

Punishment for Sale

Private Prisons, Big Business, and the Incarceration Binge

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1

America's Incarceration Binge

The Expansion of Prisons, Budgets, and Injustice

Joel Dyer comments, without exaggeration or hyperbole, that the increase in the number of inmates in the United States “reflects the largest prison expansion the world has ever known” (2000, 2). This “incarceration binge” (Irwin and Austin 2001) entails building, stocking, and staffing an increasing number of prisons and jails, which in turn requires dramatic increases in corrections budgets. This pot of money increased dramatically from the early 1970s until the 2008 financial crisis, and it has been an important factor in the creation and growth of both private prisons and the larger criminal justice–industrial complex. Indeed, in *The Perpetual Prisoner Machine*, Dyer follows the money and reports that “today’s prison industry has its own trade shows, mail-order catalogs, newsletters and conventions, and literally thousands of corporations are now eating at the justice-system trough” (2000, 11). The recipients of taxpayer money became vested interests who lobbied government to maintain or expand their piece of the pie, which created stronger vested interests lobbying for more money, and so on, ultimately creating a seemingly perpetual incarceration binge.

Understanding the origins of modern private prisons is thus more than a perfunctory historical exercise because the same factors that gave rise to prison privatization are still present and continue to drive the growth of what is now a multi-billion-dollar, multinational incarceration business. The dynamics that created private prisons—an increasing prison population and government outsourcing—not only continue to shape it today but also provide insights into future directions and problems. The introduction to this book noted the historical problems associated with efforts to privatize or introduce profit motives into state-sanctioned punishment, yet private prison companies gained a foothold during the 1980s. They

generated venture capital from the backers of Kentucky Fried Chicken, and a number of private prison companies later raised money through initial public offerings (IPOs) to become public companies traded on the stock exchange (see chapter 3). While this phenomenon generated resistance along the way, Wall Street analysts labeled private prisons as hot stock picks in the 1990s, and the degree of comfort with the idea of prisons having publicly traded stocks was so high that one prison had a sign out front advertising the closing stock price of its parent company (Dyer 2000).

Such changes in sentiment, while drastic, do not occur overnight; governments and business tend to be conservative and incremental. So, this chapter outlines the first of two main factors that created prison privatization starting in the 1980s and helped give it the legitimacy necessary to expand. The first important trend, covered in this chapter, is the explosive growth in the numbers of prisoners in the United States. This unprecedented expansion in the prison population required rapidly increasing criminal justice expenditures for the “war on crime” and provided the basis for politicians to seek unconventional solutions to the problem caused by decades of “getting tough” on street crime. The second important trend, covered in chapter 2, is elected leaders’ professing an antigovernment ideology that justified smaller government and the outsourcing of many services to for-profit businesses. During the Great Depression, people and politicians saw government as the answer to widespread problems, and in the late 1960s President Lyndon Johnson premised his Great Society on an assumption that combating social problems requires government involvement. But in the 1980s, President Ronald Reagan and Republican leaders maintained that big government was the problem, not the solution. Government was inefficient, so they argued for a smaller government that would benefit by outsourcing services to business, which would allow free market competition to reduce cost and improve service.

Thus, the immediate task is to examine why, from 1980 to 2000, the United States built more prisons than it had in the entire rest of its history (Vieraitis, Kovandzic, and Marvell 2007, 590). During the 1800s, prisons were among the largest structures in the United States, and our experiments with rehabilitation attracted the curiosity of Europeans. One of many who braved the journey here to study our prison system was Alexis de Tocqueville, who somewhat ironically ended up writing the classic *Democracy in America* (1904). Less than two hundred years later, our experiments with rehabilitation have long since ended, and of all the countries in the world, the United States has incarcerated the largest percentage of its population. The irony now is that the country founded on a revolutionary notion of democracy and the inalienable right to liberty has become *Lockdown America* (Parenti 1999).

In order to explain the incarceration binge, this chapter starts by describing the nature and extent of the increased use of imprisonment. It also provides a critique of this phenomenon to make clear that private prisons and the larger criminal justice–industrial complex are providing little social good and contributing to societal harm. The second section examines the ideology and “ideas” justifying the incarceration binge, starting with the rise of “law and order.” The Republican ascendancy to power in the 1980s and media images further drove the popularity of “tough on crime” that has created an overcrowding crisis and massive expansion of budgets for criminal justice.

AMERICA'S INCARCERATION BINGE

One major method for understanding changes in the use of prisons involves the incarceration rate, which expresses the number of prisoners for every one hundred thousand people in the population. This standardized rate allows comparisons in one country over time as the population grows or across countries of different sizes. Figure 1.1 illustrates the incarceration rate from 1925 to 2005 in the United States, which had a relatively stable level from 1925 until the early 1970s when President Richard Nixon ran the first “law-and-order” campaign. “Law and order” became a “war on crime” as the rhetoric about “getting tough” continued over decades and resulted in policies that pushed the incarceration rate from about 100 state and federal prisoners per 100,000 of the population in the mid-1970s to almost 509 by midyear 2008 (Bureau of Justice Statistics 2009, 2).

Notably, figure 1.1 only includes state and federal prisoners and not inmates in local jails because similar historical data are not available. According to the Bureau of Justice Statistics, by midyear 2008 the incarceration rate for jails plus federal and state prisons stood at 762 per 100,000 (2009, 2), or 1 in every 100 residents (Pew Center on the States 2008). Even before it reached this level, the United States had the highest incarceration rate in the world. In the last year for which there was comparable international data, the United States had an incarceration rate of 760, ahead of the Russian Federation at 628. Other North American countries had substantially lower rates, with Canada at 116 and Mexico at 207; America's industrial democratic peers were also much further down the list, with England and Wales at 151, Germany at 88, Italy at 97, and Japan at 63 (International Centre for Prison Studies 2009).

Another way to look at the growth in incarceration is to consider the change in the actual number of inmates in the United States. By this measure, the state and federal prison population increased fourfold—quadrupled—between 1980 and 2008, going from about 320,000 inmates in

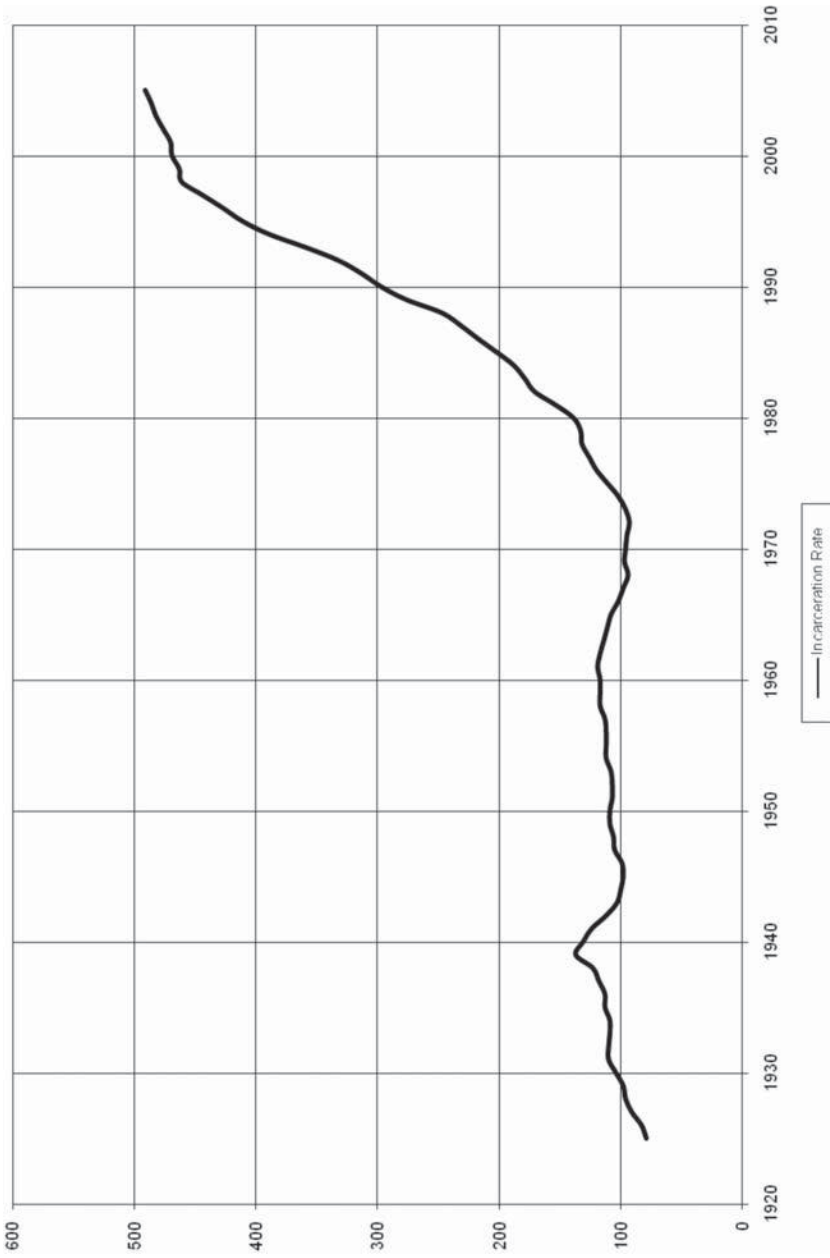


Figure 1.1 Imprisonment rates in state and federal prisons.
 Source: Sourcebook of Criminal Justice Statistics online, Table 6.29, 2005.

