

Chapter 1

The Imprisonment Binge

America has undergone a massive imprisonment “binge.” Between 1980 and 2000, the country’s prison populations increased fivefold. The rate of incarceration zoomed from 100 to over 500 per 100,000. As a result of this expansion and the punitive ideology that underpinned it, hundreds of new prisons were built at a cost in the billions of dollars, and completely new prison regimens were introduced. In this book, I examine the causes of this binge, the new forms of imprisonment it produced, and the particular and broader effects it caused.

In 1992, as this binge was well under way, James Austin and I conducted a study of prison expansion to learn what was driving it and to see who was being sent to prison in this punitive convulsion.¹ We found that a conservative rhetoric on crime in America, based on several fallacious concepts, had prevailed and dictated penal policies. We identified the following misconceptions:

1. The war on poverty—which tried in the 1960’s and 1970’s to fight crime through education, job training, and rehabilitation—was a total failure.
2. Dangerous criminals repeatedly go free because of liberal judges or decisions made by the liberal Supreme Court that help the criminal, but not the victim.
3. Swift and certain punishment in the form of more and longer prison terms will reduce crime by incapacitating hardened criminals and making potential lawbreakers think twice before they commit crimes.

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4. Most inmates are dangerous and cannot be safely placed in the community.
5. It will be far cheaper to society in the long run to increase the use of imprisonment.
6. Greater use of imprisonment since the 1980s has reduced crime.²

The first two of these ideas were patently false. The war on poverty was never waged. The courts were not relatively lenient, and the number of “defendants” who escaped prosecution because of the “exclusionary rules” established by Supreme Court decisions was insignificant. We were able to demonstrate that escalation of punishment and the incapacitation of more and more “criminals” had little or no impact on crime rates. We also discovered that the majority of persons sent to prison in this punitive binge were charged with unserious felonies, crimes that would have received short county jail sentences or probation before the punitive era, and that the binge disproportionately incarcerated African Americans, other nonwhites, and women. Since then, it has become increasingly apparent that the financial cost of the binge damaged other government undertakings, particularly education and social welfare.

Since our study (published in 1994), the punitive binge has continued, hundreds more prisons have been built, prison populations have further escalated and changed composition, and prison management regimens have dramatically altered. Though James Austin and I did not conduct a close study of prisoner social organization, I suspected that prisoner routines were radically different than in earlier eras of imprisonment. It had been years since I had the opportunity to conduct the type of study—close, participant observation—that would inform me of what was happening in that world. In my last close examination of the prison world, during the 1970s, prisoner society had been shattered by conflict and violence.³ Since then, like the general population, I have been bombarded by the mass-media camera scans of throngs of muscled, long-haired, tattooed, menacing convicts milling about prison yards and conservative criminologists threatening us with the proliferation of new “career criminals” and “criminal predators.”⁴ I know these images both provide a distorted perspective on the prisoners and continue to justify punitive policies.

I was sent to prison as a young adult and after that spent most of my academic career studying prisons. I remain emotionally attached to the prisoner world, so during the imprisonment binge my curiosity and concern about prisoner issues mounted. In 1999, I received permission from the California Department of Corrections to study prisoners and parolees. I started my study at California State Prison at Solano, one of 22 large prisons built in California during the 1980s and 1990s. After two years, I shifted to the San Pedro Parole unit and studied parolees.

