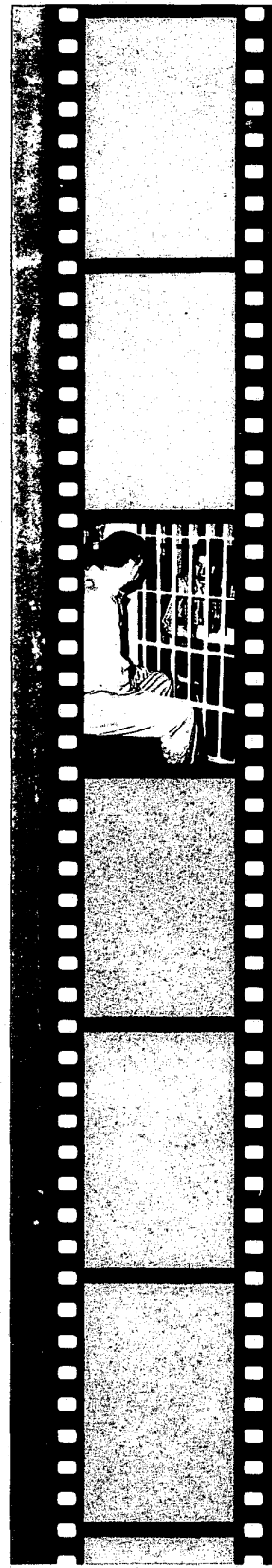


U.S. Department of Justice
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CRIME FILE

Inside Prisons

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**Moderator: James Q. Wilson, Professor of Government,
Harvard University**

**Guests: Dr. George Beto, Huntsville, Texas
Alvin Bronstein, National Prison Project of the
American Civil Liberties Union
Norval Morris, University of Chicago
Law School**

Your discussion will be assisted by your knowing some of the background to America's current prison problems, including information about current crowding, the history of prisons, and the impact of prisoners' rights litigation.

Prison Crowding

On December 31, 1984, there were 463,866 adult inmates in State and Federal prisons; another 300,000 were confined in county and local jails. Ninety-five percent were male and nearly half were black. The Southern States had the highest imprisonment rates per 100,000 population; the Northeastern States the lowest.

Although violent crime rates have leveled off in recent years, the national prison population has more than doubled since the early 1970's and is still rising. Prisons are crowded throughout the United States. Crowding affects living conditions in cells and dormitories; it limits recreational, work, and educational opportunities and creates difficult management problems for correctional administrators. In more than half the States, including Texas (the Nation's largest prison system), Federal courts have ruled that prison conditions violate the eighth amendment injunction against cruel and unusual punishment.

There are about 600 State and Federal prisons. Despite high construction costs (as high as \$100,000 per cell) and high operating costs (\$15,000 to \$25,000 per prisoner per year), the number of prisons is steadily increasing. The Federal Government, almost all of the States, and many counties have embarked upon prison and jail construction programs that will constitute a major legacy of the 1980's. While this expansion will permit incarceration of more people, it is unclear whether the additional facilities will succeed in relieving crowding; there seems to be almost limitless demand for prison beds. Prison is apparently seen by many as the answer, or at least the best answer, for the traditional serious crimes against persons and property. There is also an increasing propensity to use imprisonment as a way to demonstrate that the authorities are serious about enforcing criminal laws that have recently received increased attention. These include laws against domestic violence, child sexual abuse, drunk driving, business crimes, environmental destruction and, of course, drug trafficking.

Prison Popularity

What is the attraction of imprisonment as a sanction? It is difficult to say, especially because prisons have been subject to much criticism since they were invented in the late 18th and early 19th centuries. The historian David Rothman has argued that the founders of the American prison were idealists who believed that prisons and other total institutions could be used to change human beings for the better. Time and again in American history, men and women have looked to penal institutions for solutions to individual and social problems; time and again they have been disappointed.

