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Lessons of the "Get Tough" Movement in the United States

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LESSONS FROM THE “GET TOUGH” MOVEMENT IN THE UNITED STATES

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Thank you for the opportunity to meet with you and to share my thoughts on the direction of criminal justice policy. I will address the experience of what has been termed the “get tough” movement in the United States, a change in policy over the past thirty years that has resulted in an unprecedented rise in the prison population in our country. My goal is to assess what lessons we can learn from this experience.

These “lessons” will in many respects not be terribly surprising to corrections officials and policymakers in most nations. Indeed, one can surmise that these insights have long been understood in other nations, as evidenced by the fact that no other nation has adopted such extreme policies. So why, then, should I take up your time by assessing the American experience? For two reasons in particular, I believe.

First, while these lessons reflect corrections experiences in other nations, nowhere have they been as extreme, or have developed over such a brief period of time, as in the U.S. Second, for better or worse, much of the world follows trends in the U.S., in culture, politics, and economics. So, to the extent that the “get tough” policies are observed or emulated, it is incumbent upon us to understand their impact and relevance for other nations.

To understand the contours of this movement, we can best observe it by looking at changes in the prison population. From a combined prison and jail population of about 330,000 in 1972, we have since had a five-fold increase, yielding a prison population of

2.1 million today, creating a situation that many scholars are increasingly referring to as mass incarceration. This prison population translates to a rate of incarceration of 715 per 100,000, placing the United States comfortably in the world lead in this regard, with a rate 5-8 times that of most other industrialized nations.

While the U.S. has a higher rate of violent crime than many comparable nations, most scholars in the field attribute the dramatic increase in the use of prison almost entirely to changes in policy, and not crime rates. That is, policymakers at all levels of government have enacted laws and procedures designed to send more people to prison and to keep them in prison for longer periods of time. For the period 1980-1996, for example, a time when the inmate population tripled, 88% of this rise was a result of changes in sentencing policy, and just 12% due to changes in crime.

The general direction of these policy changes has involved a shift toward determinate sentencing and increasingly greater restrictions on judicial discretion. Specifically, this has led to the expansion of mandatory sentencing policies, applied primarily to drug offenses, which require judges to sentence offenders to fixed terms in prison regardless of individual circumstances. In addition, “three strikes and you’re out” policies have been adopted in half the states. These laws require a life sentence upon conviction of a specified third felony offense. The most extreme form of this policy is in the state of California, including such cases as a man convicted of a third offense for stealing \$153 worth of videotapes and sentenced to 50 years to Life in prison. Many states have also enacted restrictions on parole release, earned good time, and other policies which increase time served in prison.

What, then, are the lessons to be learned from this experience? Let me try to assess the effects of these policies in six key areas, covering both the impact of incarceration on crime and also the increasingly broad-ranging consequences of these policies. While much of the perspective I will present is critical of the policies of recent decades, I will also conclude on a note of cautious optimism regarding recent developments that hold promise for a change of direction.

Lesson #1: Mass incarceration has had only a modest, and diminishing, impact on crime.

Examining the impact of new punishment policies on crime is, of course, the stated goal of policymakers. Since the early 1990s there has been much discussion about the steady decline of crime rates. Many observers have attributed this to the dramatically increased prison population during this period, arguing that either through incapacitation or deterrence placing more people behind bars has reduced overall crime.

The full results are not all in yet, but the emerging research view shows us that the dynamics of the crime decline are far more complex than a simple incarceration-crime relationship might appear. We can see this in several ways.

First, recent scholarship suggests that the rise in imprisonment during the 1990s may have been responsible for one-quarter of the decline in violent crime. That is a significant impact, but it also tells us that three-quarters of the decline was *not* due to greater use of prison. It appears that a number of factors explain most of the decline. These include a relatively strong economy during this period, the waning of the crack cocaine epidemic and its associated violence beginning in the early 1990s, the movement toward community policing in some cities, and behavioral changes among young people to avoid situations of potential conflict and violence.

Increasingly, we are finding that high rates of incarceration may also result in counterproductive effects on crime. This comes about due to the high mobility in certain neighborhoods caused by people cycling in and out of prison. As a result, there is a fraying of social bonds between families and neighbors, and the loss of informal controls that normally contribute to public safety. For example, when a low-level drug offender is sent to prison, that person's crime "potential" is removed from the community for a period of time, but so also are whatever positive connections the person has to the community. That is, people sent to prison cannot commit crimes while they are incarcerated, but they also cannot function as parents, workers, consumers, and neighbors.

