

**The Punitive (Un)Welfare State:
U.S. Penal Policy in Comparative Perspective**

Marguerite G. Rosenthal, Ph.D.
Salem State College

For most of the twentieth century...[the]view of prisons as exotic institutions was justified by an incarceration rate that covered a small fraction of the population. The prison boom, however, has overtaken the usual social science analysis. Researchers now observe that incarceration is a pervasive event in the lives of poor and minority men. Punishment has become normalized....the criminal justice system has now become a fixture in the passage to adulthood for minority youth with little economic opportunity. (Western, Pattillo and Weiman, 2004. p. 3, emphasis added).

Introduction

The United States is often described as a welfare state laggard. This term and its companion, “the reluctant welfare state,” refer to the fact that, compared to other industrialized (especially Western European) countries, the U.S. provides fewer and less comprehensive social, educational and vocational programs and supports for its population. There are few, and in fact diminishing, universal programs (no universal health care, a not-quite-universal pension system that is under attack, and time-limited social assistance, to name just a few examples).

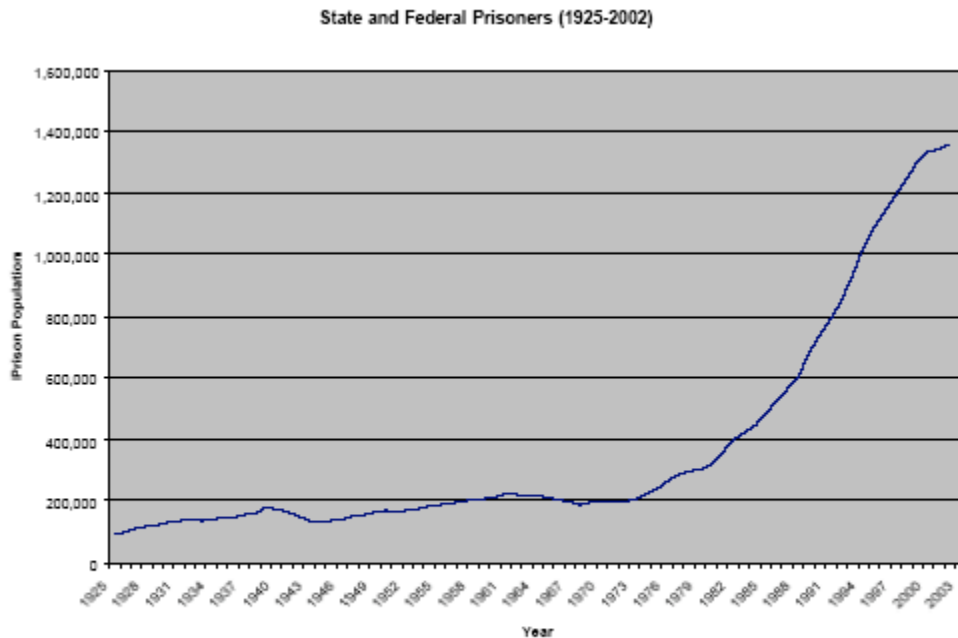
An aspect of US “exceptionalism” that is often ignored in comparative welfare state discourse is the far-reaching arm of its criminal justice system. The United States incarcerates an extraordinarily high number and proportion of its population, and, at the same time that welfare and educational programs have been contracting, prisons and jails and their attendant programs—probation and parole—have been expanding. In the context of a tax-resistant political climate, not only has incarceration consumed large proportions of federal but especially state budgets that might otherwise be spent on

supportive public programs, but it has also been carried out in an increasingly punitive manner that has for all intents and purposes abandoned rehabilitation as a goal of corrections policy.

This paper addresses several aspects of recent American criminal justice policies, including an examination of the growth of the prison population over the last twenty years and the reasons for it; a description of some of the prison conditions and outcomes, including joblessness and being barred from voting, that prisoners face; a discussion of resource consumption associated with the criminal “justice” system; and an examination of the privatized prison system that has accompanied the expansion of incarceration (an almost exclusively American approach).. Comparisons of U.S. criminal justice policies, to the degree that the author is able to make them, will show that the in penal policy, too, the U.S. stands alone.

The Dramatic Growth of Incarceration in the U.S.

The United States has recently seen unprecedented numbers and rates of incarceration. The numbers of people in state and federal prisons in the U.S. have quadrupled in the last 20 years and now number over 2 million. At the end of June, 2002, there were 148,783 prisoners in Federal facilities, 1,176,269 in state prisons and 621,149 serving sentences in county jails (U.S. Bureau of Justice Statistics, cited in Information Plus, p. 15). Rates of incarceration are even more telling. In 1929, the rate of incarceration of persons under state and federal jurisdictions was 79:100,000; by 1939, it had risen to 137:100,000 and thereafter, it fluctuated between just under 100 to the 130s: 100,000 until 1981 when the rates began a steady rise to 217:100,000 in 1986 to 332:100,000 in 1992 and to 489:100,000 in 2000 (Information Plus, p. 27).



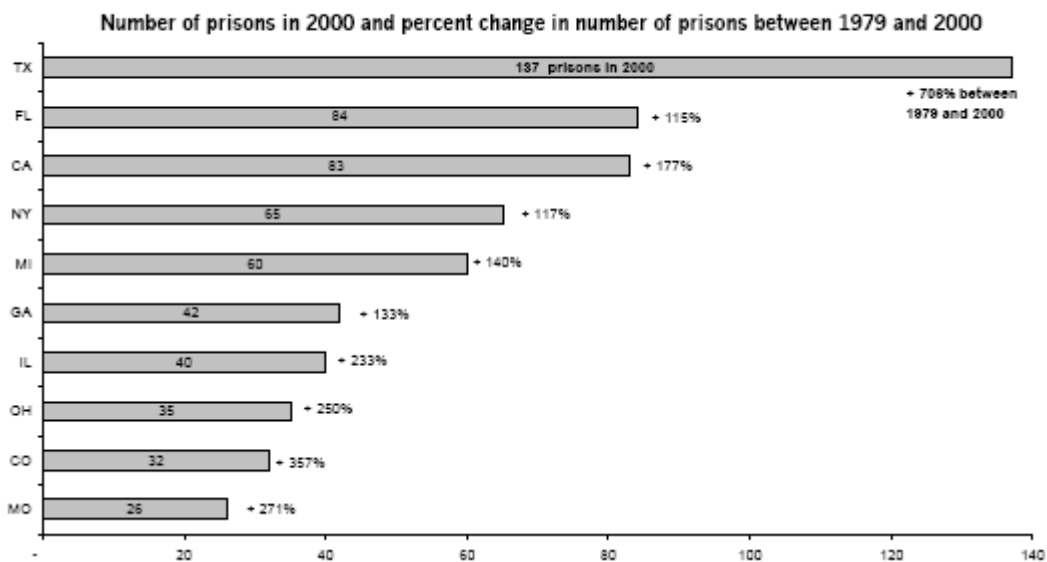
¹ Harrison, P.M. & Karberg, J.C. (2003). *Prison and Jail Inmates at Midyear 2002*. Washington, DC: Bureau of Justice Statistics.

