Ex-convicts in society

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In the late 1970s, the United States embarked on a prison-system buildup of a scale previously unknown in a free society. By 2002, nearly 2 million American men and women were serving sentences in local, state, and federal correctional facilities. The country’s incarceration rate rose from slightly over 100 individuals per 100,000 in 1980 to nearly 500 in 2002. Coincident with the prison buildup, crime rates fell by half—household victimization even more steeply—and the United States went from being the most dangerous large Western democracy to the safest.

While the growth of the nation’s prison system has recently slowed, no mass movement has emerged intent on setting free the scores of violent criminals behind bars. But as over 93 percent of those now serving time in American prisons will one day return to the streets, it behooves society to worry about what happens to them.

In her new book When Prisoners Come Home, Joan Petersilia confronts the thorny questions associated with the unprecedented influx of ex-prisoners into society. Nearly every statistic associated with returning prisoners should heighten our concern about the effects of America’s incarceration boom: Few released convicts find stable jobs or develop decent family relationships, and two-thirds are rearrested within three years. Over a quarter are arrested for new crimes within just one year. When it comes to rehabilitation efforts, conventional wisdom has it that Robert Martinson was right in his 1974 Public Interest article that famously concluded: “nothing works.”

Petersilia, a professor at the University of California-Irvine and sometime collaborator with James Q. Wilson, proves largely successful in her efforts to find a viable

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course between building a correctional system solely to punish convicts and imagining that violent criminals would become productive members of society if only they were dropped onto plush college campuses. Her book contains three major sections: A historical review of pre- and post-release programs, an analysis of how current programs help and hinder both convicts and crime victims, and an outline of prescriptions for reform.

The historical section ranks among the best brief histories of the correctional system ever written. Petersilia describes how prisons evolved from purely punitive in purpose to largely rehabilitative and then turned back, sharply, in the direction of punishment as crime rates spiraled out of control during the 1960s, 1970s, and 1980s.

One theme runs throughout the book: States made a disastrous mistake when they moved from indeterminate sentencing regimes, where parole boards have broad discretion to determine sentence length, to determinate sentencing systems where prisoners receive a fixed sentence and get time off only for "good behavior." Despite its name, "good behavior" consists of little more than not committing serious criminal acts behind prison walls. A mere 16 states—only two large ones—retain discretionary systems and, even there, truth-in-sentencing laws and other seemingly tough measures have limited the ability of parole boards to judge individual cases. Determinate systems have resulted in shorter sentences and have removed incentives for inmates to improve themselves. In addition, since there is no discretion in the release process, crime victims no longer have an influence on the length of imprisonment.

Petersilia's case for involving victims in the release process is convincing. While victims' rights advocates have won many victories in recent years, most of these simply improve the damaged party's participation in the initial arrest and trial. But the burden of follow-up—even in states where victims possess a legal right to it—almost always falls on the damaged parties themselves. Only a small percentage of crime victims have any say about when their attacker gets released.

Just as leaving victims out of the release process diserves victims of past crimes, lack of follow-up with released convicts creates new dangers. Many probation
officers see their charges only a few times a month, provide few actual services, and quickly send them back inside for the most trivial of infractions. There's nothing intrinsically wrong with re-imprisoning convicted offenders when they fail a drug test or return to gangland haunts, but failing to do anything for people who might remain on the straight and narrow with a little more guidance simply wastes resources. Based on Petersilia's arguments and data, one can conclude that many states should consider keeping inmates behind bars for shorter periods of time in return for longer periods of intensive, even daily, monitoring in the community.

While more extensive monitoring makes good sense in the first years after release, Petersilia raises interesting questions about the United States' policy of maintaining criminal records for a convict's lifetime and declaring convicted criminals ineligible for many government benefits. These rules do harm prisoners' reintegration into society, but Petersilia exaggerates their long-term effects. "Lifelong" stigmas don't really last forever except in a narrow, legal sense: Hardly anyone would give a second thought to employing a well-respected family man with a 20-year-old theft conviction. Except when accused of truly severe offenses like murder, rape, and kidnapping, almost all first-time offenders (and many second, third, and fourth-time offenders) are brought before a judge, told to sin no more, and released into the community, where their records are usually erased after a year or so of good behavior. People who go to prison have already had at least one, and usually more than one, chance to clear their criminal records, even after receiving an automatic erasure of their juvenile records.

But Petersilia wants to go further. She favors a system similar to England's, by which, after a set period of good behavior, most offenses are considered "spent." These offenses no longer appear in official records nor need to be mentioned on job applications, with exceptions for social work and jobs related to national and homeland security. But such a system undermines the idea that crime should have a price. Crime-induced wounds to the social fabric do heal in time, but scars borne by individual victims do not vanish entirely simply because a given criminal stays out of trouble.
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Petersilia also allies herself with those who argue that inmates should spend their time in prison learning things that will help them become productive members of society. Indeed, she is optimistic, perhaps too optimistic, about the possibility of rehabilitation behind bars. While she is right that Robert Martinson overstated his case (in fact, he admitted as much in a follow-up article in the *Hofstra Law Review*) and that some rehabilitation programs are useful, no program appears to offer broad benefits to its participants or even to help a majority of the inmates it serves. Still, confirming previous research, Petersilia finds that programs that prepare prisoners for work or, even better, actually put them to work in paid jobs, help to reintegrate convicts into society. She also observes that prison programs appear to have the greatest impact on younger offenders, and she recommends that drug treatment again become a correctional-system priority.

PETERSILIA'S masterful synthesis and sensible recommendations are marred by a slapdash final chapter in which, among other things, she gives serious consideration to the conspiratorial idea that a search for profits drives continued prison expansion. While it is undeniable that prison-guard unions and residents of declining rural areas have a strong financial stake in continued correctional-system expansion, it's much harder to argue that the influence of marginal groups like these have led states and cities across the country to build correctional facilities. After all, few cities really want prisons, and most guards' unions have relatively little power. Likewise, although Petersilia's book doesn't include much about drugs, its conclusion contains an ill-considered call for radically rethinking the drug war. Petersilia overstates the number of truly nonviolent first-time drug offenders in prison and thereby comes up with overly rosy projections for the chances of lowering prison populations by reducing the drug war's intensity.

After they leave the prison gates, many convicts terrorize society once again. Their behavior stems from a lack of self-restraint, and they should not escape punishment. At the same time, we ought to heed Petersilia's advice and recognize that our current policies are inadequate, serving neither the released convicts nor the rest of society.