

The right choices

CLEVELAND, TEXAS

America's bloated prison system has stopped growing. Now it must shrink

DAVID PEACE, a 35-year-old from Dallas, has never used the internet. Neither has he ever used a mobile phone, possessed a driving licence or received a pay-cheque. Mr Peace, who is black, stockily built, with a broad smile, was convicted of an aggravated assault in 1997 after using a knife in a fight with a neighbour. The years most men of his age would have spent working, or starting a family, he has spent in various prisons in Texas. Next year he will be released from the minimum-security prison in Cleveland, a town near Houston, where he is currently held. The prospect of the outside world is still daunting. "I feel left behind," he says. "I've been living in a place where all of my choices are made for me, and now I have to learn to make the right choices."

No country in the world imprisons as many people as America does, or for so long. Across the array of state and federal prisons, local jails and immigration detention centres, some 2.3m people are locked up at any one time. America, with less than 5% of the world's population, accounts for around 25% of the world's prisoners. The system is particularly punishing towards black people and Hispanics, who are imprisoned at six times and twice the rates of whites respectively. A third of young black men can expect to be incarcerated at some

point in their lives. The system is riddled with drugs, abuse and violence. Its cost to the American taxpayer is about \$34,000 per inmate per year; the total bill is around \$80 billion.

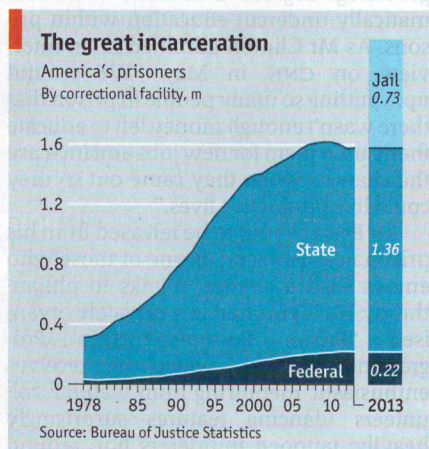
Things were not always this way. In 1970 America's state and federal prisons together held just under 200,000 inmates. In 2013, the latest year for which figures are available, the number of people in federal prisons, which hold only people convicted of federal crimes such as drug-smuggling or fraud, was itself more than 200,000 (see chart). There were almost 1.4m more in-

mates in state prisons; and there were over 700,000 people locked up in jails, some of them serving short sentences, the majority of them awaiting trial. Most of the inmates were men, but at 113 per 100,000 the incarceration rate of black women is higher than the overall incarceration rate in France or Germany. Prison conditions are often poor; many of those locked up have no proper access to training, education or rehabilitation.

Unstoppable though the system's growth has seemed at times, in the past five years it has reached a plateau. In 2009, for the first time since the 1970s, the total prison population declined slightly. One reason is that, faced with budget pressures, many states—particularly big ones such as California, New York and Texas—have been trying to cut their prison populations. Reforms to sentencing policy introduced by Eric Holder, Barack Obama's attorney-general from 2009 to 2015, may explain the very small recent fall in federal prison numbers.

Another reason for the plateau in prison numbers is that crime is on the retreat—and with it people's fears of crime. According to polling by Gallup, the proportion of Americans who worry "a great deal" about crime and violence has fallen dramatically since 2001 (though this year it ticked up from its previous low). That makes reform easier. American electorates have been widely assumed always to favour measures that look tough and punitive; but in California voters passed a ballot initiative last November that was designed to keep some non-violent criminals out of prison.

The trend could continue. Indeed, it ▶▶



could and should accelerate; this problem needs fixing. But even with a political appetite for reform and a public mood conducive to it, a comprehensive cutting back will be hard. The expanded prison system has built itself into the fabric of society. Judges, district attorneys, state- and county-level politicians, police forces, prison-guard unions, federal agencies and private firms that build and run prisons: all have contributed to the rise of mass incarceration, and many benefit from it. In rural parts of America prisons are now the biggest employers in many towns.

