

Responsible Prison Reform

Eli Lehrer

OVER THE PAST FEW DECADES, the United States has witnessed an enormous increase in the number of people in jail and in prison. As a response to surging crime rates in the 1960s and '70s, the nation got “tough on crime” — stepping up policing, increasing arrests, and lengthening sentences — producing hordes of new inmates. In 1979, around the time that imprisonment rates began their sharp uptick, the Bureau of Justice Statistics reported that 314,000 people sat behind bars in the United States. As of mid-2013, that number stood at about 2 million. Today, the United States has roughly 5% of the world’s population and nearly a quarter of its inmates.

The evidence shows that this mass incarceration has performed more or less as advertised. By any measure, nearly every neighborhood, city, and state in the United States has become safer over the past two decades. Crime rates in many categories are at less than half of their all-time highs. But the costs of incarceration — both financial and societal — are also becoming increasingly clear. The policies that were appropriate for a nation that had one of the highest crime rates among developed Western countries are not necessarily appropriate for a nation that now has one of the lowest.

Just as conservatives once led the way toward the tougher sentencing rules and other policies that increased imprisonment rates, they should lead the way in sensibly shrinking the prison population. Reform of America’s correctional system does not require abandoning a single conservative principle or returning to disproven and, frankly, disastrous policies that blamed society as a whole for crime and resulted in too few people held accountable for their misdeeds. In fact, somewhat paradoxically, an increased emphasis on individual responsibility — which

ELI LEHRER is the co-founder and president of R Street.

earlier prompted the move toward mass incarceration—also holds promise for a new conservative agenda for prison reform. Combined with a renewed emphasis on effective punishment, increased attention to circumstances within jailhouse walls, and a different social attitude toward ex-offenders, these sound, time-tested principles can shape the new vision for prison reform that America urgently needs.

CRIME AND PUNISHMENT

To a large extent, the modern American correctional system and its policy of mass incarceration represent the triumph of theories that hold individuals, rather than society, responsible for crime. This view is now so widely embraced that almost no political leader disputes it publicly. But its simple emphasis on locking people up is very costly, both in fiscal and in human terms.

Before examining this dominant view, it is necessary to consider the alternative. During much of the latter half of the 20th century, most of the American left subscribed to the notion that society as a whole is responsible for crime and that individuals commit crimes because of social deprivation or prejudice. Though this view is now derided by conservatives and many modern liberals, it does not lack for appeal or factual grounding.

Briefly, the social theory of crime postulates that crime results from unfortunate social circumstances that few are able to overcome. This view also holds that the actual apparatus of the criminal-justice system—police, prisons, and courts—does little to diminish crime. Rather, the best way to reduce crime is to address the underlying social problems that are crime’s “root causes.” As members of the 1967 Presidential Commission on Law Enforcement and the Administration of Criminal Justice put it: “Warring on poverty, inadequate housing and unemployment, is warring on crime.”

Strong adherents of the social theory of crime had little use for the four classic functions of the corrections system—deterrence, incapacitation, retribution, and rehabilitation—that scholars in the field had long emphasized. Imprisonment was needed to incapacitate the truly dangerous, of course, but that did not describe most criminals. Punishing people for the harm they inflicted on society was seen as a barbaric practice, since society itself was responsible for crime. Insofar as the justice system offered answers, it was to rehabilitate criminals through

schooling, counseling, and labor. Moreover, critics asserted, the justice system was terribly prejudiced against African-Americans and other minority groups.

While the position that society causes crime is quickly dismissed today, even in left-of-center circles, it actually has a fair amount of evidentiary support. Children who grow up in homes without two parents, whose parents are not closely attached to the work force, and who drop out of school are much more likely to commit crimes than are those raised in more stable environments.

Furthermore, for a long period of time in much of the country, the justice system *was* clearly prejudiced. As William Stuntz documented in his 2011 book, *The Collapse of American Criminal Justice*, the criminal “justice” system of the Jim Crow South was, in many respects, a cause of crime itself. Under Jim Crow, most common crime in African-American areas was simply ignored, but the system actively worked to facilitate lawlessness in the form of lynching, police riots, and outright abuse of anyone who threatened the racist status quo.

Ultimately, however, public-sector efforts to combat crime by alleviating social problems failed. Significant increases in the size and scope of the welfare state and large drops in the poverty rate correlated closely with *increases* in crime (partly, of course, because some social programs exacerbated the very social pathologies they were intended to cure). Efforts to rehabilitate inmates within prison walls likewise failed so dismally that, writing in *The Public Interest* in 1974, criminologist Robert Martinson concluded that nothing, or almost nothing, worked.

