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BRENNAN CENTER FOR JUSTICE
AT NEW YORK UNIVERSITY SCHOOL OF LAW

**SOLUTIONS:
AMERICAN LEADERS SPEAK OUT
ON CRIMINAL JUSTICE**

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A CULTURE CHANGE

Jeremy Travis
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“ACHIEVING THIS CULTURAL CHANGE WILL REQUIRE FIVE INTERRELATED ACTIVITIES: UNDERSTANDING AMERICAN PUNITIVENESS, IMAGINING A DIFFERENT FUTURE, BREAKING THE GORDIAN KNOT OF CRIME AND PRISON POLICY, RETHINKING THE ROLE OF THE CRIMINAL SANCTION, AND PURSUING RACIAL RECONCILIATION.”

Mass incarceration is one of the most important moral challenges facing our democracy. If this level of incarceration, or anything close to it, becomes our new normal, I am concerned for the future of our democratic experiment, our notion of limited government, and our pursuit of racial justice.

Reversing course will require something much more profound than our current reform strategies. What is required is a deep cultural change.

The National Academy of Sciences published a report in 2014 that reflects the deliberations of a panel of twenty prominent scholars convened to assess the evidence on the “causes and consequences of high rates of incarceration in the United States.”¹ I was honored to serve as chair. These are the key findings of this report: First, we stand apart from the rest of the world. The growth in incarceration rates in the United States over the past 40 years is historically unprecedented and internationally unique. Second, we are here because we chose to be here; our high incarceration rates are the result of our policy choices. Third, the public safety benefits of the prison build-up are, at best, modest. Fourth, the financial and social costs of the prison build-up

are likely significant. Lastly, we have lost sight of important principles.

Our panel recommended that the United States reduce incarceration rates. Specifically, we recommended reforms to the policies that drove the prison build-up: mandatory minimums, long sentences, and drug enforcement. We also recommended that the nation improve conditions for those incarcerated and reduce the harms experienced by their families and communities. Finally, we need to increase service needs in those communities.

Certainly there are reasons to be optimistic that these reforms will happen. The incarceration rate has dropped slightly over the past few years. We are seeing a new left-right coalition that has embraced the common goal of reducing the prison population. Solidly conservative states like Texas, Georgia, Mississippi, and Alabama have taken steps to cut back on their prison populations.

But, the euphoria occasioned by the slight downturn in incarceration rates is premature and the reforms that we celebrate are nibbling around the edges.

I would like to imagine a different future for our country, when we do not lead the world in incarcerating our fellow citizens. To get there, we must attack the breeding grounds of the political reality that brought us to this situation. But a cultural change is a necessary precondition to this political change. Achieving this cultural change will require five interrelated activities: understanding American punitiveness, imagining a different future, breaking the Gordian knot of crime and prison policy, rethinking the role of the criminal sanction, and pursuing racial reconciliation.

Why did America become so punitive? We need to look beyond criminal justice policy — and beyond traditional political and historical analysis — to answer this question. We need to recognize that this punitive reflex has been evident in other policy domains as well. We have substituted school disciplinary processes with criminal proceedings. We have decided to detain millions of undocumented immigrants in a network of prisons not counted in our measures of incarceration. In response to threats of terrorism, we have enacted policies that significantly constrain the liberty of all Americans and have subjected Muslim Americans to special scrutiny.

Our efforts to reduce mass incarceration will require a deep exploration of why our country embarked on this aberrational experiment in the massive deprivation of liberty.

One of the missing ingredients in the current debate over mass incarceration is that we do not have an alternate vision for our future. We are so focused on the tactical challenges of coalition building, the hand-to-hand combat of legislative reform, and the concern about short-term victories that we do not take the time to say, simply: It need not be so.

