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End of the “Mass Imprisonment” Policy in the US? (Un)profitability of the Widespread use of Imprisonment

Abstract: Since the 1970s, the number of prisoners in the US has been increasing., but this is not due to an increase in crime as statistics during this time actually indicate a decline. America is living with the illusion that imprisonment is the cure for crime. The majority of funds from the budget, rather than being spent on education, welfare and health, goes to gigantic expansions of prisons. Legislation under which an increasing number of criminals is sentenced to longer terms of imprisonment for an even broader range of offenses has changed. Support for such a number of new prisoners consumes more and more costs, both financial and social. This realization came quite late, because only in 2011, when the financial system of California, a state which expanded its prison system the most of all the US states, broke down. Since then, the prison population of the United States has begun to decrease slightly.

Key words: mass imprisonment, punitive criminal policy, cost of imprisonment.

Criminal policy and the number of prisoners in the US

As Timothy Flanagan writes (1995, p. 11), one of the leading researchers of the issue of long-term prisoners in the US and Canada, prison has been the basic response to serious crimes in the United States for nearly two centuries. And when the effectiveness of severe penalties to change criminal behavior is consistently questioned over these 200 years, politicians have focused almost exclusively on

manipulating the speed, inevitability and severity of criminal punishment. Unfortunately, improving speed and inevitability proved difficult to implement, even unachievable, so the authors of this policy made severity a component that equalized the gaps in others, demonstrating that they are “tough on crime”.

Long-term penalties is the main reason for the explosion of the prison population in the United States since the mid-1970s. The dramatic and unprecedented increase in the number of prisoners in state and federal prisons throughout this period, was caused by both the growing number of those sentenced to imprisonment in relation to those sentenced to non-isolation punishment as well as by extending prison sentences (Chapman 1985, p. 31). The legislation “reforms”, as Flanagan calls them sarcastically, such as mandatory sentences, the law on recidivism or tougher penalties for crimes related to arms and drug trafficking, inflated the prison population to historic proportions. As a result, prisons became a segment of the fastest growing spending of the US government since the early 1980s (Gold 1991, p. 22).

The decade of the 70s in America was witness to a growing prison population, and as some predicted accurately (e.g. Blumstein, Kadane 1983, p. 3), this trend would continue for many years. The vast majority of prisoners carried out and carry out such long prison sentences that even after leniency for good behavior or parole, they still have a significant time in isolation ahead of them (US Department of Justice 1981). In addition, there are reasons to believe that the population of prisoners is increasing at a faster rate than the number of short-term prisoners. This disproportionate increase may be the result of what Flanagan complained about, namely the legislative changes which, according to MacKenzie and Goodstein, strive to simply remove from public entities with a rich criminal history for increasingly longer periods (MacKenzie and Goodstein 1995, p. 34).

Research conducted in 1983 by the *National Council on Crime and Delinquency* revealed that laws imposing a mandatory minimum sentence of imprisonment for those convicted of a number of serious violations of the law were introduced in almost all of the US states. If the defendant is convicted under these laws, the judges do not have a choice but to impose a prison sentence upon him, and it often exceeds 5 years. The crimes for which he receives this mandatory sentence can generally be divided into four broad categories: violent crime, recidivism crime, drug-related crimes and the use or unlawful possession of firearm (Bureau of Justice Statistics 1983).

Other laws have been clearly written to neutralize those committing serious crimes – with a rich a record of convictions or committing a felony – by imposing on them significantly longer prison sentences. For example, legislative reforms in Minnesota (*Minnesota Sentencing Guidelines and Commentary* 1980), Pennsylvania (*Pennsylvania Commission on Sentencing* 1982) and North Carolina (Clark 1984) were adopted for a specific purpose – to keep serious criminals in prison for much longer than was customary until now.

Legislation imposing mandatory minimum penalties for offenders convicted of a number of serious crimes such as rape, have been approved in many other states, including Illinois, Connecticut and Pennsylvania. Other legislation – for example, the aforementioned law of Minnesota – were, according to MacKenzie and Goodstein, clearly written for higher penalties of imprisonment for repeat offenders (*Minnesota Sentencing Guidelines and Commentary* 1980).

