

George W. Bush and the 'Texas Solution'

Michael Teague explores the impact President Bush's uncompromising 'Texas Solution' may have upon American criminal justice, with its unprecedented rate of penal expansion and its huge correctional industry.

George W. Bush's analysis of criminal justice during his 1994 Texas gubernatorial campaign was unambiguous: "Incarceration is rehabilitation". Elected on a law-and-order platform, Bush's punitive and retributive approach to offending defined his subsequent governorship. It may yet define his presidency.

Bush's equation of incarceration with rehabilitation gains particular resonance in light of America's unprecedented rise in imprisonment over the last 25 years. The USA is home to 5% of the global population, yet this land of the free holds over a quarter of the world's prisoners. America's rate of imprisonment is 6-10 times greater than that of most industrialised nations. The nation's second biggest employer, after General Motors, is the prisons industry. With an annual \$35 billion budget and over two million of its citizens in prison, America leads the world in incarceration.

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Imprisonment has impacted disproportionately upon the minority ethnic population. The US Justice Department has concluded that white men have a 4.4% chance of going to prison at some point in their lives. For Hispanic men the figure is 16%, while black men have a shocking 28.5% chance of imprisonment in their lifetime. Between 1980 and 1999, the incarceration rate for African Americans more than tripled (from 1,156 per 100,000 of the population to 3,620 per 100,000). In 1999, 46% (almost half) of prison inmates were black, and 18% were Hispanic. This disproportionality extends to the death penalty; 36% of those executed between 1976 and 2001 were black, though black people comprise 12.6% of the overall population.

The total US correctional population includes all those under the supervision of federal, state and local correctional authorities, whether in prison, on probation or parole supervision. In 1999, this

total rose to some 6.3 million – 3.1% of all American adults. This total represents a staggering increase of 242% since 1980, indicating a period of unprecedented penal expansion.

Nevertheless, probation in America is well used, if hardly thriving. While US community intervention significantly differs from UK practice, no less than 3,773,624 offenders were subject to community supervision in 1999. English probation officers, with their average caseload of 36.6 offenders, will be interested to learn that US probation caseloads average from 100–500 offenders per officer (though this varies by state).

A flavour of the different context of US probation work is provided by California's Probation, Parole and Correctional Association, which notes that supervision may involve "handcuffs, protective devices for communicable diseases, bullet-proof vests, puncture-resistant gloves, communications equipment, chemical sprays and/or firearms and any other equipment designed to protect personnel".

The nature and intensity of community supervision varies from occasional brief contact to intensive probation, which places those assessed as high risk of breach on concentrated supervision. This is often conducted on a daily basis, and is sometimes combined with a curfew. New York Probation Service quaintly defines intensive probation as a 'dispositional alternative to incarceration'. Intensive supervision stresses control (e.g. reporting, enforcement, electronic monitoring, curfews) rather than treatment (e.g. drug work, anger management).

Static or decreasing resources in many jurisdictions have heightened pressures for sanctions which cost less but are 'tougher'. Most states spend \$20,000–\$50,000 per year for each prisoner, yet pay only \$200 annually for each probationer. Under-resourcing means the average probation supervision session each month lasts from 5-20 minutes, contradicting virtually everything we know about 'what works' in reducing reoffending. It is doubtful that significant change can be achieved within this limited time frame. When significant intervention – as opposed to a perfunctory paper or electronic exercise in monitoring – does occur, it is almost exclusively of a cognitive behavioural nature.

The reality of the American experience is that crime rates for many offences are lower than those in the UK, but this has hardly impeded US penal expansionism. Despite the fall in the overall US crime



'Execution', Sutianto, Indonesia

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rate in the last decade, 83 % of Americans can expect to be a victim of crime at least once in their lifetime. This, coupled with the extreme reluctance of politicians to publicly argue for rehabilitation, helps explain the political imperative for governments (and presidential candidates) to support penal populism and appear 'tough on crime'. Overall crime may have dropped, but the US correctional population has inexorably risen.

A number of factors have contributed to this. 'Three strikes' laws, leading to automatic life imprisonment without parole after three offences, have been passed in almost half of US states. Mandatory minimum sentences have been disproportionately utilised for drug offenders (who represent a quarter of the country's prison population). Increased federal funding has reinforced the pressure for states to enact 'truth in sentencing' legislation – ensuring offenders serve at least 85% of the sentence imposed by the court.

