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Prisons First: Putting Prisons at the Center of the Criminal Justice Policy Debates

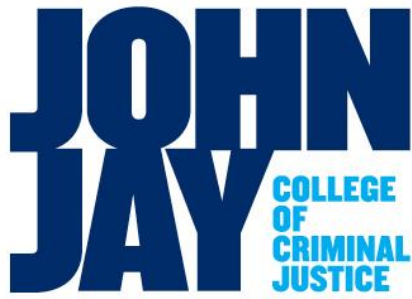
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Prisons First:

Putting Prisons at the Center of the Criminal Justice Policy

Debates

Keynote Address

By

Jeremy Travis

President

John Jay College of Criminal Justice

At the Annual Meeting of the

John Howard Association

October 13, 2014

John Howard Association, Chicago, Illinois

Dean Creasie Finney Hairston, John Maki:

I thank you for your very generous introduction.

It is wonderful to be in Chicago with friends and colleagues and supporters of the John Howard Association. Over the years, I have had the good fortune to work closely with many of you. Chicago has long been an incubator for important and impressive criminal justice reform efforts. Indirectly, I have been involved in some cutting edge work in your city, starting two decades ago with the Project on Human Development in Chicago Neighborhoods, an ambitious research undertaking that documented the phenomenon of “collective efficacy” and showed the role that strong communities play in reducing violence. Other trips to Chicago have been connected with the launch of the Safer Return program in East Garfield Park, the violence reduction initiative of the Chicago Police Department in partnership with John Jay College, and the ambitious study called *Returning Home*, which documented the trends and patterns of prisoner reentry in Illinois and the neighborhoods of Chicago. In thinking about my connections with Chicago, I have learned so much from Chicago’s criminal justice thought leaders — including Creasie Finney Hairston, Diane Williams, and Paula Wolff — and have also been generously supported by progressive philanthropic organizations such as the MacArthur Foundation, the Joyce Foundation, and the Woods Fund. You have all been my teachers and I am grateful.

I was delighted to receive your invitation to speak at this annual meeting of the John Howard Association. I am humbled to appear on the same program as your honorees — State Representative Elaine Nekritz and Tom McNamee, editor of the editorial page of the *Chicago Sun-Times*. They are clearly doing important work on the front lines — helping to shape a legislative agenda promoting criminal justice reform, in Elaine’s case, and offering sage editorial opinions to shape the policy debate in Tom’s case. I am thrilled to be on the program with them.

I need not remind this audience of the important work of the John Howard Association, extending back over a hundred years, but I do want to share some thoughts on the life of John Howard, the man. Today, at the annual celebration of the John Howard association, we recommit ourselves to creating a criminal justice system that is more humane, more just, and more democratic. In moments such as this, we too often forget that many others have fought these battles before us. In fact, we stand in a long tradition of pioneers who have paved the way for our work today. John Howard was such a man, a hero of the prison reform movement that swept Europe and the United States in the 18th Century.

Most of you know the John Howard story. Born to British aristocracy, he was on a trip to Europe when his ship was captured by French privateers and he was held in French prisons.¹ Following his release, as part of a prisoner exchange, he began his advocacy on behalf of those still in prison. After his appointment as High Sheriff of Bedfordshire in 1773, John Howard decided to inspect the prisons that fell within his administrative responsibility. He was horrified by the conditions he saw. The following year, he arranged for an invitation to testify before Parliament to raise public awareness about these prisons. The conditions were indeed shocking.

¹In Howard’s life, he had another personal experience with the impact of prisons: His son John was sent to prison for homosexual acts, held as insane, and died after 13 years in a mental institution.

He wrote about prisoners sleeping on straw mats [quoting directly], “worn to dust, swarmed with vermin; no court; no water accessible to prisoners. The petty offenders were in irons...”

