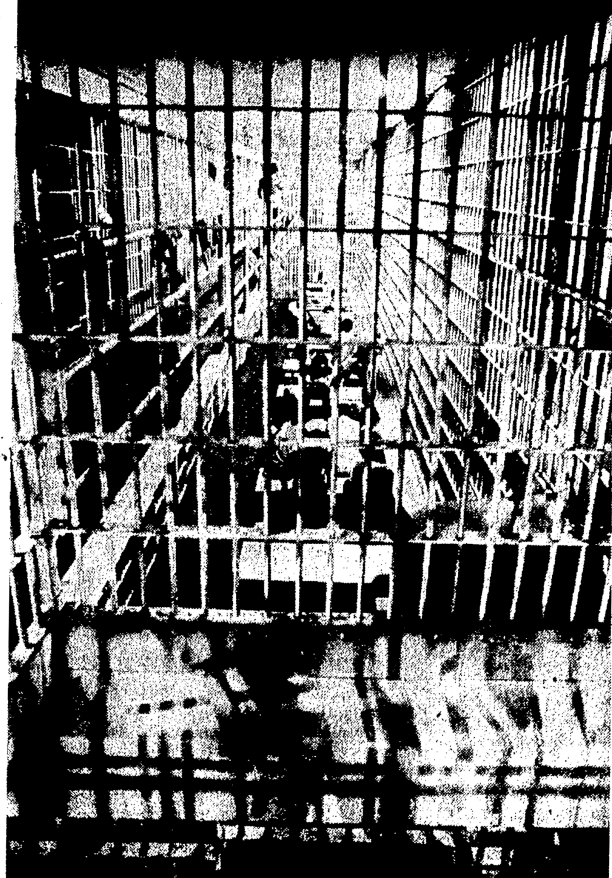


The Shame of the Prisons



By Ellsworth Davis—The Washington Post

A Human Wasteland In the Name of Justice

By Ben H. Bagdikian
Washington Post Staff Writer

If today is average, 8,000 American men, women and children for the first time in their lives will enter locked cages in the name of justice.

If theirs is an average experience they will, in addition to any genuine justice received, be forced into programs of psychological destruction; if they serve sentences most of them will not be by decision of judges acting under the Constitution but by casual bureaucrats acting under no rules whatever; they will undergo a significant probability of forced homosexuality, and they will emerge from this experience a greater threat to society than when they went in.

"Justice" in the United States today is so bad that conservative reformers talk openly of salvaging law-breakers by "diversion from the criminal justice system wherever possible" (The American Bar Association Commission on Correctional Facilities and Services).

It so efficiently educates children into crime that one official could say, "It would be better if young people who commit crimes got away with them because we just make them worse" (Milton Luger, Director of the New York State Division of Youth).

American convicts serve a majority of their sentences at the mercy of parole boards whose decisions on which prisoners to release are so irrational that it can be statistically proved that society would be better protected if some passerby pulled names of convicts at random out of a hat.

Coerced homosexuality is merely one of the psychological distortions built into the prison system. It appears to be prevalent among 80 per cent of

all women prisoners, from 20 to 50 per cent of male prisoners, and an unknown but significant proportion of juveniles.

Ninety-seven per cent of all prisoners are eventually released back into society, where from 40 to 70 per cent of them commit new crimes.

Human prisoners in the United States are more carelessly handled than animals in our zoos, which have more space and get more "humane" care. Eighty per cent of all prison guards in the country are paid less than \$8,000; all keepers of animals in the National Zoo in Washington are paid between \$8,400 and \$9,100.

Almost everyone seems to agree that our prisons are terrible.

President Nixon: "No institution within our society has a record which presents such a conclusive case of failure as does our prison system."

John Mitchell, Attorney General of the United States: "The state of America's prisons comes close to a national shame. No civilized society should allow it to continue."

Norman Carlson, director of the U.S. Bureau of Prisons: "Anyone—not a criminal—will be when he gets out of jail."

But the change is glacial. In most places there is no change at all.

The system is hardly a true system, but a disjointed collection of buildings and jurisdictions. The smallest is the federal, generally accepted as the more carefully designed, if bureaucratic.

