

The Rise of Prisons and Decline of a Nation

Craig S. Marxsen

University of Nebraska at Kearney

In 1982, Mancur Olson wrote a book called *The Rise and Decline of Nations*. In it, he theorized that rent seeking special interest groups (p. 44) bring about the stagnation of advanced industrial democracies partly by their relentless lobbying. “Distributional coalitions,” he explained (p. 75), “reduce an economy’s dynamism and rate of growth... [And] increase regulation, bureaucracy, and political intervention in markets.” After discussing devices ranging from protectionist trade policies to special tax exemptions and complex regulations, Olson (1982, p. 109) also pointed, for illustration, to southerners’ pre-1960s instituting of racial segregation, as an example of coalitions of people at work serving the narrow interests of special groups. His segregation example is especially illuminating of today’s mass imprisonment phenomenon. Olson (1982, p. 109) emphasized the actions of small groups obtaining, for example, “Jim Crow” laws that instituted separate black facilities ranging from schools to public restrooms. However, he also emphasized that other kinds of restrictions pervade the business

environment where they hinder efficiency, innovation, and the entry of competitors. As time passes, Olson reasoned, restrictive constraints multiply so much that total factor productivity growth that previously made a nation rise, wanes and the nation enters into economic decline. The process takes place because the politically most effective groups in society are small enough to disregard the common good as they seek to introduce or preserve restrictions that directly or indirectly redistribute some of society’s output in their own favor.

The thesis of this paper is that expanding imprisonment in America exemplifies Olson’s process that brings economic stagnation. Olson’s interest group orientated stagnation thesis sheds light on why a prison population explosion is occurring without regard for the substantial harm it may be inflicting on affluence and economic growth. Because the public has been slow to recognize the negative impacts on the nation’s prosperity and because some lagged negative effects are likely long lasting, the process may illustrate Olson’s theory ultimately with a momentum increasingly detached from the

public will. By the time it has fully run its course, mass imprisonment may thus prove deeply regrettable.

Drug Prohibition

Today's criminal prosecution enforced drug prohibition benefits one interest group at the expense of another because it snares male blacks disproportionately. In many states, ex-convicts lose their right to vote in political elections. Groups competing politically with black men gain obvious advantage. Olson (1982, p. 109), to elaborate his theory, pointed to "Jim Crow" laws as examples of one interest group, American southern segregationists, previously oppressing another group, southern blacks. He claimed that the first important southern special interest coalitions to form after American Civil War Reconstruction were local and white-only, and some were susceptible to racist demagogues (Olson, 1982, p. 109). They prevented the black population from organizing politically, often by violent means, and the "Jim Crow" system of segregation and black subordination emerged from decades of white interest group activity (Olson, 1982, p. 109). Elsewhere, Olson emphasized that "Jim Crow" was the product of relentless small interest group activity that established it courthouse-by-courthouse and state-by-state (1983, p. 926). He thought economic development, involving an influx of outside industry, expertise and labor, subsequently suffered resistance partly because it then might have threatened the established order of white supremacy (Olson, 1983, p. 927). After World War II, the South finally shifted from being much the poorest region of the United States with a substantial out

migration to being one of the most dynamic parts of the U. S., with migrants flowing in (Olson, 1983, p. 921). Olson (1983, p. 928) thought dismantling "Jim Crow" finally contributed positively to an acceleration of economic growth subsequently and from this he reasoned that "Jim Crow" had significantly contributed to pre-World War II stagnation in the south.

Olson (1982, p. 164) also perceived the work of special interest coalitions in the formation of South Africa's former apartheid system of black suppression. He (1982, p. 164) explained that individuals or individual employers find it costly to discriminate so that a society that makes individuals free to undertake whatever transactions they wish will thereby inhibit or limit the extent of discrimination. However, coalitions of individuals can potentially gain enormously from racial suppression so that apartheid was likely the product of collective action wherever it occurred (Olson, 1982, pp. 164-165). Decommissioning an underclass and systematically excluding it from a rent seeking society's plentiful redistributive benefits created an exploitable quasi proletariat that Marxists might logically substitute for Karl Marx's theoretical source of "surplus value." When ethnic boundaries define such a quasi proletariat, its members are immutably identified so that oppressor group members need not fear falling into the oppressed category as might happen when mere social class boundaries define the exploited group's membership.

Jesse Jackson today finds the phenomenon of harsh sentencing effectively resurrecting slavery again, now organized in prison labor camps populated by a preponderance of minority convicts. Jackson (2003) sees blacks being systematically railroaded into privatized

prisons that contract out prison labor. Much as Timothy Lynch (2000) has observed, Jackson says small job starved communities nowadays compete to host a prison. Jackson, like Olson, thus looks for selfishly motivated interest groups that derive benefit from black imprisonment similar to benefits that other groups once obtained from “Jim Crow” laws. The working poor suffer today from wage depressing effects of competition from American prison labor. It is little different from competition from Chinese or other publicly deplored foreign prison labor, according to Jackson. Jackson seemingly gropes to bring into his grasp what Michael Tonry (2004, pp. 109-113) identifies as the use of drug and crime issues by one cultural group as a weapon against another or others. Tonry (pp. 109-113) draws on historian David Musto’s analysis of the history of harsh drug and alcohol policies actually aimed at minority groups exemplified today by the latest targets: blacks and Hispanics. Tonry (pp. 81-82) cites the 100 to 1 law that punishes crack cocaine trafficking as severely as powdered cocaine offenses involving 100 times the equivalent amounts because blacks deal in crack and whites in powder. David Jacobs (2003, p. 746) reports findings based on cross-national analysis that shows the presence of large minority populations results in higher incarceration rates. Larger minority populations seem to pose a greater threat to the dominance of the majority group. Surprisingly, imprisonment rates seem to be highest where the public has the greatest political influence in contrast to more corporatist political arrangements that diminish direct democracy, according to Jacobs (2003, p. 746). The reader might visualize limited government administered by more

restrained representatives (analogous to corporate “agents”) subsequently giving way to somewhat less restrained special interest coalition ardor as one of the mechanisms partly underlying the shift toward mass incarceration.

