

## **WHYARE WE SO PUNITIVE? – SOME OBSERVATIONS ON RECENT INCARCERATION TRENDS**

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### **Introduction**

In the early 19th century, the famous Frenchman Alexis de Tocqueville spent a considerable amount of time touring America and writing about what he saw. He is, of course, most famous for his book *Democracy in America* (1961), but he also wrote, along with a fellow Frenchman Gustav de Beaumont, a book called *On the Penitentiary System in the United States and Its Application in France* (1964). In this latter book, they observed that while the United States has the most extended liberty, the prison system displays little more than despotism. The contradiction between the liberties we enjoy in this country and the system of punishment has been noted by virtually everyone who has written about crime and punishment in America (one of the best treatments on this subject can be seen in the work of Elliot Currie, 1998 and Michael Tonry, 2001).

Currently the United States is the only western democracy that has the death penalty. We rank well ahead of everyone else in the rate at which we incarcerate people, while ironically continuing to have the highest rate of violent crime among all those countries who keep such statistics. I would like to make an attempt to explain why this is so, with an emphasis on explaining one consequence of our extreme punitiveness, the ever-growing criminal and juvenile justice system and how this affects young women.

### **The Prison as a Growth Industry**

It would be no exaggeration to say that during the past two decades the American prisons system has been a 'growth industry.' There are now more than 2 million people behind bars in America, with an incarceration rate above 700 (if we include jails), triple what it was twenty years ago (Ziedenberg, J. and V. Schiraldi, 1999, 2000a, 2000b; Beck, Karberg and Harrison, 2002). We are way ahead of other industrial democracies, whose incarceration rates tend to cluster in a range from around 55 to 120 per

100,000 population. Some countries have incarceration rates well below that range, like Japan's rate of 37. The average incarceration rate for *all countries of the world* is around 80. Neighboring Canada has a rate of only 98, although other estimates put the figure at around 130 (Christie, 2000:31; Sprott and Doob, 2001). Thus, America's incarceration rate is almost nine times greater than the average country.

More specific comparisons of different countries are telling. For instance, even though the rate of property crime in America is similar to most European countries, Australia and elsewhere in the world, the contrast in terms of incarceration rates is rather stark. The Netherlands has a rate of 74; Switzerland has a rate of only about 85; Italy's rate is around 86; France has an incarceration rate of about 90; Greece stands at around 71; Germany's rate is about 90; Austria's rate is around 70; Portugal is a bit higher than others in Europe, with a rate of about 100 (sentenced prisoners); Finland's rate stands at among the lowest in the world at 60; Australia is somewhat higher at about 100 (Kuhn, 2001). A recent report reveals that the entire European Union, with 370 million people, has a total of 300,000 prisoners, which translates into an incarceration rate of 81 (Welch, 2003: 231). It should be noted that for many of these countries, incarceration rates include those housed in various 'community-based' facilities, while U.S. rates do not. While exact figures of offenders housed in community-based facilities in the U.S. is not known, there are at least 4 million under some form of supervision on either probation or parole (Shelden and Brown, 2004). In other words, the discrepancy between the U.S. and other countries is even greater.

The United States, therefore, stands alone among the world's nations. Table 1 shows changes in America's prison system during the past 75 years. Note that the most significant increases have occurred since the mid-1980s, when the war on drugs began to have its effects on jail and prison populations. Indeed, a recent estimate is that convictions for drugs accounted for almost *one-half* of the increase in state prison inmates during the 1980s and early 1990s. Between 1988 and 1994 the number of prisoners who had been convicted of drug offences went up by 155.5 percent! By comparison, only modest increases were seen for violent and property offenders. Between 1980 and 1992 alone, court commitments to state prisons on drug charges alone increased by more than one thousand percent!<sup>1</sup>

What is even more incredible is the increase for women offenders. As shown in Table 2, from 1925 to 1975 there was virtually no change in their rate of

incarceration. Between 1975 and 2000, their incarceration rate increased by more than 600 per cent, twice the rate of increase for males. Not surprisingly, the rise in women's incarceration rates is linked to the drug war, as the proportion being sent to prison for drug offences jumped from around 10 per cent in the early 1980s to more than one-third in the 1990s; within the federal system, in 1984, 28 per cent of female offenders were drug offenders, but by 1995 their percentage had more than doubled to 66 per cent.

**Table 1 The Growing Prison Population, 1925-2001**  
(rates per 100,000 in state and federal prison).

Year	Number	Rate
1925	91,669	79
1935	144,180	113
1945	133,649	98
1955	185,780	112
1965	210,895	108
1975	240,593	111
1985	480,568	202
1995	1,085,363	411
2001	1,405,531	472

Source: Maguire and Pastore (1996: 518); Austin and Irwin (2001); Beck (2000: 3); Camp and Camp (2000: 1, 15); Beck et al. (2002).

