

CORRECTIONAL POLICY ANALYSIS AND THE
DEVELOPMENT OF THE AMERICAN PRISON ECONOMY

by

THOMAS E. CASTELNUOVO

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Signature of Author.....
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Certified by.....
Thesis Supervisor

Accepted by.....
Chairman, Department Committee

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ABSTRACT

An analysis of correctional policy requires an understanding of the historical development of the penal system. Where many authors view correction as the product of humanitarian reforms, a chronicle of major changes in the penal system reveals them to be the result of developments in the external economy. This thesis traces the development of the prison system from Philadelphia's Walnut Street Jail to the present with special emphasis on New York's prison experience and examines proposals for a community based correctional system in their economic context. An analysis of correction in its labor market and product market context suggests that correctional alternatives can be developed from the radical and dual labor market theories of poverty and underemployment. These theories in turn offer a means of evaluating the range of prison and ex-offender programs that have developed in recent years.

Thesis Supervisor: Professor Leonard Buckle
Assistant Professor of Urban Studies and Planning

For much of the post depression era, the field of penology remained dormant as an area for policy study and debate. Prisons were low on the public agenda as the consensus that prisons should be a punitive repository for convicts that offered occasional "rehabilitative" services dictated the role and scope of penal institutions.

In recent years however, the idea that the prison should remain, along with probation and parole, the sole penal options available to society has been subjected to vigorous challenge by the advocates of the so called community based corrections system. The community based system when fully implemented would include a range of penal options including probation, work release, the halfway house and the prison itself. The advocates of community based corrections have suggested that these new penal options will better employ "community resources" in serving the "correctional client". It is suggested by these advocates that community based corrections is inmate centered in its focus and another step in the humanitarian development of prison policy. I will contend that the community based system is the latest of a series of American penal systems that have had a far more material set of motivations and constraints as their basis. To understand that basis, the questions which must be addressed are: Why is the community based correctional system being advocated at this point in history? Secondly, what framework can be developed from which to analyze penal alternatives? Thirdly, what other means to deal with convicts can be opposed to the

penal alternatives and released offender programs being advocated?

As the prison is the product of a series of designs, decisions and events, the answer to these questions requires a chronicle of the changes in the penal system and the causes of those changes. The chronicle of a consistent set of causes will be the basis for the determination of a model of correctional development. The model will then serve as a guide to understanding the role of the community based system and to developing alternative approaches to correctional policy making. While the penal system appears as a polymorphous institution designed to rehabilitate, reintegrate, incapacitate, protect, deter, punish, secure, detain, treat, cure, correct and enlighten its charges, the developmental path of the penal system reveals it to be one designed to simply incapacitate for the least cost. This deceptively simple mandate, however, has proved difficult to achieve during periods of changing economic conditions. This is most evident today where the correctional system, self sufficient in early America, has become an onerous financial burden to the taxpayers of the states and cities who rely upon it.

In response to this trend, the set of programs that has been created by federal and state and municipal governments under the heading of "community-based corrections" has as its object the minimization of the cost of incapacitating the sentenced population. At each level of the community based system - maximum security prison, minimum security prison,

work release, the halfway house, parole and probation - a level of convict incapacitation is provided that is appropriate to the type of inmate restricted by society.

I contend that the limited emphasis on cost and incapacitation has a long historical tradition dating back to the Walnut Street Jail of the 1790's in Philadelphia and continuing through the Auburn, reformatory and industrial prisoners to the present day. Moreover, from the time that the prison was devised as an alternative to the impracticable system of corporal punishment to today, the character of the prison and the scope of prison policy have been almost totally determined by the need for the penal system to adapt itself to the progressive exclusion of inmate labor from access to labor and product markets. The character of the prison as a changing, profit maximizing (or more realistically today deficit minimizing) institution responsible to the state is clearly evident in the case of the New York System. Research into the operations of the Newgate, Auburn, Sing Sing, Dannemora, Elmira and Green Haven institutions as well as examination of the present New York State and New York City systems provide insight into a continually evolving structure. It is sculptured by the external economic realities in which it operates and is the grandchild of the colonial practices of corporal punishment and punishment by disgrace which we find almost inconceivably barbaric today. The design of the community based corrections system which is being introduced today is true to those origins.

The community based system, which is being promoted by modern reformers, reflects an external economy which is best described by dual labor market theorists. Dual labor market theorists picture the economy as divided into primary and secondary sectors. Primary sector jobs offer high wages, stability, security and opportunity for advancement. Secondary sector jobs offer low wages, poor working conditions, little opportunity for advancement and often arbitrary discipline. The prison exhibits all the characteristics of the secondary labor market and more. Prison inmates are intermittently employed in low productivity prison industries where poor work habits are cultivated, physical plant is old and no link exists between prison work and employment in well paying "primary" jobs in the outside world. Job training programs exist more as an inmate pastime than as a means of getting a good job outside prison. Job placement services when available similarly redistribute parolees and ex-inmates within the "secondary" labor market. A significant penal innovation though, is offered by work release and supported work programs. The first provides supervised work for part time incarcerants. The second employs parolees and released offenders. Jobs in both exhibit the characteristics of the secondary labor market. The social costs of imprisonment decrease somewhat (at least in the short term) as a result of these programs, but little effect on the long term ability of the released offender to obtain stable employment is realized. Discrimination against inmates in the allocation of jobs and against prisons in the allocation of coveted markets is the

cause of the inmates secondary status. This results in the underuse of inmate productivity which one economist measures at \$1.5 billion dollars per year.

Hopeful alternatives to the community based system have arisen in the past decade which provide an opportunity for offenders to achieve their potential. Most notable of these is the Delancey Street Foundation established by an ex-Riker's Island inmate named John Maher. Maher directs a non-profit cooperative of ex-inmates that owns and operates businesses in the restaurant, construction and moving trades while offering an environment conducive to personal growth and development by the offender. DSF members and members of FIGHT, a Rochester community development group that employs and trains many ex-convicts, exhibit virtually no prison recidivism and far exceed state programs in their success. The key factor seems to be that inmates in the cooperative programs have gotten "a piece of the action" and have thrived in a context of mutual support while those in state programs have had to settle for the meager trimmings offered them by the government in the name of rehabilitation.

To be effective, rehabilitation for the secondary labor market offender must mean jobs, jobs in a fully productive private and public economy, jobs made available through equal opportunity legislation and executive action, jobs developed within communities that have continued to suffer from the exigencies of disinvestment and discrimination, and finally decent jobs developed by the initiative of convicts and state

workers within prison and without.

This study of the growth and development of the penal system requires a more or less continuous chronicle of the creation and reform of that system. Fortunately the core of such a history can be garnered from the research of Paul Takagi, David Rothman, W. David Lewis, Thorstein Sellin and others. However, little secondary source data exists on the planning of the Reformatory and the relationship of that institution to the politics and economics of the Gilded Age. The volume of prison literature too seems to depend upon the turbulence of the institution within a changing historical context. The period from the Reformatory to the present community based era like no other represented a dark age in prison history. The prison as an institution was static and public debate over prison policy was at a minimum.

The American Correctional System began in the turbulent years following the Revolutionary War with the importation and implementation of the British idea of the penitentiary. The penitentiary replaced the practice of corporal punishment, this having become impractical during a time of civil unrest and changing social relationships. This device, whose prototype was the Walnut Street Jail, was carefully designed and built by America's early leaders to provide imprisonment as punishment for convicts in a secure and isolated environment which would prove to be self supporting through the production of marketable goods by inmate labor. The success of this idea proved ephemeral, however. Changes in the structure of the correctional system since the time of the penitentiary, namely the development of the Auburn System, the Reformatory, probation, prison industries and community based corrections, have all resulted from the inability of the state to make use of prison labor under previously existing institutional arrangements. A prison fiscal crisis often accompanied by inmate unrest has usually been the proximate cause of these structural changes. Such fiscal crises have resulted from

the initiatives of businessmen and organized labor who have acted to influence state legislatures and the federal government in an effort to capture markets and jobs previously available to prisons and convicts.

Today, modern correctional observers and policy analysts fail to consider the evident process of correctional development and the important role of political power in penal policy when they discuss the virtues of correctional instruments. Instead each device, whether it be the Reformatory, parole or even the penitentiary itself has been assigned its own mythology with false or misappropriated heroes such as Beccaria, the Quakers, Alexander Madonochie or the National Council on Crime and Delinquency. A penal vocabulary which places the welfare of the inmate as the primary goal of the system helps to further confuse attempts to understand the goals and functions of the penal system. The result is a diet of ideological pabulum for public consumption and a monopoly on penal planning by a select few. The set of community based programs presently being advocated by many government and academic spokesmen does not work or aim to deal effectively with the inmate needing training and a steady job; nor does it act, as far as can be ascertained, to reduce recidivism or diminish crime. Ex-offender sponsored community development efforts and community projects which hire the ex-offender, however, show signs of dealing successfully with the ex-offender in making him become a productive member of society. Such efforts demand more attention from Criminal Justice

System researchers, public policy makers and members of the community who share in the tragedy of penal system failures.

A more intensive effort is required also in the building of theory about correctional development. Orthodox and radical theories alike have been ahistorical with only tenuous or subjective linkages to the development of the outside economy. Section two will suggest the elements of critical correctional theory which develop from the historical approach to correctional development and the Dual Labor Market and Radical theories of poverty and underemployment.

Present Interpretations of Penal History

" 'Few realize that America gave to the world the modern prison system', Barnes and Teeters reported in their book New Horizons in Criminology. 'Fewer still know that it was chiefly the product of humanity.' Fewer still, it might now be added, have questioned how such humanity could have been so misused, or noted such a paradox as that which attributes so gross and failing an institution as our prison system to the reform efforts of well-intentioned and good men".¹

And so begins Goldfarb and Singer's "massive indictment of the criminal justice system" in the words of Tom Wicker. Barnes, Teeters and now Ron Goldfarb and Linda Singer have found the root of failings of the correctional system in the shortsighted "humanism" of some of our Founding Fathers, specifically "The Quakers and the Philadelphia Society for the Alleviation of the Miseries of the Public Prisons...."² whose "...moral and religious scruples were violated by the brutality of the criminal justice system and the waste of human life implicit in the colonies' adopted schemes."⁴ According to Goldfarb and Singer, the Quakers played the key role in converting this bounding humanism into policy. "The Quakers decided that the best way to reform criminals was to lock them in cells and keep them alone in total and unrelied solitude - day and night. Out of their hopeful and high minded but misplaced intentions was to develop the Pennsylvania Solitary, Cellular System of Penitentiaries."⁵

Goldfarb and Singer voice the common presumption about the early days of the prison system. A review of the circumstances surrounding the rise of the penitentiary suggests that a different set of priorities guided the development of the prison system in America. The prison, it can be argued, was developed as a necessary solution to the impracticability of corporal punishment during a time of political instability, not as a Quaker sponsored humanitarian initiative.

The Quakers and the Rise of the First American Prison

Several correctional observers have suggested that the Society of Friends, the Quakers played a decisive role in the development of the penitentiary. The life style and experience of the Quakers of Pennsylvania, however, would seem to make them an unlikely source of such an institution as the Walnut Street Jail, America's first prison.

"...Like William Penn, who was imprisoned three times prior to the founding of Pennsylvania, many Quakers had learned at first hand the terrors of confinement in typical English jails. Their belief in the doctrine of 'The inner light' led them to seek not only to better prison conditions but also to convince their contemporaries that the aim of penal treatment should be to reform rather than to punish."⁷ The Quakers as a tolerant, non-evangelical sect saw the religious institution of the family as the keystone of American life and were very much opposed to coercion by the state in any form. They cherished simplicity as they were forbidden by their code to make lavish displays.

"Though deeply religious like the Puritans, the Friends believed in perfection more than sin, in guidance by The inner light rather than in restraints imposed by the authority of the clergy and magistracy." "Leaning in faith toward philosophic anarchy, the Quakers were not absorbed in politics as much as the Puritans of New England..." "...Their inclinations were toward tolerance rather than uniformity, inquiry rather than authority, charity rather than damnation."⁸

Their early role in the evolution of the penitentiary in America was in the development of societies to help lessen the suffering of inmates, not in advocacy of the prison. Individual Quakers worked as designers and implementers of programs to aid the incarcerated.

"The first prison society, called the Philadelphia Society for Assisting Distressed Prisoners, was formed in 1776 following the work of Richard Wistar, a member of the Society of Friends."⁹

This society gathered food and clothing for prisoners lodged in the colonial work houses. Though, as Paul Takegi asserts, the Society is generally believed to be the parent organization of the Philadelphia Society for Alleviating the Miseries of Public Prisons, the activities of Wistar's group "centered about improving the physical comforts of the prisoners."¹⁰

Another colonial American Quaker concerned with the lot of prisoners was John Bellers, a cloth merchant, who sought improved conditions for Friends incarcerated in England. Bellers traveled throughout England in his quest and advocated "strict regulation of prisons, suitable employment for inmates, restrictions upon the selling of intoxicating drinks in jails, and an end to the practice of allowing wealthy prisoners to buy special indulgences."¹¹ Characteristically, he abhorred capital punishment and believed that "inducing felons to get married might be a good way to steady and reform them." These men were characteristic of the humanitarian

Quakers who worked to aid those in the British jails and prisons. Their influence would prove to be temporary however.

The Revolutionary War marked the decline in importance of the Quakers as penal innovators and of customary religion as a whole. Correspondingly, the practice of Methodism, Unitarianism, and Deism increased. Methodism provided a "democracy of the pew"¹² which helped secure the political republicanism of the new nation. The tenets of Methodism fit nicely with the needs of the largely secular bourgeoisie. "In religion it emphasized the salvation of the individual by prayer and communion. In morals, it waged a Puritan-like war on dancing and frivolity in general while it specifically exalted the virtues of industry and sobriety."¹³ Such a view of labor as "a calling", in Weber's words, was essential for the development of a work force malleable to the needs of developing capitalism. Though ascetic Protestants opposed the temptations of the flesh, they did not oppose rational acquisition, only the irrational use of the wealth so gained. Quakers lauded the ethic of work and supported the lot of bourgeois virtues; as Weber put it, "...the intensity of the search for the kingdom of God commenced gradually to pass over into sober economic virtue...."¹⁴ But this change had been occurring for sometime.

It can be said that some Quakers brought warmth and compassion to the early organization of the prison. In doing so they set the Walnut Street Jail and Newgate prison apart from the cruel warehouses of men surviving at subsistence levels

which followed much later. Their political influence in the development of the penitentiary has been overstated while their objectives with regard to convicts have been misunderstood.

At the time of the planning of the conversion of the Walnut Street Jail, the Quakers had a minority of influence with the Philadelphia Society for Alleviating The Miseries of Public Prisons. "As a matter of fact, no more than 136 out of 340 members from 1787 to 1830 were affiliated with the Society of Friends, and the president of the Society for the first 49 years of its existence was William Whyte, Bishop of the Protestant Episcopal Church of Philadelphia."¹⁵

The American prison had its roots not in the efforts of the Quakers of Pennsylvania and the Eastern State Penitentiary, but in the Walnut Street Jail which was a rather different phenomenon. The intellectual climate of the time was that of enlightened rationalism with the interests of humanitarian groups playing a secondary role.

The Penitentiary and the Enlightenment

The motivation for the development (or more correctly, importation) of the penitentiary is thought by most theorists to be humanitarianism. Goldfarb and Singer present one view of the character of the intellectual climate of colonial times: "Enlightened Rationalist notions of the times sought social progress through purging superstitious convictions and applying more humane treatment to the sick, the poor and other infirm as well as prisoners. English, French, Italian, and American writers such as Bentham, Voltaire, Montesquieu, Beccaria, Livingston and Jefferson criticized the crudeness of the prevailing criminal system at this time."¹⁶

The authors bring forth an interesting set of writers on behalf of their assertion about the "humane" origins of the prison system in America. Rationality and humanitarianism, though, are two rather different objectives. Bentham's concept of the rational, utility maximizing man does not derive from a tradition of humanitarianism. His reasons for the limitation of punishment are few

4. Cases where punishment is unprofitable.

XIII. 1. Where, on the one hand, the nature of the offence, on the other hand, that of the punishment, are, in the ordinary state of things, such, that when compared together, the evil of the latter will turn out to be greater than that of the former.¹⁸

XV. On the other hand, as to the evil of the offence, this will also, of course, be greater or less,

according to the nature of each offence. The proportion between the one evil and the other will therefore be different in the case of each particular offence. The cases, therefore, where punishment is unprofitable on this ground, can by no other means be discovered, than by an examination of each particular offence; which is what will be the business of the body of the work.

XVI. 2. Where, although in the ordinary state of things, the evil resulting from the punishment is not greater than the benefit which is likely to result from the force with which it operates, during the same space of time, towards the excluding the evil of the offences, yet it may have been rendered so by the influence of some occasional circumstances.

Bentham goes on to suggest that the offsetting evil can exceed the benefits of punishment on occasion, particularly when the punishment might increase the number of delinquents, when valuable services of delinquents might be lost, when punishment lacks sufficient popular support or when punishment might displease an important foreign power. Bentham's calculus of punishment provides no support for the thesis that humanitarian consideration of the convict was a factor in the levying of punishment.

Neither was Voltaire a spokesman on behalf of humanitarian treatment of convicts. Voltaire had considerable influence on Benjamin Franklin and James Madison and specifically

on the development of the federalist which is a classical Enlightenment document. On the question of corporal punishment, "Voltaire saw no danger in continuing to use corporal punishments. He objected to cruel and unusual ones however."¹⁹

The aim of other rationalist reformers such as Montesquieu and Beccaria was to make punishment proportioned to the gravity of the offense committed, with no more pain inflicted than was necessary to preserve the safety of the community. Certainty of punishment was more important than severity. Beccaria believed the purposes of punishment to be threefold; to prevent new acts by the individual being punished, to deter others from disobeying the law and to maximize the impression created by punishment while minimizing the bodily torture resulting from that punishment.²⁰

Jefferson believed in proportionate retributive justice as well. His interpretation of the idea would probably jar the liberal sensibilities of Goldfarb & Singer, however. In his proposal of 1779, "A Bill for Proportioning Crimes and Punishments", "...'petty treason' and murder are to be punished by death, and 'Whosoever committeth murder by poisoning shall suffer death by poison.' 'Whosoever shall be guilty of rape, polygamy, or sodomy with man or woman, by cutting through the cartilage of her nose a hole of one half inch in diameter at the least.'

'Whosoever on purpose, and of malice aforethought, shall maim another, or shall disfigure him, by cutting out or disabling the tongue, slitting or cutting of a nose, lip, or

ear, branding, or otherwise shall be maimed, or disfigured in like sort: or if that cannot be, for want of the same part, then as nearly as may be, in some other part of at least equal value and estimation, in the opinion of the jury, and moreover shall forfeit one half of his lands and goods to the sufferer.' "21

Goldfarb and Singer are mistaken in suggesting that such men were the guiding force behind a "humane" penal system along with the increasingly powerless Quakers of the late 18th century.

What Enlightenment writers and later rationalists were trying to do is more aptly summed up by Walter Kaufmann:

"As long as traditional Christianity flourished retributive justice did, too. When the faith in hell and the Last Judgement lost its quip, Jefferson and Kant, as well as other writers still tried to save the faith in retributive justice by providing a new rationalist foundation for it."22

The "crudeness" of the criminal justice system which Goldfarb and Singer cite as the target of Enlightenment thinkers refers not to the basic inhumanity of the system at that time, but to the dissonance of the politically capricious and irrational correctional system in place with the needs of the developing western market economy. The Enlightenment's penal system needed to ensure the rule of law while maintaining sufficient political support. Examples of the particular problems of Enlightened American political leaders will follow.

The Walnut Street Jail

The Walnut Street Jail was authorized by the act of February 26, 1773 to replace the High Street Jail in Philadelphia. The old jail had been built shortly after the English laws of 1718 went into effect. The new facility was to be a "gaol, workhouse and house of correction in the City of Philadelphia"²⁴ and it began to receive prisoners in January, 1776. However, the Continental and, for a time, the British armies used the jail to house military prisoners from mid 1776 until 1789. In the meantime, criminals were housed in the High Street Jail which used the pillory and the whipping post as punishment. Takagi describes the events leading to the later and most significant innovations at the Walnut Street Jail:

"Shortly after the end of the Revolutionary War, Benjamin Franklin, Benjamin Rush, William Bradford and Caleb Lownes led a movement to reform the English code of 1718 which was still in effect. The new laws of September 15, 1786 called for the penalty of 'hard labor, publicly, and disgracefully imposed.'²⁵ This meant that prisoners would be employed in 'cleaning the streets of the city and repairing the roads' and authorities were 'to shave the heads of the prisoners and to distinguish them by infamous dress...and to encumber them with iron collars and chains, to which bomb shells would be attached...'²⁶

The Philadelphia Society for Alleviating the Miseries of Public Prisons...was formed shortly after the new laws went into effect. Significantly, the Society's first campaign,

aside from introducing religious services in the Walnut Street Jail, was to amend the law. In January of 1788, the Society prepared a report noting 'that the good ends thereby intended, have hereto been fully answered...' and recommended that 'punishment by more private or even solitary labor, would more successfully tend to reclaim the unhappy objects...'²⁷ In the widely cited passage from Robert Vaux's Notices, the justification for the law change was that public punishment "begot in the minds of the criminals and those who witnessed them, disrespect for the laws"²⁸.

Why did these powerful men change their minds within one year under the new law? How did public disgrace and hard labor become "punishment by more private or even solitary labor."? The events of the time and the role of these men and their associates in early Philadelphia provide the answers.