(Reprinted in Mauer, 2003, p. 1)

While the incarceration rates for men have shown a very steep rise over the last twenty-five years, around 900:100,000 in 2000, those for women have also been growing, from close to zero in 1970 to about 80:100,000 in 2000 (extrapolated from U.S. Bureau of Justice statistics, Figure 4.1 Information Plus, p. 28).

Prison-building has also expanded dramatically, particularly in the states of Texas, Florida, California, and New York (among others), as the following chart demonstrates. Lawrence and Travis (2004) found that in the 10 states documented in the graph below, counties housing prisons increased from 13% in 1979 to 31% in 2000; new prisons were located in both urban and non-urban areas, but in most cases, prisoners are sent to facilities far from home, a practice that greatly inhibits maintaining family and friendship or romantic ties and thus inhibits successful re-entry to society.

Figure 6. States with highest growth in number of prisons



Source: Lawrence, S. and Travis, J. (2004, p. 18).

The Matter of Race and Racism in Imprisonment

Racial disparities are particularly stunning: in 2001, the incarceration rate for white males was 462:100,000, but for African American males it was 3,535:100,000 and for Hispanics, 1,177:100,000. Ten percent of black males between the ages of 25 and 29 were in prison, nearly 3% of Hispanic males but only 1.2% of white males in the same age range that year. Incarceration rates in impoverished, black neighborhoods are staggeringly high; it has been estimated that 75% of African American males living in Washington, D.C. will spend time in jail or prison at some point during their lives (Braman, 2002, cited by Mauer, 2003, p. 3). At any one time, nearly 1/3 of all African American males aged 20-29 are under some form of control by the criminal justice system when one adds probation and parole to incarceration (Sentencing Project, 1995), but an even more shocking 42% of inner city black young men were involved in the criminal justice system in Washington, D.C. at any one time in 1992; the figures may be higher today (Miller, 1992). Human Rights Watch (2000) reports that in 11 states, black men are twelve to twenty-six times more likely to be incarcerated than white men; in Washington, DC, those rates are 49 times greater than for whites, and many if not most of these imprisonments are drug-related (see below). Fifty-two percent of black male high school drop-outs have prison records by the time they reach their early thirties (Justice Policy Institute (2003b). While white women outnumber black women (Information Plus, pp. 37-38, relying on U.S. Bureau of Justice Statistics for 2001), the rates of black women's imprisonment have been rising much more rapidly than for whites (Sentencing Project, 1995).

Why has the prison population expanded?

Harsher Sentencing Policies

Mark Mauer of The Sentencing Project (2003) reports that although crime rates rose dramatically between the mid-1960s and mid-1970s and accounted for some of the growth in the prison population, most of prison expansion happened later as a result of changes in laws and policies. A much more punitive response to crime, including prison sentences for drug possession, mandatory sentencing policies that have lengthened prison terms, and “three strikes” laws (where persons convicted of a 3rd crime, no matter the degree of severity, receive an automatic sentence of anywhere from 25 years to life) account for as much as 88% of the increased prison population (Blumstein and Beck, 1999 as cited in Mauer, 2003, p. 6).

Imprisoning Non-Violent Offenders and Drug Offenders

Unlike those in other countries, U.S. policies (here we take into account both federal and state laws) lead to the incarceration of non-violent offenders, and this practice has been increasing. Thus in 1980, 59% of those in prison had been convicted of violent crimes; having dropped to 46% in 1990, they accounted for 49% in 2000 (Information Plus, p. 38). Non-violent property crimes accounted for 20% of imprisonments in 2000. About 20% of state prisoners, but 55% of federal prisoners, are imprisoned for drug offenses. Drug offenses are among the most typical reasons that women are in prison (Information Plus, pp. 38-39). Drug offenses, in fact, are the principle reason that the federal prison population has skyrocketed to about 138,000 in 2003 (extrapolated from Table 5.5, Information Plus, 2004, p. 40).

In the U.S. simple possession (that is, possession of drugs for one's own use, a victimless crime) accounted for 28 percent of all drug-related admissions to state prisons, and even the majority of those imprisoned for trafficking were low-level operators (Human Rights Watch, 2000). Perhaps most disturbing are the extreme racial disparities in sentencing for drug offenses. Citing official reports, including survey results from the Federal National Household Survey on Drug Abuse, Sterling (2001) reports that there are significantly more white men than African Americans who use drugs (10.3 million versus 1.8 million in one 1997 month, for instance), but because federal law is harsher on crack cocaine use than powder (the latter used more by whites) and because of police and prosecutorial discretion, African American men are very much more likely to be imprisoned (as discussed above).

Undocumented Immigrants and Patriot Act Detainees

Mention must also be made of the increasingly harsh policies towards undocumented immigrants. While firm counts are hard to determine and official ones are disputed as understating true numbers, one source reports that as a consequence of federal legislation passed in the mid-1990s, the Illegal Immigration and Immigration Reform Act, that required the detention of undocumented immigrants, there was a huge increase in the numbers of detained immigrants, from 1,593 in 1985 to 13,676 in 2000; 75% were detained for unlawful entry or re-entry into country (most from Mexico) (US Department of Justice, 2002). Then, after 9/11 and the Patriot Act, there was a broad sweep of Muslim communities. As of July 2003, according to one report (Anderson, 2003), 762 people had been detained under the Act. The Federal Bureau Prisons reported 15,574 or

10.4% of the total, as imprisoned on immigration violations (Information Plus, Table 5.5, p. 40).

The federal government has made extensive use of private prisons, many of them with deplorable conditions, for immigration detainees (see below); some are under contract with the Immigration and Naturalization Service which also runs its own facilities. Immigrants are also held in state prisons, local jails and other private facilities (U.S. Bureau of Justice Statistics, reprinted in Information Plus 2004, Table 16.6, p. 95).

Unemployment, Crime and Punishment

The dramatic rise in the numbers and rates of the incarcerated in the U.S. is policy-driven. In the 1990s, during the period of economic boom, the crime rate “fell dramatically” according to U.S. Department of Justice’s National Institute of Corrections (2004); nonetheless, as the graph above shows, the incarceration rate continued to rise during the 1990s. The FBI has found a positive correlation property crime and unemployment (Federal Bureau of Investigations, 2002, cited in U.S. Department of Justice, 2004), and a longitudinal study that examined crime rates and unemployment as well as wages, found “that both wages and unemployment are significantly related to crime, but that wages played a larger role in the crime trends over the last few decades” (Gould, Weinberg and Mustard, 2002, abstract). Violent crime has declined steadily since 1994, falling from a high of 758:100,000 in 1991 and 1992, to 507:100,000 in 2000 and 475:100,000 in 2003 (murder rates have increased by almost 2% since 1999, a factor related primarily to urban gang violence) (FBI crime reports, reprinted in Anderson, 2004).

Extraordinarily and chronically high rates of unemployment characterize urban, minority populations in the United States. It should therefore not be surprising that ill-educated, un- and underemployed young men living in the urban ghettos of the U.S. are disproportionately represented in the criminal population. It is also the case, however, that minority men are targeted by the police, as the recent attention to racial profiling in activities as relatively unimportant as speeding on the highways has demonstrated.