This is not to suggest that cheap prison labor provides the primary benefit to groups gaining from oppressing blacks. The eminent threat of going to prison substantially bridles blacks that manage to stay out of prison so that they must retreat from assertiveness and become more servile in behavior. Blacks who do go to prison emerge politically and economically decommissioned and this diminishes the competition from blacks felt by other racial and ethnic groups that compete with them. It is like the societal equivalent of hostile office politics where people, desiring competitive advantage, are hoping their rivals will get into trouble somehow. Interest groups need only inhibit subsequent reform that might reverse the new status quo once society has blundered together the ill designed laws and institutions that oppress blacks by excessive imprisonment. Injustice persists more as the product of malevolent neglect than of sinister calculation imbedded in original designs.

Benefits from Tough Policies

Michael Tonry (2004, pp. 118-130) dismisses the contention that massive imprisonment has been responsible for recent reductions in American crime rates. He (pp. 119-126) shows that cities that have most conspicuously resorted to severe enforcement and punishment have exhibited crime trends little different from other similar cities in America. Comparison (pp. 124-125) of crime trends in several

states likewise shows remarkable similarity. Tonry (pp. 127-130) furthermore shows that, while the United States has deviated extremely in its severity of punishment, the U. S. trend in crime rates in the past two decades is virtually the same as seen in other western democracies and in Canada. He (pp. 11-12) explains that although many people believe that severe crime control policies "...substantially reduce crime rates, most informed practitioners and scholars no longer believe that to be true." Even though Steven Levitt (2004, p. 179) takes an opposite view from Tonry on imprisonment's effectiveness, he nevertheless contends that employing more police officers would have been more cost effective than the increase in incarceration, in effect raising suspicion that additional motives besides crime control, per se, have been at work in promoting the rising prison population. Levitt (2004) explains what he finds to be the four most significant reasons for the crime decrease in the 1990s and he argues that the huge increase in America's prison population conceivably accounts for between one fourth and one third of the recent crime decrease. Serious crime rates increased markedly after remaining nearly constant from 1950 to the mid-1960s; they generally behaved like homicides that doubled in the second half of the 1960s and then fluctuated during the period from 1973 to 1991 (Levitt, 2004, p. 165). From 1991 to 2000, serious crimes per 100,000 residents came back down to roughly their 1950 to 1965 levels – this is the recent "crime decrease." Since about half of the increase in the adult incarceration rate occurred between 1973 and 1991, when the rate more than tripled, Levitt (2004, pp. 184-186) concludes that crime should have fallen then roughly as it did during the 1990s, and he concludes that its failure to

do so is enigmatic. Although Bernard E. Harcourt (2006, pp. 6-7) sheds additional light on historical crime rates by aggregating imprisonment rates and rates of mental hospitalization, his "institutionalization rate" aggregate parallels the imprisonment trend after 1979 and fails to help explain the 1980's persistence of crime. Crime's failure to fall from 1973 (and particularly from 1979) to 1991 seems especially to reinforce Tonry's argument since prisons probably admitted relatively more dangerous criminals in these pre-1990s years.

Following a modeling tradition initiated by Gary Becker, Ayse Imrohorglu, Antonio Merlo, and Peter Rupert (2004, pp. 708-709) obtain statistical findings that cast doubt on the significance of the severity of punishment as a major factor causing the decline in property crimes from 5.6 per 100 Americans in 1980 to 4.65 in 1996. They point out that the average length of prison sentences times the fraction of property crime offenders sentenced to prison stayed nearly constant at 12.5 months in 1980 to 12.3 months in 1996. Over the same period, however, the number of property crimes cleared by arrest increased from 16.8 in 1980 to 18.5 (per 100 property crimes) in 1996. Imrohorglu et al. (2004, p. 709), conclude that "...the most important factors that account for the observed decline in property crime are (in order of importance): the higher apprehension probability, the stronger economy, and the aging of the population." Their results thus point toward increased policing as more decisive. On the other hand, Richard Rosenfeld (2004, p. 87), in a recent article in *Scientific American*, says it would be surprising if the quadrupling of America's prison population failed to cut crime in the short run. Prison obviously

prevents its occupants from burglarizing houses outside of the prison walls. The long run may be a different story, according to Rosenfeld (2004, p. 87), though, as mass imprisonment tends to boost crime rates by breaking up families, driving up unemployment, and depleting the social capital of communities hardest hit by crime and the imprisonment of their members.

If employment of more police rather than incarceration of more prisoners would have been a more cost effective crime control strategy, why was the latter favored politically? The police as an incumbent interest group probably find little prospective gain from adding a multitude of new recruits to their numbers – recruits who would become rivals for incumbent's rent seeking benefits. The incidence of crime commission seems far greater among blacks than among whites, meaning that "get tough" strategies produce human tragedy shared very unequally among the members of society – strategies that, therefore, border on persecution of the nation's black minority. By 1999, 7.9% of working-age black males were in prison or jail on an average day, while only 1% of whites were (Pattillo, et. al., 2004, p. 6). Almost 20% of black male high school graduates in their early thirties had prison records by 1999 – about 5 times the proportion of white male high school graduates (Pattillo, et. al., 2004, p. 7). Almost 60% of black males in their early 30s who had dropped out of high school had prison records, compared with about 11% of their white counterparts in 1999 (Pattillo, et. al., 2004, p. 7). If non-blacks were benefiting from the resulting decommissioning of blacks then substitution of deterrence for punishment would be of ambiguous benefit to them. Both incumbent police and non-black

citizens have reason to be unenthusiastic about employing more police officers as an alternative to policies promoting imprisonment.

