

The Dilemmas of Corrections

Third Edition

Contemporary Readings



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The Third Edition **Dilemmas** **of** Contemporary Readings **Corrections**

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Preface

Prisons, as they were established in the United States, were to be positive contributions to the new world. They were to be institutions in which the idle, the unmotivated, the hooligans, and the cruel were sent to be transformed into active, energetic, useful, and kind members of our society. Somehow, somewhere, something went wrong. Critics have offered too few constructive solutions for change and too many quick-fixes. One of the more insightful comments was made by George Bernard Shaw in his 1924 book *Imprisonment*:

Although public vindictiveness and public dread are largely responsible for [the cruelty], some of the most cruel features of the prison system are not understood by the public, and have not been deliberately invented or contrived for the purpose of increasing the prisoner's torment. The worst of these are (a) unsuccessful attempts at reform, (b) successful attempts to make the working of the prison cheaper for the state and easier for the officials, and (c) . . . the new state prisons (pp. 80–81).

Shaw directs our attention to problems with prisons that he observed in the early 1900s. Unfortunately, these problems still prevail, and they exist for more prisoners in more prisons than Shaw ever imagined. On June 30, 1994, 1,012,851 men and women were confined to state and federal prisons, over 450,000 were locked up in local and county jails, and approximately 3.5 million others were under probation, parole, or some other type of correctional supervision.

Our purpose in bringing together the readings in the third edition of *The Dilemmas of Corrections* (entitled *The Dilemmas of Punishment* in its first edition) is to present a timely, issue-oriented perspective on corrections. From the vast number of articles and reports on corrections, we have chosen forty-one that demonstrate what Shaw noted so many years ago: there have been recurring attempts to reform shabby prison operations; there have been recurring attempts to find simple answers for complex penal problems; and more and bigger prisons have been constructed. What George Bernard Shaw also told us is that these

attempts are nearly always well-intentioned and nearly always leave a legacy of failure.

A close analysis of the literature on corrections reveals a tendency to criticize each and every aspect. What is written about jails and prisons tends to leave the reader with the impression that practitioners do nothing at all, or actively and maliciously oppress a selected segment of society. While it may be a trend to damn every aspect of corrections, it is in many ways unfair. As we read these articles, we can reflect upon Shaw's comments and keep in mind that most administrators and line staff want to do what is right and what is decent. Unfortunately, the political and budgetary restraints placed upon correctional officials make it extraordinarily difficult to manage prisons and other correctional programs effectively.

Our compilation of materials includes some of the outstanding statements and studies that have been published in books, research reports, and professional journals. In addition, we have brought together new material from several of the best criminologists in the country. These original contributions offer readers the most recent theories and research findings in the field of corrections. Part I provides an overview of the scope and structure of the American correctional system and addresses the all-important question: Who goes to prison and why? Our second section describes the pains of imprisonment felt by those who are incarcerated. What really happens when the bars slam shut? Part III examines the impact the judiciary has had on the correctional system and the prisoners. No book on corrections would be complete without a chapter on rehabilitation, and our fourth section offers an up-to-date overview of the continuing debate over the effectiveness of correctional treatment programs. The fifth section explores the theory and practice of what has come to be called community-based corrections. Corrections outside the traditional walls and fences may be a sensible alternative to warehousing criminals, but the movement toward community corrections has not succeeded in reducing the nation's reliance upon prisons.

Part VI was added in the second edition of *The Dilemmas of Corrections*. This section now contains readings on seven problems and issues that undeniably are among the most pressing and troublesome in the field of corrections today. The first three articles in this section examine the problems involved in meeting the special needs of three distinct types of offenders: the mentally ill inmate, the elderly prisoner, and the incarcerated adolescent female. The next two selections offer insights into two controversial issues in correctional administration—the difficult policy choices concerning how best to prevent the spread

of AIDS in American prisons and the hotly debated question of whether private corporations can do a better job of running prisons than do government agencies. The final two chapters are both new to the third edition. Each analyzes the costs and benefits of an increasingly popular “get tough” policy. The next-to-last chapter tackles the tricky issues surrounding the question of the cost-effectiveness of “locking them up,” and the final chapter offers a correctional official’s thoughts on whether the high costs of capital punishment are justified.

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Part I

Who Goes to Prison?

Introduction

Many Americans undoubtedly believe that the United States is one of the most lenient nations in the world in punishing offenders. However, the U.S. imprisonment rate is the second highest in the world and it is rising rapidly. As of 1993, the rate of incarceration in the United States (519 inmates per 100,000 population) was surpassed only by that of Russia (558 per 100,000). Moreover, the best available data indicate that American prisoners serve longer terms than their counterparts anywhere else in the world. With over 450,000 inmates incarcerated in city and county jails and over one million adults behind bars in state and federal prisons as of June 30, 1994, it is important to find out who is selected to be placed in these facilities and who is not. Our first group of readings addresses these and related issues.