Furthermore, while crime in black communities was almost certainly not measured accurately in the Jim Crow South, there is no evidence that greater racial tolerance after the civil-rights era corresponded with decreases in the rates of most categories of crime committed by blacks. In fact, reported statistics indicate that those rates soared between the 1950s and 1960s as the civil-rights movement won its major legislative victories. Efforts to blame society for crime and to focus on rehabilitation thus failed dismally.

THE WAR ON CRIME

As consensus around the social view of crime collapsed, an individual view of criminal justice was left as policymakers’ most promising option. Since most people, even those from deprived backgrounds, do

manage to obey the law and avoid wrongdoing, this individual-centered view holds that criminals commit crimes largely because of internal moral failings. Social inequities exist, of course, but they do not cause or excuse crime.

The individual-responsibility view proposes that all four classic purposes of the criminal-justice system should be reflected in the law. First, the risk of punishment deters weak-willed people from committing crime. Second, locking people up provides a near-certain method of incapacitation, as criminals behind bars cannot prey on society. Third, incarceration is an effective punishment in that it excludes people from society, denies them most choices, and forces them to live for years in unpleasant surroundings. Finally, rehabilitation—drug treatment, literacy classes, and so forth—stands the best chance of success if it is compulsory, which further recommends incarceration.

Although the individual view of crime was typically held by people on the political right—many of whom were skeptical of government efforts to remedy social inequality, some of whom were skeptical of certain elements of civil-rights legislation, and at least a few of whom were racially bigoted—it also came in time to be embraced by some political liberals, just as the social view had been by some conservatives.

Tom Bethell's 1989 *Washington Monthly* cover story "Criminals Belong in Jail," for instance, signaled a period in which liberals began embracing the individual view of criminal justice just as strongly as conservatives ever had. Along with other liberal lawmakers, then-senator Joe Biden helped President Ronald Reagan enact major legislation related to the "War on Drugs." He later helped Bill Clinton spend billions of federal dollars on hiring more police and building more prisons.

At the same time, a longstanding system of "indeterminate sentencing," which gave judges and parole boards significant freedom to shorten sentences, found itself replaced with a more mechanistic system. Statutory sentencing guidelines increasingly specified minimum time behind bars for a wide variety of specific crimes, and "good time" systems replaced parole boards with formulas that reduced sentences by a set amount for each day inmates stayed out of trouble. The strategy was widely credited with increasing sentence length.

Judged by its intended results, the strategy of locking more people up plainly worked. Crime rates started dropping in the early 1990s and have fallen almost every year since. While new policing tactics,

demographics, and cultural trends certainly contributed to the decline, there is no doubt that mass incarceration did as well. Social scientists have estimated that around 25% of the reduction in crime can be attributed to increases in incarceration. Only improved policing can plausibly claim as large a contribution to the long and ongoing drop in crime.

The benefits of this decline also manifested themselves in the plunging costs of crime to society. The most recent systematic effort to calculate the costs of crime, published in *Drug and Alcohol Dependence* in 2010, concluded that each murder costs society nearly \$9 million, each rape more than \$240,000, and even simple motor-vehicle thefts more than \$10,000 each. As such, preventing even a few crimes can be well worth the financial costs of incarceration, since a single convict might commit dozens of crimes in a year.

As the societal costs of crime have fallen, criminal justice has diminished as a public concern. The most recent Gallup poll asking people about the leading issues facing the country found that fewer than 2% of respondents cited crime. In the 1990s, as many as half did. Even if one includes Gallup responses to a variety of tangential issues—school shootings, guns, and the like—fewer than 10% of Americans consider crime to be a top agenda item. While crime-reduction policies played a significant role in every presidential election from 1960 to 1996, in the 2012 presidential contest, Barack Obama and Mitt Romney never so much as mentioned crime in any one of their debates or in their nomination-acceptance speeches.

Without question, this indifference stems from the fact that crime rates today are much lower than they have been historically. The Uniform Crime Reports issued by the Federal Bureau of Investigations show a nearly consistent drop in overall crime from the 1990s until today. The telephone polls conducted by the Bureau of Justice Statistics to survey crime victimization show an even longer-running decline, dating all the way back to the 1970s. Although differences in legal standards and definitions make exact comparisons difficult, gross crime rates in the United States (a measure dominated by assaults and property crimes) are *lower* than they are in other sizable Western countries. Relative to Londoners, for example, New Yorkers are half as likely to have their cars stolen or to face serious assaults.

