

Worst thing about U.S. prisons is the prisoners

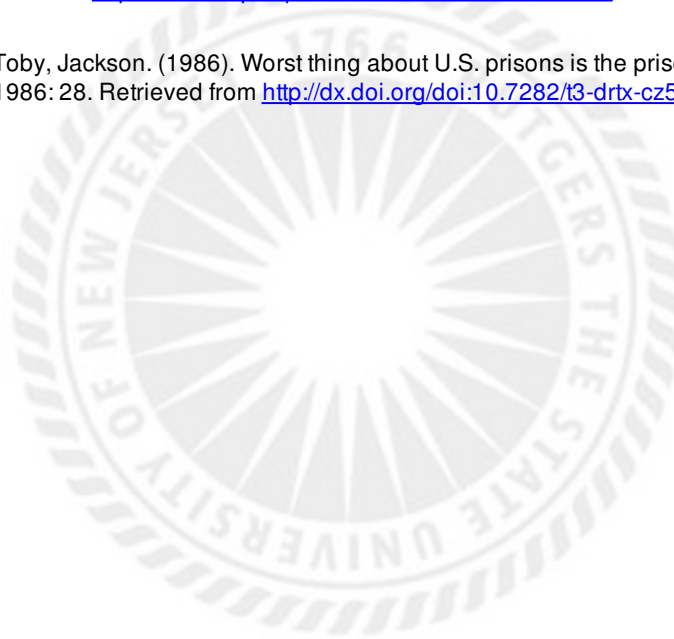
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Worst Thing About U.S. Prisons Is the Prisoners

By JACKSON TOBY

American prisons get terrible publicity. Stories of rape, murder, hostage-taking and overcrowding abound, as do those of judicial orders to release prisoners or close prisons because of conditions of "cruel and unusual punishment."

Is there a pattern of official brutality in prisons? Official brutality, no. Nowadays incarcerated offenders are responsible for nearly all the violence in American prisons. Officials generally are businesslike with their unpleasant clients. Until the 18th century, however, prisons were rare, but official brutality was the rule. Perpetrators of serious crimes were enslaved, executed (often as painfully as possible), maimed, flogged, branded or publicly mutilated while in the pillory. Harsh punishments were not reserved only for what would today be regarded as serious offenses. As recently as 1868, the state of North Carolina allowed capital punishment for 30 offenses, including adultery.

Prisons were devised only 200 years ago as a substitute for harsher punishments. True, dungeons existed for at least 1,000 years to incarcerate persons whom ruling monarchs perceived as troublesome. However, dungeons were not prisons, and jails weren't prisons either. Accused people were detained in jails to ensure their presence at trials, as were debtors to make them pay up. But the idea of deprivation of freedom as punishment for violators of serious rules did not attract support until Benjamin Franklin's time.

Dr. Benjamin Rush, one of the signers of the Declaration of Independence and a prominent physician, read a paper about

crime and punishment to a group of intellectual Quakers in Franklin's home on March 9, 1787. Rush advocated replacing traditional physical punishments with deprivation of freedom (through solitary confinement) and the opportunity for penitence (through Bible study and work in the cells). The Pennsylvania Prison Society was formed to carry out this program, and soon Pennsylvania had a "penitentiary," intended to rehabilitate offenders.

Nineteenth-century American prisons did not live up to Rush's humane intentions. Many of them—Auburn, for example, in New York state—inflicted severe punishments on inmates to enforce arbitrary rules. In Auburn, inmates were forbidden to speak to one another. Violators of "the silent system" were flogged, chained to the floor and "stretched" with ropes attached to a pulley in the ceiling, confined in an unventilated "sweat box," and, while shackled naked to a wall, targeted with a high-pressure water hose. Prisoners were "slaves of the state."

By comparison with 19th-century American prisons and with contemporary prisons in all but a couple of dozen democratic countries (out of 167 independent nations), prison conditions today in the U.S. are almost luxurious: beds and mattresses rather than a floor, flush toilets instead of a pot, uninspired but wholesome food, heated cells and workshops, access to counselors, to telephones, to a library, to legal aid, and to procedures for adjudicating grievances concerning prison policies.

Contemporary American prisons also provide inmates with recreation, with vocational training, and with education pro-

grams, including day release in order to attend local colleges. Taxpayers pay about \$15,000 a year per inmate for these amenities in maximum-security prisons and somewhat less in medium- and minimum-security prisons. But the most important amenity is safety from official brutality: American prisoners need not fear beatings by their guards. Although assault from other inmates is all too common, the guards try to protect prisoners from one another.

American prisons today cannot have arbitrary rules nor can they enforce reasonable rules arbitrarily, because both state and federal courts are constantly intervening to protect the human rights of inmates. The civil-rights revolution that accelerated in the 1960s meant that prisons could not be run according to the whims of wardens or guards. By 1978, the last year for which I could locate statistics, 9,730 civil-rights cases on behalf of inmates of state prisons were filed in the federal courts alone. Prison officials spend an appreciable amount of their time in court defending themselves against charges that their administrative acts have deprived inmates of rights protected by the First, Fourth, Eighth, 13th, and 14th amendments to the Constitution.

The threat of judicial intervention has resulted in fewer restrictions on mail privileges, on press interviews, and on religious worship, and has liberalized visits with friends and relatives. American prisons constantly reexamine the reasonableness of security measures like cell searches and body-cavity searches, as well as disciplinary transfers to other institutions. They

have established minimum standards for medical and dental care, exercise, food, privacy, shower privileges, heat, work, and other amenities whose absence judges might construe as constituting "cruel and unusual punishment."

Operating civilized prisons is expensive—as Americans imprisoned for violating the laws of Third World countries learn to their sorrow. The 43 countries with a gross national product per capita of \$500 or less—Pakistan and Nepal, for example—cannot afford the creature comforts and the programs available in U.S. prisons. In poor countries, the family of a prisoner often is expected to provide him with his food. An imprisoned individual without friends or relatives risks starvation. As for medical and dental services, prisoners in Third World countries had better avoid illness and toothaches.

But a high gross national product does not guarantee civilized imprisonment. The labor camps and psychiatric prisons of the Soviet Union are notorious for beatings and brainwashing. Murderers and robbers are treated less cruelly than political prisoners in Soviet prisons but callously by American standards.

If American prisons are so decent, why the constant criticisms from prisoners, journalists, judges, even criminologists? Because the critics respond not only to current realities but to what they think prisons should be like. Americans have high standards for the treatment of human beings.

In terms of expectations, liberals deny that there can be a good prison. They are right. But the worst feature of American prisons is the other prisoners. As a means of coping with serious misbehavior, the American prison is a good try in an imperfect world. The U.S. has made its prisons increasingly civilized. In comparison with the historical alternatives to imprisonment—as well as with the ghastly prisons in some Third World and Marxist societies—American prisons are nothing to be ashamed of.

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