# THE PENAL COLONY: RELIC OR REFORM?

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## STATEMENT OF THE PROBLEM

After some 150 or 175 years, depending on whether one begins imprisonment in the United States with the Walnut Street Jail or the Pennsylvania system of experience at punishing and reforming prisoners simultaneously, though with little evidence of success, today's prison system symbolizes the most abject failure of the criminal justice system. As the trash can of that system, the prison is held responsible for protecting society while having no control over the selection of its clients. We currently find the nation in a punitive mood that reflects societal concerns about the economy, national security, and criminal activity. Daily there are reports of overcrowding, prison abuses, law suits, intolerable conditions, and prisoner resistance. The response of institutions, agencies, and the government traditionally has been to escalate restraint and control in existing facilities, and to construct new prisons.

Prison overcrowding has reached such proportions that we witness a backlog of prisoners accumulating in local jails, awaiting space in the longterm prisons. This generates a situation which approaches the critical stage. For Oklahoma the proposed alternatives range from not sending any more offenders to prison until the overcrowding abates, to the projected building of 24 new prison facilities over the next five years at a cost of about $348 million 1983 dollars, which is three times the annual budget for the Department of Corrections in the State.

Concerns for reform have been diverted from the more esoteric discussion of such "vital" reforms as whether the inmates should have access to a notary public 24 hours daily (Arkansas) and to avoidance of triple celling (Oklahoma). Simple care and custody assume pre-eminence as the major reality facing prison administrators today.

## THE PENAL COLONY

The State of Georgia was originally established by English convicts. During the latter half of the 19th Century, Australia became the discharge resource for all English prisoners from the penal colonies of Tasmania and Norfolk Island. Most European nations developed their colonies with prison labor. The abysmal practices and conditions associated with those institutions have produced revulsion, and have relegated such penal colonies to the same discard as the rack and the thumbscrew.

As an artifact of the tortured past of prison management, the penal colony is only of academic interest to the scholars who parade the atrocities before students when they need to arouse the class. It is sometimes convenient to use them to demonstrate progress in the evolution of penology in the United States. This places the penal colony in the museum of archaic, medieval practices.

But the penal colony, located in geographically remote regions, provides a method for achieving banishment, development of resources, alleviation of crowding in prisons, reducing unemployment, and aiding a depressed economy. In the United States the precedent for the basic facility has been established through such agencies as the Civilian Conservation Corps during the depression of the 1930's. Another example is the World War II "relocation camps" for United States citizens of Japanese descent, and prisoner of war camps for captives taken from the Axis belligerents in Europe. More recently, detention camps have been established for Haitian and Cuban refugees.

Such colonies could provide shelter and food while the workers perform public works projects. All of the cost savings advocated in this paper could be incorporated and realized in the penal colony. During economic crisis, voluntary commitment could be allowed for the unemployed who wish to earn a living. It could also answer the criticism of "unfair competition" by convict labor. Such new prison communities might more closely resemble a town than a prison.

Penal colonies and labor camps have been widely used for prisoners for some time. The manner of conducting such colonies can be such as to avoid abuse of human rights. Contemporary institutions such as those in Las Islas Marias in Mexico, agricultural colonies in India, the Davao penal colony in the

Philippines certainly point the way to a different kind of colony. While such institutions are not new, the option of voluntary commitment for unemployed persons is a new element.

## HISTORICAL REVIEW

From ancient times, the traditional punishment for criminal offenders has been exile: banishment from the community with the attendant deprivation and death. As banishment to the wilderness became impractical, societies assigned prisoners to slave status, road building, propelling ships, and in more recent history, colonizing foreign possessions during the expansionist era. Commitment to the modern prison differs from ancient concepts in form, not in content.

Prisons exist for punishment. The punishment should be restricted to the natural consequences of banishment and deprivation of freedom — and should not include physical abuse imposed by inmates or prison staff. Society has the right to banish those convicted in regular court proceedings. The major difficulty in prison management is not necessarily inherent in the concept of prisons. It is a function of mismanagement that results in forced idleness, degeneration, physical abuse, and production of a worse offender by the time of release.