This book is about the contemporary “warehouse” and “supermax” prisons, how prisoners cope in these new prisons, and how they fare after release.⁵ I also attempt to explain why the United States has the world’s largest prison system. To this end, I examined the role of punishment in society, the development of the prison as society’s primary penal device, and the history of American prisons. A grasp of this history is necessary to understand prisoners’ contemporary modes of adjustment to prison life.⁶

The Punitive Swing

It is popularly believed that public reaction to rising crime rates since the mid-1940s is responsible for the excessively punitive penal policies and the escalation in prison populations. Many prominent academics share this belief. David Garland, a leading scholar of the history of punishment, examined the punitive swing in England and America. He concluded that this swing is mainly due to rising crime rates and the threat of crime to the middle classes:

[I]ncreasing levels of concern about crime were certainly triggered by the steep increases in reported crime (especially violent offending) that occurred in the decades after 1960. As more and more of the population were themselves burgled or robbed or assaulted, or else had a close friend or relative who had been; as theft of and from cars became a normal concomitant of car ownership in many cities; as the visible evidence of vandalism and drug abuse began to manifest itself on city streets and schools; and as U.S. statistics showed an increasing percentage of homicides committed by unknown assailants, rising crime rates ceased to be a statistical abstraction and took on a vivid personal meaning in popular consciousness and individual psychology. The anxieties about

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crime, on top of the more inchoate insecurities prompted by rapid social change and economic recession, paved the way for a politics of reaction in the late 1970s.⁷

The actual patterns of crime rate increases cannot explain the growing fear of crime experienced by Americans. The best evidence suggests that crime rates in America remained relatively steady from 1950 to 1966, rose significantly between 1967 and 1973, leveled off again, took a slight upward swing around 1981, leveled off until 1995, and then began a steady decline.⁸ In reality, the public concern for crime followed more closely politicians' and the media's attention to crime than the fluctuations in crime rates. Garland admits: "This politics, in its turn, helped shape these diffuse middle-class anxieties into a more focused set of attitudes and understandings, identify the culprits, naming the problem, setting up scapegoats."⁹

I contend that in the 1970s, '80s, and '90s, politicians aroused public fear of crime and mounted the punitive penal response—mainly imprisonment of hundreds of thousands of "offenders" in the new warehouse or supermax prisons—for the following reasons: (1) to divert the public's attention away from other serious social and political problems; (2) to exploit an expedient issue to win elections; and (3) to mount a penal response to control, manage, and dispose of the new dangerous class. This class is largely composed of nonwhite, inner-city youths whose life opportunities had been severely restricted by the economic changes that occurred from the 1970s into the 1990s, and who, it was believed, posed a threat to the lives and property of middle-class Americans. This development is treated thoroughly in Chapter 8.

Punishment in Society

Society's response to crime is a complex issue. To unravel it, we must examine the social forces that define crime and design punishment. Emile Durkheim, the eminent grand theorist of sociology, suggested that the punitive response is a function of the moral outrage that members of a society experience toward those who violate shared social standards or mores. As he put it, the passion experienced by members of society toward violations of the "collective conscience," that is, the shared moral precepts, was the "soul of punishment."¹⁰ It is starkly apparent, particularly today

after a sustained 25-year expression of public concern regarding crime and the leniency of the criminal justice system, that moral outrage toward many forms of crime plays an important role in public policy toward crime and therefore influences imprisonment. However, there are forces other than public outrage toward violations of public morality that influence lawmakers and the various criminal justice functionaries—policemen, prosecutors, and judges.

My analysis rests on the assumption that society's response to crime is not merely the translation of public morality into law and into a system of official actions to enforce this morality. To understand the prison today, and particularly the experience of prisoners in it, we must examine the various purposes and processes that create and influence law and its enforcement.

Making Law

Laws are rules enforced within a sovereign society that has the capacity to enforce its rules through an organized response that includes punishment. This process requires "rulers" to make the rules and direct the enforcers and punishers. Customs, standards, and folkways—extralegal rules that guide social behavior—accrue over long stretches of time and may not come into being through conscious decisions made by specially empowered leaders. Laws, however, are consciously made and enforced. Consequently, to understand the nature of law and law enforcement, we must start with the "purposes" of the particular decision makers who make and enforce the law.¹¹ I have divided these purposes into four sets: (1) formalizing traditions, (2) advancing self-interest, (3) pursuing rational/utilitarian goals, and (4) pursuing humanitarian arrangements. Formalizing traditions has occurred in rapid and dramatic fashion in some of the historic codifications, such as the making of Hammurabi's "code." In these codifications, rulers attempted to establish order among heterogeneous groups that possessed conflicting mores. The "legislation of morality," as it has been referred to, is also a factor in the ongoing making and enforcing of the law whenever rulers believe there is widespread nonconformity to central, sacred, or crucial standards or mores. This frequently occurs when rulers believe that minority or "inferior" groups, such as the Irish immigrants in America at the end of