As noted above, African Americans are also incarcerated for drug crimes at levels much higher than are whites. Drug addiction, too, has been clearly shown to be related to unemployment and hopelessness, Currie (1998 and 1999), for example, cites studies showing that a majority of U.S. military serving in Vietnam were using or were addicted to heroin while there. Those who returned to stable families and work quickly dropped their habits without treatment, but those, primarily black men, who returned to joblessness and social disorganization went on to be chronically habituated.

In a subtle argument about the relationship between unemployment and incarceration, Western and Beckett (1999) note that high incarceration rates artificially lower unemployment measures, since those in prison are not counted as unemployed. Helen Lachs Ginsburg (2004). argues that were the prison population counted as unemployed, the unemployment rate would increase by 1.5 points. (To this, one can add that since the numbers of people in prison are so high and the numbers of others needed to attend to the criminal justice system (police, court personnel, probation and parole officers) are very high as well, if one were to include them in unemployment counts, the unemployment rate would be somewhat higher.) Western and Beckett (1999) point out as well that unemployment rates are raised by the vast population of former prisoners

who have great difficulty finding work because of lack of education and job skills and discrimination on the part of employers.

Violence in America

Crimes of violence are higher in the U.S. than in other industrialized countries, at least partly caused by readily available guns and weak gun control policies. Even with a sharp decline in the murder rates in the U.S. in the late 1990s, those rates are still about four times greater than the average of European countries (Mauer, 2003, p. 5). As noted above, however, only about half of prison sentences are for violent offenders.

Conditions in Prison

While the major focus of this paper is on the growth of the prison system and its components, it is important to make mention of current conditions and trends in the prison systems in the United States. According to Randall G. Sheldon (2001) even previously mouthed lip-service to the notions of rehabilitation and treatment, common in the post World War II era, have been all but forgotten. Control and punishment, combined with labor at sub-minimal wages, dominate prison complexes today.

The American Civil Liberties Union (2004) describes the current situation this way:

A "tough on crime" approach to criminal justice induced a trend of overcrowded prisons and jails with deteriorating structures and prisoner violence, overwhelmed correctional officers who grow younger and more inexperienced because of accelerated burnout and turnover, and inadequately financed medical care systems, work, education, and drug treatment programs. (ACLU webpage)

Jamie Fellner of Human Rights Watch (2004) reports that in 1999, a federal judge stated that the prisons in Texas were pervaded by a “culture of sadistic and malicious violence” and that violence and intimidation are rampant in the nation’s prisons. Prisoner-on-prisoner rape is all-too-common and has become widely recognized.

As for prison labor, an extreme example is the situation in Oregon where, in 1994, an approved ballot referendum mandates that all prisoners work for 40 hours per week (Lafer, 2003). The impact on unionized public sector jobs but especially on private sector ones has been enormous. In institutions around the country, prisoners book airline flights, pack and ship Microsoft software and repair auto parts for a fraction of what “free world” workers make. Twenty-one thousand federal prisoners work for Federal Prison Industries, a quasi-public for-profit company that sold \$678.8 million in goods and services in 2002, \$400 million to the Department of Defense (Urbina, 2003). Lafer (2003) states that prison labor programs are not organized to provide job training or rehabilitation for prisoners but rather serve the needs of employers; those most likely to be chosen for work are those with the most skills.

Treatment, whether for drug addictions or mental illness or health problems, is almost non-existent. Lafer (2003) reports that drug treatment slots were cut in half in the 1990s and are available to only 10% of those who need them. A qualitative research study done by three of the author’s students two years ago revealed that women in Framingham State Prison (the women’s facility in Massachusetts), most of whom had drug involvement upon incarceration, received no treatment for their addictions until they reached their pre-release program (Dussault, Dymek and Furlong, 2003).

Prisons have replaced state mental hospitals as the institutions for confining most of the country's mentally ill (Mariner, 2003). Mariner (2003) reports that the American Psychiatric Association has estimated that perhaps 20% of the prison populations is mentally ill, and a quarter of them are actively psychotic, yet there are barely any qualified mental health staff working in prisons and, instead, the most disturbed are seen as disruptive and are often isolated in solitary confinement. Correction Medical Services, a private prison healthcare company that contracts with many state corrections systems, is alleged to have employed no licensed mental health personnel in New Jersey's sex offender prison, and because the company had no Spanish-speaking staff, it used prisoners to translate for each other (Communications Workers of America, 2001?).

The state of prison health care is not only appalling bad, but it also threatens public health since most prisoners eventually leave prison and share their diseases with the population at large. Prisoners come to prison in poorer health status than the general population. HIV and AIDS, Tuberculosis and Hepatitis C are all rampant, communicable diseases that spread rapidly in prison, yet many if not most prisons have inadequate medical personnel and budgets to purchase needed medications. Medical care, determined by the U.S. Supreme Court to be Constitutionally required for the incarcerated, is the largest single per prisoner cost, and yet many go untreated—particularly those who are served by privatized prison health companies (Rosenthal, 2004a).

Education, too, has gone by the board in most prisons. Pell grants (federal grants available to low income students to support college education), once available to prisoners, were cut off by Congress in 1994. Before the cutoff, about 300 colleges throughout the country offered college courses in prisons. Now, despite the huge increase in the numbers of prisoners, only about 25 are offering these courses (Connors, 2004). Connors (2004) reports on a study that found that only 7.7% of prisoners from one institution who took college classes became recidivists, compared to 30% who didn't, yet providing the opportunity to take college classes is seen as coddling, even rewarding, prisoners with benefits not available to others in the population.

Finally, the invention and spread of the “supermax” prison, from one in 1984 to 30 or more in 2001, emphasizes the extreme of punishment in contemporary America. The details are gruesome and include long-term (measured in years) isolation, including sensory deprivation; restricted communication with the outside world, high-tech scrutiny (video cameras), and little to no psychiatric attention for the mental problems and stress that precede or are the consequences of these practices (Kurki and Morris, 2001). While the claim is made that these prisons or units are necessary to isolate the extremely disruptive, including gang members, Kurki and Morris (2001) believe: “ many prisoners are transferred to supermaxes because they are an administrative nuisance and not because they are particularly disruptive” (p. 392-3). Many acutely mentally ill prisoners, particularly those who are disruptive, are spending their lives in supermax cells. As many as 20,000, or nearly 2%, of state prisoners may be in these facilities (Kurki and Morris, p. 1). Norval Morris, a renown criminologist, gives a detailed and harrowing description of one of these facilities in Illinois (Kurki and Morris, 2001). The author recalls being invited to take a “virtual tour” of Virginia’s supermax prison online (she declined). That such prisons are touted with acclaim by state prison authorities is something to be greatly decried.

Private Prisons: A “Liberal” Corrections Model

The intention in this paper is to discuss various aspects of the American penal system, but it is noteworthy that the only other countries to have turned over portions of their prison system to private corporations are Great Britain and Australia; all three countries are classified as “liberal” welfare states in the original Esping-Andersen (1990) typology. One relatively recent characteristic of liberal welfare states is privatization of

formerly public functions. Australia, which began privatizing some of its prisons in 1990, has about 20% of its incarcerated population in private prisons, and one province, Victoria, confines 50% this way. Scotland, England and Wales, New Zealand, New Brunswick (Canada), and South Africa—all British derivatives—and the Netherlands Antilles have recently begun to experiment with privatization (Harding, 2001, p. 268).

