

Stigma neke rase

Stigma of race

Dolores Modic¹

Povzetek

Avtorica se v delu posveča problematiki očitnega nesorazmerja med celotnim številom zapornikov in zaporniki, ki so pripadniki manjšin, v zaporih v ZDA. V prvem delu poda dejansko stanje in na kratko očrta razloge za veliko število zapornikov v ZDA v primerjavi z nekaterimi (evropskimi) državami. V nadaljevanju se posveti raziskovanju razlogov za nesorazmerno veliko število zapornikov, ki so pripadniki manjšin: zgodovinskemu ozadju, vplivu zaporniškega industrijskega kompleksa (prison industrial complex), medijskemu efektu, vlogi spremenjenih penoloških politik in spremenjene vloge socialnih politik. Nadalje raziskuje posledice na črnske skupnosti: praznjenje sosesk, povečano interpersonalno nasilje, izguba volilne pravice, zdravstvene probleme, posebej pa analizira tudi posledice za otroke in ženske. Ugotavlja, da sta celota obravnavanih razlogov in penološka politika kot taka v ZDA pripeljala do situacije, v kateri posledice nesorazmerno padajo na pripadnike manjšin.

Ključne besede: ZDA, diskriminacija, zaporniška populacija, človekove pravice, črnska skupnost

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Abstract

The author depicts the massive growth in the prison and jail population in the USA and the reasons that had led to such devastating numbers. However the average growth in the number of inmates has fallen disproportionately on the population: the African Americans are incarcerated at nearly six times the same rate and Hispanics at nearly double the rate as the white population. The author analyzes the reasons they lie behind it: historical elements and the new prison industrial complex, the changing representation of the "criminal" and the media effect, a new social scheme, the "get tough" policies and social control. Additionally the author analyzes the consequences: the empty neighborhoods and the interpersonal violence in them, the costs for children, health problems, disfranchisement from the voting process and the effects on women.

Keywords: *prison population, discrimination, USA, human rights, the black community*

Introduction

In this new era of increased securities issues, strongly enhanced with terrorism "threats", its interesting to see what are the effects on penology policies and what are the outcomes of these new revised policies.

In this paper I took a closer look at the specific situation in the USA, where the massive growth in the prison and jail population can be traced back to changed political developments and changes in the sentencing practices, which however had not started with the war on terror, but rather with another, equally

unsubstantial and everlasting war, “war on drugs”² together with mandatory minimums and the “three strikes and you are out” legislation.

However the average growth in the number of inmates has fallen disproportionately on the population: The African Americans³ are incarcerated at nearly six times the same rate and Hispanics at nearly double the rate as the white population. It is a fact, that in four decades, the ethnic composition of the US inmate population reversed, turning from 70% white during the 1950s to nearly 70% black and Latino today. The latter leads to conclusion, that the general rise of the prison population enhances the racial disparities among the prison population, which is why we will start the paper by looking at the problem of the over-representation of the black community through the prism of mass incarceration. First we shall analyze the main reasons for the mass incarceration in the US, which will later be tied to the reasons underlying the over-representation of the African Americans in prisons. The hypothesis of this paper is, that this interconnection of reasons exists. Strong emphasis is given to the prison industrial complex and the shifts in policies, although some other elements are also shown. The effects of this over-representation of the African Americans will also be analyzed.

² For a more comprehensive role of the so-called »war on drugs« and also its effect on different minority and ethnicity members see also Demuth et Steffensmeier, 2004.

³ In this paper we shall use two terms: the term African Americans and the term the black community; mostly due to the fact that the two terms are used equally often in the scientific literature and because of citation needs.

The rise of incarceration in the USA

The rate of prison incarceration in the USA has risen more than 500% since the 1970's⁴. In absolute numbers that means 2.3 million people behind bars in 2007 (West and Sabol, 2008, p. 1)⁵. The parole and probation populations now include 3.8 million persons, and more than 6 million people (3% of the adult population) are under some kind of correctional supervision (Beckett et Western, 2001, p. 43). The numbers are also stunning, if we compare them to most other Western countries (Brinc, 2000, p. 235-236), for example: Germany 87, the Netherlands 76, Italy 71, Austria 95, Slovenia 59⁶, while in the USA the number reached at yearend 2005 491 inmates per 100.000 inhabitants.

"How did the Land of the Free become the world's leading jailor?" is the question that Vince Beiser (Beiser, 2005) asked himself in his article with the same title (though of course he is not the only one (for example see also Hirst, 2000, p. 133-137). "How did this happen? How did a nation, dedicated to the principle of freedom, become the world's leading jailor? The answer has little to do with crime, but much to do with the perception of crime, and how that perception has been manipulated for political gain and financial profit." One can only

⁴ In this paper we will disregard the disparities between the states and will only focus on the national levels. The differences between federal and state prisons are also disregarded.

⁵ The number was 2.2 milion people behind bars in 2006 (Mauer et King, 2007, p. 1).

⁶ We may also note that the number of prisoners is also growing rapidly since 1992, when it was on its lowest point; at that time, the prisons were only 39,3 % full; in 2000 the number of prisoners reached the full 100% capacity of prison cells. Since then, the number has grown even more, but is, in the recent years, preaty stable at around 102%.

agree. It is true, that there was a huge shift in the perception of crime and also in the perception of the criminal. There is also a new view of looking at rehabilitation, which was accompanied by a radical social reform. A shift in the policies of law and order towards "governing through crime" occurred. Although there are more people in prisons, that does not mean less crime. In order to reduce crime for 1 % you need a 10 to 20 % increase in prison population (see also Reitz, 1996). In the States crime rates today are comparable to those of the 1970s, but the incarceration rate is four times higher than it was then. It's not crime that has increased; it's punishment. More people are now arrested for minor offenses, more arrestees are prosecuted, and more of those convicted are given lengthy sentences.