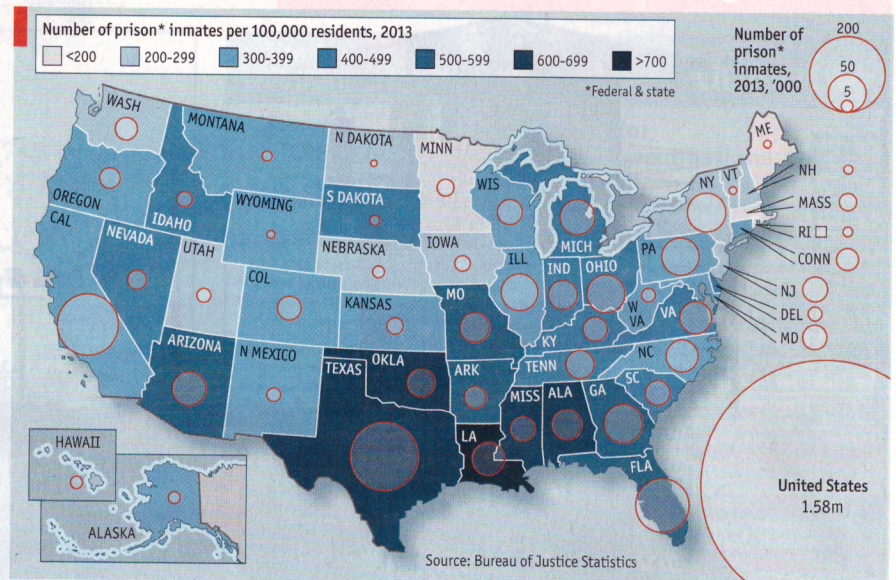
Forcing people in

The extraordinary growth in the prison population started with the “war on drugs” begun by Richard Nixon. The first state laws to bring in mandatory sentencing for drug crimes were introduced in New York in 1973, under Governor Nelson Rockefeller. During Ronald Reagan’s administration in the 1980s both the federal government and many states introduced much tougher penalties for dealing crack cocaine than for dealing powder cocaine, a move that enforced strong racial biases on sentencing. Between 1980 and 1990, the proportion of offenders in prison whose primary offence was to do with drugs climbed from under 8% to almost a quarter.

The crack-cocaine epidemic produced the conditions for more punitive policies across the board. “Three strikes” provisions, which required prison for third offences however minor, and “truth-in-sentencing” laws, which limited the possibility of parole to at most the last 15% of a sentence, proliferated. In many cases their passage was sponsored by prison-guard unions. Time served grew dramatically: according to a study by the Pew Charitable Trusts, the average prisoner released in 2009 spent three years inside, up from two in 1990.

In the early 1990s crime began to fall; by 2000 it was falling steeply. At the time some put this down to the growth in the prison population, but today few experts see that as having been much of a factor. In the 1970s and 1980s more incarceration probably did take some violent and dangerous people off the streets. But a comprehensive study by the Brennan Centre for Justice at New York University Law School, published in February, found that at most 12% of the fall in property crime in the 1990s could be attributed to more people in prison—and that there might have been no effect at all. Some of the punitive policies adopted in the 1990s seem to have been of particularly little value: Robert Nash Parker, a criminologist at the University of California, Riverside, has found that crime fell just as fast in states that had not adopted three-strikes laws as in ones that had.

A bigger prison system was also a worse one; as prisons filled up, states cut



back on their quality. In 2012 a report on Arizona prisons by Amnesty International found thousands of prisoners confined to windowless cells for 22 to 24 hours a day, without access to education or indeed any sensory stimulation at all. Most Texan prisons are not air-conditioned, which means that in summer the heat index, which takes temperature and humidity into account, can rise as high as 140°F (60°C). In one shocking case at a women’s prison in Alabama, guards were found to be routinely raping the inmates—and punishing those who complained with solitary confinement or threats of violence.