In the United States, juveniles have been confined to private, non-profit facilities for at least 100 years, though the pattern of increased reliance on the voluntary sector has grown since about 1970, now accounting for 2/5 of the juvenile correctional population (McDonald, 1992 as cited in Harding, p. 267).¹ The practice of confining adults to private facilities can be related to the pervasive tight-money, anti-government but pro-business economic and political environment that has dominated US policy-making since the Reagan era of the 1980s. The result has been in an ideological shift that favors privatization, even when it is not shown to be more effective or efficient.

Contracting with private facilities began at the federal level when the Immigration and Naturalization Service [INS] began contracting with private facilities for detention of undocumented immigrants in the 1970s; the practice has now spread to the states, particularly in the South and rural West. On the state level, the first private prison was a take-over of a county facility in Tennessee in 1984 by Corrections Corporation of America, one of the two biggest private, for-profit prison companies. Currently, though estimates vary, about 7% of incarcerated adults are in private, for-profit facilities located throughout the country (Wagner, 2003). A count from December, 2000 (notably before 9/11) showed that there were 153 private facilities—including detention centers, jails and prisons—with a capacity of over 119,000. (Sentencing Project, 2004). Wagner (2003) put

the total closer to 140,000, and other counts vary. No state has privatized its entire system, although Governor Benson, who has just lost re-election in New Hampshire, a very conservative Republican Governor of New Hampshire, has proposed doing exactly that.

The growth of prisons-for-profit has coincided with the rapid expansion of the prison population. In some cases, these facilities have been built rapidly, if shoddily, to provide cells for over-crowded public corrections systems. The claim was that these prisons could be built and run for less money than it takes to run public prisons, as much as 20% according to one report (Carey, 1997 as cited in Sentencing Project, 2004). A big incentive was flexibility in hiring—in other words, union-busting. In addition, both states and the federal government were running out of space because of the escalating numbers of prisoners they had to house, and they turned--or were persuaded to turn-- to the private, for-profit sector to provide needed prison space. A particularly troubling aspect of relying on private prisons to relieve prison overcrowding is that many prisoners get transferred out of state (Vermont sends prisoners to Kentucky and Alabama sends prisoners to Mississippi, for instance), making family visiting virtually impossible.

Costs, Conditions and Promises Not Kept

Two giant corporations dominate the private industry, Corrections Corporation of America (CCA), headquartered in Tennessee, and the Wackenhut Corporation of Palm Beach Gardens, Florida (Wackenhut is a huge, international corporation that contracts for a variety of security services, including prisons). Together they comprise 75% of the private prison market. (For a comprehensive history of Corrections Corporation of America, see Mattera and Khan, 2003). There are also several smaller companies that

primarily operate on local or state levels. In addition to the corporations that own, lease and/or operate private prisons, there are several health care companies (Corrections Medical Services and Prison Health Services) that contract with states and local jails to provide health care of a treacherous sort to prisoners throughout the country (for information about the record of this aspect of privatization, see Rosenthal, 2004 a and b).

As noted above, private prison companies have promised to house prisoners for less money than the public institutions, and they also promised better care. They have done neither. Two official reports, one by the General Accounting Office (1996) and the other by the Bureau of Justice Assistance (2001) found little to no difference in costs, An Abt Associates (1998) report came to a similar conclusion (for summaries, see the Sentencing Project, 2004). Add to that the fact that private prisons generally refuse to accept more difficult prisoners, and it appears that these prisons have not fulfilled their financial promises. What's more, financial difficulties have dogged CCA (Mattera and Khan, 2003).

Of more concern is the track record of U.S. private prisons. Private prison corporations seek to make money for their investors. They do so by cutting costs, hiring untrained staff, and generally looking to the bottom line (Mattera and Khan, 2003). Abuse of prisoners, escapes, prison violence (including prisoner-on-prisoner, prisoner-on-guard and vice versa), restricted and malfeasant health care, providing rotten food, and other prison management problems are characteristic of the private prison industry (Sentencing Project, 2004; Greene, 2001; Mattera and Khan, 2003). For example, one study (Austin, as cited in Greene, 2001) found 49% more prisoner-on-staff and 65% higher prisoner-on-prisoner assaults in private medium and minimum security prisons

than in public ones. A particularly notorious example is that of the CCA-operated Northeast Ohio Correction Center in Youngstown, Ohio where, in only 14 months, there were 13 stabbings, 2 murders and 6 escapes that ended in violence (Sentencing Project, 2004). Mattera and Khan (2003) document many other examples of brutality and incompetence perpetrated in CCA-run facilities.

The Political and Economic Dimensions

Private prison interests have actively lobbied state legislatures and public officials to favor privatization, including contributing substantially to political campaigns (particularly but not exclusively in the South). An advocacy organization that documents campaign and other contributions has reported that, between 1998-2000, 2,250 checks were written to 830 recipients, \$1,125,598 to individual candidates and \$96,432 to political parties (Bender, 2002). Political campaign contributions by prison interests—and to this it must be added that public prison unions, especially in California, have done likewise—have a corrupting influence because they not only push for private prisons, but they also encourage sentencing policies that will keep the prisons full. The Sentencing Project (2004, p. 4-5) reports that both CCA and Wackenhut have been important contributors to the American Legislative Exchange Council, an organization that develops policy for and supports conservative state-level politicians and has supported get-tough crime policies.

In addition, many public officials—desperate to create jobs in their economically depleted areas—have looked to prison-building as a source of job creation, both in construction and, in the longer term, for prison guards and upkeep. While this is not exclusively a matter of private prison-building, private prison companies have taken

advantage of the general concern of high unemployment in rural areas to feed into the notion that prisons bring work, though it is not at all certain that, in the long run, prisons are money-makers. In the rural South, this argument has been appealing since so many traditional forms of employment—tobacco, cotton, textile and furniture production—have largely disappeared. Private prison companies have received huge public subsidies (\$68 billion in tax-free bonds, for example) to help them build, demonstrating further the political connections that private prison corporation executives have cultivated with politicians and public administrators (Mattera and Khan, 2001).

Civil Liberties and Prison Privatization

The writer has an inherent and profound disagreement with the idea that private corporations and individuals should be allowed to earn profits from the mistakes and miseries of others. There are real legal and civil liberties questions that are fundamental to this arrangement as well. In particular, there is a strong argument that a private entity should not have the right to restrain an individual's liberty. As Harding (2001) puts it:

There is a view that, however well regulated, accountable, and successful the particular regime turns out to be...prison privatization is nevertheless unacceptable. This is the fundamental moral criticism that imprisonment is an intrinsic or core state function that by definition cannot legitimately be delegate in any of its aspects to a nonstate agency without undermining the very notion of the state and its responsibility to and for its citizens. (p. 266)

John DiIulio has said something similar: "To remain legitimate and morally significant, the authority to govern behind bars, to deprive citizens of their liberty, to coerce (and

even kill) them, must remain in the hands of government authorities (1991, p. 197, quoted in Harding, 2001, p. 274).