As Governor Bush was poised to assume the

presidency, the Washington-based Justice Policy Institute reported that Texas locked up more prisoners than any other US state (despite the fact that California's population is substantially larger). The Institute further stated that if Texas were an independent nation, it would have the world's highest imprisonment rate (higher even than Russia or China). This perspective on criminal justice accompanied President Bush to the White House.

Since the US Supreme Court re-legalised capital punishment in 1997, no less than 38 US states have reintroduced the death penalty. Approximately 3,500 prisoners are currently on death row. In Texas, 152 prisoners were executed during Bush's governorship. Despite protestations of 'compassionate conservatism', the evidence suggests that President Bush has an unyielding stance on offending and considers that punishment and coercion are the most crucial functions of the criminal justice system.

On 31 December 1999, Governor Bush's home state had 163,190 inmates in federal and state prisons. The Texas incarceration rate increased by 98,901 inmates, an increase of no less than 172.7% between 1990 and 1999.

Texas also executed more prisoners than any other US state last year; according to the National Coalition to End the Death Penalty, 40 prisoners received capital punishment in the year 2000 (Virginia, which ranked second, executed 11). On federal death row, almost one third of the whole country's prisoners currently awaiting execution were prosecuted in one state. That state is Texas. Once again,

minority ethnic prisoners are substantially over-represented. At the start of 2001, a total of 448 prisoners were on death row in Texas: 99 were Hispanic while a staggering 184 were black.

People with learning disabilities or mental disorders remain eligible for capital punishment. Larry Robison, a paranoid schizophrenic who killed five people in a single incident, was executed in Texas last year. His parents now conduct an anguished campaign on the plight of mentally disordered offenders in the Texan criminal justice system.

While capital punishment for offences committed under age 18 is prohibited by international human rights standards such as the Convention on the Rights of the Child, inmates are executed in Texas for offences committed when they were 17. In January 2001, 23

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death row inmates had been convicted of an offence committed while they were under the age of 18. Even now, some politicians in Texas and other states are calling on state legislatures to lower the age for capital punishment for offences committed below even the current national minimum age of 16, set by the US Supreme Court (*Thompson v. Oklahoma*).

Amnesty International has noted that racial disparities in capital sentencing of juvenile offenders in Texas are the most disproportionate in the USA. In 1998, of the 25 Texan offenders who committed capital offences while aged under 18, no less than 23 were from ethnic minorities – a staggering 92%.

Bush directly linked the overall 14% decrease in offending and the 20% drop in violent crime in Texas over his two terms as governor to his policy of 'swift and sure punishment for criminals'. He also effectively abolished parole for some offenders; Texan sex offenders, for instance, now serve their entire sentence. As governor, Bush passed a 'two strikes' law, leading to automatic life imprisonment for a second sex-related offence. In what may be another pointer to the future, he signed a voluntary castration bill for repeat violent sex offenders. Drawing on the Texan experience, the new President now plans to implement the abolition of parole and further measures for 'truth in sentencing' which will inevitably lead to inmates serving even longer sentences.

With one in 26 Texans on probation or parole supervision, and one in 98 in state prison or county jail, the Texas solution offers a clear indication of the new uncompromising stance in the White House.

Despite this context, community supervision in Texas (albeit of a somewhat more robust nature than its UK variant) was surprisingly well utilised; approximately one-eighth of US probationers and parolees – some 556,410 people – were receiving community supervision.

During the last decade, the serious crime rate in Texas dropped faster than that of the country as a whole, leading commentators to label Bush's criminal justice policy the 'Texas solution'. Texas now has more criminals under state supervision each day – in prison, in state jail, or on probation or parole – than any other state. With one in 26 Texans on probation or parole supervision, and one in 98 in state prison or county jail, the Texas solution offers a clear indication of the new uncompromising stance in the White House.

While Republicans have traditionally been considered tough on crime (if not on its causes), it is wrong to assume that the Democrats have been supportive of either rehabilitation or decarceration.

The reality of President Clinton's eight-year tenure was the biggest rise in the use of imprisonment (in both federal and state prisons) of any previous US President. Clinton's belated conclusion in December 2000 that America desperately needed 'a re-examination of our entire prison policy' was not reflected in the policies previously implemented by his administration. That Clinton only felt able to articulate this view as his presidency was about to expire is further evidence of the political pressures that inform US criminal justice policy formulation.

If America leads the world in incarceration, then Texas leads America. The Texas solution has now arrived at the White House. As the first US president who gained a criminal conviction before assuming office (for drink driving, in 1976), George W. Bush now has the chance to grant all US citizens an opportunity that he himself enjoyed – the opportunity for rehabilitation. Whether he will do so remains to be seen.

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