Not only a greater number of defendants are being convicted for longer sentences since the new laws have been enforced, but also a broader scope of cases has begun to be handled through the new conditions. For example, in the new law adopted in Connecticut, a convicted defendant for first degree assault or for first degree burglary, must receive a mandatory sentence of minimum 5 years of imprisonment, but he may serve even up to 20 years. In addition, the convicted defendant, for violation of law twice, is classified as a *persistent dangerous offender*, and is judged as a Class A perpetrator, which automatically determines the sentence from 10 to 25 years (Goodstein et al. 1984, p. 21). Under the previous law, many of these offenders received lower sentences. The same process – sentencing more and more people for an increasingly broader range of offenses for increasingly longer prison terms – takes place together with the reforms the law in subsequent US states (Cooper et al. 1982, p. 11). Indeed, in his study, Shane-Dubov (1984) shows how for over 10 years (1974–1984) the reform of criminal law in all US states, as many as 33 increased punishment for prisoners returning to crime, while no state reduced the regulations for these offenders.

The aforementioned changes in legislation have begun or have contributed significantly to the increase in the number of prisoners in the United States. These are not the only changes (for the record, the law "Three strikes and you are out" should be mentioned, popular mostly in California, but not only, by virtue of which a third conviction for any criminal offense, automatically means receiving long-term punishment, life imprisonment included), many of them followed later, but there is no need to recall them in detail. It is important that in the US they have led to global leadership in the so-called prisonization factor (716 prisoners per 100 thousand inhabitants in 2011 – Subramanian, Shames 2013, p. 2), doubled the number admitted each year to serve a sentence (the ratio of the year 1980 to 2000; Ruddell 2004, p. 76) and caused its considerable elongation (Sabol 1999, p. 2). It all meant that the population of prisoners in the US in 2009 reached the number of 2.3 million (including state and federal prisons, detention centers and private prisons) (*Bureau of Justice Statistics* 2013).

The financial consequences

The number of long-term prisoners, who in 2007 served a penalty of at least twenty years of imprisonment, was more than 310 thousand. (Cole and Smith

2008, p. 11). According to data from 2012, nearly 160 thousand prisoners in the United States served life imprisonment (every ninth prisoner), including nearly 50 thousand without the possibility of parole (this value increased from 40 thousand in 2008) (Nellis 2013, p. 8). Among the latter, 3.2 thousand served their penalty for a crime unrelated to the use of violence (Pilkington 2013, p. 2).

According to the calculations by Flanagan (1995, p. 7), a prisoner sentenced to a minimum of 25 years – assuming the cost of his stay at 15 thousand dollars a year, and this, as the author argues, is not too inflated an estimate for a maximum-security prison – will cost the budget 375 thousand dollars over this period (not including the cost of designing and building the prison). The “standard” prison for American conditions, having 2,200 places, filled with such prisoners, will generate over these 25 years a total cost of about 825 million dollars. In this way, according to Flanagan, long-term imprisonment is a major investment in America, absorbing finances and human resources.

Of course, one may not agree with such a calculation, because we do not know its precise methodology. In Poland, the monthly cost of maintaining one prisoner is calculated on the basis of total expenditure on the prison system in a given year divided by the number of prisoners, which has no relation to the actual attributable costs or in other words: “consumed” directly by one prisoner. It does not change the fact that this prisoner does not live in a vacuum, and the cost of the salaries of guards and educators or for supporting a prisoner are costs that must actually be incurred. According to Zbigniew Lasocik, as he writes about the costs of maintaining prisoners in the US, according to calculations based on official data, the maintenance of a young prisoner who has been sentenced to life imprisonment costs an average of 20 thousand dollars per year, which, with a population of 160 thousand, gives a national sum of 3.2 billion dollars a year. However, as the author further writes, it should be taken into account that with the passage of time, the maintenance of such a prisoner grows – the cost of a year’s stay in prison of an older person serving a sentence of long-term imprisonment, is approx. 70 thousand dollars. The average total cost of maintaining a prisoner sentenced to life imprisonment, calculated by the Americans, is 1 million dollars. Later, the author writes that when you try to calculate this unit cost, you must consider the following circumstances: the perpetrators of serious crimes are relatively young people, and therefore staying in prison for a relatively long period – the average period of serving a sentence of life imprisonment is relatively long, a certain part of those sentenced to this punishment will never leave prison, and the average age of a prisoner only slightly differs from the average life achieved outside the prison (Lasocik 2006, p. 112).