state and federal prisons to more than 1.5 million. In addition, those incarcerated in local jails increased from 182,000 in 1980 to almost 750,000 in 2005. Taken together, the United States went from having roughly a half million inmates in 1980 to more than 2.3 million by midyear 2008 (Sourcebook Online, table 6.1.2005; Bureau of Justice Statistics 2009, 16). (By 2007, an additional 5.1 million Americans were on parole or probation [Bureau of Justice Statistics 2008a, 1], another large area of expansion for corrections and a major new growth area for privatized services, which we explore in this book's conclusion.) Locking up that many Americans requires not just large budgets for corrections but also increasing numbers of police to make arrests and courts to process offenders. Indeed, according to the Bureau of Justice Statistics, "If increases in total justice expenditure were limited to the rate of inflation (184%) after 1982, expenditures in 2003 would have been approximately \$65.7 billion ($\$35.7\text{B} \times 184\%$), as opposed to the actual \$185.5 billion" (2006, 3).

Many people believe that spending such large amounts is regrettable but necessary, or even that the increased expenditures successfully caused the declines in crime rates during the early 1990s. However, criminologists have called the incarceration binge a natural experiment in crime reduction that failed, and many see it as causing social harm by diverting money from other important priorities and adding to social injustice by fueling inequality, racial tension, and community breakdown. We believe these critiques have merit, meaning that private prisons and the criminal justice-industrial complex were born from a social movement that has fostered injustice and that these entities, pursuing their own economic interests rather than the public good, perpetuate policies that cause further injustice because they profit from them. Indeed, with privatization, we use quotation marks around the word "solution" to indicate our belief that it has created more problems than it has solved. Therefore, it is important to explain briefly the failure of the incarceration binge to reduce crime and its contribution to social harms.

The first point in the critique of the incarceration binge is that increases in the prison population have little effect on crime rates, which makes them an inefficient way to reduce crime. The incarceration rate increased every year since the early 1970s, but crime rates did not start to fall until the early 1990s. Using the all-time highest crime rate to start a comparison of violent crime rates and the incarceration rate in the early 1990s produces a flawed chart, like that in figure 1.2a, which shows a misleadingly clear picture of the relationship between incarceration and crime. Politicians and businesses wanting to justify the enormous budget increases for criminal justice and prisons frequently make this type of comparison. Figure 1.2b, which takes into account a longer time frame, indicates a more complex relationship: while the incarceration rate

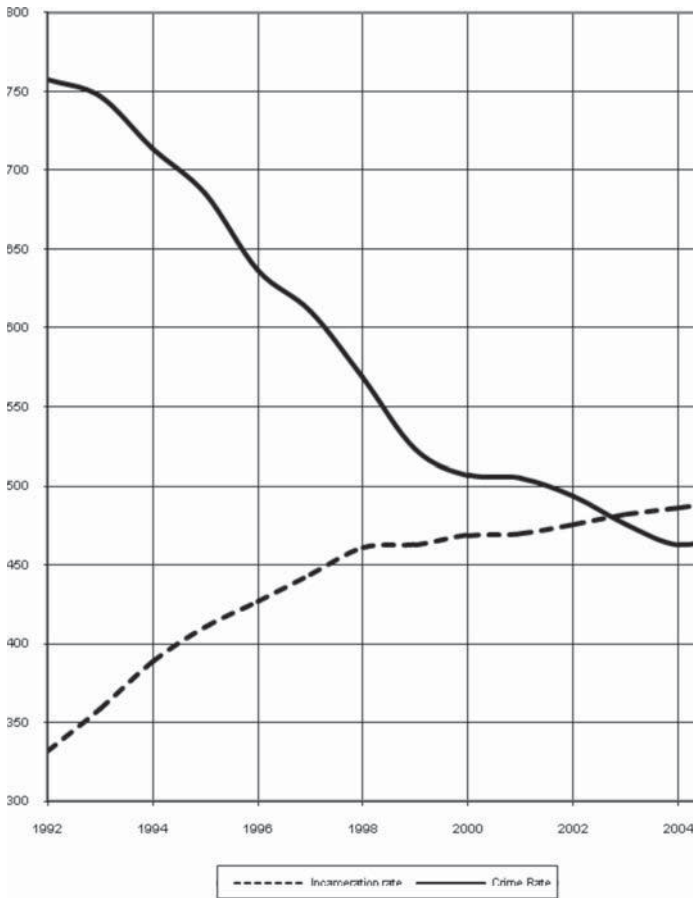


Figure 1.2a Incarceration and crime rates for different time periods, 1992–2004.

Source: Sourcebook of Criminal Justice Statistics online, Table 6.29, 2005.

increases, the crime rate fluctuates and has cycles. Thus, surveying the last thirty-five years, the argument that prisons reduce crime requires a problematic “heads I win, tails you loose” reasoning: increases in the crime rate necessitate getting tougher, while declines in the crime rate prove tougher sentences are working (Reiman and Leighton 2010).

However, criminologists point to a number of facts that question the efficacy of the incarceration binge. For example, states that enacted the strictest laws did not necessarily experience the sharpest declines in crime. Indeed, Canada and other countries did not follow the U.S. lead in getting tough but still saw crime rates fall (Currie 1998; Zimring 2007). Of course it would be hard to increase the incarceration rate by 600 percent without

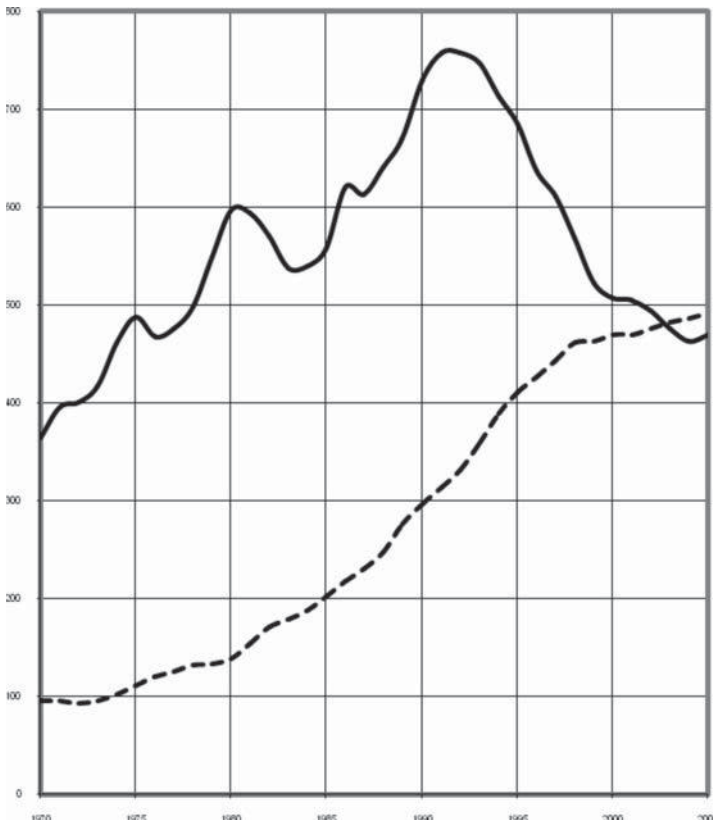


Figure 1.2b Incarceration and crime rates for different time periods, 1970–2005.

Source: Sourcebook of Criminal Justice Statistics online, Table 3.106, 2005.

having some effect on crime, but the Texas comptroller of public accounts discovered what many criminologists already know: the state criminal justice system cannot solve the crime problem. He performed an audit of expenditures on criminal justice and writes in *Texas Crime, Texas Justice: A Report from the Texas Performance Review* that “the only point on which virtually all students of Texas crime agree is that the ultimate answer to the state’s rising crime must come from outside the sphere of criminal justice. Economic hardship, the growing ‘underclass,’ drug addiction, the decline in moral and educational standards, psychological problems and other root causes will never be cured by punitive measures” (Sharpe 1992, ix).

