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978-0-521-71339-9 - Prison State: The Challenge of Mass Incarceration

Bert Useem and Anne Morrison Piehl

Excerpt

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CHAPTER ONE

The Buildup to Mass Incarceration

The era of big government is over.¹

Every culture, every class, every century, constructs its distinctive alibis
for aggression.²

It's too soon to tell.³

The change began with little official notice or fanfare. There were no presidential speeches to Congress, such as the ones pledging to land a person on the moon within a decade or declaring war on poverty. No catastrophic event, such as the attack on Pearl Harbor or 9/11, mobilized the United States. No high-profile commission issued a wake-up call, as the Kerner Commission did in warning the nation that it was moving toward two separate and unequal societies and, decades later, as the 9/11 Commission did in exposing the country's vulnerabilities to terrorism. Indeed, to see the change of interest – the massive buildup of the U.S. prison population that began in the 1970s – one has to look to the statistical record. There was little bark (at least at first), but a great deal of bite.

Beginning with modern record keeping in 1925 and continuing through 1975, prisoners represented a tiny segment of the U.S. population. In 1925, there were 92,000 inmates in state and federal prisons. By 1975, the number behind bars had grown to 241,000, but this increase merely kept pace with the growth of the general population. The *rate* of imprisonment remained stable, at about 110 inmates per 100,000 residents.⁴ Indeed, during the early 1970s, two well-known criminologists argued that society kept this ratio (inmates over population) at a near constant to meet its need for social integration.⁵ As the

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crime rate went up or down, like a thermostat, society would adjust its imprisonment decisions to ensure that the rate of imprisonment would remain close to 110. Then, in the mid-1970s, the thermostat was disconnected. The imprisonment furnace was turned on full blast.

The number of prisoners shot upward and would continue on that trajectory for 25 years. By the end of the twentieth century, there were 476 prison inmates per 100,000 U.S. residents, or more than 1.36 million people in prison.⁶ And the furnace has not yet been put to rest. By year-end 2005, the number behind prison bars had risen even further, to 1.5 million.⁷ In the 12-month period ending in December 2005, for example, the prison population increased by 21,500 inmates, an annual growth rate of about 1.9%.

To add some perspective, if assembled in one locality, the prison population would tie Philadelphia for the fourth largest U.S. city. If “prisoner” could be thought of as an occupation, one in fifty male workers would have this “job”; there would be more people in this line of “work” than the combined number of doctors, lawyers, and clergy. For certain demographic groups, the proportion serving time in prison has become extraordinarily high. By year-end 2004, 8.1% of black males between the ages of 25 and 29 were in prison.⁸ About one-third of all African American males are predicted, during their lifetime, to serve time in a state or federal prison.⁹ In 1975, 241,000 inmates in state and federal prisons were serving 8.4 million inmate-days. By the end of 2005, 1.5 million inmates were serving more than a half-*billion* inmate-days per year and consuming 1.6 trillion meals.

Our topic is the prison population buildup. Why did the United States embark on this course? What were the consequences for society? This transformation did not occur spontaneously, and it has had consequences. There are a profusion of claims about this choice. Proponents of the buildup tend to see only virtue and necessity. We had to build more and more prisons, in this view, to stem the tide of disorder and crime on the streets. The buildup was a farsighted investment in our future, and we are now reaping the benefits. Critics tend to see only vice and human folly. The buildup has done far more harm than good. In one argument, putting more people in prison adds fuel to the fire by stigmatizing millions of low-level offenders as hard-core felons and schooling them in crime. Mass prison is not only a massive waste of

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public resources, but it is also socially destructive. Hard-nosed realism requires something other than more prisons.

These points of view have been expressed on the opinion/editorial pages of newspapers and television talk shows, been the subject of numerous stump speeches by politicians seeking elected office, and, from time to time, been given serious study by scholars. Still, we may be no closer now to consensus over the “prison question” than we were halfway through the buildup. With the arguments well worn, both sides now play the common-sense card: everyone *knows* that more prison causes (or does not cause) less crime and that the motives behind the buildup were noble albeit tough minded (or ill conceived). The goal of this book is to get past these self-confident assertions.

PRISON BUILDUP: CONSTRUCTIVE OR DESTRUCTIVE?

Prison is the ultimate intrusion by the state into the lives of its citizens. Prisons impose on their residents near-complete deprivation of personal liberties, barren living conditions, control centers that regulate movement within the prison, exterior fences draped with concertina wire, lines painted on hallway floors that limit where inmates may walk, little and ill-paid work, and endless tedium. The prison buildup was commonly and appropriately called the “get tough” approach to crime control.

Was the buildup generally constructive or destructive? If there is satisfaction in the buildup, from what does it spring – the harnessing of aggression to get a grip on the plague of crime, especially violent crime, or the satisfaction that comes with demolition and denigration?¹⁰ Is the prison buildup an ennobling enterprise? Or are such lofty claims merely alibis for aggression or, worse yet, an effort at repression by some groups over other groups?