Benjamin Franklin, now in his eighties, was the chief executive officer of Pennsylvania. Franklin and Dr. Benjamin Rush, a prominent physician, had signed the Declaration of Independence. William Bradford and Quaker iron merchant Caleb Lownes would later be appointed respectively to the Supreme Bench of Pennsylvania and to the post of inspector of the Walnut Street Jail. These men were among the thirty seven charter members of the Society, the others also being "prominent citizens of the community representing the major religious faiths, medicine, law and commerce..."²⁹ "The work of the Society, as contrasted to Richard Wistar's efforts, had nothing to do with alleviating the miseries of the

prisoners. Instead, they [sic] worked closely with some members of the legislature, lobbying or issuing propaganda material, while the powerful remained in the background by not signing any of the Society's position papers. They nevertheless followed closely the activities of the Society if not actually directing them. Benjamin Franklin..signed the message to the legislature containing the recommendations of the Society".³⁰ He recommended changes be made in the penal law "calculated to render punishments a means of reformation, and the labor of criminals of profit to the State. Late experiments in Europe have demonstrated that those advantages are only to be obtained by temperance, and solitude with labour."³¹

Dr. Rush was the author of the new policy. His proposal for the establishment of a prison included in its program: "a) classification of prisoners for housing, b) a rational system of prison labor to make the prison self-supporting, including gardens to provide food and out door exercise for prisoners, c) individualized treatment for convicts according to whether crimes arose from passion, habit or temptation and d) indeterminate periods of punishment."³² It was after this proposal was made that Philadelphia Society for Alleviating the Miseries of Public Prisons was formed. Soon after that, on April 5, 1790, an act was passed which began the modern system of prison management.

Rush's plan derived from knowledge by the Society of the British jails' system of separating the sexes as well as

different types of offenders. A pamphlet written by the Society in its campaign for the new system also cited "the experiences at Wymondham^{*} where imprisonment at hard labor was found to be profitable, and by providing hard labor for all on six days of every week, the prisoners earned more than double the cost of their own maintenance."³³ "The pamphlet declared that 'exactly what was needed at home was to follow the English example' "³⁵ Thorstein Sellin concludes from his examination of early British and American penal development that "...The philosophy of the system was a British importation and the 'penitentiary house' of the Walnut Street Jail was no innovation."

Takagi's theories about the origins of the Walnut Street Jail and the American penitentiary are compelling. He suggests that the creation of the Walnut Street Jail represented in miniature..."the problems of the Confederation in centralizing the powers of the state. The demand for a strong centralized government was to guarantee the development of a new economic order on the one hand, and on the other, to solve the problem of law and order."³⁶ On a smaller scale, he argues that the penitentiary was necessary to eliminate the public disturbances caused by corporal punishment and public disgrace in the new nation.

Times were tense in post-Revolutionary America as punishment was by no means certain and the natives were, to say the least, restless. Laws did not reflect the scarcity of money

*The Gaol at Wymondham, Norfolk

in the states and as Washington wrote to Madison in November, 1786 "We are fast verging to anarchy and confusion..."³⁷

In Rhode Island, debtors seized the legislature to force legislation that would allow acceptance of the then worthless paper money by their creditors. In North Carolina, the courts were shut down to protect judges who had ordered both forfeiture of property for non-payment of mortgage interest and the jailing of debtors. Most disturbing was the Shay's Rebellion in western Massachusetts where local courts feared to punish dissidents. The Shayites disrupted Court of Common Pleas Proceedings in several counties as well as the Supreme Court. The militia was ordered out, but public sympathy was with the demonstrators. The federal government then tried to enlist recruits ostensibly to fight the Indians, but this too was to no avail. Finally, wealthy merchants and bankers in Boston recruited a mercenary army of 4,400 to quell the insurrection in January, 1787.

"As the Revolution took away the restraining hand of the British government, old colonial grievances of farmers, debtors and squatters against merchants, investors, and large landowners had flared up anew; the lower orders took advantage of the new democratic constitutions in several states, and the possessing classes were frightened."³⁸ Pennsylvania had adopted a Bill of Rights which contained in Clause I the following passage: " 'That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, among which are...life and liberty, (and the)

acquiring, possessing and protection of property...' "39
 Other colonies asserted similar principles to win the loyalty
 of the masses and insure the success of the Revolution.

The authors of the federal constitution though took to
 preserving the differential access to power of men in post
 revolutionary America contrary to the commitments of the
 various states' Bills of Rights. "Hamilton exclaimed that
 'all communities divide themselves into the few and the many.
 The first are rich and well born and the other, the mass of
 the people who seldom judge or determine right.'"40 He advised
 a permanent governmental body to ' "check the imprudence of
 democracy' "41 Gouvernor Morris wanted a Senate composed of
 an aristocracy of wealth to "keep down the turbulence of
 democracy". Madison said their object was "to secure the
 public good and private rights against the danger of such a
 faction and at the same time, preserve the spirit and form
 of popular government."42

"The members of the Constitutional Convention were con-
 cerned to create a government that could not only regulate
 commerce and pay its debts, but also prevent currency infla-
 tion... and check uprisings such as the Shays Rebellion. Crib-
 bling and confining the popular spirit that had been at large
 since 1776 were essential to the purposes of the new consti-
 tution:"43 The convention proceeded smoothly, none of the
 radicals of 1774 were present and the delegates worked in
 earnest, the majority being "investors or speculators in the
 public securities which were to be buoyed up by the new

constitution."⁴⁴ Such was the political context at the time of the inception of the prison.

To minimize the "turbulence of democracy", to avoid peacefully the future insurrection of a class that had been rendered propertyless and to insure the smooth functioning and the rule of law, a penal innovation was needed to replace the politically dangerous system of corporal punishment.

Inside The Walnut Street Jail

The institution of the penitentiary required the resources of the state beyond those of the counties of Pennsylvania. The transfer of jurisdiction was gradual.

The Walnut Street Jail, which began as a county jail like any other in Pennsylvania became the first state prison in the United States. "The law of March 27, 1789 took the first hesitant step toward the creation of a state prison by providing that any felon convicted in any part of the state and sentenced to at least 12 months at hard labor might be sent to the Walnut Street facility."⁴⁵ Expenses incurred in the operation of the jail were to be absorbed by the various counties in proportion to the number of prisoners they sent there. The 1789 law also provided that Philadelphia receive £100 annually for maintaining the state prison system, "although expenses toward the county could be deducted by any proceeds received from prison labor."⁴⁶

Though commitment of prisoners to the Walnut Street Jail was originally an option left to the counties, this option was soon rendered infeasible. A law was enacted on April 5, 1790 which provided "...imprisonment at hard labor for the punishment of crime; directed the separation of witnesses and debtors from convicts; insured the segregation of sexes, and ordered the erection of a block of cells in the Walnut Street facility for solitary confinement of the 'more hardened and atrocious offenders'."⁴⁸

The counties could either build new facilities for them-

selves or purchase the service from Philadelphia. "The counties apparently balked. Commitments to the Philadelphia prison totalling 131 in 1789, had fallen by 1793 to 45...."⁴⁹

The Walnut Street Jail became an official state prison on April 22, 1794 as a new law directed that all persons convicted of any crime except murder be sent to Philadelphia jail policy also changed. "The punishment of solitary confinement was no longer reserved for the 'more hardened and atrocious offenders'; it was to apply to all for a period of one-twelfth to one-half the term of imprisonment; and in order to provide flexibility to managing the prison, discretionary powers were granted to prison inspectors to determine the length of solitary confinement."⁵⁰ The difficulty of managing a prison would continue from that point as a theme underlying the evolution of corrections. But the idea of the state prison proved popular in the other states, New York adopting it with Newgate prison in 1796. Takagi viewed the development of the state prison this way:

"Here the issue is not the level of government operations, that is to say a state versus a county operated prison; it has to do with the establishment of a special public force with powers to exact revenue to appoint officials with special privileges and power, and the right to use force to whatever degree is necessary."⁵¹

Takagi saw the invention of the state prison as a means of dealing with the insoluble contradictions resulting from conflicting economic interests. It exiled troublemakers,

banishing them from family and friends to a place where no visitors were permitted. It moved out of sight and apparently out of mind the contradiction of being poor in a country that had emphasized to the property less their unalienable rights.

The prison ministered almost totally to the poor. "That the prison contained mostly debtors, servants, and paupers, is evidenced by a memorial issued by the Society in 1801. It called for additional reforms, this time the construction of another prison, the Arch Street Jail in 1801 specifically for debtors. Accordingly to McMaster, the early American prisons contained debtors on a ratio of five to one."⁵²

Lodgings at the Walnut Street Jail came in two sizes, solitary cells were 6 feet wide, 8 feet long and 9 feet high. Cells for the less dangerous convicts called "night rooms" were 18 feet by 20 feet. Since the fear of solitary confinement, relatively uncrowded conditions and promises of pardons for good behavior maintained the security of the institution, corporal punishment was unknown at the Walnut Street Jail. At night, conversation among prisoners was allowed; while in the shops during the day a rule of silence was enforced.

A visitor to the prison, Robert Turnbull, described the industry of the prisoners: "The inmates worked at carpentry, joinery, weaving, shoe-making, tailoring, and the making of nails. ..The unskilled convicts were employed in beating hemp and picking moss, wood or oakum. The female convicts worked at spinning cotton yarn, carding wool, picking cotton, preparing flax and hemp, and washing and mending."⁵³ Wages

were paid to the male prisoners at or below the going rate, some earning as much as a dollar per day. Female prisoners had "opportunity to earn small sums."⁵⁴ All were billed for the cost of their daily maintenance.

Detailed records on the profitability of prison enterprise are difficult if not impossible to obtain. Franklin's enthusiasm for the economy of its British antecedent at Wymondham and the ready adoption of the method by other states, though, suggest that costs of the system were not prohibitive.

The Newgate prison provides a better setting for study of the methods of and developments in prison production. It is to Greenwich Village that attention now focusses.

Newgate Prison

Newgate Prison, like the Walnut Street Jail, was imported and shepherded through the legislative process by prominent, informed, interested and politically active citizens. "Influential citizens in New York observed the correctional reforms in Pennsylvania with interest."⁵⁶ The most diligent of these was Thomas Eddy. Eddy was a Quaker, a Tory and a merchant who had been raised in Philadelphia and knew some of the influential citizens there. As a Tory in the Revolution he "...experienced a brief taste of wretched jail conditions. As a merchant, he had reason to desire a penal code in New York which would protect property more effectively than the ill-assorted and unevenly executed sanguinary punishments that prevailed there."⁵⁷ He was known not as a great speaker but as a "quiet crusader" who knew the right people (such as General Philip Schuyler, father in law of Alexander Hamilton and "a political star of the first magnitude in the Empire State"⁵⁸) and had exceptional talent as a lobbyist. Eddy and Schuyler visited the Walnut Street Jail in 1796.

Eddy's efforts with the legislature, each of whose members received copies of the Pennsylvania penal code, bore fruit on March 29, 1796 when Eddy was placed on a four-man committee empowered to build a state prison and given primary authority to supervise this task.⁵⁹

The new prison was named "Newgate" after the British institution of the same name and resembled the Walnut Street Jail, the similarity insured by correspondence between Eddy and Caleb Lownes, inspector of the Walnut Street Jail. Newgate lacked the jail characteristics of the Walnut Street Jail

as it was designed to house felons only, to the exclusion of vagrants, suspects, and debtors who were imprisoned at the Walnut Street Jail.

Newgate's first "agent" (warden) was none other than Thomas Eddy. Newgate's organization paralleled that of Walnut with the additional innovation of a large room for worship and a night school for some inmates. "Under Eddy's frugal and efficient management, the penitentiary soon became a prosperous industrial unit. Shoemaking was the first trade to be inaugurated, followed by the production of nails, barrels, linen and woolen cloth, wearing apparel and wooden ware. The program had two goals: to promote reformation through inculcating 'habits of industry and sobriety' and to make possible an 'indemnity to the community for the expense of the conviction and maintenance of the offender.'"⁶⁰ "By 1803, the profits of the Newgate shops actually yielded a tiny surplus after the prison's expenses had been paid." Well behaved prisoners were even given a portion of the profits upon release and skilled inmates served as superintendents and foremen in the shops.

Prisoners in Newgate's early years did not accept their condition though. In 1799, inmates rebelled as "50 or 60 men revolted and seized their keepers." In 1800, the military had to be called in to quell a riot and on April 4, 1803, twenty inmates tried to scale the walls to escape. Prison guards opened fire and killed four convicts, one of whom was an innocent bystander. But "the bloodshed...did not appear

to shake his [Eddy's] faith. His aims as a prison reformer, he told Colquhour, a month afterward were 'how so far accomplished, and put into a train of successful experiments,' that he would be able to spend some of his time attending to other matters."⁶¹

1803 was a watershed year for Eddy, Newgate and the penitentiary system. "Political" appointments to the governing board of the Newgate prison had begun in 1800 to supplant the dedicated and the rehabilitation minded Quakers⁶¹ in Elmer Johnson's view. More precisely, the first years' of the nineteenth century were a time in which the Jeffersonians were wresting control of the prison from the Federalists. Hence Eddy, a Federalist, was placed in an uncomfortable position. A contract labor system was replacing his shoe-making shop system in the prison as his stated goals of rehabilitation and training in craftsmanship were diminished in importance. After seven years as chief agent, Eddy resigned his position in January 1804 and lamented to Calcquhour "...that there is some reason to apprehend all my labours are like to be lost."⁶²

Prison made goods began to be looked upon with disdain by the public. An apparently unexpected side effect of the development of prison industry in Newgate was the use of claims by shoe manufacturers that their competitors in the outside world were actually selling cheap prison made goods. The stigma seemed to be sufficiently bothersome for the legislature to require that all shoes and boots produced at Newgate

prison carry a stamp as to their origin. This defacto restriction of markets for prison products was the first of many which would change the character of prison activity and rehabilitation. Such constraints, for one thing, served to bring to light inadequacies in prison management. Newgate for instance had many officials responsible for the government of the prison, following New York's strong attachment to the doctrine of separation of powers after the Revolution. These included the justices of the Supreme Court, seven inspectors, the Mayor of New York City and the State Attorney General. Newgate's partisan system of allocating jobs and the lack of job security did not improve the quality, productivity or effectiveness of the institution either.

A problem unique to early prisons was the lack of segregation of prisoners. Newgate contained, among its purely felon population, adult males, females, juvenile delinquents and the criminally insane. Each group required its own facilities for exercise and sleeping, but worked with the others during the day. Said one (presumably male) inmate of the female prisoners, "Their bestial salacity in their visual amours is agonizing to every fibre of delicacy and virtue."⁶³

With the decline of interest in cultivating the "inner light" and an increased focus in the early 1800's on cost cutting came a hardening of the institution. Legislative appropriations were grossly inadequate. Low salaries and a tense, uncertain, prison climate brought a tendency to cruelty on behalf of keepers.

In planning production, the fact that the state furnished raw materials and marketed goods meant that agents had to be aware of market conditions or be caught with excess inventory. By 1815 \$106,000 worth of goods had accumulated, exacerbating an already difficult cash flow problem.

As the inmate population increased, skilled inmates were skimmed from the labor pool through pardons leaving the unskilled and infirm in greater numbers in the prison. Weavers misdyed or burned cloth and sabotage of work was common among those who thought they could escape detention.⁶⁴

The failure of the early American prison and in particular Newgate prison, then, was determined in the end by two insurmountable problems - excess demand for prison spaces and the drying up of markets for prison products.

Newgate was originally designed to hold 450 inmates. Capacity was not significantly exceeded until 1807-1808 when indiscriminate pardons began to be used to lighten the burden. "By the end of 1821, when there were actually 817 inmates at Newgate, it was estimated that there would have been over 2000 without the use of clemency."⁶⁵ Pardons were, oddly enough, issued in regular seasons resulting in semi-annual chaos, disturbance and sabotage on the part of the rejected. The pardoning practice also supported a number of lawyers who circulated false pardon petitions and "importuned the Governor with dubious evidences of reformation..."⁶⁶

More interesting though was the progress of production at Newgate. Compared with the inventory surplus of 1811, the

embargo and the war years produced a boom in demand for prison products. "...by 1815, the prison was turning out brushes, spinning wheels, clothespins, bobbins, spools, butter churns, washtubs, pails, hoops, wheelbarrows, machinery, cabinets, whips and a variety of woven goods."⁶⁷ Markets for consumer desirables were sought not only in New York City, but also in New Haven, Hartford, Providence and Newport. Staff members were optimistic and "In 1813, prison administrators hailed a temporary slackening in the pace of congestion as "a decisive proof of the efficacy of the system...".⁶⁸

By 1816, though, a crime wave resulting at least in part from the unemployment of returning soldiers, as well as other aspects of the post war recession, resumed the increasing congestion of Newgate. The pardoning power "could not be used frequently enough." Epidemics were feared and inspectors were panicking. The prison was also deeply in debt with large inventories of unsold merchandise. A crisis was at hand, the second significant one in the history of the American penal system.

The reaction of the legislature to the crisis of 1816 led to three structural changes in the way the penal system dealt with felons. Firstly, the legislature authorized the construction at Auburn of a new prison in that year which would put New York in the lead as penal innovator. Secondly, it revamped the prison industries in 1817. "To reduce state risks as much as possible, the law makers required convicts to work only on raw materials brought to the penitentiaries

by private entrepreneurs who agreed to pay a fixed labor charge to have been made into manufactured goods."⁶⁹ The Governor was also empowered to employ felons elsewhere if the prison population exceeded 450, provided their employers paid for their upkeep. Such was the case in canal construction. Thirdly, disciplinary measures were increased as capital punishment was ordered for inmates who committed arson or assaulted an officer with intent to kill. Flogging and use of irons were legalized at Auburn and Newgate in 1819.

A number of other suggestions were made by state legislators and others to alleviate the crisis. These included a suggestion by Newgate's inspectors for the establishment of a federal penal colony in the newly chartered northwest. Another suggestion was the employment of felons "on wilderness roads leading to such distant outposts as Chateaugay and Ogdensburg."⁷⁰ Others advised the banishment of all ex-inmates from the state as had been done in colonial times. One legislator went so far as to advocate to Governor Clinton the pardoning of Negro convicts on condition they be sent to one of the Southwestern states or territories for agricultural labor.

All these ideas would have been unenforcable if attempted. The recurrence of these policy alternatives and their subsequent dismissal indicated the nature of the new political reality in the developing nation. Outside employment other than at the nearby Erie Canal was inadvisable given the experience of Americans with outside employment

and public punishment before the development of the state prison. Additionally, America in the early 1800's was not an imperial power, so the idea of the penal colony was inappropriate. Labor did not have to be coerced to work in the areas along the western frontier. Reenslavement of freed blacks was similarly an anachronistic suggestion. A new form of the prison was the only feasible solution to the problems that the foundering of newgate posed, while the use of outside employment provided a safety valve for overcrowding. Walnut fared similarly.

Walnut's Demise

Despite favorable reports by New York State legislators who visited the Walnut Street Jail in 1817, it was evident that that facility was suffering the same difficulties which had beset Newgate. "In 1817, a Philadelphia grand jury reported that there were from thirty to forty convicts lodged in rooms eighteen feet square, and that the prison had begun to assume the aspect of 'a seminary for every vice'." The labor system had begun to break down in 1815 and serious riots followed in 1817, 1819, 1820 and 1821.⁷¹ To deal with its prison problems, the Pennsylvania legislature authorized the establishment of a new prison at Allegheny near Pittsburgh, where prisoners could be kept in solitary confinement to maximize the deterrent effect of their incarceration while providing for production by prisoners in their individual cells. This short-lived and costly penal innovation lost out to the more cost effective prison model that was implemented by Newgate's successor.

The early American prison was designed as a small handicraft based institution that was to be self-sufficient. It encountered some of the problems of the preceding corporal punishment system such as disturbance under sheer weight of numbers. More importantly, as a handicraft based institution it could not compete with the developing factory system. Productivity could only be increased through crowding rather than industrial reorganization. In the end, Newgate and Walnut failed as inferior forms of productive organization and from the beginnings of discrimination against prison products.

The Auburn Prison

The failure of efforts at Newgate to produce a successful penitentiary system brought about renewed pleas for the institution of solitary confinement as the best means to deal with prisoners. Thomas Eddy was convinced in 1803 that solitary confinement on short rations would be the best way to deal with minor offenders. This would apparently maximize the rehabilitative effect to be gained from the cultivation of the "inner light" while minimizing the time spent in valuable prison space.

Solitary confinement was attempted at the new Auburn facility with disastrous results. In 1820, Auburn's first agent William Brittin completed construction of a new wing at the prison which contained solitary cells, but most of these were destroyed by inmate incendiaries. The wing was rebuilt with the famous Auburn system of tiers of cells which would be copied by newer penitentiaries through the beginning of the twentieth century.

"On March 13, 1821 a legislative commission which had studied New York's growing penal problems recommended that Auburn's inmates be divided into three classes."⁷³ These classes were: the least dangerous who could work in groups during the day and be separated at night, a more dangerous group which would spend part of its day as well in solitary confinement while the most dangerous group would never be let out of its small solitary confines. The solitary confinement based plan began on Christmas Day, 1821.

By 1823 solitary confinement had resulted only in illness, death and apparently unchecked recidivism among those so confined.

The Auburn System and its Founders

Absolute solitary confinement with varying amounts of group labor at Auburn was a failure in dealing with those so confined for most or all of the day. A different program which emphasized prison production under strict discipline and supervision proved significantly more successful. What became famous as the Auburn system was imposed upon all inmates and included: solitary confinement at night, collective work in silence during the day and constant use of surveillance, coercion and intimidation. It was thought that the new system would minimize corruption of inmates by other inmates, provide fewer opportunities for inmate plots, eliminate insurrection and arson and provide hard labor which "was deemed essential to reformation of character and to the economic solvency of the prison",⁷⁴ according to Elmer Johnson. The positive reformation of character was not the objective of the men who led the effort to develop the Auburn system however.

George Tibbits, Stephen Allen and Samuel M. Hopkins were a three man legislative team which investigated prison conditions in 1823. Each had an interesting set of credentials. George Tibbits was a merchant and politician with "considerable ability in financial matters" who helped raise funds for the building of the Erie Canal but achieved "no lasting success as a prison reformer,"⁷⁵ and was overshadowed by the other two.

Stephen Allen was a merchant, Tamany Hall politician and former Mayor of New York City who held various positions under

the Jacksonians. He was instrumental in having the Treadmill adopted at city prisons while Mayor. He believed that reformation was a failure and that educational efforts took away valuable labor time.⁷⁶

Samuel M. Hopkins was a former federal congressman and an influential member of the state legislature during the 1820's. He "exerted strong pressure for changes in penal discipline" and one prison reformer later remembered having heard Hopkins deliver a speech in Albany where he "...contended that inmate life had not been sufficiently severe and should produce more terror and suffering."⁷⁷ Allen and Hopkins asserted "that convicts had not been treated with sufficient severity; that too much faith had been placed on their reformability; and that drastic changes would have to be made if the penitentiary idea were to succeed."⁷⁸

Work at Auburn

Samuel Hopkins in 1822 was willing to eliminate all forms of labor at the prison as prison industries were lacking in productivity. The collapse of solitary confinement, though, swung the pendulum away from a penitent, solitary confinement focus to a productive one. "By 1825, it was the stipulated duty of prison agents to cause all the expenses...of any kind to be supported wholly, or as nearly as shall be practicable, by the labor of the prisoners."⁷⁹ This included all transportation and travel costs. Any profits would go, not to well behaved inmates as under the old Newgate system, but to pay for the upkeep of juvenile institutions.

