

Incapacitation Effects for Controlling Violence & The Need to Restore Rationality in Sentencing Policy



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Why Is Studying Incarceration Important?

■ Theory

- Assess predictions about the effect of punishment in criminal careers and subsequent criminal activity.
- Understudied at the aggregate and individual-level of analysis.

■ Policy

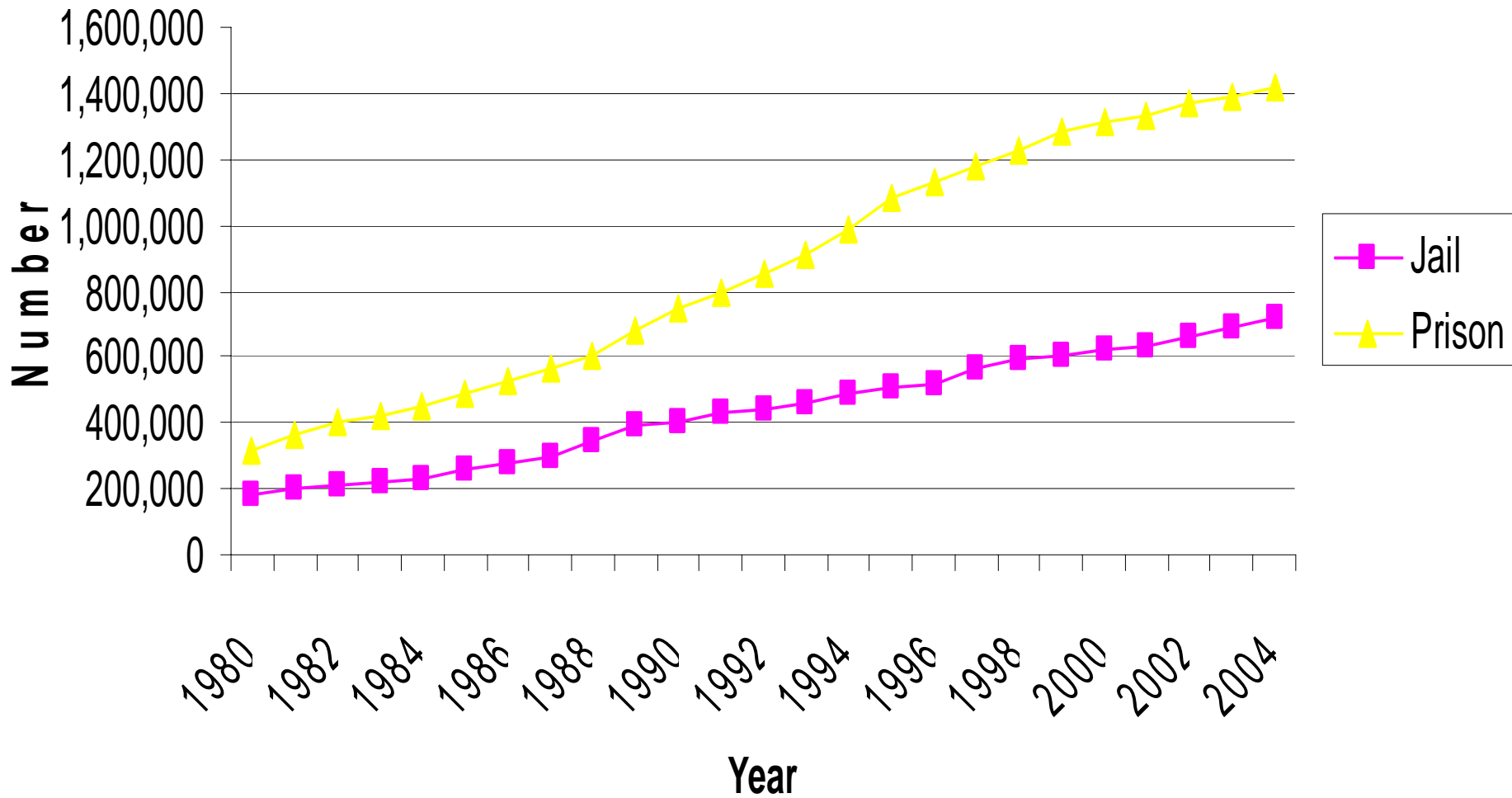
- US reliance on incarceration.
- Interest in assessing costs-benefits associated with this policy and policy-shift.
- Develop strategies to minimize harm/maximize benefits.