What might be effective? For starters, consider the recent success of Proposition 47 in California, which reclassified criminal offenses, reallocated money from corrections budgets, and provided opportunities for people convicted of low-level felonies to have these felonies removed from their records.² Many lessons can be drawn from this success. First, the campaign led with the voices of crime victims — everyday Californians who said that the current system did not deliver the justice they sought.³ Second, the campaign specified alternative investments of the money spent on prisons.⁴ Finally, because of California's ballot initiative, the campaign was able to bypass the legislative process and directly reflect the will of the people.

Only a few states provide for sentencing reform by referendum. We need other ways to paint a different vision for the future, such as conducting community-level conversations that provide direct input into a new vision for justice.

We can also compare our prison system with those of other countries. We Americans are notoriously parochial and frequently respond with excuses of American Exceptionalism. In our nation's history, Europeans came to this country to learn about progressive sentencing and prison policies. Today, we need to repay that compliment by looking carefully at what we can learn from the prison systems of other countries.

Next, we have to break the Gordian knot of crime policy and prison policy. The prison build-up was only indirectly caused by crime increases, and high rates of incarceration yielded, at best, only modest benefits in terms of public safety. But every time we talk about reducing prison populations, that proposition is still cast in terms of public safety.

Research now shows us that we are only repeating a false premise if we couch a prison reduction strategy as possible only if crime does not go up.

We need to develop other reasons for reducing the number of people in prison. To be credible, advocates for reductions in imprisonment need to have a position on public safety. It is the height of irony that we have so many people in prison precisely at a time when we have developed a very sophisticated portfolio of effective crime prevention strategies. We are now in a position to question the premise of mass incarceration itself and to ask: Why do we need to use prison so extensively to reduce crime? Why not put the intellectual energy and taxpayer resources into effective strategies?

We have a golden opportunity to reframe crime policy in terms of new ideas about the role of the criminal sanctions in producing public safety. Nothing would be a more powerful antidote to the prison-centric realities of our current crime policy than the design and implementation of a suite of effective crime prevention policies that minimize the use of prison, such as the concept of “focused deterrence.” This concept envisions the criminal sanction — including arrest, prosecution, and incarceration — as part of a larger strategy designed to address specific crime conditions. Today, over 50 jurisdictions have joined the National Network for Safe Communities, the vehicle for implementing focused deterrence strategies around the country.⁵

One of the principles of the National Network is to reduce the unnecessary use of incarceration while reducing crime. In focused deterrence, formal social control is used only in connection with explicit informal social control, including the moral voice of communities, persuasion of family members, and positive examples of formerly incarcerated individuals. Police officers, prosecutors, defense lawyers, probation officers, judges, and corrections officials are not accustomed to an embrace of informal social control that is so explicit and so strategic. The success of focused deterrence requires a rethinking of the role of the law in influencing behavior.

These innovations are important for what they teach us about deterrence and for what they can deliver in terms of public safety. They are also important because they undercut the notion that we need long prison sentences to produce public safety.

Perhaps the most important task we need to undertake is to come to terms with the implications of mass incarceration for our country's pursuit of racial justice. Most of the increase in incarceration came from one subpopulation: minority male high school dropouts. The likelihood that African American high school dropouts born between 1945 and 1949 serving at least a year in prison before age 34 was 14.7 percent. For those born a generation later — during the prison boom — the risk of imprisonment is now a staggering 68 percent.⁶ These data lead to only one conclusion: Our incarceration policies — and, more broadly, our criminal justice policies — have done enormous harm. For young men growing up today who are living in our inner cities, in communities with poor school systems, poor housing, poor health care, who are not able to complete high school, their life course likely includes time in prison.

We can nibble around the edges, work with politicians to change sentencing laws, deepen our understanding of punitiveness in America, even adopt new crime prevention strategies, but a moral and historical imperative remains: We need to come to terms with the racial damage caused by the era of mass incarceration. We need to admit our government — acting in our name — has done great harm. We need to accept responsibility for that harm, and find ways to alleviate the consequences.

We must find the way, and must find it together. The optimist in me says we have a chance of success. If we dig deep and commit ourselves to doing the truly hard work of our democracy: ensuring that our society lives up to its ideals.