

Why American Prisons Fail

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*How to Fix Them without Spending
More Money (Maybe Less)*

SECOND EDITION

Peyton Paxson

George H. Watson



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Contents

Acknowledgments	xi
Introduction	xiii
Chapter 1 • Mass Incarceration	3
Causes of Mass Incarceration	3
The Baby Boom	5
Giving Up on Rehabilitation	9
The War on Drugs	12
Mandatory Minimums	17
The “Get Tough” Movement	18
Crime Declined but Incarceration Continued to Rise	19
Incapacitation	20
End of the Baby Boom	21
More Effective Law Enforcement	21
Abortion on Demand	21
Less Lead in the Environment	22
Declining Crack Cocaine Usage	23
Crime Is Going Down; Does the Public Know That?	24
The End of Mass Incarceration?	25
Calls for Ending Mass Incarceration from the Right	26
Recidivism: The Ultimate Metric	29
Conclusion	30
Where Do We Go from Here?	30
Notes	31
Chapter 2 • George Goes to Jail	39
Not Your Typical Jailbird	39
A Knock at the Door	41

Accused	44
United States v. George H. Watson	47
Preparing for Prison	48
George Goes to Jail	50
Watson Goes to Camp	59
Watson Goes to Work	65
Keeping Busy	70
Watson Learns Prison Culture	72
Bureaucracy Behind Bars	74
Real Men Stay in Prison	76
George Goes Home	79
Conclusion	80
Notes	81
Chapter 3 • What Were They Thinking? Why People Commit Crimes and How America Punishes Them	83
Why Do People Commit Crimes?	83
Criminology 101	84
Preclassical Theory	85
Classical Theory	85
Classical Theory and Rational Choice	86
Positivist Theory	89
Sociological Theories	91
Social Conflict Theories	91
Strain Theory	91
Social Learning Theory	92
Integrative Theories	93
Multifactor Theory	94
Life Course Theory	95
Why Do We Incarcerate?	95
Incapacitation	95
Deterrence	97
Retribution	99
Rehabilitation, Reformation, and Reentry with Reintegration	100
Rehabilitation	100
Reformation	101
Reentry with Reintegration	102
Restorative Justice	105
A History of U.S. Prisons	106
The Pennsylvania System	106

The Auburn System	107
Southern Prisons in the Second Half of the Nineteenth Century	109
The National Prison Association and the Evolution of Prison Reform	110
The Reformatory	111
The Twentieth Century's Big House	112
The Federal Bureau of Prisons	114
Prisons Evolve into Correctional Institutions	114
“Nothing Works” and Mass Incarceration	115
Prisons Today	115
Conclusion	117
Notes	117
Chapter 4 • Is There a Better Way in Norway? The U.K.?	123
United States as Outlier	123
Americans Like to Punish	126
Punitivity Is Partly Politics	127
Punitivity Is Partly Sociological	130
Comparing Apples and Oranges: Definitional Problems	131
Definitional Problem #1: Defining Crime and Measuring Its Occurrence	131
Definitional Problem # 2: Incarceration Rates	133
Looking Elsewhere	138
Norway: 21 Years for Mass Murder	138
The United Kingdom: Cautioning	139
Spain: Family Solutions	139
Denmark: Least Possible Intervention	140
Recidivism, the Ultimate Prison Metric	140
Incarceration as Deterrent to Crime	142
The Dutch Way	142
Norway, Again	142
Germany: Location, Location, Location	144
England and Wales: Independent Monitoring Boards	145
France: Corrections Judges	146
Scotland: Short Term Sentences versus Community Corrections	146
The U.S. vs. Other Western Democracies: Lock ‘em Up versus Let ‘em Out	147
Tocqueville Revisited	147
Conclusion	148
Notes	150