On any given day the prisoner population in federal prisons is about 20,000, or less than 10 per cent of all sentenced prisoners in the country.

See PRISON, A16, Col. 1

Prisons Have Various Goals—Some Contradictory

PRISON, From A1

The states have 200 facilities, ranging from the big state penitentiaries to an assortment of reformatories, forestry camps and juvenile halls, ranging from some of the most humane in the country to some of the worst. They hold over 200,000 prisoners each day.

There are 4,337 jails and uncounted city and town lockups where the range in conditions runs from fairly good to filthy and dangerous. Technically, "jail" is a place where a person is held awaiting trial, "prison" where he serves a sentence.

The county jails hold about 161,000 persons a day, 3 per cent of them juveniles (usually mixed with adults) and 5 per cent women. Including jails, the total incarcerated population is about 1 million. If one includes town "drunk tanks," 2 million Americans pass through cells each year.

Who are the Americans who find themselves behind bars?

They are overwhelmingly the poor, black and the young. A profound sense of being cheated runs through them. They may have been cheated by the environment they grew up in, by chaotic families, poor neighborhoods, ineffective schools, depressing career opportunities. But this is not the usual reason the average prisoner feels cheated. He feels that he has been unfairly treated by the criminal justice system. He is right.

A Tiny Minority of Lawbreakers

The President's Crime Commission in 1966 showed that from 3 to 10 times more crime is committed than is ever reported to police. They cite a survey showing that in a sample of 1,700 persons of all social levels, 91 per cent admitted committing acts for which they might have been imprisoned but were never caught. So most law-breakers are never caught.

If they are, the affluent tend to avoid imprisonment. The concentration in prison of the poor, the black and the young reflects, among other things, a special selection by which we decide whom to put behind bars.

Once found guilty, the fate of a sentenced man is subject to the widest range of fate. Robert Apablaiza sold a matchbox of marijuana and happened to find himself in a particular courtroom in New Orleans where he was sentenced to 30 years in prison; hundreds of others have done the same thing elsewhere and not gone to prison.

So every prisoner knows other offenders who received substantially better treatment than he did. He knows, and statistics prove, that justice is not evenhanded.

Once committed to prison, he is still governed by chance. The building he is in may be a 100-year-old fortress with four men in a narrow, dark and damp cell, or he may be in a clean one, one man to a cell. More than a quarter of all prisoners are in prisons 70 years or older.

If he is in Delaware, the state will spend \$13.71 a day on his food and custody; if he is in Arkansas, \$1.53 a day. If he is in Pennsylvania he will get meat and three vegetables almost every meal; if in South Carolina, meat once a week and other times greps and beans.

In some prisons he will be raped homosexually unless he is strong and has a weapon; in others he will be left alone. In some, the guards will abuse him and turn him over to psychopathic or rackerering fellow inmates, and censor his mail to make sure he gets no word of it to the outside. In other prisons he will be treated humanely and can appeal punishments to an impartial board, including inmates, and communicate with the free world.

The people on whom such uncertain



Inmates at work in the sewing room of Louisiana penitentiary. Prison labor in America regularly returns large profits.

justice is visited are men, women and children who already have been involved in drugs or alcohol. They are generally of normal intelligence (the median for federal prisoners is 104 I.Q., for a typical Midwest state, 89.7) but they test out between 7th and 8th grade achievement.

In a typical state 25 per cent are in for burglary, 22 per cent for larceny, 12 per cent for robbery, 9 per cent for forgery, 6 per cent for assault, 5 per cent for drugs, 3 per cent for auto theft, 4 per cent for homicide, and 2 per cent for some sex offense.

The Protection of Society

The President's Crime Commission showed that in 1965 there were 2,730,000 serious crimes reported to police and 627,000 arrests made and of these 63,000 people imprisoned. Thus just for reported crime, which is a minority, only 2 per cent of criminals went to prison. If they were all released they would not materially increase the law-breaking population.

If they were released the prisoners conceivably could affect the crime rate in another way: by encouraging otherwise inhibited people to commit crimes because they felt they would not be punished.