Of course, crime remains a major problem in some areas. It is still a leading political issue in a handful of large cities, such as Detroit. Local

television news programs, operating under the banner “if it bleeds it leads,” still make much hay of grisly crimes. Furthermore, America’s murder rate—bolstered by the cutthroat nature of the drug trade, the easy availability of handguns to criminals, and a variety of cultural factors—remains among the highest in the developed world. And while overall crime rates are generally lower in the United States than they are in Europe, wealthy Asian democracies like Japan and Taiwan enjoy crime rates far lower than America’s.

Still, for most Americans most of the time, crime simply isn’t a major problem any longer. Growing incarceration rates have both coincided with and been a cause of this significant shift.

THE COSTS OF INCARCERATION

Effective though mass incarceration is, however, the strategy is not without its costs. These costs can be measured in fiscal terms, in the failure of imprisonment to prevent certain repeat behavior, in the impact of incarceration on certain communities, and in the tension between high incarceration rates and democratic values.

The financial costs of large-scale incarceration are immense. Housing an inmate for a year costs anywhere from \$10,000 for a low-security inmate in a state where corrections officers are paid modestly to more than \$100,000 for maximum-security inmates in states with high prison-guard salaries. Nationwide, the Bureau of Justice Statistics estimated total spending on prisons and jails in 2010 to be nearly \$50 billion, or nearly \$500 a year for every American household.

But these costs represent only the tip of the iceberg. Removing 2 million people from the labor force causes dislocations of all sorts. People in prison and jail have a difficult time maintaining personal relationships. This contributes to large numbers of children growing up in single-parent homes, or without any parents at all—which, in turn, correlates strongly with more of those children turning to crime.

The policy of large-scale incarceration has also failed to demonstrate lasting success in the area of rehabilitation. Although recidivism has declined slightly in recent years, thanks in part to new re-entry programs, most studies show that about 40% of people who are released from prison will be re-arrested within three years. Despite concerted efforts and millions of dollars in public spending, recidivism rates barely declined during the 2000s. Since vastly more people are serving time

behind bars, this pattern of high recidivism suggests that prisons are fostering even more criminality.

The costs of incarceration also fall particularly heavily on the black community. Contrary to some conventional wisdom, there is evidence to suggest that blacks who are convicted of crimes actually get treated slightly *more* leniently in sentencing than their white counterparts. Black murderers, for example, are less likely to face the death penalty than white killers are. Nevertheless, while African-Americans comprise about 13% of the population, they make up nearly 40% of this country's inmates. A 2013 report from the U.S. Sentencing Commission did find that black federal offenders serve longer sentences than their white counterparts. And while crime rates in black communities have actually declined at a faster rate than they have among other communities, crime figures among African-Americans still remain much higher than the numbers for other groups. While this means that the benefits of reduced crime accrue disproportionately to blacks, it means the social costs of incarceration, too, are felt most intensely in African-American communities.

Finally, while punishing the truly dangerous is a mark of civilization, it is clear that there is something deeply hypocritical about a country that claims to prize freedom having the world's highest incarceration rate. The irony becomes stronger when one realizes that at least some prisons and jails are not only unpleasant, but frankly torturous. Prison rape is the most notorious abuse, but other problems that have reached near-epidemic levels include drug-dealing conspiracies involving both inmates and guards (such as the one exposed this spring at the Baltimore City Detention Center) and the tacit approval by prison administrators of gangs' abuse of unruly inmates.

Policymakers thus face a paradox: Locking up lots of people has contributed to a significant drop in crime that, at least from a political perspective, has helped to "solve" a once-major social problem. But incarceration is overused, expensive, and offensive to democratic values. Simply opening the prisons and releasing many people who have been convicted of crimes, however, would almost certainly return crime rates to intolerably high levels.

This leaves another course of action: reform that emphasizes individual responsibility and continues to use incarceration as an important policy tool, but that changes the frequency and length of prison

stays and vastly improves the circumstances and conditions within prison walls.