You could say that this is a significant cost, but it must be incurred, because that is what justice requires. It turns out that this is not so obvious. The growing prison population in the US was accompanied by a decrease in crime, the most serious at that, resulting in the placement in prison for a long-term sentence.

Between 1990 and 2000, the number of homicides decreased by 39%, rape by 41%, robberies by 44%, eligible attacks by 24%, burglaries by 41%, car theft by 37%, and common thefts by 23% (Krajewski 2007, p . 45). According to statistics available on FBI's¹ website, between 2004 and 2013 there was a further decline in the number of crimes: violent crimes (total) by 14.5%, homicides by 18.3%, rapes by 16.1%, robberies by 14.1%, burglaries by 10.1%, car thefts by 43.5%. One may ask if all those who during this time received a severe long-term sentence definitely deserved it. Probably in many cases it was neither justified nor just. It was dictated only by conducting a very punitive criminal policy, which was not based on high crime. Many authors, including Krzysztof Krajewski, believe that the Americans let themselves be seduced by the idea of the beneficial effects of the broad and strict use of prison as a universal panacea for crime. Although, after the famous work of Robert Martinson (1974) they do not believe in social rehabilitation, they believe deeply in its deterrent and preventive function. Let's consider, however, whether even from a purely financial point of view, such a procedure is beneficial for society (because we can assume that the Americans, as a nation boasting its pragmatism, concluded that, although closing so many citizens in prisons for so long is unjust, then as a whole, it pays off for society, because for various reasons it brings financial benefits to this society; here we assume a clearly higher rationality of this type of action, the existence of which we do not know).

Steven Levitt, cited by Krajewski, believes that prison is effective also financially. On the basis of his own calculations, he argues that imprisonment reduces the financial costs of crime, because its costs are lower than the costs of the crimes that are prevented. In his opinion, embedding one person in prison prevents the occurrence of crime costs amounting to almost 54 thousand dollars in a year. In the mid-1990s, so when Levitt wrote his article, the cost of maintaining a prisoner in prison was estimated at 24–35 thousand dollars (and so these were different numbers), depending on the condition, type of facility, etc., so it was a profit of about 19–30 thousand dollars. This would mean that investments in prisons in fact bring measurable economic profits. As Krajewski continues to write, many authors argue that the way these calculations are made is a huge simplification. While the calculation of material losses caused by crimes against property is relatively easier (which does not mean easy, as the author notes), then estimating the losses caused by bodily injury, damage to health, suffering associated with victimization, etc., is much more difficult. To calculate them, Levitt used the average amount of compensations awarded by American juries in civil lawsuits for damages to health due to bodily injury caused in all kinds of accidents, which he then extrapolated for damages resulting from violent crimes. He was accused that

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¹ www.fbi.gov

such compensations are awarded by juries only in serious cases, while the rest of the cases end in settlements. Therefore, the compensations awarded by juries cannot be the basis for estimating indirect costs of an average offense. Krajewski concludes that there has been a dramatic overstatement of indirect costs of crime, and therefore it has come to the unjustified demonstration that prison “pays off” in economic terms (Krajewski 2007, p. 48–50).

Perhaps the state of California learned this most painfully. Since 1977, the prison population has increased there by 850% (Lasocik 2006, p. 43), and currently amounts to 140 thousand people (*Bureau of Justice Statistics* 2014). To accommodate it, 23 new prisons have been built for a price from 280 to 350 million dollars each. Despite this, overcrowding there reached from 139% to 249%, which caused that in 2011 the US Supreme Court ordered the release of nearly 34 thousand inmates over the next two years, recognizing that such huge overcrowding violates the eighth amendment to the constitution prohibiting cruel or inhuman treatment (Moore 2009, p. 1). The financial system of the prison system of California suffered a collapse, leading to a bankruptcy of the whole state (Węglarczyk 2011, p. 3). The already mentioned “three strikes and you are out” law can be regarded as one of the factors responsible for this (Lasocik 2006, p. 44). Expansion of the prison system in California has reached such a level that it was begun to say: “California’s problem is not a high crime rate, but too frequent reliance upon the penalty of imprisonment” (Medina 2013, p. 2).

Locating a prison in small towns (which took place in California) does not always give measurable financial benefits for them. The turnover of restaurants and petrol stations increase, but other sectors suffer as a result. Owners of small shops complain that prison staff do not shop in the stores located near the gates of the prison. As a rule, these workers are paid well and live far away from the walls of the prison. Another downside to the neighborhood is the falling prices of real estate located nearby (Samuels 2010, p. 3).

