

Episode 248: Fifty Years of Mass Incarceration

Lisa: Hi, I'm Lisa Hernandez

Lizzy: And I'm Lizzy Ghedi-Ehrlich.

Lisa: And we are your hosts for Scholars Strategy Network's No Jargon. Each month we will discuss an American policy problem with one of the nation's top researchers without jargon. And this month in light of the 50th anniversary of mass incarceration, we are talking about the US prison population and the steps needed to reduce it.

Lizzy: Yeah, I think, you know, as a person who thought I well understood what the phenomenon of mass incarceration is, it's really interesting to look back at the history and say, no, it's not just that it was getting bigger and bigger and bigger every year. It's that we kind of hit an inflection point back in the seventies.

And uh, if that is true, if there was a time before mass incarceration was really growing all the time, that means we could get back to that time.

Lisa: Right, and I think, I mean, it's really important to note that because we have existed in the era of mass incarceration for the last 50 years, like you said, we don't, it doesn't necessarily mean that's how, that's where we have to be moving forward, especially when we know all the harm that incarceration is causing.

And I'm, you know, one of the really interesting things, uh, about our conversation with, um, the researcher that we're speaking with today is really thinking about all the different ways to tackle, issues within our society without resorting to incarceration. And then thinking about how do we, I mean, prison populations have been reducing slightly over the last couple of years, but how do we

increase that number of people, especially when so many people are incarcerated right now and it's, um, it's definitely a big topical conversation that has been making the news recently.

Lizzy: Especially during Covid. I mean, we saw there were so many policy shifts that took place during that time that proves that they can happen, I am assuming. Of course, I haven't listened to this conversation yet because I was not the host, but I'm assuming that the past couple years, uh, reversal of our mass incarceration trend was because of the kind of emergency laws that were put in place, um, to keep pandemic transitions down there that changed the way some people were sentenced.

It changed the way people were being processed through jails, um, to get into prisons. And so, you know, that shows that we can do it under extraordinary circumstances. What can we do under regular circumstances?

Lisa: Right. So let's hear what our expert has to say. I spoke to Nazgol Ghandnoosh, the Co-Director of Research at the Sentencing Project, a nonprofit organization engaged in research and advocacy for criminal legal reform. Dr. Ghandnoosh holds a PhD in sociology from the University of California Los Angeles.

She conducts and synthesizes research on criminal justice policies with a focus on racial disparities, lengthy sentences, and the scope of reform efforts. Here's our conversation.

Lisa: Hi, Dr. Ghandnoosh. Thanks for coming on No Jargon.

Nazgol: Great to be here, Lisa. Thanks for having me.

Lisa: So you work for a non-profit organization called The Sentencing Project, and since the research you do happens to be tied to that organization, um, could you talk about the mission and purpose of your organization?

Nazgol: Sure. So we are an DC based nonprofit that's been around for over 35 years now, and our goal is to end mass incarceration and address its racial disparities, as well as gender disparities and other forms of inequality that it produces. So a big part of the work that we do is research. So we produce our own original research and we also synthesize the research that others do, particularly in academic settings and help to, make policy makers and advocates aware of the research that's out there in support of criminal justice reform, as well as give them a sense of, what we know based on data and evidence of what reforms would have a big impact. And which ones wouldn't. And so then we also have an advocacy team that does this kind of work directly to educate lawmakers and policymakers. They testify, they work with other community-based organizations on the ground and help to pass reforms in these areas.

The work that I've been doing at The Sentencing Project has really been an extension of my dissertation research. Looking at extreme sentences and other issues related to mass incarceration.

Lisa: And, um, I wanna delve a little bit deeper into like the topic of mass incarceration, and we know that in 2023, it's that 50th anniversary of mass incarceration, which feels like a really odd anniversary feels like a weirdly celebratory, um, word for it. But mainly I wanna ask about, how do you mark the official start of mass incarceration?