Chapter 5 • Politics and Prisons	155
The Role of Fear	155
Overlapping Laws	157
Overcriminalization	159
Overcriminalization: Marijuana	161
Overcriminalization: Drug-Free Schools	163
Overcriminalization: Habitual Offender Statutes	164
Lack of Intent	167
Void for Vagueness	172
Sentencing Concerns	173
Mandatory Minimums	175
Parole	180
The War on Drugs	181
The Sixth Amendment’s Right to Trial by Jury: What Happened?	182
Grand Juries	185
Conclusion	188
Notes	189
Chapter 6 • As Prosecutors Say, “Follow the Money”: Prisons and Profits	197
Private Prisons and Incarcerating for Profit	198
Recidivism Isn’t Enough; They Need More Criminals	203
Preying on the Weak	204
Cherry Picking: Optimal Conditions Mean Maximum Profits	206
Prisons Are Also Revenue Streams for Government Entities	208
Prisons as Employers	210
Plenty of Prisoners Means Job Security	211
Prisons and Jails as Profit Centers: Vendors	213
Supporting Criminalization as a Business Strategy	217
ALEC	218
Conclusion	220
Notes	221
Chapter 7 • Let’s Fix the Problem	229
Overcriminalization	230
We Call Our Legislators “Lawmakers” for a Reason; But Do We Need All These Laws?	231
The Colorado Model	234
Decriminalization	235
Drug Laws	237
Mandatory Minimums	239

Life Sentences	240
Diversion from Prison	242
Community Corrections	243
Intensive Supervised Probation	244
Drug Courts	244
Mental Health Courts	245
Veterans Treatment Courts	246
Prisons	247
Solitary Confinement	249
Programming	250
Choice Architecture	250
Substance Abuse Treatment	251
Cognitive Behavioral Therapy	251
Education	253
Literacy	253
Adult Basic Education	254
Secondary Education	254
Vocational Training and Job Readiness Training	254
Entrepreneurial Training	255
College	255
Reforming Correctional Economics	257
Professional Correctional Staffing	257
Bail Reform	258
Telephone Call Prices	259
Prisons and Profits: A Horrible Idea	259
Juveniles: Almost All of Them Will Get Out	262
Life after Prison	265
Reintegration	265
Earning a Living	267
Conclusion	269
Notes	270
Epilogue	279
Bibliography	283
Online Resources	286
Index	287

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Introduction

Some years ago, Paxson exchanged emails with a friend from his years spent living in Austin. She told Paxson that their mutual friend from law school, George Watson, was doing time in federal prison, and that she thought Paxson should contact him because Watson was struggling. As soon as Paxson heard that Watson was in trouble, he knew he had to do what he could to offer him some comfort. Despite Watson now being a convicted felon, Paxson knew that he was a good man. In many ways, Watson's situation falls within the maxim, "there, but for the grace of God, go I."

Watson is a bibliophile, as you'll see in Chapter 2, and Paxson's local library has great used book sales. Sending books was easy on Paxson's end, and much appreciated by Watson. The two corresponded regularly. The more Watson told Paxson about prison life, the more Paxson, who teaches criminal justice courses, thought that Watson's observations on the criminal justice system in general, and the corrections system in particular, should be shared with a larger audience. The book before you is our effort to do so.

The week before the manuscript for the first edition was sent to the publisher, the British magazine *The Economist* ran a cover story entitled "Jailhouse Nation; 2.3 Million Reasons to Fix America's Prison Problem." As the article states, "No country in the world imprisons as many people as America does, or for so long."¹ After having a relatively stable incarceration rate for decades, American political institutions shifted to a mass incarceration model in the last quarter of the twentieth century. As we finished the manuscript for the second edition, the situation was somewhat better, but the U.S. still has more prisoners than any other nation, as well as the world's highest incarceration rate.²

In Chapter 1, we look at the reasons why the United States has about five percent of the world's population but twenty-five percent of the world's pris-

oners. These reasons include the post-World War II baby boom, the War on Drugs, the belief that “nothing works” in corrections, and the implementation of mandatory minimum prison sentences. We further address the incongruence of incarceration rates increasing while criminal activity decreased. Chapter 1 concludes with a brief discussion of the ultimate metric for determining if the corrections system is working—recidivism, or the rates of repeated criminal activity. Recidivism rates remain startlingly high, an indicator that the current system is broken.