The role of the Prison industrial complex

The toll is also taken by the so-called prison industrial complex; a complicated system at the intersection of governmental and private interests. The system is seen as the »heir« of the more known military industrial complex⁷. The system »uses prisons as a solution to social, political, and economic problems /... and/ depends upon the oppressive systems of racism, classism, sexism, and homophobia.« (Critical Resistance, 2008) The term therefore refers to the criminal justice system in the USA which is defined by rapid growth and the increasing importance of private interests in criminal justice policy (Wood, 2002, p. 16). Privatization of the criminal system has been driven largely by the dominant ethos of neoliberal agenda in which a variety of traditionally public goods and services have been transferred to the (supposedly) more efficient and less corrupt private sector

⁷ The latter is contested by Parenti (Parenti, 2002, p. 30).

(Sinden, 2002, p. 39). The prison industrial complex⁸ can not »supply« itself; for that it heavily depends on the stricter sentencing policies (the get tough on criminals such as mandatory minimum sentences and repeat offender provisions (Sinden, 2002, p. 41). The rise of the prison industrial complex, the sentencing policies and the rise in the number of prisoners are heavily interconnected. Wood (Wood, 2002, p. 17-26) gives as a series of reasons for the rise of the prison industrial complex: the increased incarceration (due to stricter penalty policies and not because of more crime), increased private sector involvement (more prisoners mean more contracts for variety of private interests, traditionally involved in incarceration and more possibilities for private prisons⁹), penal regression (according to Radzinowitz the tendency of the system to »display an increasing disregard for those fundamental considerations of political, social and moral nature from which /.../ the machinery of justice in a democratic society should never be cut off« (Radzinowitz in Wood, 2002, p. 19), the »southern strategy« (which was an attempt to criminalize where possible and demonize where not; in this context we can also see the changing representation of the criminal), the rise of the aforementioned crime control theories and interestingly the economic crisis.

⁸ Just as a reminder: Privately run prisons are not a new phenomenon in the US or the Western world. Privately run jails were in operation centuries ago in medieval England. Also, today there are many countries where prisons are run privately (as reference see: Sinden, 2002)

⁹ For example the biggest company that runs prisons is the Correction Corporation of America (CCA), which is even in these financially otherwise hard times showing the increase in net income for 13, 8 % (CCA, 2008).

The role of policy making

Crime control and the virtues of penalty become, more as before, a “vital element of the political rhetoric” (Rose, 2000, p. 204). In the view of the new political landscape connected to penal policies we need to draw attention to three special characteristics: 1. the loose linkage between the symbolical and operational content of punishment laws¹⁰, 2. the zero sum supporting the rhetoric punishment proposals¹¹ and 3. the paradoxal politics of distrust in penal legislation¹² (Zimrig, 2001, p. 163-165). Zimrig sees a change in all three characteristics, which in his opinion also leads to political limits of decarceration policies (Zimrig, 2001, p. 165).

Safety is definitely the mantra of today. There is hardly a word so oftenly misused as the term safety (see also Kanduč, 2003, p. 159). The word refers mostly only to safety from criminal victimization and, in the mainstream, seldomly to the “safe enjoyment of human rights” (ibidem, p. 171). The notion of safety arises in the view of “how to protect ourselves” from those who pose a potential treat. This is also the only view in which the world of the rich is usually interested in the world of

¹⁰ According to Zimrig there are two different public purposes beeing served when criminal legislation is enacted; the first beeing the public denunciation of crime and criminals (the symbolic purpose) and the other the operational purpose of an attempt to change the operation of punishment systems. For long this linkage was a loose one, allowing the laws »to bark more than they actually bit«, but in the recent years this is beeing changed and he laws may actually »bite more than they bark in the first place.« (Zimrig, 2001, p. 163)

¹¹ The zero sum asumes that everything bad we do to the criminal, is being mirrored in some positive effect for the victim. The latter argument is of course downright wrong (Zimrig, 2001, p. 163-164).

¹² This last argument asumes that the more suppport the government gets, the public support for harsh penal measurments will increase and vice versa. This is also not supported by the actual data (Zimrig, 2001, p. 165).

the poor (ibidem, 2003, p. 171). We can observe the moral distancing of the well-off from the economically weaker members of the society. The poor are getting more and more stigmatized; “the pervasive image of the perpetrator of crime /being/ not one of the judicial subject of the rule of law, not that of the social and psychological subject of criminology, but of the individual who has failed to accept his or hers responsibilities as a subject of the moral community¹³” (Rose, 2000, p. 205). The society is changing from fragmented and quickly changing, who regards itself a plural and conflictual entity, towards a society where the fragmentation has reached intolerable limits, so the need for re-establishment of unity, authority and hierarchy is on the rise again (Melossi, 2000, p. 145). These are unique periods in which the theories of social control¹⁴ are setting forth and human rights protection is being subdued by the “urgent” need for safety in its general meaning (see above).

Populist punitiveness is also heavily present; politics playing on rising anxieties about risk and insecurity, in particularly relating to ethnic minorities and crime.

¹³ The perpetrators are more and more seen as individuals who are breaking the rules and the reasons therefore are searched for in external reasons, rather than internal. The notion of the perpetrator as itself a victim of his past experiences is on the decline.