the nineteenth century, are not following the morality of the superior group.¹²

Self-interest motivates lawmakers and enforcers. There are abundant examples of despotic rulers who arbitrarily established self-serving laws and backed these up with brutal force. More relevant for my analysis are the persistent and largely successful activities of judges, legislators, executives, lobbyists, Political Action Committees (PACs), and influential power brokers who decide or influence the law to effect outcomes beneficial to some group, particularly the elites of a society. In fact, ever since societies have had sufficient central organization and power to make and enforce law, the advancement of the self-interest of the rulers, the ruling class, or the elites has been the dominant force in making and enforcing law.

Some lawmakers and law enforcers do work to make the society function more efficiently and effectively. As in the case of the famous codifiers of disparate traditional systems, there are historical examples of notable lawmakers, such as Solon in fourth century B.C. Athens, Napoleon in France at the beginning of the nineteenth century, and the framers of the American Constitution, who, to a great extent, were trying in a rational fashion to set down laws and legal procedures to make things work for the “good of the society.” Also, in the ongoing lawmaking processes, a few (some would argue many) lawmakers—legislators, executives, judges, and administrators of criminal justice organizations—make efforts to work toward the public good. Of course, all leaders and law enforcers frame their activities in a rhetoric of the “public good,” but their actual purposes are usually very different. However, they sometimes do work to fulfill socially pragmatic goals.

Finally, from the beginning of the development of law, some individuals and groups have worked persistently to make the law fair, humane, and just. Invariably, these “humanitarians,” “political activists,” “reformers,” and “do-gooders” are reacting to the conditions that exist because of the efforts of lawmakers who have pursued other purposes, particularly self-serving ones.

Many “natural law” theorists have suggested that the legal enterprise contains within itself impetus for reform and seeking justice.¹³ Their argument suggests that when people are forced to live according to rules, they naturally recognize unfair practices, such

as punishment without due process, inconsistent application of rules, *ex post facto* enforcement, and cruel and unusual punishment. For the most part, these theorists have focused on procedural matters and have not addressed the absence of “social justice.” However, some have.¹⁴ When we examine the history of humans living in societies governed by law, it is clear that unfair, unjust, cruel living conditions precipitate steady efforts on the part of individuals and groups to correct these conditions and to make things more humane and just. In fact, it is from the reformers’ efforts that legal systems have become as fair, just, and humane as they are. Legal systems left to evolve from the acts of unrestrained rulers will remain despotic, tyrannical, and unjust.

Since law is the outcome of these different purposes, particularly those of self-interest, it is important to recognize that not all laws are related to deeply held morals or mores. Many are. All modern legal systems outlaw murder, assault, many forms of theft, and other “crimes,” which are clearly violations of widespread moral values. However, modern systems also outlaw loitering, tax evasion, stalking, prostitution, the use and possession of some drugs, and many other acts toward which there is a lack of unanimous or intense public moral repugnance. Also, there is more vigorous law enforcement toward relatively less serious crimes committed by lower-class people, such as petty street crime, than toward serious white-collar crimes, such as the embezzlement of large amounts of money and political corruption. A young Rio de Janeiro slum dweller, a character in a John Updike novel, sums it up with remarkable conciseness and perspicacity: “The world itself is stolen goods. All property is theft, and those who have stolen most of it make the laws for the rest of us.”¹⁵