Little accountability or oversight at the local, state, or federal level has accompanied these vast sums of money to ensure that taxpayers are getting good value for their hard-earned money. The Texas comptroller’s audit is

unique but noteworthy because this political and fiscal conservative's striking conclusion is that

despite the need for real solutions, public debate over crime in Texas revolves around hollow calls for the state to become "tougher." In fact, this is a call for the status quo—for more of the same, only more so. It is a call for a continuing cycle of cynical quick fixes and stop-gap measures, for costly prison construction that cannot keep pace with the demand for new prison space—for a constant drain on state and local treasuries that makes Texas taxpayers poorer, not safer. (Sharpe 1992, emphasis in the original)

In the first book to examine systematically the drop in crime rates, *The Crime Drop in America*, two mainstream criminologists used different quantitative techniques to arrive independently at the conclusion that the enormous increase in incarceration contributed, at best, 25 percent to the crime reduction that started in the mid-1990s (Blumstein and Wallman 2000). Alfred Blumstein and his colleagues credit "multiple factors that together contributed to the crime drop, including the waning of crack markets, the strong economy, efforts to control guns, intensified policing (particularly in efforts to control guns in the community), and increased incarceration" (Blumstein 2001, 2). In another book not based on original research, *Why Crime Rates Fell*, John Conklin posits that incarceration had a slightly larger impact but concedes that "the expansion of the inmate population certainly incurred exorbitant costs, both in terms of its disastrous impact on the lives of offenders and their families and in terms of the huge expenditure of tax revenue" (2003, 200). Thus, even those inclined to see incarceration as more effective in reducing crime seem to question whether it has been an overall "success." Yet another book on the crime drop by criminologist Franklin Zimring emphasizes the cyclical nature of crime rates (2007, 131) and suggests a "best guess of the impact" of incarceration on crime rates "would range from 10% of the decline at the low end to 27% of the decline at the high end" (55).

Imprisonment may prevent an inmate from committing crimes in the outside world, but research shows that a small number of career criminals commit a disproportionate number of offenses, so after they are locked up, further increases in the prison population have a declining effect on crime (Vieraitis, Kovandzic, and Marvell 2007, 597). More and more trivial, nonviolent offenders received harsh sentences as the decades progressed: "Between 1980 and 1997 the number of people incarcerated for nonviolent offenses tripled, and the number of people incarcerated for drug offenses increased by a factor of 11. Indeed, the criminal-justice researcher Alfred Blumstein has argued that none of the growth in incarceration between 1980 and 1996 can be attributed to more crime" (Loury 2007).

For example, William Rummel was convicted of a felony involving the fraudulent use of a credit card to obtain \$80 worth of goods, another felony for forging a check in the amount of \$28.36, and a third felony for obtaining \$120.75 under false pretenses by accepting payment to fix an air conditioner that he never returned to repair. For these three nonviolent felonies that involved less than \$230, Rummel received a mandatory life sentence under Texas's recidivist statute. The Supreme Court affirmed the sentence despite Justice Louis Powell's dissent, which noted, "It is difficult to imagine felonies that pose less danger to the peace and good order of a civilized society than the three crimes committed by the petitioner" (*Rummel v. Estelle* 1980, 445 U.S. 263, 295).

Unfortunately, the Supreme Court recently reaffirmed *Rummel* in a case involving a fifty-year sentence for two instances of shoplifting videos. In 1995, Leandro Andrade, a nine-year army veteran and father of three, got caught shoplifting five children's videotapes from Kmart, a heist yielding a value of around \$85. Two weeks later, he was caught shoplifting four similar tapes—including *Free Willie 2* and *Cinderella*—worth about \$70 from another Kmart. Under California law, Andrade's 1982 convictions for residential burglary were his first "strikes" under the Three Strikes Law, and the prosecutor decided that Andrade was a repeat offender whose current shoplifting charges should count as strikable offenses. The two current Kmart shoplifting charges thus became strikes three and four—each carrying a mandatory penalty of twenty-five years. The thirty-seven-year-old Andrade received a mandatory fifty years, meaning he will likely die of old age before being released (and incurs a cost to taxpayers of about \$25,000 to \$35,000 a year for the early years of his incarceration). Andrade contended that his sentence was grossly disproportionate to the crime and violated the U.S. Constitution's Eighth Amendment prohibition against cruel and unusual punishment. The Supreme Court decided the sentence was not unreasonable and found that "the gross disproportionality principle reserves a constitutional violation for only the extraordinary case" (*Lockyer v. Andrade* 2003, 538 U.S. 63, 77); Leighton and Reiman 2004).

The second point in the critique of the incarceration binge is that there has been a tremendous opportunity cost in building prisons and expanding the criminal justice system. The idea behind an opportunity cost is that because money, time, and effort are spent on one thing, other projects go unfunded, and other ideas are ignored. With the imprisonment binge, the United States spent hundreds of billions on an inefficient method of crime reduction, and the opportunity cost involves thinking about how that money could have been put to more socially beneficial uses. One legislator bluntly stated, "For every dollar you're spending on corrections, you're not spending that on primary and secondary education, you're not spending it on colleges and tourism. It's just money down a rat hole, basically" (Huling 2002, 205).

Some trade-offs are inevitable, but government decisions have usually entailed funding prison expansion by slashing budgets for education, crime prevention, community programs, drug and alcohol treatment, and a host of other programs that seek to create law-abiding citizens rather than simply punish people after they commit a criminal act. One criminologist likens this tactic to “mopping the water off the floor while we let the tub overflow. Mopping harder may make some difference in the level of the flood. It does not, however, do anything about the open faucet” (Currie 1985, 227). Worse still, programs that prevent crime can have a high return on investment because by intervening early, “you not only save the costs of incarceration, you also save the costs of crime and gain the benefits of an individual who is a taxpaying contributor to the economy” (Butterfield 1996, A24).

Once again, Andrade’s case provides an example because he was stealing to support a drug habit. The presentence report noted he had been a heroin addict since 1977: “He admits his addiction controls his life and he steals to support his habit” (Lockyer 2003). The obvious question is why he didn’t just go for treatment. While Andrade’s personal history is unknown, another person in a similar situation tells a common story about drug addiction and prison. Charles Terry, one of the “convict criminologists” who served time in prison then earned a PhD wrote in *The Fellas*,

Before that particular arrest, I made phone calls to various hospitals or “recovery” centers asking for help because I was hopelessly addicted. I was tired of the pain, the remorse, and the sure knowledge that sooner or later I was going back to prison. When someone on the other line answered, I’d say, “Hi. I need help. I’m a heroin addict who has already been to prison twice. I’m hooked like a dog. I’m doing felonies everyday to support my habit, and I can’t stop!”

In response came the inevitable question, “Do you have insurance? . . . The cost is five hundred dollars a day.” (2003, 4)

Needless to say, Terry did not have that kind of money and committed more crimes that landed him back in prison. His book does not suggest that drug rehab is an easy cure-all, and his stories of “the fellas” show that drug rehabilitation among hard-core convicts is extremely difficult. But it is also true that the best time to reach people is when they want help. Not funding drug treatment on demand is one of the many opportunity costs of funding an incarceration binge. The emphasis on building prisons made fewer programs available for prisoners already incarcerated, let alone creating new drug-treatment programs. During the 1990s, prisoner participation declined in educational, vocational or job, drug and alcohol, and prerelease programs (Vieraitis, Kovandzic, and Marvell 2007, 592). All these programs help make reintegration more successful and thus contribute to public safety by decreasing the likelihood of crime.

The third point in the critique of the incarceration binge is that it has caused social harm in a variety of ways, including undermining public safety, disrupting communities, disenfranchising millions, and contributing to racial and economic inequality. The most serious concern centers on findings that excessive use of incarceration can increase crime and violence. For example, *The Crime Drop in America* notes,

It is somewhat ironic that the growth in violence with handguns was at least partly a consequence of the drug war's incarceration of many of the older drug sellers. . . . As older sellers were taken off the street, the drug market turned to younger individuals, particularly inner-city African-Americans. . . . The reduction in age of the workers in the crack trade entailed a predictable increase in violence, as the inclination to deliberate before acting is simply less developed in the young. (Blumstein and Wallman 2000, 4–5)

In addition, excessive use of prison that results in high levels of incarceration concentrated in poor communities can cause social disorganization and weaken informal social controls like family, neighborhoods, and community groups (Clear 2002). Offenders exit prison with diminished job prospects; many have been hardened or brutalized as well, and they return to communities already stressed by dealing with social problems. This movement from the community to prison and the subsequent return to the community leads to “neighborhood instability and low informal social control [both of which] have been linked to higher crime rates” (Vieraitis, Kovandzic, and Marvell 2007, 590). The effects from high levels of incarceration in certain neighborhoods exist in addition to a general finding that prisons are criminogenic, meaning that “imprisonment causes harm to prisoners,” who go on to “commit more crimes than they would have had they not gone to prison” (Vieraitis, Kovandzic, and Marvell 2007, 614).