Prisoners were also placed firmly at the bottom rung of society in considerations of subsistence and remuneration. "Criminals were desperately wicked." "Far from meriting special treatment, such desperadoes deserved to be subjected to hard labor at the hands of a parsimonious state, and the commissioners Allen, Tibbits and Hopkins filled their report with suggestions on how expenses could be trimmed by forcing convicts to wear wooden shoes, to sleep on mats made from the husks of Indian corn, and to eat food which would cost no more than 3 cents per ration."⁸⁰ The prisoner could not be considered ahead of "poor but virtuous citizens."⁸¹ An English visitor William Crawford believed output and revenue "...outweighed any other penological considerations in the public mind."⁸²

The Auburn workshops were run on a system similar to

the inside contracting system; the state account system having been put to rest by the legislature in 1817. Private entrepreneurs were to bring raw materials to the prison, pay a fixed charge for the use of inmate labor, and market the finished goods at their own risk. The task of Auburn's agents was to find businessmen who were willing to put materials in the hands of convicts and contractors who could never actually contact prisoners. Officials offered cheap and disciplined labor to the entrepreneur and contractor.

By 1826 a dozen contracts had been signed in the areas of coopering, tailoring, shoemaking, weaving, toolmaking, and rifle manufacture. To smooth the process of production, direct communication with inmates by contractors was permitted in 1828 as keepers were found wanting as intermediaries between contractor and convict.⁸³

Control of the workplace was quite effective. Turnkeys watched prisoners through slits in the walls to catch infractions of prison rules. Recalcitrant inmates were given up to 39 lashes and/or solitary confinement for their transgressions.

Ante-bellum production at Auburn expanded to include output of footwear, barrels, combs, harnesses, furniture and clothing. Some products were marketed locally, others in the rest of the U.S., Canada and even Latin America. Sing-Sing, which opened shortly after Auburn prison, specialized in cutting the marble from a nearby quarry and provided the stone for N.Y.U., Grace Church, and other buildings. It too

diversified in the 1830's and produced barrels, boots and shoes, hats, locks, silk, chairs, brass ware, tools and other goods for markets as far away as the West Indies. Auburn also had an edge on profit making not duplicated since in that it maintained a thriving tourist trade, receiving visitors who could marvel at the latest resolution of the urban crisis. Auburn's balance sheet was as follows for its early years:⁸⁴

Institutional Revenues Less Expenses

1825-29	-36,000
1830-36	+29,000
1837-38	-20,000
1839-41	+12,000

Capital expenditures were apparently not included in this tabulation, but a positive balance of \$21,000 from 1829-41 gratified New York taxpayers. The legislature chided Auburn and Sing-Sing agents, though, for insufficient profits in 1833 and kept careful watch over the prison balance sheet.

1833 was also an important year for the industrial prison. That year, the General Trades Union of New York City and vicinity was formed. It promptly listed convict labor as one of its targets for legislative review and held conventions and instituted lobbying in the state legislature to that end. The union was concerned because some ex-convicts had "infiltrated" the ranks of the tradesmen and lowered their status. Artisans explicitly barred ex-convicts from their trades. The ban on ex-convict hiring would become so stringent that an inmate who received the endorsement of the New York

Secretary of State in 1846 could not find work in his field on the outside.

The union found opposition to its desires to curtail prison industries from taxpayers who resisted modification of the then profitable system at Auburn. A compromise was affected in 1835 which limited the numbers of inmates who could be taught any single trade while in prison, restricted production "chiefly to goods which normally came from abroad" and required "full and free competition for all prison contracts."⁸⁵

Auburn's agents blamed deficits in 1837 and 1838 on the new legislation, however, they were able to circumvent the part of the act which restricted the number of inmates employed in domestic crafts to "the number who had learned a trade before coming to prison"⁸⁶ by interpreting that to mean that any felon who had learned any trade on the outside could work in the shop even if the trade were totally different from that practiced by the inmate in prison. Unskilled inmates were used to perform skilled trades where those trades could be segmented into semi-skilled components. This latter development, though, corresponded to the changes taking place in the inside contracting system.

Evasion of the law stirred bitter protests by labor, and in 1842 an investigation by the legislature led to proposals for change. The investigators advocated the elimination of the contract system and its associated instruction and machines

and their replacement by convict employment in building roads, in providing products for state use and in making iron and steel. Also suggested was the replacement of the Auburn plan with the Pennsylvania system.

This proposal is of particular interest in that it embodied plans for the appeasement of both organized labor and industry owners. The iron and steel industries were not as yet unionized; The state use market was apparently not coveted by competing interests at least to the extent that they would preclude work by inmates of the Utica Insane Asylum for whom state use was intended. A return to increasingly outmoded and anachronistic handicraft production as at Pennsylvania would not threaten labor, but it would yield lesser revenues as that state found before eventually adopting the Auburn system.

Legislation passed on April 9, 1842, however, went only so far as to restrict the practice of trades by inmates to those previously learned, to otherwise restrict prison labor practices, and to request the Attorney General of the state to cancel contracts violating the law of 1835. Eight contracts were cancelled throwing "large numbers of inmates out of work."⁸⁷

Auburn's commercial difficulties continued through the mid-1890's. It sought new markets in the areas of silk production, carpet making and cutlery as it was forced to abandon competition with domestic producers in several areas. Union leaders were content because "use of convicts in such activity would remove them from competition with free workers as

effectively as if they were transported to Russia or Sweden."⁸⁸
By 1844, both Auburn and Sing-Sing had deficits in their
budgets.

The Design of Auburn Prison Industry

The design of the Auburn system of prison industry and discipline took its form from the increasingly prevalent type of industrial production in the Jacksonian Era known as the Inside Contract System. As John Buttrick describes,

"Under the system of inside contracting, the management of a firm provided floor space and machinery, supplied raw material and working capital, and arranged for the sale of the finished product. The gap between raw material and finished product, however, was filled not by paid employees arranged in the descending hierarchy...but by contractors, to whom the production job was delegated. They hired their own employees, supervised the work process, and received a piece rate from the company for completed goods."⁸⁹

The inside contracting system was the first form of factory production in the U.S. It had distinct advantages for the capitalist just as the Auburn System had for the state government. "The capitalist, although owning the plant, was freed from most of the technical problems associated with production, improvement of the manufacturing process, and labor supervision."⁹⁰ It was a system tailored to the needs of the merchant capitalist as the problems of production were shifted to the contractor. Auburn contractors and agents were similarly burdened, but had the added problem of dealing with dual demands of institution and production. In the outside world, contractors had independence in the way they chose to run the plant, no problems selling the finished product and

no difficulty getting working capital. Auburn System contractors then and, for the most part, managers of prison industry today faced in organizing production a number of difficulties unique to prisons. These included: erratic hours, as prisoners often had to be counted, subject to hospital calls or diverted for various and sundry purposes; a clumsy responsibility structure; the possibility of riot or destruction of goods; and the abundance of what Lewis characterized as "substandard workers" such as the unskilled the diseased or the crippled.⁹¹ These constraints rendered the prison unfit for gunsmithing and production of wagons and sleighs, threshing equipment and buttons as experience through 1834 attested.

The economic advantages of the prison surpassed its liabilities for most types of production. A factory was provided to capitalists and contractors without rent and with an assembled and already disciplined work force. Investors could also take advantage of water power and other infrastructural improvements provided gratis by the state.⁹² Skill limitations (after 1835) were overcome as determined contractors separated work tasks into the skilled and unskilled, some of the former being done outside the prison. Needless to say, this division of labor, added little to the human capital stock of inmates.

The Decline of the Inside Contracting System

The success of the inside contracting system derived mainly from its capacity to make use of interchangeable parts and thereby gain from economics of scale in production. The form of the hierarchy of production was advantageous to the capitalist of the time because he did not have the capacity to supervise closely the operations of the factory that a corporate management would have today. The businessman's low span of control additionally made supervision of more than a few shops impossible.

By 1876, the system had evolved to the point where... "the single capitalist had been supplemented by a managerial group."⁹³ The monopoly power of the contractor was threatened by increasing knowledge of production by the front office. "By 1876, the production of guns at Winchester for example was divided among a dozen large departments each headed by a contractor."⁹⁴

Efficiencies of production became of primary importance to management. "Just prior to 1876, two related events occurred. First companies ... began to recover from the great depression of the 1870's during which sales and prices had dropped precipitously. Whereas previously selling the finished product had posed no severe problems, now salesmanship increased in importance and production costs began to loom large in the eyes of the company officials."⁹⁵ The development of more accurate accounting methods and more exacting schedules increased pressure on the contractors while

those contractors and like personnel as well lost their roles as innovators in production methods.

The period from 1876 to World War I was "largely a history of management's efforts to improve its control over the contractors without losing the advantages of the system."⁹⁶ Hiring by 1900 ceased to be the province of contractors and the revolution in management was consummated by the First World War with the triumph of Taylorism.

Attempts at Reform

Voices of reform which suggested that prisoners were the product of their environment were heard in the 1840's in the State of New York. These included the "...influential Democratic Review which asked its readers in 1846 to consider the extenuating circumstances which existed with regard to certain illegal acts, and to inquire how far even the most virtuously disposed might have fallen before them" ⁹⁷ Lydia Maria Child remarked in the New York Tribune in 1844 that "Society is answerable for crime, because it is so negligent of duty." ⁹⁸

In 1844, the founder of the New York Prison Association, Unitarian minister William H. Channing, asserted in its first report the goals of that organization in helping those awaiting trial and released prisoners as well as reforming convicts. William H. Channing explained this commitment as "...not only testimony to a Christian desire to have good triumph over evil and to avoid 'the vindictive spirit', but also reflecting the community's ultimate responsibility, because of its 'neglect and bad usages' for 'the sins of its children'." ⁹⁹ He laid primary responsibility at the doorstep of the home where "Bad germs bear bad fruit." ¹⁰⁰

Meanwhile Walter Channing of the Boston Society for the Prevention of Pauperism argued against the rationale that men were totally responsible for their economic condition. "The pauper", protested Channing, is forever looked to as the active, sole agent in the production of his own misery. He

is poor - he is squalid in dress... He is in a state of willing slavery... He is dependent upon others around him....¹⁰¹

These ideas brought forceful reaction. "Nobody has any rights except scoundrels, and slaves and debtors" exclaimed James Watson Webb's New York Courier and Examiner in 1847.¹⁰²

Meanwhile, W. David Lewis maintains, dispute over penal methods at Auburn versus those of Pennsylvania, "played into the hands of critics who had never wanted a change in the first place." The period from 1844 to 1848, which had marked the movement for more humanitarian administration of prisons in New York ended in acrimony as phrenologist argued with clergyman, Auburnite with Pennsylvanian. Retrenchment followed as silence and corporal punishment were after a brief hiatus reinstated to deal with rebellious and unproductive inmates.

Some gains were made in this period as the use of the lash was curtailed and eventually abolished while convicts were allowed to read, write and receive visitors. The lock-step, the cramped cells and solitary confinement remained however. As Lewis suggests, the humanitarianism "was tempered by a fear of becoming too lenient with offenders and a distaste for moral relativism."¹⁰⁴ Reformers continued to focus their attention on how best to "rehabilitate" the criminal. By 1854, the New York Prison Association was in financial trouble and in 1859 "a reform minded Albany pastor could only decry 'the wicked indifference of the masses of our people to the whole subject of crime' ".

With the passage of the laws of 1842 and a readjustment of prison industry policy, the prisons were no longer a contested, important issue for the articulate interests of the era. Reform efforts would have no appreciable effect on the structure of the prison. On the other hand, the apathy which followed the long exposure to the debates of those years had a substantial effect on the floundering prisons in encouraging corruption among prison inspectors and agents, particularly at Sing-Sing prison.

1842 and Beyond

The efforts to make the prison profitable following the adoption of the 1842 laws met with only limited success as legislative appropriation and emergency relief became more and more a part of the prison balance sheet. Clinton prison had been established in the Adirondack Mountains 17 miles west of Plattsburgh in an effort to take advantage of iron deposits there. A Saratoga County investor, Ramson Cook, who scouted the area for iron became the first warden of the new prison. "In anticipation of the institution's success, citizens named the agglomeration of dwelling houses and log shanties which came to be scattered throughout the woods near the prison 'Dannemora' after the well known Swedish iron center."¹⁰⁵

Cook believed in kindness over cruelty and worked to upgrade his institution socially and industrially. He implemented two pieces of his own design, a steam powered forge and an electro-magnetic ore separator, at the institution.¹⁰⁶ Ransom Cook also lectured to convicts on scientific subjects and "took pains to establish a prison library."¹⁰⁷ The difficulties faced by the prison were virtually insurmountable however. Machinery was late in arriving to the institution. Roads were inadequate to carry the institution's products and additionally made the prison very difficult to supply. Added to these problems were a depressed market for Adirondack iron in the 1840's and 1850's and a mine which in 1842 ran out of ore upon which the prison depended. Prison

transfers to Auburn were begun but stopped as that institution became overcrowded.

Faced with closed markets, and overcrowded prisons again, the Empire State's legislature turned increasingly to the State Use System. An outgrowth of the law of 1842, the legislature stipulated that all clothing for Dannemora convicts be made at Auburn and Sing Sing. But state use remained inadequate as long as prisons were the only outlet of production. Sing Sing prison's unskilled inmates were used as workmen along a portion of the Hudson River Railroad, this permissible as a track ran directly through penitentiary grounds. Skilled inmates continued to engage in the production of those items not produced domestically. But this was precarious as domestic producers could assume production of the good anytime in the future.

Auburn relied heavily on its carpet shop which was run by a local entrepreneur, Josiah Barber. It went so far as to secure Barber's debts after he suffered some business setbacks. Barber could not meet his obligations and the institution was left holding the carpetbag, so to speak. As 350 inmates faced unemployment, Barber was nevertheless awarded a new contract by Auburn's inspectors who cut the cost of using skilled labor and provided inexperienced convicts gratis for three months. The increasing desperation for jobs by prison agents led to more and more lucrative contracts for entrepreneurs. One firm cited by Lewis entered into a five year contract for convict

labor at a total charge of \$33,485.70. It also received thirteen thousand feet of floor space heated at state expense, janitorial help in the shops and the assistance of three keepers. It managed to cut labor costs to \$26,717.51 and then recovered \$25,017.79 for losses allegedly suffered in a fire. Prison scandals and discipline problems also marked the decline of the industries as keepers resorted to kicking, caning, striking and torturing to circumvent the legislative restrictions on lashing. One device called "the shower" placed the disobedient prisoner on the brink of drowning¹⁰⁸ and was apparently the precursor of aversion therapy techniques which do the same thing in California and Connecticut today. Dorethea Dix thought the shower a useful disciplinary tool.¹⁰⁹ Changes in the prison environment were not without prisoner response. Prison uprisings occurred at Auburn and Sing Sing prisons in 1857 and 1858 respectively. In 1859 the New York Board of Inspectors espoused a preference for the Pennsylvania system whose solitary confinement method was costly but free of disturbance.¹¹⁰ The closing of markets to penitentiary shops had insured the end of the Auburn system of prison discipline. It continued with a slight surplus during the Civil War years with the exception of Dannemora, but its fate was sealed. The state now looked to other countries for ideas on how to deal with its teeming prison population.

The Australian Experience

Following the ending of transportation to America caused by the revolution of the colonies, the Pitt government sought outlet for the prisoners and debtors who crowded his majesty's gaols and bridewells. Australia was the site of the British innovation of the penal colony. Discovered in 1770 by Captain Cook, Australia was wild and unsettled.

Prisoners sent there could not be indentured for a time to property owning masters as in America, given the under-population of the continent so a new method of transition to freedom had to be developed to handle felons who would remain prisoners after their transportation. At first, prisoners who had completed their terms of servitude with good conduct and industry were released with an absolute pardon. Later though, a form of conditional pardon known as the "ticket of leave" was established. The ticket simply dispensed a convict from attendance at government work and "enabled him on condition of supporting himself, to seek employment within a specified district."¹¹¹ This proscription did not differ significantly from a provision of the Statute of Artifices which gave servants of masters freedom to work elsewhere after they had lawfully completed their term of employment.

As Moran describes the evolution of the system of ticket of leave during the colonization of Australia:

"Until 1811 tickets of leave were freely granted to prisoners for good conduct, meritorious service, or for the purpose of marriage. In 1811 a policy was adopted requiring that

prisoners serve specific periods of time before being eligible to receive tickets of leave. This procedure was not strictly adhered to until 1821 when a regular scale was formulated. Prisoners who had a sentence of seven years could obtain a ticket.

Alexander Maconochie and the Tickets of Leave

Barnes and Teeters cite Alexander Maconochie and his system of Tickets of Leave as the "progenitor of parole."¹¹² Dressler agrees. Articles by Stephen White and Frederick Moran dispute this contention. They support the work of J. Barry in his biography of Maconochie. "Barry showed, as Moran had found that the system of ticket of leave had been in operation long before Maconochie turned his mind to matters penalogical."¹¹³

Said Maconochie of tickets of leave:

"It provides a further security besides good management in prison against the danger of discharging and thus re-absorbing great criminals among ourselves, by requiring them to be discharged partially at first, and only entirely after serving a further probation in free society before complete release." This indeed sounds like the modern theory of parole as espoused by some correctional analysts.

But these words were spoken towards the end of his life "...probably the reflection of the views of persons far more powerful than he."¹¹⁴ In his observation of Van Diemen's Land and its system of tickets of leave just as he began to study penology, he characterized the ticket holders as "slaves of the police."¹¹⁵

"According to Maconochie's description, the average ticket of leave holder's position in society was a unique one. Once the ticket was obtained the holder was assigned a particular district in which he was required to reside. Although

he could choose his master and residence, he could not change that residence without informing the police; he had to sleep there at all times and was subject to a curfew. He could receive wages but not acquire property. More seriously, the ticket could be suspended or entirely taken away for the most trifling irregularities. In either case, the holder was usually sent to hard labor on a road party."¹¹⁶

Maconochie viewed release in a different light. He thought that prisoners who had been thrown on their own resources should be subject to fine, imprisonment or loss of freedom, but not to intensive police interference, indenture to a single master or constraint on residence. Society's real goal was to instill the feelings of a free man in the releasee. "Having 'dearly earned' his way to this position, nothing less than a solemn judicial sentence should deprive him of it."¹¹⁷

Such ideas would be unpopular with the propertied in Australia. Coerced labor is certainly valuable as under paid labor. Masters gain substantially from an immobile labor force overseen by the state. As such, the Van Dicmen's Land ticket of leave program served as a state subsidy to chosen members of the propertied classes of Australia.

Maconochie's ideas were nonetheless given a try after being reviewed by the House of Commons Select Committee on Transportation in 1837. Maconochie was appointed as head of the Penal Station on Norfolk Island in 1840. He suggested an

ultimate system of discipline known as a local ticket of leave. Under this, individual tickets would be responsible for themselves alone, allowed to "open shops with articles purchased with marks from the government store" and act as jurors or representatives in local courts for which they would receive marks.¹¹⁸ Marks were a form of wages by which the prisoners' servitude might be eliminated while not eliminating the prisoner's punishment. Under Maconochie's plan the sentence would be a combination of labor provided and good conduct maintained within a minimum time.

Maconochie remained at Norfolk Island for only a few years and according to Moran "...his achievements did not have any revolutionary effect on the system of transportation."¹¹⁹ Though the system that Maconochie instituted differed somewhat from his plan, White maintains, "Neither the system he planned nor the one he instituted, however, can be regarded as a forerunner of parole."¹²⁰ Maconochie's system can be likened more to a system of release and restitution rather than to the system of conditional release which is parole. Prisoners were buying their release by working in state supported enterprise rather than existing in the outside labor market with restrictions on their freedom. Ticket holders were restricted in their freedom of movement, but they were sure of the terms of their imprisonment and not subject until 1844 to constraints on their freedom in the outside world under the Probationary System. Maconochie's thoughts on the new system

are related by Stephen White:

"The men were little better than working prisoners in the midst of a free society; discharged progressively with growing privileges, but always under some disabilities, they could never free themselves from their early history and associates."¹²¹ Maconochie himself added, "By whatsoever plausibilities supported the existence of a penal class in a civilized community must morally injure."¹²²

The Irish System

The American reformatory and the system of parole derive from the Irish System of Sir William Crofton who became head of the Irish prison system in 1854. Crofton's system was marked by three stages of servitude. Under this system referred to by Crofton as the "Intermediate System", the convict served eight or nine months in strict custody in Mountjoy Prison, Dublin. There he performed monotonous, hard labor on a limited diet and was housed at night in solitary confinement as at Auburn. Crofton's program provided that if the inmates' conduct was satisfactory, he was placed in an "Associate Prison" where he could earn marks toward his release through labor on public works. A sufficient number of marks allowed the prisoner conditional release, on condition that employment was waiting for him.¹²³

Associate prisons were designed to be "as nearly normal as possible" with the minimum necessary restraint exercised to maintain order. The prisoner when released was provided with a ticket of leave which provided the following conditions, conditions which remarkably resembled those placed on Benjamin Franklin in his indenture:¹²⁵

Each ticket of leave man was further instructed as follows:

Each convict coming to reside in Dublin City or in the County of Dublin will, within three days after his arrival, report himself at the Police Office, Exchange Court, Dublin, where he will receive instructions as to his further reporting himself.

Each convict, residing in the provinces, will report himself to the constabulary station of his locality within three

days after his arrival and subsequently on the first of each month.

A convict must not change his locality without notifying the change to the locality to which he is about to proceed.

Any infringement of these rules by the convict will cause to be assumed that he is leading an idle, irregular life and thereby entail a revocation of his license.

1) The holder shall preserve this license and produce it when called upon to do so by a magistrate or police officer.

2) He shall abstain from any violation of the law.

