

# U.S. Criminal-Justice System Is Out of Control, and Media Are Distracted

*The evil is compounded by the preoccupation of the the political class with the news story du jour, from the southern border.*

by Conrad Black



Few episodes illustrate more completely the absurdity American political discourse has reached than the more robust aspects of the controversy over separated children at the southern border. Once again the Trumpophobic media decked the halls with their latest version of their triumphalist call that this time he (the president) has gone too far. They have rung their bells threadbare with that refrain, from the size of the inaugural crowd through restriction of entry from terrorism-plagued countries, Charlottesville, supposed affronts to foreign leaders, warmongering over Korea, insults to countries

that are the sources of immigration, and now the fate of these children. When Senator Richard Blumenthal of Connecticut compares it to stuffing "people in cattle cars and sending them to death camps," Bill Maher calls for a recession and if necessary assassination, to be rid of the president, and the bellwether of Trump-hate, the egregious and avaricious Representative Maxine Waters, warns of a violent public uprising and asks that Trump supporters be assailed in public and in their homes, Trump's enemies smell blood, either his, at last, or in desperation, their own.

The issue is nonsense. The children were used by their parents to promote sympathy as they invaded the country illegally, and then were abandoned by them after being stopped and briefly retained and ordered to come back for a hearing, which most of them never do, simply leaving their children in the hands of the U.S. government as wards of the American taxpayers. Their conditions are better than most of them had at home, and they are reasonably well taken care of and fed as if they lived in McDonald's. The administration has now undertaken to round up the parents and reunite them with the children, and the Democrats want them released into the country with their parents, and the process of trying to normalize entry into the country by masses of unskilled foreigners effectively abandoned. Trump probably sees a big electoral victory in a showdown on immigration, which would be the likely reason why he promised full support for Republican efforts to legislate at the start of last week but a few days later counseled to wait for the midterm elections. Endless trips to the border by improbable Democratic crusaders like Nancy Pelosi can't be expected to maintain this levitation of public outrage indefinitely.

It is not the continuing media frenzy to find some mortal failing in Trump, and the lunacy, now down to Nazi name-calling, that makes discourse absurd, though it is certainly a flying start. It is the hypocrisy and stupidity of two-thirds

of the federal politicians and almost all of the media running whole newscasts for days on end over these 2,300 Mexican and Central American youngsters who are well cared for, abandoned by their illegally invading parents, even as millions of Americans have had their lives ruined by the monstrously evil justice system of America. At any time, as many as a million Americans are in prison in inhuman conditions, despite being innocent or over-sentenced, or having committed minor offenses. The tenacity with which Americans persist in regarding themselves as a society of laws is disgustingly complacent, when 99 per cent of Americans accused of crimes are convicted, 97 per cent without a trial, and carceral conditions are frequently abominable by the standards of advanced countries.

Professor Andrew Koppelman of Northwestern recently wrote in the *Arizona State Law Journal* that because the American legal system and general "moral understanding" is that crime is caused by "morally defective people," having committed almost any crime, they prove themselves to be permanently bad and undeserving of consideration. To quote another expert, Joshua Kleinfeld, with whom Professor Koppelman is having a sophisticated academic debate: "American criminal punishment is not too harsh because it reserves the ability to severely punish some people but because it metes out severe punishment to far, far too many people. American criminal punishment's essential moral failure is its recklessness about when and against whom to be harsh." Koppelman writes that, as Kleinfeld observes, the United States "is remarkably ready to declare that a person who has committed a crime is irredeemable. . . . Innocent people are routinely convicted on the basis of false and coerced confessions, questionable eyewitness procedures, invalid forensic testimony and corrupt statements by jailhouse informers."

The United States has 2.3 million prisoners, about 1 per cent of the adult population, and about 3 per cent of the people

are under correctional control, including about one third of African-American men. Prison conditions are notoriously vile: "male-on-male rape, domination by racial gangs, assault by sadistic guards, and assault by other prisoners," as Kleinfeld writes in the *Stanford Law Review*. The whole system is one of vengeance and not of rehabilitation, and its hopelessness is compounded by sentencing guidelines, the near-uniformity of plea bargaining, and the use of actuarial guidelines to determine degrees of punishment. The legislators, in pursuit of the votes of the frightened and the misanthropic, have usurped the role of the judges. Though American justice is intended to stabilize society, the proportions of incarceration are so extensive that the opposite is the result; about 15 per cent of Americans have been in prison at some point in their youth, with very unsettling effects. It isn't so much a justice system as a process dressed up in tatters of due process by which law enforcement sends astounding numbers of people to inhumane places and ruins their lives. There are 70,000 American minors in prison now, and juvenile prosecutions have risen spectacularly as the juvenile crime rate has been dropping.

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This is why the U.S. has six to ten times as many incarcerated people per capita as other prosperous democracies (which have lower crime rates than the U.S.): Australia, Canada, France, Germany, Japan and the U.K. With less than 5 per cent of the world's population, the United States has about 25 per cent of its incarcerated people. Kleinfeld writes that "America seems to have lost the concept of error." He makes the point that people are deemed not to have made mistakes, they are wicked, as a result of having been convicted, even though, unlike every other advanced society in the world, indictment and conviction are synonymous 90 per cent of the time. He asserts

that a system that provides 25 years in prison for someone who shoplifts three times, even five years apart, regards the wrongdoer as evil, when in fact the system itself is evil; “the country throws away tens or hundreds of thousands of lives that could be salvaged. . . . Racism, sadism, and mindless inertia interact in complex ways.”

Koppelman concludes:

*In America, we have collectively decided that our interest in feeling superior to all those bad guys outweighs the atrocity of mass incarceration. . . . America maintains, at huge expense, an immense industry whose purpose and effect is the mindless or malevolent destruction of human lives. . . . We are the ones who are doing this. Evidently we are happy to keep doing it. That's evil.*

The professor is correct. The American criminal-justice system is a monstrous and soul-destroying evil, and this fact is regularly proclaimed by enlightened judges, lawyers, and qualified academics. The evil is compounded by the mawkish and obscene preoccupation of the entire media and the political class with this trivial business of a small number of illegally arrived foreign children being tolerably treated after abandonment by their parents. The entire tableau is a farce, a disgrace, an outrage, and a tragedy.

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