But nobody knows this or can even guess intelligently.

For all the public clamor about crime and punishment, this field remains a wasteland of research, the most remarkable void of reliable analyses of any major institution in American life. The worst void is prison and prison programs where, in the words of one administrator, "we are sorting marbles in the dark." The American prison system is a monument to mindless procedures in the midst of a society that prides itself on being scientific and measuring everything in sight.

The result is that the lives of millions of prisoners, the billions of dollars spent on them (about \$1.5 billion this year), the safety of citizens from crime and the loss of \$20 billion to victims of crime, continue to be governed by archaic conventional wisdoms. The only thing we are fairly certain of is that most of these conventional wisdoms are wrong.

It is one of the conventional wisdoms that the current rise in crime is

strongly influenced by excessive leniency by prosecutors and courts. Another is that harsh punishment will reduce crime. J. Edgar Hoover told a recent Senate committee, "The difficulty is with district attorneys who make deals and judges who are too soft. Some are bleeding hearts."

According to the FBI, from 1960 to 1968 the crime rate per 100,000 rose 53 per cent. Beginning in 1964, federal courts and most state judges began giving out longer sentences. From 1964 to 1970, federal sentences became 38 per cent longer and time served was even more because the federal parole board began reducing paroles. California's sentences have risen 50 per cent.

But from 1965 to 1970 the national crime rate—during the harsher period rose 45 per cent.

Robert Martinson studied every report on treatment of prisoners since 1945 and analyzed the 231 studies. He concluded:

"... There is very little evidence in these studies that any prevailing mode of correctional treatment has a decisive effect in reducing recidivism of convicted offenders." "Recidivism" refers to crimes committed by released prisoners.

James Robison of the National Council on Crime and Delinquency, and Gerald Smith, of the University of Utah, made one of the most rigorous analyses of various treatment of American prisoners and concluded:

"It is difficult to escape the conclusion that the act of incarcerating a person at all will impair whatever potential he has for a crime-free future adjustment and that, regardless of which treatments are administered while he is in prison, the longer he is kept there the more he will deteriorate and more likely is it that he will recidivate."

A Conflict of Motives

A fundamental reason for confusion is that unlike some countries, the United States has never decided what it wants its prisons to do. There are several motives for criminal punishment:

1. Hurting the prisoner so that he will feel free of guilt, having paid for his act.
2. Using the criminal as a scapegoat for others in society who feel the same

criminal impulses within themselves and by punishing the criminal pure purpose themselves; but some are contradictory.

3. The need of some to feel morally superior by sustaining outcasts in a despoiled and degraded condition;
4. Keeping the criminal out of circulation;
5. Revenge imposed by the state to prevent the victim or his family from taking private revenge, as in family feuds;
6. Revenge in the name of all society so that the public will not impose its own version of justice, as in lynch mobs;
7. Deterrence of the criminal who, by being hurt, will decide that committing the crime is not worth it;
8. Deterrence of others who, seeing the criminal suffer, will not imitate his crime; and
9. Reforming the criminal so that he will learn to live in peace with society.

Criminal punishment may accomplish a number of these objectives simultaneously. But some are contradictory and cannot be done together. It is not possible to cause a man to respect those who treat him with deliberate cruelty. Scapagoating does not eliminate the illicit impulse; where punishment of the individual is violent and cruel, it promotes violence and cruelty in society.

The confusion in goals for prison has its roots in a curious phenomenon: the most damaging practices in criminal justice were started as humanitarian reforms.

The prison itself is an American invention created out of genuine compassion.

For centuries, people were incarcerated only until the local lord or king could impose punishment. Punishment would then be death by hanging, drowning, stoning, burning at the stake, or beheading, usually with a large crowd observing to deter them from imitation.

A Place for Penitence

In the 1780s, the Quakers of Philadelphia, taking soup to the jails, were appalled by the squalor and decided to pass laws substituting sentences of incarceration in permanent, well-designed prisons as a substitute for stocks and saws or flogging.