Imprisonment as Punishment

In addition to producing a large body of “substantive” law that does not stem directly from society’s moral values, the various purposes of the law have led to a variety of punitive measures. Of these, the prison is the primary and most destructive form. This punitive mechanism has seen many changes and served many different purposes. Some students of imprisonment have suggested that rulers have used imprisonment for personal rather than the public interest to promote a self-serving political economy, to

control the surplus population or the “dangerous classes,” and to introduce a form of discipline consistent with the new capitalist mode of production—the factory.¹⁶

In general, I am persuaded by these arguments. In particular, however, I contend that the recent imprisonment binge and most contemporary forms of imprisonment are the end products of the recent war on crime and its stepchild, the war on drugs. Conservative politicians pursuing self-serving interests first declared the war on crime in the 1960s. The same politicians and the media that supported them fanned the public’s fear of crime, citing the rise in street crime in the late 1960s and early 1970s. Public frenzy over this crime wave gave politicians the justification necessary to target the new dangerous class—the poor, mostly nonwhite, young, male, inner-city dwellers. Once politicians had public support to target this population, they were able to jail and imprison them. The purpose of these politicians was mainly the control and disposal of these persons.

Control of the dangerous class is not the “official” purpose of imprisonment. Most criminology or criminal justice texts list retribution for crimes committed, general deterrence of crime in society, the incapacitation of dangerous criminals, and the reformation (or rehabilitation) of criminals as its purposes.¹⁷ Instead, I suggest that key decision makers, those who have had the primary influence in shaping society’s penal strategies, have pursued three “unofficial” purposes. The first is class control. These decision makers believe that a new dangerous class constitutes a substantial threat to the lives and property of “honest people” and to social order. The second unofficial purpose is scapegoating, directing public attention to the behavior of the dangerous class to divert attention away from conditions and relationships that benefit decision makers or their patrons and have the potential of being recognized as serious social problems (e.g., the growing disparity in the distribution of wealth in the United States). The third unofficial purpose is to use the threat of the dangerous class as a device to gain political capital and win elections.

Policies driven by these three unofficial but dominant purposes not only have led to the escalation of punishment but also have obtruded into penal practices and greatly affected the conditions of imprisonment. These policies have moved imprisonment away from the more (but not completely) defensible purposes of

retribution, general deterrence, incapacitation, and reformation.¹⁸ They influence the types and degree of pain prisoners receive and, therein, the harm they experience.

In addition to these unofficial purposes of imprisonment imposed by persons external to penal organizations, prison administrators and staff pursue purposes that are generated by, and emerge within, the prison bureaucracy itself.¹⁹ These include (1) maintaining moral superiority of the employees over prisoners, (2) avoiding outside criticism, (3) maintaining the autonomy of the prison bureaucracy, and (4) increasing the ease of employees' work. These unofficial purposes stem from the self-serving motivations of the employees; they are not unique to prisons but appear to some degree in all bureaucracies. In prison organizations, however, these unofficial purposes are more extreme than in most other government bureaucracies and have special qualities because of the prison's peculiar assignment, that of controlling lower-caste, potentially dangerous persons.²⁰

This complex and shifting mix of official and unofficial purposes has produced a variety of prison regimens through its 200-year history in the United States. Two enduring characteristics, pain and harm, have varied in intensity and form with these shifts. Prisoners' modes of coping with imprisonment have varied with the shifts in prison regimens.

Prisoners do not simply comply with the regimens imposed on them. They actively conspire to survive, to reduce their state of deprivation, to ease their moral condemnation, and to pursue their own self-interests. To the extent that their situation allows, they fully or partly cooperate with other prisoners and form their own social organizations with their own values and rules to achieve their goals. In the next chapter, I examine the major phases in America's prison history with the intention of exploring these variations. My purpose is to reveal and help the reader understand the experience of prisoners in the new prisons and the harm these new prisons cause.