Each generation has criticized the prisons and penal philosophies of its predecessor and has offered new rationales and management theories to reform the institutions. Each reform has come to be seen as a mistake, and

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as a cause of increasing human misery and prisoners' alienation. Many now reject rehabilitation as a goal of imprisonment. Critics contend that correctional programs do not reduce prisoners' subsequent criminality and that, in the guise of benevolence, rehabilitative programs have increased state control over the individual.

While few people idealize prisons, many see them as devices for deterring crime and incapacitating criminals. Deterrence is notoriously hard to measure; we simply do not know if increases in the prison population have deterrent effects on crime.

Imprisonment at least prevents the crimes in the free community that would have been committed by those who are incarcerated, although some prisoners will commit crimes against other prisoners, staff, and the prison itself. Still, the extent to which imprisoning people, and thereby incapacitating them, reduces crimes is a subject of debate.

Prison Alternatives

Prisons may be a preferred punishment because other available punishments are even less satisfactory. The possibility that corporal punishment, banishment, and hard labor will be revived as sanctions is remote. Americans like to think of themselves as an advanced, humanistic society. Most people believe (rightly or wrongly) that imprisonment is more humane than these other punishments. While sentences to capital punishment are once again being carried out, the Supreme Court has limited their use to a small category of offenders. New technologies to control offenders, like drugs to keep offenders sedated while they continue to live in the community, are seldom discussed. Today's generation seems unable to imagine any other serious punishment or system of control.

More people are sentenced to probation each year than to jail or prison. But the overloading of probation, and the failure to increase funding in proportion to the increase in caseloads, has watered probation down so much that it is widely regarded as providing no punishment or control. While there is much talk of "alternatives to incarceration," there has been little progress in designing and administering such programs. In any case, when they are established, such programs are as likely to be used as alternatives to probation as substitutes for prison. For all of these reasons, it is unlikely that current pressures on limited prison resources will soon diminish.

Prison Problems

Prisons have always been difficult to manage. The history of American prisons is replete with eruptions of violence, scandals, and misery. Prisons have always suffered from crowding, violence, suicide, brutality, and poor medical and sanitary facilities. For most of prison history, these problems were substantially shielded from public view, but the involvement of the Federal courts in prison matters since the mid-1960's has opened up prisons to unprecedented scrutiny.

Prisoners overwhelmingly represent societal "failures," young men (and a small percentage of women and older men) who have had unsuccessful experiences in their families, schools, military services, and labor force. They suffer disproportionately from child abuse, alcohol and drug abuse, poor self-concept, and deficient social skills. They tend to be hostile to others, and especially to authority. When all other social institutions have failed with such persons, how can prisons succeed? Prisoners bring their values, patterns of life, even their gang structures with them into the prisons. The prisoner subculture is inimical to the prison administration and to society; it is likely to revolve around the smuggling of illicit drugs, extortion, and predatory sexual relations.

Prisons are characterized by crowding, lack of privacy, noise, racial tension, boredom, lack of heterosexual relations and, for some inmates (lifers, for example), hopelessness. Many prisons are old and dilapidated; there is not enough money to keep them in good operating order. While there are many talented and dedicated prison officials, pay and other amenities are far too low, leading to "burnout" and high turnover. Given these problems, it would be surprising indeed if prisons and prisoners thrived.

Prison Reforms

Today's prisons have been influenced by the prisoners' rights movement and the activism of the Federal courts. Prior to the 1960's, prisoners were considered, as one court put it, "slaves of the state," and they had little access to the courts. This changed in the 1960's, as echoes of the civil rights movement reverberated through the prisons. Civil rights litigation became a strategy for challenging the whole structure of prison management. Much early litigation involved assertions by Black Muslims of denial of religious freedom, and the Muslims frequently won. For the first time in American history, the warden's word was not final: prisons had become accountable to an outside institution—the Federal courts. One by one, the courts recognized other rights—freedom to correspond with attorneys and to sue prison officials without reprisals, certain freedom from censorship, the right to minimum due process before being disciplined for breaches of prison rules, and the right to be free from intentional or reckless disregard for health. The courts terminated the most brutal disciplinary measures, including corporal punishment and use of indefinite and harsh solitary confinement. Prison officials' ability to induce conformity by granting and denying prisoners' access to goods, services, and opportunities was also cut back. Under constant scrutiny, prison rules and routines became more rational and bureaucratized. Policies that could not be justified had to be discontinued.