¹⁴ In the view of the theories of social control criminal acts are seen as acts, whose roots are anchored in the disruption of the ties between the individual and the society. The conformity with social norms is, on the other hand, the consequence of satisfactory social integration in the social and psychological nets of its environment, which is why one can distinct between the good and the evil (Brinc, 2000, p. 230). On the other hand the theory of rational choice sees the criminal act as a consequence of individuals freewilling and rational choice (Brinc, 2000, p. 230).

A new social scheme, the "get tough" policies and social control

Some historians suggest, the spirit of an age is revealed in its public works (Wood, 2002, p. 16) and the state of its welfare. It is therefore interesting that the growth of the prison population in the USA, also coincides with the decline in the number of welfare recipients (Beckett et Western, 2001, p. 43). We can speak also of punitive spending patterns, since states with larger African American populations, on average spend less on welfare programs and more on incarceration¹⁵.

In the 19 Century welfare was regarded as the answer. But the welfare schemes came into attack by the 1970"s, by their "apparent" failure¹⁶. The following new emphasis were given in criminology: emergence of punitive policies, the rise of the role of victims (impact statements,...), tone changes on a more emotional level, there is a big emphasis on public safety, crime becomes an election theme (Wood, 2002, p. 22-27), rise of the SuperMax, rise of community policing, the notion of crime as being ever present...

The cumulative impact of these trends can be seen in the mix of social and criminal justice policies that have resulted in a situation whereby 29% of black males born today can expect to serve time in prison in their lifetime.

This impact also resulted in a huge rise of prison population. Major legislation intended to get tough on criminals, particulary

¹⁵ See some of the related data on Motherjones.com (Motherjones.com,2008), which is broken down state by state.

¹⁶ There is nothing apparent about it, though. the number of crimes committed did in fact rise, but there is no analysis, as in how much did the new police technologies and the new information technology contributed to this rise.

drug offenders. Examples of this new "get tough" policy include mandatory minimum sentences, repeat offender provisions; especially the "three strikes and you are out" provision.

The over-representation of the black community in prisons in the USA

This brings us to the next set of facts: the increase of people incarcerated between 1980 and 2000 which amounts to a 300% increase, fell disproportionately on young African Americans and Latinos¹⁷. By 1994, one of every three black males between the ages of 18-34 was under some form of correctional supervision, and the number of Hispanic prisoners has more than quintupled since 1980 (Beckett et Western, 2001, p. 43) Prison boom has also exacted a tremendous social cost. Blacks, Hispanics, and Native Americans are all incarcerated at rates far higher than that for whites. On any given day, nearly a third of all young black males are in prison, on probation, or on parole. Blacks are more likely than whites to be arrested, convicted, and given longer sentences for drug offenses - despite surveys showing that whites use drugs at the same rate as blacks do or even less. African Americans represent 15 percent of regular drug users, compared to 67 percent for whites and 13 percent for Hispanics. Yet African Americans make up 35 percent of those arrested for drug possession, 55 percent of drug convictions, and 74 percent of those sentenced to prison for drug possession (Jackson, 2002).

¹⁷ In this paper we use the term racial disparity when the proportion of a racial or ethnic group within the (legal) system is greater than the proportion of such groups in the general population. Similar definitions are used in most of the literature (for example see

The overrepresentation of the African Americans in prisons is however only the last result and from a methodological point the easiest indicator, However the disparate treatment of the African Americans neither starts nor ends here; we can regard as particular focal points: the policing.

Breaking down the causes for the over representation of the black community in prisons

Historical elements and the new prison industrial complex - does the prison industrial complex in itself enhance the over-representation of the black community in prisons?

There is little emphasis given on a very important fact: The African Americans were brought to America in order for the whites to have free labor (in other words; slaves). They were denied the elemental right, the right to freedom. In my opinion this is a very important historical fact, which explains, why it is especially the African Americans, who are getting disproportionately jailed.

After the liberation of slaves and the emancipation of slaves, the whites passed the so-called "Black Codes". Their sole purpose was to support continuing agricultural society of the Slave owning society. Individuals that where one slaves and now had no homes and no jobs, were targeted under these laws and incarcerated for such "criminal acts" as vagrancy and unemployment. These codes sent a strong message that African American activity and lifestyle needed to be strongly regulated in order to support private businesses (Morris, 2002, p. 91).

It seems we come across the same message today if we look at the prison industrial complex. As Wood puts it: »The racist application of law and order has a long pedigree in the United States. The racial construction of criminality /...is/ essential to an understanding of the American penal system. Racial profiling, »war on drugs« that targets the African American neighborhoods and the drug dependencies of the poor, zero tolerance urban policing and »three strikes« legislation have created a prison system whose demographics are widely at odds with the social profile in modern America« (Wood, 2002, p. 20)

The prison industrial complex is being fed mostly by members of minorities. But while there are more critics of prisons today, there are also more interest groups with a financial stake in the incarceration complex -- groups with a powerful incentive to ensure that the influx of inmates continues... Private, for-profit prison corporations are a multibillion-dollar industry. If we take as an example the state of Mississippi, when in 2001, there were more than 2600 empty beds in the Mississippi state jails, the state legislature committed \$6 million dollars to increase the capacities of private prisons. As it is written in the article by Morris: "The apparent commitment to private prisons - even in the absence of need - illustrates the degree to which the exploitation of African American offenders for the direct economic benefit of large corporations has been preserved - and anticipated (ibidem, p. 92).

From a crime control perspective, of course, continued expansion of the prison complex is likely to lead to diminishing returns, as successively less serious offenders are incarcerated on average. From a social standpoint, mass imprisonment results

in fundamental concerns of human rights and racial polarization becoming more prominent each day (Mauer, 2001, p.13).