Can you tell us how, um, incarceration has, basically not, not progressed, but become this reality that we live under, over the last 50 years?

Nazgol: The way we mark the beginning of mass incarceration is to look back historically at prison population numbers. And when we do that, what we know is that starting in 1973, the prison population went up every single year for almost four decades. And since then, starting in 2010, actually the prison population has been coming down, but it's been coming down really modestly.

And so we still are very much in the era of mass incarceration. So those 50 years includes, near, nearly 40 years of that period was just unrelenting growth in the prison population and then the last 10 decades of really quite modest reforms so that's sort of the, the way that we think about it.

And when it's absolutely a very grim milestone. It's nothing to celebrate. The United States has a much higher incarceration rate than many of our peer countries, and we have such a higher incarceration rate than we had historically as well. But we wanted to highlight this timeline to give people a sense of just how long we've been in this era, and also to really contextualize the reforms that have been happening and to sort of give more urgency and, encouragement to bolder bigger reforms so that we can be out of this era of mass incarceration within our lifetimes.

Lisa: And can you talk a little bit about the reforms that have been, I guess leading to a decrease in, incarcerated population?

Nazgol: There's been a 25% reduction in the prison population since 2009, and that seems like a pretty big number, but we still have about five times as many people in prison as we did in the 1970s. So we still have quite a long way to go, but we're definitely not in the same place that we were in the 1980s and nineties where the call was constantly from, from Democrats and Republicans to

increase incarceration numbers, and we're in a very tricky time right now where crime rates, in particular homicide levels went up in the early part of the pandemic especially. And so we're seeing some renewed calls for returning to that old playbook, and so it's a very tricky and interesting time as we see elected officials, some of them very aware of the mistakes of the past and reluctant to move us back in direction, but others more willing to sort of return to those policies.

So that's one area of reform that's happened. Another kind of general type of reform that's happened has helped to reduce racial disparities in incarceration, and that's something that I'm looking at in a report that I'm writing right now on. How much progress we've made in reducing levels of racial disparities.

So not just the overall numbers of people that are incarcerated, but we've made more reductions in the number of Black and Latinx people that are in being incarcerated compared to the number of white people. Even though Black and Latinx people are still far more disproportionately incarcerated than whites, especially Black Americans.

So, there's been a lot of reforms that have been happening around the country to reduce sentencing and prison admissions, for nonviolent offenses in particular for drug offenses. And that's been a big source of this progress that we can see in terms of the numbers. And a lot of this reform has happened in urban areas, and we can see the movement to elect and protect progressive prosecutors or reform minded prosecutors is largely an urban movement, and that's also helped to reduce the disproportionate burden of incarceration on people of color. So we've made quite a bit of progress. We're in a tricky time now to defend that progress that's been made, but there's still also a long way to go.

Lisa: I wanna ask a little bit about, uh, what has led to this mass incarceration. So is it an issue of a number of arrests or length of sentences or both? What are, what are the factors that have led to mass incarceration?

Nazgol: The nuts and bolts of how we got here is that in the 1970s and eighties until the nineties, crime rates were going up in the United States just as they were in many other countries around the world. And that has to do partly with the age structure of the country. The fact that there were more young people in our population and young people commit more crime. It has to do with the crack cocaine epidemic and the violence that was related to that. So there are a lot of different factors that increase crime rates, unfortunately, instead of really meaningfully tackling the sources of those criminogenic factors that were going on.

The response was to dramatically increase drug law enforcement. And so that includes arrests and, and then incarceration when arrests do happen. And then it also included increasing the likelihood of incarceration when, uh, when someone was charged and convicted for crimes across the board. So both for property and drug crimes as well as for violent crimes.

And then the third factor is that when people were sent to prison in particular, their prison sentences that they were, that they received were far longer than sentences imposed in the past. And then the length of time that they would actually have to serve before they were released, uh, increased as well.

Because states got rid of parole and things like that. So these are the main drivers in terms of nuts and bolts of how it's been happening.