To take stock, “more prisons” is *not* merely a policy preference in the way one might prefer more bike trails, better schools, or lower taxes. More prisons means the greater exercise of coercive power by some people (mere human individuals) over other people. Mass imprisonment is an emphatic expression of aggression; that is obvious. But what kind of aggression? And with what consequences? Answering these questions is the central purpose of this book.

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Much of the sociological literature on prisons and the prison buildup construes the buildup as an effort at social domination and exploitation. This argument is developed most famously by Michel Foucault, the French social critic, and, more recently, by a group of scholars that include David Garland, Loïc Wacquant, William Chambliss, Jerome Skolnick, and James Q. Whitman. The U.S. prison buildup has no rational content. Prison's formal purposes – retribution and crime control – are nothing more than alibis for aggression. Behind the mass movement demanding more prisons are excited but unaware masses, politicians taking advantage of these lower sentiments, and large doses of collective irrationality. One formulation portrays the buildup as coming out of the emotional lift stirred by treating people as inferior and placing them in harsh conditions.¹¹ We consider these arguments and search for evidence to support them. Unfortunately, for these authors, we do not come up with much.

An alternative position is that society has mandates that are not arbitrarily chosen tasks but are the core of what is needed for society to function. In a modern economy, schools must teach true lessons about physics today so that tomorrow's flood-control levies can be built without structural flaws. The judiciary must be independent of family, clan, and special interests; judges must be competent; and the rule of law must mean something; otherwise, the judiciary cannot serve as an instrument of economic development.¹² Likewise, prisons gain or lose their legitimacy according to whether they achieve their mission, their social ends – retribution and crime control. Prisons achieve, or are supposed to achieve, a substantive outcome. This outcome is important to society.

The position we ultimately take is much more in line with the second stance. However, it is important to emphasize that because prison growth can achieve something substantively important, it does not follow that such gains are always achieved. There may be a threshold beyond which more prisons yield minimal crime reductions, and possibly even more crime. Thus, it is an empirical question whether we currently use incarceration in a way that is effective. There is a small literature (in economics, sociology, and policy analysis) that takes such an empirical approach. We address this empirical question in Chapter 3.

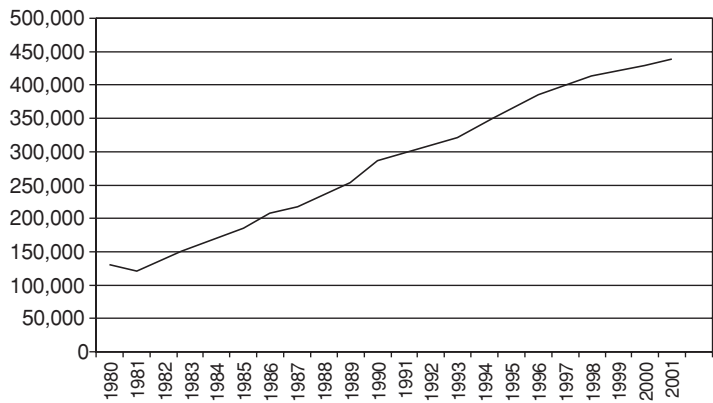


Figure 1.1. Prison employees, 1980–2001. *Source: Corrections Yearbook*, South Salem, NY, and Middletown, CT: Criminal Justice Institute, annually, 1980–2002.

BUILDUP AS BIG GOVERNMENT AND FAILED GOVERNMENT

The prison buildup is sometimes described as adding more prison beds. This is a shorthand term for more recreation yards and infirmaries, custody and treatment staff, visiting rooms and educational programs, food preparation facilities and guard towers, wardens and associate wardens, and sheets and towels – in short, the components that differentiate a fully functioning prison from a mere dormitory or housing unit. “More beds” imposes ever-greater demands on the public fisc and requires more government employees. It also raises questions of governance: can a mass of inmates be governed without an organizational collapse? Should we anticipate high rates of violence and rebellion?