The "get tough" policies and social control from the African American perspective

Here should be noted that the crime that most frequently led to a three strikes conviction, that »guaranteed« 25-to-life or more, was robbery at 18.2 %, followed by first-degree burglary (11.2%) and drug possession (9.8%) (Sinden, 2002, p. 43). Knowing this, makes it obvious that the group of people on which this provisions fell disproportionately, was on those living in "bad" neighborhoods, where chances of a steady income are slim¹⁸.

Its also a fact that minorities are subject to greater surveillance than are whites and it can also be that non-whites are more likely to engage in illegal behaviors not captured by crime data (Beckett et Western, 2001 and Morris, 2001). The latter can be depicted in the case of drug offenders arrests¹⁹, which are particularly interesting since the drug laws are broken by a large percentage of population (for the USA the estimated number is around 8% of population), which is why they are prone to selective enforcement (Reich in Justice policy institute, 2007, p. 6; Luna, 2001, p. 522-525). For example; although the white drug users outnumber black drug users (by approximately five times), there are more than twice as many African Americans admitted to prison for drug offences. In other words the rate of admission to prison for drug offenses is more than 10 times higher for African Americans than for whites (ibidem, p. 7) . This fact is

¹⁸ Poverty levels seem to be heavily related to incarceration rates.

¹⁹ Drug offences are a typical *malum prohibitum* offences and are therefore for our paper an especially relevant topic, since they are more a matter of policy than the *malum in se* offences.

partially explained by the very nature of drug abuse and different modules in which we can come across it; in the white suburban areas drug abuse accrues in the privacy of the homes, whereas the trafficking takes place mostly inside black communities, on the streets. Therefore the phenomena is more exposed in the black communities²⁰, which are additionally more subdued to initiatory (preventive) policing, resulting in more arrests.

However not only the policing and prison incarceration are problematic²¹; the African Americans face also disparate treatment in other stages of the criminal process; Arraignment, Release, and Pre-Adjudicatory Decisions, Adjudication and Sentencing, Probation and Community-Based Alternatives to Incarceration and Parole and Reentry²². In some opinions this stems »from generalizations and miscommunications between people of different racial or ethnic backgrounds« (Justice policy institute, 2007, p. 8)²³.

²⁰ The police is more likely to spot an offence occurring on a street, than for instance that taking place in a sub-urban home.

²¹ Although due to the length limit of this paper we will devote most of the paper to the latter two focal points of the criminal justice system.

²² For a comprehensive view on problems in every particular stage see The Sentencing project, 2008, p. 11-19.

²³ The same source for instance gives an example of how the probation officers regard crimes committed by African American youth as a consequence of their personal failure, but on the other hand those committed by the whites as having to do with external causes (Bridges and Steen in Justice policy institute, 2007, p. 8).

The social background

The social background is also one of the key elements contributing to racial disparities in the legal and sentencing system. Inequitable access to resources can result in very different outcomes between middle-class and low-income individuals even though they may share similar behavioural problems. Additionally, individuals with access to resources generally employ an approach to treating problems outside the legal and criminal systems. Also in the event of an arrest, alternatives to detention are more readily available in middle-class communities than low-income communities, raising the chances that middle-class youth will be diverted from the system (The Sentencing Project, 2008, p. 7). Where relying on sentencing policies to solve social problems becomes the leading *magna*, there is hardly any space left to projects that would try to root out the causes for the increasing crime problems.

The discussion here is bound to be also about the priorities of the US government. Between 1980 and 1996, prison spending shot up in every state, while spending on higher education declined in 19 states. If we take as an example, Colorado lawmakers diverted in May 2006 \$59 million earmarked for improving colleges and universities into paying for prison expansion. If one compares the Prison vs. Education spending per capita, the pictures gets even sader²⁴.

If we look at the statistical data on African American households we can see that the black households had the lowest median income in 2006 among the race and Hispanic-origin groups,

²⁴ The comparison can be found on http://www.motherjones.com/news/special_reports/prisons/atlas.html.

\$31,969, which was 61 percent of the median for non-Hispanic White households (\$52,423). Also if we look at the per capita income, the median is »only« \$17.902, whereas the income is almost twice that number for non-Hispanic White (\$30.431) (Walt-DeNavas, Proctor, Smith, 2007, p.4-7).

The changing representation of the "criminal" and the media effect

It is always important to be aware of the fact that, it is the ones who represent the "power" are the ones who determine, who are the "problematic", who are "criminal" and who are "bad". The stigmatization of a certain group of people (bigger or smaller), can serve as a mean of unification of people (we the "good", against the others who are "villain" and "bad"). This is especially problematic, since people understand "criminality" according to who is arrested and punished, and do not consider the social factors that contribute to who is brought into the system (Morris, 2002, p. 93).

That is why the shift towards a greater dehumanization of the perpetrators is, to say the least, worrying. The perpetrators are described as "predators" or "monsters" and the usual diction is one of "getting rid of the weeds". Its difficult to quantify to what extent this process of dehumanization is tied in with perceptions of race and ethnicity, but the data on prison populations and the political imagery of recent years strongly suggest that these issues are intimately connected. It is known that its easier to impose pain (or punishment) on those with whom we have little in common or do not know in any personal sense; thus the more stratified a society, the easier it becomes for the well off to advocate greater pain for those less fortunate.

The media plays a big role in the process of mis-portraying the perpetrators and of increasing the irrational fear of victimization. Both are driven largely, although not exclusively, by television-cultivated insecurity. The media, especially television, have a vested interest in perpetuating the notion that crime is out of control. ...According to the Center for Media and Public Affairs, crime coverage was the number-one topic on the nightly news over the past decade... From 1990 to 1998, homicide rates dropped by half nationwide, but homicide stories on the three major networks rose almost fourfold....In one 1997 survey, 80 percent of those polled said that news stories about violent crime increase their fear of being victimized (Motherjones.com, 2006).