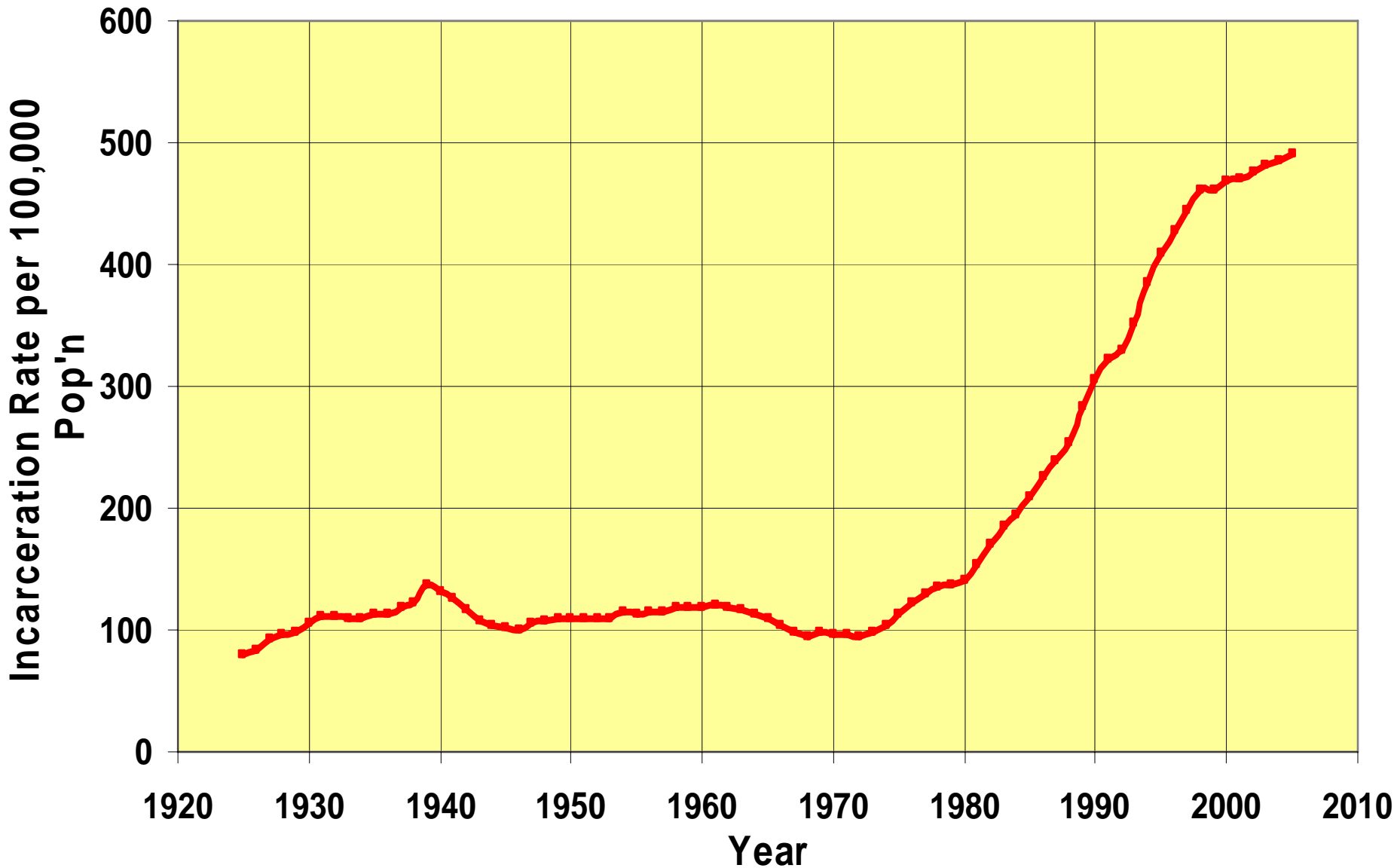
Dramatic Growth in US Incarceration Rate Since 1970s