These harmful dynamics have hit inner-city minority neighborhoods especially hard because as the prison population has grown, the proportion of incarcerated minorities has also increased. According to the Bureau of Justice Statistics, “On June 30, 2006, an estimated 4.8% of black men were in prison or jail, compared to 1.9% of Hispanic men and 0.7% of white men. More than 11% of black males age 25 to 34 were incarcerated” (2007a, 1). Table 1.1 presents the data more systematically; it also expands on the normal counts that provide a snapshot of a particular day and considers the cumulative impact of high incarceration rates across a lifetime. The table highlights the disproportionate number of minorities, especially blacks, who are in prison—explaining why many feel the war on crime is a war on minorities (Miller 1996). But the detail by gender—almost one-third of black males born in 2001 will go to prison at some point during their lives—underscores problems like weakened families and social disorganization mentioned above.

Table 1.1. People under Control of the Criminal Justice System by Gender, Race, and Ethnicity

	<i>Jail (rate per 100,000) Midyear 2006</i>	<i>Prison (rate per 100,000) 2008</i>	<i>Percentage of Adult Population Ever Incarcerated in Prison 2001</i>	<i>Percentage Ever Going to Prison during Lifetime if Born in 2001</i>
White	170	N/A	1.4	3.4
Male		727	2.6	5.9
Female		93	0.5	0.9
Black	815	N/A	8.9	18.6
Male		4,777	16.6	32.2
Female		349	1.7	5.6
Hispanic	283	N/A	4.3	10
Male		1,760	7.7	17.2
Female		147	0.7	2.2

Source: Bureau of Justice Statistics (2003, 1 and tables 5 and 9; 2007a, 6; 2009, 18). BJS does not regularly report overall incarceration rates for race and has not recently reported jail incarceration rates by race.

Because of the high number of minorities who have been to prison at some point, minority communities are disproportionately affected by felony disenfranchisement, the denial of voting rights to incarcerated felons after their release, at which point they have supposedly paid their debt to society. These laws, which became widely used in the South after the Fourteenth Amendment gave newly freed slaves the right to vote, now disenfranchise 2 percent of the U.S. population and 13 percent of African American men (King 2006, 1). The census's method of counting prisoners further erodes the electoral power of inner-city minorities because inmates are counted as residents of the rural county where the prison is located instead of having their "usual and customary residence" be the city where they formerly lived and to which they will return. The census then becomes the basis for apportioning legislators, so the number of elected representatives from (white) rural areas increases because their prison populations have inflated their overall population counts (Prisoners of the Census 2007). Census counts are also the basis for distributing various payments to cities and counties, leading to a redistribution of aid away from racially diverse and impoverished inner cities.

As part of sentencing reform, many jurisdictions are enacting "truth-in-sentencing" laws, which require offenders to serve at least 85 percent of their sentence. But criminologist Todd Clear notes that a sentence's length is a small part of the "truth" about its underlying irrationality. He imagines a judge telling the full truth, which nicely summarizes some of the critique of the imprisonment binge:

For the crime of selling drugs, I sentence you to 10 years in prison. I am doing so even though we know that this sentence will not prevent any more drugs from being sold, and that it will probably result in someone not now involved in the drug trade being recruited to take your place while you are locked up. I impose this sentence knowing that the main reason you have been caught and convicted is that we have concentrated our police presence in the community where you live, and that had you lived where I live, your drug use and sales would probably have gone undetected. I impose this sentence knowing it will cost the taxpayers over a quarter of a million dollars to carry it out, money we desperately need for the schools and health care in the area where you live, but instead it will go into the pockets of corrections officers and prison builders who live miles away from here and have no interest in the quality of life in your neighborhood. I impose this sentence knowing it will most likely make you a worse citizen, not a better one, leaving you embittered toward the law and damaged by your years spent behind bars. You think you have trouble making it now? Wait until after you have served a decade of your life wasting in a prison cell. And I impose this sentence knowing that it will make your children, your cousins, and your nephews have even less respect for the law, since they will come to see you as having been singled out for this special punishment, largely due to the color of your skin and the amount of money in your pocket. I impose this sentence knowing that its only purpose is to respond to an angry public and a few rhetorically excited politicians, even though I know this sentence will not calm either of them down in the slightest. This is the truth of my sentence. (Welch 1999, x)

This critique is fundamental to understanding private prisons because they, along with the larger criminal justice–industrial complex, were created from the same movements that gave rise to a sprawling, expensive, inefficient, and sometimes socially harmful prison system. Both also now have an interest in perpetuating this system, thus its problems, because the duty of business executives is to maximize profit, which they do by expanding business opportunities, which in turn is best accomplished through an expanding prison and criminal justice system. While the United States has a long history of the rich getting richer while the poor get prison (Reiman and Leighton 2010), the current situation—private prisons listed on the stock exchange and an expanding number of businesses profiting from the expansion of the criminal justice system—means that rich whites get richer *from* poor minorities being sent to prison.

IDEOLOGY AND “IDEAS” JUSTIFYING THE INCARCERATION BINGE

“Following the money” is a useful exercise, especially as the criminal justice–industrial complex gets larger (see chapter 3), but we can better un-

derstand several important steps that created the foundation for the present situation by looking at political discourse and “ideas,” or ideology. Indeed, the role of ideology is to justify the present, which means that current social dynamics come to seem natural, inevitable, and fair. As the previous discussion indicated, this state of affairs is deeply unfair. It is not natural and inevitable, but its unfolding does have a logic, which this section of the chapter explores. Indeed, the deeply problematic nature of the current situation and the ideological inertia to continue along this “commonsense” path make understanding how the United States came to this self-perpetuating dynamic of injustice imperative.

During the 1960s and early 1970s, crime changed from a local concern into a federal one, with conservative national politicians conflating civil rights protests, urban unrest, and crime into one problem that required “law and order” as a solution. Unfortunately, too few people thought to ask, whose law? And what social order is being upheld? Also, the flexible sentences that prospered under a system of rehabilitation gave way to more determinate ones. Because of the continued popularity of “tough on crime” and the continued election of conservatives espousing it, fixed sentences became harsher (and harsher). The process of getting tough continued to ensnare large numbers of nonviolent and trivial offenders, but media depictions of crime aided in perpetuating the belief that building more prisons was necessary for public safety. Finally, the obvious result of enacting harsher mandatory sentences was that more people were in prison, but overcrowding quickly became a crisis. The easy option of building prisons to continue “tough on crime” quickly ran into conflict with politicians’ other popular line about cutting taxes.

THE RISE OF “LAW AND ORDER”

The 1960s were troubling times for Americans because of marches, riots, and acts of civil disobedience related both to the civil rights movement and protests over the Vietnam War. For those with conservative leanings, war protests and civil rights marches threatened the social order and exacerbated what they saw as the erosion of traditional values. The increasing acceptance of divorce, free love, teenage parenthood, and drug use, in addition to women’s liberation, were all indicators of the unraveling social fabric. On the other side, liberals saw some traditional values as tolerating and even perpetuating racism, sexism, and inequality. They waged extensive legislative battles for civil rights and voting rights laws, only to face further battles over implementing those pieces of landmark legislation. As one of many examples, in his 1963 inauguration speech as governor of Alabama, George Wallace declared, “In the name of the greatest people that have ever

trod this earth, I draw the line in the dust and toss the gauntlet before the feet of tyranny, and I say segregation now, segregation tomorrow, segregation forever." Later that year Governor Wallace himself would stand in front of a door at the University of Alabama and block the first two black students from entering, a move that required the National Guard's intervening to enforce the law.

During this same period, a dramatic shift in the national attitude transformed crime from a local into a national problem that warranted a national solution. The 1964 presidential campaign battle among Republican senator Barry Goldwater, Independent candidate George Wallace, and Democrat Lyndon B. Johnson brought crime into the national spotlight as a policy issue. Goldwater and Wallace stressed formal social control rather than social welfare as the government's primary responsibility. The "permissive society" needed to be reigned in, and they promised to repress crime with a stricter enforcement of the criminal code. In reaction to civil rights demonstrations and a rising crime rate, both Goldwater and Wallace included a strong law-and-order plank in their campaign platforms. Glenn Loury (2007) notes that this

punitive turn represented a political response to the success of the civil-rights movement. Weaver describes a process of "frontlash" in which opponents of the civil-rights revolution sought to regain the upper hand by shifting to a new issue. Rather than reacting directly to civil-rights developments, and thus continuing to fight a battle they had lost, those opponents—consider George Wallace's campaigns for the presidency, which drew so much support in states like Michigan and Wisconsin—shifted attention to a seemingly race-neutral concern over crime.