The Olson interpretation of interest group benefit from oppression of blacks does not require black innocence for its validation. Interest groups define crime by the laws they pass to control it and the secretly desired effect can be the ensnarement of other specific groups. Jared Taylor and Glayde Whitney (2002) emphasize that a strikingly greater black propensity to commit crimes, compared with whites, provides an empirical basis for racial profiling in spite of a media bias against acknowledging the difference. Michael Alexeev and James Leitzel (2001) reason that profiling for pulling over motorists can diminish enforcement effectiveness because it estranges the affected population that, in turn, engages in increased jury nullification when crimes so detected go to trial. Profiling, however, in a sense, starts within the legislature that designs rigorous laws to begin with, being politically cognizant of whom such laws will probably snare. Hama (2002) argues that blacks as a group commit more crimes because the group contains more members who score low on tests of cognitive ability. Affirming a connection between low IQ test scores and black social pathology, Thomas Sowell (1995), in his review of *The Bell Curve* by Charles Murray and Richard J. Herrnstein, emphasizes evidence that the disappointing average IQ of blacks is not rooted in immutable genetic deficiency. He explains that, while blacks test relatively low, significant IQ differences between generations of blacks and between male and female blacks devastate the notion that IQ is a racial trait impervious to cultural influence or that blacks are permanently subject to an "intellectual

glass ceiling.” Ron Haskins and Cecilia Rouse (2005, pp. 1-2), advocating efforts to promote better minority group pre-school brain development, acknowledge low black and Hispanic kindergartners IQ test scores hobble learning performance throughout the school years and correlate with criminal activities later in life. Lance Lochner and Enrico Moretti (2004, p. 157) find that differences in educational attainment can explain as much as 23% of the gap between black and white incarceration rates and that little of that gap is due to differences in apprehension rates once crimes have been committed. Present levels of severe sentencing seem inappropriate for deterring poorly educated, low IQ individuals because their propensity toward crime presumably derives substantially from myopia evidenced by low crime-imprisonment elasticities. John Donohue (2005) leads us to believe that seeing a police officer on the corner seemingly deters their criminal behavior better than today’s level of severe punishment of their brethren, which is occurring outside of their realm of cognizance. Studies of the elasticity of crime with respect to imprisonment and the elasticity of crime with respect to police, Donohue explains, imply that locking up about 300,000 fewer inmates (p. 48) and employing about 500,000 more police officers (p. 50) in the U. S., or almost twice as many as presently employed, would substantially improve crime control. Although employment of more police officers would be more effective for deterring crime among low IQ and poorly educated people, perhaps imprisonment is of greater merit in the eyes of benefiting interest groups that consequently resist reform of laws and enforcement even as they resist perceiving that the status quo is unjust.

The 1965 Moynihan Report (U. S. Department of Labor) documented well the collapse of the black family as an institution in less affluent black communities and attributed the collapse to poverty that followed migration to urban areas. George Gilder (2005) explains that fatherless households founder in disciplining boys so that a society proliferating female-headed households produces disproportionate female college populations and male prison populations. Charles Murray, in an article in the *Sunday Times* (London, 2005), suggests that England must soon become a “custodial democracy” for reasons similar to why the United States has become one. Having pursued policies that greatly encourage bearing children out of wedlock, England is enlarging a troublesome underclass that results from fatherless children growing up under conditions of poverty. Like the United States, England will soon find mass imprisonment the only option left. However, a vicious circle emerges from policies that proliferate female-headed households with children.

Bruce Western, Leonard M. Lopoo, and Sara McLanahan (2004) studied the effects of incarceration on young fathers who might marry or cohabitate with the mother of their child or children. They found large impacts on the probabilities of marriage or cohabitation from imprisoning young males – reductions in the order of 20% to 40% (P. 40). Because marriage and cohabitation contribute to reduced propensities toward crime, both among fathers and their offspring, high incarceration rates promote high-crime, low-marriage neighborhood equilibriums (p. 42). While, in 1999, 17% of black men with no college education, born between 1965 and 1969, were in prison, another 30% of such men were present as ex-cons in poor

black neighborhoods, maybe offsetting, in criminogenic effect, the absence of the criminals actually behind bars that year (p. 42). Research shows near negligible reductions in crime result from locking up drug offenders (p. 42), in contrast to locking up violent or property offenders. Locking up large numbers of young men might conceivably fail to make neighborhoods safer at all, though the negative collateral consequences transmitted through women and children seem to the authors more far-reaching than previously thought (pp. 42-43).

While mandatory sentencing came about after hard on crime and civil rights groups both advocated it in the 1970s, one must wonder why blacks did not more successfully lobby for reform of such policies that subsequently proved so destructive to the black community as an interest group. Perhaps the black community (in its less affluent instances, at least) itself now stands effectively divided. Females who are largely heads of fatherless households derive incomes from sources other than the DNA dads of their communities. The black female thus has a conflict of interest in advocating policies that release imprisoned black males who tend to return as dependent consumers, longing to be intoxicated and making little or no contribution to the support of households. Imprisonment has largely politically decommissioned the black male while the black female has short run incentives to oppose the reform he desires even though she retains her political influence and a measure of sympathy for him. Having now collapsed, the black family has vanished as an organ of its own advocacy. The poor, low IQ, undereducated black male, with his right to vote forfeited, remains to become nearly the only

passionate participant in a movement to end his mass imprisonment in America. That man, in some respects, epitomizes the expression “poor bastard!”

Definition of Crimes

U. S. Department of Justice statistics (2004) show that 2003 arrests for marijuana crimes were half again as numerous as arrests for heroin and cocaine combined and outnumbered other kinds of drug offenses by an even wider margin. Marijuana offenders were the largest group of drug offenders sentenced to prison by U. S. District Courts in 1999 – almost a third of all sentenced drug offenders (Scalia, 2001, p. 9).