The media also created the myth that race and culpability are connected. They are mis-portraying the structure of criminals. The "usual" perpetrator shown for e.g. on TV is a black man²⁵, in his twenties...which of course causes the perception that African Americans commit the most crimes, which is statistically incorrect. There seems to be certain normalcy with which black criminality is understood in America. Forgetting here the fact that most African Americans do not commit crimes, are law abiding citizens, and do not deserve to be criminalized in any way. On the other hand it seems from the data shown above and also collaborated by research by Marcus-Newhall and Pallucki Blake (Marcus-Newhall and Pallucki Blake, 2002).

²⁵ It will be however interesting to see if this will change in any way, since Barack Obama has been elected as the first black president in the USA:

The effects on the black community

The empty neighborhoods and the interpersonal violence in them

In some urban neighborhoods, as many as one in four men are under the criminal justice system's control on any given day. Todd Clear, a criminology professor at John Jay College of Criminal Justice in New York City, says many inner-city neighborhoods may be reaching what he calls a "tipping point." In some areas, he notes, so many residents have been through prison that entire communities are unraveling, afflicted with rising unemployment, domestic violence, and crime (Abramsky, 2001).

The study underscores a trend that may soon affect the nation as a whole -- one that Clear boils down to a simple formula. "The higher the numbers returning from prison the higher the crime rate." In California, a state report from a couple years stated that around that 85 percent of released prisoners are drug or alcohol abusers, 50 percent are illiterate, and 10 percent are homeless (ibidem).

This is especially worrying since it produces a criminalization of entire communities on account of a relatively few. The other problem is, that the members of such communities slowly start to regard themselves as "useless predators" (as they are seen by some), which contributes to a climate where to have participated in violent or criminal behavior is perceived as a rite of passage, rather than an indiscretion (Morris, 2002, p. 93). Elijah Anderson writes in his article *Going straight* (Anderson, 2001): "Of all the problems besetting the poor inner-city black communities, none is more pressing than that of interpersonal

violence and aggression." "The inclination to violence springs from the circumstances of life among the ghetto poor - the lack of jobs that pay a living wage, the stigma of race, the fallout from rampant drug use and the resulting alienation and lack of hope for the future." (Anderson, 2001, p. 135)

By subjecting petty criminals to a world of hardened violence, America's experiment with mass-scale incarceration may ultimately make its streets not safer, but more dangerous. "What I'm seeing is people coming out of prison with anywhere from moderate to severe symptoms of post-traumatic stress disorder," says Bonnie Kerness, associate director of the American Friends Service Committee's Criminal Justice Program in Newark, New Jersey. "People are coming out with hair-trigger tempers." (Motherjones.com, 2005).

The integration is also, everything but easy. There are some re-entry programs for recently released convicts, but they serve relatively few people. The Fortune Society, for instance, is one of the largest re-entry programs in New York but serves only about 1,000 ex-cons annually, out of the nearly 30,000 who are released in the state every year.

A criminal record makes getting a job considerably tougher. California has even banned parolees from certain occupations, including nursing, physical therapy, and education. Bruce Western, a sociologist at Princeton University, found that paroled inmates who do manage to land jobs are paid only half as much as people with similar backgrounds who have not been imprisoned. In many states, felony convictions and drug-related offenses render former prisoners ineligible for public assistance

or public housing (see also Beckett et Western, 2001), and Congress cut off higher education grants to those with drug records (ibidem). This leaves many black communities lacking on resources needed for healthy and positive habilitation, quality education, health care...

The costs for children

The children left behind

Across the US, an estimated 1.5 million children have a parent behind bars - an increase of more than half a million since 1991, according to the federal Bureau of Justice Statistics. No one knows the exact number, because in virtually every jurisdiction nationwide, no official body - not police, courts, or prisons - is responsible for even asking if prisoners have children. Researchers believe that over 10 million kids have experienced the incarceration of a parent at some point in their lives.

According to studies by the Los Angeles-based Center for Children of Incarcerated Parents, which is a research and service organization, as many as 90 percent of children in long-term foster care, have a parent who has been arrested or incarcerated (Bernstein, 2001).

It's also sad to note, that the prisons, that are far away from the perpetrators homes, cause an almost total alienation of the children from their parents. In 1993 NCCD study, 54% of the mothers interviewed reported that their children never visited them in prison.

The children born to incarcerated mothers are at increased risk of being born drug-exposed

to mothers who were not given proper prenatal care. They are at increased risk of experiencing poor peer relations and school performance and at increased risk of being institutionalized ²⁶.

The imprisonment of black youth

Although overall juvenile violent crime declined by 30 percent between 1994 and 1998, juvenile incarceration has continued to rise, particularly among African American youth. African American youth makes up 15% of the youth population in the US, but represent 26% of youth arrested and 40% of youth in residential placement (Morris, 2002, p. 92). Most devastatingly, all the movement toward youth involvement in adult courts is similar to "get tough" schemes in the education system. And, as is the case for school discipline policies, the rise in juvenile incarceration has disproportionately impacted minority youth. Consequently, although minority youth are one-third of the youth population nationwide, they represent two-thirds of all youth confined in local detention and state correctional systems (Johnson, 2001). 50 states now have laws that allow juveniles to be tried as adults (Jackson, 2001).