The drug problems that often get people to prison are rarely treated there: in 2010 the National Centre on Addiction and Substance Abuse, a think-tank, found that 65% of prisoners and jail inmates had substance-abuse problems, for which just 11% got any help. In many states prisoners have extremely limited access to vocational training or higher education. The crime bill signed by Bill Clinton in 1994, a measure which enacted subsidies that encouraged the building of state prisons, also banned prisoners from receiving Pell grants to help get college degrees—a decision which dramatically undercut education within prisons. As Mr Clinton admitted in an interview on CNN in May, “We wound up...putting so many people in prison that there wasn’t enough money left to educate them, train them for new jobs and increase the chances when they came out so they could live productive lives.”

Mr Peace, about to be released from his prison near Houston, is one of those who enjoys such a chance, thanks to philanthropy. He is enrolled in a privately organised “Prison Entrepreneurship Programme” through which he receives enthusiastic mentoring from well-off volunteers (dancing features surprisingly heavily: tattooed murderers bob around

the floor with blazer-wearing oil executives from Houston). When he leaves prison, he will get help finding housing and work. When most prisoners in Texas are released at the end of their term, though, they get just a bus ticket home and \$100; those let out on parole get \$50. It is a recipe for recidivism. According to a Department of Justice survey of those released from state prisons in 30 states, 77% of those released in 2005 were arrested within five years; more than half of the arrests were within a year of release.

Building a new life is made even more difficult by policies which continue to punish criminals long after they have served their time. In many states, former felons are banned from claiming food stamps and getting public housing. In some trades, having a conviction can keep you out of work entirely. In Texas prisoners may be taught how to cut hair in prison, but barbers’ licences are withheld from some convicted felons.

Making a plateau a peak

The case for change is manifest; the opportunity real. Outrage at the deaths of black Americans at the hands of the police has prompted a new look at the way the rest of the justice system treats them. Hillary Clinton, the likely Democratic nominee for president, gave a speech in April arguing that “there is something profoundly wrong when African-American men are still far more likely to be...sentenced to longer prison terms than are meted out to their white counterparts.” Some sort of reform is popular with a number of Republicans, too. In the Senate several Republicans are joint sponsors of bipartisan bills intended to reform the federal prison system.

The war on drugs is now being wound down. In four states and the District of Columbia cannabis has been legalised; in many more, its possession has been decrimi- ▶▶

► minialised. New York reformed the Rockefeller drug laws in 2004 and again in 2009. In 2010 Congress passed the Fair Sentencing Act, which reduced the historic 100:1 disparity between the amount of powder cocaine and the amount of crack that would trigger federal penalties. Drugs courts have been widely introduced to direct non-violent drug-users into treatment, not prison.

John Whitmire, a Democrat in the Texas state Senate who is a prominent advocate of prison reform, says his state is at last learning “to distinguish between who you’re afraid of and who you’re mad at.” The state’s Right on Crime movement—a Republican group—argues that reducing prison populations is both fiscally conservative and in accord with the Christian principle of forgiveness. Rick Perry, until January Texas’s governor and a Republican presidential candidate for 2016, likes to boast about closing three prisons during his time in office.

But substantially reducing the prison population is difficult. Reducing the flow into prison of non-violent, non-sex-offender prisoners who have committed relatively minor crimes—which is much of what has been done so far—is politically palatable, but has only a limited impact. John Pfaff of Fordham Law School in New York points out that such offenders have been a diminishing proportion of the prison population for some time. Violent offenders make up around half of all prisoners in state and federal prisons, sex offenders 12%. There are 165,000 murderers in America’s state prisons and 160,000 rapists: if everyone else were released, America’s incarceration rate would still be higher than Germany’s. Over time this pattern seems certain to strengthen: even for dealers, drug sentences tend to be relatively short, but violent criminals are sent away for decades. There is little appetite for releasing them early, even if they have aged and melted in prison.