Tara Gray (pp, 3-5) provides the first article in her 2002 readings book, *Exploring Corrections*, with a book review in which she explains how John Irwin and James Austin surveyed randomly selected members of the prison population in several states, examining some of the details of what they had done. Gray reports (2002, p. 4) that Irwin and Austin discovered that the majority of the prisoners examined were in prison for petty crimes that involved no injury or even threat of injury to a victim, no weapon, no theft over \$1000, and no use of heroin or sale of marijuana even. Only 18% were in prison for serious or very serious crimes such as seriously injuring someone, stealing over \$10,000, smuggling narcotics, or raping or killing someone (Gray, 2002, p. 4). While, in the late 1990s, criminal justice spending had risen to \$112 billion per year, the cost of crime, including theft, medical expenses, loss of pay, and other expenses, came to about \$17.6 billion per year (Gray, 2002, p. 3).

The selection of persons for imprisonment probably depended more upon police and prosecutorial discretion than on “due process” that Americans traditionally think of as their decisive protection from unjust imprisonment. Prosecutors probably piled on charges until each defendant faced a dilemma that left no rational alternative to pleading guilty to lesser charges. Few were as bold as Martha Stewart who foolishly dared to demand an actual trial. Frank Bowman (2003, p. 7) testified before the U. S. Sentencing Commission, for example, that during 2001, in the five states that border with Mexico, U.S. District Courts sentenced 16,833 defendants, only 267 of whom actually had gone to trial.

Interest Groups behind Idealists

Susan Dudley (2005, pp. 9-10) explains the “public choice” theory and “economic theory of regulation” that both emphasize that regulations proliferate because interest groups attempt to secure their enactment in the hope of gaining advantage for themselves, though the regulations may be disguised by pretending to serve idealist’s causes. Bruce Benson and David Rasmussen (1996, pp. 177-182) emphasize enforcement agency efforts that influenced legislation resulting in forfeiture and confiscations revenue pouring into enforcement agency coffers. They (1996, pp. 172-173) explain that the police themselves have been a very influential lobbying group that helped bring about America’s high incarceration numbers, partly by releasing false or misleading information to affect legislation. Joan Petersilia concludes her 2003 book (pp. 236-243) with a lengthy discussion of the political influence of the “prison-industrial

complex” that she parallels to the “military-industrial complex” that Eisenhower warned was too interested in influencing public policy in favor of its own economic interests. She (p. 238) emphasizes that the California Correctional Peace Officers Association, one of California’s most powerful labor unions, gained large pay raise concessions from Governor Gray Davis at the height of the state’s budget crisis in spite of their already having the highest prison guard pay scales in the U. S. This union was very instrumental in helping the “three-strikes” law to pass in California and in getting 21 more prisons built (Petersilia, 2003, p. 238).

David Friedman discusses the pitfalls of severe punishments in a paper titled, “Why Not Hang Them All: The Virtues of Inefficient Punishments” (1999). He concludes that severe punishments increase the ability of prosecuting authorities to gain benefit through out of court settlements. Friedman cites the Randy Weaver case where the BATF intended entrapment in order to force Weaver to become an informer. This appears in a broader context of creating incentives for enforcement officials to benefit at the expense of defendants. Friedman explains that rent seeking adds a hidden cost in a system of punishment that encourages it: “The legal system becomes a mechanism to be used by some people to expropriate other people – who respond by taking expensive precautions to avoid being expropriated.” The more alarming specter of police corruption comes to mind, though Friedman avoids discussing it specifically. Friedman’s observations also call to mind an apparent absence of white-collar crime in most of the published statistics. The existence of severe sanctions may have resulted in a multitude of hidden informal

settlements involving resignations and restitution and a variety of regulatory predations involving large payments or donations being required of white collar and corporate offenders involved in, for example, health, safety, or environmental regulatory infractions. What a handy tool harsh sanctions are for encouraging some marginally productive old geezer to take an early retirement without severance pay and remain silent about how his company unjustly pushed him out by trumping up secret charges of wrongdoing!

Bruce Benson (2003, pp. 182-183) emphasizes the expansion of criminalization of “victimless” crimes – crimes involving voluntary exchanges without any discernable injured party, as the mission of law enforcement agencies expands. Coalitions of federal, state and local criminal justice agencies lobbied to escalate the “war on drugs” as civil forfeiture transformed it into a significant revenue source for such agencies (Benson, 2003, p. 185). Voters, finding little individual incentive to acquire information about what law enforcement was actually doing, faced only choices between political packages offered by the major parties and were unable to refrain from, in effect, purchasing these costly services offered by enforcement agencies, according to Benson (2003, pp. 168-169). With lobbyists designing these packages with their small group’s interests in mind, choosing between validating the dogcatcher’s agenda and releasing an army of stray dogs to the community seems analogous to the sort of voter’s choice that Benson would have us visualize. Benson (2003, p. 198) ponders whether contracting prison administration out to private firms might not hurt society while improving service production

efficiency, since the mission of the criminal justice bureaucracy has gone awry.

Harsh Enforcement and Productivity

Since prisons systematically sequester a less productive segment of the American labor force, one might erroneously expect imprisonment to work in favor of improving productivity. David N. Weil (2005, pp. 247-249), commenting on the “dramatic reduction in the growth of productivity starting in the early 1970s” that took place in both the United States and throughout the developed world, emphasized that it seemed “one of the most puzzling phenomena of the post – World War II era.” He explains that perhaps the slowdown occurred due to declining efficiency in spite of no decrease in the rate of technological progress. Olson (1982, p. 74) explained that, expanding complex regulation, “distributional coalitions slow down a society’s capacity to adopt new technologies and to reallocate resources in response to changing conditions, and thereby reduce the rate of economic growth.” His contention enjoys empirical support from numerous studies. James Robinson (1995, p. 414), for example, in a path finding study done for the Office of Technology Assessment, found that “Overall, the U.S. manufacturing sector attained a level of multifactor productivity in 1986 that was 11.4% lower than it would have attained, absent the growth in environmental and occupational health regulation since 1974.” Wayne B. Gray, a leading authority on the subject of pollution abatement and productivity, has published a 2002 book in which he summarized much of the existing empirical literature on the subject and provided a collection of 21 previously published journal articles. Gray

showed that virtually every investigator who attempted to look for it has identified at least some degree of negative impact of government regulation on productivity growth. Olson (1982, pp. 69-73) envisaged a relentless increase in the complexity of regulation and the expansion of government and legal institutions to deal with it. Susan Dudley (2005, pp. 44-45) explained that, since 1960, federal outlays for writing, administering, and enforcing regulations have grown from \$533 million to \$39 billion and The Small Business Office of Advocacy estimated that compliance with federal regulations in 2004 cost businesses and consumers \$1.1 trillion.