A particularly troublesome aspect in this regard is that for-profit entities have a financial incentive to retain prisoners. A cursory investigation of whether state corrections departments retain control over discharge and parole decisions or whether wardens of the private prisons assume authority for these decisions was inconclusive, but the suspicion remains that private prisons may hold on to prisoners (particularly ones who are not troublesome) as a means to earn extra money. And even if they do not directly control discharge decisions, by controlling record-keeping about prisoners' behavior, they can have a determining role in establishing when a prisoner is to be released or paroled.

Impact on State and Federal Budgets

The massive increase in the prison population has had serious consequences for public budgets, and the result has been a curtailment of expenditures on critical human services and public education. Of course, prison expansion has taken place at the same time as both the federal and state governments have pulled back from social expenditures as a matter of ideology (e.g., Bill Clinton's famous statement, "The era of big government is over" in combination with the so-called Contract with America) and recent declining revenues as a result of tax cuts and reduced tax revenues associated with higher unemployment rates. It becomes difficult, therefore, to pinpoint precisely the financial impact of harsh penal policies, but there is a trend: particularly at the state level, expenditures on prisons are beginning to outstrip other important state functions.

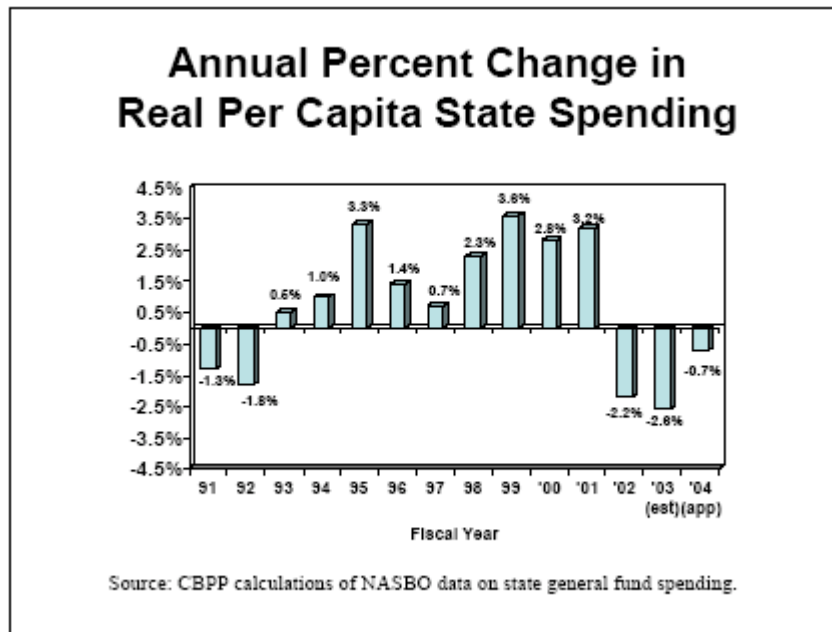
Total outlays in the federal system (this includes law enforcement, litigation, corrections and criminal justice assistance (not sure what that refers to) have increased from about \$15 million in 1992 to \$35 million in 2003 (Executive Office of the President, Figure 2.1, Information Plus, 2004, p. 10). State expenditures for corrections activities have risen from 2.6 to 3.0 percent of total state expenditures between FY 91-92 to 99-00. In 1980, the expenditures were just under \$5 billion/year; by 1999, they were \$30.8 billion or more than a 6-fold increase (U.S. Census Bureau data reported in Information Plus, 2004, Figure 2.2 and U.S. Bureau of Justice Statistics, Figure 2.4, Information Plus 2004, both p. 11).

It is important to note that overall figures obscure the considerable differences in per prisoner expenditures that, in 1996, ranged from a high in Minnesota of \$37,800 (other high spenders were Rhode Island, Maine, Alaska and Utah) to a low in Alabama of \$8,000 (other low spenders were Oklahoma, Mississippi, Texas and Missouri) (Information Plus 2004, p. 10). Medical expenditures are the biggest single cost factor in prisons where several serious communicable diseases—HIV/Aids, Tuberculosis, and Hepatitis C—are more likely to affect those going into prison than those in the general population and are spread easily in the confines of prison complexes.

At the local level, expenditures that included police, judicial and jail costs have mushroomed as well, from \$2.3 billion in 1980 to \$15.2 billion in 1999. There were 390,765 jail beds added between 1983 and 1999 (Information Plus, 2004, p. 11-12).

State spending has been declining since FY 2002 and is estimated to be 5.4% lower in FY 2004 than in FY 2001 and that \$55 billion more would have had to have been spent by the states in order to maintain spending at the 2002 level (McNichol, 2004).

p. 1). Thus, expenditures for prisons and other corrections activities have been rising as overall spending (and revenues) have been declining. According to McNichol (2004), many states have cut expenditures in health programs for poor children and families (SCHIP and Medicaid), subsidized child care and, in the case of 34 states in 2004, state aid to K-12 public education.



Published in Center on Budget and Policy Priorities (2004, p. 2).

Critics document that while state expenditures for prison-building and incarceration have been growing, outlays for public higher education have been declining, often with dire consequences for making a college education affordable for poor, and especially minority, students. The Justice Policy Institute (2003a), citing its earlier studies, compared prison-building to higher education-building and found the following (p. 5):

- States around the country spent more building prisons than colleges in 1995 for the first time. That year, there was nearly a dollar-for-dollar tradeoff between corrections and higher education, with university construction funds decreasing by \$954 million to (\$2.5 billion) while corrections funding increased by \$926 million to (\$2.6 billion).
- From 1984 to 1994, California built 21 prisons and only one state university. During that decade, the prison system realized a 209% increase in funding, compared to a 15% increase in state university funding.
- In New York, between 1988 and 1998, the state spent \$761 million more on corrections, while spending on state colleges and universities declined by \$615 million.

In 1981, the states and local governments spent, on average, 8.2% of their total budgets on higher education and 2.2% on prisons; by 2000, spending for higher education had declined to 6.3% of total budget and spending on prisons was up to 4.3% (Justice the Policy Institute, 2003a, p.8).

The same study (p. 5) found that, although there were wide variations among the states, on average there was a 29% increase in state funding for higher education but a 175% increase on incarceration between 1985 and 2000. Florida increased higher education spending by 88% but spending on prisons by 217%, in California, there was a 16% *decrease* in education spending but a 184% increase, in New York State the *decrease* on higher education was 25% but the increase on prisons 137% and in Texas,

there was a 46% increase on higher education but a *346% increase* in spending on prisons. The Justice Policy Institute (2003b), citing a National Conference of State Legislatures, found that 21 states were also contemplating reducing funding for elementary and high schools.

Public colleges and universities have attempted to compensate for decreased public funding by increasing tuition and fees. The result is that it is more and more difficult for poor and working class students to receive a higher education, and many, if they do complete their degrees, do it by working and extending their undergraduate time in school to five and six years. In combination with harsh and discriminatory justice policy implementation, these increased costs have resulted, at least in part, in accounting for the fact that in 2000, there were 1/3 more young African American men in prison than in higher education (Justice Policy Institute, 2003a p. 9) and that this was particularly true for populous states with large prison systems. In thirteen states, the numbers of young African American males in prison exceeded those attending college (p. 10).

