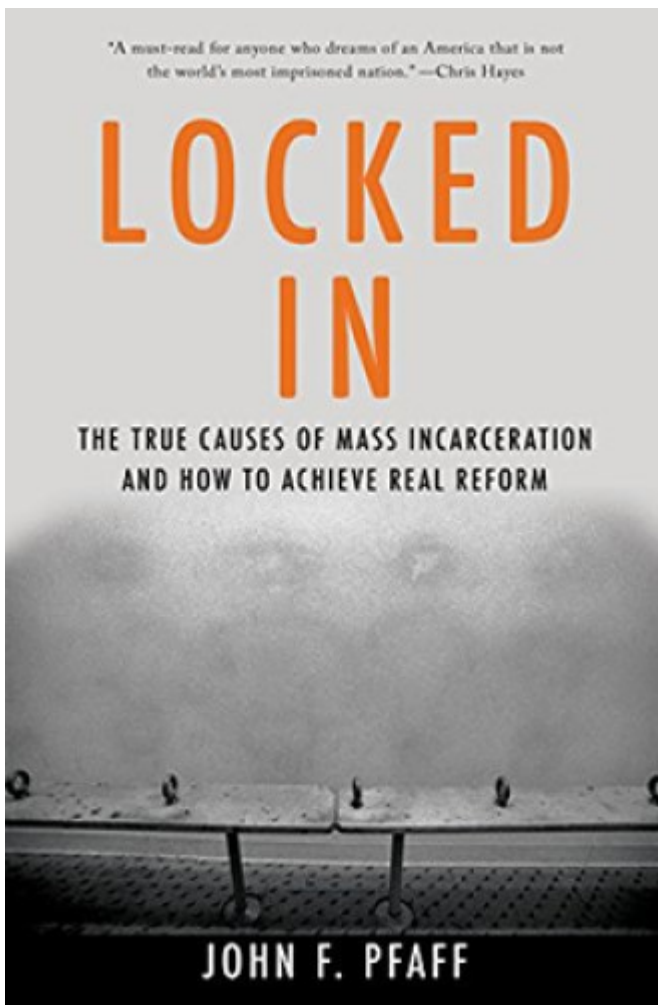


The role of county prosecutors in mass incarceration

John Pfaff's *Locked In* adds to what we've learned from Michelle Alexander's *The New Jim Crow*.

by [Amy Levad](#) in the [August 16, 2017](#) issue

In Review



Locked In

The True Causes of Mass Incarceration and How to Achieve Real Reform

By John F. Pfaff

Basic Books

Influenced by books like Michelle Alexander's *The New Jim Crow*, many Americans have begun to question criminal justice systems that have given the United States the highest incarceration rate and largest prison population in the world. According to a now standard story, the practice of mass incarceration has been fueled by the increasing imprisonment of nonviolent drug offenders due to misguided mandatory minimum sentencing rules encouraged by tough-on-crime politicians—and by privately run prison systems that turn a profit from warehousing prisoners.

John Pfaff, who teaches law at Fordham University, maintains that the effectiveness of reform efforts based on this account of mass incarceration will be limited, and may even backfire, because the narrative is wrong. Pfaff offers a different story.

According to Pfaff's detailed data analysis, public-sector actors at the local level—unions representing corrections officers, legislators in districts where prisons are located, and elected judges and prosecutors who need to avoid appearances of leniency to stay in office—are the main power players in advocating tough-on-crime agendas. In light of the power of public-sector actors and the relatively few number of people in private prisons, Pfaff concludes that the focus on prison privatization is often a distraction.

The main problem occurs at the level of county prosecutors, who are bringing felony charges against more people, who then serve relatively short sentences. About three-quarters of people in prison serve less than three years. Furthermore, most people who have been imprisoned—about two-thirds—never return to prison. Pfaff infers from these two points that our prisons are filled not with a “stock” of more than 2 million people who have been dealt especially punitive sentences, but with a “flow” of more than 9 million people since 2000 who serve relatively short sentences. Prosecutors feed this flow, not by sending some people to prison for a long time, but by sending a lot more people to prison for a short time—that is, by creating prisoners.