In the 1970's, the nature of prisoners' rights litigation began to change. Instead of claiming denial of civil liberties, prisoners' rights lawyers began to attack conditions of confinement on the ground that they were too crowded, noisy, unsanitary, and dangerous. The prisoners won many victories, none more significant than *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex., 1980), 650 F. 2d 555 (5th cir., 1981), in which Judge William Wayne Justice declared the Texas prison system unconstitutional and ordered its total revamping. In order to oversee the system's movement toward constitutional compliance, Judge Justice appointed a special master, who in turn appointed a staff of monitors

and aides. The special master and his staff are still working full time monitoring conditions in the Texas prisons and verifying the prison administration's progress toward complying with the court order and with the many consent agreements negotiated by the parties. Special masters are at work in jails and prisons all across the country.

The extension of constitutional rights to prisoners and the oversight of prisons by Federal courts have undoubtedly caused dislocations. Prison officials initially objected to being "second guessed" by Federal judges, and many refused to abide by court orders or attempted to circumvent them. Many prison officials have since come to accept that the courts have the ultimate duty and power to protect rights and liberties. While conforming to the rule of law probably makes prison management more difficult, this is the price a democracy pays for being a free society. In many contexts, adherence to the rule of law may make "running society" more difficult; perhaps society would be more "efficient and orderly" if nobody had rights, but fortunately our democracy and our constitution place limits on state powers, and guarantee rights and liberties to everyone, including prisoners.

The Texas prison system and many others around the country are experiencing stress, even turmoil. The old autocratic system has been abolished by court order. Many top corrections employees have resigned or been fired. Crowding remains a major problem, and the prisons have deteriorated physically and administratively. Thousands of new employees have had to be hired and trained, and new techniques of control have yet to be successfully developed. While prisoners now enjoy more rights, freer access to the courts, and much better health care, they may be more vulnerable to assault by other inmates. Once flourishing industrial and agricultural programs have substantially broken down. The final results of court-ordered change will not be fully apparent for many years.

While many American prisons are crowded and trouble ridden, there are exceptions. The experience of the Federal Bureau of Prisons' Butner Correctional Center in North Carolina demonstrates that prisons for serious offenders can be operated safely and effectively. The atmosphere is relaxed; prisoners feel safe. While inmates may not be "happy," one hears few complaints. It is not yet clear what accounts for Butner's success. Some contributing factors may be its excellent architectural design and modern physical plant, its extraordinary resources and talented staff, its capacity to send troublemakers to other, less desirable institutions, and its very sense of being "an experiment." It is an experiment well worth replicating in State prison systems around the country.

There are other bright spots. The National Institute of Corrections and its training college in Boulder, Colorado, provide important Federal leadership to the whole country. There are increasing numbers of minimum-security facilities and better systems of classifying prisoners. The most brutal punishments, including use of primitive solitary confinement cells, have been eliminated. The improvement of prison health care in almost every prison and jail is a significant step forward. The influx of vast numbers of women and members of minorities into correctional careers has

created a healthier and more normal atmosphere in prison and has democratized the implementation of punishment. The establishment of first-rate prison law libraries guarantees that prisoners will never again be isolated and shut off from the larger society.

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Discussion Questions

1. Would it be more inhumane to drug a violent offender and leave him in the community than to send him to prison for several years? Why is imprisonment widely regarded as more humane than corporal punishment?
2. Why does imprisonment play so large a role in punishment in the United States?
3. Should prisoners be entitled to television? ice cream? conjugal visits?
4. Are there any realistic alternatives to the prison?
5. Is there any figure for the total number of prisoners in America that would be unacceptably high?
6. In what respects can the presence of more women and minorities among prison staff be said to "democratize" the prison?

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