Chapter 2 tells of Watson’s experience of being “involuntarily embedded” in the prison system. While there, Watson, who holds bachelor’s and master’s degrees in psychology, observed how the prison system fails both prisoners and the taxpayers who pay for our prisons. Watson experienced things he would really prefer he hadn’t, but in the process he was able to identify some things that could be changed to make American prisons more effective and more efficient.

In Chapter 3, we provide a brief overview of criminological theories about why people chose to engage in criminal activity. We also discuss how choice theory has become the dominant behavioral theory underlying the American criminal justice system. We will see that this cultural emphasis on rational choice theory—that the majority of criminals choose to be criminals—is unfounded. Chapter 3 also surveys the primary goals of the corrections system and concludes with a brief history of American prisons and the underlying penological theories and practices that those prisons represent.

Chapter 4 compares the societal attitudes reflected in the American corrections system with those of some other Western democracies. We provide examples of how the American ways of responding to crime are at odds with the successful practices of other nations. We analyze why other nations imprison fewer people for shorter periods, and how other nations often have different perceptions about what constitutes crime and its acceptable punishment.

Chapter 5 examines how politics has contributed to mass incarceration. When deciding what behaviors to punish and how to punish them, politicians are subjected to intense lobbying by groups with conflicting interests, as well as pressure from a panicky public. This yields a criminal justice system that is similar to our income tax system: overly complex, confusing, and contradictory. It is very different from the black and white, good guy/bad guy system most people think of. Another complication is that criminals can be “manufactured” through vague legislation. This gives prosecutors great latitude in determining which activities to try as crimes and which suspects to prosecute.

In Chapter 6, we look at the economics of the American corrections system and the institutions and industries that benefit from the criminalization of certain behaviors. These include prison workers’ unions, law enforcement

agencies, private prison corporations, and industries that provide goods and services to prisons. Prison workers' unions spend millions of dollars to lobby for longer prison sentences and against alternatives to prison in an effort to provide job security for their members. A private prison company was behind Arizona's controversial new immigration law, which created a new crime in the state in order to populate privately operated prisons. These institutions' and industries' economic models require a constantly increasing supply of prisoners whose food, clothing, housing, medical care, and supervision is paid for with American tax dollars.

We conclude with a vision of a better corrections system in Chapter 7. We look at what seems to work best in the U.S., as well as best practices in some other nations. We offer suggestions that focus on the best use of resources to prevent future criminal activity. In some areas, it is simply expanding effective rehabilitation and education programs already in use. In other areas, new legislation and approaches are required.

We appreciate that our corrections system strives to help keep us safe. We do not make excuses for criminal behavior; most of the people in prison did break the law. However, we show that there are better means available to reduce repeated criminal activity and to keep criminal behavior and criminal lifestyles from being passed on from one generation to the next.

The first edition of this book was published in January, 2016, as Barack Obama began serving his last full year as president and Donald Trump campaigned to replace him. The Trump administration's approach to criminal justice issues has proven quite different from that of the Obama administration. We examine some of those differences in this edition. However, prison reform is a bipartisan issue. We quote with approval the words of Ted Cruz, the American Civil Liberties Union, one of the Koch brothers, and the National Lawyers Guild, among others. Their motivations vary, but the goal is the same: a more efficient, less expensive means of dealing with crime in America. We hope that once readers come to better understand the systemic problems within our corrections system, they will ask our government leaders to examine those problems and develop more effective correctional policies and practices.

Notes

1. "Jailhouse Nation; 2.3 Million Reasons to Fix America's Prison Problem," *The Economist*, June 20, 2015, 23.
2. "Highest to Lowest—Prison Population Total," World Prison Brief, http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All.