Surprisingly, the war on drugs is not the main tributary to this flow. Most people in prison—nearly two-thirds—have been convicted of violent offenses, not nonviolent drug offenses. Focusing on the war on drugs may be the low-hanging fruit of reform efforts, opening the possibility of more thorough reforms that would address other

types of crime. But too often advocacy for reform of drug laws has been based on harsher sentences for people convicted of violent offenses, a trade-off that Pfaff suspects may create larger prison populations in the long run.

Pfaff does not take on *The New Jim Crow*, although the publisher's advertising, most reviews, and many social media discussions of *Locked In* point to a beef between Alexander and Pfaff. Alexander does argue that the war on drugs operates as a social and cultural marker that facilitates the excessive incarceration of people of color, but her central contention is that mass incarceration functions as "a contemporary system of social control" that re-creates the racial caste systems challenged by the end of slavery and segregation. Dismantling mass incarceration, Alexander avers, requires more than criminal justice reform; we must address the racialized institutions, practices, and ideologies that have undergirded mass incarceration and decimated communities of color.

Pfaff's argument about how we ought to focus criminal justice reforms does not abrogate the need to do the more fundamental cultural and social work on race called for by Alexander. At points, Pfaff also indicates the need to think beyond criminal justice reform. He suggests the need to address the lack of upward mobility available to young men in racially segregated neighborhoods; to advocate for solutions outside criminal justice tactics, such as investment in schools or strengthening public health systems; and to tackle the impact de facto racial segregation has on county-level politics. But his discussion of these efforts is fleeting. Reading *The New Jim Crow* alongside *Locked In* could offer complementary—rather than competing—perspectives on dismantling mass incarceration.

Pfaff's data-driven diagnosis of mass incarceration is compelling, as are his policy recommendations. But a thinner thread throughout the book is equally important, particularly to religious readers. Pfaff writes, "More important than any legislative reform effort will be attempting to change people's attitudes toward crime." One thing that reformers—especially those not haunting the halls of the state legislature with policy recommendations—need to do is to "effect 'cultural change'" and convert "hearts and minds."

Pfaff suggests that reformers need to "ask . . . seemingly 'impossible' questions about the costs and benefits of crime control," by which he means the questions of how much crime we as a society are willing to tolerate given the costs of

punishment to individuals, their families, and communities. He notes:

Policies that acknowledge the costs of punishment as well as the costs of crime require us to ask those with more power to give up some of their benefits in order to reduce the costs being imposed on other people, people from whom they are often separated by geography, class, and race.

Yet Pfaff's utilitarian framing—which can only offer answers in terms of balancing costs and benefits among competing interests—hampers his ability to address some of these “impossible” questions. What religious readers might bring to the reform efforts are commitments, traditions, and practices that teach about values and virtues beyond costs and benefits. Cultural change and attitudinal shifts may come about as we uplift the common good, the fundamental dignity of all people, the call to forgiveness and mercy, the need to give up power attained through injustice, and neighbor love.

But such work is not easy. One area in which we need work is discerning how we ought to respond to violent crime. As Pfaff shows, this discernment is key to ending mass incarceration. People of faith have not adequately tackled this question, despite numerous appeals to restorative justice in denominational statements on crime and punishment.

To engage in such discernment, we first need to be informed about our criminal justice systems and the roots of mass incarceration. Some readers may reject Pfaff's thesis because of its challenges to the standard story we tell about mass incarceration. But rejecting it without careful consideration might imperil efforts to dismantle mass incarceration, a goal that Pfaff shares with Alexander. If we are to be effective in our work for criminal justice reform, we must accurately assess how we got here. *Locked In* goes a long way in helping us to do so.