Today, we would say that John Howard was a man on a mission. In a few short years, he visited hundreds of prisons. In 1777, as our country was fighting for its independence from England, he published a book entitled *The State of the Prisons*. In this book — which was his version of your recent publication entitled *Changing Directions: A Roadmap for Reforming Illinois’ Prison System* — Howard made recommendations for the design of prisons, the training of personnel, the need for adequate health care, and the importance of external inspections. He extended his work to Europe, always making public the horrors of each country’s prisons. He died at age 63, after contracting typhus on a prison visit in Crimea.

With justification, John Howard is called the first English prison reformer. During his lifetime he received many awards and public recognition for his pioneering work. Nearly eighty years after his death, the Howard Association was created in London, later renamed the Howard League for Penal Reform, dedicated to continuing his work. In Canada, this legacy is carried out by the John Howard Society. Similar organizations named after Howard are found in Virginia and New Zealand. Here, in Chicago, this work is carried on by the organization that meets here today. In short, his work inspired an international movement.

This is a truly remarkable story — a story of one man, relentlessly shining a light in the darkest corners of our society, devoting his energy and personal resources to a cause with few other champions, deciding to provide voice to those who had no voice. Somehow this man connected with a deep personal sense of injustice. Somehow he found a common humanity with those imprisoned. Somehow he found the words, the forums, the publications that brought his message — and their plight — into the corridors of power. As we meet here today we can be only inspired by this man’s life and legacy. Yet, though the legacy of John Howard is uplifting, we must face the sobering reality that the cause of prison reform is still urgent, and prisons are still too far removed from public awareness. I hope we can build on his legacy by putting prisons at the center of our debates over the future of criminal justice policy in America.

Over the past few years, I have been privileged to serve as Chair of a Committee convened by the National Research Council, the operating arm of the National Academy of Sciences, to examine the [direct quote] “causes and consequences of high rates of incarceration in the United States.” This work was jointly funded by the National Institute of Justice and the MacArthur Foundation, under the visionary leadership of Julia Stasch. Our committee comprised 20 scholars from a variety of disciplines (ranging from economics, to criminology, to history) who had been convened by the National Academies to answer two compelling questions that confront our society: first, what are the causes of the unprecedented growth in the use of prison as a response to crime; and second, what are the consequences for our society of having more than quadrupled the rate of incarceration?

We covered a lot of ground. The report² includes three chapters that review the evidence on the reasons for the unprecedented growth in rates of incarceration in the US, including an empirical

² National Research Council (NRC). 2014. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, DC: The National Academies Press.

analysis of the drivers of the prison increase (Chapter 2), documentation of the legislative enactments that resulted in more people sent to prison and sent for longer sentences (Chapter 3), and a review of the historical evidence on the political and social factors contributing to the tough on crime movement (Chapter 4). The report includes seven chapters on the consequences of this unprecedented rise in imprisonment — including the impact on crime rates (Chapter 5), the employment prospects of those who have been in prison (Chapter 8), the children and families of the incarcerated (Chapter 9), and the communities to which they return (Chapter 10).

This is a landmark report that speaks to the nation with the voice of the National Research Council and stands as an authoritative review of the evidence on the rise of incarceration in our country. In a few moments, I will comment on the main findings of our report, but first, in keeping with the John Howard legacy, I would like to call your attention to Chapters 6, 7 and 11. The title of Chapter 6 is “The Experience of Imprisonment.” In this chapter we review the research on the impact of high rates of incarceration on prison life. We document the psychological consequences, the impact on programming, and the overall conditions of confinement. Chapter 7 is titled: “Consequences for Health and Mental Health,” and we document the significant health challenges facing the prison population. Finally, I want to call your attention to Chapter 11, which summarizes the impact of high rates of incarceration on our democracy. Here, we review the realities of felon disenfranchisement, the absence of prisoners from our census and statistical calculations, and the realities of social stigma and marginalization of a larger class of our fellow citizens who have been incarcerated. These chapters stand in the John Howard tradition.