These dynamics have been borne out in a recent study in a large city in the state of Florida. Researchers there found that imprisonment brings some reduction in crime at modest levels, but that at higher levels it actually contributes to an increase.

While we should not discount whatever effect greater imprisonment had on reducing crime, we also need to keep in mind that this equation still does not tell us how prison compares to other interventions. In fact, a good deal of research in recent years demonstrates that investments in drug treatment, school completion programs, and interventions with families at risk produce greater crime reduction effects than continued expansion of the prison system.

Lesson #2: Not only does the death penalty not deter, but it causes major disruption in the court system.

A second key lesson from the U.S. regards the American experience with the death penalty. Following court cases challenging the death penalty in the 1970s, capital

punishment was ruled to be constitutional in 1976. Since that time, more than 900 persons have been executed and 3,500 await execution today. It will not come as news to most of the world that the death penalty provides no deterrent effect to crime or murder specifically. Exhaustive research has documented that in many nations over time.

But what we have seen in the U.S. over the past three decades is that the widespread use of this penalty in a democratic nation is also extremely costly, both in fiscal terms and in harm to the criminal justice system. The fiscal costs -- \$2 million per case in many states -- result from the lengthy trial and appeals process that accompanies such cases, with the average executed person having been incarcerated for more than ten years. In some states, nearly half of the supreme court's time is now spent working on death penalty appeals.

Implementation of the death penalty, even in a nation as wealthy as the U.S., has been fraught with error. To date, more than 100 persons on death row have been exonerated, in some cases after having spent as much as 20 years awaiting execution. A recent study found that over a 20-year period fully two-thirds of all capital cases were reversed due to serious error. The most common problems were incompetent defense attorneys and the suppression of evidence by police and prosecutors. Overall, these problems have served to undermine confidence in the justice system, they have consumed enormous resources, and they have served as a distraction from discussions about how to address broad public safety concerns.

Lesson #3: Incarceration has a broad range of collateral effects on society.

While we have long studied the effect of imprisonment on the individual who is incarcerated, there is now increasing evidence of the broad range of collateral effects of

mass imprisonment on society. Most immediate is the effect on the families of prisoners. There are now about 1.5 million children in the U.S. who have a parent in prison. For African American children, 1 of every 14 has a parent behind bars on any given day. Over the course of a year or an individual's childhood, the figures would obviously be much greater. For these children, the experience of shame, stigma, and loss of financial and psychological support becomes a profound aspect of their life experience. The effect on these communities is compounded by the fact that imprisonment has become an almost inevitable aspect of the experience of growing up as a black male in the U.S. Government figures now show that a black male born today has a one in three chance of spending at least a year in prison at some point in his life. Thus, while children in well-off communities grow up with the expectation that they will go to college, many in low-income communities now grow up with the prospect of doing time in prison.

High rates of incarceration in low-income communities also affect family formation and stability. This is primarily caused by the fact that so many young men are "missing" in these communities. In some neighborhoods in Washington, D.C., for example, there are only 62 men per 100 women, with most of this gap explained by imprisonment. Thus, the prospects for finding marriage and parenting partners are very limited. Further, with so many people cycling in and out of prison each year, families are disrupted due to the loss of economic support, the burdens brought on by visiting and supporting loved ones in prison, and the social stigma of having a family member in prison.

Lesson #4: The cost of incarceration affects other social priorities.

Building and maintaining prisons is expensive, of course, currently costing about \$25,000 a year to house a person in prison. Incarceration now costs \$57 billion annually in the U.S. At the state level the rising cost of imprisonment is exerting a direct impact on funding for universities and other services. Between 1985 and 2000, spending on corrections rose at six times the rate of spending for higher education. Essentially, policymakers are faced with a choice of whether they wish to contribute to an expanded prison system or provide vital social services. They can no longer do both.

These figures take on particular meaning when we recognize that half the prison population in the U.S. is incarcerated for a non-violent property or drug crime. Thus, we are spending considerable funds imprisoning hundreds of thousands of offenders who do not present great danger to the public and for whom alternative means of supervision could be developed.

Lesson #5: Privatization has not proven to be a panacea for rising prison costs.