Origins of the Prison

The United States is credited with, or blamed for, making the prison the primary penal response to felonies or serious crimes. Indeed, the history of the prison coincides with U.S. history. One of

the world's first such prisons, the Walnut Street Jail, opened in 1790 in Philadelphia. Before that, in the colonies and in Europe, most felons were banished, fined, publicly shamed in stocks and pillories, whipped, mutilated, or executed. Since its introduction, the prison has remained the cornerstone of our criminal justice system. As one student of the prison put it, "Unlike the Wall of Jericho or, more recently the Berlin Wall, the prison edifice stands firm. Indeed, prisons are a more central feature of our criminal justice system than at any time in history."²¹ This importance is revealed by the fact that approximately 2.7 percent of the current U.S. population, 5.6 million people, have served time in prison.²²

Americans did not invent the prison from scratch. Before America's introduction of the "penitentiary" in 1790, several penal practices that led to imprisonment were employed by different European countries. As early as 64 B.C., a prison was built under the sewers of Rome. From the late fifteenth century to the eighteenth century, galley slavery, a precursor of imprisonment, was used extensively in many countries, particularly France and Spain. England's gaols were in wide use from the thirteenth century, and England introduced houses of corrections in 1609. The United States introduced the penitentiary, a new type of prison, which added reformation to the prison's former purposes—punishment, deterrence, and incapacitation (or quarantine).²³

Development of prison systems in Europe and the United States, particularly as it relates to changes in shifting political economies, has been thoroughly examined.²⁴ In the next chapter, I provide an overview of this history and identify key elements in its various historical forms, using a large body of close studies of prisons since the 1930s.²⁵ Information on the earlier phases, 1800 through 1930, is sketchy.

In Chapters 3 through 6, I describe the new forms of imprisonment that have been developed since 1983, during which time the country has experienced unprecedented expansion of its prison population and constructed hundreds of new prisons. In Chapter 7, I examine the problems prisoners face when they are released from the new prisons. In Chapter 8, I step back and more carefully trace the decisions and developments that led to the imprisonment binge. Finally, in Chapter 9, I explore the aftermath of America's disastrous penal experiment.

Endnotes

1. John Irwin and James Austin, *It's About Time: America's Imprisonment Binge* (Belmont, CA: Wadsworth, 1994).
2. *Ibid.*, xiii.
3. See John Irwin, *Prisons in Turmoil* (Boston: Little, Brown, 1980).
4. These began with James Q. Wilson warning us that "wicked people exist," in *Thinking About Crime* (New York: Random House, 1975). They peaked with the railing of his outspoken student, John Dilulio, warning us that "Crime in America: It's Going to Get Worse" *Reader's Digest*, August 1995.
5. James Austin and I evaluated parolees' experiences, and the picture was depressing. Most of those we interviewed were not achieving economic viability or coming close to realizing their life aspirations, and most returned to prison after release. It appeared that most who did stay out were on the edge, many descending into dereliction (*It's About Time*, Chapter 5).
6. For example, very early in the history of prisons, prisoners developed a "convict code," residues of which endure and influence prisoner behavior today.
7. David Garland, *The Culture of Control* (Chicago: University of Chicago Press, 2001), 153.
8. A full discussion of these rates appears in Chapter 8.
9. Garland, *Culture of Control*, 153.
10. See Emile Durkheim, *The Division of Labor* (New York: Macmillan, 1933). For a thorough discussion of Durkheim's ideas on this issue, see David Garland, *Punishment in Modern Society* (Chicago: University of Chicago Press, 1990), Chapter 1.
11. I have selected *purpose* instead of *motive* or *intent* because it does not have restricted legal connotations. I use *purpose* narrowly to mean conscious purpose rather than the function of some process or arrangement as seen by an observer.
12. See Joseph Gusfield, *The Culture of Public Reform: Drinking and the Symbolic Order* (Chicago: University of Chicago Press, 1981) for an examination of class conflict in the "legislation of morality."
13. See Ron Fuller, *The Morality of Law* (New Haven, CT: Yale University Press, 1964), and Edmond Cahn, *The Sense of Injustice* (Bloomington: Indiana University Press, 1975).
14. See John Finnis, *Natural Law and Natural Rights* (New York: Oxford University Press, 1990), and John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).
15. John Updike, *Brazil* (New York: Facett Columbine, 1994), 8.
16. See G. Rusche and O. Kirchheimer, *Punishment and Social Structure* (New York: Columbia University Press, 1939), E. B. Pashukanis, *Law*