It is interesting to note, in contrast, that counties with prisons are able to count their prison population in census tabulations, a policy that enables them to take advantage of population-based federal grants and subsidies in such areas as Medicaid, Adoption Assistance, social service block grants (Lawrence and Travis, 2004). Since most prisoners are not allowed to vote, there is an irony here, since most are housed away from home, their families are, in a sense, being denied assets that might otherwise be available to them were the grants determined according to county of origin instead of county of “residence” (the resemblance to the 3/5 clause in the original U.S. Constitution has resonance here).

Long-term Consequences of Imprisonment

Recidivism

A U.S. Department of Justice study of persons released from prison in 1994 revealed a very high recidivism rates. Within 3 years from their release, 67.5% of the prisoners were rearrested for a new offense, 46.9% were reconvicted for a new crime, and 25.4% were sentenced to prison again for a new crime (Langan and Levin, 2002). On the other hand, almost 52% of those who were re-sentenced to prison were for a technical violation of their parole or release. Tellingly, those with the highest (almost 74%) re-arrest rates were those who committed property crimes; 66.7% of released drug offenders were re-arrested within 3 years of discharge.

Unemployment and Employment Discrimination

As Travis (2004) points out, one of the consequences of the longer terms now served by prisoners in the mandatory sentencing era, is that former prisoners are more likely to have attenuated ties with their families and communities. Prisoners are less likely to have participated in drug treatment, vocational or educational programs prior to their release from prison (Travis, 2004). Although a 1993 U.S. Justice Department study (cited in Travis, 2004, p. 259) found that over half of those entering prison in 1991 were working when they were arrested, it is likely that many were not well prepared for work. They leave prison no better prepared.

Most former prisoners have a very difficult time getting work, particularly if they are members of minority groups. Holzer, Raphael, and Stoll (2004) have studied the willingness of employers to hire persons with prison records and found a general aversion to doing so; 60% of surveyed employers in four metropolitan areas said that probably or

definitely would not hire them (p. 211). About half said that they always or sometimes do criminal background checks on potential employees (p. 212). And employers who are unlikely to hire those with criminal backgrounds also have entry requirements (high school degrees, work experience and references) that just released prisoners are very unlikely to have. What's more, many employers appear to assume that young, black men have criminal backgrounds and they are reluctant to hire on that basis (p. 227). In addition, many states require that particular jobs (for instance, those involving contact with children) are closed to anyone with a criminal record, and criminal background checks on applicants are routine. While a tight labor market somewhat improved the employment chances of former prisoners, they consistently fared less well in the eyes of employers than other stigmatized groups (particularly public assistance recipients) (Holzer, Raphael, and Stoll 2004). Given the large numbers of prisoners who return to their communities eventually and the discrimination they face in hiring, a return to crime (especially property crime, as noted above) and the persistence of social isolation should not be a surprise.

Disenfranchisement

One consequence of imprisonment that has been getting rather wide public attention recently—doubtless as a result of the 2000 Presidential election when many entitled to vote were falsely accused by Florida election officials as being former felons—is that of barring former prisoners from voting permanently (or if not permanently, then requiring compliance with arduous procedures to having voting rights restored). In some states, restoring voting rights is called “regaining citizenship.” Uggen and Manza (2004) conclude that almost 75% of those disenfranchised are not currently in prison: they are

either on probation or parole or they have been discharged completely from their sentences but, nonetheless, they cannot vote. Mauer (2003, p. 15) states that 4 million current and former felons are now unable to vote, and that the prohibition affects about 13% of African American men. Uggen and Manza's study (2004) includes qualitative data that demonstrate how interested in political events many felons and ex-felons are and how acutely they feel their inability to participate in the political process. Given the large number of persons so affected, these lost voices translates into the silencing of objection to the terms and conditions of imprisonment that need to be heard.

Recent editorials in the New York Times (2004) and the Boston Globe (2004) and an opinion piece in the Washington Post (Krajick, 2004)--and no doubt others--all call for restoring the right to vote to former felons. This step seems one, at a minimum, to be taken on the long road to improving the American criminal justice system.

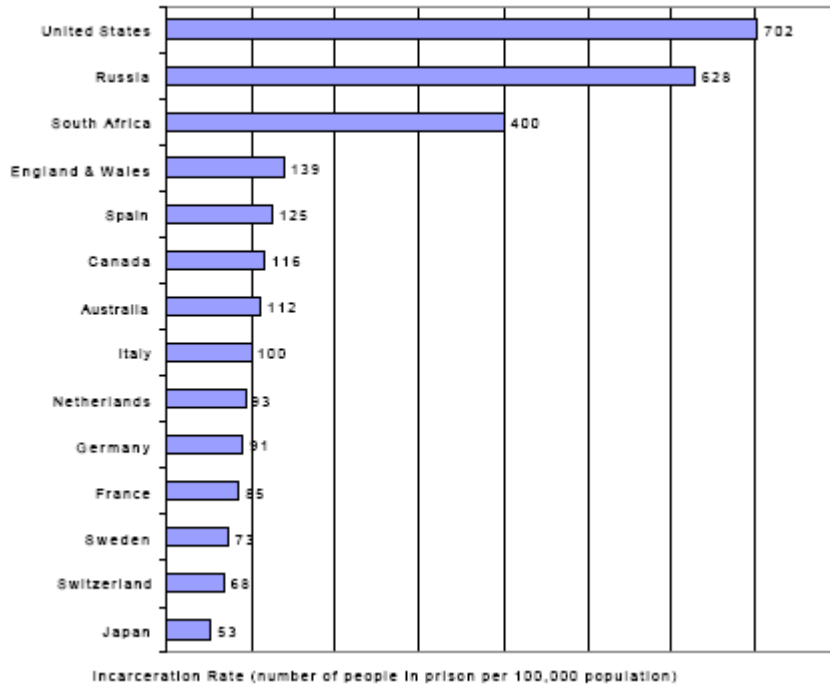
Attenuated Family Ties

Long spells in prison, long distances from home that inhibit family visits, and cautious if not dissuading attitudes and behaviors of prisoners' family members contribute to the difficulties that former prisoners have in reintegrating into their families and communities. These men, but also women, leave often not knowing where they will live or whether their families will have them back. Relations with children are particularly problematic, and family caretakers often inhibit or even forbid the former prisoner from having custody or contact with his or her children. Social isolation, thus, is compounded, for many leaving prison (Nurse, 2004; Dussault et al, 2003).

A Brief Examination of U.S. Prison Corrections Policies in Comparative Perspective

Incarceration Rates

As the following graph shows, incarceration rates in the United States are extraordinarily disproportionate in comparison to most other industrialized countries.



Source: Mauer, 2003, p.3.

Crimes of violence are higher in the U.S., related at least in part to readily available guns and weak gun control policies. Even with a sharp decline in the murder rates in the U.S. in the late 1990s, those rates are still about four times greater than the average of European countries (Mauer get page).