Over the past twenty years the increasing demand and cost of incarceration has led to the rapid expansion of a \$2 billion private prison industry. Private for-profit corporations have promoted their services by promising that they can imprison offenders at less cost than public institutions. Currently, about 5% of all prisoners in the U.S. are housed in such prisons. The experience to date does not show any significant cost savings for these institutions. To the extent that private prison operators attempt to cut costs, it is likely to come as a result of inexperienced staff, limited training, and cuts in programming. Further, because there is often high staff turnover and/or inexperienced staff in these prisons, the rate of assault has been higher than in publicly run prisons. As

a result of increasing concerns, some state governments have rescinded their contracts with private prison operators, and the overall growth rate of private prisons has slowed considerably.

Lesson #6: Mass incarceration affects democratic society.

One final lesson of high rates of imprisonment is the effect of these practices on a democratic society. In the U.S., conviction of a felony offense generally leads to the loss of the right to vote for a period of time. In all but two states, all felons in prison are prohibited from voting, and in two-thirds of the states persons under supervision on probation or parole also cannot vote. Most dramatically, persons convicted of a felony in 14 states can permanently lose the right to vote, long after they have completed serving their sentence. In the upcoming presidential election, nearly five million people will be unable to vote as a result of a current or previous felony conviction. Among black males, one of every eight is ineligible. Thus, we have a set of policies whereby extremely high rates of incarceration translate into the loss of voting rights, which in turn reduces the impact of this community in having a voice regarding the wisdom of these policies.

Overall, these developments are quite disturbing to increasing numbers of people who view large prison populations not as a sign of success but as problematic for a democratic society. But fortunately, there are also developments in recent years in the U.S. that are more encouraging, both in terms of their potential for producing public safety and in avoiding the many negative consequences of large-scale incarceration.

In the area of law enforcement, the past twenty years have seen a shift in philosophy and practice – at least in some jurisdictions – to a model of community

policing. Put simply, this approach tries to measure police success not by how many arrests are made but by how many problems are solved. So, for example, when the city of Boston experienced a high level of youth homicides a decade ago, the police developed a partnership with church and community leaders to develop a multi-pronged approach to the problem. The relationship involves heavy-handed law enforcement for parolees found with weapons, but also extensive community outreach designed to help youth become engaged in constructive programs and services. Local officials believe that the significant drop in youth homicides in the years after the program was implemented was largely attributable to this initiative.

A second area of rational policy development can be seen in regard to treatment of drug offenders. While the key themes of the “war on drugs” remain high levels of enforcement and incarceration, there has also been a significant expansion of drug treatment as an alternative within the criminal justice system. This has primarily been accomplished through the establishment of “drug courts,” specialized courts whose goal it is to divert eligible defendants in drug cases to treatment programs rather than incarceration. There are now more than 1,000 such courts in operation or being planned, and they have generally been greeted with approval by both court officials and communities.

Over the past several years, a strong movement has emerged as well around approaches to prisoner reentry. In a way, this should not be at all remarkable, since it merely acknowledges that 95% of prisoners will return to the community one day and we should prepare for their return through programming in prison and upon their transition to the community. But as obvious as this point may seem, it has been lost for many years.

This new “discovery” has been successful in deflecting much of the liberal/conservative debate on crime through focusing on “what works” to reduce recidivism. To date, funding and support for these approaches is still relatively modest, but it includes pilot programs in nearly all states as well as investments by private foundations in local initiatives.

Another development of recent years is the exponential growth of restorative justice. Originally promoted by church-based reformers, this practice is now the subject of attention among judges, probation staff, and other practitioners. In many jurisdictions it is now applied in a range of juvenile non-violent offenses, but there are growing numbers of cases in which the approach is being used for more serious offenses, in both the juvenile and adult systems. The challenge for restorative justice at this point is whether it can gain a position as a primary response for the resolution of conflict rather than as an “alternative” for situations that the formal justice system would rather not handle.

As I indicated in my introduction, many of these “lessons” will not come as a surprise to corrections leaders in most nations. These are findings that criminologists and practitioners have recognized over many decades. But in our increasingly global world of communications, there are indications that these lessons may need to be told repeatedly, lest the overly simplified version of the “get tough” movement affect developments in other nations. And conversely, of course, there are many lessons that we in the United States can learn from our colleagues in other nations. I hope this dialogue will lead to a more compassionate and effective approach to these challenging issues.