I hope these chapters will provide scientific evidence that supports the efforts of the John Howard Association to bring about prison reforms in Illinois. Also, we document the increased overcrowding in our nation’s prisons. Although overall rates of violence in prison have declined over the decades of the build-up, other indicators of prison life cause deep concern. The level of overcrowding has increased as single cells have become double and sometimes tripled-bunked. The availability of programming has dropped as budgets have been squeezed. The use of segregated housing — typically called solitary confinement — has increased, although the data on this phenomenon are scarce. Planning for reentry has dropped. In short, while we have quadrupled the rate of incarceration, and now spend \$80 billion a year to incarcerate our fellow citizens, the prisons where we now house a million more people than we did a generation ago still cry out for reform.

Our report places this phenomenon of the growth of imprisonment in the larger context of public responsibility for our prisons. In the John Howard tradition, an urgent need for public inspection and governmental oversight of these institutions still exists. Indeed, one of our key recommendations was increased transparency and accountability for prisons. We note that judicial review of prisons has been curtailed, journalistic coverage of prisons has declined, legislative oversight is rare, and the important process of conducting research on prisons is difficult and rarely embraced. Prisons are typically located far away from the centers of political power. This physical distance symbolically reflects the reality that prisons — and the people who work in them and are detained in them — are far from the public’s mind. In our report, we call for a different view of prisons — we argue that they should be seen as “pillars of justice,” meaning that they should be held to the highest standard as institutions that advance, rather

than impede, the larger goal of social justice. This is a lofty aspiration, one that I believe John Howard would have applauded.

This reality — that prisons are closed institutions, with poor conditions, far from public view — is not new, of course. What is new is the sheer scale of the use of prisons in America. The current high rates of incarceration — where nearly one in a hundred adult Americans is in prison or jail — is unprecedented in our history. For fifty years — from 1920 to the early 1970s — our rate of incarceration was stable, about 100 per 100,000. Then, starting in 1972, this rate began to increase — steadily, by 4-6% a year, for the next four decades and only recently has leveled off, at a rate nearly five times greater than in the 1920s. Today, our rate of incarceration is five to seven times higher than that of any other western democracy.

Our report tells a complicated history that explains this increase — including a changing political environment, a public narrative about crime that linked crime, fear and race in pernicious ways, and politicians who discovered that being tough on crime was a winning campaign strategy. But the overarching conclusion of the NRC report is both simple and striking: These high rates of incarceration are the result of policy choices. Although a rise in crime in the 60s and 70s contributed to a changed political environment, crime rates by themselves did not result in higher prison rates. Let me state our conclusion even more directly: we have so many people in prison because we chose to have so many people in prison. Facing the implications of this conclusion requires deep self-examination of our culture and our democracy.

To be even more blunt (and here I speak as an individual — not as chair of the NRC panel): Dealing with this new reality requires confronting the racial dynamics of our current criminal justice policies. As you know, those dynamics work in two directions. We must confront the racial realities that made it possible for our country to put a million more people, disproportionately men of color, behind bars, when other responses to crime would have been more effective with less damage to communities of color. At the same time, we must come to grips with the consequences of this new reality for our nation's pursuit of racial justice. How can we justify the current level of imprisonment when our nation's crime rates are so low and there is no strong evidence that high rates of imprisonment — particularly long sentences and mandatory minimum sentences — contribute significantly to public safety? How can we continue the war on drugs when the evidence shows that the tenfold increase in incarceration rates for drug offenses — overwhelmingly borne on the backs of communities of color — has had little effect on drug prices or drug use?

Can we truly imagine a “new normal”³ in which African-American men who have dropped out of high school are as likely to be in prison as in the workforce? How can we feel comfortable, as a democracy committed to upward social mobility, with the fact that these men — black male high school dropouts — now face a 68% chance of serving at least a year in prison, whereas for black male high school dropouts born a generation earlier, before the prison boom, the lifetime probability of serving time in prison was only 15%? Answering these questions necessarily

³ Travis, Jeremy. 2014. Assessing the State of Mass Incarceration: Tipping Point or the New Normal? *Criminology & Public Policy*. Issue IV.

forces us to come to terms with the realities of racial division that have been a stain on the American democratic experiment since African slaves were first brought to these shores.