We begin with “Prisons as Punishment: An Historical Overview,” a chapter in Leonard Orland’s provocative 1975 book, *Prisons: Houses of Darkness*. This article provides an excellent history of our present penal system. It traces the history of criminal punishments from Anglo-Saxon England to the twentieth-century American corrections system. It is not surprising that the approach to criminal punishment pursued in the American colonies in the seventeenth and eighteenth centuries was very similar to the approach that had long prevailed in England: use of the stocks, the pillory, and the public cage, as well as whippings, banishment, and hangings.

In 1879, however, Philadelphia’s Quakers had a new idea; they opened the Walnut Street Jail—the world’s first penitentiary for the housing of

convicted felons. Although the Walnut Street Jail and the many other penitentiaries that soon opened emphasized solitude, forced labor, and an ordered, disciplined life, these new institutions were viewed by many as a progressive, humane alternative to the harsh and primitive punishments of the past. As Orland chronicles the past 200 years of correctional history—a seemingly endless cycle of scandal and reform—readers may come to agree that despite all of the reform movements, “the prison has steadfastly remained a nineteenth-century institution.”

Certainly one thing that never seems to change is that prisons are primarily filled by people who are poor, powerless, undereducated, unemployed, and members of minority groups. In the second article in Part I, Jessica Mitford offers some explanations for minority overrepresentation in America’s prisons. She invites readers to consider the history of society’s efforts to pinpoint a criminal type. This selection has been reprinted from Mitford’s controversial, hard-eyed examination of the inadequacies and hypocrisies of the American prison system, *Kind and Usual Punishment: The Prison Business*. Her thesis in “The Criminal Type” is that although crimes are committed at all levels of society, the criminal justice process sees to it that the prisons are overwhelmingly filled with the young, the poor, the Black, the Chicano, and the Puerto Rican.

Of course, it has long been documented that race, ethnicity, and social class are of major importance in determining who goes to prison. African-Americans, for example, account for approximately 12 percent of the total U.S. population; yet they are grossly overrepresented in America’s prisons, comprising nearly 50 percent of the national prison population. For the most part, this reflects the disproportionately high arrest and incarceration rates for African-American men. Our third article focuses on the reasons for the high rate of African-American-male involvement in the criminal justice system. In “‘Lock ‘Em Up and Throw Away the Key’: African American Males and the Criminal Justice System,” Marc Mauer argues that while the criminal justice system does not bear all of the blame for the overrepresentation of Black males in American correctional populations, its impact on Black men nonetheless has been devastating. Mauer examines the many and complex factors that have created this situation, and he suggests a number of reforms that may lessen the negative impact that the justice system has had on African-American males.

Virtually all of the available data on the scope and structure of the American correctional system and on the demography of the U.S. correctional population stems from the work of the Bureau of Justice Statistics (BJS), a branch of the U.S. Justice Department. Thus, we are

fortunate to have as our fourth selection an article by two BJS statisticians who have analyzed some of the most recent and important trends in the U.S. correctional population. Allen Beck and Peter Brien show that the number of adults under some form of correctional supervision (including probation and parole) reached an all-time high of nearly 4.9 million as of the end of 1993. Beck and Brien explain some of the reasons for the dramatic growth in the correctional population, stressing changes in the composition of the jail and prison populations. They also discuss the three basic data-collection methods used in the BJS correctional statistics program, and they offer a preview of some new BJS surveys and censuses that will soon fill important information gaps.

More information is also needed to address the question of why the United States has such extraordinarily high imprisonment rates and so many overcrowded prisons. This is one of the issues analyzed in the fifth and final selection in Part I. In "The American Prison Crisis: Clashing Philosophies of Punishment and Crowded Cellblocks," Ben Crouch, Geoffrey Alpert, James Marquart and Kenneth Haas argue that the current prison crisis stems from the failure to develop a consistent policy of imprisonment premised on a clear understanding of what prisons can and cannot be expected to accomplish. The authors discuss several of the traditional justifications for criminal punishment: retribution, general deterrence, specific deterrence, incapacitation, and rehabilitation. They conclude that unless and until Americans and correctional policymakers decide which of these goals can be accomplished within current budget restraints and develop a consistent and widely accepted prison policy, the present prison crisis will only get worse.

1

Prisons as Punishment **An Historical Overview** Leonard Orland

The English Heritage

Places of criminal detention are ancient institutions. Indeed, the ancient cuneiform symbol for “prison” is a combination of the symbols for “house” and “darkness.”¹ Although the description “house of darkness” remains accurate, and suggested the title of this volume, the earliest prisons were quite different from those of today. The early institutions functioned only to detain prisoners prior to trial; they were not used to punish people after conviction. The idea of sending men to prison as postconviction punishment did not arise until the early decades of the nineteenth century. Ironically, the prison was born not amid the tyranny of Europe’s divine-right monarchs or Asia’s Draconian potentates, but rather among the free citizens of the United States of America.