**Table 2. Incarceration Rates, by Gender, 1925-2000.**

Year	Total	Rate	Male Rate	FemaleRate
1925	91,669	79	149	6
1935	144,180	113	217	8
1945	133,649	98	193	9
1955	185,780	112	217	8
1965	210,895	108	213	8
1975	240,593	111	220	8
1985	480,568	202	397	17
1995	1,085,363	411	796	48
2000	1,321,137	478	915	59

Source: Maguire and Pastore (2001), Table 6.27.

That the drug war has contributed to rising prison populations is further supported with data from U. S. District Courts (federal system) showing that whereas in 1982 about 20 percent of all convictions were for drugs, by 1994 this percentage had increased to about 36. During this same period of time

the proportion of those convicted on drug charges who were sentenced to prison increased from 74 percent in 1982 to 84 percent in 1994, and their actual sentences increased from an average of 55 months in 1982 to 80 months in 1994; the average sentences for murder during this time period actually *decreased* from 162 months to 117 months, while for all violent offences the average sentence declined from 133 months to 88 months. Incidentally, on any given day, almost 60 percent (58.6 per cent) of all federal prisoners are serving time for drug offences; of these 40 percent are African-American.

Such growth is not uniform throughout the country for there are some states that have experienced a far greater growth in imprisonment. In Texas, for example, the number of prisoners increased by more than 100,000 during the 1990s. As a comparison, this number (100,000) is much larger than the *total* prison population of France, Great Britain and roughly equal to Germany's prison population (Currie, 1998: 13; Ziedenberg and Schiraldi, 2000b).

Additionally, the actual *number of prisons* has increased, along with, in some cases, the *capacity within* the prison - some 'megaprisons' can hold from 5,000 to 10,000 inmates (Austin and Irwin, 2002:125- 131). In 1990 there were a total of 1,287 prisons (80 federal and 1,207 state prisons); by 1995 there were a total of 1,500 prisons (125 federal and 1,375 state prisons), representing an increase of about 17 percent. The federal system experienced the largest increase, going up by 56 percent. During this five-year period, prison construction varied widely by state and region, with the largest increases occurring in the South, adding 95 prisons for an increase of 18 percent. The state of Texas leads the way, adding 49 new prisons for an increase of 114 percent! Oklahoma added 17 new prisons for an increase of 74 percent (Mays and Winfree, 1998: 171). Texas currently leads the nation with 102 prisons, an increase of 155 per cent from 1991 (Rush, 1997: 157). As of December 31, 2000, Texas had 163,190 prisoners, with one out of every 20 state residents behind bars, up from one out of every 25 in 1996. During the decade of the '90s almost one of every five new prisoners added in the U.S. was in Texas (18 per cent). The Texas prison population tripled during this decade.

The modern prison system (along with local jails) has been described by many as a *ghetto or poorhouse* reserved primarily for the unskilled, the uneducated, and the powerless. More importantly is the increasing numbers of African-Americans found within the American prison system. This fact has led some to call the modern prison system the *New American Apartheid* (Shelden and Brown, 2003). This subject is explored in the next section.

### **The New American Apartheid: Incarceration of African- Americans**

It is obvious from the examination of arrest and prison data that the groups being targeted by the criminal justice system are disproportionately drawn from the most marginalized populations. African-Americans, particularly males, are especially vulnerable. For example, in 1995, according to the Sentencing Project, about onethird of all African-American males between the ages of 20 and 29 were, on any given day, either in jail, prison, on probation or on parole, a percentage that was up from 25 percent in 1990. In some cities these percentages were even higher, such as Washington, D.C., where the figure was about 60 percent.

In the 1930s about 30 percent of all prisoners were racial minorities, but by 2002 this percentage had climbed to 70 (Welch, 2003). A survey by the Department of Justice in the early 1990s estimated that a black male child born in 1991 stood a 28 per cent chance of going to prison someday. An updated survey found that a black male child born in 2001 had a 33 per cent chance of going to prison someday (Younge, 2003). Obviously, the situation has not improved for young black males.

Many sentencing structures have a built-in class and racial bias. A case in point is the drug laws, especially 'crack' cocaine. The penalty for possession and/or sale of crack cocaine is far greater than similar quantities for the powdered variety of cocaine. Recent scholarship has concluded that such punishment has intentionally targeted African-Americans, since this group is far more likely to use crack, while most users of the powdered cocaine are white and middle class. In fact, historical scholarship on drug legislation has concluded that virtually every drug that has been outlawed during the past 150 years has focused on drugs used by racial minorities and/or the poor. Little wonder that the enforcement of drug laws have been one of the major reasons the prison population has increased so rapidly in recent years. Between 1981 and 1991, for instance, the proportion of admissions to prisons that were racial minorities increased from 42 per cent to 51 per cent, while the proportion that were sentenced because of drug law violations increased from 9 per cent to 25 per cent. One study found that between 1985 and 1987 of all the drug-trafficking defendants in federal courts, 99 per cent were African-American (Baum, 1997). Facts such as these have led such reputable scholars as Michael Tonry, William Chambliss and Noam Chomsky to conclude that it was the *intent* of the Congress and the Senate to target minorities. Whether or not policymakers consciously knew they were

targeting these groups in the beginning, the fact that the negative effects on blacks and the poor have been pointed out on numerous occasions over the years, through literally dozens of books and reports, and this 'war' continues unabated, makes it quite clear what their intentions are, and it has nothing to do with reducing drug use.