Johnson ultimately won the election and sought to build his Great Society by spreading the benefits of America's successful economy to more citizens. Early in his administration, President Johnson stressed the need to address crime's "root causes" and argued that programs attacking social inequality were, in effect, anticrime programs: "There is something mighty wrong when a candidate for the highest office bemoans violence in the streets but votes against the war on poverty, votes against the Civil Rights Act, and votes against major educational bills that come before him" (Beckett and Sasson 2000, 52). But through the conservative Southern strategy, "anxiety over racial change and riots, civil rights and racial disorder—initially defined as a problem of minority disenfranchisement—were defined as a crime problem, which helped shift debate from social reform to punishment" (Loury 2007). By the end of the decade, even President Johnson would turn away from long-term structural solutions like "the war against poverty" toward shorter-term punitive practices like "the war against crime."

Conservatives further argued that the criminal justice system had become so concerned with civil rights that it was benefiting criminals rather than preventing the victimization of innocent citizens. Throughout the 1960s, the Supreme Court under Chief Justice Earl Warren strengthened individual rights, including the protections offered to criminal defendants. For example, the court ruled in *Mapp v. Ohio* (1961) that search warrants must be obtained before the search for or seizure of evidence, *Gideon v. Wainwright* (1963) guaranteed defendants the right to legal counsel, and *Miranda v. Arizona* (1966) required that suspects be informed of their legal rights. In the eyes of conservatives, such decisions established “criminal’s rights” rather than logically extending the individual rights enshrined in the Constitution that protect all individuals, innocent and guilty, from abuses of state power. After an unsuccessful campaign to impeach the chief justice, on whom the Constitution confers a lifetime appointment in order to insulate the Court from political passions, conservatives settled in to argue the need to strengthen the state control apparatus in other ways to prevent criminals from getting the upper hand.

Of additional critical importance to the successful promotion of increased punitiveness was the growing support for the “culture-of-poverty” thesis, which attributed poverty to the immorality of the impoverished. For example, Democratic senator Daniel Patrick Moynihan’s much-discussed 1965 report on the black family attributed black poverty to the “subculture of the American Negro” and described crime, violence, and disorder in urban ghettos as a deserved consequence of poor choices and a lack of morals and values. Moynihan specifically cited female-headed households as a problem (Wilson 1987). The release of the report touched off widespread discussion, much of it emphasizing poor individual choices rather than larger social conditions and disenfranchisement. Loury notes that “before 1965, public attitudes on the welfare state and on race, as measured by the annually administered General Social Survey, varied year to year independently of one another: you could not predict much about a person’s attitudes on welfare politics by knowing their attitudes about race” (2007). Correlations are used to measure the strength of relationships between two items, with a value of one indicating perfect similarity or predictive ability and a value of zero indicating the absence of any similarities. The “correlation between an index measuring liberalism of racial attitudes and attitudes toward the welfare state over the interval 1950–1965 was 0.03. These same two series had a correlation of .68 over the period 1966–1996. The association in the American mind of race with welfare, and of race with crime, had been achieved at a common historical moment” (Loury 2007).

The effect of these shifts was to transform the image of the impoverished, especially poor minorities, from needing social justice to not deserving rights, financial assistance, and rehabilitation. By emphasizing street crime

and framing that problem as the consequence of bad people making bad choices, conservatives made it much less likely that members of the public would empathize with, and support measures to assist, them (Beckett and Sasson 2000, 53). Historian Michael Katz points out that “when the poor seemed menacing they became the underclass” (1989, 185). Through “law-and-order” and “tough-on-crime” campaigns, society could be protected from them—unwanted, unworthy of help, and increasingly portrayed as dangerous. The end result was that race eclipsed class as the organizing principle of American politics. By 1970, when Nixon declared a “war on crime,” quickly followed in 1971 by his declaration that “America’s Public Enemy No. 1 is drug abuse,” both were firmly associated in the public’s mind with minority populations (Ray 1972, 38).

A key aspect of the transformation of these attitudes into criminal justice policy started with the overthrow of rehabilitation and the indeterminate sentences that supported it. Indeterminate sentences were flexible and open-ended commitments—say, five years to life, with the parole board deciding release based upon the offender’s participation in programs and an evaluation of his or her progress toward rehabilitation. Criticism of rehabilitation would come from both the political Left and Right, although for different reasons. The bipartisan agreement on the problem of discretion in flexible sentences and concerns about rehabilitation precipitated the shift to both the era of the prison warehouse (Irwin 2005) and ever-increasing fixed sentences as Republicans gained power with their “tough-on-crime” rhetoric.

With rehabilitation, critics on the Left pointed to a variety of faulty theoretical assumptions, the harm done under the guise of therapy, and the use of the therapeutic ideal to administer justice in a discriminatory manner. For example, new therapeutic techniques, such as drugs, electroshock, sterilization, and psychosurgery, used under the guise of benevolence often left inmates with irreversible physical and psychological damage. The logic of “behavior modification” became the ultimate coercive custodial weapon used to deny inmates basic human rights; the critique of mental institutions in *One Flew over the Cuckoo’s Nest* (Kesey 1963) applied equally to penal institutions. Also, critics argued that prison officials used the indeterminate sentence as a coercive tool to achieve their own custodial goals rather than treatment goals. The criterion for release became institutional conformity rather than “cure.” In addition, critics pointed to the furtherance of class and race discrimination because of discretionary practices by parole boards that had almost no official accountability (especially for decisions to continue incarceration). Finally, rehabilitation, by explaining crime in highly individualistic terms as perpetrated by sick offenders rather than a symptom of a problematic society, legitimated the expansion of numerous state administrative powers used in practice to discriminate against already

disadvantaged groups whose crimes were frequently minor in comparison with the immensely destructive actions of corporations and the state (Greenberg and Humphries 1980).

Where the Left saw discrimination, the Right generally saw leniency for offenders. Too many programs “coddled” offenders who were undeserving of such efforts and resources. The lower end of the range for indeterminate sentences was increased as politicians put the “law-and-order” and “tough-on-crime” rhetoric into practice. Pointing to soaring crime rates as evidence that those administering our criminal justice system had tipped the scales in crime’s favor, neoclassical criminology stressed that the failure to control crime largely resulted from the failure to punish criminals (Kramer 1984, 223). This school of thought argued that the vast majority of offenders break the law only after they have used their rational faculties to calculate that the benefits of committing a crime outweigh the potential costs. That the benefits of crime outweighed its costs, it was argued, stemmed directly from leniency, including the “soft” sentences associated with the rehabilitative efforts.

In addition, conservatives argued that it was time to “admit that we do not know how to rehabilitate and start thinking about the criminal’s victims for a change” (cited in Cullen and Gilbert 1982, 96). The argument about whether rehabilitation was ineffective received a substantial boost because of an article by Robert Martinson (1974) that reviewed more than two hundred evaluations of treatment programs. His conclusion was widely interpreted to be that “nothing works.” While other researchers studying the question had weighed in on both sides of the debate, Martinson’s article drew a great deal of attention and even led to the author’s appearance on *60 minutes* (Cavender 2004). Martinson would do a follow-up study later and write that “new evidence from our current study leads me to reject my original conclusion,” but no one paid attention, even though Francis Cullen and Paul Gendreau note that Martinson’s original “nothing works article is among the most cited of criminological writings” (Cavender 2004). The selective nature of attention to these studies suggests that they were “used to justify, not to form, opinions about correctional treatment” (Cavender 2004). However, Martinson’s article made the conservative critique seem grounded in reality and science. Because liberals, rehabilitation’s traditional defenders, were also critiquing it, few voices spoke out against widespread political agreement that discretionary practices like indeterminate sentences should be abolished along with parole boards.

REPUBLICANS AND MEDIA DRIVE “TOUGH ON CRIME”

This move to more fixed sentences was an important step, but it would not necessarily have led to an incarceration binge without ongoing support for

the notion that “getting tough” would solve a problem the United States faced. In this sense, the second important step entails the political Right’s domination of politics in general and the crime issue in particular, as well as that group’s consistent emphasis on tougher criminal sentences. Indeed, even when a Democrat finally won the presidency, he did so with a largely conservative crime-control agenda: Bill Clinton favored the death penalty, advocated putting one hundred thousand more police on the streets, and expanded the drug war (he also did a great deal to increase the use of privatized prisons). While recent politics has focused more on terrorism than crime, there is no sign of a rejection of the tough-on-crime agenda (Reiman and Leighton 2010), so it is important to look beyond the early origins of this “idea” and examine its ongoing impact on politics. Indeed, it is the relentless nature of this politically popular agenda that causes overcrowding and increased criminal justice budgets. In turn, these budget increases conflict with the perennially popular and politically lucrative tax-cutting agenda—and rather than admit a basic contradiction in politically popular rhetoric, politicians will turn to privatization in order to have their cake and eat it too.

