



How Mass Incarceration Undermines America's Democratic Way of Life

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Imprisonment in the contemporary United States far surpasses other nations. The ironies are sharp and manifold. The United States deploys armies abroad under the banner of freedom and at the same time has the largest custodial prison infrastructure on the planet, a system of jails and prisons that locks up a greater fraction of our people for life – more than fifty for every 100,000 residents – than the population share imprisoned for any length of time by Denmark, Sweden, and Norway combined. American democracy is inspired by ideals of active and equal citizenship, yet racial and class inequalities run through the heart of our criminal justice system. Urban black communities have little voice in setting criminal justice policies, even though they experience the brunt of violations and the direct and indirect effects of punishment. Intellectuals have an obligation to lay bare the threat to American democracy caused by massive, racially skewed imprisonment. To that end, I offer the following reflections.

Who Experiences Crime and Decides about Punishment?

Political theorists have long understood crime and punishment as central to society. In *The World of Prometheus: The Politics of Punishment in Ancient Athens*, Danielle Allen argues that citizen participation in bringing charges and deciding their disposition – participation influenced by class, gender, and servitude status – crucially shaped Athenian democracy. Her insights are relevant to modern democracy as well.

As constitutional lawyer William Stuntz argues in his book *The Collapse of American Criminal Justice*, racial and class inequalities in U.S. imprisonment have been furthered by shifts over two generations in the way crime policies are made. The basic ideal of Anglo-Saxon justice features local juries – hailing from the communities where crime is actually experienced – making key decisions about guilt, innocence, and degrees of punishment. But several intertwined transformations have undermined this ideal in modern America, fostering growing disjunctions.

- Apart from juries, prosecutors now make many decisions about charges and disposition of criminal cases. The rise of plea bargaining has empowered prosecutors, who can use discretion and bargain with defense lawyers to decide which defendants are charged with what offenses, and whether or not to go to trial.
- Proliferating claims about constitutional protections now give appellate jurists a larger role in deciding how trials are conducted than the actual courtroom judges. Rights may be better articulated, but attention to the nuances of cases goes by the board.
- Given shifts in population across the country, suburban and ex-urban voters have more say than do central city voters about crime control policies, which are often set or strongly influenced by state and national legislation and elections. This is true even though the non-urban voters are not the ones who bear the brunt of much crime or have to deal with the personal and community consequences of inflexible and severe punishments.

Inner-city residents have become bit players in the democratic drama that determines the nature and extent of criminal punishment. Yet these are people who know, first hand, both about the depredations of crime and about the enormous personal burdens of draconian and unequal punishments. Inner-city residents, often people of color, are certainly threatened by misbehavior in their midst; yet at the same time they are closely connected by bonds of psychic and social affiliation to the law-breakers. Ideally, this ambiguity should be exploited in the interest of true democracy, allowing public choices about degrees and kinds of punishment to be informed by those who experience the infractions first hand and also know the circumstances of the miscreants. But that is not what occurs in most contemporary U.S. policymaking about crime. Instead, non-

urbanites, disproportionately white and less affected by most crimes, decide on laws and punishments for urban blacks who live on the front lines.

Legal Violence and Citizen Alienation

Criminal punishment is an inherently necessary but problematic form of violence practiced by government in the name of maintaining social order. Too much of such legalized violence, especially when skewed by class, race, and locality, becomes a decidedly bad thing in a democratic republic committed to ideals of civic equality. Punishment of criminals is not only physical; it involves a violence of thought and conception as well – a violence of ideas required to make an exercise of might on this scale, and with this degree of inequality, come to seem natural, inevitable, necessary and just. If many more “wrongdoers” are routinely rounded up and imprisoned from some social groups compared to others, the communities affected come to see the world as “us” dealing with “them,” and everyone in the society gradually takes for granted highly skewed conceptions of moral worthiness. It is also important to keep in mind that we are talking about more than lawbreakers themselves. Prisons in the United States are increasingly dealing with individuals whose development has been undermined by failures of schools, families and communities, and the employment system. Mass imprisonment has, over the decades, contributed to the societal breakdowns that engender ever more wayward youth and broken lives – and generate yet more wrongdoers to be rounded up and sent to prison. Researchers are learning that high levels of imprisonment in inner city neighborhoods leave families and communities less able to inculcate good habits in youngsters and lay the foundations for lifelong success. And what does it mean to grow up where trips to visit imprisoned fathers, sons, or partners are routine, and where ex-prisoners constantly return, marked by bitter experiences and reduced prospects? As the saying goes, “What happens in San Quentin does not stay in San Quentin,” and the same is true for Dannemora, the upstate fortress hundreds of miles away yet so closely intertwined with some New York City neighborhoods.

In short, imprisonment in the forms and scale now employed in the United States threatens our democratic aspirations and raises questions about what manner of people we have become. This is a question all Americans must ponder as we seek better ways to prevent and control crime, even as we further basic democratic ideas of citizen engagement, local involvement, and equality before the law.

Read more in Glenn C. Loury, “Detention, Democracy, and Inequality in a Divided Society.” *Annals of the American Academy of Political and Social Sciences* 651 (January 2012): 178-182.

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