It is obvious, therefore, that there has been a direct correlation between the 'war on drugs' and the growth of the prison system. Officially, this drug war was launched during the Nixon administration (according to Dan Baum, Nixon's policy advisors specifically suggested that focusing on drugs would be a 'legal' way to target blacks and 'hippies' whom they despised). The 'war' was significantly escalated during the Reagan years when he promised that the police would attack the drug problem 'with more ferocity than ever before.' What he did *not* say, however, was that the enforcement of the new drug laws 'would focus almost exclusively on low-level dealers in minority neighborhoods.' Indeed, the police found such dealers in these areas mainly because *that is precisely where they looked for them*, rather than, say, on college campuses (Mauer, 1999:142) or checking up on people like Rush Limbaugh.

The results were immediate: the arrest rates for African-Americans on drug charges shot dramatically upward in the late 1980s and well into the 1990s. In fact, while African-Americans constitute only around 12 per cent of the U.S. population and about 13 per cent of all monthly drug users and their rate of illegal drug use is roughly the same or even less (according to some surveys) as for whites, they represent 35 percent of those arrested for drug possession and 74 per cent of those sentenced to prison on drug charges. The evidence of racial disproportionality in the drug war is overwhelming. For instance, drug arrest rates for minorities went from under 600 per 100,000 in 1980 to over 1500 in 1990, while for whites they essentially remained the same. As far as prison sentences go, studies of individual states are telling. For instance, in North Carolina between 1980 and 1990, the rate of admissions to prison for nonwhites jumped from around 500 per 100,000 to almost 1,000, while in Pennsylvania, nonwhite males and females sentenced on drug offences increase by 1613 per cent and 1750 per cent respectively; in Virginia the percentage of commitments for drug offences for minorities went from just under 40 in 1983 to about 65 in 1989, while for whites the percentage actually *decreased* from just over 60 percent in 1983 to about 30 percent in 1989. Presently, the rate of incarceration for

African-Americans exceeds that for whites by a ratio of 8 to 1 (Donziger, 1996: 115; Tonry, 1995; Mauer, 1999).

### **Locking Up Juveniles**

In recent years 'zero tolerance' policies have mushroomed all over the country, resulting in some truly draconian responses to minor misbehaviors that years ago would have been ignored or dealt with informally. For instance, a 14-year-old boy was charged by school police with a felony for 'throwing a deadly missile' which turned out to be a Halloween 'trick or treat' of throwing an egg. He was taken away in handcuffs and put in juvenile detention. In Florida, a 6-yearold was charged with trespassing when he took a short-cut through the schoolyard on his way home (how many of us did that as a kid?), while in Indianola, Mississippi elementary school children have been arrested for talking during assemblies. In New Hampshire a student was arrested for pushing another child on the schoolyard. Research by a non-profit group called the Advancement Project reported on these and similar incidents all over the country, noting that between 1999 and 2001 there was a 300 per cent increase in student arrests in the Miami-Dade Public Schools. In schools all over the country there has been a swelling of arrests by school police, mostly on minor charges, typically appearing within the 'miscellaneous' category, after serious assaults, property crimes and drugs have been totaled in annual reports (Browne, 2003). Where I live, the Clark County School District Police have reported increasing arrests for 'crimes' placed in this miscellaneous category, going from about 80 per cent of the total to over 90 per cent in the past ten years (Shelden, 1998). Such draconian measures have been put in place despite the fact that schools are the safest places for children and serious crime on school grounds had been declining long before such policies went into effect.

Zero tolerance policies have been adopted throughout the country, mostly in response to exaggerated claims about 'super-predators' and a rise in teenage violence, claims that have been thoroughly contradicted by research. More examples include the following: (1) a five year prison sentence handed out to a 17-year-old Texas high school basketball player who 'threw an elbow' to the head of an opposing player during a game; (2) two six-year-old children were suspended for three days for playing 'cops and robbers' with their fingers (pretending their fingers were guns and going 'bang, bang' toward other children); (3) a girl who gave a friend a Nuprin was suspended for 'dealing drugs'; (4) some high school baseball players were suspended

for possessing 'dangerous weapons' on school grounds - a teacher who suspected them of having drugs found none, but instead found some baseball bats in their cars (Shelden, 2000).

During the decade of the 1990s, referrals to juvenile court for serious crimes like robbery, aggravated assault, rape and homicide went down by more than 25 per cent, while referrals for the category of 'simple assault' went up by 128 per cent (mostly fighting). While the most serious property crimes (for example, burglary and motor vehicle theft) went down, drug offences went up by 148 per cent (representing the largest percentage increase of any offense), while 'obstruction of justice' and 'disorderly conduct' both jumped up by 100 per cent (U.S. Department of Justice, 2003: 7).