We have already noted the nationalization of crime in the 1964 election and Johnson’s backtracking on fighting crime by refocusing on dealing with poverty. But the 1968 election of President Nixon signaled the first successful “law-and-order” campaign. His 1970 State of the Union address announced a resounding rejection of earlier tactics for fighting crime, which he made a high priority:

We have heard a great deal of overblown rhetoric during the sixties in which the word “war” has perhaps too often been used—the war on poverty, the war on misery, the war on disease, the war on hunger. But if there is one area where the word “war” is appropriate it is in the fight against crime. We must declare and win the war against the criminal elements which increasingly threaten our cities, our homes, and our lives. (Nixon 1970)

As the 1970s came to an end, the American public defined crime as the number one domestic problem facing the nation, and fear of crime increased dramatically. Initially a substantial increase in the major index crimes reported by the police in the late 1960s and early 1970s aroused this anxiety. However, even as the violent crime rate declined in the early 1980s (see figure 1.2b), the public continued to believe that crime was increasing, and the level of fear remained high—a pattern that would repeat itself in the 1990s as well. Regardless of whether the crime rate was actually increasing or decreasing, national, state, and local politicians played on the media-driven fear of crime and its underlying racial anxiety to promote harsher sentences (Davey 1998).

During the 1980 presidential elections, the Democratic Party included a crime plank denouncing excessive police brutality and promising increased

federal funding for jobs and education, while the Republicans emphasized swift, certain, and strong punishments, including mandatory minimum sentences for drug offenders (Woolley and Peters 2007). The Republican candidate won. In 1984 the Republican Party announced its anticrime agenda comprising largely repressive measures, including preventative detention, the reestablishment of the death penalty, and the targeting of drug dealers. The Democrats, in contrast, focused on “the elimination of poverty and unemployment that foster the criminal atmosphere” (Woolley and Peters 2007). The Republican candidate won. In 1988, the Democratic Party platform continued the education-and-prevention theme, stating that sentencing reform should include “diversion programs for first and non-violent offenders.” On the issue of drugs, the platform called for “readily available counseling for those who seek to address their dependency.” The 1988 Republican Party platform demanded “an end to crime” and what it called a “historic reform of toughened sentencing procedures for federal courts to make the punishment fit the crime.” In addition, the party stated, “The best way to deter crime is to increase the probability of detection and to make punishment certain and swift. Republicans advocate sentencing reform and secure, adequate prison construction” (Woolley and Peters 2007). The Republican candidate won.

After almost two decades of “law and order,” efforts to keep the public focused on crime and supportive of yet another round of getting tough required dramatic political stunts. Thus, in September 1989, President George Bush gave a televised speech about the drug problem in the United States that included a prop—a bag of crack cocaine that he said had been purchased right across the street from the White House. Media coverage of drug issues increased, and public concern about drugs skyrocketed. Following the speech, the Gallup Poll recorded its highest-ever response to the question about whether drug abuse is the most important problem facing the United States (Bureau of Justice Statistics 1992). Congress and state legislators responded with another round of tougher mandatory sentences. Keith Jackson, an eighteen-year-old black high school student, was indicted for drugs and became known as the kid who sold drugs to the president.

Though not well covered by the media, the story behind this “political theater” provides a good example of the symbiotic relationship politicians and the media have with the crime issue (Barak, Leighton, and Flavin 2007). Stories like this garner support for politicians and an audience for the media if told in certain ways—for instance, by highlighting a young black man’s selling crack to the president. The more complex and less newsworthy story was that Jackson had no previous record and was a student in good standing; he only occasionally sold drugs for extra money because the area of Washington, D.C., in which he lived had severely limited job opportunities. His drug-sale pattern did not normally take him near the

White House, and despite his living in Washington, D.C., he did not know where it was. Drug Enforcement Administration (DEA) agents had to drive him there so he could make the sale. The DEA's special agent in charge of D.C. admitted in court, "We had to manipulate him to get him down there. It wasn't easy" (T. Thompson 1989, C1; Thompson and Isikoff 1990, D6). Worse still, a homeless woman in the park attacked a DEA agent charged with videotaping the transaction because she thought he was taping her. The jury chuckled, and the presiding judge likened the event to an episode starring the slapstick Keystone Cops.

The reality for Jackson was not so funny. He was held without bail and faced a mandatory twelve-year prison sentence. The first trial ended in a hung jury, but in the second, he was convicted of drug charges stemming from drug sales other than the one near the White House. Judge Sporkin, a former CIA general counsel appointed to the bench by President Reagan, imposed a ten-year sentence without the possibility of parole under mandatory sentencing guidelines for crack cocaine (T. Thompson 1990a, B11). The judge said he regretted having to impose a sentence of ten years (at a cost to the taxpayers of \$175,000) and hoped Bush would commute the sentence (he didn't). The image on the television screen showed another black man in handcuffs for selling drugs. The media focused coverage on the rhetorically excited politicians calling for more and harsher penalties because drug dealers were selling crack near the White House. They ignored and left unsaid the other truths about sentencing mentioned by Clear (above): the lack of jobs and opportunities, the need for money to go to school rather than prison, the fact that most crack users and dealers are white, the perception that Jackson was singled out, the likelihood that he will emerge from prison a worse citizen, and the possibility that those who know him will have less respect for the law. More pointedly, Valerie Callanan sees crack dealing as part of an informal economy that flourished because of labor market crises, and she asks, "Would we have two million people incarcerated today if the links to deindustrialization and globalization had been made in the media?" (2005, 178).

Although Clinton was a Democrat, he broke from the 1980s ideas in the Democratic Party platforms mentioned above and seized the crime issue by advocating traditionally Republican positions. Governor Clinton interrupted his 1992 campaign for president to return to Arkansas for the execution of a retarded black man who wanted to save a piece of cake from his last meal for after his execution (Sherrill 2001). Clinton's proposal to put an additional one hundred thousand police on the streets won him the support of the police unions, and he later claimed they had "played a big role in the recent crime drop" despite skepticism from criminologists (Reiman and Leighton 2010, 1). While other presidents could ignore crime-rate decreases during their terms, the decline in these rates under Clinton was

substantial, so he took credit for it, and he did so in a way that kept the issue alive: "Now that we've finally turned crime on the run, we have to redouble our efforts." Thus, his 1999 State of the Union address proposed more police armed with updated technologies (Reiman and Leighton 2010, 2).

State and local politicians noted the success of "law and order" and "tough on crime" at the national level. By 1974, most states had begun to build at least a few new prisons and put into place sentencing guidelines. In the mid-1970s Illinois and Arizona revised their criminal laws to increase penalties based on the argument that rehabilitation does not work and a discussion of serial killers (Cavender 2004, 342). Of particular relevance to the growth of the prison population were the state statutes relating to drug offences. For example, New York's 1973 Rockefeller drug laws set forth a mandatory sentencing scheme that requires judges to impose prison terms of no less than fifteen years to life on anyone convicted of selling two ounces or more, or possessing four ounces or more, of any illegal narcotic substance. The penalties apply without regard to the circumstances of the offense or the offender's criminal history, character, or background (Schmalleger 2003, 497). In 1978, Michigan enacted the 650 Lifer Law requiring mandatory life sentences for the possession, sale, or conspiracy to sell or possess 650 grams of cocaine or heroin. By 1983, forty states had passed such provisions (Tonry 1987). In 1984, the Sentencing Reform Act mandated the formation of the U.S. Sentencing Commission and tasked it with establishing binding sentencing guidelines to narrow judges' sentencing discretion dramatically. Increasingly, criminals were "no longer persons to be supported, but risks to be dealt with" through incarceration, so "as of 2000, 33 states had abolished limited parole (up from 17 in 1980); 24 states had introduced three-strikes laws (up from zero); and 40 states had introduced truth-in-sentencing laws (up from three). The vast majority of these changes occurred in the 1990s, as crime rates fell" (Loury 2007).