3) He shall not habitually associate with notoriously bad characters, such as reported thieves and prostitutes.

4) He shall not lead an idle and dissolute life, without means of obtaining an honest livelihood.

If the license is forfeited or revoked in consequent of a conviction of any felony, he will be liable to undergo a term of penal servitude equal to that portion of his term ofyears, which remains unexpired when his license was granted, viz., the term ofyears....months.

By 1865, the Crofton System was being proposed for use in America. Some disagreement was voiced, however, by those who thought it was un-American to place any individual under police supervision. Crofton suggested a way around this by "...having prisoners about to be released name a 'next friend' to whom they would be willing to make their reports, a person 'likely to befriend them and then to arrange with competent persons for supervision of a friendly character to the well doer, but at the same time of a nature which will restrain the evil disposed by compelling them to observe the conditions upon which they have been liberated."¹²⁶

The system depended upon two critical points for its success as suggested. Firstly the presence of a demand for skilled prison labor in outside industry. Secondly, the existence of criminals in a heterogeneous community where

transition to total freedom could be accomplished through the system of parole that Crofton suggested for America. This was the rationale behind the establishment of the Elmira Reformatory. In the long run, neither condition was met.

The Elmira Reformatory Plan

As with Auburn, the Elmira Reformatory was being constructed while the organization plan which would make it famous was being developed. Elmira Reformatory was opened in July 1876 and had been operating a year before Zebulon Brockway, its first superintendent, proposed a definite policy for the institution.¹²⁷

His proposal outlined the following special features:

- an indeterminate sentence, the length of time served dependent upon the "behavior and capacity of the prisoners" and constrained by a maximum sentence.

- privileges and incentives provided to the well behaved prisoner.

- compulsory education.

- Parole release of "carefully selected prisoners" after a minimum of 12 months of good conduct.¹²⁸

Upon release, the prisoner was given a suit of clothes, provided funds for his immediate expenses and instructed to report to his employer where he would remain for at least six months. The parolee was required to report to his guardian on the first of every month and inform him as to his situation and conduct. The employer would certify the parolee's wages and this certification along with the guardian's report were sent to the superintendent of the Reformatory.¹²⁹ Supervision was required for a minimum of six months but frowned upon for longer periods as this would be discouraging to the parolee.

The local Chief of Police, " 'not the average policeman of the great cities, nor indeed a religious or philanthropical organization or private individual' was considered the most satisfactory individual to supervise paroled prisoners."¹³⁰

Contract industries continued as best they could as in other New York prisons. The presence of training at Elmira diminished pressure on the institution to be self-supporting. Businessmen, who had been the prior motivating force in the legislature behind cost minimization at the prison, could now tolerate, as they were in other areas of society, the use of state funds for an institution whose avowed purpose was now the education, training and discipline of men who would be good industrial workers.

It is interesting that when "it appeared that there would be no industries for a time, military drills and organized athletics were introduced, and these became regular features of the reformatory program."¹³¹ Even after markets became limited and training itself became outmoded and irrelevant to industry practice, "reformatories" could claim that they taught the "habits of industry" and the discipline of work.

The goals of the Elmira system lacked the incentives for their implementation that existed within the profit maximizing Auburn system. Government in 1870-1900 assigned to reformatories, as it does today, the same type of personnel that were hired for the penitentiaries plus "a few underpaid and overworked instructors".¹³² The message carried to

prisoners was one of discipline and most certainly boredom. The medium rather than the plan was the message.

Elmira was opened in 1876 and received as its prisoners the youth from 16 to 30 years of age who were serving their first prison term. Within the climate of declining prison industry, its creation was met enthusiastically, if not as the final solution to the problem of incarceration and prison maintenance. One authority suggested, "It is fair to predict that before the close of the opening decade of the coming century the Elmira system of graded prisons and classified prisoners will dominate in every state in the Union."¹³³ Instead, as Sellin notes, "...The reformatory movements had reached its peak and was on the decline by 1910."¹³⁴

The Reformatory innovation was not as pervasive in its adoption by other states as the Walnut and Auburn systems were in their day. From 1870 to 1900, additional Auburn type prisons were built in the industrializing states of the West and South. Perhaps in these states labor opposition to prison industry was not as developed in the east. Markets for prison products would also have been more available in these states. The relationship between the type of prison built and the level of development of the region in which it survived is further documented by the experience of the reconstruction era south. Prior to the war, the south had maintained a sparse number of Auburn style penitentiaries. After the war and during the period of subservience to northern industrialists, the system of prison labor changed

radically. Georgia, Florida, Mississippi, Louisiana and Arkansas leased out their entire prison population to contractors. The Carolinas, Alabama and Texas maintained central prisons for the most difficult prisoners but leased the majority of the convicts to private companies. Virginia, Tennessee, Kentucky and Missouri managed to stick by the contract system, but this was while the northern states were moving toward the reformatory system.¹³⁵

Sellin attributes the negative Southern "contribution to penology" to two technologically neutral factors. "In part, this was due to the special problems which they faced in dealing with so large a proportion of plantation negroes among their prisoners, and to the fact that the South was still essentially agrarian as contrasted with the industrial North and West." He adds "On the whole, these southern prisons during this period offer only examples of the depths to which modern civilized states can sink in the punishment and custody of criminals."¹³⁶

The South during reconstruction became subject to and dependent upon investment of Northern capital. The Southern states, in addition, faced severe problems in maintaining services and rebuilding infrastructure. Under such conditions, the South was forced to minimize costs by whatever means possible including leasing convicts to private firms and downgrading prison conditions. The citation of plantation negroes and Southern states either directly or by inference as the cause

of prison miseries is a classic case of blaming the victim. The characterization of the experience as a negative "contribution to penology" misses the entire lesson of Reconstruction as a failure of national policy to help a region in need.

The Decline of the Reformatory

The reformatory was dependent upon two types of markets for its survival, product markets for prison produced goods and labor markets in related areas for paroled prisoners. Where prisons prior to the reformatory were literally self supporting or virtually so during times of economic success, the reformatory by producing productive workers in addition to prison made goods could claim a productive purpose equal to that of its predecessors.

Data on the cause of the reformatory's failure is sparse and where available is not conclusive. That it was short lived in its success even if it was successful at all is clear however. The "industrial prison" which dominated in the period 1900-1935 has a pale shadow of the reformatory ideal. As Thorsten Sellin described it:

"Most prisons maintained a pathetic kind of evening school with children's text-books during the winter months for illiterates and for some of those who had not finished grammar school. As the result of a survey conducted in 110 prisons and reformatories in 1927-28, MacCormick reported at the American Prison Congress in 1933: 'We should face squarely the fact that in most of our prisons and penitentiaries almost nothing in the way of a program of general education can be found and that no prison has more than scratched the surface in the field of vocational education.

Trade training was gained in the course of employment. Industrial assignments were of necessity based on institutional

need or opportunity rather than on individual predilections or vocational guidance.' "Industry continued as in the early days merely a means of keeping prisoners busy and of helping to pay expenses. To the reformers was left only the cold comfort that some prisoners at least were being taught the 'habits of industry'. As the prisons adopted the reformatory philosophy (and very little of its practice), the reformatories became more and more like the prisons. In some states, there was little or no difference between the two except the ages of the prisoners."¹³⁹

To complete the chronicle of prison history, a study of the reasons for the decline of the system of parole to work would be needed. Where discrimination against prisons in product markets appears in legislation and pronouncements throughout the period of prison development, no complementary history of labor market discrimination exists. Nonetheless, a series of laws restricting parolee and ex-offender employment exists today as does discrimination against the hiring of ex-offenders which will be discussed in a later section. The decline in the training and post release employment functions of the reformatory, though, would be futile ground for future study by labor historians. However, given the purposes of the reformatory, the nature of its successor, and its early demise and the plethora of laws restricting ex-convict job opportunities it can be safely surmised that restriction of employment opportunities played a major role in the decline of the training functions of the reformatory.

Even if labor market opportunities had continued, losses in product markets would have spelled the end of the Reformatory, which depended upon on the job training for its success. At first, the reformatory had difficulty keeping pace with the demands placed upon it as the value of prison production declined from \$24,000,000 in 1885 to \$19,000,000 in 1895. State account, public works and state use systems then helped the prison to increase production to \$34,000,000 in 1905 and \$71,000,000 in 1932.¹³⁸ This last increase in production, however, did not match the 140 percent increase in population over that period as production per capita maintained a slow decline.

The ground work for a more rapid decline was laid by further legislative action and changes in the outside economy.

Access to federal government markets by state prison industries was banned by President Roosevelt in 1905. By 1929 seventeen states had passed laws making the contract system illegal, and sixteen other states required that prison made goods be specially labeled as to their origin.

In 1929, Congress enacted the Hawes-Cooper Act, which permitted states that prohibited the sale of goods made in their own prisons to bar the importation of prison-made goods from other states without such restrictions despite the legal prohibition that forbids local interference with interstate commerce: According to Goldfarb and Singer's research on the law's legislative history, the chief sponsors of the act were manufacturing interests protecting their markets, supported by labor unions worried about unfair competition and the General Federation of Women's Clubs, which was concerned with the abuses of contract labor.

Opposition by prison wardens, who rightfully feared the effects of idleness and unemployment on prisoners, postponed enactment of the law until 1934. In 1935, the wardens efforts were "rewarded" by the Ashurst-Summers Act which added a penalty for violating the law by making it a federal offense to transport prison-made goods into any state where they had been outlawed. Where in 1932 state prison industries had employed 77,000 prisoners and produced goods valued at \$71 million, in 1936 and 1937, industries employed only 25,000 prisoners who produced only \$20 million worth of goods annually. As James Bennett, then director of the Federal Bureau of Prisons put it:

"While some thirty percent of our countrymen were out of work, more than eighty per cent of our prisoners had been deprived of any form of constructive, industrial occupation. Some of the more ingenious wardens were devising new ways of keeping their men busy. One warden put a man to work maintaining an electric motor that needed a drop of oil a day. Another assigned a prisoner to keeping salt shakers in straight lines down the rows of tables in the mess halls."¹⁴⁰

Table III. State Prisons: Percent of Prisoners Employed at Productive Labor Under Different Systems in Specified Years

SYSTEM	1885	1895	1905	1914	1923	1932
Prisoners employed at productive labor under-	%	%	%	%	%	%
Lease system.....	26	19	9	4	0	0
Contract system.....	40	34	36	26	12	5
Piece-price system.....	8	14	8	6	7	11
State-account system.....			21	31	26	19
State-use system.....	26	33	18	22	36	42
Public works and ways system.....			8	11	19	23
Total	100	100	100	100	100	100

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"State-use" industries predominated in the prisons after 1935 as industries produced office furnishings and supplies, institutional clothing, the proverbial license plates, agricultural produce, dairy products and road signs for use by prisons and other agencies. Some legislatures went so far as to require state agencies to purchase their supplies from the prisons, yet this law was often disregarded and prison industries did not grow or diversify to meet the potential demand for their products. Outmoded and undercapitalized plant were and are the rule in the prison industries.

Four states, New York, Pennsylvania, New Jersey and Ohio are cited by Thorsten Sellin as having operated prisons notorious for the idleness and unemployment of prisoners. In New York where the possible state-use market for prison

products was estimated at \$20,000,000, the prisons could only secure \$2,000,000 worth of business. What business was created was often ephemeral. As soon as a modern printing press was installed at Sing Sing, free industry secured legislation restricting its use to printing for the State Department of Correction.

The range of correctional programs today does not exceed to any significant extent the inherited bounds within which the prisons are required to function in the 1970's. The penal systems of New York City and New York State contain numerous examples of the industrial "warehouse" prison which constitutes an expanding product market while offering few productive opportunities to inmates while preaching the virtues of treatment and punishment for the "sociopathic" incarcerant. What prison work does exist is geared toward institutional maintenance and production of a limited set of "state use" goods. These activities take precedence over jobs which offer useful quality job experience. More than anything else, boredom and sheer frustration with the functions of the prison characterize the feelings of the inmates and concerned prison professionals who must live and work in this lifeless institution.

Outside the prison ex convicts have limited opportunities available to them. Furloughed incarcerants become part of the secondary labor force and there are joined by those in the supported work program. Parolees and those who have done their time are barred by statute and employer discrimination

from getting jobs in the outside labor market. Though counter measures are being initiated to lessen such discrimination, even a simple arrest in New York State can be a disability to men and women seeking work.

While the elements of the community based system develop in New York, debate over penal options continues between the so-called "pragmatists" and "abolitionists" who disagree about the proportions of the elements of that system rather than about its substance. Discussion at the administrative level among those who run the prisons, halfway houses and the rest as to broad policy initiatives is limited to consideration of the homilies offered by the American Correctional Association which praises the valiant efforts of society's keepers.

A review of these aspects of the present system concludes with a sober review by outgoing New York City Corrections Commissioner, Benjamin Malcolm of the state of the system he has worked in for 40 years.

The New York System Today

Poor working conditions, inadequate training and inmate unemployment continue in the New York prison system according to a report by the R.C. A. Institute. The purpose of the institution in that state is maintenance of custody with the least possible deficit. "What meager incentives there are for encouraging rehabilitation among inmates in correctional institutions exist as little more than incidentals to training and education programs. In fact as Collins and Weisberg have suggested, and as we found in our visits to institutions, some incentives actually draw inmates away from training programs and into low-skill jobs which ill prepare them for re-adjustment to society and help to guarantee their eventual return to the institution."¹⁴²

The operations of the institutions and the uses of inmate labor are highly irregular and strikingly parallel to descriptions of the "periphery" of the economy and the "secondary labor market". "At one New York facility, where inmates spend only nine hours outside their cells each day...Those who work late at the dairy barn...are given incentive to work there as opposed to participation in even the most sophisticated training programs."¹⁴³ Similarly, inmates who work at the superintendent's house can catch his notice and receive favorable recommendations for parole. Work at menial tasks is often pursued solely in an attempt to combat boredom in the facility.

An analogy with the "secondary" labor market is in evidence with the observation that "...the high

availability of cheap labor and the extensive absenteeism (for such activities as haircuts, showers and commissary visits) have resulted in overstaffing of the production line." "The industrial environment which results from these factors is somewhat relaxed, if boring and bears little resemblance to actual industrial conditions."¹⁴⁴

Training in the institutions is inadequate and focussed toward the long term inmate whose productivity will benefit prison production for the longest time. Allocations for training are meager. At Green Haven prison, only \$1200 was allocated for materials and supplies for all its training programs in 1970-71, and that amount was cut by 10% for 1971-72; The per capita amount is considerably less than \$1.00/inmate. The seven programs offered at that institution have a total enrollment capacity of less than 5% of the inmate population, and "this includes shops such as barbering, carpentry and machine shop, which are at least as much institutional maintenance programs as they are training programs. As for the quality of tools, one instructor complained of "...obsolete equipment, inexpensive materials and labor intensive methods, all of which have no relation th the current commercial state of his trade."¹⁴⁵ That researchers were able to find a vocational instructor is a minor miracle in itself. Collins and Weisberg writing in Manpower Research found there to be 1 vocational instructor per 370 inmates in state prisons. In comparison Galvin and Karachi in their study of state and federal institutions found in 1969: 37,000 of 54,000 employees

surveyed to be line officers. One teacher was found for every 130 inmates and one treatment and training related employee for every 30 inmates. Robert Diamond in Crime and The Law counts one classification worker per 450 inmates and one psychologist for every 1200 inmates.¹⁴⁶

The reason cited for the institutional priorities in New York State is a remarkable one. "The Governor's Special Committee on Criminal Offenders in New York somewhat cynically included all the programs we have mentioned," said the RCA Institute report, "including education, vocational training, prison industries and institutional maintenance and operations, as 'programs that pass for rehabilitation' and noted that their goals are 1) to keep inmates occupied 2) to reduce institutional costs 3) to foster good work habits and 4) to teach useful skills. The committee felt that the over-emphasis is on the first two goals resulted partially from the fact that they were the only two goals which were measurable."¹⁴⁷ What should have been added is that those two goals

are the only ones which they are prepared to do something about. Keeping inmates occupied translates to preventing disturbances. One recent New York State prison administrator who is now New York City Commissioner of Corrections warned against inmate "idleness" as a prime cause of disturbances. The second goal refers to the management initiatives being developed in New York to reduce correction officer sick leave, improve officer productivity and implement systematic management of operations. The latter two goals are not pursued because there is no money to fund them in the State of City budget and no reasonable expectation that such efforts will be realized in successful outside employment.

The N.Y.C. Department of Corrections Today

Last year about 54,000 prisoners were held by the Department of Corrections, most at the Riker's Island complex. Two-thirds of that number were detained while waiting for the courts to dispose of their cases. The remaining inmates were sentenced prisoners serving terms of less than a year.

Benjamin Malcolm is the Commissioner of Corrections in New York City and his observations on the present state of corrections in New York City are revealing:

"We probably suffer most for all the mistakes made in the criminal justice system here." "We're the only ones who have no discretion, because we have no control over who comes in when or who goes out when. Back in 1972, we had an average daily census of thirteen to fourteen thousand inmates, or twice our cell capacity. Overcrowding is a prime cause of riots, and we had a couple of bad ones. But then Judge Ross (David Ross, New York City Administrative Judge) made his brilliant move to frontload the court system (disposing of small cases at arraignment). That reduced our enormous prison load, which now averages six to seven thousand inmates"¹⁴⁸.

"The overall concentration on the heavy hitters in crime - in the D.A.'s office, the courts and here - may be the only solution. It certainly has changed the corrections business. There used to be prostitutes, pimps, addicts, shoplifters in prison, but very few misdemeanants end up there now."¹⁴⁹

"We have a criminal justice industry. A whole mob of us make livings out of this non-system. Out of a total

correctional budget of ninety-two and a half million dollars last year, seventy-seven million dollars went for personnel. It costs twenty-two thousand five hundred thirty-eight dollars and seventy-five cents to keep one prisoner at Rikers for a year. And since 1970 we have spent over a hundred million dollars on new corrections facilities. In short, its a very expensive system. What does it accomplish? It holds people. It is a warehouse system. Our purpose should be to prepare inmates to live within the community without assaulting it. Do we do that? Emphatically, no! In this country we are still living in the nineteenth century...just getting around to ideas...advocated by Benjamin Rush and Cesare Beccaria in the eighteenth century. In Europe, they are much more advanced than we are." "In West Germany, government officials, businessmen, and trade union leaders got together and set up prison plants to manufacture highly intricate automobile and aircraft equipment. Union workers trained prisoners who proved that they could do the most complicated kind of precision work. It's been a great success. But here you couldn't persuade either businessmen or unions to go along with that. Both are too afraid of losing money and power. Not long ago, I discovered an 1896 law that prohibits the sale of any commodities made within the prison system outside that system. We didn't have much in the way of unions then, so it was a business men's law. But now, the unions are even worse. Let's say we repealed that law, and then trained inmates in marketable skills. The next thing would be to give them union

cards, so they could get jobs. But you can't do that. Unions won't allow it, so politicians won't even listen to such a proposal. Three or four years ago, I wrote City Hall and said we have a bakery at Riker's Island and if you can arrange with union bakers to come in and train inmates, we'll supply all the bread for city hospitals, school-lunch programs, and so on. All we need is an agreement with the bakers' union. I never got an answer. Therein lies the root of recidivism."¹⁵⁰

Commissioner Malcolm then spoke on the increasing numbers of youthful criminals in the correctional system:

"The ones we have in the system now are the hard core. I'd be the last one to let them out. Last January, we took a sample census of 1100 prisoners who were between sixteen and twenty years old. Ninety to ninety-five percent of them were there for murder, assault, armed robbery. Twenty-four percent were in for murder."¹⁵¹

"In 1976, almost seventeen thousand kids under the age of sixteen were arrested here for committing very serious crimes. At least ten percent of them should be held in secure facilities. The Juvenile Justice Reform Act, which went into effect last February...gave judges the authority to commit the more violent juvenile criminals to secure facilities for one year. But we only have two hundred and seventy-five beds in the whole state for them. Of course, it didn't take long to use up the few vacant beds there, so judges had to go back to applying the old law to juvenile criminals."

"What would you do to reform the correctional system if you had the money and the authority?" the interviewer asked.

"I would have two different systems - one for detainees, one for sentenced inmates. Take detainees first. We've found that nowadays sixty to seventy percent of them are hard-core criminals. They must be brought to trial speedily, within ninety days. If a defendant is innocent or there isn't enough evidence to prove him guilty, let him go. If he's guilty, satisfy the victim and society. During the ninety day waiting period, we must have educational programs. It's pointless to try to train someone in vocational skills in such a short period. But we could have intensive courses in reading, writing, simple arithmetic...seven days a week...to obtain maximum results and also to stop riots, which usually occur on weekends, when prisoners have little to do."

"Next take sentenced inmates. Anyone coming into the prison system should be given enough time to do him some good - six months at minimum, maybe even a year." "I would set up an industry-supported, labor supported plan to have training programs for work on the outside. To reduce the cost of the program, I would set up a series of residential, or halfway houses in communities where inmates intend to live and work after release. Under the law, I should have the authority to execute warrants to withdraw good time earned by inmates who don't behave. Everyone would be in a work release program. Say a man has a one-year sentence. He would spend eight months being trained in prison and four months on work-release

outside. We would pay him for his work during the last four months, so that when he goes back on the street he will have a bankbook with several hundred dollars to help him start again, and he would have a skill to start with. We would give him attitudinal counseling." "...each man would have a chance to become a member of a family and a community and a work force - a chance to become a man, maybe for the first time, and to have some confidence in himself. As it is now, we just send them out blazing with anger, without hope, ready to rip off the first person they can. And we could set up a large part of this program on our current budget." "If we cut the stays of detainees...cut housing and overhead costs... use the money we saved to pay for work release...need more funds to provide real training programs...social savings. Work release...halfway houses are the only answer. ...cheaper ...idealistic...save our society. Otherwise...swamped, swamped, swamped, by crime."¹⁵²

The prison and the community based system do not hold a monopoly on programming designed to reintegrate the offender into society. Community development corporations and offered or sponsored organizations such as the Delancey Street Foundation offer the offender a chance to be a productive member of society. Beyond that, they appear to out perform the community-based system in recidivism reduction, though a search of correctional literature would have you believe that such organizations were either non-existent or perhaps even non-corrective.