It has become very clear that racism permeates the entire juvenile justice system, as recent juvenile court statistics reveal. For instance, the chance of having your case petitioned to go before a judge is far greater for minority youth than for white youth, especially when it comes to drug offences. Moreover, if you are a minority youth your chances of being certified as an adult are twice as great as if you are white. The rates of detention for minority youth are often astronomically higher than whites. Minority youth are more likely to be placed out of the home for drug offences than whites. In 1997 (the latest figures available) black youth were detained at a rate five times greater than for whites. When considering the offense charged, they remained far more likely to be locked up. For instance, for a violent index crime, they were 8 times more likely to be detained; for a drug offense, they were ten times more likely to be detained. Similar discrepancies are found for rates of commitments to juvenile correctional facilities: regardless of offense charged, black juveniles were far more likely to be locked up than white juveniles. Specifically, the overall incarceration rate for black youths was 737 compared to only 146 for white youth; for drug offences, the rate for blacks was 94, compared to only 8 for whites; for violent index crimes, black youth were almost ten times more likely to be sent up (Shelden and Brown, 2003: 345).

It should be noted that arrest rates and rates of detention and incarceration are somewhat lower for Latinos than for blacks, with whites consistently having the lowest rates. This reminds me of a phrase heard repeatedly during the civil rights movement in the 1960s: 'If you're white, you're alright; if you're brown, stick around; if you're black, stay back.' Reams of evidence and dozens of books and articles

during the past two decades have confirmed that the war on drugs and the war on crime more generally, have been a war on racial minorities, especially blacks. In Oregon, for instance, you won't find many white youths subjected to the effects of Measure 11 and similar get tough measures (more about Measure 11 below).

### **Why Have We Become So Punitive?**

*The Conservative Philosophy and Religious Fundamentalism* All of these incredible numbers beg for an explanation, for there is a lot more going on. The war on drugs is obviously one culprit, but it goes much deeper than that, for we must also ask why such a 'war' has been declared in the first place and why we have become so punitive.

We need to look deep into the American culture to understand this high degree of punitiveness. The ultimate source for this, it seems to me, can be found in the conservative philosophy that has become so dominant in this country. At the heart of this philosophy is a simplistic view of the world, a world divided into rigid categories of 'good' and 'evil.' Behind this view is a view of the family that can be described as the traditional nuclear family with the father in control as the major breadwinner. There is, under this system, a 'strict father morality' which is based in part upon the belief that in order to become a 'good' and 'moral' person a child must learn to obey the rules and respect authority. Proper behaviour is taught through the use or threat of punishment. Within such a system 'the exercise of authority is itself moral; that is, it is moral to reward obedience and punish disobedience' (Lakoff, 1996: 67).

According to this view, this system of rewards and punishments has a higher purpose operating here, namely, that in order to survive in a dangerous world children must learn discipline and build character. Punishment, according to this philosophy, is the only way to become a self-disciplined and moral person. To be successful requires becoming self-disciplined. More importantly, rewarding someone who has not earned it by developing self-discipline is immoral. This is why conservatives are constantly complaining about various forms of welfare, affirmative action, lenient punishments and the like, for they see this as rewarding deviance, laziness, etc. (Lakoff, 1996: 68).

Of course, this does not apply when we consider various kinds of corporate welfare and all the other benefits that accrue to someone born into wealth and privilege. There is an erroneous assumption that those who are rich and famous

did so through their own efforts, with little or no help from others. Luck and the privileges of birth are not mentioned within this conservative philosophy. According to the conservative view, there is a 'morality of strength.' Moral strength can be seen as a metaphor. As suggested above, this metaphor sees the world as divided into 'good' and 'evil' and in order to stand up to evil one must be morally strong; and one becomes morally strong through a system of rewards and punishments which teaches self-discipline. A person who is morally weak cannot fight evil. If one is too self-indulgent he or she is immoral. Welfare is immoral, as is crime and deviance, and therefore should be punished. Therefore, it logically follows that crime and deviance are the result of moral weakness. Teenage sex, drug use and all sorts of other deviant behaviours stem from lack of self-control. A person with proper self-discipline should be able to 'just say no' and those who do not must be and deserved to be punished (Lakoff, 1996: 74-75).