Notice that many of these laws targeted drug possession rather than violent crime, and many others increased sentences for a range of nonviolent offenses. "Get tough" started with the idea that the United States needed harsher penalties against repeat violent offenders, even though research demonstrates the United States is no more lenient with serious crimes than other Western democracies (Lynch 1993). Later rhetoric would shift to concern for leniency with repeat *and* violent offenders. Though rhetorically subtle, this shift has important implications for sentencing because a large number of repeat offenders have never done anything violent, as the stories of Rummel and Andrade discussed above illustrate. Steven Donziger calls this a "bait and switch" after the classic sales ploy of luring customers into a store with a low advertised price on one item, then shifting their focus to a more expensive one. With criminal justice, he writes,

the "bait" is citizen fear of violent crime. The "switch" occurs when public officials fight crime by building more prisons *but then fill the new cells with nonviolent offenders*. This scheme profits those who wish to appear "tough" on crime but in reality are failing to make America safe. One consequence of this policy is that the criminal justice system spends tens of billions of dollars on prisons and then underfunds effective drug treatment, educational programs, and violence prevention programs by asserting that there is not enough money. (Donziger 1996, 25, emphasis in the original)

The continuing popularity of "tough on crime" and the packing of prisons with nonviolent offenders at great taxpayer expense could not have happened without increasing media coverage of crime that stoked people's fear. Just as crime had earlier changed from a local concern into a national one, 1990s television coverage of crime followed the same process: certain types of crime occurring anywhere in the country were worth reporting. The media do not directly determine people's beliefs, but they do help focus their attention on one issue (like crime) over others (like unemployment, poverty, and inequality). Further, the media provide "frames" for coverage, and crime fits into a "fear frame" that plays to sensationalize conflict, which attracts more viewers and advertising revenue—but it also sends a message about the dangerousness of contemporary society (Cavender 2004, 338), especially by implying that the violence is random in nature.

Media executives say their outlets reflect what happens in the real world, but from 1990 to 1995, a time when crime rates peaked then started to decline, the "number of crime stories on national television news broadcasts nearly quadrupled" (Callanan 2005, 8). When the increase in crime dramas, "reality" programs, and other coverage is included, it comes as no surprise that the public believed crime was continuing to increase even after crime rates had been falling for several years. Further, when compared with official crime statistics, media representations reflect a "law of opposites": "The characteristics of crime, criminals, and victims represented in the media are in most respects the polar opposite of the pattern suggested by official crime statistics or by crime and victim surveys" (Pollak and Kubrin 2007, 61). The media cover violent crimes almost to the exclusion of property crimes, even though the latter comprise the vast majority of offenses. And the more freakish the violent crime, the more coverage it gets, especially when a photogenic white female victim is involved. Further, minority men are overrepresented as offenders compared to their prevalence in arrest data and victim surveys that ask about perpetrator characteristics. Conversely, the media underrepresent minority men as victims, even though violent victimization occurs disproportionately to that portion of the population.

During the 1970s, criminologist James Q. Wilson summarized the crime problem with the words "Wicked people exist," and the increasingly corporate media repeatedly associated black men with that idea by

overrepresenting them as violent offenders, underrepresenting them as victims, and downplaying social conditions as an explanation in favor of blaming individual pathology. Over decades, crime dramas, the news, and entertainment programs helped create the image of a typical criminal as overwhelmingly poor, black, male, increasingly drug crazed, and more and more dangerous. Katheryn Russell (1998) uses the term *criminalblackman* to capture the close association in the media and the public mind of black men with crime, especially the kinds of crimes white America fears most. This process, combined with the ideology about law and order discussed earlier, helped create a powerful sense that “crime was bad and getting worse, criminals were monstrous ‘OTHERS’ and the modern world was virtually spinning out of control” (Cavender 2004, 346).

While many Americans were coming to believe that gangs of (black) criminals were overrunning the streets randomly committing violence, the public discourse continued to focus on protecting law-abiding citizens (“us”) from the dangerous population (“them”) through imprisonment and executions. One important result of this crusade was the belief that there were only two choices: either build more prisons or have dangerous criminals on the streets. By showcasing extreme incidents of violent, predatory street crime, politicians and the media convinced the public to uphold the status quo policy of “lock ‘em up.” Anything else would be dangerous and irresponsible, even though the reality of get-tough policies involved escalating punishments for nonviolent offenders. As Grey Cavender notes, “In Governor Jim Thompson’s words, we should ‘send a message to the criminal.’ In Dirty Harry’s version, it was, ‘Go ahead. Make my day.’ As this response was replayed in the coverage of legislative debate across the states, and in movies and TV drama, it eventually became THE solution; and, it became common sense” (2004, 346).

THE OVERCROWDING CRISIS AND MASSIVE BUDGET EXPANSION

Set in this sociohistorical context, the upsurge in prison populations is not surprising (Ziedenberg and Schiraldi 2000). The attack on rehabilitation from political figures at the state and national levels, supported by the utilitarian calculus of neoclassical criminological thinking and coupled with the ever-increasing media focus on crime and criminals, elevated the level of fear of crime and the *criminalblackman*. However, prior to the mid-1980s, few new prisons had been built in the United States since the Great Depression, and the flood of new prisoners that began in the late 1960s overwhelmed these aging facilities (see box 2.1). Although the first private prison was still years away, the 1970s and early 1980s furnished the foun-

dation for it by causing overcrowding that guards, prison administrators, politicians, and courts found unacceptable. Guards perceived overcrowding as a threat to their physical and mental health, while administrators viewed it as career threatening and an impediment to accomplishing the goal of providing a secure facility. Politicians saw overcrowding as having the potential to call into question their crime policies, and courts saw the totality of prison conditions as violating the Constitution.

As prison populations began to grow in the early 1970s, prisoners sought relief from the conditions produced by overcrowding. Inmates in Florida (*Costello v. Wainwright* 1975, 1980) and Alabama (*Pugh v. Locke* 1976) challenged the conditions of confinement, noting how overcrowding exacerbated sanitation and security problems, while also further limiting access to classes and what remained of rehabilitative programming. Inmates in Texas also filed a historic suit in 1972 (*Ruiz v. Estelle* 1980) because the state prison system was so overcrowded that some units were operating at 200 percent of capacity with as many as five inmates to a two-person cell and others sleeping on the hallway floors and outside in tents. In 1980, a federal judge finally decided the case: citing brutality by guards, overcrowding, understaffing, and uncontrolled physical abuse among inmates, he ruled that conditions were so dismal that the state prison system in Texas violated the Eighth Amendment's protection against cruel and unusual punishment. The state of Texas was ordered to reduce overcrowding, and the entire Texas system was placed under court supervision (R. Vogel 2004).

Given that the Alabama court found prison conditions there "wholly unfit for human habitation" (*Pugh v. Locke* 1976, 406 F. Supp 318 at 323), it is not difficult to see the connection between severely overcrowded prison conditions and riots. Overcrowding was linked to major prison riots at Attica (1971), Santa Fe (1980), and Southern Michigan Prison at Jackson (1981), the world's largest walled prison at the time. Thus, at the international meeting of the American Federation of State, County, and Municipal Employees (AFSCME) in 1982, the corrections personnel union addressed the overcrowding issue once again. In addition to the mental stress and physical danger guards faced, AFSCME added its concern over antiquated facilities because "forty-three percent of prisoners nationwide are in facilities built before 1925" (Resolution No. 69 1982). In the final analysis, AFSCME called for \$6.5 billion in federal aid to build new prisons.

As inmates won lawsuits, administrators came to view the problem as a serious threat to their jobs and the autonomy of the profession. Inmate victories like *Ruiz* and *Pugh* resulted in the appointment of a "special master" to oversee policy changes and implementation (Martin and Ekland-Olson 1987). Prison litigation on this scale results in a consent decree where the two sides agree to standards and procedures for running a prison (or an entire state prison system) along with timetables for remedying conditions.

The special master is someone who typically has experience in prison administration and can potentially oversee the case for a decade or more, looking over the warden's shoulder and reporting on his decisions.

By 1985, prisons in two-thirds of the nation's states were under court order to correct conditions that violated the Constitution's Eighth Amendment prohibition against cruel and unusual punishment. Corrections officials and local politicians who failed to comply with court-established deadlines faced contempt charges. For example, the corrections commissioner of the state of Tennessee was fined and nearly jailed for contempt of court (Humphrey 1985). The state of Texas was also threatened with an \$800,000-a-day fine until prison overcrowding was alleviated (T. Vogel 1987). Across the country, corrections officials and politicians alike announced that they would begin the mass release of prisoners because of caps on the prison population to prevent overcrowding. In Michigan, state corrections authorities released seven hundred inmates. In Texas, corrections officials announced the impending release of thousands of convicts unless a new prison was built (LaFranchi 1986). In 1984, a Tennessee court threatened to order the immediate release of three hundred inmates from the state prison system. In 1985, more than eighteen thousand prisoners were released on an emergency basis to alleviate overcrowding (McDonald 1990, 6).