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PART II

Correctional Theory Today

If you read the major correctional journals, you will find that the future of corrections is being determined by debate between the "abolitionists" and the "pragmatists". A close reading suggests that their differences are more apparent than real. They disagree more about the proportions of the community based system than its substance.

I believe that the conflict over correctional paradigms is more accurately divided into orthodox (abolitionist-pragmatist) dual labor market and radical perspectives. The primary division between the orthodox and the latter theories concerns the approach that each takes towards the function and effect of the prison. The orthodox theorists see the function of the prison as punishment for legal transgressions and concern themselves only with the way in which the penal system will achieve that purpose cost effectively. The dual labor market and radical theorists see the prison as part of a larger environment that determines what kind of work is available to convicts before after and within prison. These theorists are also concerned with the effect of the prison on the mechanisms of the economy and vice versa.

The dual labor market theory considers the penal system as another institution within the secondary labor market, the economy being divided between primary and secondary sectors and subject to barriers to mobility. The radical theory of the prison has yet to be written, but would focus on the role of the prison as a means of insuring the propagation of

capitalism while subject, as a productive entity, to contradictions in its structure.

Orthodox correctional planners see opportunities for achieving their efficiency aims in a number of ways most prominent being the establishment of the community based system. The community based system establishes a range of correctional options for the government to pursue that will achieve maximum security for minimum cost. Orthodox planners operate within a limited policy environment delimited by the so called Abolitionist-Pragmatist debate where levels of inmate freedom are discussed as to their virtue with little ostensible concern given to the economic benefits of those levels of release.

Other evidence of the orthodox approach can be found in the development of the Wildcat program, classification schemes and the proposed elimination of parole as a preferred correctional option.

The Wildcat program decreases social costs while employing ex-offenders at menial dead end jobs. The taxpayer gains while the ex-convict remains in a marginal labor market position.

A Classification system is presumed to be the first stage in an inmate centered treatment program. The proscription for classification systems by the President's Task Force reveals classification as a means for dividing inmates into manageable groups ready for readjustment into economic society.

Orthodox policies, in having a limited focus on security and cost, do not deal effectively with the causes of crime

or the labor market position of the offender in the view of dual labor market or radical economists. The position these theorists would take toward corrections as an economic phenomenon will be developed later.

Community Based Corrections

An article by the American Correctional Association and the Chamber of Commerce of the United States entitled "Community Corrections: A Cheaper and More Humane Approach" exhibits the difference between the rhetoric and reality of the community based system. "Community-based corrections recognizes the failure of massive, impersonal institutions far removed from population centers. It recognizes the importance of working with the offender in his home community, or near it where his ties with family and friends can be used to advantage in his rehabilitation."¹

Humanitarian rhetoric dispensed with, we find the defining aspects of the community based system to be these:

- 1) In that "Experts agree that only 20-30% of present inmates represent a danger to society and must be securely confined" An observation made by Cressey, Ohlin and others, the remaining 70% can be released for varying amounts of time into society without risk of this unspecified danger to "society".
- 2) The basic rationale of the community based program is cost minimization. In 1971 it cost "\$11,000* a year to keep a married man in prison. This figure includes the inmate's loss of earnings, the cost to taxpayers if his family has to go on relief, and the loss of taxes he would pay. Compare this to the national average cost of 38 cents and 88 cents per day for probation and parole supervision respectively, or an average of less than \$365 a year, as reported by the President's

*The cost of incarceration in New York City today is \$26,000/man/year.

Commission on Law Enforcement and the Administration of Justice."³ Increasing operating costs of \$200 million per year from 1969 to 1975 would compound the problem as would building costs of \$15-20,000 per bed.

3) The community based system shall release offenders from the arrest-trial-conviction-sentencing-prison process at several possible points, release or type of release being determined by the characteristics of the offender. The types of release are as follows:

a) Post-arrest, pre-trial diversion programs - Prosecution is suspended for 90 days pending successful participation by offenders, particularly young first offenders, in a counseling, training and employment assistance program. No criminal record results if participation is successful.

b) Probation (Post-conviction) - Convicted offenders released on probation live at home, protect and support their families, and work and pay taxes in the community. They are subject to the supervision of the probation officer and the court which may revoke probation if one of a set of rules is violated.

c) Halfway-house - Halfway houses are usually privately owned, state funded small community facilities that are for "offenders who need more control than probation or other types of community supervision can provide. Halfway houses are also used for gradual readjustment to community life for those who have come out of institutions."⁵

d) Work-release - Work released prisoners work at a job

outside of prison during the day and return to the institution at night or on weekends, but they are "...permitted to pursue their normal life the remainder of the time."⁶

e) Parole (release after a period of imprisonment) - Paroled prisoners are given early release from prison, but must report to their parole officer on their condition regularly. The parole officer, like the probation officer, has the power to request the court to re-incarcerate the offender. Each option, the authors suggest provides a number of employment and other services to the offenders.

What the A.C.A. and the Chamber of Commerce are suggesting, in essence, is a program of correctional reform which creates a hierarchy, or more accurate, a stack of offenders whose relative states of freedom minimize the cost of the correctional system while insuring the security of "society". Offenders under this system are graded according to their propensity to be recidivists and placed accordingly in a queue which specifies whether, when, where and how an offender is to be employed, spend his time and obtain an income. Inmates who demonstrate that they are a threat to life or property are replaced in the queue.

These, with a few embellishments such as release on recognizance before trial, classification and treatment programs within institutions, and state use prison industries programs are what would be characterized as the optimal correctional design under certain assumptions:

- 1) Sufficient information can be gained at minimal cost

to determine the place of an individual within the queue.

2) There is a socially determined trade off between deterrence and safety versus cost at each point of potential release and that the utility function so described is useful for decision making.

3) Manpower and therapy programs can alter the size of the affected pool of inmates.

4) The objective function of the system is simply to minimize costs subject to a security or incapacitation constraint.

Successful implementation of the community based system requires a successful challenge by its sponsors of the custodial prison based system. In New York State this will require a total reformation of the warehousing-reformatory-industrial prison based system prevalent today as well as mitigation of restrictions which limit inmate and offender employment. Here opportunity exists for offender employment gains beyond the needs of a community based system, especially with the aid of the EEOC and recent court decisions. Such goals extend beyond the limited aims of community based system advocates, however.

These advocates are far from silent in their criticism of parole as a tool of penal policy.

Parole, a remnant of the reformatory era, was originally a means of keeping tabs on parolees gainfully employed outside of prison. It has failed to deal with the problem of how to manage the unemployed or underemployed parolee. Parole and the indeterminate sentence have, in this century, worked against the Enlightenment and Constitutional admonitions to ensure "swift and certain punishments, thereby compromising the deterrent effect of the system. Texas Senator Lloyd Bentsen said "Our parole system has lost respect." He was joined by New Mexico Senator Pete Domenici who added that it "has served its purpose."⁷ Accordingly, Attorney General Bell and Senators Kennedy and McClellan have been working to pass a bill that would fix federal prison terms and discard parole⁸ much as Gerald Ford had advocated mandatory sentences for repeat offenders⁹. President Carter's support of the Kennedy-McClellan initiatives could spell the end of parole during his administration and increased pressure for implementation of the cost minimizing elements of the community based system.

What is interesting about these initiatives is that while they have come about at a time when the President has been emphasizing the need for fiscal restraint and ultimately a balanced budget, they have not been accompanied by stronger pressure for work release, halfway houses and the like which would absorb the non-parolee population. As S.1347 nears passage, these issues and the problems of the advocates of community based corrections should surface.

The Abolitionists versus the Pragmatists

The debate over the path of prison reform, according to Corrections Magazine, a publication begun by the ABA and the Ford Foundation, follows "two distinct courses". The first is labeled "abolitionist". Most abolitionists, Corrections Magazine contends, agree with the observation of the authors Struggle for Justice that:

"The quest for justice will necessarily be frustrated so long as we fail to recognize that criminal justice is dependent upon, and largely derives from, social justice. The only solution for the problem of class and race bias in the courtroom or by the police or correctional system is the eradication of bias from American life."¹⁰

The authors of Corrections Magazine, however, add the statement of Frank Tannenbaum (1922) as supportive of the "abolitionist" position:

"We must destroy the prison, root and branch. That will not solve our problem, but it will be a good beginning. ...Let us substitute something. Almost anything will be an improvement. It cannot be more brutal and more useless."¹¹

C.M.'s Abolitionists, then, do not wish to abolish prisons, only change them (at least for the moment). The vanguard for this change is the National Council on Crime and Delinquency. According to Corrections Magazine, "...NCCD joined the ranks of the abolitionists in 1973. In a policy statement from its board of directors it declared that no "non dangerous" offender should ever be imprisoned." Yet,

as the magazine also notes "Throughout its history, NCCD has remained a stalwart defender of community corrections. It was one of the first organizations to develop formal standards for the operation of adult and juvenile correctional institutions, for probation and parole, and for the operation of halfway houses and other diversion programs..."¹²

The National Council on Crime and Delinquency is at the forefront of the present move toward correctional reform. Founded in 1907 as the National Probation Association at a time when probation as an idea was quite unpopular, it operates as a research organization and technical advisory group to various state and local correctional associations. The NCCD obtains its funding from charitable organizations such as the United Way and from corporations and private foundations. It suggests that "no 'non dangerous' offender should ever be imprisoned, and narrowly defined 'dangerous' offenders as those with records of persistent violence who were also mentally disturbed. Not more than 10 to 20 percent of the offenders then confined could meet this criterion..."¹³ NCCD has called for a moratorium on the construction of new prisons and has acted through legal means and internal lobbying to halt new construction plans, according to its Executive Director Milton Rector, in Illinois, Washington, Washington D.C. and other jurisdictions. NCCD says that "...new construction should be part of a comprehensive correctional plan that would provide 'non-institutional alternatives' for the vast majority of offenders.

C.M.'s characterization of the movement for community based corrections as abolitionist runs directly counter to the position taken in Struggle for Justice.

"Call them 'community treatment centers' or what you will, if human beings are involuntarily confined in them, they are prisons. If it is conceded that in some circumstances we might employ coercion against an individual to achieve some compelling social goal, it confuses analysis and obscures the moral nature of our act to pretend that we are not employing punishment... Thus proposals that we should abolish prisons' or 'end the crime of imprisonment' are destructive of thought and analysis when all that is contemplated is a reshuffling of our labels or institutional arrangements for coercive restraint."¹⁴

Struggle for Justice leaves little doubt as to what constitutes imprisonment in its view with a series of questions: "Is the proposed alternative program voluntary? Can the subject take it or leave it? If he takes it, can he leave it any time he wants? If the answer to any of these questions is 'no', then the wolf is still under the sheepskin."¹⁵

The Correction's Magazine Abolitionist then seems to be a thinly disguised community based system advocate with quite pragmatic economic aims.

What then is the "pragmatist" position? As Corrections Magazine reports, "Many of the 'pragmatists' profess to hold the same ideals as their more 'radical' colleagues in the prison reform movement. Some of them also favor large-scale depopulation. All of them favor the elimination of the American "mega-prison" and its replacement with smaller, more humane institutions."¹⁶ Mostly members of the academic community, the pragmatists maintain more amicable ties with government officials and legislators than their more radical colleagues. In fact, many of them have been the recipients of government grants to study the criminal justice system and its reform."

Norval Morris, dean of the University of Chicago Law School is the spokesman for the pragmatists. The reforms which he outlines in "The Future of Imprisonment" are supported by, among others, "A Time to Die" author Tom Wicker of the New York Times and Norman Carlson, director of the U.S. Bureau of Prisons. Morris rejects the abolitionist argument that a prison must, by its very nature, be a brutal and uncaring institution. To those who say that reform is doomed to failure, he responds: "The misanthropic belief that plans will inevitably be misapplied and corrupted...Should not be allowed to interdict all scholarly and administrative efforts at reform. In a sense, the radical utopian position, arguing that it is ingenuous to try to improve prisons, damning all reform efforts, and insisting that we concentrate only on the restructuring of society... is the ultimate 'cop-out'. It is the abregation of responsibility."¹⁷

Morris specific program involves the narrowing of sentencing options for judges (e.g. instead of zero to ten years, one to three years). He would have a parole board set a definite date for release a few weeks after an offender's entry into an institution, presumably to determine the capacity of the offender for cooperation in his rehabilitation. "That date, which would be re-evaluated just before a scheduled parole, could be changed only if the offender had failed in a mandatory program of graduated community release, beginning with weekend furloughs and then moving to work or education release and eventual residence in a halfway house."¹⁸ The

pragmatist program, then, corresponds more or less exactly with that espoused by the Chamber of Commerce and the ACA. Morris and the pragmatists also advocate that a judge "... decide whether or not to imprison an offender strictly on the basis of the gravity of his crime rather than on a determination of whether he is "dangerous"¹⁹, the latter judgment having proved impossible in the past. Morris' plan thereby eliminates the need for inefficient evaluation staff and, in the tradition of Beccaria, provides for uniform justice.

Struggle for Justice recognized that abolition of prisons is "not a real option". It then reasoned that imprisonment should be equal for those convicted of the same crime. Corrections Magazine notes this area of agreement with Morris but neglects to reemphasize the advocacy of social justice by the authors and the implications that such a perspective would have for the remainder of the community based rehabilitation strategy.

The Rationalization of Corrections

Efforts are being made to reevaluate the scope of correctional programs in the United States with an aim towards transferring many correctional programs to the private sector while providing greater fiscal and management control over public sector programs. "In order to determine which areas of program and administrative operations are most in need of change and improvement, the American Correctional Association through a Ford Foundation grant, has been conducting a self-evaluation program for correctional institutions across the United States."²¹ The evaluation is based on the ACA's Manual of Correctional Standards and covers all aspects of correctional operation "...from community correctional facilities to statistics and records and fiscal management."²²

One key focus of the manual is employment of "...every possible community resource in the improvement of correctional procedures."²³ Success by correctional institutions in this area is measured according to standards in the manual. The plan for utilization of community resources involves development of "Community based detention facilities for those awaiting trial, centers for receiving low-risk offenders from the courts for study and observation prior to disposition, facilities to which short-term offenders are directly committed, work release centers for offenders at the pre release stage and residential facilities for parolees..."²⁴ Complementing this trend is the adamant sponsorship by LEAA and the ACA of volunteers as a resource for use in parole,

probation and the correctional institution. Use of offenders and ex-offenders as a resource in institutional maintenance, education and client supervision programs is similarly advocated by the two organizations. The private sector rounds out the set of new initiatives being taken in correctional reform.

Purchase of Services from the Private Sector

State agencies now contract with private concerns for a wide range of services in such areas as job counseling, employment service, psychological counseling, job training, physical rehabilitation, behavior modification, personnel training, pre-release guidance and education, meal service for institutions, transportation, legal services, management consultation, penological research and medical care. Some of the opportunities provided for offenders through these contracts are to an extent promising. For instance, the Federal Correctional Institution at Lompoc, California has a contract with the Lockheed Aircraft Corporation to provide skilled labor training in areas such as sheetmetal drafting. Graduates receive certificates upon completion of training which are honored by Lockheed if the graduates seek employment there. However, Lockheed is not bound to hire such graduates. Nonetheless some graduates do indeed work for Lockheed. Similar agreements exist between the Kansas State Department of Corrections and the Philco-Ford Corporation. This type of training program which leads to well paying jobs in industry is rare however. Industry has been generally unwilling to participate in offender hiring programs. The General Motors plant in Framingham, Massachusetts, to cite a particularly blatant example, is a short distance away from the Mass. Correctional Institution at Framingham. G.M. has consistently declined to participate in the work release program of this largely isolated institution.

Private sector services have functioned mainly to substitute for those services provided by the public sector. Within the institution while advancing the transition to community based corrections and a rationalized corrections system. General and specific examples cited by Richard Minkoff include:

-A \$160,218 grant in 1967 from O.L.E.A. to develop intensive control and treatment services in a model community correctional program for adult offenders in Stockton, California.

-Purchase by the U.S. Bureau of Prisons of "Substantial services from the private sector through its operation of community treatment centers. These pilot centers, originally pre-release guidance centers for younger offenders, are being expanded to include low risk offenders for study prior to sentencing and short-term offenders and female offenders upon direct commitment."²⁶ These privately operated centers are "Located in metropolitan areas near centers of education, industry, recreation, and public transportation; the centers can be housed in commercial hotels or YMCA's through contracts."²⁷

-Use of short term specialists in state correctional institutions. "L.E.A.A. has more recently reimbursed the U.S. Bureau of Prisons for providing short term specialists to state correctional institutions. With well over \$200,000,000 in appropriations in Fiscal 1970, ample opportunities as well as resources should exist for increased purchasing of services

for corrections from expertise of the private sector."²⁸

-Development by profit making corporations and charitable foundations of seminars, films and training for correctional personnel development and cultivation of managerial skills.

The Expanding Prison Market

Even with the trend towards community based corrections, new prisons are being built at an astonishing rate to deal with the overcrowding of conventional correctional institutions. New York prison officials report that prisons are now more crowded than during the time of the Attica riot in September 1971.²⁹ New York is not alone. As the Nation reports, "Today, there's almost a panic to get new prisons built. In fact, the National Council on Crime and Delinquency estimates that plans have been drawn for, or construction started on, 450 new prisons or jails that could cost as much as \$7 billion. And that figure is dwarfed by the \$20 billion that the U.S. Justice Department estimates would be needed to bring all state and local jails up to minimum standards."³⁰

As the size of the prison market has expanded, business has grown to meet the demand. One firm, which offers everything from construction of architecturally innovative Center City maximum security jails to Colonial style brass locks and hinges to suit the needs of the tasteful prison buyer, boasts an international market. "Among users of our products", it states proudly, "are most counties and municipalities in the United States, every state correctional system and the U.S. Federal Bureau of Prisons. We also have supplied equipment to correctional facilities in Canada, Australia, New Zealand, Germany, Peru, Ecuador, Iraq, Venezuela, Kuwait, the Philippines and Puerto Rico."³¹

Classification

The President's Task Force on Corrections maintains that "criminal behavior has no single cause or common manifestation. To understand it and try to correct it therefore requires a diversity of approaches."³² This disclaimer presented, the Task Force goes on to describe a set of typologies of incarcerated, all with a common metric, their "sociality." The classification is as follows:

The Prosocial Offender - This offender is "viewed as normal", "identifying with legitimate values and rejecting the norms of delinquent subcultures. Their offenses usually grow out of extraordinary pressures. They are most frequently convicted of crimes of violence, such as homicide or assault, or naively executed property offenses, such as forgery."³³ The rehabilitation suggested for these offenders is of two types - therapy and release. For those who exhibit neurosis, psychotherapy aimed at resolving "the anxiety and conflicts exhibited" is recommended.³⁴ "Ordinarily, these offenders need greater insight into the reasons for their delinquent behavior and need to learn how to manage conflicts and anxieties more effectively."³⁵ For "many offenders, no rehabilitative treatment is recommended. As the Task Force notes "The problem with some of them is to get them out of the correctional cycle before they are harmed by contact with other offenders."

According to Professor Jerome Frank, there are two different structural forms of therapy practiced by psychotherapists. The first which he terms "evocative", "aims to

promote the patient's total personality development and is exemplified by psychoanalysis and Rogerian 'client centered therapy'." Evocative therapies are directed toward those clients who are perceived to be basically normal, but differ in degree from other normal people in their protective mechanisms and reactions to the outside world.

Says Professor Frank, "The essence of evocative therapy, then, is the provision of experiences with the Therapist or group that will enable the person to overcome his fears, abandon his defenses, and so become free to resume his personality growth. Evocative therapies try to help the patient to become generally more mature, creative, and spontaneous so that he will be able to gain more success and satisfaction from all aspects of living."³⁶ The reason that such neurotic individuals have deviated from the "normal" path is that "...they have suffered painful or frightening experiences..."³⁷ By aiming to evoke or draw out "his strengths, weaknesses, helpful and hurtful emotions so that he the client gains greater self knowledge...", the therapist seeks to provide the client with a "...sense of increased inner freedom."³⁸ The parallel with the desire by the Quakers to cultivate the "inner light" in man is unmistakable. The correctional professionals seek to deal with the pro-social offender in a positive manner, then, through the use of evocative therapies.

The Antisocial Offender - "This type of offender identifies

with a delinquent subculture, if he resides in an area which has such a subculture, or exhibits a generally delinquent orientation by rejecting conventional norms and values." This individual sees himself as "a victim of an unreasonable and hostile world." His inadequate socialization is blamed upon "patterns of family helplessness, indifference, or inability to meet the needs of children, absence of adequate adult role models, truancy in school, and inadequate performance in most social spheres."³⁹ The treatment suggested for this inmate is placement in an environment of "...clear, consistent social demands", "...strong and adequate adult role models", "redefined" poor relationships, and a setting in which "concern for his welfare and interests is regularly communicated to him."⁴⁰

The espoused locus of responsibility for criminal behavior is a familiar one. In the Auburn era, advocates of the penitentiary system and those seeking to insure the maintenance of American social structures and institutions in the West expressed concern about the strengthening of the family, the church and the law in the frontier states and among immigrant populations.

This type of therapy is classified as "directive" therapy by Professor Frank. "Directive therapies, in contrast with evocative ones, involve a defined set of activities through which the therapist guides the patient. He actively tries to produce beneficial changes in the patient's feelings, thinking, and behavior and remains firmly in charge at all times."⁴¹

The Pseudosocial Manipulator - "This type of offender is described as not having adopted conventional standards, as being guilt-free, self-satisfied, power oriented, non-trusting emotionally insulated, and cynical."⁴² The Task Force offers a number of approaches for dealing with this interesting type of offender. These include long term psychotherapy, confrontation of the offender with the dual nature of his behavior and amazingly making an effort to "redirect his manipulative skills in a socially acceptable manner." This offender's nature is blamed upon competitive, exploitive or over indulgent families, the family once again being the source of the offender's nature. The Task Force seems to ambivalent as to the virtue of the behavior of the "Psychosocial Manipulator". His counterpart in free society is very often a successful citizen in a market society and some psychologists seem to recognize this. The best "treatment" or means of reintegration of this individual into society would seem to be the one they allude to, that of helping him to become an entrepreneur or salesman. To my knowledge, no rehabilitative programs provide such training. Additionally, the history of the prison system suggest that such training will be barred to offenders. Perhaps this is why the Task Force suggests "...a rather discouraging picture of prospects for successful treatment."⁴³

The Asocial Offender - The asocial offender "...acts out his primitive impulses, is extremely hostile, insecure, and

negativistic, and demands immediate gratification. An important characteristic is his incapacity to identify with others."⁴⁴ This offender is placed in "a single social setting" with patience and support provided him.⁴⁵ How "a simple social setting" can be established, especially within a prison, is not specified. The Walnut Street Jail and The Pennsylvania System of Prison Discipline tried to establish such a setting and failed for the reasons set forth earlier.