It should be pointed out that the entire criminal justice system (and to a somewhat lesser extent, the juvenile justice system) is based upon a similar punitive philosophy, generally known as *deterrence*. Such a view argues that the best way to deter - that is, prevent - crime from occurring is the threat of punishment or the fear that one will be caught and punished. There are two kinds of deterrence. *General* deterrence is aimed toward the population as a whole. Thus, you punish one person in the hopes that others will 'get the message' and refrain from committing crime. *Special* deterrence is that you punish a specific individual in the hopes that he or she will 'learn their lesson' and not do it again. It is based in part upon the idea that all humans are rational with free will and seek to minimize pain and maximize pleasure. Thus, the pleasure of committing a crime should be offset by the pain of punishment. It can certainly be debated whether or not humans actually behave in this manner. What cannot be debated, it seems to me, is that increasing the punishments for crimes has not worked very well. Yet we seem to keep sounding the same horn, louder and louder, saying to those who might be tempted to commit crime 'we're sending you a message that you will be caught and punished to the full extent of the law if you keep doing this.' The same messages are constantly coming from the Bush administration to so-called 'Rogue nations' that if you don't stay in line we will use our military might to force you to behave and we are proving this with our 'preemptive war' in Iraq.

It should be pointed out that this conservative philosophy has become a more dominant force in American culture in recent years, beginning with

the Reagan years (Mauer, 2001). Underscoring this development has been the concomitant growth in the number of conservative 'think tanks' (Herman, 1997). Add to this the increasing 'politicization' of crime, referring to the fact that starting in the mid- 1960s 'law and order' entered into national political races with the Republican Barry Goldwater in 1964. Since this time it seems as if Republicans have had a corner on the market of 'crime control' as a key issue. To be sure, their platforms have consisted of simplistic slogans like 'don't do the crime, unless you can do the time' or 'go ahead, make my day.' Nevertheless, such simplistic bromides have resonated with many voters, especially white Southerners.

Part of this philosophy comes from religion, as you might guess. More specifically, it derives in part from the famous 'Protestant Ethic' which refers to a belief system that one must make sacrifices, be thrifty, and engage in hard work in order to be successful (Weber, 1958). It is certainly no accident that some of the most conservative people in the country are extremely religious, especially those that lean toward a fundamentalist religious orientation.

Given the dominance of conservatism in American politics and the heavy influence of religious fundamentalism it is not hard to understand the turn toward harsher forms of punishment in recent years. The increase of fundamentalist religious beliefs has been truly phenomenal, with the majority of the American public claiming to have such beliefs. In fact, a recent study found that the extent of fundamentalist religious beliefs in America is rather astounding, with about three-fourths of Americans believing in miracles, clear majorities believe in the devil, and more than half believe some humans possess psychic powers (they don't); less than 10 per cent believe in Darwin's theory of evolution; almost half believe that the world was created six thousand years ago. Many even believe that dinosaurs and humans co-existed! (Chomsky, 1995:125-126). And it is no accident that the ascendancy of the conservative movement and the election (or should I say 'appointment') of George W. Bush as President stems in large part from the influence of the religious right and the growth of fundamentalist beliefs.

We also know how powerful religion can be with regards to punishment. Need I say that virtually every religion uses fear and guilt to keep people in line? In fact, the earliest form of law in this country was shaped by puritan religious beliefs and most laws back in colonial times were almost direct

quotes from the bible. Some of your most punitive people are also very religious and they have substituted legal punishment for punishment by God. So much for the separation of church and state when it comes to our legal system. In short, one way to see why we are the most punitive nation in the western world is to simply examine our religious beliefs.

I should also note that religion played a key role in the establishment of the first prisons. It was not by accident that they were called *penitentiaries*, for they were established by Quakers and other religious groups in the late 18th and early 19th century, during a time when crime was still equated with sin. These earliest prisons, often based upon what has been called the 'Pennsylvania model,' had prisoners locked up in solitary confinement almost 24 hours per day, with nothing to read but the bible and the only outside visitor allowed in was a member of the clergy. More interesting, however, was the fact that while locked up they would seek *penance*, since this was the origin of the word *penitentiary*. Going to prison was supposed to be a 'monastic experience' (Foucault, 1979; Welch, 1999). As already noted, conservatives strongly believe in the reformatory value of punishment. In many ways the old Pennsylvania model has reared its ugly head, given the increase in the number of 'supermax' prisons or areas within many prisons that lock people up 24 hours a day, save for an hour outside for exercise (Shelden and Brown, 2003).

Finally, religion has played a key role inasmuch as concepts like vengeance and retribution have dominated discussions of crime control policies. Rational arguments against the death penalty, for instance, have fallen on deaf ears. To most people, especially 13 JR57 conservatives, the fact that the death penalty is not a deterrent, that it is more costly than life in prison and that it discriminates against racial minorities seems to be irrelevant (Mauer, 2001: 16). This last point, namely that the death penalty discriminates against racial minorities, needs to be emphasized. As one writer has recently commented, it is much easier to impose severe punishments on people 'with whom we have little in common or do not know in any personal sense' and that the 'more stratified a society, the easier it becomes for the well-off to advocate greater pain for those less fortunate' (Mauer, 2001: 15). The fact that well over half of all of those imprisoned today are racial minorities does not seem to create much of a public debate is revealing. Can you imagine the reaction if the police suddenly began arresting middle and upper-class white youths and placing them in prison in numbers approaching the arrest and conviction rates for blacks?