While the number of pages of regulations was increasing rapidly since the early 1970s, another trend was also in progress – a trend toward more emphasis on criminal prosecution and severe sanctions for enforcement of regulations of many kinds. David B. Spence (2001, p. 917) discussed the “rational polluter” model driving the stepping up of regulatory enforcement effort on the grounds that business firms are calculating offenders engaged in a profit maximizing level of polluting that only heavy penalties can discourage. Accordingly, Alexander Volokh and Roger Marzulla (1996) showed a chronological table of rising numbers of total years of sentencing and confinement of environmental regulation violators from the early 1980s to the mid-1990s. They explained how strict mandatory sentencing guidelines renovated the enforcement of environmental regulations and resulting sentencing tables commonly forced judges to impose prison sentences longer than the maximums prescribed by the actual regulatory laws they were upholding. The population of prisoners in state and federal prisons remained almost constant around

200,000 from the mid 1950s to the mid 1970s after taking nearly 30 years to double since 1925. Marc Mauer (2003, p. 2) showed that, after nearly 50 years of this surprisingly stable use of incarceration in America, the mid-1970s marked the start of very rapid prison population growth, increasing by nearly 7 fold to the present. Likewise, imprisonment seemed unheard-of for violating environmental, health, or safety regulations before 1970 while, due to media attention, increasing fear of imprisonment for such violations perhaps pervaded at least the public’s imagination after the early 1970s.

Thus, the rapidly rising prison population arguably accompanied an exaggerated public perception of increasing severity of regulatory enforcement. Besides bringing greater reductions in undesirable things such as environmental pollution, the public perception of rigorous regulatory enforcement may have brought reductions in business innovation, entry and expansion. The increasing behavioral modifying effectiveness of regulation may have brought an unintended “go by the book” productivity growth slowdown. To illustrate by comparison, consider that American labor unions, in recent decades, have proven that an analogous malicious compliance “work slowdown” is an effective alternative to striking. To avoid the perceived risks of imprisonment, economic decision makers became more bound to the traditions of established production procedures. As Philip Howard has noted in his book, *The Death of Common Sense: How Law is Suffocating America* (1996), regulatory law gained mass beyond any lawyer’s competence to guide business innovators in dynamic compliance adequately. Therefore, retreating from innovation, industry regressed significantly

into the safety of a sort of traditional society that carefully replicates yesterday's methods for all production today – or so America's productivity growth slowdown would suggest.

Costly Strategy

Robert J. Gordon (2004, p. 72) explains that the higher GDP per capita in the United States compared with European countries exaggerates the actual difference in standards of living partly because the United States has such a large number of people in prisons. Reasoning that the preponderance of U.S. prison inmates are there for "petty, minor drug offenses," Gordon explains that European countries save a lot of money by their drug policies that are less punitive and the part of U.S. GDP going for our huge prison population adds little or nothing to our welfare compared with Europeans (2004, p. 72). Gordon is referring to the fact that, at the end of 2000, 60% of the federal prison population and 23% of the state prison population consisted of drug offenders (Petersilia, 2003, p. 222).

The costs that benefit the law enforcement industry fall on the rest of society and not just on the alleged criminals that legislation targets. By various estimates, it is costing over \$20,000 per prisoner to incarcerate more than 2 million prisoners and most state governments, since the costs are concentrated on them, are reeling from budget crises deriving, in part, from these excessive law enforcement costs. Recidivism rates are near 50% so that this world's record prison population is self-reproducing. Yet California, a state that leads the way in corrections trends, has demonstrated that unsustainable and illegitimate strategies often hold down

prison costs. Laurie Udesky, in a recent article in *The Lancet* (2005), explains that the courts have taken over supervision of the provision of health care in the state's prisons because of findings of gross negligence in providing medical attention to prisoners. Udesky reports (p. 796) "U.S. District Court Judge Thelton Henderson said he was 'driven in large measure by the stunning testimony that was uncontroverted that a prisoner in one of California's 32 prisons dies on average every 6 or 7 days as a result of malpractice, negligence, or some other deficiency in the State's medical care delivery system.'"

Kevin B. Smith (2004, p. 302), using a sophisticated regression analysis, shows that more than 90 percent of the variance in prison population size can be explained by multiplying a state's previous year's prison population times a number greater than 1. Not only are the tough laws that built up the prison population in the first place still vigorously at work increasing it, but also the prisons themselves are training a huge cohort of lifelong clients who, upon release, will be fit for nothing but a swift return to prison. As the prisoners grow old, the cost of caring for them increases astronomically. Healthcare costs become more substantial. A report by the California Legislative Analyst's Office emphasized that incarcerating an elderly inmate costs \$69,000 per year compared with \$22,000 per year as the national average cost for all inmates (McMahon, 2003). The alleged crisis imprisonment was intended to mitigate is spontaneously breeding a prison population financial crisis in a sort of multiple illustration of the processes Robert Higgs (1987) illuminated in his famous book, *Crisis and Leviathan*. Not only do we see the growth of government that Higgs looked for, but also some of the spending

on imprisonment actually comes from curtailing other more meritorious government activities instead. Marc Mauer (1999, pp. 180-181) explains that states typically reallocate funds from higher education to pay for prisons. California's three-strikes law, for example, could not get funding from healthcare or K-12 education cuts, so that the resulting RAND Corporation's estimated doubling of the proportion of California's state budget going to prisons had to come almost entirely from higher education (Mauer, 1999, p. 181). The reduction in higher educational opportunities ultimately results in even more people going to prison because college would otherwise have reduced these would be students' likelihood of committing crimes.