The effect of drug courts is here also to be mentioned: instead of playing their role as a "different way of dealing with offenders", and routing the people who have problems with drugs in other channels, the drug courts seem to have a different effect. There are more and more and more young people who end up in jails, since the presence of drug courts causes that the police

²⁶ According to Denise Johnston, head of the Center for Children of Incarcerated Parents, up to half of all male children of prisoners will go on to commit crimes themselves, perpetuating a cycle that will feed the prison boom for generations to come.

sometimes arrest the young, which they would otherwise just let go²⁷. Because of all that, it is evident that the drug policies need to be reformed. The goal should be to help those addicted to drugs to find a better way. The answer is not imprisonment and legal attack. The answer lies in sentencing reform, in supplying treatment on demand, and in delivering honest drug education to the kids. There is a need for policies that reflect what we know about drug addiction rather than policies that seek to punish it. As Governor Gary E. Johnson writes in his article *Bad investment; Take it from a businessman: The War on Drugs is just money down the drain*: "In 1980, the federal government arrested a few hundred thousand people on drug charges; today we arrest 1.6 million people a year for drug offenses. Yet we still have a drug problem" (Johnson, 2001).

Health Problems

Miles calls prisons "the nation's reservoir of disease," but like many officials, he insists that most prisoners bring their illnesses with them from the outside -- a side effect of the drug use and risky sexual practices many of them indulged in before being locked up. "Sure, sex and drug use take place behind bars," Miles says. But the rate of new infections, he maintains, is "very, very low." (Speed Weed, 2001) One can not so easily agree with him, due to the fact, that there are no studies by Centers for Disease Control. But we can consider, without doubt, as especially

²⁷ Malcolm Young, executive director of the Sentencing Project, a nonprofit research organization that advocates alternative programs, says many jurisdictions set up alternatives that draw in offenders who probably wouldn't have gone to prison. Small fry who might have otherwise simply been let go can, thanks to a drug court or intensive supervision program, end up placed under a probation officer's scrutiny, where the penalty for even a minor slipup is jail.

problematic: HIV, tuberculosis²⁸ and other sex transmitted diseases.

Private prisons are in this field very problematic²⁹ (though, of course, public prisons are not immune). For example, the private delivery of medical services in correctional institutions has caused significant problems as every dollar of a fixed annual stipend not spend on health services for prisoners benefits the company's bottom line, encouraging an unacceptable incentive to skip on critical care. A 1998 audit found that "more than 20 inmates died as a result of negligence, indifference, understaffing, inadequate training or overzealous cost-cutting (Sinden, 2002, p. 39). Only a handful of states and cities currently allow prisoners access to condoms. None allows needle exchange. Without more prevention, it is clear that the cost of treatment will continue to mount.

Disenfranchisement from the voting process

Another devastating impact of rising incarceration rates among African Americans is disenfranchisement from the voting process. The right to vote is the central political right and the basic right of the representative democracy (Kaučič et Grad, 2007, p. 132), their loss therefore being especially harmful.

²⁸ Tuberculosis has received more attention, perhaps because it has on occasion so clearly spread from prisons to the general public. In the early 1990s, a deadly strain of TB swept through the state prison system in New York. Thirty-nine prisoners caught the disease, as did two corrections officers. The outbreak went on to infect more than 1000 civilians.

²⁹ The CCPOA Spokesman, Lance Cocrain said about private prisons: "We call them dungeons for dollars because their allegiance is to the stockholders, not to the public." (Cocrain in Parenti, 2002, p. 35)

Dozens of states bar current and former convicts from voting³⁰. As a result, 3.9 million US citizens were disenfranchised, including 1.4 million who have completed their prison and jail terms in 2001³¹. While African Americans represented approximately 13 percent of the US population, they represented 36 percent of the total number of US citizens who have lost their right to vote. Today the number has risen to 5,6 million US citizens being disfranchised (Timoney, 2008, p. 2). Among them 1,4 million African Americans, which means seven times the national average. The gains of the civil-rights movement are thus being rolled back (Morris, 2002, p. 98) (Timoney, 2008, p. 2). This also means a significant crippling of the impact of the civic voice of the entire African American community.

African American women in prison

In 1980 women accounted for only 4% of prison population, today they account for 6.6 %. About 75% of women prisoners are serving time for non-violent offences, most of which is result from enforcement of offences mandatory drug-sentencing laws or "zero tolerance" for drug use. The racial element of crime and punishment is revealed in the fact that an African American woman is eight times more likely than a non-Hispanic white, and twice as likely as a Latina woman to be imprisoned. Singled out

³⁰ The laws are different in various states, but all states—all except Maine and Vermont—prohibit voting by offenders who are currently incarcerated for a felony offense. Another thirty-five states bar felons from voting while they are on parole and two states deny the right to vote to all offenders, even those who have completed their sentences (Timoney, 2008, p. 2).

³¹ For example: in Alabama and Florida 31% of African Americans are permanently disfranchised and in Iowa, Mississippi, new Mexico, Virginia and Wyoming this number is between 24 to 28%.

for crack, cocaine, the drug associated with inner city crime. The war on drugs has become a war on minorities and on women (van Wormer, 2002, p. 104).

I have already discussed the problem of children alienation. If, at this point we look at the costs we see a following picture: Imprisoning a low-level offender, whose rap sheet consists mainly of drug offenses, costs the state about \$2,100 a month. But that's only page one of the bill. Warehousing two kids is where it really gets expensive. Keeping a teenage boy in juvenile hall costs about \$5,000 a month, and keeping a youngster in a children's shelter runs another \$5,000 per month (Bernstein, 2001). Perhaps this is not an appropriate way of looking on the matter, but I just wanted to portray that imprisoning small offenders cost in the end far more than the society profits from their imprisonment.

