prison-guard unions. Unsurprisingly, California's prisons were 180 percent above capacity in 2011 when the U.S. Supreme Court upheld a federal court order mandating that the state release prisoners to alleviate severe overcrowding.

With the tremendous support behind increased incarceration, prison building went too far. The U.S. needed to incarcerate more people, and it did. Now, however, we are incarcerating too many people and seeing diminishing returns. Alternative sanctions for many nonviolent offenders would be less costly, less destructive to families and individuals, and most importantly more effective at ensuring public safety.

\*

Serendipitously, developments in research and technology have produced new strategies such as electronic monitoring, problem-solving courts, and actuarial risk and needs assessments that can better match offenders with the right level and type of community supervision.

One promising practice is the Hawaii HOPE Court which uses swift, sure, and commensurate sanctions to promote compliance with drug tests and the terms of probation. In the HOPE Court, the judge informs a drug offender that he will be assigned a color and that he must call the court daily to see whether the color has been randomly

selected. If so, the offender must report to the court and pass a drug test. Should he fail the test, he spends a short, but immediate, stint in jail—often just a weekend.

HOPE has led to a two-thirds decline in substance abuse and probation failures in Hawaii. It works because swift and certain sanctions are more effective than severe sanctions that come only after multiple probation violations have been ignored. Cesare Beccaria, an 18th-century criminologist made this argument in a 1764 treatise. But an academic treatise is hardly necessary to understand why HOPE works. A parent appreciates the importance of swift and certain sanctions just as well as a professor. HOPE began in Hawaii, but HOPE-style courts are sprouting across the country, and HOPE has become a cause célèbre among conservative reformers.

Texas, in many regards, is the model for how conservatives have led a transformation in corrections. In 2007, Austin number-crunchers projected that over 17,000 new prison beds, at a cost of \$2 billion to taxpayers, would need to be built in Texas by 2012. Legislators refused to spend the money and instead allocated a smaller amount to expand community-based options such as probation, problem-solving courts, and evidence-based drug treatment. Since Texas shifted to these alternatives in 2007, crime has dropped by 25 percent and the 17,000 prison beds are no longer needed. In 2011, Texas actually closed a prison. As it enters the 2013 legislative session, Texas correctional facilities are an additional 4,500 beds below capacity, and legislators are talking about closing two additional facilities.

The leader of this revolution in the Republican-controlled Texas House of Representatives was Jerry Madden, a businessman from north of Dallas who says that prisons ought to be prioritized for the people “we’re afraid of, [not] the ones we’re mad at.” Governor Rick Perry signed these reform-oriented budgets and legislation into law. Perry says that he “believe[s] we can take an approach to crime that is both tough and smart...focus[ing] more resources on rehabilitating [nonviolent] offenders so we can ultimately spend less money locking them up again.”

Texas is just the beginning. In 2012, Georgia, under Republican Governor Nathan Deal, passed the nation’s most sweeping corrections reform bill. Deal has shown a particular interest in rehabilitating drug offenders, and he has framed his arguments in recognizably conservative language on taxes: “If we fail to treat the addict’s drug addiction, we haven’t taken the first step in breaking the cycle of crime—a cycle that destroys lives and wastes taxpayer resources.”

In Louisiana, Governor Bobby Jindal has promised that his state will “hammer away at the dubious distinction of [having] the highest incarceration rate in the world.” In February, he presented legislators with a proposal that strengthens the incentives for drug offenders to complete rehabilitation programs.

Other states that have enacted major reforms led by Republican governors include Ohio, Pennsylvania, South Carolina, and South Dakota.

Some states have taken a performance-oriented approach that creates a fiscal incentive to achieve better outcomes for public safety, victims, and taxpayers. Arizona instituted a policy in 2008 that allowed a portion of state savings from reduced incarceration to be redirected to counties—if the counties pursued policies that diverted offenders from prison, reduced recidivism among those on probation, and ensured that offenders paid restitution to victims. This incentive-funding plan enabled local jurisdictions to implement proven practices for better supervising those on probation, including addressing substance abuse and mental illness. (Around 350,000 inmates in American prisons and jails are mentally ill.) In the first three years after this incentive approach was instituted, the rate at which Arizona’s probationers were revoked to prison fell 38 percent and the number of new felony convictions among its felony probationers dropped 41 percent.

Similar incentive-funding approaches in juvenile justice have been successful in reducing crime and overall costs in Ohio and Texas. For conservatives who have long emphasized that incentives affect the behavior of individuals and systems, the success of these policies

is unsurprising.

Perhaps the key indicator of conservative enthusiasm for criminal-justice reform is the robust language in the 2012 Republican platform: “Government at all levels should work with faith-based institutions that have proven track records in diverting young and first time, non-violent offenders from criminal careers, for which we salute them. Their emphasis on restorative justice, to make the victim whole and put the offender on the right path, can give law enforcement the flexibility it needs in dealing with different levels of criminal behavior. We endorse State and local initiatives that are trying new approaches to curbing drug abuse and diverting first-time offenders to rehabilitation.”

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After the 2012 election debacle, the consensus among conservatives for moving forward seems quixotic: develop new policy prescriptions but without compromising foundational principles. Criminal justice reform, however, is perfectly suited for the mission. The model for conservative criminal justice—less spending, better results, accountability, and greater reliance on faith, family, and community rather than central government—is really the model conservatives should be applying to all issues.

*Vikrant P. Reddy and Marc A. Levin are senior policy advisers to the Right on Crime campaign in Austin, Texas.*

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libertarian jerry says:

March 6, 2013 at 8:19 am

First of all,if you would free all of the non-violent drug offenders the American prison population would probably be reduced by half. 2nd,by decriminalizing marijuana and certain narcotic drugs and its distribution,in effect legalization, as was done with alcohol back in the 1930s, America could not only cut down on violent crime and control drug abuse, which is a social problem and not a criminal problem,but at the same time raise large amounts of tax revenue by taxing drugs as we do alcohol and tobacco. And finally,in America today,there are just too many laws. By increasing the size and scope of laws in America the government has created what is popularly known as the “Law Enforcement Growth Industry.” The more laws,many of them intrusive and frivolous,the more police,courts,judges and prisons thus creating a taxpayer funded industry. Back in Stalin’s day the man in charge of his secret police,Beria,once said “in the Soviet Union we have so many laws that if you find me the man I will find a law to hang that same man.” Unfortunately, America may be morphing into the old Soviet Union.

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**WorkingClass** says:

March 6, 2013 at 9:24 am

The drug war and the gulag are inseparable. End one and you end the other. The CIA, Wall Street and private prisons profit the most from the war on drugs but a host of smaller parasites including police and politicians also have an interest.

The number of voters wanting to legalize marijuana has reached a plurality and is rising rapidly. Obama is a sitting duck on this issue. Republicans (if not Conservatives) should take the side of decriminalization. It would win them votes and soften their image.

But money trumps votes. As long as both parties continue America's longest war they can continue to reap the profits and the voters be damned.

**Adam** says:

March 6, 2013 at 9:59 am

“For conservatives who have long emphasized that incentives affect the behavior of individuals and systems, the success of these policies is unsurprising”.

This applies to other areas as well, such as the tax code. Savvy individuals and especially major corporations view the tax code as an incentive plan to minimize their payment, which they should, but often in ways detrimental to the original intent. Conservatives should definitely apply the logic exemplified in this piece to other areas in order to actually come up with workable solutions rather than rhetoric and bumper sticker sound bites.

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