Another problem is that the people who run the system have substantial incentives to protect it. “If it wasn’t for district attorneys, we would have passed so many more bills already,” says Ana Yáñez-Correa, the head of the Texas Criminal Justice Coalition, a prison-reform pressure group. The backlash to be faced if a criminal who could have been, or stayed, locked up does something heinous gives elected prosecutors—and judges—a strong incentive to err on the side of stiff penalties. Mr Pfaff sees a ratchet effect at work over time, with prosecutors seeking ever tougher charges. Private prisons, which account for just 8% of all prison beds but are growing fast, also produce a constituency with an interest in seeing those beds filled. Many prison-management firms insist on minimum-occupancy terms in contracts.

For these reasons and others, attempts

made by states to slow or arrest the growth of their prison populations have met with only partial success. Texas’s prison population, for example, has not fallen much since 2007. In half the states the prison population continued to increase between 2009 and 2013, even as the national numbers fell a bit.

But two big states, California and New York, have done well enough to suggest that the others could do better. In California the imprisoned population has been cut by 51,000, over 30%, since 2006. New York’s prison population has been falling since 1999, and is now a quarter smaller than it was. In both states, the reforms that have worked have not been changes to laws but rather adjustments to the way in which the entire system, from arrest to release, is organised.

In California, the reduction was largely the result of “realignment”, a policy adopt-



ed after the US Supreme Court ruled that the state’s prisons were dangerously overcrowded and either new prisons would have to be built or prisoners released. The response was to pass the cost of dealing with comparatively harmless criminals from the state to its counties—the entities which actually charge people and send them to prison. In addition, county probation departments took on responsibility for 60,000 people released from prison into supervision programmes.

Focusing on the worst

The policy seems to have realigned incentives productively; though roughly a third of the reduction in California’s prison population went back behind bars, two-thirds did not. The state is now going further: proposition 47, an initiative passed last year with overwhelming support, is likely further to reduce the number of people going

to prison by replacing several felonies with misdemeanours.

New York’s adjustment to the system has been brought about largely by prosecutors in New York City, who have become more careful about how they use the toughest charges. Cy Vance, Manhattan’s district attorney, is a fan of what he calls intelligence-driven prosecution. Under his tutelage, a Crime Strategies Unit collects information on the most persistent criminals, which can inform prosecutors even if it does not form part of a case. “If I know someone who is involved in shootings or violence, even if he is arrested for shoplifting, I want to charge it as aggressively as possible,” says Mr Vance.

The rationale behind this strategy is that most people who turn up in front of a judge are fairly harmless; even in the most violent neighbourhoods, a tiny number of criminals, often ones good at intimidating witnesses, account for most violent crime. If the book is thrown at the second lot and more leniency show to the first, prison populations and crime rates could both fall. The intelligence lies in throwing the books correctly.

And some money that could have been spent on prosecutions is instead being spent on crime prevention. At a gym in a relatively poor neighbourhood of Harlem teenagers are taught basketball skills by professional coaches—all under the watchful eyes of police officers and staff from Mr Vance’s office. Similar sessions take place every weekend at ten different sites across Manhattan. In a city where zero-tolerance policing makes many young black teenagers suspicious of any uniform, the teenagers seem happy with the prosecutors and cops present. The hope is that by building trust, prosecutors will find out about arguments between teenage gangs before they erupt into violence.

If prison is to be less of a part of American life, the philosophy behind such schemes needs to spread. Reform in police forces like those of Los Angeles and New York City, which in the 1990s started trying to prevent crime as well as react to it, is one of the things that has made America less violent. But the rest of the criminal-justice system is only slowly catching up to the idea of being proactive. A system that has been designed to react to crime, and to punish it, needs to prevent it instead. That will take a broad change in culture, not just tweaks to laws.

In his cell block, Mr Peace complains that for most of the time he has spent in prison, he has never been treated as someone with a problem, but rather as a problem himself. He has earned qualifications as a plumber and a welder—both paid for by his mother. He is hopeful that when he leaves, he will never come back. If America is to be the land of the free, it will have to learn to forgive a lot more men like him. ■