The prison-time is also very hard on these women; there is a big lack of medical services (Van Wormer, 2002, p. 108) and a high level of mistreatment. A 1996 Human Rights Watch report noted that male correctional employees have vaginally, anally and orally raped women prisoners. These women have now a damaged self-esteem that leads to the deterioration of their perceived self-worth and a perception that their power rests solely in their sexuality. This sets a foundation for the cycle of abuse that makes African American girls the most victimized population in America (Morris, 2002, p. 96).

There are some programs to help women reintegrate to the society, like the project SISTER or the Cameo House, but these

programs involve only a minority of women released from prisons (Bernstein, 2001).

The "replacement"= the Hispanic minority and prisons

At the end, I would just like to make a couple remarks about the Hispanic minority and prisons. If we look at the numbers, it really looks like they are playing the roll of a "replacement"; meaning that in the States where there is a "lack" of the African American minority the Hispanic minority seems to take its place in the prison statistics.

In 2005, Hispanics comprised 20% of the state and federal prison population, which means a 43% rise since 1990. In other words, one of every six Hispanic males (and one of every 45 Hispanic females) born today can expect to go to prison in his (or her) lifetime (Mauer et King, 2007).

All the facts mentioned in the above sections are more or less true for the Hispanic minority too. If we, for example look at the poverty rate of Hispanics its 27% (which means there is no statistical difference between the rates for African Americans (also 27%) and Hispanics) (Morris, 2002, p. 97). There is a presence of the "historical element" as with the African Americans. The Hispanics traditionally came to the US to do the low paying jobs (these at least seems to be the general view). As such, they integrated themselves as the "poor communities" and are even today regarded as such. This brings as back to the relation between poverty and social control.

A special note here can be made also about asylum seekers, especially with the current going-ones in the US. New harsh sentencing laws have created a special population of prisoners -

immigrant prisoners -whom the federal government segregates from the rest of the prison population (and turns over to private prisons). But perhaps more about this topic next time...

Conclusion

It seems all of the elements contribute to a situation where African Americans are targeted more intensively than the rest in regard to the penal policies. All of these has resulted in a situation where not only the African Americans are overrepresented in prison population, but has also brought with itself numerous other negative effects: from the empty communities to the interpersonal violence and human rights violations.

The two sets of reasons, first those behind the rise of incarceration and the second on the disproportionate numbers of incarcerated African Americans, mostly coincide. However due to the fact that prisons are getting populated unproportionally by the prisoners of African American descent; for instance the African Americans represent around 12% of all US citizens, but on the other hand they represent 33% of all incarcerated persons; it is obvious that the negative effects are falling disproportionately on the black community. The prison industrial complex is also being mostly fed by the members of the minorities, which is not interested in who it imprisons, but mostly on the fact it imprisons as many people as it can in order to gain profit. Naturally it is easier, also due to arresting policies to imprison members of the deprived minorities. The arresting policies are, though de iure being equal for all, having however de facto more negative effects on the black community, than the rest of population. One of the deciding elements also

seems to be the fact that the members of the black community in average represent the poorer segment of the society, on which also the get tough schemes target the most. The degrading welfare schemes further enhance those negative effects.

Though both phenomena; the rise of incarceration and the over-representation of African Americans in prisons, are really looked at together, it is however obvious that the two phenomena are tightly connected. This is however a politically more delicate subject, but with the recent changes in the government perhaps the time for a more precise analysis is ripe also in the US.

Section 1 of the 13 amendment of the US Constitution says that »Neither slavery nor involuntary servitude, except as punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.« The prison sentence means *per se* a violation of one natural right to freedom, that is why this topic is especially delicate. With the sentencing falling disproportionately on the African Americans, also the treats of human rights violations increase. With this the historical negative »relationship« of the African Americans to American (criminal) law continues...

References

Abramsky, Sacha (2001). Breeding violence. URL: http://www.motherjones.com/news/special_reports/prisons/violence.html (22.10.2008)

Anderson, Elijah (2001): Going straight; The story of a young inner-city ex-convict in *Punishment & Society*, no 1, vol. 3, p. 135-152.

Bauer, Marc et King, Ryan S. (2007): Uneven Justice: State Rates of Incarceration By Race and Ethnicity. URL: http://www.sentencingproject.org/Admin/Documents/publications/rd_stateratesofincbyraceandethnicity.pdf (22.10.2008).

Beckett, Katherine et Western, Bruce (2001): Governing social marginality. *Punishment & Society*, no 1, vol. 3, p. 43-59.

Beiser, Vince (2005): How did the Land of the Free become the world's leading jailer? URL: http://www.motherjones.com/news/special_reports/prisons/overview.html (22.10.2008).

Bernstein, Nell (2001). Left Behind. URL: http://www.motherjones.com/news/special_reports/prisons/left_behind.html (22.10.2008).

Brinc, Franc (2000): Zapor za koga, kako, s kakšnim ciljem in za kakšno ceno (Kriminološke in penološke teorije – resničnost ali mit). *Varstvoslovje*, No. 3, Vol.2, p. 229-238.

Corrections Corporation of America (CCA) (2008). Third Quarter 2008 Financial Results. URL: <http://investor.shareholder.com/cxw/releasedetail.cfm?ReleaseID=345987> (22.10.2008).

Critical Resistance (2008). What is the Prison Industrial Complex? URL: <http://criticalresist.live.radicaldesigns.org/article.php?preview=1&cache=0&id=58> (22.10.2008).

Demuth, Stephen et Steffensmeier, Darrell (2004). Ethnicity Effects on Sentence Outcomes in Large Urban Courts: Comparisons Among White, Black, and Hispanic Defendants. *Social Science Quarterly*, No. 4, Vol. 4, p. 994-1011.