## **Social and Political Factors**

Obviously, there is more to explaining the most recent rise in punitiveness than religion alone. I'd like to move on and examine some of the other sources. According to one of the world's foremost criminologists, Michael Tonry, four major sources have been cited by various experts as the cause of this increase in punitiveness: rising crime rates, economic and social disruption, postmodern angst, and populist punitiveness (2001: 7-8). While neither myself nor Tonry agree with all of these, but they are important variables to consider. I will cover each of these in turn.

First, in comparing different western nations, while crime rates rose between the mid-1970s and the mid-1990s in most countries (and then dropped in America and elsewhere), only the United States and the Netherlands experienced a corresponding increase in prison populations. Yet even here in the United States, when taking the longer view of the 30-year period from 1971 to 2000, we see that the crime rate didn't change, yet the rate of imprisonment went up by around 500 percent (Shelden and Brown, 2003). Moreover, the type of crime most responsible for rising prison population has been drug law violations. Clearly, the war on drugs has played a major role, and yet this is tied to another explanation which I will cover shortly.

Concerning economic and social disruptions, the argument here is that such disruptions have brought about what some call a postmodern angst, or extreme worry about the future with a great deal of insecurity. And when people suffer this they tend to look for scapegoats and this in turn results in growing punitiveness. While this may help explain things in the United States, it does not easily apply in other countries, where similar disruptions and corresponding worries have occurred.

Tonry offers three other possible explanations (2001: 8-15). First, there has been a growing tendency among politicians to adopt a policy known as 'governing through crime.' What this means is that with the breakdown of broad-based political parties, the rise of 'single-issue' interest groups (for example, environment, civil rights, abortion, taxes, etc.) and the overall lack of confidence citizens have for politics in general, have made it difficult for politicians to win elections by addressing broad concerns. Methods must be found to not alienate important interest groups and thus they try to seek out issues that involve convenient scapegoats, such as criminals, welfare recipients, immigrants and the like. These are all very emotional issues that are not affected by rational arguments backed by facts.

One result is that politicians compete to see who can sound the toughest. A good example of how facts are not allowed to get in the way of politicians and belief systems is seen in the following quote from Zell Miller, the governor of Georgia, who commented on boot camps. While all sorts of research have failed to show any success of such programs, the governor dismissed such evidence saying that: 'Nobody can tell me from some ivory tower that you take a kid, you kick him in the rear end, and it doesn't do any good. And I don't give a damn what they say, we're going to continue to do it in Georgia' (quoted in Welch, 1999: 112). Even Bill Clinton, a Democrat, seemed to take the get tough on crime perspective away from the Republicans. It should be noted that this applies most to the United States, but not to European countries, except perhaps the Netherlands.

Second, Tonry strongly suggests that race plays a major role and here he is most definitely onto something. The so-called 'Southern Republicans' began to address issues like welfare and crime as an indirect way to express their racist beliefs without sounding like racists. All we need to do is look at both anti-welfare policies and anti-drug policies during the past couple of decades to see that the most negative effects have been against racial minorities. The vast differences in the incarceration rates between blacks and whites, as already noted, provides ample evidence of this.

Third, Tonry suggests that the drug war played a key role in this, which should be obvious. He argues that both drug and crime policies have been the 'product of an interaction between long-term patterns of tolerance and intolerance of deviance, a series of late-twentieth century moral panics, and the ubiquity and sensationalism of massmedia crime coverage' (Tonry, 2001: 10). It is during these 'moral panics' when people exaggerate the dangers of things they fear (for example, fearing crime when crime is actually declining or when the odds of being a victim are extremely low) and they become more rigid and moralistic. Just look at the attitudes toward so-called 'crack babies' and teen mothers expressed in recent years, with clear majorities believing the hype surrounding these two issues and wanting such individuals punished in the most severe way (Reinarman and Levine, 1997). It appears that such attitudes begin to harden during the time when crime and drug use is decreasing. There is little doubt in my mind that such attitudes and such fears are in part generated by the news media and politicians, both driven by the need for corporate profits and social control.

### **Another Perspective: Controlling the ‘Surplus Population’**

Missing from most discussions of crime policies and the resulting increases in incarceration rates is a more careful look at the changing economic system and the disruption it has caused. I am speaking here of the decline in our manufacturing base as more and more corporations are finding it profitable to increase their profits and compete in the ‘global marketplace’ by shipping jobs to Third World countries. Clear evidence of this can be seen by examining the labels on the clothing you are wearing (check the baseball cap you are wearing, the purse you are carrying, the shirt or blouse you have on and see where it is made). An argument has been made by several different scholars that with the changes in technology and the transfer of jobs elsewhere, more and more people are ‘superfluous,’ that they are not needed as far as profit is concerned. Such persons become part of what Karl Marx called the ‘surplus population.’ When you have a significant growth of this population, something must be done with them, as they cannot be absorbed into the job market. So what do we do with this group of people? You either increase welfare assistance, let them starve and die off, gun them down in the streets (as they do in some Third World countries), segregate them into urban ghettos, or put them in jails or prisons. It seems as if we have chosen the last two options: confine them to either prisons or ghettos (Shelden and Brown, 2000). Some researchers have suggested that ghettos and prisons have much in common (Wacquant, 2001).