EFFECTIVE PUNISHMENT

People who harm society should pay a price for what they have done. Forcing them to make amends achieves the goal of retribution and, in the process, should limit their ability to repeat the offending behavior. An effective system of punishment would also be intrinsically rehabilitative, dissuading the perpetrator from wanting to repeat the behavior in the first place. The current high level of recidivism suggests the justice system isn't punitive *enough*, since prisoners aren't broken of their bad habits.

A more effective system of justice requires selecting those punishments that would actually make offenders sorry for what they have done and less likely to repeat it, rather than those penalties most likely to satisfy social outrage over the offenders' actions. Options include treating prisoners' addictions, compelling work behind bars, and revising sentences to ensure they are actual punishments rather than exercises in human warehousing.

More than a quarter of prisoners have drug problems and a roughly equal (partly overlapping) group are alcoholics. Ideally, all offenders with serious drug or alcohol problems should be strongly encouraged to participate in treatment programs — consequences in terms of both sentence length and conditions of confinement should be much harsher for those who refuse treatment — and these programs should be viewed as a form of punishment. This may cost more, but it would be money well spent — particularly if sentences overall became somewhat shorter and fewer addicts became repeat offenders.

These programs should be the opposite of the plush rehab centers favored by celebrities. Prisoners should be placed in extremely spare facilities with plenty of medical support but almost nothing in the way of entertainment or “fun” until the inmates demonstrate that they have broken their bad habits.

Just as important, all able-bodied prisoners should be forced to work hard. Most people who end up in prison have not worked and do not work in the legitimate economy — by most estimates, fewer than one-third of offenders hold full-time jobs at the time of their arrests — and instead live off of criminal activity or government transfer programs.

Forcing work on inmates will end these habits and should rightly be seen as a way of making punishment more effective. The primary purpose of these jobs should not be to offset the costs of imprisonment or even to help prisoners develop job skills but, like drug treatment programs, to break the habits that landed them in prison in the first place. A major point of prison work, in other words, should be work itself.

That said, the key to making work a habit is to make work rewarding. As in the federal prison system, jobs behind bars should be paid, albeit very modestly. And while plenty of unpleasant work might be assigned to prisoners, any work assigned should accomplish some worthy end: Simply forcing prisoners to break big rocks into smaller ones is useless and sadistic. Over time, better-behaved and more productive inmates should have access to jobs that allow them to interact with employers in the non-prison economy. Prisoners who do particularly good work behind bars should have opportunities to earn market-level wages and, in some cases, move directly from prisons to jobs in the outside world.

Finally, sentences should be assigned to maximize punishment rather than to simply warehouse people. In concrete terms, this means shortening, but not eliminating, mandatory minimum sentences. Short, shocking stays behind bars sometimes can actually do more to deter future crime than long sentences. In some ways, they can be even more unpleasant.

Indeed, in all but the most violent and poorly run prisons, most inmates end up finding some sort of accommodation with prison life that makes it tolerable, if not pleasant. As such, the length of time in prison is not really a good measure of the magnitude of the punishment. In fact, a growing body of research provides evidence that existing mandatory minimums are simply too long, because imprisonment has, to borrow a medical term, a low “minimum effective dose.” In at least 13 states around the country, policies that sentence offenders to very short stays (sometimes even a single weekend) for violating parole or probation sentences, for failing a single drug test, or for similar slip-ups have had a bigger effect on recidivism than policies that tolerate multiple slip-ups before putting people behind bars for much longer periods. Particularly for non-violent offenders and people who commit minor acts of violence while using drugs and alcohol, relatively short stays away from society can serve as a shock and a strong incentive to shape up without giving them time to be drawn into the prison underworld or even forcing them to quit their jobs, if they have them.

People released into the community, furthermore, might be monitored more intensely than they are now. Rather than having ex-offenders check in with parole or probation officers periodically and take scheduled drug and alcohol tests, transition programs should increasingly involve random, unannounced home visits, subject ex-offenders to round-the-clock electronic monitoring, require them to take random drug tests, and offer them swift and certain punishment for slip-ups. Intense monitoring efforts that partner police and probation or parole officers in places like Boston and Orange County, California, that involve just these steps have achieved very good results. Such programs ought to be expanded and imitated elsewhere.

HUMANE DETENTION

To be effective and to preserve American democratic values, prisons also must be made more humane. Incarceration itself—the experience of being separated from society, friends, romantic partners, family, and freedom, particularly if enhanced with mandatory work and substance-abuse treatment—is sufficient punishment. While prisons and jails *should* be uncomfortable, there is no reason to allow inmates' suffering inside to be intolerable.