Labor and Capital both Diminished

Besides deterring innovation, eagerness to imprison all kinds of offenders has had other negative economic effects. Other mechanisms may also associate overpopulating prisons with stagnating the economy – mechanisms also beyond the costs explicitly paid by taxpayers who could put as many people through college for fewer dollars. Cassia Spohn and David Holleran (2002, p. 329) find that imprisoning drug offenders produces higher rates of recidivism than putting them on probation. Statistical evidence persuades Spohn and Holleran that prison has a more pronounced criminogenic effect on people convicted of drug offences than on those convicted of other types of crimes. Apart from embittering the incarcerated drug offender, prison subsequently weakens the offender's legitimate social bonds and reduces their ordinary social capital (Spohn and Holleran, 2002, p. 243). Finding

suitable housing, stable employment or reconciling with family becomes very difficult, as the released inmate stands cut off from opportunities to participate in conventional social life.

John R. Sutton (2002, p. 13) examined data from 15 countries over the period from 1960 to 1990 and found statistically significant effects on both labor force participation and unemployment rates. Sutton (2002, p. 13) found that the impact of imprisonment was stronger than the impact of social welfare, schooling, labor market structure, and the power of the left as expressed through unions and partisan politics. In his sample (2002, p. 11), a one percent rise in imprisonment rates leads to a decline in labor force participation of two hundredths of a percent two years later. Sutton (2002, p. 10) finds a large lagged impact from an increase in imprisonment on unemployment rates, concluding that a one percent increase in imprisonment rates will increase the number of unemployed by about half a percent. Since unemployment and labor force participation discouragement from stigmatizing effects of imprisonment tend to persist throughout the duration of an ex-convict's life, Sutton adds a substantial element to understanding the manifold costs of imprisonment.

Harry Holzer, Paul Offner, and Elaine Sorensen (2004) investigated the causes of continuing decline in employment and labor force participation among young male blacks during the 1980s and 1990s, the 1990s being a time when black female labor force participation was rising dramatically and wages of employed young black males were also rising. They found (p. 24) that two causes together were sufficient to explain entirely why young black male

employment rates and labor force participation in the age group from 25 to 34 declined and to explain much of the decline for those age 16 to 24. Labor force participation of young black males fell due to past incarceration and toughening of child support laws. Rather than positive influences such as a booming economy, reform of the Earned Income Tax Credit, and rising educational attainment of young black males, the very negative impact of incarceration records and the threat of garnishment of wages dominated the change in labor force activity of young black males in the 1990s. Child support mandates had many young black males facing wage garnishment court orders that, combined with taxes and food stamp restrictions, confiscated 60 to 80 percent of their wages if they worked, and garnishment alone took up to 65% if they fell into arrears. Criminal employment in the underground economy was a compelling alternative. Rising average wages for employed young black males were partly due to the reduced labor force participation of the lower earning young black males with records of past incarceration. By the end of the 1990s, perhaps 30% or more of young black males had gained records of past incarceration while about half of the less educated black females age 25 to 34 were custodial mothers of children with fathers living elsewhere (Holzer, et. al., 2004, pp. 6-7). Young black male labor force participation rates had fallen by roughly 10 percentage points by the end of the 1990s, compared with the beginning of the 1980s (Holzer, et. al., 2004, pp. 32-33), as if so many young black males had become maimed and hobbled victims of some war.

The personal saving rate in America, for reasons not fully understood, has fallen

to new historic lows. Households seem reluctant in America to divert from consumption very much, if any, of the flows that show up in the National Income and Product Accounts of the United States. Civil forfeiture simultaneously became prevalent in America and a causal connection is conceivable, at least among people who feel vulnerable to being its victims. According to Leonard Levy (1996, p. 127), a review of 25,000 DEA confiscations found that 80% of people forfeiting property were never even charged with an associated crime and most of the seized items were common things such as modest homes or cars and the hard-earned savings of ordinary persons rather than the luxury goods of wealthy drug barons. People expecting to be imprisoned likewise must find little motive to accumulate assets for the future. The lower classes in the past included various immigrant groups within which people distinguished themselves by stoic self-denial and rapid self-improvement, in contrast to a culture of defensive defeatism prevalent among today's poor who are most affected by mass incarceration.

Conclusion

The costs of building prisons and guarding prisoners are high and visible. There are many additional and less visible costs, however. In addition to these, overzealous law enforcement and over-criminalization of minor offenses produce a significant psychic cost in the form of innovator paralyzing terror that government might be becoming a greater threat to one's person than the "criminals" government intended to restrain. Other repercussions do not really require much imagination to perceive such as the

destructive effect that imprisonment has on a significant portion of the labor force and, therefore, the nation's output. Deeper still are contributions to American stagnation associated with slowing productivity growth and capital formation that erosion of America's classical liberal foundations may be causing. Adherence to traditional production techniques gains value by offering safety from horrendous punishments that innovating, by increasing opportunities for error, necessarily risks.

A war on drugs has added to the prison population vast numbers of people who committed offenses that were arguably harmless to persons other than themselves. Prison fails to help such people; prison virtually destroys them instead – them and often their families too. Lochner and Moretti (2004, P. 155) contend that simply encouraging would-be dropouts to finish high school reduces crime enough to yield a benefit to the rest of society that is 14% to 26% as large as the economic return realized by the high school completing youths personally. Rather than extreme punishment, a fraction of the same resources devoted to policing and crime solving seems to be more unambiguously effective as an anticrime strategy, certainly in the long run and probably in the short run also. The realization that much of the law (and its regulatory elaboration) comes into being as an instrument of oppression serving various rent seeking groups raises doubt that severe sentencing serves justice. America once seemed a model of a just democracy and perhaps she has now fallen, with wage stagnation and poor productivity growth among the major signs of a malaise addressed by Mancur Olson.