The social consequences

Still in terms of financial costs, Rick Ruddell, presents far more reaching consequences for society which come with the “mass imprisonment” policy. In his opinion, an unprecedented increase in the prison budget of the US has forced a reduction of expenditure on health, education and social programs. He gives the state of Maryland as an example, where there are more people in prisons than there are in state colleges and, of course, California, where from 1984 to 1994, the prison budget increased by 209%, while for state universities – during the same period – by 15% (Schiraldi 1998, p. 29). According to Bauer and Owens, from 1977 to 2001, spending on the prison system from the budget increased by 1,101%. At the same time, expenditures for other sectors financed from the budget in-

creased as follows: hospitals and health care – 482%, education – 448% debt service – 543%, social protection – 617% (Bauer, Owens 2004, p. 31). Therefore, Ruddell raises the question: if the true sources of crime are associated with family dysfunction, substance abuse, poor education and a bad financial situation of families, is the money spent on prisons really a good investment? (Ruddell 2004, p. 112). However, such considerations are rarely the content of government committee meetings (as provided by Irwin and Austin 2001, p. 7). "By investing in the expansion of the prison system we have fewer dollars to spend on instruments to prevent social chaos and crime. Investments in city centers, social programs or vocational training can replace the need for isolation" (Hagan, Dinovitzer 1999, p. 13).

Doris Mackenzie raises the question whether such a large prison population of the US may affect other social institutions: families, local communities and schools in the sense that as a consequence it will increase crime and social disorganization. The author writes that the family, neighborhood groups, local communities, educational institutions and labor markets provide and determine norms of behavior that keep most people away from getting involved in criminal activity. When these ties are weakened or disappear, individuals become more marginalized, and then they exhibit a greater tendency to commit crimes. These changes particularly affected the communities of young African-Americans living in urban centers. Since the beginning of the 1980s, the number of working men decreased dramatically, while the number of women taking over the role of head of the family increased. At the same time, the number of drug dealers increased, and violence inherently related with it further weakened the ties with these institutions.

As the author writes, a high prison population deepens the problems present in urban centers. In a situation where fewer family members have been in prison it did not seem to have a major impact on the local community, but if 10% of the population is in jail, and the vast majority have been there at some point in their lives, then it may have such an impact on this community that has never been seen before. The policy of "mass imprisonment" weakens the family by putting men in prison, and the remaining members are not always able to control adolescent teenagers. In addition, this policy causes that there are less bachelors in the community and more single mothers raising children on their own.

On the one hand, as MacKenzie further writes, the removal of its members from the community to prison, who commit crimes can be good for it, because they no longer commit crimes on its territory. However, the author points out that perhaps this is based on the false assumption that these criminals only "drain" the community without giving anything in return. In her opinion, even if they commit crimes, they can be useful to the community. If they are locked up in prison, it may not be possible to rebuild their positive impact after serving the sentence, because they are in prison for too long, and after returning they can simply be alienated from this community. Hence, a direct consequence of the "mass impris-

onment” policy may be that these communities will experience even greater disorganization and crime as a result (MacKenzie 2001, p. 11–13).

Conclusions

In 2012, California law reduced the “three strikes...” law, reserving a life sentence after committing a third offense only for the most serious crimes. Subsequent states began to retreat from the “three times” law and others resulting in an increase of prison population (Staples 2012, p. 1).

Since 2010, the number of prisoners in the US has been starting to decrease slightly (2010: 2,270,100 prisoners; 2011: 2,240,600; 2012: 2,228,400) (*Bureau of Justice Statistics* 2013). However, it is too early to assess whether this is a trend or a temporary fluctuation.

It seems that the only entity that has benefited from such powerful expansion of the prison system in the US was the lobby of the state’s prison system and not its community (Lubowski 2009, p. 24). It can most probably be said that it wasn’t about any higher, hidden rationality of the system.

So is there an end to the phenomenon of “mass imprisonment” in the US? Americans are a pragmatic people, so if it reaches them loud and clear that it is unprofitable, the trend can be reversed, or at least alleviated. Americans, however, are also very susceptible to penal populism, to which it has been subject for decades, and which, like any populism, is resistant to all reasonable comments and calculations. For now, attempts to unequivocally determine the direction of changes should be done very carefully.

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