

The Conservative World View and Prison Populations, Broken Windows.

Posted in [Uncategorized](#) by Mike on December 23, 2010

Tim Carney asks, as a New Year's resolution, [to not to do battle with faceless ideologies](#). Carney is interjecting into a specific problem, that of the conservative movement and prison population. Carney:

But on Twitter, Serwer repeatedly characterized the “conservative approach to crime” and claimed the “conservative record on crime is clear and easy to evaluate,” dismissing Freire’s objections that such a record might be more complex than he thinks because, well, different conservatives have different views.

This was just another instance of the sort of head-butting we constantly see on blogs. Complaining about “liberals” or “conservatives” being inconsistent is a waste of time.

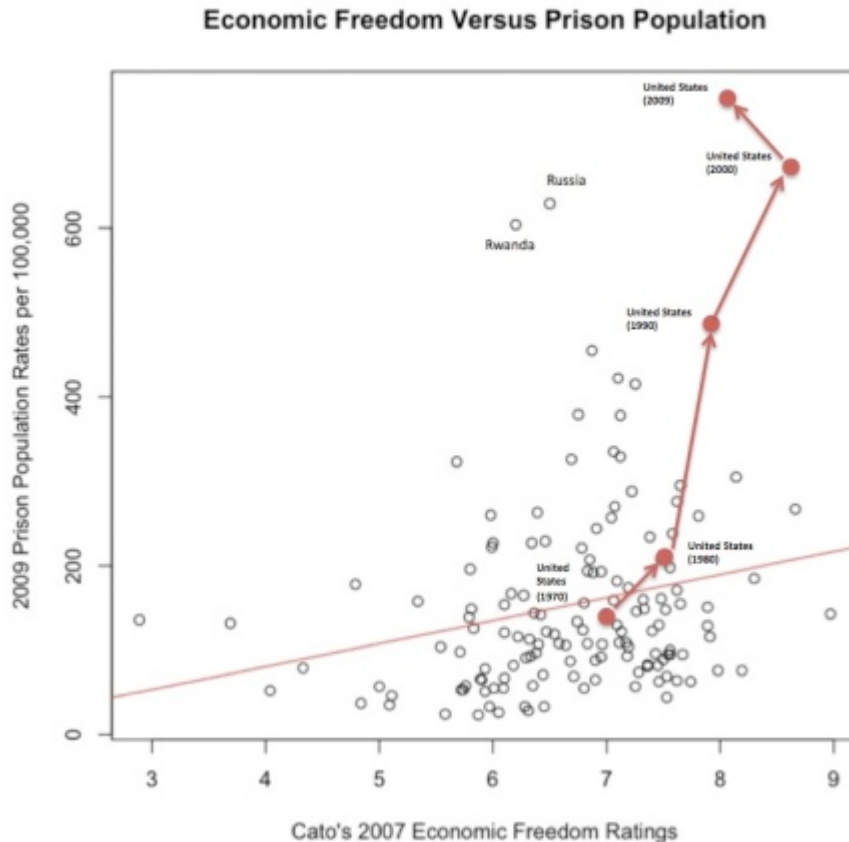
What Serwer is doing isn't a gotcha point. A lot of conservative energy, thought, money, infrastructure, ideology and worldview is built around the idea of a high prison population, harsh sentencing minimums, and a casual disregard towards the idea of “Rights” in the maintenance of order, and as such it's not going to be trivial to pull back on that.

Or to put it a different way, when several friends have mentioned that prison reform might be a GOP priority in 2011, all I can think is “The Tea Party is going to get behind putting young, African-American men back on the streets and back into their communities? Are we watching the same group of organized, older, affluent-but-vulnerable white men?”

But maybe this will enter the public debate, and as such I need to start organizing my thoughts on it. Let's walk through why I think we can think of our current prison population dilemma as a conservative project. This is a rough draft.

First. Let's post one of my favorite charts I made in 2010 – we'll do a top 5 next week! – a cross-section of countries and the strong correlation between their prison population per capita and an index of their “economic freedoms”, with a plot of the United States since

1970 over it:



(Sources: [one](#), [two](#).) There's been a massive explosion in the rate of prison population in the United States since 1970. Empirical work [has found](#) that states with a Republican governor and Republican legislatures show a greater increase in incarcerated populations, and that the effect is stronger in the 1990s.

Second. I like reading David Frum. One thing that surprised me was that he listed James Q Wilson's *Thinking about Crime* (1975) as one of [his Top Five Books on Core Conservative Philosophy](#). Why is this a philosophical book for movement conservatives?

[Frum:] One of the things [Wilson] argued is that the supply of crime is not infinite, that is, the crimes are done by relatively small numbers of people. If you can get those people off the streets – incapacitation is the technical term – you can make a big difference and that's, in fact, exactly what happened....

Why is this a conservative book?

It's a conservative book because of its mood. Its mood is unsentimental. It does not believe there is greater virtue at the bottom of society, it doesn't accept conventional excuses, it doesn't make racism the centre of the American story. Also, because it's willing to contemplate the effective use of state punitive power to solve a social problem....

The older conservatives were primarily literary intellectuals – Russell Kirk, Richard Weaver... What the neoconservatives brought to politics was the application of social science to social problems. What made them conservative was, as Mrs Thatcher said, that the facts of life are conservative. They are social scientists, they use social-science methods, they are interested in the governance of society and public policy.