They designed the new prisons for solitude and meditation on the prevailing theory that men do wicked things because the devil has invaded them and only through contemplation of their sins could they become penitent and innocent again. The new institutions for penitence were called penitentiaries. The prisoners were forbidden to speak and saw no one, sometimes not even their jailers.

Europeans studying the new country reported on the new institution and adopted it, though some, like De Witt Clinton and De Witt Clinton, said penitentiaries often produced insanity.

In the late 1800s, it was observed that country people on their farms had been law-abiding until they moved to the impoverished industrial cities they became criminals. It was thought that there might be some connection between environment and crime, that prisons might be a way to counteract bad environment.

The impact of Freud and psychology complicated the view of human behavior, adding to the physical environment the emotional history of the individual. If prison was an opportunity to change the environment, it might also be a place to give the prisoner a more accurate view and control of himself.

But the conflicts have never been resolved. The environment is not "treatment" between the purpose of protecting society by keeping the criminal locked up and the real of protecting society by trying to condition him for peaceful return to the community.

The Usefulness of 'Industries'

Only this continuing confusion could explain the survival of irrationalities like "prison industries" and the decisions of parole boards.

Most work inside federal prisons, for example, is done for an independent corporation called Federal Prison Industries—Incorporated, a board of directors mostly of executives of private corporations who serve without pay. It maintains 62 shops and factories at 25 federal institutions where it employs about 25 per cent of all federal prisoners.

Historically, at the insistence of private business and labor unions (George Meany, head of the AFL-CIO also is on the board of FPI), they do not make goods that compete with privately made goods, which means that they usually do not develop skills that will let the ex-convict compete in private industry after he gets out.

The chief customer is the federal government. Pay rates are from 10 to 47 cents a day.

FPI in 1968 had earnings of \$39 million on \$55 million in sales, or 17 per

cent profit on sales, the highest of any industry in the United States (average for all U.S. industry is 4.5 per cent on sales, the highest being the mining industry at 11 per cent).

FPI has proudly announced that it declared a dividend every year since 1945 and that these dividends total \$62 million. To whom was this dividend on captive labor issued? The American taxpayer—the general treasury of the United States.

Federal prison officials agree that a major reason for repeated crime by ex-convicts is their lack of skill in the jobs that are needed in free life—mechanical and dental technicians and other categories that will hire all the qualified help they can get. They also admit that most prisoners will be released when they lack the money to train significant numbers of convicts in marketable skills. Yet they have regularly turned back large profits made by prisoner labor.

The Effects of Parole

Even prison industries cannot match the performance of parole boards for lack of success and lack of accountability. Parole is another humanitarian reform that was perverted. It was supposed to give the prisoner incentive to improve himself to earn a release earlier than his full term. It was supposed to shorten time spent behind bars. It has lengthened it.

Most prisoners are eligible to apply for parole after one-third of their sentences have been served. Judges and legislatures know that, so they have increased sentences on the assumption that most prisoners will be released at something like one-third their time. The prisoners have not been released at that rate. Consequently, American prisoners serve the longest sentences in the Western world.

But that is not the worst characteristic of American parole boards. Their purpose is to release the prisoner as soon as possible consistent with his own good and protecting society from repetition of crime. The boards are in the position of predicting human behavior, a task for which they are the most perceptive and wise individuals.

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Take the case of Jack Crowell (not his real name, but a real person). He is a stocky, 41-year-old Navy veteran doing 10 years for voluntary manslaughter in a Southern state. He had such a good record in the state penitentiary that toward the end of his sentence, he was permitted to join the state's work release program.

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Who Are the Worst Risks?

Crowell's is a typical case. One can guess what happened. He was in for manslaughter. Parole boards do not like to parole killers and sex offenders because it makes for bad public relations. They fear the headlines. If such men raise crimes while on parole, but contrary to conventional wisdom, murderers and sexual offenders are the most likely not to repeat a crime.