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- and Marxism: A General Theory* (London: Ink Links, 1978); and Michel Foucault, *Discipline and Punish: The Birth of the Prison* (London: Allen and Unwin, 1977).
17. See, for instance, Edwin H. Sutherland, Donald R. Cressey, and David F. Luckenbill, *Principles of Criminology*, 11th ed. (New York: General Hall, 1992), 477, and Ira J. Silverman and Manuel Vega, *Corrections: A Comprehensive View* (New York: West, 1996) 20.
 18. In Working Party for the American Friend's Service Committee, *The Struggle for Justice* (New York: Hill and Wang, 1971), the "working party" critically examined these purposes and agreed that general deterrence and retribution have only limited value. Reformation and incapacitation, they argued, were not accomplishable or acceptable according to contemporary values of justice and humanity.
 19. One of the important discoveries by sociologists was the operation of the "informal" social organization within "bureaucracies," which has its unofficial norms, values, and personal relationships and which operates within the formal structure and often conflicts with its official rules and goals. See Milton Dalton, *Men Who Manage* (New York: Wiley, 1959).
 20. See John Irwin, "The Trouble With Rehabilitation," *Criminal Justice and Behavior*, no. 2 (1974).
 21. Robert Johnson, *Hard Time* (Belmont, CA: Wadsworth, 2002), 1.
 22. Bureau of Justice Statistics, as quoted in the *Los Angeles Times*, 18 August 2003, p. A10.
 23. At the urging of John Howard, the English critic of penal practices, the English Parliament passed the Penitentiary Act (1779), which called for a regimen of imprisonment that involved (1) humane treatment, (2) governance by formal rules, (3) safety, (4) instruction in morality, (5) isolation, and (6) organized work. This was basically the concept that Americans put into practice in New York and Pennsylvania.
 24. See G. Rusche and O. Kirchheimer, *Punishment and Penal Discipline* (New York: Columbia University Press, 1939); Foucault, *Discipline and Punish*; B. McKelvey, *American Prisons: A History of Good Intentions* (Montclair, NJ: Patterson Smith, 1977); Dario Melossi, *The Prison and the Factory: The Origins of the Penitentiary System* (Berkeley: University of California Press, 1980); David Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little, Brown, 1980); and David Garland, *Punishment and Welfare: A History of Penal Strategies* (Aldershot, England: Gower, 1985) and *Punishment in Modern Society*.
 25. See Donald Clemmer, *The Prison Community* (New York: Holt, Rinehart, and Winston, 1965); Gresham Sykes, *The Society of Captives* (Princeton, NJ: Princeton University Press, 1958); David Ward and

Gene Kassebaum, *Women's Prison: Sex and Social Structure* (Chicago: Aldine-Atherton, 1958); Rose Giallombardo, *Society of Women: A Study of a Women's Prison* (New York: Wiley, 1966); John Irwin, *The Felon* (Englewood Cliffs, NJ: Prentice Hall, 1970) and *Prisons in Turmoil*; Esther Hefferman, *Making It in Prison: The Square, the Cool, and the Life* (New York: Wiley, 1972); Leo Carroll, *Hacks, Blacks, and Others: Race Relations in Maximum Security Prison* (Lexington, MA: Lexington, 1974); James Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977); Nicole Rafter, *Partial Justice: Women in State Prisons, 1800–1935* (Boston: Northeastern University Press, 1985); and Barbara Owen, *In the Mix* (New York: State University of New York Press, 1998). ♦