The prison classification system being implemented in New York City will be a valuable tool for rational prison management. Entering inmates will be segregated after an interview with a psychiatric social worker into 8 categories: minimum security, maximum security, medical, alcoholic, addict, homosexual, psychiatric and suicidal. In this way the institutional routine can be managed most effectively. An appropriate level of security, observation & medical attention where needed will be provided to each group and the institutional routine will be stabilized; especially as tight controls are placed on those in maximum security and in the psychiatric (read dangerously psychiatric) wing. With inmates well classified and chaplains and counselors available for tension reduction and emergency counseling, incidents will be prevented. An ounce of prevention by inmate classification is much more inexpensive than a pound of cure.

New York City, though, is not ready for the nuances of classification and counseling suggested by the Task Force on

Correction. It is however cognizant of the virtue of orderly classification opting for 8 areas of classification rather than 2 as required by statute.

Rehabilitation

After all of this expense , does prison "rehabilitate"? Many observers don't think so, and history tends to discount the rehabilitation rhetoric.

In 1974, Professor Robert Martinson of the City College of New York published an analysis of 231 correctional programs conducted between the mid 1940's through 1967. His startling conclusion was that "with few and isolated exceptions, the rehabilitation efforts that have been reported so far have had no appreciable effect on recidivism."⁴⁶ In September 1974, Attorney General William Saxbe seconded that judgment by pronouncing rehabilitation a "myth", at least for violent criminals, his definition of anyone from a murderer to a burglar. "The solution to the crime problem was not more rehabilitation programs, he maintained, but more punishment."⁴⁷ The myth of rehabilitation was being challenged in earnest for the first time since its inception in 1870.

In 1870, as the reformatory was replacing the antiquated and bankrupt Auburn system as the mainstay of the state penal system, the first Congress of the National Prison Association (forerunner of the American Correctional Association) was meeting in Cincinnati, Ohio. There, the members of that body endorsed a new Declaration of Principles for the operation of the prison system. The declaration was a truly majestic sounding document that began the renaissance of the corrupt and faltering prison system through the development of the reformatory. The Irish System was the inspiration for the

reformatory and the group's creation.

"The purpose of imprisonment should no longer be 'vindictive punishment' the declaration announced, but the 'reformation' of criminals."⁴⁸ "Granite walls and iron bars, although they deprive the criminal of his liberty and inflict a just physical punishment,'declared the keynote speaker, 'do not work that reformation into the soul of the man that will restore him to society regenerated and reformed... It is left to the philanthropic and Christian sentiment of the age to devise ways and means to elevate the unfortunate and wayward to the true dignity of manhood."⁴⁹ Reverend F. H. Wines concluded the proceedings, "My heart is almost too full for utterance. We have all, I am sure, caught the inspiration of this great occasion. Let us, then, go down from these heights of social, intellectual, and spiritual enjoyment, to toil faithfully, resolutely, persistently in our respective fields of labor, and so fulfill the high mission assigned us by Providence - The regeneration and redemption of fallen humanity."⁵⁰

The theme and the enthusiasm of the gatherings remained remarkably constant through 1966 when the present, Mr. Harold V. Langlois described in his address "...a new edition of the Manual of Correctional Standards: It permits us to linger, if we will, at the gates of correctional Valhalla - with an abiding pride in the sense of a job superbly well done! We may be proud, we may be satisfied, we may be content."⁵¹

Many authors, most notably Jessica Mitford, Ron Goldfarb,

Linda Singer and Lloyd Ohlin, have viewed the 1870 Declaration of Principles and the subsequent pronouncements of the American Correctional Association conventions as the standard against which modern correctional programs should be measured. The conventions of the ACA and the fervent, sometimes military pronouncements of ACA presidents should be viewed in a different light. Correctional work and the role of the individual prison manager, budgeter, planner or correctional officer is a difficult one not only because it is sometimes dangerous or open to public criticism, but because it is so unsure. Persuading a correctional officer in an often bare, frequently overcrowded and sometimes ethnically and racially homogeneous institution that he is participating in a just and worthwhile project is a difficult task. At the ACA convention, the troops are rallied for another year. Inspirational copy is generated for correctional journals. Prison shop talk abounds in the midst of a gaggle of gadgets and a parade of programs. The ACA president gives inspiration to those wardens, correctional officers and professionals assembled and a good time is had by all.

Just as the statements of a military officer, AMA presidents and religious leaders should not be taken as indicative of the essence of foreign policy, health policy or the bible, so should critics of the prison system look for a more steady starting point for the criticism of the prison system.

Lloyd Ohlin suggests that with regard to the basic goals

of the 1870 Declaration of Principles, "There are questions as to whether they are appropriate today in a post-industrialized society." The President's Commission on Law Enforcement and the Administration of Justice as well as the publication of "Struggle for Justice", he suggests, indicate that there is a new readiness to re-examine basic philosophical assumptions about "...The place of punishment and treatment in a system of crime control."⁵² The obligation of corrections to punishment and treatment as contradictory goals gives administrators "much discretion with regard to classification, segregation, work assignments, education and training programs, discipline etc." It is charged this is discriminatory.

Ohlin cites five important trends in corrections: decriminalization of victimless crimes such as alcoholism, drug use and truancy as well as a general lessening of the use of the criminal sanction, diversions and deinstitutionalization because "prolonged confinement is self-defeating" and the "costs exceed the proven values,"⁵³ enrichment of alternatives such as community treatment, development of the capacity for competent policy evaluation and finally protection of the rights of convicted offenders through use of standards and guidelines for correctional procedure.

Wildcat

The Wildcat Service Corporation was created by New York's Vera Institute of Justice to "help rehabilitate and employ ex-addicts." It is the largest of Vera's supported work projects.

Wildcat is a private, not for profit corporation which employs 1400 formerly unemployed ex-addicts and ex-offenders. Founded in July 1972, "Wildcat's object is to prepare its workers for non-subsidized jobs in industry or government; and to do so through public service activities useful to the community."⁵⁴

The Vera Institute describes the philosophy behind Wildcat:

"At Wildcat's heart is a belief in the work ethic and in the power of work as a rehabilitative force. The supported work programs grew from the conviction that people who have been viewed as unemployable, because of a history of drug addiction, alcoholism, or crime, can work productively in jobs where the problems of the chronically unemployed are understood and offset by sensitive management."⁵⁵ Applying the typology established by the Task Force on Corrections, Wildcat is for the "rehabilitation" of the offender, providing him with self confidence, good work habits, and a basis for applying for work in the outside world as a public servant or private employee.

Wildcat is an important development at this point in correctional history. Its effects promise to be widespread,

as the principle of supported work is being spread to twelve other cities which are creating supported work, demonstration projects similar in design to Wildcat.

Wildcat obtains its clients on referral from drug treatment programs. Individuals are eligible for Wildcat if they are a resident of New York City, at least 18 years old, a former heroin addict now either stabilized on methadone or drug free, enrolled in a drug treatment program for at least the past three months, unemployed for at least 12 of the past 24 months and currently receiving or eligible for Supplemental Security Income benefits pursuant to Social Security Administration regulations as they pertain to Wildcat employees. "Nearly all eligible applicants are accepted. A typical employee is a former heroin addict (98%) stabilized on methadone (77%) or drug free (23%)."⁵⁶ There is also an ex-offender project at Wildcat whose participants are 83% ex-addicts. Overall, the typical Wildcat employee is black (62%), Male (88%), unmarried (64%) and 28 years old. He has been arrested 8.2 times and convicted 4.5 times. Three fourths of the experimentals had not completed high school and 80% had not worked one day in the six months prior to program entry.* Wildcat employees, then, are from the segment of the publicly assisted population which is chronically unemployed, has a substantial criminal record, is lacking in education and skill and is a persistent burden to the taxpayer.

*From "Wildcat: The First Two Years"

Wildcat salaries exceed that which would be earned on welfare but are less than that of outside employment. Starting wage is \$95 per week with merit increases possible to a maximum of \$115. The average wage is \$100.

The jobs provided by Wildcat or agencies which hire Wildcat sponsored labor provide little in the way of on the job training. As Lee Friedman explains, "...to the extent that the value of the goods and services delivered is emphasized, Supported Work resembles an employment program rather than a program designed primarily to develop human capital (though some of the basic skills, like punctuality, might get developed."⁵⁷

Wildcat sponsored over 50 different work projects and employed 3,800 men and women in its first three years. These included the painting of 30 feet of curb in front of each of the 103,000 fire hydrants in the city, messenger service for municipal agencies, maintenance work in public buildings, making police barriers, taking bets at two of the City's Off-Track Betting Parlors (OTB), repairing tires at police stations, comparison shopping for the poor and taking older people to Medicare appointments. Somewhat more skilled Wildcat jobs included renovation of abandoned buildings, making maps and charts for the City Planning Commission, keeping libraries open on weekends, doing research and clerical work, preparing architectural plans for microfilming and acting as interpreter for Spanish speaking hospital patients. For the most part Wildcat work is unskilled, is done for the municipal

service agencies in New York City and offers few entry level positions which will allow advancement up a career ladder upon program completion. The costs and benefits of the Wildcat program which are attributed to society, the taxpayer and the participants by Lee Friedman produce some interesting results. Friedman's social cost benefit analysis compares the opportunity cost of the "real" resources used, labor, management, equipment, material and space, with the "social value of the outputs of the program."⁵⁸ The results of the social cost benefit analysis is as follows:

1. Value Added by Program to Public Goods and Services	\$4519
2. Post Program Experimental Earnings	1154
3. Savings from Crime-Connected Costs	
(system)	86
(crime reduction)	207
4. Drug Program Participation	-----
5. Health	(285)
	<hr/>
Total Social Benefit	\$5681

Costs:

1. Opportunity Costs of Supported Employees	\$1112
2. Staff and Non-Personnel Expenses	2362
	<hr/>
	\$3474

Benefit-Cost Ratio: 1.64

Friedman follows his analysis with a dutiful quantitative sensitivity test of his results and discovers "It is only in cases both where benefits are less than 50 percent of the estimated ones and costs have been underestimated that a

judgment that the program would require net benefits from the future effects."⁵⁹ Longer term benefits are not, therefore, included in his study.

Friedman's analysis deserves a closer look with regard to naming and accounting of benefits and costs. "Value Added by Program to Public Goods and Services" is measured by computing the value to the city of the services performed. This was accomplished by comparing the amount that the city would have paid for that service had it paid an outside contractor or a city employee. For example, Fire Zones cost five dollars a piece to paint and police barriers \$24 each to construct. Previously, outside contractors and members of the police force (not necessarily officers although Friedman is unclear whether barrier work was done by civilians employed under CETA, active members of the force or policemen on restricted duty) were assigned to do the job. Mr. Friedman does not address himself to consideration of what these displaced workers are to do within the sluggish New York economy or what the effect would be of an eliminated worker equivalent from the police force. It is not even clear that new production results from the program. At the very least, the first benefit is overstated.

The second benefit, "Post Program Experimental Earnings" refers to the earnings of Wildcat employees which exceed those of a control population. This figure was based on a comparison between the two groups over the short two year period from the programs inception to the time of analysis. The

"Health" benefit entry and "The Crime-Connected Cost" savings also derive from this cohort analysis of 120 experimentals and 109 controls. Cohorts are compared with regard to educational enrollments, health and received welfare payments with the following results:

60

The average experimental spent 4.85 days in the hospital per year, while the average control only spent 2.73 days there. Additionally, the average experimental made a non-routine visit to the doctor 2.43 times per year. The average control made 2.07 such visits. 1.64 routine visits were logged by the experimentals versus 1.56 for controls.

As for criminal activity, verified arrest records were used to ascertain that the average experimental was arrested only .05 fewer times per year than the average control.

Friedman's calculations based on these comparisons leave much to be desired. In the area of education, he uses data on average yearly income increases "expected for the general public; making an arbitrary and very conservative assumption that these increases will accrue each year for 25 years, and

and using a 5 percent discount rate, the present discounted value of increased future earnings over the average experimental is a bit under \$500." No mention is made of the labor market position of the ex-addict largely black ex-offender population which might have bearing on this number. Averaging results of expected earnings from training and education is a questionable practice in any case. None the less, this cited advantage which controls have over experimentals in terms of human capital is overlooked in the Social Cost Benefit calculation.

"Post Program Experimental earnings refer to the average earned income received by experimentals after leaving the program from non-supported employment. Again no mention is made of the source of this employment and possible displacement effects resulting from it. The discussion on the third year Wildcat report will amplify the possible pitfalls of this assumption.

The \$293 "Crime Connected Cost" reduction is fundamentally without basis. Firstly, the data on rearrest is too shallow for use. Were experimentals and controls arrested for the same offenses? Do both groups have the same chance of arrest for the same crimes? A police officer might easily react differently to a Wildcat employee than to a control with an identical profile as Wildcatters enjoy a good reputation in the Criminal Justice System in New York. Greeting Cards from that organization can be seen in many city offices and Wildcatters wear proudly their Wildcat T-Shirts as they work each

day, many in police stations or on police sponsored projects.

The .05 arrest reduction for experimentals versus controls remarkably small and not elaborated upon by Mr. Friedman. In continuing his analysis of Criminal Justice Cost reduction, though, Mr. Friedman hits upon an average operating cost per non-traffic arrest in New York City of \$1705. Arrests vary substantially in terms of cost, so again the analysis is hampered by inadequate data. The response of the New York City Criminal Justice System to a marginal change in the demand for its resources is also difficult to estimate. A police planner in the New York City system once remarked to me that the number of policemen employed had no measurable effect on the amount of crime in the city. They do, however, affect the number arrested. However, what we are speaking of here is the size of the pool of arrestable individuals. Studies such as one by Professor Gary Marx of MIT on proactive policing work suggest that the supply of potential arrestees is almost inexhaustible or else that the demand for them creates the supply.

Friedman goes on to cite "two independent studies which suggest that the ratio of identifiable losses (e.g. value of damaged property, loss of earnings and medical expenses from bodily harm) to the system costs is 2.42."⁶¹ From his meager .05 arrest reduction figure, he can then derive a crime reduction savings of \$207 as well as "non-quantifiable benefits of reduced crime."⁶³ Each arrest, then, costs the system and society $3.42 \times \$1705 = \5841.10 . A program, then, which aimed

at reducing recidivism and eliminated one arrest per participant out of the 6 per person committed would save the city and society more than the Wildcat program did in 1974. This point is conspicuous by its absence.

The calculation for health appears to be correct on the benefit side. No explanation is offered however for the excess use of health resources by Wildcat employees over controls.

On the cost side, the average earnings of a control is used as a measure of the opportunity cost of labor. This amounts to \$1112 per year. A judgment has been implicitly made in the calculation of this figure, namely that only legal income be considered. This has the result that some seemingly contradictory aspects of the law are submerged in the accounting system. For example, a fellow who takes bets at O.T.B. would increase value added while the local bookmaker would not. Admittedly this is an extreme case, but it does show that the cost benefit accounting can contain value judgments, especially in the measurement of Value Added. More significantly, the \$1112 may not be a true opportunity cost. The direct opportunity cost of labor is equivalent to the social value of the marginal product foregone as a result of the new project coming into being. In as much as the controls suffer substantial underemployment, it is incorrect to say that a decrease of one in the size of the underemployed labor force will yield a decrease in social production. The opportunity cost of labor could very well be near zero.

The 1.64 social benefit-cost ratio derived by Friedman could vary significantly depending on which external factors are taken into consideration. Faulty, inadequate and perhaps unmeaningful crime and arrest related data, and lack of documentation of the increased social product created by the program and its aftermath tend to depress the ratio. Unfounded labor market assumptions and a miscalculated opportunity cost of labor tend to increase the ratio. The results of the social cost-benefit ratio would seem to be inconclusive.

Taxpayer Benefits and Costs

Here a comparison is made between what the taxpayer is asked to forego in the first year, and what he receives in return in that year from the program.

Benefits:

1. Public Goods and Services	\$4519
2. Welfare Reduction	1797
3. Increased Income Taxes Collected	311
4. Savings from Crime Reduction	
	(system) 86
	(crime) 207
	<hr/>
Total Taxpayer Benefit	\$6920

Costs:

1. Supported Work Costs	\$6131
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Benefit-Cost Ratio: 1.13

The same unsure figures on Public Goods and Services as well as the estimate on "Savings from Crime Reduction" are used to inflate the Benefit-Cost ratio. The figure for welfare reduction seems to refer to the amount received by single individuals with no dependents. Were the Wildcat employee a family man with dependent children the figure would be larger. Similarly, reductions in welfare from employment of these of different marital and family status involved in other supported work programs would be more substantial than that exhibited by this pilot program. The taxpayer benefit from the Wildcat experiment might also be understated if indeed higher paid public employees are displaced by low wage Wildcat personnel. The prospects for taxpayer gain here could be substantial if developed over the long term during a period of

management reform, job restructuring and layoffs or attrition.

Welfare Benefits and Costs

Direct cash Welfare payments of \$1.19 are sent to Wildcat for each hour worked by a supported employee. This adds up to \$1237 per experimental man-year. The average experimental also receives \$384 directly from welfare and \$458 in indirect benefits for a total welfare payment of \$2079. The average control receives \$2639 in welfare benefits per man-year. Therefore the "Welfare Department" derives a benefit cost ratio of 1.27 for its "investment" in supported work.

The only questionable calculation here is the presence of a \$1797 welfare reduction in the taxpayer calculation which is unreconciled with the figures in the welfare calculation. If the difference derives from the presence of administrative costs in the welfare department, i.e money for client supervision and information gathering, then this should be noted as the Wildcat corporation apparently provides a mechanism which eliminates the need for the case worker.

Accepting the Welfare Benefit-Cost calculation, another interesting result can be obtained in examining the costs and benefits to the federal government. If we assume that the federal government pays 50% of welfare costs then:

Federal Government Benefits and Costs
(Per Experimental Man-Year)

Benefits:	1) Foregone Welfare Payment-Federal	\$1320
	2) Increased Income Taxes Collected	<u>311</u>
	Total	\$1631
Costs:	1) Welfare expenditure for Wildcat-Federal	1040
	Benefit-Cost Ratio	1.57

And this, again, is a conservative estimate.

Participant Benefits and Costs

Keeping in mind that the Participants are not being asked to forego any income in order to participate in the program and additionally that no training results from participation, the calculation is as follows:

Participant Benefits and Costs

Benefits:	Wages and Benefits	\$3769
	Out of Program Earnings	<u>1154</u>
	Total	\$4923
Costs:	Welfare reduction	1797
	Increased Taxes	311
	Foregone Earnings	<u>1112</u>
		\$3220

Benefit Cost Ratio: 1.53

Here the assumptions with regard to legal income and the labor market states of participants are most apt to produce misleading results.

Third year data gives a better understanding of the products of the Wildcat program. Between October 27, 1972 and June 30, 1975 12% of those ever employed at Wildcat obtained non-supported jobs. Non-supported work was attained in four ways: by promotion to the Vera or Wildcat staff, by being "rolled over" to the payroll of the agency in which he had been working, through placement by job development staff, or through finding a job on his own. These individuals found work at a time when the New York City Unemployment rate rose

from 6.5 to 11.9 percent (9/72 to 9/75)⁶⁶. The jobs so attained were held for at least a year by 86%, with "roll-overs" outperforming those with placements outside the areas of employment they were familiar with.

Twelve percent graduation is not that encouraging a figure. Vera surmised that "Job development data suggested that Wildcat employees continued to face formidable barriers to obtaining non-supported work." and in the same breath, "Frequently, they were unattuned to employer expectations and lacked requisite job skills."⁶⁷ Foregoing a more thorough analysis of the "barriers" and resolving that the problem lay in the laps of the Wildcatters, the Employee Services Unit was set up in December 1974. The ESU provides "a vocational counseling system to expand support and job counseling services...counselors are assigned a caseload of 100 crew members whom they help with problems on the job at Wildcat, and with long-term vocational planning from intake through departure."⁶⁸

The success of the Wildcat program in its first year diminished somewhat in the second. Experimentals earned \$573 less the second year than the first year while controls earned \$767 more. During the second year, 17% fewer of experimentals and 2% fewer of controls (75% and 48%) worked at some point; the percentages decreased to 61% and 41% respectively in the last quarter. The proportion of experimentals on public assistance rose from 22 percent to 32 percent; while for controls it declined from 72 to 65 percent. Still, twice as

many controls received welfare as experimentals, and more of it at that.

As for criminality, the proportions of experimentals reporting use of any illicit drug (excluding marijuana) was 18% the first year, 34% the second; for controls, 24 and 30 percent. Heroin use was higher for controls the first year (9% vs. 2%) but similar the second year (7% of controls vs. 9% of experimentals). Cocaine was the preferred drug.

In matters of criminality, both experimentals and controls showed similar numbers of arrests. Twenty-three percent of experimentals and twenty-two percent of controls were arrested in the second year. During the second year, 30% of experimentals and 33% of controls reported hustling, compared to 35 and 39% the first year. Total numbers of arrests were not reported. From the short term and most evidently from the long term perspective, Wildcat would appear to be a disappointing program, especially from the viewpoint of the participants.

Corrections and the Dual Labor Market

Dual Labor Market Theorists would be very much concerned that when a convict has completed his term or is put on work furlough or parole that he or she be able to resume his or her position in the community with the means and the opportunity to earn a decent living. While in prison opportunities should exist for productive work and training for inmates that will make good use of their time of restricted freedom. Concurrent with this focus on reform, Dual Labor Market Theorists would continue to encourage the elimination of barriers between the primary and secondary labor markets which would have, as one effect, the development of viable alternatives to the "hustle" for many ghetto residents. Dual Labor Market Theorists would be very much concerned with the racial aspects of the correctional system and advocate policies which would remove job barriers through mechanisms like the EEOC. They would criticize present inmate manpower programs as woefully inadequate.