In 1969 parole boards reported to the Uniform Parole Reports released 25,563 prisoners before they completed their full sentences. Almost one-third of them were burglars who in their first year had their usual rate of repeat crime of 31 per cent. There were 3,510 armed robbers released and in the first year 41 per cent were back to the Uniform Parole Reports released 2,563 prisoners before they completed their full sentences. Almost one-third of them were burglars who in their first year had their usual rate of repeat crime of 31 per cent. There were 3,510 armed robbers released and in the first year 41 per cent were back to the Uniform Parole Reports released 2,563 prisoners before they completed their full sentences. Almost one-third of them were burglars who in their first year had their usual rate of repeat crime of 31 per cent.

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Larceny . . . 30%
 Burglary . . . 31%
 Forgery . . . 34%

(These are failure rates for the first year on parole; the rate increases as the group is out longer but the rank order does not change significantly over the years.)

It appears reasonable for parole boards to be more cautious in releasing violent men. Even if burglar repeat their crimes, theft of property is less harmful to society than killing and rape. But parole boards do not support the parole boards, murderers and rapists on their second offense do not commit as many added murders and rapes as do other kinds of criminals. Of 80 cases of willful homicide that sent 1969 parolees back to prison in their first year of freedom, 24 were committed by people not originally in for willful homicide. Six released murderers went back to prison for another killing, but nine burglars went back for murders.

The 11 forcible rapists on parole, to take another example, committed four new forcible rapes; burglars during their parole committed eight. All men whose original conviction was for property crimes while on parole committed 12 forcible rapes.

The rate of new homicides and rapes by the category of released prisoners is about the same, approximately one-half of 1 per cent. Since murderers and rapists represent a small proportion of all released prisoners, about 2 per cent for all such categories, their one-half of 1 per cent represents less of a threat to society than do the violent offenses by other kinds of criminals.

Because they regularly release the worst risks, parole boards would be best advised to release only those who are not so likely to be a public nuisance. The police and the general public are outraged at the violent crimes of released prisoners; they don't know that 97 per cent of all prisoners released in 1968 were not the longer criminals stay in prison, the more crimes they commit afterwards.

The Torture of Uncertainty

In prison after prison, the uncertainty of the sentence was mentioned as "the most excruciating part of prison." "Give me a fixed sentence anytime," is common.

"Or," I behaved myself, the warden recommended me. I had a job on the outside, my family was waiting for me and they turned me down. I ask them why and they say, "You're not ready."

"I'm not ready" that means and they don't say. What am I supposed to do? Give me five, give me ten but let me know how much time I have to do it. Don't keep me hanging all the time."

Society takes elaborate pains to assure that lawyers and judges are qualified to make the most serious decisions. Yet the gravest of decisions—those that determine the fate of a man—those that determine how long he will be in prison—are made by parole boards. The parole boards are in the position of predicting human behavior, a task for which they are the most perceptive and wise individuals.

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The Least Studied Institution

What remains after the available data on criminals are studied is the remarkable absence of other good data on American prisons and their effectiveness. Prisons would seem to be the ideal laboratory for social scientists—controlled populations in a variety of conditions, available to be measured and compared. But they remain the least studied of any major American institution.

George Saleeby, associate director of the California Youth Authority, was asked why there is not a more comprehensive study of crime, and a country anxious about criminals, did not insist on rigorous study and analysis.

"The criminologist Saleeby said: 'Wait a minute. Who said there was a damn? They want some people put away and they want to forget about them.'"

Why do not prison administrators themselves look carefully at their own results? George Beto, director of Texas' prisons says:

"I know of no institution unless it be organized Christianity which has shown a greater reluctance to measure the effectiveness of its varied programs than has corrections."

The answer seems to be that what happens to prisoners inside American prisons has very little to do with the release of prisoners. What will happen to them after they are released into the free world? That is a question only rarely asked by social scientists. The values of the American citizen who considers himself law-abiding.

John Frawley served 10 years in Soldado Prison for armed robbery. He is now a college professor at San Francisco State College, specializing in penal studies.

"The radical talk of abolishing punishment, but they really want to start punishing a new population of 'capitalist' prisoners. They want to start punishing but call it 'treatment.' The contractors are the only ones honest about it, but they want only disproportionate amounts that it's crazy."

It is hard to avoid the conclusion that what goes on inside American prisons tells more about the character of people inside the walls than it does about the inmates inside the walls.

Next: Inside an American penitentiary