To this end, there are several reforms policymakers should pursue in order to reduce the degradation to which inmates are currently subjected. First, violence cannot be permitted behind bars. The high prevalence of sexual violence, in particular, is the most inhumane aspect of the American prison system today: Although truly reliable data on sexual crimes anywhere are hard to come by, the best estimates—generated by Cindy Struckman-Johnson of the University of South Dakota—find that as many as one in five inmates may face coerced sexual contact behind bars during their stays in prison.

After ignoring and even tacitly encouraging this abuse for a generation, the country finally started to take the problem seriously, prompting Congress to pass the Prison Rape Elimination Act in 2003. That law, which established national anti-rape standards and facilitated the collection of statistics, has helped address the scourge, but it remains a significant problem that calls for more serious policy remedies. The National Prison Rape Elimination Commission, created by the act, released a major 2009 report proposing some commonsense national standards—zero tolerance, clear reporting guidelines for

inmates — that appear to be effective in preventing sexual abuse. These need to be applied to all detention facilities.

But non-sexual violence also remains quite common, particularly in higher-security prisons. In fact, violence remains a constant threat in a great many other correctional facilities where gangs — many motivated by racial-supremacist ideologies — have enormous sway and power. Indeed, even in lower-security facilities, intimidation and terror can be common. Although extreme cases do exist, it's rare that the gangs actually “run” prisons. Instead they are given a few tacit privileges and the implicit right to use violence, including rape, against their enemies. By maintaining a suppressive atmosphere of terror, and by providing support groups of a sort for inmates, such gangs often make prisons easier to manage — which is why they are tolerated by prison administrators. Of course, prison guards' convenience is no justification for such brutality.

Instead of having to outsource the work of discipline and punishment to gang leaders, prison administrators should have more power and authority to decide inmates' treatment themselves. For such a change to be possible, however, policymakers must first reverse a number of popular — but ultimately ineffective — legislative and administrative decisions governing the operation of American prisons.

All over the country, a “get tough” attitude has resulted in removing from many prisons everything from weights to certain television and radio programs and denying prisoners access to Pell Grants. But these policies, while perhaps appealing to the voting public, are clearly counterproductive. For example, weightlifting does help prisoners bulk up, but it also reduces idleness behind bars (a clear cause of violence) and may increase self-discipline. And removing weights doesn't stop inmates from increasing their physical strength anyway. Serving inmates “green baloney” and other barely edible food — a practice that has won Maricopa County, Arizona, sheriff Joe Arpaio significant public approval — doesn't really save taxpayers any money, and may end up increasing costs when inmates become sick and require medical treatment.

The point isn't that prisoners are entitled to weights, television, or good food. The concern here, rather, is that prison officials need to be able to grant inmates *some* privileges if only so they can take them away when prisoners misbehave. Trying to legislate in minute detail exactly what prisoners should and shouldn't do ties the hands of corrections

officials and reduces their ability to discipline inmates humanely. In the end, this helps strengthen the power of prison gangs.

The second reform policymakers should consider is related. The single most important cure for violence and brutality isn't any sort of secular conditioning. Rather, it is the intervention that has most often led people throughout the world to true inner change: spiritual conversion. While the ritual practice of religion itself—Roman Catholic masses, Pentecostal healing services, Islamic Eid dinners—is respected and even encouraged in correctional facilities already, its power to change lives remains remarkably underutilized, even after more than a decade of high-level endorsement of such faith-based approaches. Because a generation of militant secularism has prevented some of history's most effective self-help ideas—those found in religious texts—from reaching the people in greatest need of them, it will be some time before we discover all the ways in which faith-based service can aid those behind bars.

Faith isn't magic, and good faith-based programs require rules, structure, resources, compassion, and demonstrated effectiveness, just as good secular programs do. While it is possible to force the otherwise unwilling to work or perhaps even study, compelling faith is neither possible nor desirable. Nonetheless, faith offers both the most important antidote to prison brutality and a true recognition of prisoners' humanity. In its best and highest forms, it can serve as the basis for restorative justice. For example, programs like the Prison Fellowship's InnerChange Freedom Initiative not only see to it that prisoners are punished but, by bringing victims and offenders together and repairing relationships, actually serve to partially undo the harm that criminals have done.