The newer uses of prison labor, namely work release, Correctional MDT programs, Supported Work and Community based programs suggest the relevance to correctional programs design of the dual labor market hypothesis. Several labor economists, most notably Peter Doeringer, Michael Piore and Bennett Harrison hypothesize the existence of such a labor market. The distinction between the two labor markets is described by Michael Piore:

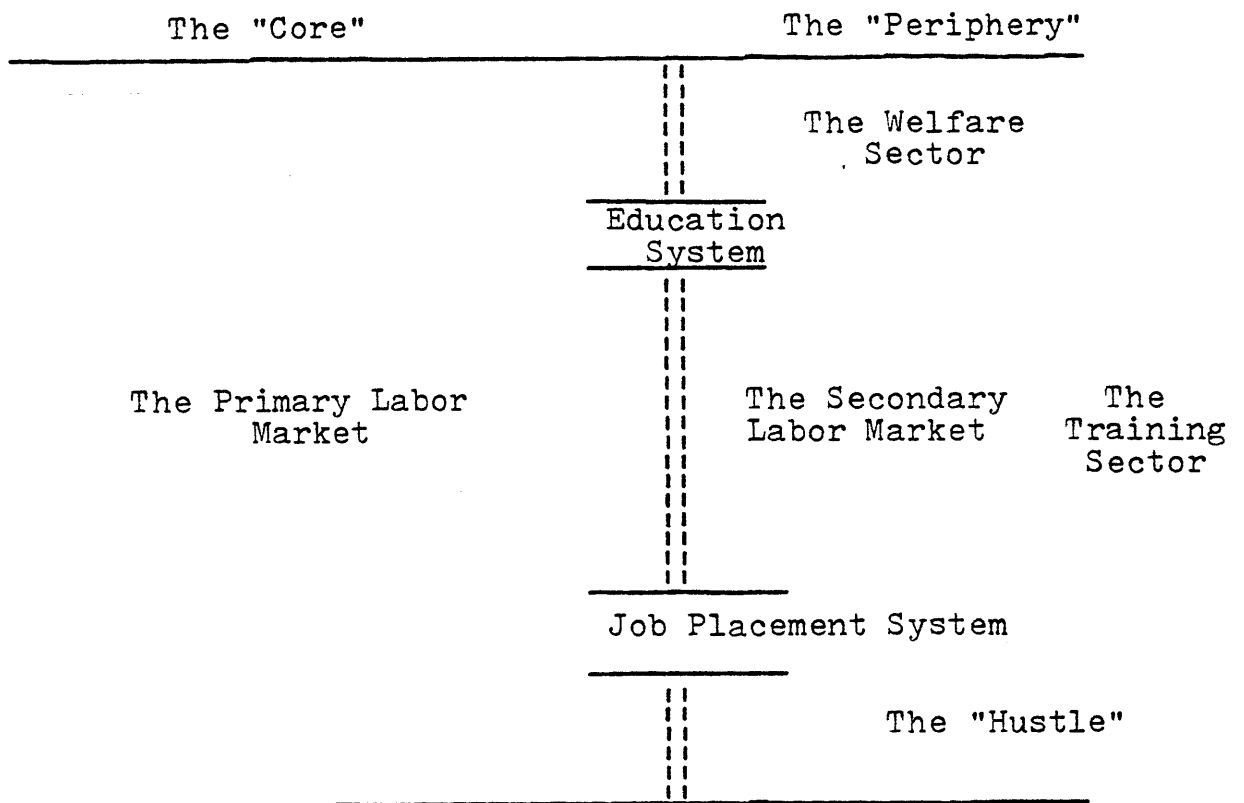
"...The primary market offers jobs which possess several of the following traits: high wages, good working conditions, employment stability and job security, equity and due process in the administration of work rules, and chances for advancement. The...secondary market has jobs which, relative to those in the primary sector, are decidedly less attractive. They tend to involve low wages, poor working conditions, considerable variability in employment, harsh and often arbitrary discipline, and little opportunity to advance. The poor are confined to the secondary labor market."⁶⁹

Doeringer, Piore and Harrison in their discussions of the secondary labor market pay a good deal of attention to "the roles of the worker's attitudes, motivations, and work habits and the way these interact with community variables such as the welfare system."⁷⁰ Piore speaks of secondary workers' "inability to show up for work regularly and on time," and of "the attractions of such illegal activity, as well as life

Patterns and role models... that foster behavioral traits antagonistic to primary employment".⁷¹ "Harrison calls attention to 'life styles' of workers that make them 'psychologically as well as technically' unable to move out of the secondary (or ghetto) economy."⁷²

Harrison presents a model of the segments of the secondary labor market in his book "Education, Training and the Urban Ghetto" and their relationship to the primary labor market.

Figure 24
The Dual Economy



To the periphery, we can justifiably add the various elements of the correctional system. A prison industries graduate would feel just as comfortable referred to a dead end job in the private sector as released to a job with Wildcat Messenger Service.

Piore makes a set of observations particularly important to consideration of present rehabilitation schemes. He suggests, "The most important characteristic distinguishing jobs in the primary sector from those in the secondary sector appears to be the behavioral requirements which they impose on the work force, particularly that of job stability." Secondary workers are generally barred from primary jobs not because they lack certain 'work skills' but because they tend to work unreliably and intermittently."⁷⁴ Other assertions relative to the dual labor market put forth by Piore are:

- that "certain workers who possess the behavioral traits required to operate effectively in primary jobs are trapped in secondary markets because their superficial characteristics resemble those of secondary workers."⁷⁵ Two kinds of superficial discrimination are mentioned, discriminated by employers who simply don't like workers with certain characteristics and so called statistical discrimination. In the latter case, "employers tend not to employ members of certain groups because their superficial characteristics seem to be statistically associated with undesirable behavioral traits like unreliability."⁷⁶

- that "the distinction between sectors is not so much technologically as historically determined. Many kinds of work can be technologically performed in either sector. 'Work normally performed in the primary sector is sometimes shifted to the secondary sector through subcontracting, temporary

help services, recycling of new employees through probationary periods and so on."⁷⁷

- that " 'the behavioral traits associated with the secondary sector are reinforced by the process of working in secondary jobs and living among others whose life style is accomodated to that type of employment.' Those who are channeled into the secondary sector as a result of discrimination 'tend over time, to develop the traits predominant among secondary workers.' This grows both from work patterns on the job and from life style in the ghetto or in the family."⁷⁸

- finally, that "a wide variety of historical forces have interacted to increase the likelihood of sharp separations between the two markets. The increasing importance of skills acquired through on-the-job training has raised the incentive to employers to retain some (stable) employees, and has tended to create a division between those jobs and other jobs which do not require such employee retention. Trade union organization and federal social welfare legislation may have 'operated in the post war period to sharpen the distinction between stable and unstable jobs."⁷⁹ (e.g. minimum wages, social insurance tax base ceilings, unemployment insurance tax ceilings) Employees are encouraged to minimize the number of people on their annual payroll.

Using this analytical perspective, we can understand shortcomings in the design of modern offender and ex-offender job programs that may explain the poor results which have developed in attempts to produce stable employment for

offenders and ex-offenders.

All correctional programs aim in some way to change the habits and attitudes of offenders toward their role in society and most importantly toward regular, socially acceptable work.

Prisons have historically, for fiscal reasons and to maintain prison discipline, tried to provide work for inmates. Prisons today provide work that is almost wholly of a secondary market character. Such work is semi skilled or unskilled, intermittent and not linked with the primary labor market of the outside world. The low wages of prisoners provide little or no savings to aid them in their re-entry to the outside world. More often than not, the only assets held by the newly released offender are train fare and the address of the nearest welfare office.

Community based programs for offenders and the job placement programs which serve the ex-offender do little to successfully provide primary employment for the offender. MDT programs when developed offered training for "...skills in high demand in the community but for which there was fierce competition for the openings available (e.g. welding, auto mechanics, auto body repair)."⁷⁹ Other types of training offered were for secondary labor market positions in hospitals and restaurants and for jobs for which there was no market (e.g. technical writing). Pieczenik suggested that a "...strong educational background was needed for some training (e.g. refrigeration repairs, radio and T.V. repair)."⁸⁰ The latter

observation, beyond being suspect in view of manpower gains made with groups thought to be untrainable (e.g. see Harrison, Education, Training and The Urban Ghetto; Friere, Pedagogy of the Oppressed), still begs the question of where "competition" ends and inadequate "education" begins.

When job provision is cited as a correctional goal, it is offered through job referral services. The referral services are few alleged by serving 13% of institutions which released federal prisoners in 1972. However, a survey in July 1972 revealed that of 153 inmates released in that month from five federal institutions offering job referral service, 130 did not even know that the job placement service existed!⁸¹

The Racial Distribution of Inmates

The prison and jail populations are disproportionately black and from 1960 to 1970 they were increasingly so.

"Nearly 2 percent of the black male population, and four percent of these aged eighteen to thirty-four were incarcerated."⁸²

Table 15-4. Individuals in correctional institutions, 1970

Age	White male	Black male	White female	Black female	Per- cent White males	Per- cent black males
Total	182,096	128,673	7,960	6,419	0.3	1.8
14 to 17 years	4,550	5,029	428	129	0.1	0.5
18 to 24 years	59,920	47,918	2,480	2,480	0.6	3.9
25 to 34 years	56,184	40,974	2,312	2,004	0.5	3.3
35 to 44 years	32,699	21,569	1,058	1,012	0.3	2.0
45 to 64 years	25,760	13,193	929	778	0.1	0.8
65 and over	2,983	890	387	16	-	0.1

White males were only one sixth as likely to be institutionalized as blacks and between 1960 and 1970, "while the correctional population fell from 349,000 to 332,000, the non-white proportion increased from 38 to 43 percent."⁸⁴ The significance of the total correctional system for the black population is evidenced by this startling analysis by Levitan, Johnson and Taggart:

"Many more persons on probation and parole are also under the jurisdiction of the correctional system. While no exact numbers are available, there were 4.6 juveniles and 1.6 adults on parole or probation for each one institutionalized

in 1966. If this same ratio held true in 1970, it would mean that approximately 232,000 black males were on probation or parole, and the true figures may be higher because of the increasing use of these non-institutional treatments. At a minimum, then, 5 percent of the black male population was under the supervision of the correctional system in 1970, and roughly one of ten aged eighteen to thirty-four."⁸⁵

If true, this observation suggests that the correctional system has an important influence on the black community. In the ghetto, "studies variously estimate that between a half and three-fourths of ghetto youths have serious encounters with the law before reaching age twenty-five.

In the New York City system, 75% of prisoners are detained awaiting trial while 25% are incarcerated following sentence. 64% are Black and 25% are Hispanic. Sixty percent of the offenders leaving New York State prisons reside in New York City. Within that system, 58% are black, 28% are white (including Hispanics other than Puerto Ricans), and 14% are Puerto Ricans.

Minorities and other offenders do not receive vocational preparation in the institutions as a rule throughout the U.S. New York is no exception.

Equal Opportunity and the Offender

Given the absence of data on the success of efforts to remove barriers to employment of ex-offenders, examination of the track record of such policy initiatives overall must suffice. The starting point for anti-discrimination policy was Title VII of the 1964 Civil Rights Act which outlawed discrimination on the basis of race, color, religion, sex, or national origin in hiring, compensation and promotion. This act led to the creation of the Equal Employment Opportunity Commission which was empowered to enforce its provisions. At first its powers were limited to information gathering, filing of amicus curiae briefs in support of anti-discrimination suits brought by others and mediation to encourage voluntary compliance on the part of violators. Amendments in 1972 expanded the scope of the law and empowered EEOC to act as a plaintiff bringing civil actions in federal court on behalf of those who had suffered from discrimination. Charges of discrimination brought to EEOC tripled from 1970 to 1972, reaching over 47,000 during fiscal 1972. Six of ten alleged racial discrimination. Eighty-five percent of complaints were against employers, the rest against unions, employment agencies and other parties.⁸⁶

The impact of EEOC was not significant in its first six years. "In fiscal 1972 the Commission completed action on over 2,800 cases without a formal decision, and in only 412 of them was a written agreement achieved; of the 970 cases closed after a decision was issued, 314 ended with agreements."

In some firms where the EEOC had negotiated an agreement, the agency had not checked in later years to insure that discrimination had resumed. Other times, the agency was found to be practicing a policy of triage whereby one in four firms changed with discrimination by the agency had better minority employment records than similar firms.⁸⁷

As Levitan, Johnson and Taggart report:

"The overall effects of the EEOC activities were usually not discernable. In Memphis, Tennessee, where sixteen successful conciliations were negotiated in 1967 and 1968, minority employment among employers subject to the law increased only from 29.1 to 29.7 percent for men between 1966 and 1969. In Atlanta, Georgia, where eight conciliations were successful during 1967 and 1968, minority employment among males dropped from 16.5 to 16.0 percent."

The 1971 *Griggs V. Duke Power Co.* decision by the Supreme Court expanded the scope of Title VII, stating that it "proscribes not only overt discrimination but also practices that are fair in form but discriminatory in operation. "Here, pre-employment tests that were not job related were ruled illegal as arbitrary achievement tests favored whites in the hiring process. Arrestees were given a boost by the court's decision in *Gregory V. Litton Systems Inc.* which prohibited a company from refusing to hire individuals with arrest records but no convictions. This practice was viewed as discriminatory because blacks are statistically more likely to be arrested than whites.

The EEOC gained new significance in 1971 as a result of the Robinson V. Lorillard Co. decision. This landmark case "established the principle of monetary relief in class action cases and raised the specter of substantial settlement costs."⁸⁸ The fear of litigation has made unions and companies more agreeable to conciliation, among them American Telephone and Telegraph which provided \$15 million in restitution and back pay for female employees and a \$23 million promotion package for women and minorities. Buoyed by this victory and "large restitutions" won from other employers, the EEOC's staff of lawyers quintupled in size in 1973.

This has special meaning for blacks who are disproportionately represented in the offenders population.

The Removal of Licensing Restrictions

Just as data is sparse or inadequate in the tabulation of prison releases per year, so it is also difficult to obtain follow up data on released offenders. Therefore, survey data is used to ascertain the effect of licensing restrictions on released offenders. One such survey by the R.C.A. Institute cover what the U.S. Department of Labor refers to as "old standbys in licensing."⁸⁹ These occupations are barber, cosmetologist/beautician, practical nurse, plumber and worker in an establishment selling alcoholic beverages.

The results are as follows:

In the field of barbering, "forty-six states and the District of Columbia have statutory provisions containing restrictions on the licensing of former offenders. Forty-five of these jurisdictions have a requirement of good moral character. Twenty-four jurisdictions deny a license to an applicant convicted of a felony or a crime involving moral turpitude."⁹⁰ Institutions often train inmate barbers to work in their shops, so this barrier is significant.

As for cosmetologist/beauticians, only three states, Massachusetts, North Carolina and South Carolina have no restrictions against the licensing of the ex-offender. Forty-six jurisdictions require good moral character, twenty-six prevent licensing of felons or those guilty of moral turpitude and in twenty four states both requirements must be met.

Practical nursing is restricted in all states except Indiana, Iowa, Montana and Pennsylvania. All the other states

and the District of Columbia require good moral character, twenty four exclude the felon or the morally turpid and twenty-three name both conditions.

The plumbing profession is basically free of restrictions against hiring the ex-offender. Only Connecticut, The District of Columbia, Kentucky, Maryland, Michigan, Texas, and Utah require that he have good moral character.

Ten states, Arkansas, California, Connecticut, Indiana, Iowa, Louisiana, Missouri, New Jersey, New York and Pennsylvania place restrictions on the "manufacturing, retailing, wholesaling or distribution of alcoholic beverages by ex-offenders."¹⁶ New York by statute prohibits employment of ex-offenders in "establishments where alcohol is sold for on-premise consumption. This is significant because, as the R.C.A. Institute report notes "...it has been estimated that one-third of the low skilled service jobs in the New York City area are affected by the New York law."⁹¹

Other restricted occupations cited by the R.C.A. Institute are chauffer, restricted in twelve states, manicurist in sixteen, masseur in eleven, hearing aid dealer in ten, junk dealer in five, boxer/wrestler in six, physical therapist in twenty-two, tree surgeon (?) in four and midwifery in sixteen jurisdictions. Professional licensing in the areas of medicine, dentistry, accounting, teaching and law requires "good moral character" in almost all states.

A survey of law schools in 1970 revealed that 13% would automatically reject a felon and 40% would reject him in the

absence of mitigating evidence. Only 10% said that a felony conviction would not disqualify an applicant. Misdemeanors result in automatic disqualification for 1.4% of law schools; 28% reject in absence of mitigating evidence while 22% do not consider a misdemeanor as grounds for denying admission.⁹²

Lawyers who commit felonies or crimes of moral turpitude are disbarred. However, those lawyers who are disqualified are advised by the A.B.A. Code of Responsibility that upon expiration of their disqualification it is the responsibility of his fellow lawyers to assist him in regaining his license and "...in being restored to his full right to practice."⁹³

The Supreme Court has been reluctant to supercede the judgement of state legislatures with regard to occupational licensing. However in *Schwane V. Board of Examiners*, 353 U.S. 232 (1956), the court said:

"A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection clause of the Fourteenth Amendment."

"A state can require high standards of qualifications, such as good moral character or proficiency in its laws, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law..."⁹⁴

The District of Columbia Court of Appeals made a more substantive ruling in the case of *Miller V. District of Columbia Board of Appeals and Review*, 294 A. 2d 365 (1972)

in part stating:

"Unless there are some standards relating the prior conduct of an applicant to the particular business activity for which he seeks a license, the power to deny a license inevitably becomes an arbitrary, and therefore, unlawful, exercise of judgement by one official, a graphic example of which is so clearly revealed by the record in this case.

"We command... the need to clarify the requirements for business licenses by adopting appropriate regulations which, among other things, will define the public health and safety dangers posed by the past histories of the license applicants with respect to each particular type of license, so that the danger of arbitrary administrative action based upon unarticulated and unannounced standards is removed and the possibility of constitutional assault upon the general licensing statute is blunted."

The decision stimulated a review by Maryland's Attorney General of occupational standards. New York's occupational restrictions are also being altered. Prior to 1973, that state had imposed restrictions, listed in English and Spanish by the New York Urban Coalition, on quite a number of positions which could be filled by ex-offenders. These occupations were political office holder, worker in any firm holding a beer or liquor license, civil servant (some), auctioneer, junk dealer, gunsmith, pharmacist, waterfront worker (some), barber, doctor, physiotherapist, osteopath, podiatrist, dentist, dental hygienist, veterinarian, certified public accountant,

undertaker, private detective, investigator, watch guard, private patrolman, attorney, billiard room operator, notary public, insurance adjuster, bingo operator, beer or liquor dispenser, real estate broker or salesman, check casher and union collector.⁹⁵ This list is under review as a result of a law enacted January 1, 1977 which provides that the ex-offender can be rejected just because he is an ex-offender only if:

"1) There is a direct relationship between your past crimes and the job or license you are applying for.

or

2) Hiring you or giving you a license will create an unreasonable risk to the safety or welfare of specific persons or the general public."⁹⁶

However, as the Urban Coalition hastens to add with regard to the new law "The new rights you have gained do not change what we say on page 8 of this booklet: "Nothing cancels a criminal conviction. Nothing can keep a boss from considering a person's conviction in making the decision not to hire. And, nothing gives anybody the right to withhold the truth about a past conviction."⁹⁷

Institutional Manpower Services

Batelle Columbus Laboratories surveyed 560 federal and state institutions in 1974 and evaluated their vocational preparation programs according to 10 criteria which measured their efficacy as manpower programs. In all but two areas, the number of institutions meeting minimum criteria was well below 50 percent. For example, only 15 percent of the institutions surveyed regularly provided job placement services for their charges. Major weaknesses were found in the areas of relevance of prison training to outside work, number and diversity of available training programs, availability and quality of equipment used in training and availability of vocational counseling and training.

According to the study, entitled Vocational Preparation in U.S. Correctional Institutions: A 1974 Survey, "major weakness of prison vocational programs is their lack of clearly defined goals and their weak commitment to what the authors regard as the primary goal of any training program - the development of job skills to enable inmates to obtain employment upon release."⁹⁸ Only half of the vocational training directors responding to the mail survey regarded skill development as the main objective of their programs. Directors of prison industries and directors of prison maintenance and operations viewed skill development as having even less importance.

As for the training provided, the programs had "limited rehabilitation potential" because "they are geared toward low

status, low-paying occupations, and because they often do not match inmates' vocational interests and aptitudes."⁹⁹ Nonetheless, the programs were popular. 32% of the resident population was enrolled in these programs and 15 percent were on waiting lists for enrollment, a high number considering that in only 32% of institutions were equipment and facilities adequate for the task. At the time of the survey only 4% of the total inmate population participated in work release.

Ex-Offender Employment Policies in Correctional Agencies

In June 1972, the Experimental Manpower Laboratory for Corrections of the Rehabilitation Research Foundation in Montgomery, Alabama distributed a questionnaire to the directors of the departments of corrections in the fifty states and the District of Columbia. Only Oklahoma did not respond. The results were as follows:

1) 44 agencies indicated that they did not prohibit employment of ex-offenders. Of these 38 indicated they had ex-offenders working in their systems at the time of the survey. Maine replied that it did not ask prospective employees about their offender status. Maryland reported the oldest hiring effort, beginning "15 or 20 years" before.

2) Of the 38 agencies that indicated employment of ex-offenders at the time of the survey, 3 agencies did not report the numbers of ex-offenders employed. A total of 280 ex-offenders (264 male and 16 female) were reported employed by the remaining 35 agencies.

3) Twenty-three agencies reported no special criteria for the hiring of ex-offenders. Twelve states and the Bureau of Prisons indicated restrictions in hiring criteria or placement within the system of the ex-offender. Placement restrictions included work in maximum security institutions or work in institutions other than where they had a previous good institutional record while incarcerated. Twenty agencies prohibited hiring of ex-offenders whose offenses fell into certain categories such as Narcotics (7), Alcohol (2), Sex

offenses (8), Notorious or heinous (7), against person (2) or against property (1). Nine state agencies checked "other", gave no explanation other than employment depended on the "need" and otherwise showed that they didn't understand the survey.

Classification by job title of positions held by ex-offenders was done by 33 responding agencies. Job titles were indicated for 240 of the 280 ex-offender employees reported.