Big Government

In 1979, there were 855 state and federal adult correctional prisons. By 2000, the number of prisons had almost doubled to 1,668.¹³ More prisons, of course, require more public funds to build and operate them and more government employees to staff them. Figure 1.1 shows the growth in prison employees, from 121,000 in 1981 to 440,000 in 2001. The money side is shown in Table 1.1. In 1980, states spent \$7.2 billion

TABLE 1.1. *Federal and State Prison Expenditures**

Year	Expenditures, state prisons in \$1,000s	Expenditures, federal prisons in \$1,000s	State and federal prisons' cost per resident (\$)
1980	7,197,338	715,300	32
1981	8,180,148	704,500	35
1982	8,185,889	800,440	35
1983	8,978,005	883,050	38
1984	10,152,592	873,250	42
1985	11,393,521	1,024,820	52
1986	11,718,582	978,020	53
1987	12,461,390	1,365,210	57
1988	14,265,336	1,559,580	64
1989	15,681,836	2,201,650	72
1990	17,505,068	3,589,700	85
1991	19,226,855	2,258,630	85
1992	19,404,816	2,663,450	87
1993	19,723,011	2,612,370	87
1994	21,417,090	2,665,870	93
1995	23,627,083	3,015,040	101
1996	24,029,310	3,250,750	103
1997	25,059,538	3,510,890	107
1998	26,120,090	3,363,330	109
1999	27,182,280	3,505,900	113
2000	27,569,391	3,769,630	111
2001	29,491,268	4,303,500	119

* Inflation adjusted to 2001 constant dollars, using the consumer price index.
Source: State data, 1980–1985, *State Government Finances*, various years (Washington, DC: Bureau of Census); 1986–2001, James J. Stephen, *State Prison Expenditures, 2001* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2001). Federal data, U.S. Department of Justice, “Budget Trend Data 1975 through the President’s 2003 Request to the Congress,” Table, Federal Prison System Budget, 1975–2003, www.usdoj.gov/jmd/budgetsummary/btd/1975-2002/btdo2tocpg.htm.

on prisons, and the federal government spent \$715 million (in 2000 dollars). In 2001, states spent \$29 billion on prisons, and the federal government spent \$4.3 billion.¹⁴ If we combine federal and state prison expenditures, prison spending for each U.S. resident increased from \$32 in 1980 to \$119 in 2001.

These figures point in one direction – “big government” becoming bigger. Or do they? The proper yardstick to measure the “size” of government is less obvious than it might first appear.¹⁵ Consider the

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growth of the U.S. Postal Service (USPS), which employs almost one-third of the federal civilian labor force.¹⁶ Since the early 1970s, the USPS increased from 740,000 employees to 850,000 employees – a 15% increase. Yet the volume of mail delivered more than doubled during this period. Also, the USPS began to generate a hefty profit (on the order of \$400 million per year), while decreasing average delivery time. If one's agenda is to trim the size of big government, one could say that the USPS was part of the problem (an increase in the number of employees) or part of the solution (a decreasing ratio of employees to mail delivered, operating in the black, quicker service). The embarrassment of more postal employees in a period of less government is superficial. What about correctional buildup?

This question loops us back to where we started – the issue of the optimal scope of government depends at least in part on whether one accepts the legitimacy of this or that governmental effort. Only the most rigid anti-big government advocate would object to the employment of more USPS employees when asked to deliver more mail. Likewise, only the most dogmatic anti-big government advocate would object to more correctional workers, if this would cause a large decline in the crime rate. If one really believes that one will see substantial crime reduction with more prisons, then increasing size may not be hard to swallow – even for the anti-big government advocate. However, if the prison buildup is all folly, then the buildup is but another instance of the state overstepping its mandate. There is nothing illogical about wanting to trim the size of government, in the belief that doing so is vital to economic prosperity, while granting exceptions. Perhaps corrections should be an exception.

Privatization as an Antidote to Big Government?

Some researchers in the field of policy studies draw a distinction between the provision of government services and bearing the cost. From this perspective, privately provided corrections services, although paid for by state and federal governments, would not be criticized as “big government” because little government bureaucracy would be involved.¹⁷ Despite years of interest in privatization as a means to save costs, this movement has not led to a substantial private prison sector. There has been a dramatic increase in private provision

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of particular services such as health care, education, and food services, much as in other parts of the economy.¹⁸ However, the direct provision of custodial control is largely the province of government. Currently, 6.7% of all inmates are held in privately operated facilities. Furthermore, the growth of private prisons appears to have reached a plateau and may not expand beyond its current small share of the correctional market.¹⁹ The proportion of inmates in private facilities grew modestly between 2000 and 2005, from 6.5% to 6.7% of all inmates.²⁰

To take the issue a bit further, some observers have argued that the impact of the privatization on public corrections cannot be measured by size alone because private prisons force public corrections to achieve greater efficiency. Correctional employees and managers, it is argued, respond to the challenge of private prisons, “whether from fear of being privatized themselves, or pride in showing that they can compete, or from being compared by higher authority.”²¹ There may be something to this. A recent study examined the possibility that states adopting private facilities will experience a reduction in the costs of their *public* facilities.²² The data were collected for the period 1999–2001. At least for this period, states with private prisons (thirty states) experienced lower rates of growth in expenditures per inmate for their public prisoners than states without private prisons (nineteen states, one state with missing data). Privatization then may be a counterforce to big governmental bureaucracy and inefficiency. It remains an open question whether the existence of private prisons will have this effect in the future. The shock toward greater efficiency may be one time only, occurring just in the period studied or thereabouts. Our main point is that privatization does not solve the big government issue, although it may help at the margins.²³

Failed Government?