Lisa: Right. And can you talk a little bit about what are the harms that are caused by mass incarceration? Um, what are people experiencing, um, as a result of this long-standing issue that we've been having as a country?

Nazgol: The harms are really widespread. There's so many ways to think about them. There've been so many communities that have suffered as a result of mass incarceration by losing, uh, a member of the family, to extended periods and or repeated periods of incarceration.

When that incarceration happens, the person is not given treatment if they have a substance use problem, which is very frequently the case, they're not given treatment during their period of incarceration. So they've come back and they're back to square one. In terms of those kinds of issues that they've been struggling with, there is economic cost.

So for, you know, there's the loss of a breadwinner or a potential breadwinner. There's also the, all the costs, the sort of hidden fees of incarceration where family members in order to stay connected, have to pay a lot of, high costs just to make phone calls. Prisons are located far from urban areas where people generally live who are incarcerated, and so it's very burdensome and costly to make it out to these places to visit loved ones.

And then there's also just the sort of criminogenic impact of incarceration itself. The fact that as one of my colleagues once put it, once you are done being punished by the criminal justice system, you're not done being punished for your whole life. You will have a criminal record that affects many different aspects of your life.

It certainly affects your ability to get employed. It affects your ability to find housing. In addition to that, it affects your ability to get food stamps, and cash assistance. If you had a drug conviction it affects your ability to get a college loan for those reasons. And some of these things have started to get reformed recently, but we've basically taken a largely disproportionately Black and Brown population, who are overwhelmingly low income.

And then, imposed on them, these kinds of penalties that are traumatic, that are straining their families and that put long-term economic burdens on them. And so you pretty much, it's pretty much hard to imagine a system that could have been worse if you, if you had tried to do that. And you know, on top of this, when, you know one of the other collateral consequences of incarceration, in addition to the challenges of getting housing and uh, employment and things like that is the fact that for a lot of places around the country, if you have a criminal conviction while you're serving your sentence in prison or on community supervision like probation or parole, or even in some places when you're done serving your sentence, you cannot vote.

You are disqualified from voting. So even, you know, the population that's impacted by these things is not even able to later on have a say in the political process to help

Lisa: Right. Yeah. For context, I live in Florida where a couple of years ago we passed an amendment that was intended to give folks who had felonies the right to vote again. And of course it's been, uh, debated a lot in the courts as things do get debated there. Um, but I do wanna talk about the solutions.

Um, I wanna talk about solutions as far as helping, decrease incarcerated populations and mitigate the effects of incarceration. So if you could tell us a little bit about, a word that comes up a lot in your work is decarceration. So what are these like efforts that maybe the federal

government have made towards decarceration or maybe more efforts that could come underway that you are suggesting?

Nazgol: At this point, you know, as I mentioned earlier in our conversation, the prison population has come down by 20% since it reached its peak level in 2009. And when we break that down and look around the country at particular states, we can see that some states have made even more progress than that.

So for example, states like New Jersey and New York have reduced their prison populations by over 50% since reaching their peak levels. And a big part of the way that they did that is by reducing how much time people have to spend in prison for a drug conviction and just reducing admissions to prison for drug convictions.

And typically when someone's serving a prison sentence of a year or longer for drugs, it's not because they were just using drugs, it's because they were believed to be selling drugs. And so we really need to rethink the drug war, what, what drugs should be legalized, decriminalized, and if we're, how often we're sending people to prison for selling drugs and for how long?

And that makes a big impact on the prison population. But the overall scale of that impact is somewhat limited because as many people have said, even if we end the drug war now and we don't send anyone to prison for drugs, we will still have a mass incarceration problem. And that's because when you look at the prison population and you look at what the most serious conviction was that someone was sentenced to prison for, it's only for a drug crime in about 17% of cases. In the majority of cases, when someone is serving a prison sentence that's because they had a violent conviction and that's a crime like, robbery or assault or even the most serious kinds of crimes like sexual assault and homicide.