References

- Alexeev, M. & Leitzel, J. (2001) Racial Profiling, Indiana University Draft Paper Retrieved January 14, 2006 from http://www.indiana.edu/~workshop/papers/Alexeev_Michael011402.pdf.
- Bacon, J. (2005) Prison Population Booming, Report Says, *U. S. A. Today* (April 25), P. 03A. [Retrieved September 26, 2005 through University of Nebraska at Kearney's access to EBSCO host].
- Benson, B. (2003) Do We Want the Production of Prison Services to Be More "Efficient"? in Alexander Tabarrok (Ed.) *Changing the Guard: Private Prisons and the Control of Crime* (Oakland: The Independent Institute), pp. 163-205.
- Benson, B. & Rasmussen, D. (1996) Predatory Public Finance and the Origins of the War on Drugs, 1984-1989, *The Independent Review*, 1(2), (fall), pp. 163-190 [Retrieved April 21, 2004 from http://www.independent.org/tii/content/pubs/review/tir12_benson.html].
- Bowman, F. (2003) Only Suckers Pay the Sticker Price: The Effect of "Fast Track" Programs on the Future of the Sentencing Guidelines as a Principled Sentencing System, (Testimony before the September 23 Hearing of the United States Sentencing Commission Regarding the Impact of the Fast Track Program on Federal Sentencing Guidelines). [Retrieved June 10, 2004 from <http://www.sentencingproject.org/pdfs/bowman.pdf>].
- Bureau of Labor Statistics (2004) Total Private Average Weekly Earnings, 1982 Dollars - Not Seasonally Adjusted - CEU0500000051 [Retrieved July 21, 2004 from: <http://data.bls.gov/cgi-bin/survey/most?ce>].
- Donohue, J. (2005) Fighting Crime: An Economist's View. *The Milken Institute Review* (First Quarter [March]), pp. 46-58. [Retrieved March 2, 2005 from http://www.milkeninstitute.org/publications/review/2005_3/46_58mr25.pdf].
- Dudley, S. (2005) Primer on Regulation, Mercatus Policy Series Policy Resource No. 1 (November) [Retrieved January 6, 2006 from <http://www.mercatus.org/pdf/materials/1465.pdf>].

- Eichler, T. (2003) *Recent Bureau Of Justice Statistics Report* (October) [Retrieved April 1, 2004 from http://www.surj.org/RB_bjs_reports.doc].
- Friedman, D. (1999) Why Not Hang Them All: The Virtues of Inefficient Punishment, *Journal of Political Economy*, 107(6), (December), pp. S259-269. [Retrieved September 19, 2004 through University of Nebraska at Kearney's access to Expanded Academic ASAP].
- Gilder, G. (2005) The Idea of the (Feminized) University: Coeds Are One Thing..., *National Review* (December 31) [Retrieved December 30, 2005 from <http://www.discovery.org/scripts/viewDB/index.php?command=view&id=3104&program=George%20Gilder%20Archives&callingPage=discoMainPage>].
- Gordon, R. (2004) The Slippery Art of Measuring Living Standards, *Challenge*, 47(2) (March/April), pp. 70-80.
- Gray, T. (2002) America's Imprisonment Binge: An Overview of the Book by John Irwin and James Austin, in Tara Gray (Ed.) *Exploring Corrections: A Book of Readings* (Boston: Allyn and Bacon) pp. 3-6.
- Gray, W. 2002. *Economic Costs and Consequences of Environmental Regulation*. Burlington: Ashgate Publishing Company.
- Harcourt, B. (2006) Should We Aggregate Mental Hospitalization and Prison Population Rates in Empirical Research on the Relationship between Incarceration and Crime, Unemployment, Poverty, and Other Social Indicators? On the Continuity of Spatial Exclusion and Confinement in the Twentieth Century, Chicago: John M. Olin Law and Economics Working Paper No. 277 (January) [Retrieved April 3, 2006 from <http://www.law.uchicago.edu/Lawecon/wp251-300.html>].
- Haskins, R. & Rouse, C. (2005) Closing Achievement Gaps, Future of Children: Princeton-Brookings Policy Brief (Spring) [Retrieved January 14, 2006 from <http://www.brookings.edu/es/research/projects/wrb/publications/pb/20050301foc.pdf>].
- Hama, A. (2002) Demographic Change and Social Breakdown: The Role of Intelligence, *The Mankind Quarterly*, 42(3) (spring), pp. 267-282. [Retrieved June 12, 2004 through University of Nebraska at Kearney's access to Academic Search Elite (EBSCO Item: 6801995); search terms "crime" and "intelligence"].
- Higgs, R. (1987) *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (New York: Oxford University Press).
- Holzer, H.; Offner, P.; & Sorensen, E. (2004) Declining Employment Among Black Less-Educated Men: The Role of Incarceration and Child Support, Urban Institute Research Report (April 1) [Retrieved September 21, 2004 from http://www.urban.org/UploadedPDF/411035_declining_employment.pdf].
- Howard, P. (1996) *The Death of Common Sense: How Law is Suffocating America* (New York: Random House).
- Imrohorglu, A., Merlo, A., & Rupert, P. (2004) What Accounts for the Decline in Crime? *International Economic Review*, 45(3) (August), pp. 707-729. [Retrieved September 17, 2004 through University of Nebraska at Kearney's access to First Search].
- Jackson, J. (2003) Society Will Pay Debt for Overly Harsh Prison Sentences, *Chicago Sun-Times*, (March 11) [Retrieved March 16, 2004 from <http://www.suntimes.com/output/jesse/cst-edt-jesse111.html>].
- Jacobs, D. (2003) Political Institutions, Minorities, and Punishment: Pooled Cross-National Analysis of Imprisonment Rates, *Social Forces*, 82(2) (December), p. 725(31p) [Retrieved September 15, 2004 through University of Nebraska at Kearney's access to EBSCO host].
- Levitt, S. (2004) Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not, *Journal of Economic Perspectives*, 18(1) (winter), pp. 163-190.
- Levy, L. (1996) *License to Steal: The Forfeiture of Property*. Chapel Hill: University of North Carolina Press.
- Lochner, L. & Moretti, E. (2004) The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports, *The American Economic Review*, 94(1) (March), pp. 155-189.
- Lynch, T. (2000) Population Bomb Behind Bars, *Cato* (February 23) [Retrieved August 26, 2004 from <http://www.cato.org/cgi-bin/scripts/printtech.cgi/dailys/02-23-00.html>].
- Mauer, M. (2003) Comparative International Rates of Incarceration: An Examination of Causes