Much of the debate of modern politics concerns the scope of government. Conservatives favor smaller government, lower taxes, and less government regulation and intervention into daily lives, in the belief that restraining public entitlements and subsidies is crucial to economic prosperity. Liberals advocate larger government, higher taxes, greater regulation, and a more generous safety net, in the belief

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that society must help those who struggle in the open marketplace. Recently, a number of scholars, including Frances Fukuyama and Peter Evans, have argued that our preoccupation with the scope of government has given short shrift to a second dimension of state power, its strength.²⁴ *Scope* refers to the range of governmental activities undertaken and the resources applied to them. *Strength* refers to the ability of a state to execute policies effectively and without massive resistance. Fukuyama states that, based on the evidence, “strength of state institutions is more important in a broad sense than scope of state function.”²⁵ Large or small is less crucial than how, and how well, state institutions are led and managed.

Critics of the buildup argue that prisons on a mass scale are unworkable. They will become tense, dangerous, and too weak to prevent high rates of individual and collective violence. Prisons, under mass incarceration, will resemble “failed states.” Yet the critics have not given this worrisome forecast the simplest empirical test. We are far enough down the buildup road to test their prediction. We do this in Chapter 4.

THE SORTING MACHINE

Metaphorically speaking, the justice system operates like a giant sorting machine that distributes offenders into four main forms of correctional supervision.²⁶ Both *probation* and *parole* are community-based sanctions, in the sense that offenders reside in the community rather than in a correctional facility.²⁷ *Probation* is a court-ordered sanction, which serves as the main alternative to incarceration. Typically, probationers are required to comply with specific rules of conduct. If the offender violates those rules, or if she or he commits a new offense, this may result in tighter restrictions or incarceration. *Parole* is correctional supervision for offenders after they have served some time behind bars. As with probation, if the parole term does not go well, the offender may be (in this instance) reincarcerated. *Jail* confines defendants awaiting and during trial, offenders who have been sentenced to a term of 1 year or less, and offenders waiting transfer to state or federal prison after conviction. *Prison* confines inmates to a correctional facility, normally to serve a sentence of 1 year or more.

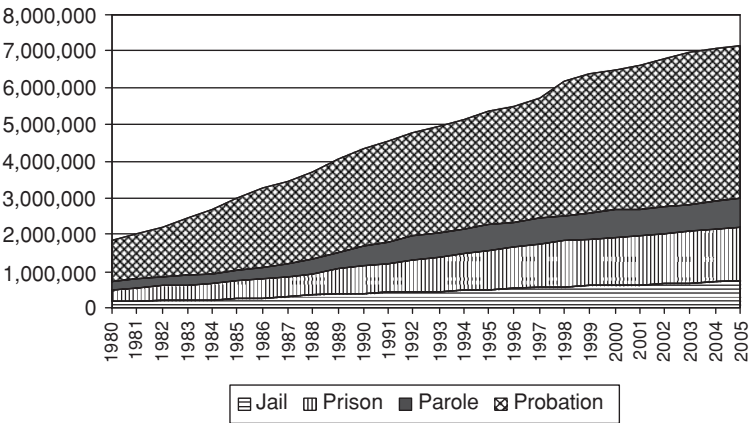


Figure 1.2. Correctional populations, 1980–2005. *Source:* “Number of Persons under Correctional Supervision” (Washington, DC: Bureau of Justice Statistics), www.ojp.usdoj.gov/bjs/glance/tables/corr2tab.htm.

How much sorting goes on? Consider the following. In 2004, there were 13.9 million arrests for crimes.²⁸ Of these, 2.2 million were charged with a serious violent crime (murder, forcible rape, robbery, and aggravated assault) or a serious property crime (burglary, larceny-theft, motor vehicle theft, and arson). For those charged with a felony, 68% were convicted, 25% were not convicted, and the remaining 9% received another disposition (e.g., diversion).²⁹ Some (unknown) portion of those convicted was innocent – the sorting was harmfully defective. Of those convicted of a felony, 32% were sentenced to prison, 40% were sentenced to jail, 25% were sentenced to probation, and the remaining 3% were sentenced to other sanctions (e.g., fine, community service, restitution, treatment).³⁰

Figure 1.2 shows the end product of the sorting, as measured by the number of persons assigned to each of the big four. Several facts about correctional supervision in the United States become apparent. The first is overall growth. At year-end 1980, there were 1.8 million offenders serving sentences under one form or another of correctional supervision. By year-end 2005, there were more than 7 million offenders under correctional supervision. In 1980, 0.8% of the U.S. population was under some form of correctional supervision. In 2005, 2.4% of the U.S. population was under correctional supervision. Second,