And so if we really wanna end mass incarceration, we have to scale back sentences for violent crimes and really begin to do much more to invest in communities to tackle the sources of violent crimes. And so, the kinds of reforms to sentencing for violent crimes that we're seeing. One of them includes second look reforms that are starting to pick up around the country.

So DC has a second look law. Some other states like California have second look laws as well. And what these laws do in the case of DC is that they say, after you've served 15 years in prison, even for the most serious crime, like homicide, let's let judges take a look at your sentence and decide if you should still be incarcerated.

In California, the way the law works is that prosecutors can ask for your sentence to be reassessed. Whereas in DC, people can directly petition the courts. And this is only for in, in the case of DC if their crime happened under the age of 25. And over a hundred people have been resentenced in DC for example, as a result of this and released.

So this is an example of the kind of reform that moves us away from extreme sentences that helps to bring to realization the evidence that we have from social scientists. That sentences of over 10 or 15 years long are not effective for public safety. They're not effective as deterrents. They don't reduce substantially recidivism rates cuz people have matured so much by that age.

They're not a public safety threat. So they help to scale back some of the most extreme sentences that we have. And, as my colleague Ashley Ellis's research has shown, for example, we now have over 200,000 people in US prisons. That's one in seven people in US prisons serving a life sentence.

And so these are the kinds of reforms that we really need to build up if we wanna end mass incarceration.

Lisa: And what are some of the evidence-based alternatives to incarceration?

Nazgol: We are actually gonna be putting out some, reports in the next couple months on interventions for youth as well as for adults and the research, uh, that's out there in terms of evaluations of some of these programs that try to focus on, um, giving people access to employment, violence intervention programs, giving people access to mental healthcare and drug treatment.

Because as I mentioned, so many people go into prisons because of substance use problems that contributed to their crime. And so, you know, these are the kinds of programs that we really need to dramatically scale up in our society if we want to reduce our reliance on incarceration and tackle crime rates.

And so I'll have more to say about that later once we have all that work sort of compiled. But for now, I would say there's sort of growing evidence base and others have done reports on this. Like John, Jay and Brookings have put out information on what should we do instead of mass incarceration or instead of incarceration.

What are the kinds of programs that we know work and we know these programs are out there, but they're not nearly scaled up at the point that to the extent that they should be.

Lisa: Well, I'm excited for that report and I do wanna ask if there's, um, anything as far as messages to people that maybe are, um, that maybe are hesitant to delve into, policies that deal with mass incarceration. Like what would you say to them in order to get them to think about addressing this issue?

Nazgol: Sure. I guess I would say two things. One of them is that for me, coming into this space and thinking about these issues, what brought me to this topic was being very interested in

addressing problems of racial inequality and poverty and the associated issues that arise from that.

And that includes crime and that includes violent crime that disproportionately, especially serious violent crime that disproportionately impacts communities of color, low income, communities of color. And so I think sometimes people -- we will make the argument, whether earnestly or not, that having mass incarceration is a response to the fact that Black Americans are disproportionately homicide victims and are disproportionately experiencing these serious violent, forms of crime.

But it's really important to realize that these policies are not helping to achieve that goal. And organizations like mine that do research and advocacy around ending mass incarceration, share the goal of tackling these kinds of crimes that are disproportionately impacting these communities, but yet this mass incarceration is not the way to get there.

And so we're trying to scale back these policies and lend support to what actually helps to keep people safe. You know, another valid concern is victims and, and I think that what happens a lot of times is people think, well, when we're talking about scaling back extreme sentences, what about victims who were, you know, suffered the loss of a family member or loved one, and at least they were promised that the person who harmed them if they were caught is going to be in prison for the rest of their lives.

How do we, you know, go back and say, you know what, we actually think this person should be released after 20 years, after 25 years. Isn't that unfair to the victims? And that's something I really grappled with myself for a while, thinking about, you know, how would I handle that?