Third. Let's leave aside the [empirical dubiousness](#) of the Broken Windows approach working. I want to look at the ideology. Here's Wilson popularizing his idea in [a very influential 1982 Atlantic Monthly article](#):

We suggest that “untended” behavior also leads to the breakdown of community controls. A stable neighborhood of families who care for their homes, mind each other's children, and confidently frown on unwanted intruders can change, in a few years or even a few months, to an inhospitable and frightening jungle. A piece of property is abandoned, weeds grow up, a window is smashed...

The process we call urban decay has occurred for centuries in every city. But what is happening today is different in at least two important respects. First, in the period before, say, World War II, city dwellers—because of money costs, transportation difficulties, familial and church connections—could rarely move away from neighborhood problems... Now mobility has become exceptionally easy for all but the poorest or those who are blocked by racial prejudice. Earlier crime waves had a kind of built-in self-correcting mechanism: the determination of a neighborhood or community to reassert control over its turf....

Second, the police in this earlier period assisted in that reassertion of authority by acting, sometimes violently, on behalf of the community. Young toughs were roughed up, people were arrested “on suspicion” or for vagrancy, and prostitutes and petty thieves were routed. “Rights” were something enjoyed by decent folk, and perhaps also by the serious professional criminal, who avoided violence and could afford a lawyer.

This pattern of policing was not an aberration or the result of occasional excess. From the earliest days of the nation, the police function was seen primarily as that of a night watchman: to maintain order against the chief threats to order—fire, wild animals, and disreputable behavior. Solving crimes was viewed not as a police responsibility but as a private one. In the March, 1969, Atlantic, one of us (Wilson) wrote a brief account of how the police role had slowly changed from maintaining order to fighting crimes. The change began with the creation of private detectives (often ex-criminals), who worked on a contingency-fee basis for individuals who had suffered losses. In time, the detectives were absorbed in municipal agencies and paid a regular salary simultaneously, the responsibility for prosecuting thieves was shifted from the aggrieved private citizen to the professional prosecutor. This process was not complete in most places until the twentieth century.

The idea of a police force that solved crimes rather than one that maintained order was the result of the private detectives industry being absorbed into police forces and the professionalization of lawyers and prosecutors. But that was an accident that needs to be fixed. The police force isn't there to investigate crimes, present evidence to a prosecutor who then presents evidence to a jury. By the time that is important the rot and decay of

social disorder has set in and it is too late. There are sharp distinctions between “decent folk” and criminals, families and outsiders, etc.

There’s an important rhetorical trick that the Broken Window ideology brought to the table, one that caught progressives off-guard and brought in liberals hook-line-and-sinker.

As [Bernard Harcourt has noted](#), it transforms the idea of offensive acts into harmful acts. Public drinking and loitering aren’t harms, but they are offensive to some. Broken Windows allowed people to believe the notion that offensive behavior created (by creating the potentials for and inevitability of) legal harms. It also became backwards compatible, with people being able to think that harmful acts were obviously preceded by an offensive act; criminalize and ruthlessly prosecute the offensive acts, and you can prevent the real harms from taking place.

Fourth: The conservative movement is pretty fantastic in how patient they (and their funders!) are. This was churning out there for a few decades before it was turned into the [“Taking Back Our Streets Act”](#) part of the 1994 manifesto for the conservative takeover of the House, the Contract with America, which planted the flag on what had happened in the 1980s and set the tone for how crime would be fought from that point on:

The bill embodies the Republican approach to fighting crime: making punishments severe enough to deter criminals from committing crimes, making sure that the criminal justice system is fair and impartial for all, and making sure that local law enforcement officials (who are on the streets every day), and not Washington bureaucrats direct the distribution of federal law enforcement funds....

Opponents of strict sentencing laws like these argue that “locking people up” does not address the problem of why crimes are committed in the first place. Evidence suggests, however, that there is a strong correlation between increased incarceration and decreased crime rates: from 1990-1991, states with the greatest increases in criminal incarceration rates experienced, on average, a 12.7 percent decrease in crime, while the 10 states with the weakest incarceration rates experienced an average 6.9 percent increase in crime.

Death Penalty Provisions (Title I)...Mandatory Minimum Sentencing for Drug Crimes (Title II)...Mandatory Victim Restitution (Title III)...Reform of the Exclusionary Rule (Title VI)...Prisoner Lawsuits (Title VII)..Deportation of Criminal Aliens (Title VIII)...

This is a wishlist of what the conservative movement wanted when it took control of Congress in 1994, and it provides that landscape that everyone is dealing with now. Large prison populations. Mandatory minimums. Huge restitution burdens on the newly released. A drug war that pushes the Bill of Rights every chance it gets (the pushing for movement on the Exclusionary Rule).

I see Carney’s point that not everyone agreed or agrees. (You can see the Cato’s Policy Handbook for 1995 on [Crime](#) for a dissent towards the federalization, overcrowding, and doubling-down on the war on drugs that this course entailed.) But this is the center of the movement, and this is where the movement got results.

And it all goes back to the issue of police needing to use force, even at the costs of so-called “Rights”, to maintain social order combined with the idea that there are just a few bad people out there who are harming the decent folks. When those bad people are

removed, a full community can flourish. Offensive acts form the basis of harmful acts. It's a very conservative view of both why there is crime and how to fix it, and simply throwing a few technocratic fixes here and there to preserve state budgets won't necessarily displace it or the infrastructure, ideologies and people that put it into place.

I add some additional thoughts [here](#).

[15 comments](#)