

Coronavirus Provides an Opportunity for Prison Reform

In the current public health crisis, one false note is the objection from the president's supporters that prisoners shouldn't be released.

by Conrad Black



Now is the moment to take the president's penal reform agenda forward. Prisons crowd people together assuring that a single instance of coronavirus is apt to infect many hundreds of people. As a matter of simple justice and to achieve some retroactive reduction of the almost unchallengeable tyranny of American prosecutors—who win over 95 percent of their cases, and more than 95 percent of those without a trial, so overwhelming is the prosecutor's advantage—all nonviolent first-time offenders who have served at least half their sentences should be released at once.

Now that illegal immigration is being sharply reduced, there is an increased chance these prisoners may relaunch themselves in respectable employment when the economy returns to normal in a few months. But elderly or otherwise medically vulnerable people who are nonviolent first offenders should, as a matter of human decency, be released immediately—to save their lives, as well as to encourage them to make something useful of the rest of their lives that otherwise will probably be foreshortened.

Failure to act very soon in such cases would, in the phrase of House Speaker Nancy Pelosi (D-Calif.), but more accurately applied, leave blood on the hands of all those charged with responsibility for America's ramshackle and almost merciless penal system, the catchment at the end of the conveyor-belt from America's scandalously one-sided criminal justice process.

Prosecutors frequently prevail by suborning or extorting perjured incriminating testimony delivered by witnesses who are guaranteed they will not be prosecuted for perjury as they negotiate their evidence with prosecutors.

As I spent three years in U.S. federal prisons—unjustly, [as was ultimately determined](#)—I am familiar with aspects of the Bureau of Prisons regime, and in particular, its inefficiency and general indifference to even the most civilized and inoffensive of those consigned to it. Because of my successful appeals and my access to a large number of readers, I often receive appeals from inmates in the U.S. prison system and, if their concerns can be verified, I sometimes write about them, with some success, particularly where there has been an urgent need for medical attention they were not receiving.

Such a case has arisen in recent weeks. An inmate who has asked me not to identify him is fetched up in a facility suffering from an infestation of scabies contracted in his previous prison, and he was placed in an isolation unit, but

not medicated, and has become dangerously immunocompromised.

There is no point in relitigating the man's conviction; as a first-time nonviolent offender, he is a candidate qualified to apply for a compassionate release under the First Step Act. If his request were accepted, his sentence would be reduced to a total of 46 to 53 months, and he has served 52 months.

He has an impeccable record as a prisoner and was declared by the trial judge not to be a flight risk. His wife has a home in Nevada and is ready to receive him, and the company he built is being successfully managed by his son and will provide an income for him. The family's pastor vouches for him.

This man entirely qualifies under what is called in Attorney General William Barr's memorandum for the director of the Bureau of Prisons on March 26, 2020: "Home Confinement Where Appropriate to Decrease the Risks to Their Health." The attorney general instructed the director to consider the age and vulnerability to COVID-19 in accordance with CDC guidelines, inmate conduct, the inmate's re-entry plan, and the nature of the inmate's original offense.

Under all these criteria, this inmate, whose family is too terrified to publicize the case, is an ideal candidate.

The detention center where he now resides has an assured policy of letters to the warden from inmates being responded to within three days. His letter of March 20 has had no reply. He has effectively served his sentence for a rather minor and, in any case, not sociopathic or violent offense, leaving out the question of whether he was justly convicted. He is in extreme danger because of immunological problems contracted while in the hands of the Bureau of Prisons, and every official, judicial, and humanitarian consideration militates for his release to home confinement and supervised release.

Again and again, while I was in prison myself (an interesting

and not completely unpleasant experience, though it was an outrage that I was charged with any crime, much less convicted of any), I witnessed people who were urgent medical cases and were not treated, or sent to external medical facilities as required. They were simply left to wither and die to the unspeakable anguish of their families who came to visit them faithfully and saw their lives ebb away because of the lassitude of their jailers, despite the pious pretensions to wholesome correctional intent of the Bureau of Prisons.

This opens up the larger question of the political advisability of ameliorating prison conditions.

Given that the United States has six to 12 times as many incarcerated people per capita as its natural analogs (Australia, Canada, France, Germany, Japan, and the United Kingdom), and that there are more than 40 million ostensible one-time felons in the country, (including relatively inconsequential offenses such as failing a breathalyzer or being disorderly at a fraternity party many years before), this is a vast constituency.

Taken together with their families, more than 100 million Americans would be appreciative of some reasonable liberalization of the treatment of these people. President Obama reduced the disparity of sentences for crack as opposed to powder cocaine from 100-to-1 to 18-to-1, but it is still discriminatory against African-Americans.

Grandstanding congressmen like Danny Davis (D-Ill.), who represent many families with convicted felons in them, put up window-dressing bills that, if they passed at all, didn't accomplish anything. This is another vast constituency that President Trump befriended with the First Step Act, but has not really courted.

While it may be too much to reform the scandalous plea-bargain system, and have the defense instead of the prosecution speak

last to the jury, and make fewer judges who are ex-prosecutors, and reform the public defender status from its present lamentable state as essentially a Judas Goat for the prosecutors, it would be just and timely to clear out of the prison all the first-time nonviolent offenders who have served a substantial part of their sentences.

Prisons, I discovered, in the case of nonviolent people, make things worse, not better, and create an artificially Manichaeian society, where anyone who has been convicted of a felony is demonized and stigmatized. Millions of American lives are needlessly destroyed.

In the current public health crisis, one false note is the objection from the president's supporters that prisoners shouldn't be released. About 20 percent, by my own reckoning, of nonviolent offenders are not, in fact, guilty. At least half of those who *are* guilty have been grossly over-sentenced, and incarceration achieves little that is useful for any of them. Community service combined with on-job training would be more effective.

Apart from questions of justice, this is the next giant voting bloc waiting to be mobilized. The Republicans should not become so enthused about law and order that they fail to temper justice with mercy, an "attribute of God" as Shakespeare reminded us (through Portia in the *Merchant of Venice*) while losing their sense of third-grade electoral arithmetic.

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