- and Trends, Presented to the U.S. Commission on Civil Rights by The Sentencing Project (June 20). [Retrieved June 10, 2004 from <http://www.sentencingproject.org/pdfs/pub9036.pdf>].
- Mauer, M. (1999) *Race to Incarcerate* (New York: The New Press).
- McMahon, P. (2003) Aging Inmates Present Prison Crisis, *USA TODAY* (August 10). [Retrieved August 11, 2003 from http://www.usatoday.com/news/nation/2003-08-10-prison-inside-usat_x.htm].
- Murray, C. (2005) The Advantages of Social Apartheid: U.S. Experience Shows Britain What to Do with Its Underclass--Get It off the Streets, *Sunday Times* (London) April 4. [Retrieved October 6, 2005 from <http://www.aei.org/publication22252>].
- Olson, M. (1983) The South Will Fall Again: The South as Leader and Laggard in Economic Growth, *Southern Economic Journal*, 49(4) (April), pp. 917-932.
- Olson, M. (1982) *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities* (New Haven: Yale University Press).
- Pattillo, M.; Weiman, D.; & Western, B., Editors. (2004) *Imprisoning America* (New York: Russell Sage Foundation).
- Petersilia, J. (2003) *When Prisoners Come Home: Parole and Prisoner Reentry* (New York: Oxford University Press).
- Robinson, J. (1995) The Impact of Environmental and Occupational Health Regulation on Productivity Growth in U.S. Manufacturing, *Yale Journal on Regulation*, 12(2) (Summer), pp. 387-434.
- Rosenfeld, R. (2004) The Case of the Unsolved Crime Decline, *Scientific American* 290(2) (February), p. 82(8). [Retrieved September 17, 2004 through University of Nebraska at Kearney's access to EBSCO host].
- Scalia, J. (2001) Federal Drug Offenders, 1999 with Trends 1984-99, *Bureau of Justice Statistics Special Report NCJ187285* (August) [Retrieved September 28, 2005 from <http://www.ojp.usdoj.gov/bjs/pub/pdf/fdo99.pdf>].
- Smith, K. (2004) The Politics of Punishment: Evaluating Political Explanations of Incarceration Rates, *Journal of Politics*, 66(3) (August), pp. 925-938. [Retrieved September 26, 2005 through University of Nebraska at Kearney's access to EBSCO host].
- Sowell, T. (1995) Ethnicity and IQ, *American Spectator*, 28 (February 1), p. 32(5p) [Retrieved May 26, 2006 from <http://www.mugu.com/cgi-bin/Upstream/Issues/bell-curve/sowell.html>].
- Spence, D. (2001) The Shadow of the Rational Polluter: Rethinking the Role of Rational Actor Models in Environmental Law. *California Law Review*, 89(4) (July), p. 917(42p) [Retrieved July 23, 2006 through University of Nebraska at Kearney's access to Academic Search Premier (EBSCO)].
- Spohn, C. & Holleran, D. (2002) The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders, *Criminology*, 40(2) (May), p. 329(30p). [Retrieved February 22, 2003 through University of Nebraska at Kearney's access to Academic Search Elite (EBSCO Item: 6951638); search term "recidivism"].
- Sutton, J. (2002) Imprisonment and Labor Market Outcomes: Evidence from 15 Affluent Western Democracies, Working Paper, Department of Sociology, University of California, Santa Barbara (January 9). [Retrieved March 10, 2004 from <http://www.soc.ucsb.edu/faculty/sutton/Design/Assets/Compris4.pdf>].
- Taylor, J. & Whitney, G. (2002) Racial Profiling: Is There an Empirical Basis? *The Mankind Quarterly*, 42(3) (spring), pp. 285-312. [Retrieved June 12, 2004 through University of Nebraska at Kearney's access to Academic Search Elite (EBSCO Item: 6801999); search terms "race" and "violent"].
- Tonry, M. (2004) *Thinking About Crime: Sense and Sensibility in American Penal Culture* (New York: Oxford University Press).
- Udesky, L. (2005) Court Takes Over California's Prison Health System, *The Lancet* 366:9488 (September 3), pp. 796-797. [Retrieved October 2, 2005 through University of Nebraska at Kearney's Access to Academic Search Premier (EBSCO host)].
- U. S. Department of Justice. (2004) Number of Arrests by Drug Type, 1982-2003, Bureau of Justice Statistics, last revised November 2, 2004 [Retrieved September 28, 2005 from <http://www.ojp.usdoj.gov/bjs/dcf/tables/drugtype.htm>].

- U. S. Department of Labor. (1965) *The Negro Family: The Case For National Action*, Office of Policy Planning and Research (March) [Retrieved January 14, 2006 from <http://www.dol.gov/asp/programs/history/webid-meynihan.htm>].
- Volokh, A., & Marzulla, R. (1996) *Environmental Enforcement: In Search of Both Effectiveness and Fairness*, Reason Public Policy Institute Policy Study no. 210 (August) (Los Angeles: Reason Public Policy Institute). [Retrieved February 22, 2002 from <http://www.rppi.org/environment/ps210.html>].
- Weil, D. (2005) *Economic Growth* (Boston: Pearson Education [Addison-Wesley]).
- Western, B.; Lopoo, L.; & McLanahan, S. (2004) Incarceration and the Bonds Between Parents in Fragile Families, in Pattillo, Mary; Weiman, David; Western, Bruce (Eds.) *Imprisoning America* (New York: Russell Sage Foundation), pp. 21-45.