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Crime and punishment in America

# Rough justice

**America locks up too many people, some for acts that should not even be criminal**

Jul 22nd 2010



IN 2000 four Americans were charged with importing lobster tails in plastic bags rather than cardboard boxes, in violation of a Honduran regulation that Honduras no longer enforces. They had fallen foul of the Lacey Act, which bars Americans from breaking foreign rules when hunting or fishing. The original intent was to prevent Americans from, say, poaching elephants in Kenya. But it has been interpreted to mean that they must abide by every footling wildlife regulation on Earth. The lobstermen had no idea they were breaking the law. Yet three of them got eight years apiece. Two are still in jail.

America is different from the rest of the world in lots of ways, many of them good. One of the bad ones is its willingness to lock up its citizens (see our [briefing](#)). One American adult in 100 festers behind bars (with the rate rising to one in nine for young black men). Its imprisoned population, at 2.3m, exceeds that of 15 of its states. No other rich country is nearly as punitive as the Land of the Free. The rate of incarceration is a fifth of America's level in Britain, a ninth in Germany and a twelfth in Japan.

## Tougher than thou

Some parts of America have long taken a tough, frontier attitude to justice. That tendency sharpened around four decades ago as rising crime became an emotive political issue and voters took to backing politicians who promised to stamp on it. This created a ratchet effect: lawmakers who wish to sound tough must propose laws tougher than the ones that the last chap who wanted to sound tough proposed. When the crime rate falls, tough sentences are hailed as the cause, even when demography or other factors may matter more; when the rate rises tough sentences are demanded to solve the problem. As a result, America's incarceration rate has quadrupled since 1970.

Similar things have happened elsewhere. The incarceration rate in Britain has more than doubled, and that in Japan increased by half, over the period. But the trend has been sharper in America than in most of the rich world, and the disparity has grown. It is explained neither by a difference in criminality (the English are slightly more criminal than Americans, though less murderous), nor by the success of the policy: America's violent-crime rate is higher than it was 40 years ago.

Conservatives and liberals will always feud about the right level of punishment. Most Americans think that dangerous criminals, which statistically usually means young men, should go to prison for long periods of time, especially for violent offences. Even by that standard, the extreme toughness of American laws, especially the ever broader classes of "criminals" affected by them, seems increasingly counterproductive.

Many states have mandatory minimum sentences, which remove judges' discretion to show mercy, even when the circumstances of a case cry out for it. "Three strikes" laws, which were at first used to put away persistently violent criminals for life, have in several states been applied to lesser offenders. The war on drugs has led to harsh sentences not just for dealing illegal drugs, but also for selling prescription drugs illegally. Peddling a handful can lead to a 15-year sentence.

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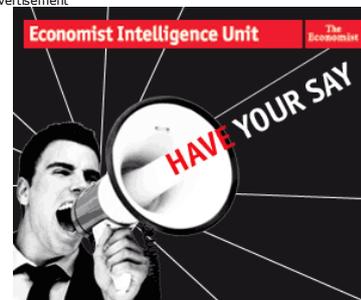
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Muddle plays a large role. America imprisons people for technical violations of immigration laws, environmental standards and arcane business rules. So many federal rules carry criminal penalties that experts struggle to count them. Many are incomprehensible. Few are ever repealed, though the Supreme Court recently pared back a law against depriving the public of "the intangible right of honest services", which prosecutors loved because they could use it against almost anyone. Still, they have plenty of other weapons. By counting each e-mail sent by a white-collar wrongdoer as a separate case of wire fraud, prosecutors can threaten him with a gargantuan sentence unless he confesses, or informs on his boss. The potential for injustice is obvious.

As a result American prisons are now packed not only with thugs and rapists but also with petty thieves, small-time drug dealers and criminals who, though scary when they were young and strong, are now too grey and arthritic to pose a threat. Some 200,000 inmates are over 50—roughly as many as there were prisoners of all ages in 1970. Prison is an excellent way to keep dangerous criminals off the streets, but the more people you lock up, the less dangerous each extra prisoner is likely to be. And since prison is expensive—\$50,000 per inmate per year in California—the cost of imprisoning criminals often far exceeds the benefits, in terms of crimes averted.

### Less punishment, less crime

It does not have to be this way. In the Netherlands, where the use of non-custodial sentences has grown, the prison population and the crime rate have both been falling (see [article](#)). Britain's new government is proposing to replace jail for lesser offenders with community work. Some parts of America are bucking the national trend. New York cut its incarceration rate by 15% between 1997 and 2007, while reducing violent crime by 40%. This is welcome, but deeper reforms are required.

America needs fewer and clearer laws, so that citizens do not need a law degree to stay out of jail. Acts that can be regulated should not be criminalised. Prosecutors' powers should be clipped: most white-collar suspects are not Al Capone, and should not be treated as if they were. Mandatory minimum sentencing laws should be repealed, or replaced with guidelines. The most dangerous criminals must be locked up, but states could try harder to reintegrate the softer cases into society, by encouraging them to study or work and by ending the pointlessly vindictive gesture of not letting them vote.

It seems odd that a country that rejoices in limiting the power of the state should give so many draconian powers to its government, yet for the past 40 years American lawmakers have generally regarded selling to voters the idea of locking up fewer people as political suicide. An era of budgetary constraint, however, is as good a time as any to try. Sooner or later American voters will realise that their incarceration policies are unjust and inefficient; politicians who point that out to them now may, in the end, get some credit.

Leaders

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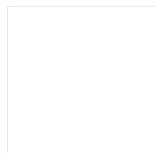
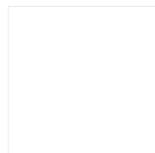
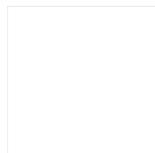
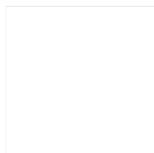
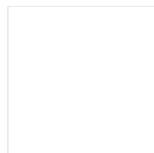
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