Source: Reprinted with the permission of The Free Press, an imprint of Simon & Schuster, from *Prisons: Houses of Darkness* by Leonard Orland. Copyright 1975 by The Free Press.

In Anglo-Saxon England, the practice of imposing a term of imprisonment for a specified period of time was unknown; guilty felons were either killed, mutilated, or sold into slavery. There were penal slaves in England through the twelfth century, "a voteless minority amidst Saxon freemen."² In Anglo-Saxon England, imprisonment was considered useless. It did not satisfy revenge; it kept the criminal idle, and it was costly.³ It was not the notion of punishment itself that was strange to the Anglo-Saxon legal tradition, but the idea of using imprisonment to punish. Prior to the Norman Conquest, the law declared criminals to be outlaws and banished them. It was the right and duty of every man to pursue an outlaw, to ravage his land, to hunt him down, and to slay him like a wild beast. Outlaws were the ancestors of convicts, and the wilderness was the first penal colony.

English penal law prior to the twelfth century had also established an elaborate system of pecuniary payment to the injured party. Every injury was atoneable by a "bot" (a money compensation paid to the injured man or his relations). The fine levied depended on the nature and extent of the damage and the rank and importance of the injured person. Every man had his class and his value, and every form of aggression against a free man, from a theft or a blow which deprived him of a tooth to a mortal wound, had its appointed fine. Maine commented that "it is curious to observe how little the men of primitive times were troubled with . . . scruples . . . as to the degree of moral guilt to be ascribed to the wrongdoer," how "completely they were persuaded that the impulses of the wronged person were the proper measure of the vengeance he was entitled to exact," and "how literally they imitated the rise and fall of his passions in fixing their scale of punishment."⁴

Early English law also relied extensively on physical punishment, as opposed to a fine or imprisonment. When physical punishment was imposed, it was severe. Death was imposed by hanging, by beheading, by burning, by drowning, and by stoning, as well as castration, flogging, and body mutilation. In medieval England, a man forfeited, for coining, his hand, which, once amputated, was nailed over the mint. One of the earliest surviving English criminal statutes, enacted by King Cnut in the eleventh century, was quite explicit: "Let his hands be cut off, or his feet, or both, according as the deed may be, and if then he hath wrought greater wrong, then let his eyes be put out, or his nose and his ears and the upper lip be cut off, or let him be scalped, so that punishment be inflicted and also the soul preserved."⁵

Although mutilation ultimately disappeared from English law, the brutality of Anglo-Saxon criminal punishment continued unabated into the eighteenth century. In the thirteenth century, offenders were commonly broken on the wheel for treason.⁶ A 1530 act authorized

poisoners to be boiled alive.⁷ Burning was the penalty for high treason and heresy, as well as for murder of a husband by a wife, or of a master by a servant. Unlike the punishment of boiling, that of burning remained lawful in England until 1790. In practice, and as a kindness, women were strangled before they were burned. The right hand was taken off for aggravated murder. Ordinary hangings were frequent, and drawing and quartering, where the hanged offender was publicly disemboweled and his still-beating heart held up to a cheering multitude, was not uncommon.

In addition, until the mid-nineteenth century, English law permitted a variety of “summary” punishments. Both men and women (the latter until 1817) were flagellated in public for minor offenses. For more serious misdemeanors there was the pillory, which was not abolished in England until 1837. With his face protruding through its beams and his hands through the holes, the offender was helpless. Sometimes he was nailed through the ears to the framework of the pillory with the hair of his head and beard shaved; occasionally he was branded. Thereafter, some offenders were carried back to prison to endure additional tortures.

The prison as we know it today—a barred and walled institution to house felons after conviction—emerged from several closely related English institutions which housed pretrial detainees. These institutions date back to the twelfth century. As early as 1166, Henry II declared that “gaols” (jails) were to be erected in walled towns or within royal castles, but their sole function was to confine prior to punishment. A related development occurred in 1553, when Bishop Ridley’s place at St. Bridget’s Well was selected for locking up and whipping beggars, prostitutes, and nightwalkers. Subsequently, similar places of detention became known as “Bridewells.” In 1597, Parliament⁸ authorized the erection of houses of correction; in 1609, each county was ordered to build a house of correction.⁹ The gaol, the house of correction, and the Bridewell were the progenitors of the contemporary prison.

These institutions quickly deteriorated into places of filth and pain. Then, as now, there was a vast discrepancy between theory and practice. Thus, thirteenth-century law declared that it was forbidden “that anyone be tormented before judgment [because] the law wills that no one be placed among vermin and putrefaction, or in any horrible or dangerous place, or in the water, or in the dark, or any other torment.”¹⁰ But this ideal was never realized. Captives were confined under inhuman conditions until the next king’s “assize” (term of court)—which could be a matter of months, or years.

John Howard’s *The State of the Prisons*, the most influential of eighteenth-century denunciations of detention conditions, reported that in 1777, despite the heavy toll taken by the gallows for no fewer than 240 separate capital offenses, “many more persons were destroyed by