Finally, prisons should consider using new technologies that allow inmates to remain in contact with society even as they are kept physically apart from it. The internet offers prisoners the ability to interact with the outside world and maintain family relationships in a limited way that can be monitored. Many heretofore expensive materials—like educational courses and textbooks—are free on the web. Other web-based resources, such as job listings (a great many jobs are now advertised *only* online), may help speed prisoners' re-entry into society.

There are numerous web-based programs to earn a GED for free, and it is possible to earn an associate's degree online for as little as \$2,000. We are likely only a few years away from similarly inexpensive courses

being offered through the master's degree level. As Marc Levin, who runs the Right on Crime project for the Texas Public Policy Foundation, observes: "[T]he traditional model of classroom instruction is problematic [because] few prisons have enough inmates or resources to have a teacher and class at every grade level at which inmates actually function." Web-based education, on the other hand, would likely cost less than the GED and vocational programs that are now the mainstays of prison educational programs and would offer a much greater array of choices.

While it would be inappropriate to allow prisoners to play computer games or visit dating web sites, some other resources might be made available to prisoners as a reward for good behavior. If printed newspapers are allowed, why shouldn't electronic ones be as well, particularly since newspapers are now read *mostly* online? E-books, too, should be made available inside prison walls. Even a limited subset of e-books could offer prisoners a far greater selection of literary options than a typical prison library as well as real opportunities for self-improvement. Moreover, because they are all electronically searchable, they may actually be *easier* to monitor than hard-copy books.

There would naturally be challenges involved in policing the web and e-books, but those challenges would not necessarily be any greater than those involved in, say, overseeing telephone access. Like prison telephones, which are generally monitored and cost money for prisoners to use, internet resources and e-readers could be provided by private contractors, who would have to meet certain standards and could recover the cost of providing the devices by charging inmates for their use. Prison administrators could also take advantage of the many software programs that monitor internet usage and block access to certain kinds of web sites. In the end, allowing more technology inside of prisons would relieve some of the brutality and tedium of prison life, while encouraging prisoners to be productive rather than idle (and dangerous).

Prisons and jails must of course remain fundamentally punitive institutions; conditions inside should be such that almost nobody should actually *want* to go to a correctional facility except, perhaps, as a last-ditch way of breaking a substance-abuse habit. But many of America's prisons are currently brutal in ways that ought to deeply offend basic democratic sensibilities. A few simple changes could yield enormous — and, for many prisoners, life-saving — improvements.

BACK TO SOCIETY

True prison reform, however, must extend beyond prison walls and into the communities that receive convicts upon their release. In any given year, between 600,000 and 700,000 former inmates are unleashed upon society—a massive number of people to habituate to the patterns of normal life. Under the administrations of Presidents Clinton, George W. Bush, and Obama, the fates of these men and women have been studied extensively; there have also been some increases in federal support for prisoner re-entry programs, which has made a modest difference.

All federal inmates—and the great majority of longer-term state inmates—now receive specific training in how to deal with society outside of prison. In most of the country, relationships between corrections, parole, and probation officers and community mental-health professionals are stronger than they were a decade ago. Some obviously unwise practices—like releasing mentally ill prisoners late at night with only a one-day supply of psychotropic medicine—have been modified.

That said, the effect of implementing these relatively easy fixes has been fairly small. Recidivism rates have fallen by only a few percentage points. This isn't altogether surprising: As James Q. Wilson observed, changing *how* government agencies go about their work rarely results in radically different or better results. To really change things, agencies must modify *what* they do.

The overriding goal of re-entry programs has been to keep offenders from immediately committing crimes again and to equip them with the minimum funds, contacts, and skills they need in order to stand some chance of surviving outside prison. The outlook might be different, however, if these programs set out a goal of eventually fully restoring offenders' rights as citizens.

One step policymakers could take toward that goal is to restore traditional parole processes, replacing the "good time" systems that now dominate our approach to criminal justice. Under traditional parole, supervised release was offered to offenders who made genuine efforts at self-improvement. Traditional parole boards were vested with significant power and allowed to take testimony from inmates, corrections professionals, and an offender's victims before deciding how much longer a convict should spend behind bars.

In contrast, even though 34 states today have entities called “parole boards,” most oversee highly pre-determined processes that mandate the supervised release of moderately well-behaved convicts after they have served a set fraction of a sentence specified in statute. This “good time” system neither extends average sentences nor promotes better behavior.