Sentencing Policies

As has been shown above, though, more than half of U.S. incarcerations are for non-violent offenses. The main conclusion from the few studies that the author has thus far been able to find that examine incarceration from a comparative perspective is that the much higher rates of incarceration in the U.S. result from harsher sentencing policies

(Young and Brown, 1993, cited in Mauer, 2003). That is, the rates of incarceration for those found guilty of violent crimes tends to be similar country to country, but at least for England, Wales and the former West Germany, the rates of incarceration for property and drug crimes is lower, and those who are incarcerated serve less time in prison. For instance, burglars in the U.S., served an average of 16.2 months in prison, compared to 5.3 months in Canada and 6.8 months in England/Wales. Perhaps it is important to remind that no European country inflicts the death penalty. In the U.S. 71 persons in 13 States were executed in 2002 (33 in Texas and the rest in other southern states, except 1 in California), and in 2003, 65 were put to death (U.S. Department of Justice, Office of Justice Programs, 2004).

Brief descriptions of corrections policies in specific Western European countries will follow.² They show policies and attitudes quite at odds with U.S. equivalents. An overall assessment, published in 1995 (Sim, Ruggiero and Ryan, p. 6), concludes that “...Western European penal systems confine the economically, politically, and ideologically marginalized” and points particularly to the disproportionate numbers of immigrants and ethnic minorities who are imprisoned in various European countries. They also found that, while the general trend was toward more punitive policies—especially for asylum seekers--, Italy and Germany were notable for moving towards limitations on the use of imprisonment (pp. 19-20). Whether this is still the case, in light of increasing numbers of refugees coming from Africa and Eastern Europe, is an unanswered question. A general conclusion from examining the individual countries is that, similar to the U.S., imprisoning policies and prison conditions are functions of

political ideologies and processes and not simply responses to objective incidences of crime.

Sweden

Swedish criminal justice policies have, in some respects, been a function of political changes. Leander (1995) notes that, following the enactment of reform legislation in 1974 under the Social Democrats, there was a trend towards humane treatment with short-term prison sentences when they were meted out at all. However, with the ascendancy of the Conservatives in the late '80s, there was a return to more restrictive policies. When the Social Democrats returned to power, they did not undo the harsher criminal justice policies introduced by the Conservatives.

In 1975, prison sentences comprised 13% of all sentences; by the early '90s, although the total number of sentences had declined, 20% of them were prison terms. On the other hand, in 1993, 85% of sentences were fines. Young offenders are rarely imprisoned, and while community service is a preferred intervention, in 1993 there were fewer than 350. Prison sentences are short by U.S. comparisons. The average one was 6.9 months in 1993 (up from 4.5 in 1973), but 9.4 months for foreigners. There was a 3-fold increase in sentences of 5 or more years between 1984-1993. Most prison sentences are for crimes of violence and aggravated drug crimes (Leander, 1995).

In contrast to U.S. prison practices, custodial care in Sweden, by law, "must be designed to promote the (re) socialization of the inmate...Preparations for the inmate's ultimate release are to begin preferably upon admission" (Leander, 1995, p. 172). Since 1994, Sweden has made use of electronic monitoring (the electronic bracelet) for those with short-term sentences and for those on parole, and, in 2001, the country has been

conducting a demonstration program where prisoners with 2 year sentences are released at 20 months with electronic monitoring (Froman, 2004a). The purpose, according to Froman (2004a) is not to relieve overcrowding in the prisons (a problem) but rather to reduce recidivism by facilitating family and community reintegration.

Sweden's policies towards drug possession and trafficking are not lenient. Leander (1995) reports that drug use was criminalized in 1988, and that in 1993, statutorily defined sentences requiring prison terms were enacted. Froman (2004b) reports that Sweden is taking a particularly hard line on intravenous heroin and amphetamine users, whose numbers increased in the 1990s. She also reports that the economic recession of the late '90s resulted in fewer municipal resources being spent on prevention and treatment of less serious drug use, with the result that users of serious drugs are now harder to reach. Coordination of various helping and correctional services is now anticipated, but there is also the concern that more effective policies and programs for drug users will be hard to achieve (Froman, 2004b).

Germany

Germany (here referring primarily to the former West Germany) and following scandals about harsh prison conditions, in 1976 enacted legislation to reduce its prison population. According to Messner and Ruggiero (1995), convictions result in fines in 80% of cases, generally assessed on a daily basis for up to 3 months. Of the 20% sentenced to prison, 1/3 are sentenced to spend no more than 9 months in prison and early release is granted 1/3 of the time. However, between 1980 and 1990, longer sentences of 2 or more years increased from 29% to almost 34%, and non-Germans comprised, disproportionately, about 15% of those so sentenced. In the early 1990s, the incarceration

rate was 60:100,000 but had increased, by 1995, to 80:100,000 (Messner and Ruggiero 1995, p. 137). Mauer (2003) notes that the former West Germany has adopted a policy of avoiding short sentences, and has thus reduced admissions, because imprisonment is disrupting, stigmatizing and, ultimately, counter-productive in terms of reducing crime and rehabilitating the criminal.

Germany, too, has experienced an influx of prisoners with drug problems. Estimates were that, by the early 1990s, 20% of men and 40% women prisoners were addicts (Messner and Ruggiero, 1995, p.138). HIV/AIDS have increased, particularly because there is continued use of injecting drugs while in prison. Messner and Ruggiero (1995) allege that there is an active drug scene in prison; needle exchange is unlawful.

Women prisoners has been on the rise in Germany, doubling between 19 75 and 1991, but there are no separate prison facilities; instead, women are confined in separate wings of male prisons. Prison sentences for women have increased, with about 60% serving sentences over two years.

Messner and Ruggiero (1995) report that community service and restitution, up to 240 hours of unpaid work, are used only for those who default on fines; however, this alternative to prison is widely used both because prison is seen as having bad impacts and because prisons are over-crowded (many were closed after 1976).

Commenting on the situation in East Germany, Messner and Ruggiero (1995) state that here the emphasis was more focused on victims' demands than in the West; East Germans are more concerned about violence and becoming victims of violence than are West Germans, though the actual victimization rate may not be any greater. Imprisonment rates dropped from 187 to 29:100,000 from 89-93 (Messner and Ruggiero,

p. 143), but because some from the East may actually be serving sentences in W. Germany, the drop may be artificially low. Further, judges in the East have been overwhelmed because of changes in judicial processes with which they were not familiar.

As elsewhere in Europe, children of asylum seekers are looked at as being a significant cause of crime, but this part of the Germany population is increasingly poor. Between 1986 and 1993, for instance, the number of individuals receiving support from welfare agencies grew by almost two thirds (Messner and Ruggiero, p. 145).

France

According to Gallo (1995), France attempted a progressive rehabilitation model of prison structure, until the influx of prisoners following the Algerian War. Following the war, the use of large, high security prisons grew and a movement towards “managerial” prisons became dominant. Prison riots led to a reexamination of prison practices in the late 1970s, and, under Mitterand in 1981, there was a rapid decrease in the prison population, from 42,00 to 30,000 within three months. The Socialists pushed a policy of crime prevention and prison alternatives, but with the ascent of the political right in 1986, the focus moved towards security and higher, mandated (through legislation) sentences. New prisons were built to accommodate 70,000 prisoners. (Gallo, 1995).