- Major growth in US Incarceration Rate
 - Was flat at 110/100k for 50 years until mid-1970s
 - Then grew at 6-8% per year to current 500
- Now the world leader at 720
 - Counting prisons and jails
- Growth is all attributable to commitments and sentence length, not to crimes or arrests per crime

US Adult Jail & Prison Population, 1980-2004



U.S. Incarceration Rate: 1925-2005



How Did This Happen?

Regime Change in CJS Control

- Originally homeostatic, with control by CJS
- Transition to political control, especially by legislatures, responding to public concerns
 - Win if “tough on crime”, penalty if “soft on crime”
- Legislatures have only limited policy options
 - Largely limited to sentencing: (in/out) or length
 - Displays a quick response to public’s concerns
 - Mandatory minimums, 3-strikes laws, “TIS” laws



Consequence: Introduced Irrationality

- No attention to replacement problem
 - Notorious in incarceration for drug offenses
 - Now >20% of state prisons, >50% of Feds
 - Resilient market recruited replacements
 - Replacements were young kids, much more dangerous with their guns than predecessors
 - 25% rise in violence in 1985-93 attributable to young people with handguns
- No attention to finiteness of criminal careers
 - Most careers terminate fairly early
 - Longer incarceration involves “wastage” of prison cells



Role of Incapacitation in Reducing Crime/Violence

- Advocates suggest that the huge run-up in incarceration beginning in the 1980's has led to significant decreases in crime and violence.
- Difficult to answer because lots of things going on during incarceration run-up.
- Much of the research has been inconclusive, both at aggregate and individual-levels of analysis.



Some Tentative Conclusions

- Substantial uncertainties remain in the size of incapacitation effects, despite methodological advances in the measurement of incapacitation.
- Aggregate analyses seem to show some role in reducing homicide ('90-'95).
- Limited individual analyses seem to show some minor effect on violent crimes.
- 3-Strike and 10-20-Life laws have no effect on violent crime rate.
- (Expanded) incarceration costs are significant.



Does It Make Sense to Expand Incarceration to Reduce Violence?

- The "elasticity" of prison with respect to violent crime is small:
 - 1% increase in prison population → a 0-4% decline in the crime rate.
- If only 200,000 incarcerated, it's a good deal; but with 2 million incarcerated need to lock up 100,000 more offenders to achieve the same effect, at around 10x the cost.
- Increased incarceration has become so costly that most other crime-reduction programs are a better investment.
- Benefits of reducing crime by adding another prison cell are about 1/3 the costs of the crime thereby averted; even doing nothing might be an improvement over the status quo.



Restoring Rationality

- Make duration of sentencing laws finite
 - Always include a sunset provision
 - Laws usually involve an “act of passion”
 - Response to an immediate public concern
 - Stay in place long after the passion has passed
 - 100:1 crack/powder Fed law was done in 1986
- Repeal all mandatory laws
 - That may generate too much anxiety
 - Then sunset them after 3-5 years
 - This would be seen as an act of wisdom, not “soft on crime”
 - Hard on the persistence of irrationality



Sentencing Commission as an Approach to Rationality

- Establish Sentencing Commission
 - Develop a coherent and proportional sentencing structure
 - Link sentencing structure to prison capacity
 - Provide a forum for developing sentencing policy outside the direct political process



Now is the Time to Act

- Crime Rates are at historic lows
 - At levels not seen since the 1960s
 - No evidence of major public concerns
 - Exception is sexual pedophiles
 - Have already gone to excess here
 - Irrationality becoming evident – no place to live
- Budgets are getting increasingly tight
 - Drains from Federal support programs
 - More burdens on the states



Bring Criminal Career Info to Process

- Through Sentencing Commissions
- Include criminologist on Commission
 - Understand theory and data, data sources
 - Negotiate outside the political arena
 - Needs standing with Commission and Staff