Overcrowding in state prisons also affected county and city jails. State corrections officials began refusing to transfer state prisoners from local and county jails, essentially warehousing state inmates at no cost to state departments of corrections' budgets while draining those of local communities. In New York, jails in counties across the state filed claims against the state totaling more than \$2.2 million for expenses related to operating at 50 percent above capacity. A Nassau County executive summed up the situation: "We're under a federal court order to keep the population below 900. If the sheriff had accepted the 901st prisoner he would have been in contempt of Federal Court, if he hadn't accepted number 901 he would have been in contempt of state court. We are in a bind" (*New York Times* 1984, 46).

As crowding grew, due largely to stricter sentencing guidelines and drug laws, politicians searched for a way to maintain "tough-on-crime-and-criminals" stances while at the same time protecting state- and locally run facilities from federal court interventions and appeasing corrections unions. State and local officials found themselves in a conundrum: political livelihoods and reelections were won on get-tough campaign promises, but there was no space to house criminal offenders. The easy answer at the time was to increase funding for prison building and facility renovation. Thus, the first important result of this crusade to manage the overcrowding problem was the development of widespread state-prison-expansion plans. Corrections expenditures quadrupled from approximately \$6.8 billion in 1980 to \$26.1 billion in 1990, and by 1995 expenditures had reached \$40

billion (Bureau of Justice Statistics 2001a). In ten years during the peak of prison construction, approximately six hundred new prisons were built in the United States (Donziger 1996). But state after state built countless new prisons only to find they were quickly filled with prisoners affected by get-tough policies that increased the likelihood of incarceration following a conviction *and* increased the length of the sentence *and* ensured offenders served at least 85 percent of their time.

While prison construction was the only solution to the way the "crime problem" had been constructed, the financial burden of more prisons was proving to be a fiscal nightmare for states (see comments from the Texas Performance Review above). Any discussion of alternatives to incarceration was the political kiss of death, and even talking favorably about more prisons but appearing less tough than an opponent could harm a politician's standing in the polls. At the same time, continuing to expand the criminal justice system became a problem because politicians also liked to promise tax cuts and smaller government. They seemed unaware of the contradiction—at least in public speeches—between building a bigger criminal justice system with many expensive prisons and imposing fiscal restraint to help hold down taxes and government growth. Worse still, the public went along with it.

As economic difficulties arose in the 1980s, citizens repeatedly voted down bond issues that funded state prison expansion while at the same time demanding that more criminals be imprisoned to make their communities safer. For example, three years after the legislature enacted the 650 Lifer Law, Michigan voters turned down a proposed tax increase for prisons. Even as the Rockefeller drug laws expanded the prison population, New Yorkers organized a statewide coalition to combat a proposed \$475 million bond issue for expanding and improving state and local prisons (Kihss 1981). In 1982, Texas governor Bill Clements vetoed \$30 million in state-appropriated funds for a new prison under pressure from voters (LaFranchi 1986). In addition, President Reagan, following up on President Jimmy Carter's revenue restrictions, made several deep cuts to the federal government's revenue-sharing program, expenditure controls, and federal tax laws. This effectively left many states and localities without any direct federal assistance for the first time (Herbers 1987). When politicians succeeded in delivering on their promise to cut taxes, state and local governments had to scramble to cut budgets or incur deficits. Ironically, this was happening at the same time that demand for local social assistance was increasing because so many people were losing jobs. The higher levels of spending for corrections were met by funneling money from other types of services and raising local taxes.

The extended economic prosperity of the 1990s alleviated this conflict to some extent, even while it provided fertile ground for the formation of

Table 1.2. Criminal Justice Expenditures, Payroll, and Employees, 2006

	<i>Total Expenditures (billions)</i>	<i>Employee Payroll (billions)</i>	<i>Total Employees</i>
Criminal justice system total	\$214.5	\$10.2	2,427,452
Police	\$98.8	\$5	1,154,193
Judicial and legal	\$46.8	\$2.3	507,793
Corrections	\$68.7	\$2.8	765,466

Source: Bureau of Justice Statistics 2008a, tables 1 and 2. Detail may not add to total because of rounding.

private prisons. So, by 2006 (the latest year for which data are available) the criminal justice system consumed \$214.5 billion and employed 2.4 million workers, as broken down by function in table 1.2. A Pew Center study has found that “federal and state governments are projected to need as much as \$27 billion—\$15 billion in additional operational funds and \$12 billion in additional capital funds” for prison construction from 2007 to 2011 to accommodate projected prison expansion and operation (Pew Public Safety Performance 2007, 18). That \$27 billion would be in addition to any increases necessary for the police and court systems.

CONCLUSION

An incarceration binge does not inevitably lead to private prisons with stock offerings. Still, some especially important points emerge from this discussion and interact with the growing interest in privatization discussed in chapter 2. First, from a business perspective, the data shown in figure 1.1 and the incarceration binge make corrections look like “growth area,” a good place to start a profitable company or to expand the profitability of an existing one. For example, in a prospectus filed with the Securities and Exchange Commission for the sale of five million shares in 1998, the Corrections Corporation of America (CCA) noted,

OUR REVENUE AND PROFIT GROWTH DEPEND ON EXPANSION

Our growth depends on our ability to obtain contracts to manage new correctional and detention facilities and to keep existing management contracts. The rate of construction of new facilities and our potential for growth will depend on several factors, including crime rates and sentencing patterns in the United States and other countries in which we operate. (1998a)

With 2.2 million prisoners, large numbers of whom are nonviolent offenders appropriate for the minimum- and medium-security institutions private prisons favor, private prisons are seen as having plenty of potential to expand. The continual increase in that number of offenders overall means

even more business opportunity. Investors would not have risked the substantial amount of capital required to build the first private prisons without this promise of growth and a continuation of the overcrowding that generates demand for immediate prison space.

While private prisons did not advertise themselves as antidemocratic, they took advantage of voters' defeat of prison bond initiatives. Private prison companies proclaimed to politicians that they could build a prison despite public bond defeats and even without a public vote of any kind. Money came not from tax dollars, but from venture capital, credit lines with Wall Street investment banks, and purchases of stock offerings.

Private prisons also benefited from the process of deindustrialization, which left many regions actively lobbying for a prison as an economic stimulus package. Regions that had previously relied on manufacturing or natural resource extraction had high unemployment and a weak tax base, so building a prison held out the allure of construction work followed by seemingly more permanent jobs for guards and other prison workers. In its 1994 annual report, the Corrections Corporation of America (CCA) quotes a resident of Venus, Texas, who had been part of a senior citizen's group that wrote a letter to protest locating the prison there. CCA "explained it from the ground up," she is said. "We felt like it would help Venus because we were just about as broke as you could get financially. It would help us tax-wise, and Venus would grow again like it used to be. So then we got out and worked for the prison and when they voted, it passed 100 percent."

The phenomenon of the rural prison economy is not unique to private prisons; many of these areas simply wanted a prison, public or private, although neither public nor private prisons had nearly as much positive impact on the local rural economies as expected or promised (Huling 2002). Politicians from economically depressed areas would lobby state representatives to locate prisons in their counties, increasing pressure on states to build prisons regardless of whether doing so was wasteful in terms of public safety. As localities went into competition and engaged in "bidding wars" for prisons, private prisons cashed in and secured tax breaks, infrastructure subsidies, and other benefits paid for out of taxpayers' pockets (Mattera and Khan 2001). Indeed, one study found that "78% of CCA's and 69% of Wackenhut's prisons were subsidized" (Mattera and Khan 2001, 28), suggesting that they had aggressively turned economic desperation to their corporate advantage, shifting large sums of taxpayer money into private profit. The subsidies for so many prisons added to the incarceration binge, contributing directly to the imbalance in legislative representation, the redirection of aid, and the other harms described earlier. All of those facilities also represent a huge opportunity cost as those dollars and resources could have gone into other projects to rebuild local economies in socially beneficial ways rather than contributing to injustice.

But private prisons could not have taken advantage of these dynamics—and might never have been part of the story of incarceration in America—were it not for another important factor: an antigovernment ideology that led to a large-scale outsourcing and privatization of government services. Without this ideological shift, the government may never have made the leap from outsourcing prison food service to outsourcing prison design, construction, and management. Without an intense ideological shift, entrepreneurs could not have sold the idea that turning over inmates to the lowest bidder would increase quality, reduce cost, and maintain the legitimacy of punishment. So, chapter 2 provides an overview of the antigovernment ideology that gave rise to privatization, which in turn, together with the incarceration binge, gave birth to the first modern for-profit prison corporations.