In addition to establishing the paucity of evidence behind the claim that “good time” results in longer sentences than parole, Stanford University’s Joan Petersilia has noted that the system excludes victims’ input and fails to distinguish between those inmates who work hard to better themselves and those who do the bare minimum to receive “good time” credit. The system has essentially transformed early release from a privilege granted to the worthy into a de facto right for inmates. By returning to traditional parole, policymakers would give prisoners far stronger incentives to actually improve their behavior and break bad habits while injecting a dose of common sense into a system that, under its current mechanical sentencing practices, often lacks it.

Increasingly punitive attitudes toward prisoners, too, have made it difficult for offenders to find opportunities to straighten out their lives once they are freed from prison. The situation is not unlike that faced by Victor Hugo’s Jean Valjean, whose “yellow ticket of leave” precluded him from honest work and forced him to assume a false identity.

People who have grossly violated society’s standards should not expect their imprisonment alone to heal all wounds. With recidivism rates so high, it is also simple common sense that convicts be denied easy opportunities to offend again. Stockbrokers who defraud their clients shouldn’t expect to return to their old profession after they are released from prison.

Nonetheless, current federal and state rules take this principle of “least eligibility” to an unnecessary and counterproductive extreme, forcing all ex-offenders to go to the back of the line for almost every public benefit. Embezzlers may find it difficult to get cosmetology licenses and drunk drivers can find themselves kicked out of public housing. While it might be appropriate to withdraw costly social benefits like Pell Grants from people who commit serious crimes — or to enforce logical limitations on how close to schools registered sex offenders can live — it is difficult to justify blanket restrictions on all career choices and places of residence by virtue of one’s having been convicted of *any* crime.

As a general rule, state-granted professional licenses should be denied outright to ex-offenders only when there is a clear connection between

an offender's crime and desired career path. Someone with a drug conviction, for instance, should probably not be allowed to work as a pharmacist. But further restrictions serve little purpose: The possibility that one might someday be denied a plumber's license is extremely unlikely to deter crime. A more measured approach that restored some rights to offenders would go a long way toward helping those who are able to re-enter mainstream society do so.

Finally, there should be some mechanism by which former inmates can have their offenses not only forgiven, but essentially forgotten. Those who do not offend again within three years of release are unlikely to offend again at all. Certain classes of offenders, such as those with college degrees, rarely re-offend in any case.

Traditionally, that mechanism has been the executive pardon. Through the middle of the 20th century, such forgiveness was frequently granted by governors in many states to former convicts who were well behaved. But while a few governors — most prominently Mike Huckabee of Arkansas — have made heavy use of their pardon pens in recent years, the risk of re-offense, and the accompanying political fallout that would result, have made the pardon almost entirely inaccessible to many who deserve it.

A better and more politically feasible approach — common in many other developed countries — would be to allow most offenses to be considered “spent” after a set period. Unlike those associated with juvenile offenses, the records of these crimes aren't entirely sealed; rather, they simply don't have to be disclosed or referred to in most contexts (like employment and licensing applications). In the United Kingdom, for example, ten years of exemplary behavior results in most minor offenses being “spent.”

This option would not be available for truly severe offenses (the British system doesn't apply at all to anybody who serves more than two-and-a-half years in prison). There would also need to be broad exceptions to non-disclosure rules for national- and homeland-security purposes, as well as for child-care and teaching positions. Still, by offering offenders a chance to wipe the slate clean, such a system could set a worthy, if high, goal for former prisoners to strive to reach.

A BALANCE OF JUSTICE

Locking up enormous numbers of Americans has made the country safer and largely removed crime from our political debates. But the

benefits of incarceration have also come with enormous costs to the country's finances and to our tradition of individual liberty.

Now is a good time to have a conversation about both those costs and those benefits. The breakdown of two-parent families, the decline of religious faith, and the drop in marriage rates doubtless mean that many more children will grow up in environments that have historically fostered criminal behavior. Nevertheless, individuals must be held accountable for their actions, because there is no other choice. The experiment with blaming crime on society had terrible consequences. A society that is too lenient on those who prey on the law-abiding majority is no more civilized than one that punishes offenders too harshly.

Without casting aside the ethos of individual responsibility that has led to so many Americans being locked up—and without undertaking a wholesale revision of the nation's laws—the United States can and should reduce its prison population and make conditions more humane for those who serve time behind bars. Such reforms, implemented wisely and cautiously, can mitigate the tremendous negative consequences of the explosion in the number of Americans in prison. The United States can remain safe and, simultaneously, undo much of the social damage that results from large-scale incarceration.