Harrison, Paige M. et Beck, Allen J. (2006). Prisoners in 2005. URL: <[http:// www.ojp.usdoj.gov/bjs/abstract/p05.htm](http://www.ojp.usdoj.gov/bjs/abstract/p05.htm) (25.10.2008).

Hirst, Paul (2000): Statism, Pluralism and Social Control, In: Garland et Sparks (ed.): *Criminology and Social Theory*, Oxford:Oxford University Press, p. 127-148.

Jackson, Jesse L. (2001). Liberty and justice for some. URL: http://www.motherjones.com/news/special_reports/prisons/liberty.html (22.10.2008).

Johnson, Gary E. (2001). Bad Investment. URL: http://www.motherjones.com/news/special_reports/prisons/investment.html (22.10.2008).

Justice policy institute. (2007). The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Countries. URL: <http://www.justicepolicy.org/content.php?hmlID=1811&smlID=1581&ssmlID=69> (22.11.2008).

Kanduč, Zoran (2003): Kriminaliteta, človekove pravice in varnost v po(zno)modernem svetu. *Revija za kriminalistiko in kriminologijo*. No. 2, Vol. 54, p. 159-171.

Kaučič, Igor et Grad, Franc (2007): Ustavna ureditev Slovenije. Ljubljana: GV Založba.

Luna, Erik (2001). Principled Enforcement of Penal Codes. *Buffalo Criminal Law Review*. No. 515, Vol. 4, p. 515-625. URL: [http://wings.buffalo.edu/law/bclc/bclarticles/4\(1\)/lunapdf.pdf](http://wings.buffalo.edu/law/bclc/bclarticles/4(1)/lunapdf.pdf) (5.12.2008).

Marcus-Newhall, Amy and Pallucki Blake, Laura (2002): Perception of Hate Crime Perpetrators and Victims as Influenced by Race, Political Orientation, and Peer Group. *American Behaviour Scientist*, No. 1, Vol. 46, p. 108-135.

Mauer, Marc (2001): The causes and consequences of prison growth in the United States, *Punishment & Society*, No 1, Vol. 3, p.9-20.

Melossi, Dario (2000): Changing representations of the Criminal. In: Garland et Sparks (ed.): *Criminology and Social Theory*, Oxford:Oxford University Press, p. 149-181.

Morris, Monique W (2002): Prison Privatization: The Arrested Development of African Americans. In: Coyle, Campbell, Neufeld (ed.): *Capitalist Punishment: Prison Privatisation and Human rights*, Atlanta: Clarity Press, p. 88-101.

Motherjones.com (2005). Special report: Violence. URL: http://www.motherjones.com/news/special_reports/prisons/violence.html (15.04.2006).

Motherjones.com (2006). Overview. URL: http://www.motherjones.com/news/special_reports/prisons/overview.html (15.04.2006).

Motherjones.com (2008). Debt to society. URL: http://www.motherjones.com/news/special_reports/prisons/atlas.html (22.10.2008).

Parenti, Christian (2002): Privatized Problems: For-Profit Incarceration in Trouble. In: Coyle, Campbell, Neufeld (ed.): *Capitalist Punishment: Prison Privatisation and Human rights*, Atlanta: Clarity Press, p. 30-38.

Reitz, Kevin R.(1996): The American Experiment: Crime reduction Trough Prison Growth,. *European Journal on Criminal Policy and Research*, No. 3, Vol. 4, p.74-91.

Rose, Nikolas (2000): Government and Control. In: Garland et Sparks (ed.): *Criminology and Social Theory*, Oxford:Oxford University Press, p. 184-206.

Sinden, Jeff (2002): The Problem of Prison Privatization: The US Experience. In: Coyle, Campbell, Neufeld (ed.): *Capitalist Punishment: Prison Privatisation and Human rights*, Atlanta: Clarity Press, p. 40-47.

Speed Weed, William (2001): Incubating disease. URL: http://www.motherjones.com/news/special_reports/prisons/disease.html (22.10.2008).

The Sentencing Project (2008): Reducing Racial Disparitiy in the Criminal Justice System. URL: <http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=626> (25.11.2008).

The US Constitution. URL: <http://www.law.cornell.edu/constitution/constitution.table.html#amendments> (7.11.2008).

Timoney, John F. (2008): Two more issues for President Obama, With Implications for Justice and Race. *Subject to debate*, No. 11, Vol. 22, p. 2. URL: http://www.policeforum.org/upload/STD_Nov08_web_510753293_11_252008120538.pdf (12.12. 2008).

Van Wormer; Katherine (2002):Prison privatisation and women In: Coyle, Campbell, Neufeld (ed.): *Capitalist Punishment: Prison Privatisation and Human rights*, Atlanta: Clarity Press, p. 102-113.

Walt DeNavas-Walt, Bernadette D. Proctor, Jessica Smith (2007): Income Poverty and Health Insurance Coverage in the United States: 2006. URL: <http://www.civilrights.org/assets/pdfs/p60-233.pdf> (12.12.2008).

West, Heather C. and Sabol, William (2008). Prisoners in 2007. URL: <http://www.ojp.usdoj.gov/bjs/pub/pdf/p07.pdf> (2.12.2008).

Wood, Phillip J. (2002): The rise of the prison industrial complex in the United States, In: Coyle, Campbell, Neufeld (ed.): *Capitalist*

Punishment: Prison Privatisation and Human rights, Atlanta: Clarity Press, p. 16-29.

Zimrig, Franklin E. (2001). Imprisonment rates and the new politics of criminal punishment. *Punishment & Society*, No 1, Vol. 3, p. 161-166.