Thinking about how some victims handling that when it comes to second look re-sentencing. And what surprised me was the, you know, really meaningful realization that victims are not monolithic and hearing from victims that supported re-sentencing and supported this law. So, in DC for example, where I live, there was a really big debate about expanding second look re-sentencing.

Originally, it was only for people who were under the age of 18 at the time of their crime. And there was a big debate about expanding it to people who were under the age of 25. There was also a big debate about expanding it to everybody. And actually DC lawmakers made that decision to expand second look to everyone.

But then Congress overturned, a, a larger package of laws that was included in. So we're back to just expansion to people who were under the age of 25. And in that process, I heard from victims like Melody Brown and I interviewed her for a second look report that I wrote and to really understand, you know, what happened?

How did she go from the fact that she lost her husband to homicide, to then being supportive of re-sentencing and release of the person who caused that harm to her? And victims change over time. They have had, if they have had a chance to recover from the trauma, to get some understanding of who the person is now, which she had a chance to do, they realized that the person that that's being considered for re-sentencing is no longer the person that caused them this huge amount of pain and suffering.

And in some situations, they can end up being supportive of that individual being released. And I think it's really powerful to see that and to see people who have experienced that level of suffering to come to the conclusion that a lifetime imprisonment is not what's gonna make them whole again. And it's not gonna what's, it's not what's gonna prevent others from experiencing the kind of harm that they've experienced. And so increasingly we see victims, especially victims of color, survivors of color, and organizations that represent them, like Network for Victim Recovery of DC for example, as one of these organizations that provides services to crime survivors and victims and has come out and supported some of these kinds of reforms. And so it's a really different landscape than you might anticipate based on media coverage on these issues sometimes frames, you know, victims as generally opposed to these reforms. And it's really heartening to see that people that are most harmed by, by crime or sometimes coming out in support of, uh, reducing the harm that is produced in response to crime.

Lisa: Well, I appreciate the work you have done, um, to try to highlight these stories and, um, sharing today a lot about your research and the proposed solutions stemming from your research as well. Um, I do wanna ask for any closing thoughts, anything that you wanna share as far as whether it's solutions, whether it's why we should care about this issue and address it?

Nazgol: I guess one final thought I will leave folks with is the idea that I really appreciated seeing in the National Academies report on racial disparities. The report is called Reducing Racial Inequality and Crime and Justice, And I, I thought that that report really captured very well the goal of reducing racial disparities as well as, which is relevant for just the goal of improving our criminal justice system.

And, and that goal is not just making adjustments so that we are, you know, improving the experience of people who experience incarceration or just reducing how often police stop whites versus blacks and reducing these kinds of disparities, but to also really tackle the oversized footprint of the criminal justice system and how much that is a part of the agenda of creating racial equity and criminal justice.

So it's not just about, , you know, balancing things, but it's about scaling things back overall. So I thought that was a really important point to make, especially in the last couple of years as we're hearing such a wide range of proposals on. , you know, in particular, after the police killing of George Floyd and the trepidations around the defund the police movement, and thinking about how to frame some of the ideas that are presented as part of that movement and to see that there's widespread recognition among academics, among policymakers to, make sure that we

are using incarceration and policing for only the kinds of things that are necessary and only for the duration of time that's necessary, and that we really begin to build up the other parts of our society and the other parts of our government that need to be tackling, um, some of the problems that for now we've, we've just asked police and prisons to address.

Lisa: Well, thank you so much, Nazgol, for sharing research again and the work that you have been doing to get research into policy.

Nazgol: So great to be here with you. Thank you.

Lisa: And thanks for listening. For more on Dr. Ghandnoosh's work, check out our show notes at scholars.org/nojargon. No Jargon is a podcast of the Scholars Strategy Network, a nationwide organization that connects journalists, policymakers, and civic leaders with America's top researchers to improve policy and strengthen democracy.

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