It should also be noted that the amount of social inequality is higher in this country than in any other western democracy. The share of the total wealth (for example, land, income, stocks and bonds, etc.) going to the top wealth-holders has increased in recent years, with 1 percent of the households getting 40 percent of all household wealth in 1997, doubling from about 20 percent in 1976, with the largest increases coming during the boom years of the 1980s (going from about 25 per cent to about 36 per cent during the decade). During this same period, all other households received proportionately less (for documentation see: Sklar, 1998; Collins and Sklar, 1999; Heintz et al., 2000; Collins and Yeskel, 2000). Overall inequality, measured by what is known as the *Gini Index of Inequality* (a scale where 0 means everyone earns the same amount and 1 means one person earns all), has gone up since the late 1960s. Whereas in 1970 the index for the United States was 0.353, in 1996 it was at 0.425, larger than any other industrialized nation (Miringoff and Miringoff, 1999: 105).

## **The Impact on Girls and Women**

As already noted, the growth of the American prison system has been truly staggering in recent years. Such growth has outpaced the growth of crime. One recent study found that, looking back over the 30-year period from 1971 to 2000, the overall crime rate remained roughly the same (4,124 per 100,000 in 2000 compared to 4,165 in 1971), while the rate of imprisonment increased almost five-fold (Shelden and Brown, 2003). The billions of dollars in expenditures on the prison industry have had no effect on crime. Yet prisons continue to grow and continue to house more and more racial minorities.

It should come as no surprise, therefore, that the get tough movement I have been talking about has filtered down to the juvenile justice system in general and to girls in particular. As noted in the third edition of the book I co-authored with Meda Chesney-Lind, the number of girls sent to *public* juvenile institutions in the 1990s increased by almost 50 percent. Girls in such institutions are far more likely than boys to have been committed for status offences and so-called 'technical' violations, usually violations of probation and other court orders (Chesney-Lind and Shelden, 2004: 207). When it comes to girls in detention, we find large numbers locked up even though no serious crime has been alleged. Fully 30 percent of the detained girls have been charged with these technical violations and another 8 percent for status offences (Ibid., p. 215).

As we also note, girls and boys are still found in adult jails. We note a study by Human Rights Watch of a jail in Baltimore which holds most of the kids in the state of Maryland. They described this jail as a 'decaying facility nearly two hundred years old' (Ibid., p. 218). As usual, a good proportion of girls in such jails have not been charged with serious crimes.

I should not have to remind anyone of one critical fact about the kids in so-called 'correctional' facilities: they are drawn mostly from the most disadvantaged sectors of our society. Well-known criminologist Jeffery Reiman says it best with his best-selling book appropriately titled *The Rich Get Richer and the Poor Get Prison* (2004). For both girls and boys, if you live in the suburbs and you are white and you commit some crime, especially of the minor variety, you stay within your community since alternatives will be found. If not, no such alternatives will be found and you will end up in public facilities. After all, conservatives often say, 'there is just not enough money' (left unmentioned are the billions being spent on Iraq). But such money is for people who really count, like corporate owners (for example, oil companies).

Now we come to the local scene here in Oregon and the infamous Measure 11. I am still trying to figure out how and why this happened, but it seems to me that this is just one more example of the growing punitiveness I have discussed here. It has been reported by the 'Oregon Youth Authority' that half of all offenders under its control have been convicted of 'sex offences.' Nationally, sex offences barely constitute a blip on the radar screen of offences for which juveniles are arrested, around 1 or 2 percent at most.

The explanation must come from the kinds of offences subject to punishment under Measure 11. These include behaviours like Sodomy I and Sodomy II, which carry penalties of up to 8 years in prison. (The reader can use a little imagination to distinguish the difference between the two.) Then there is 'Unlawful Sexual Penetration' I and II, which carry equally absurd penalties. This represents a throwback to the Puritan days in New England prior to the American Revolution, a time when all sorts of sexual behaviours were severely punished, along with such things as blasphemy and working on the Sabbath. Here we find good old fashioned Puritanism run amok, as normal sexual behaviour among mostly consenting juveniles is subject to barbarian punishments. How many of us adults here ever did these sorts of things when we were young?

The punitiveness I've been talking about here is perfectly illustrated in a brochure put out by the Oregon Youth Authority that aims to send a clear message that the state of Oregon 'means business.' The brochure's title tells it all, in big bold letters: **MEASURE 11: ONE STRIKE YOU'RE OUT.** The brochure states: 'If you are at least 15 years old and are charged with one of the following crimes, you will automatically be tried as an adult in criminal court. And, if convicted, you face the following time behind bars, as a minimum. No questions asked.' The brochure lists all the crimes, including the aforementioned sodomy and other sex offences. Elsewhere in this brochure, it is stated that: 'Living in an OYA youth correctional facility is not fun.' There follows a list of things that will happen to a youth while inside, which include things like 'limited privacy' and someone is always watching. It is interesting to note that nowhere in this brochure is there a single word about rehabilitation or treatment. Apparently kids are sent there to be warehoused and punished, period!