The bottom line conclusion of the NRC report — that we have reached a level of incarceration that is historically unprecedented as a result of policy choices — also leads to a clear call to action. If we recognize, as the NRC report does, that the nation is not well served by these high rates of incarceration, then the primary strategy for achieving the significant reduction in those rates, as the report calls for, is to reverse those policy choices. This will be difficult. This will require sustained political work to convince legislators to dial back the sentencing statutes that have put so many people in prison. This will require new political coalitions and an engaged public calling for change. To put this in simple terms: if our democracy got us here, our democracy will have to get us out of here. Simply focusing on crime reduction strategies will not be enough. Simply focusing on better alternatives to incarceration will not be enough. Simply focusing on improved reentry planning will not be enough. All of these are worthwhile endeavors — and all have my support — but we cannot reverse the forces that led to the reality that some call “mass incarceration” without convincing our elected officials to roll back the punitive policies that they embraced — in our name — over the past forty years.

In concluding these remarks I would like to focus on another chapter of the NRC report, Chapter 12. In this chapter, our committee reviewed the literature on the normative principles that should guide society’s decision to use prison as a response to crime. We thought it important to speak of values — to reinforce certain principles — to speak to the country in a normative voice — rather than simply summarize the scientific evidence on causes and consequences of the growth in imprisonment in America. In the effort to reduce incarceration, we believed that four principles should serve as guideposts. First we restated the principle of proportionality: the notion that punishment must be proportionate to the severity of the offense. We also cited the principle of parsimony: the idea that the state is not authorized in our democracy to inflict pain on our fellow citizens beyond that required to achieve a legitimate social purpose. In so many ways, we have lost sight of these jurisprudential principles over the years. We also point to the principle of social justice, which calls for us to consider the use of prison as an instrument of justice, and therefore subject to transparency and accountability.

But in closing today I would like to cite, verbatim, the third principle in Chapter 12. This is the principle of citizenship:

The conditions and consequences of punishments for crime, especially terms of imprisonment, should not be so severe or so enduring as to violate an individual’s fundamental status as a member of society (p. 323)

For today’s conference, we might call this the John Howard principle. This embodies the simple, yet powerful and actually revolutionary notion, that people in prison remain citizens, and that society should ensure that their citizenship — their human dignity — is not violated by the punishment imposed, particularly if that punishment involves the deprivation of liberty. As this audience knows, the principle of citizenship has a modern voice, and not just from John Howard’s era. The American Correctional Association, the United Nations Office on Drugs and Crime, and the American Bar Association are among the organizations that proclaim the value of

citizenship. It can also be found in Article I, Section 11 of the Illinois Constitution, which states that “all penalties shall be determined ... with the objective of restoring the offender to useful citizenship.”

This principle is also, in very important ways, given voice by our Constitution in the Eighth Amendment’s prohibition of cruel and unusual punishment. In the landmark case of *Furman v. Georgia* (1972), Justice William O. Brennan wrote that “punishment must not by its severity be degrading to human dignity.” Most recently, the Supreme Court, in the *Plata* (2011) decision written by Justice Anthony Kennedy, noted that “prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment.” In all our work, we must remember — and remind others — of the normative value of citizenship that is so central to our republic.

I close my remarks with the words that also close the report of the National Research Council — the eloquent statement by Justice Kennedy before the American Bar Association in 2003. In that speech, he referred to the “hidden world of punishment” in America and warned that if we looked closely “we should be startled by what we see.” After reviewing the rise in incarceration, the human toll of imprisonment, and the collateral damage, Justice Kennedy concluded, in words that resonate at this conference today: “Our resources are misspent, our punishments too severe, our sentences too long.” At the end of his speech he reminded us, as did John Howard centuries ago, that all of the people in prison “are human beings whose minds and spirits we must try to reach.”

I commend you on your continuing good work and wish you every success in helping us reach those minds and spirits.