The French system apparently allows for short-term imprisonment, meted out by the police at the local level. Suspects can be held for up to 10 days without charge in these facilities. In 1994, Amnesty International criticized these facilities for overcrowding, lack of heat and other problems related to conditions. Non-Europeans were especially harshly dealt with. Remand (or pre-trial) imprisonment is the highest in

Europe, according to a study cited by Gallo (1995, p. 83). By 1993, 31% of the prison population was non-French born; in 1975, the percentage was 18.

By 1993, a trend of increased sentences was observed as compared to the situation when the Socialists were in power. For instance, life sentences increased by 19%, and sentences of more than 10 years increased by 50%. Thus, although 60% of sentences that are meted out each year are for 3 months or less, 88% of the average daily prison population were incarcerated on longer sentences (Gallo, 1995, p. 81). Property offences accounted for 30% of prison sentences and drug offences for 21.3% in 1994.

Women have consistently been about 4% consistently of the prison population and, according to Gallo (1995), and those who have been sentenced for serious crimes are treated very harshly. One positive note is that women who give birth in prison can keep their babies for 18 months. Apparently a substantial proportion of the female prison population is foreign women involved in the coerced sex trade.

Parole, or “conditional discharges” are given to those who display a positive social readjustment, and are usually granted after the prisoner has served half of his or her sentence. Community service is also in place as an alternative to imprisonment, but according to Gallo (1995), many of these sentences are given to those who likely would not have received a prison sentence in any case.

France has not been immune to some of the trends discussed above in the U.S. case. For instance, the Minister of Justice, Chalandon, in 1986 proposed creating 25,000 cells in new, high tech private institutions. According to his vision, 50% of the total prison capacity would be privatized, but resistance from grassroots organizations and the Socialists managed to reduce the total to 15,000 cells. By 1994, there were 17 privatized

prisons with 10,000 prisoners. However, Gallo (1995) points out that in France, privatization has meant that government has retained the management and guarding functions in publicly owned facilities while services such as prison-construction, food-provision, education have been contracted out. One of these prisons, Salon (in southern France) was wrecked in a prison riot triggered by bad food and isolation practices.

Finland

Perhaps the most dramatic example of a country that has completely changed its incarceration policies and prison conditions for those who are incarcerated is Finland. According to Mauer (2003), in the 1970s, the Finnish government, observing that its prison population was high in Scandinavian terms, adopted policies to increase the use of suspended sentences and early parole, with the result that there was a 40% drop in the rate of incarceration between 1976 and 1992 (p. 9). In twenty years, crime rates have dropped, 40,000 imprisonments have been avoided and as much as \$20 million of dollars saved (Hoge, 2003). The incarceration rate is now 52:100,000, lower than Sweden's and higher than (according to the chart above) Switzerland's and Japan's.

Finnish prisons are of two kinds: "closed" and "open," but the descriptions of both reveal institutions that resemble dormitories more than anything else (Hoge, 2003). Closed institutions use video monitors rather than gates and locks for security, and prisoners are housed in rooms rather than cells. Guards wear civilian clothing and are unarmed (guns are kept locked in prison safes). Work and sports are part of the prison regime. In open prisons, guards and prisoners are on a first-name basis, home visits occur regularly as prisoners near the end of their sentences, and beforehand, they can live with their families in houses on the prison grounds. Tapio Lappi-Seppala, Director of the

National Research Institute of Legal Policy, is quoted by Hoge (2003) as saying: "We believe in the moral-creating and value-shaping effect of punishment instead of punishment as retribution."

Finland, too, incarcerates drug dealers and violent criminals, but it aims to rehabilitate prisoners and inculcate in them self-control. Hoge (2003) reports general satisfaction among the Finnish population with these humane justice policies. This approach should be a model for the rest of the world to examine and emulate.

Towards the future:

Prison is never a pretty picture, but scene in the U.S. is particularly gloomy. This paper has shown that the U.S. is an outlier in its criminal justice policies in virtually every aspect: its over-reliance on incarceration, its rising incarceration rates, its extraordinarily punitive approach to those who are incarcerated, and its use of very long (and growing longer) prison sentences and its commercialization of prisons through heavy use of private prisons.

Despite this litany of problems, there are some hopeful signs. Over the last several years, for instance, many states have grown disillusioned with private prisons as the solution to over-crowding and high budgets. A recent report by the Sentencing Project states (2004) that since 2000 no states have negotiated new private contracts (although Mississippi has reopened a private prison with a terrible track record, not for its own use but as a place to house prisoners from other states). Growing public attention to disenfranchisement of former felons, as discussed above, gives hope that these policies may be abandoned or at least modified in many states.

Finally, governments (if not citizens generally) are learning that long incarceration and mandatory sentences are becoming too expensive to sustain. Several states, unable to afford new prisons and incapable of preventing extreme over-crowding, have been forced to grant early release (567 in Kentucky in December, 2002, and another 328 the next month; over 500 in Arkansas; more in Alabama and more contemplated in at least 7 other states) (Abramsky, 2003).

A more promising and forward-thinking example is provided by Vermont. Responding to the problem of prison overcrowding, Governor Jim Douglas appointed a commission to make recommendations for its relief. The report, issued in August 2004, calls for an end to incarcerating non-violent offenders and creating more community-based treatment programs in place of prison (some of the recommendations are less sanguine, but the overall thrust is to reduce the prison population whose numbers have nearly trebled in 20 years) (Lefebvre, 2004). The recommendations received a lot of attention, largely because two Vermont prisoners, sent to a Corrections Corporation of America prison in Kentucky because of overcrowding in Vermont's facilities, were injured in a riot just weeks after the report's release. The recommendations are being studied with the view towards—it is hoped—legislative approval and implementation. On the other hand, on November 2, 2004, the voters of California rejected a ballot initiative to relax its 3-strike mandatory sentencing law, an event that signals that Vermont's lead will not be followed anytime soon by California, let alone Texas.

There are, thus, a few examples of states that are recognizing the financial—if not human—costs of present incarceration policies. Perhaps these realities will create momentum to move this country in a different direction. For now, the conclusion must

be that the United States remains unique among industrialized nations in its punitive and reactionary approach to crime, itself a symptom of poverty and thwarted economic opportunity.

Notes:

1. This paper deals almost exclusively with incarceration of the adult (including young adult) population in the U.S. The over-use of detention, juvenile correctional facilities and other forms of out-of-home “placements” of youngsters—particularly young people of color-- in the U.S. is another, though related, subject of enormous importance and concern, but it is beyond the focus of this paper.

2. Most of the descriptions of individual countries’ prison policies have been taken from various chapters in Ruggiero, Ryan and Sim (1995). Brief overviews of the entire criminal justice systems in many countries can be found in the World Factbook of Criminal Justice Systems, written by various authors under a U.S. Department of Justice, Bureau of Justice Statistics grant the State University of New York at Albany and available online at <http://www.ojp.usdoj.gov/bjs/abstract/wfcj.htm>.

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