To me this is nothing other than religious fundamentalism run amok! It is almost as if the wrath of God himself has descended upon the state of Oregon with a vengeance. It's New England Puritanism all over again, with the

same sort of beliefs that gave us the Salem witch trials and the stocks and the pillory. Was there any debate about Measure 11? Was there any opposition? What evidence did the supporters of this bill bring forward that this would reduce crime? I can answer that one very easily by saying that they had no evidence because there never has been any evidence in support of such draconian measures!

Bud Brown (professor at Western Oregon University) and I met one of the casualties of Measure 11, a 15-year-old girl locked up at Hillcrest (a youth correctional facility in Salem) in a unit called 'Female Sex Offenders.' I doubt any other juvenile institution in the world, much less this country, has such a unit. She said she was a habitual runaway from a small town in the eastern part of the state, no doubt stemming from some serious sexual abuse as a child and being adopted and shuffled from one foster home to another over the years. Why was she in this unit? As far as we could tell there was only one real reason: she's a lesbian.

I am sure glad we have Measure 11, as I feel so much safer coming to Oregon now, as I am sure all of you are. We should be thankful they have locked up all these dangerous youthful sexual predators. Such an injustice begs for concerted action in order to overturn Measure 11. It is the least that the citizens of Oregon can do.

### **A Concluding Thought**

I have one more concluding thought to make. Recently I came across some words written by Noam Chomsky back in the 1960s in his now classic book *American Power and the New Mandarins* (1969). Chomsky was the first academic to challenge the conventional views about the Vietnam War and put his views in writing. In the introductory chapter he expressed hope that the 'struggle against racism and exploitation at home can be linked with the struggle to remove the heavy Yankee boot from the necks of oppressed people throughout the world.' This sentence certainly caught my eye and had immediate meaning for me as I read it. But what really caught my attention and caused me to think about how his words 34 years ago might apply to what I am talking about here, was what he said in the next paragraph. I will reproduce part of what he said here:

*Twenty years of intensive cold-war indoctrination and seventy years of myth regarding our international role make it difficult to face these issues in a serious way. There is a great deal of*

*intellectual debris to be cleared away. Ideological pressures so overpowering that even their existence was denied must be examined and understood. The search for alternatives, for individuals, for American society, for the international order as a whole, has barely begun, and no one can guess where it will lead. Quite possibly it will lead nowhere, cut off by domestic repression or its 'functional equivalent,' to use a favorite term of the present administration: the dominance of a liberal technocracy who will serve the existing social order in the belief that they represent justice and humanity, fighting limited wars at home and overseas to preserve stability, promising that the future will be better if only the dispossessed will wait patiently, and supported by an apathetic, obedient majority, its mind and conscience dulled by a surfeit of commodities and by some new version of the old system of beliefs and ideas (Chomsky, 1969: 4-5).*

At the time, Chomsky was hopeful that the radicalism of the times would bring about some important changes, and it did, at least for a while, as we ended our involvement in Vietnam. But serious criticism of our involvement in this war did not extend to a serious analysis of the values that got us involved in the first place. Part of the value system that created this war is the belief that 'might makes right' and that you can change behaviour through force or the threat of force. It is part of the same mentality that has created a prison system with more than 2 million people. It is part of a mentality that creates a sort of 'police state' that hovers over the daily lives of people, waiting to pounce on those who 'get out of line.' It is part of the mentality that created Measure 11.

The challenge that faces us today is the same one that faced us over 30 years ago: create true 'alternatives' in dealing with our problems, alternatives to the 'might makes right' ideology. We need to remember also, as Chomsky suggested, that the belief system that helps wage a war in Iraq also wages a war here at home. The victims are similar: both are without much power to resist, but resist they must, for they have no choice, even if they are fighting against the most powerful war machine in the history of the world; whether you call it the military or the criminal justice system, it's essentially the same.

## **Note**

1. Robert Gangi, Executive Director of the Corrections Association of New York, said: 'Building more prisons to address crime is like building more graveyards to address a fatal disease. N6(Welch, 2003: 233).

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He writes:

*Among the lessons I have learned over the years is that one cannot begin to understand crime and criminal justice without also examining such issues as social inequality, racism, sexism, politics, economics, and history. Moreover, we must not restrict ourselves to the study of conventional crimes, like homicide, burglary, robbery, etc. Rather, we need to provide equal, if not more, coverage to such harmful behaviours as corporate crime, white collar crime, crimes of the state and the closely related subjects of war and terrorism. The discussion of these issues is what you will find in my web site - <http://www.sheldensays.com>*

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