TABLE 3
Positions Held by Ex-Offender Employees
in American Correctional Agencies

Positions Held by Ex-Offender Employees	Number of Ex-Offenders Employed	Percent of Ex-Offenders Employed
Maintenance and Service	68	28.3
Counselors	51	21.3
Line Staff Correctional Officers	40	16.7
Teachers and Teachers' Aides	34	14.2
Clerical Staff	33	13.8
Administrators	11	4.6
Minister	1	.4
Physician	1	.4
Other (Not Identified)	1	.4
		100

The jobs of maintenance and service worker, teacher and teacher aide and clerical staff are performed also by offenders

at a number of institutions. These job categories account for 73% of the total. Perhaps some of those hired continued in the positions they held at the institution. In that 80,000 persons were employed by the adult felon institutions and central offices according to the Joint Commission on Correctional Manpower and Training (1969), the meager number of ex-offenders hired by the corrections system can in no way be considered significant. Within institution employment in most non treatment, non security positions can safely be considered the uncontested domain of the inmate population. Other jobs in the institution are either not offered to or not taken by the offender and ex-offender.

Radicals would consider the prison an important element of capitalism and deal with it on that basis.

Their policy emphasis would be on eliminating or circumventing the private forms of ownership and the structure of wage labor that creates patterns of crime and correction among the poor. Radicals would suggest efforts at collective ownership of resources by ex-offenders and political action to gain jobs and improve living conditions within and outside the prison. If crime and correction within a system of private property are uniquely capitalist phenomena, then such "problems" of the correctional system as recidivism can be eliminated by eliminating capitalism on a large scale ultimately and on a small scale in the short run. Radicals would support the initiatives of groups such as the Delancey Street Foundation and FIGHT which work to provide ex-offender job entry as their

primary object. They would chasen those who support job placement and training programs for inmates as positive initiatives for offenders as being unrealistic during a time of chronic offender and ex-offender unemployment and under-employment.

A Radical View

David Gordon's "Economics of Crime" purports to be a radical critique of the liberal and conservative theories of crime and its causes. Gordon's view is that much crime is a rational response to an unequal society and apparently a necessary aspect of a capitalism. He asserts that capitalism relies on a "competitive ideology" to motivate workers in an alienated working environment where the economic security of the individual is uncertain. Naturally then, some workers will find "the best opportunities available to fend for themselves and their families"¹⁰⁰ only by violating a set of socially irresonant, historically bequeathed laws. This phenomenon is particularly evident in the ghetto where the "legitimate jobs open to many ghetto residents, especially young black males, typically pay low wages, offer relatively demeaning assignments and carry the constant risk of layoff. In contrast, many types of crime 'available' in the ghetto often bring higher monetary return, even higher social status..."¹⁰¹

Differences in the number and types of crimes committed by different social groups derive, according to Gordon, from the differential access to jobs and power among the different classes of society. The institutional bias which regulates such opportunities is additionally evident in a system of justice which focusses mainly on crimes committed by the poor. As Gordon sees it, reform of the criminal justice system is impossible without large scale reform of the economic system

and its institutions.

Gordon's analysis of crime seems to rely upon a link between unequal economic power and the phenomenon of crime. It is not a radical model of crime as it assures the same cost benefit calculus on the part of a potential criminal that orthodox observers maintain. Orthodox economic modelers of criminal activity always include a state created "cost" in the potential criminal's decision and never postulate the existence of a society where all criminal activities are perceived as less profitable than legal activities. Never will you come across an analysis which purports to have found an "answer" to crime that will eventually lead to its elimination. Crime in the orthodox economic and criminological systems is inevitable and must be contained by governmental action.

A radical analysis of the phenomenon of crime, as Platt notes, is yet to be written. It will require extensive research into the historical origins of the criminal justice system and a dialectical analysis of the changes in that system as capitalism has developed. The main points of inquiry would be divided into two segments - that of the Criminal Justice System as an important "system defining institution" to use Gordon's phrase¹⁰² and that part of the process which affects men directly as the objects of the system.

The correctional process has in many ways been overlooked as an area of historical, scientific and political inquiry. So much so in fact, that a mythology, a lexicology and even

a romanticism have grown about this mysterious institution. It has its misunderstood heroes in Alexander Maconochie and the Quakers of Pennsylvania. It drowns in poorly understood terms that substitute for meaningful goals. Treatment, rehabilitation, punishment, deterrence, community reintegration and therapy come most readily to mind. The academic community has been of little help in understanding those, all of which are invoked in the name of benefitting the convict and improving his welfare. In my studies, I have found not a single significant correctional program or policy which was ever developed with the betterment of the offender as its sole or even primary object.

Marxists, it would seem, have a wealth of historical documentation replete with political crisis and conspiratorial intrigue that can form the basis for a political economic analysis of the prison. Such an analysis would however be vulgar at best. A Marxian analysis of the development of the prison should make good use of the tools that are central to a critique of capitalism and capitalist enterprise. The dialectical method for one would examine the process of penal development as the progressive resolution of the economic contradictions of the prison. Specifically, that analysis would focus upon the way in which the state's need for a secure and effective penal system was constrained by its role in insuring capital accumulation and otherwise maintaining the legitimacy of the system.

A more rigorous analysis of the prison would relate

penal development to the accumulation, realization and crises of capitalism and examine the role of the prison in containing the revolutionary potential of the reserve army of the unemployed during economic and fiscal crises. In either case, a Marxian analysis of the prison would need to examine its concrete role in maintaining the basic relations of production while the forces of production develop. A rigorous analysis would emphasize, as Gordon in his article does not, the objective role of the prison in securing those relations. The prison as the object and result of the legal process should be the beginning of a radical understanding of crime. It is through the prison that the productive role of a segment of the working class is transformed and through that transformation that the effect of the legal process is realized.

The Delancey Street Foundation

John Maher, characteristically, thinks drug addicts are "bums", "pathetic" human specimens who would ruthlessly exploit their friends and family to support their habit. Maher understands his charges well, having supported his own heroin habit through "burglary, shoplifting, procuring, drug pushers and numbers running"¹⁰³ in his native New York while in his youth.

From 1958 to 1962 John Maher was incarcerated at the Rikers Island facility in New York City. "He was once elaborately tested with ink blots, pegboards, and imbedded figures. 'What d'you make of that?' they asked him. 'And that...and that?' He finally decided that psycho-lockup solitary confinement was preferable and whipped out his cock. 'What d'you make of that?' Later he made the mistake of confiding to a psychiatrist his plans for founding a movement of ex-cons and addicts. The diagnosis? Paranoid schizophrenia with delusions of grandeur and compensatory fantasies.' "¹⁰⁴

With the development of the Delancey Street Foundation, Mr. Maher has created an institution which converts drug addicts and other ex-offenders into restaurant workers, moving men, construction workers, business men, salesmen and otherwise useful citizens. He is especially proud of the fact that he has done it without federal government or foundation assistance and without the flock of psychiatrists, psychologists, social workers, counselors and "creep

consultants" which dominate "most other projects."¹³⁷

"According to Maher, he started Delancey Street with a \$1,000 gift from an underworld loan shark."¹⁰⁵

The program of the Delancey Street Foundation rests on two principles which have been the basis for the success of the downtrodden in our country since its inception - a commitment to community with recognition of the responsibility that commitment implies, and a strong desire on the part of the members of that community to work hard for what they get. The unity and purpose of the men and women who live and work at DSF is apparent to the visitor as he enters their San Francisco residence. Prominently displayed near the entrance is an advertisement which ran in the New York Daily News:

"The trouble with New York is that some punk is always ripping off your mother while you're out ripping off someone else."¹⁰⁶

Foundation members think of themselves as a cross between a family and a lifeboat crew in hostile waters, working together to make something of themselves.

At the Delancey Street Foundation, the progress of the client is the most important product. No one associated with the foundation, including Mr. Maher, receives a salary. All the proceeds from Foundation ventures - the raffles, restaurant, garage, flower and terrarium business, moving company and building maintenance are turned over to the Foundation. "Family" members take a vow of poverty upon entrance and rely upon the Foundation for all their needs. The Foundation

maintains that this prevents squabbles about money among its members, and this is the aspect of the Foundation's communal organization emphasized by the Corrections Magazine publication, Behind Bars.

A more important set of results is described by Charles Hampden-Turner in his book Sane Asylum. Hampden-Turner suggests that the communal commitment and the support through productive relationships given by Foundation members to other Foundation members develops the character of participants. He suggests, "The personalities of residents do, in time, grow along multiple dimensions, which integrate their values and their community at one and the same time.

The Delancey Street Foundation is run by a board of directors and associate directors - residents, squares those other than residents , and experts who donate their time. In fact, the "squares" donate their skills and services rather than capital to the foundation.

Contrary to the usually austere and deliberate image put forth by community development groups and state sponsored community reintegration projects, the D.S.F. does its number with style and class. -A recently released convict was escorted from San Quentin by Foundation "mobsters" in spats, zoot suits and cigars; the blond molls were close at hand. -The foundation in 1974 sent fifty volunteers to help with the People in Need Program after John Maher observed that Randolph Hearst was being used by... "Goons that sold Hearst \$200,000 worth of meat that was all fat and bone and nearly

started a riot... We accepted no money and no food..."¹⁰⁷
Fittingly, the Foundation was located by John Maher in three mansions atop Pacific Heights in the vacated Egyptian Consulate, the old Russian Consulate and the Estonia Hotel. The glaring contrast between the public perception of convicts as screw-ups and ne'er do wells and the stunning achievements of these men and women "jolts the audience into admiration."¹⁰⁸ As Hampden-Turner explains it "Hide your origins, pretend that you were never a loser; and you slam the door on the fingers of would-be emulators, while confirming the prejudices of the ruling class against all those you once resembled. Only those persons prepared to keep alive the glaring paradox between their own present freedom and their past slavery, only they, hold open the door for others to follow."¹⁰⁹

Hampden-Turner explains the existentialist idea behind Maher's D.S.F. program, "If you accept your basic human predicament - that you have been convicted, stigmatized, truncated in the only life there is, that you cannot handle chemicals, that you need others to keep you sane - these limitations are the springboard for a new freedom."¹⁴⁴

Delancey does not discriminate in favor of the less dangerous criminals. "Some of them have killed and many have used firearms to rob."¹¹⁰ Everyone comes into the program as a "fuck-up" and a "stupid asshole" as Maher characterizes them and "cleans up his act."¹¹¹

The content and emphasis of the D.S.F. is different from

that conventional programs. Entering residents are put immediately to work producing for the Foundation and insuring its survival. Through participation in one of the D.S.F. businesses, family members develop skills and find themselves, though successful production is the only stated goal of the enterprise. Developers of jobs follow through on the projects they create.

Interpersonal relations within the Foundation community are developed and strengthened on the job and through a series of often brutal "Games". The Games deal with the attitudes and difficulties which have developed which threaten Foundation life. They are also a period of what Maher's "squares" would call attack therapy where on a given night the Game is "on" a particular resident. During the Game, directors and residents engage in a no holds barred confrontation with the target. "In Games you are encouraged to be impulsive, imaginative, irreverent, outspoken, playful, anarchic, self-expressive, humorous, rebellious, informal, and egalitarian. At work, you should be self-controlled, mundane, deferential, tactful, task-oriented, orderly, self-effacing, serious, authoritative, formal, and hierarchical."¹¹² The Games also provide feedback on the management of the individual enterprises as well as D.S.F. itself.

After a period of conflict and growth (at least two years), "graduation" arrives preceded by a process of "dissipation". The dissipation is a non-stop forty-five hour confrontation - expiation - emotional endurance test that

eliminates the last set of chips on the collective shoulders of those involved and cements the basis for their further existence. The focus and basis of the Delancey Street Foundation is on collective productive work however. The resolutions of the Games and even the lingering animosities, fears and doubts which follow them are resolved by being counter posed against the process of productive work.

John Maher doesn't place much stock in the possibility of "rehabilitation" in the ghetto. "All social programs are kept in ghettos to fester off the hopelessness. You can no more cure an addict or criminal in a slum than you could cure an alcoholic in a bar. How do you rehabilitate a person who gets up in the morning to see everyone lined up at the Welfare Office and goes to bed at night with everyone lined up for dope or a whore."¹¹³ Hence the Pacific Heights location of the Foundation was chosen, and opposed vehemently by other residents of Pacific Heights.

Maher's view of the ghetto is as the domain of thieving addicts, exploitive slumlords and ever present "creep consultants" to social service and criminal justice agencies.

FIGHT

An alternative approach to the provision of ex-offender and parolee employment is that of FIGHT, a Rochester community development effort. As Bernard Gifford, former Director of FIGHT and President of the New York City RAND Institute explains:

"In Rochester, we had to explain to both the black and white communities what FIGHT meant by "profit"... If we take ten welfare mothers off the welfare rolls... we save the... Department of Social Services \$50,000... We have about eighteen brothers working with us who were ex-cons. If you go by the statistics, you'll find that about 75 percent of the brothers who leave the slam get remanded in less than nine months. We found out that nobody with us went back to the slam; Those who left us went on to better jobs. We have these people off welfare and out of the slam getting training with us at FIGHT-ON and then going on to Kodak and Xerox... So we go back to Kodak and Xerox and say, "Dig it man. Here we are subsidizing you because we're training these people and sending them on to you, pushing them into the mainstream, and not getting any payback. So when we want to bid on some Kodak machinery at less than cost we trade off."¹¹⁴

Similar claims are voiced by the managers of sweat equity housing programs in New York City (see e.g. People's Development Corporation) who find ex-cons and ex-addicts to be diligent, trainable and inspired workers. Yet, no mention

of FIGHT or the successes of community development corporations is to be found in the rehabilitation literature.

Conclusion and Summary

The American prison system has passed through several phases in its development since the time of post Revolutionary America. The early prison, of which Newgate and the Walnut Street Jail are examples, was an idea imported from Britain by prominent Philadelphians and enacted by the Philadelphia and later New York legislatures to deal with the problem of dispensing justice to the convicted. The earlier system of dispensing corporal punishment became unworkable in light of riots by the propertyless and the debtor class which disrupted or stopped the judicial process in several states.

The early penitentiary was characterized by:

- Two classes of solitary cells to accommodate dangerous and less dangerous prisoners.

- Night time conversation among prisoners with silence in the shops.

- Skilled and unskilled work by inmates in a pre-industrial setting.

- Wages paid to inmates from which prison expenses were extracted.

- No segregation of prisoners during work.

- Quaker management and attempts at cultivating the "inner light."

- Purchase of raw materials on state account and state marketing of prison products.

At Newgate, from 1807 to 1817, increasing prison population and legislative cost cutting, forced the use of

indiscriminate pardons. Markets for prison goods dried up except for a brief hiatus during the War of 1812 when both pressures eased.

The crime wave of 1816 led to the creation of the new prison at Auburn. A legislative mandate in the following year required provision of raw materials for prison production and distribution of the finished product to be handled by private entrepreneurs. The legislature also empowered the Governor of New York to employ felons outside prison during times of overcrowding if employers paid for the prisoner's maintenance. The use of this option however was largely limited to work on the Erie Canal. Prison discipline was already hardened by a loss of enthusiasm by early reformers, poorly paid keepers and various pressures on the institution when the legislature allowed the use of flogging and irons at Auburn and Newgate in 1819. Capital punishment was ordered for inmates who assaulted an officer with intent to kill as well as those who committed arson.

After a disastrous trial with intensive solitary confinement at Auburn, the Auburn system was developed to replace the then antiquated early penitentiary system. The Auburn system had as its attributes:

- organization patterned after the inside contracting system whereby private entrepreneurs brought raw materials to the prison, paid a fixed charge for the use of inmate labor, provided a contractor to oversee inmate production, and marketed the finished product.

- solitary confinement for inmates at night.

- collective work in silence during the day.

- constant covert surveillance as well as coercion, intimidation and regimentation used to insure hard labor and prevent inmate plots or arson.

- emphasis on production over all other goals, though on the job training was developed for unskilled inmates as a result of the need for high productivity.

- skilled work in the production of consumer durables for local and distant private markets.

The prison proved reasonably profitable after some initial setbacks. In 1833 the General Trades Union of New York City was formed. That union lobbied against convict labor while its members and local artisans barred ex-convicts from their trades. Hence, in 1842, prison production was limited to those goods which were only produced abroad. Inmates, additionally, could only practice those trades they had learned outside prison. By 1844, Auburn and its New York counterpart Sing-Sing, were running a deficit. The Dannemora prison, which was built to allow inmates to extract iron from a nearby mine, failed as the ore ran out.

Once again a crisis resulted characterized by overcrowding and prison deficits. This was mitigated somewhat by production of prison clothing at Dannemora, but this type of "state use" production was inadequate as prisons were the only outlet for such production. The resulting tension in the institution brought kicking, caning, striking and torture

of inmates as a means of circumventing prior legislative restrictions on lashing. By 1858 prison uprisings were underway at Auburn and Sing-Sing. War once again eliminated the problems of prison overcrowding and lack of markets in the 1860's, but a new solution was needed for the problem of the floundering prisons.

The Reformatory, inspired by Crofton's Irish System (then in use in the British Isles) was the solution. The program of the Elmira Reformatory under the leadership of Zebulon Brockway included:

- An indeterminate sentence, the length of time served dependent upon the "behavior and capacity of the prisoners" and constrained by a maximum sentence.

- Privileges and incentives for the well behaved prisoner.

- Compulsory education.

- Parole release of selected prisoners after 12 months of good conduct.

- Six months work required in the firm to which the parolee was assigned.

- Reports by the parolee to his "guardian" once a month to insure his proper conduct.

- Use of contract industries in the Reformatory itself.

- A focus on younger offenders. -Profit no longer the single prison goal.

The Reformatory did not dominate its era (1870-1900) as did the Walnut and Auburn systems. Prison systems varied regionally with Southern States leasing convict labor to

provide contractors after the war while many northern and western states stayed with the Auburn system.

The ideal of the Reformatory as Brockway envisioned it was short lived. Prison reformers retreated from efforts to provide training for inmates as a means of balancing the prison budget. The necessary replacement for the reformatory was the industrial prison, a combination of reformatory rhetoric and form with state-use prison industry that persists to the present day.

The industrial prison was part of a prison system which included:

- Little or no training for incarcerants.
- Prisoner education limited to remedial grammar school education.
- The government as virtually the only outlet for prison production through state-account and state use systems.
- Remnants of the reformatory system including the stated goals of that system as well as the devices of the indeterminate sentence and parole.
- Probation as a means of more efficiently allocating prison space to the more unreformed repeat offenders.
- Further restrictions on prison production for private markets with the passage of the Hawes-Cooper and Ashurst-Summers Acts in 1929 and 1935 respectively.
- Excessive unemployment among state prison inmates which reached 80% during the Great Depression.

The present era has seen numerous efforts to decrease the cost of the penal system primarily through the development of community-based corrections. Community based corrections is a broad term which refers to a panoply of programs including work release, probation, parole, the halfway house, pre-trial diversion, decriminalization and deinstitutionalization, which aim to reduce the population pressure on institutions and decrease social welfare and correctional costs over all. These programs adapt the corrections system to the new realities of the outside labor market and achieve a new balance between the needs of the system which are to maintain security while minimizing cost. They are accompanied by LEAA sponsored programs such as the Volunteer Probation Officer program which employs community resources to decrease criminal justice costs and reduce potential conflict between the state and its charges.

Offenders and ex-offenders within the developing community based system are limited to a constrained set of work opportunities. For incarcerated offenders these include:

- Provision of institutional services including maintenance, laundry, grounds keeping, dairy farming, agriculture and food preparation; some of which benefit directly corrections officers and superintendents and serve to supplement their salaries.
- Production of goods and services for state use such as prison clothing, printed material and data processing.
- Export of prison labor to the private sector through the

mechanism of work release.

-Participation by offenders in a limited range of training programs which employ often obsolete equipment and provide little guarantee of outside employment.

The paroled or released offender is faced with:

-Limited employment opportunities within the correctional system itself, save for roles as "parole officer aides" or similarly designated paraprofessionals.

"Supported work", especially if he is an addict or former addict, which allows him to develop "work habits" in low skilled municipal service occupations.

The occasional assistance of a state placement service which will help him find a job after release.

The community based system is accompanied by federally sponsored efforts at rationalization of the total corrections system through implementation of management reforms such as MBO (Management by Objective) and PPBS (The Planning Programming and Budgeting System). As comprehensive evaluation of the criminal justice system from police through corrections has proved so far impossible (or undesirable) only the former, MBO, has been tried in earnest as a useful planning tool (e.g. in using analytical tools to forecast demand for prison space). Inefficiencies and poor data will continue to plague the system though. In the New York State System, the Commissioner stated that no means for evaluation of his programs existed as research staff had been cut from 30 to 3 in the past five years.¹¹⁵

In an historical context, corrections policy emerges not as the result of vaguely defined goals, but as an institution which provides security and loss of freedom as punishment for convicts at the least possible cost. It does this as best it can within the context of available markets for prison products and labor.

This view of corrections helps to put into perspective the emerging community based corrections system and bring to light the inadequacies of a system that operates within a set of historically generated constraints.

Corrections as constituted today cannot provide a level of punishment that is sufficient to have a significant impact on crime. In providing what is popularly called a "slap on the wrist", corrections is costing, at least in New York City, almost three full year's income for an average resident of New York City for each year's incarceration of one inmate. Politicians who wish to capitalize on the fears that the penal system is unable to contain are left with only capital punishment as an answer to the needs of terrorized resident of New York. Taxpayers, meanwhile, are giving more and more of their tax dollars for prisons and incarcerating fewer law-breakers for their money.

To combat the declining cost effectiveness of corrections, a set of community based correctional alternatives have been offered by academic correctional experts.

In coming years, there is a real possibility that New

Yorkers will recognize the minimal potential and minimal effect of their judicial and correctional systems and seek a new alternative to deal with crime. That alternative can center around the use of the talents and abilities of offenders in the development of New York's decayed communities. It is necessary to develop in detail that alternative and present it as a hopeful and realistic option for the future.

The virtue of an historical model of penal development is that it reveals the consistent interplay of political technological and economic forces that have impacted on penal policy. As an explanatory model it is not proscriptive and does not presume to judge the better policy approach. It does however isolate a set of political options described by the orthodox, dual labor market and radical approaches from which policy must be chosen.

Footnotes

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63. Ibid.
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