## ECONOMIC COSTS OF PRISON

Americans have a blind faith that incarceration of criminal offenders, at a greater rate than any other nation, will necessarily protect society. A corollary to excessive imprisonment is that most prisoners do not require the level of custody and containment created for them. According to most prison wardens, probably 85 percent of the nation's prisoners could safely be detained in facilities that are less secure, and much less expensive.

While the offender "pays" for the crime only by serving time, it is the crime victim and the public who pay extremely high financial costs.

1) The victim suffers the initial money loss from a property crime, and for the cost of treatment for physical injury.

2) The public pays through taxation, about $50,000 per bed for constructing high security prison facilities.

3) The public pays through taxation about $14,000 per inmate per annum for maintenance, services, and administration.

4) Society loses the potential benefit of the manpower resource while the prisoner is in custody, and pays to support any dependents left behind while the offender is in prison.

5) Society loses again when the prisoner is released, because there is usually a resumption of the crime pattern, and a costly return to penal custody.

The present system is designed to punish, but does so only at a tremendous cost. It is the victim and the public who bear the dollar costs, not the offender. The offender is relieved of the need to support self or family, and thus achieves a psychological state envied by many — freedom from responsibility. Surely it is apparent that one cannot learn responsibility through irresponsibility. The modern era must deal with prison problems from an economic base. Humanist arguments for prison reform have little meaning. A better focus is on alternative methods to alleviate the high cost of incarceration, preferably, with some reform of the system.

## REDUCING CONFINEMENT COSTS

Jurisdictions in New Jersey and California have gone far in judicial effort toward creative sentencing. Judges, not correctional administrators, have diverted some offenders from prison into more productive avenues of punishment. In so doing, punishment has become more cost effective.

- A San Francisco judge sentenced a veterinary doctor convicted on a federal game law violation to provide free service for the city zoo animals for one year in lieu of a fine or imprisonment.
- A Florida judge sentenced a murderer to life time probation on condition that he financially support the victim's widow and children.
- Across the country, judges are sentencing offenders to community service projects which they perform while living at home or in a local jail.

Legislators could change the laws which presently provide only for fines and imprisonment. Military service in lieu of prison confinement should be reinstituted for selected offenders. Correctional administrators have a responsibility to suggest, plan, innovate and

administer changes that lead out of the quagmire of endless prison construction and staffing. We can no longer afford administrators concerned only to maintain the status quo.

Prison construction in response to overcrowding of institutions is currently a national concern. A different approach could alleviate this problem. Staff and inmates could build new facilities at a considerable financial saving. The Texas Department of Corrections has been doing so for many years, giving an example which could benefit many prison systems. Most of the older prisons in the United States were originally built with prison labor. We then had a requirement that physically capable inmates of the system can and should provide labor to build the facilities.

New facilities are not always needed, nor are they always practical. In the past decade, Oklahoma prisoners have been housed in motels, trailers, and tents. Most jurisdictions have outdated and antiquated facilities, such as old hospital buildings, schools, or military bases which, through prison labor, could be made suitable for detention for most prisoners. Renovation would generally be less costly than new construction, could be ready for occupancy much sooner, and would orient prisoners toward self-sufficiency.

Nowhere is it mandated that all prisons be built of granite, concrete, and steel. There is no reason why barracks-type wooden facilities, within a secure perimiter, cannot be appropriate for a large portion of inmates. With less costly construction, materials and labor, new institutions could be constructed at great financial savings. Inmates would be productively engaged in building their own shelter, prison idleness would be reduced, and prisoners could pay some of the direct costs of their confinement.

**SOME EXAMPLES**

About 20 years ago, in Alaska, with the cooperation of citizens, labor unions, government and inmates, we built an institution for 120 inmates. At the end of the construction period we had a physical plant valued at $500,000 at a cost to the State of $79,000. The cost per inmate was a modest $658. In the building process, inmates learned skills useful to themselves after their release. And the inmates had a vested interest in the project because they were involved in the design as well as the construction. They were motivated; they were not idle; and they created something where there had been nothing. In the occupied facility, there were no escapes, no assaults, no homosexual rapes, no drunkenness, because it was *their* institution.

In contrast, two years later a second facility was built for 100 inmates about 50 miles distant from the first. Traditional procedures were used, with architects, contractors, bids, and union labor. The planning grant alone for the second facility exceeded the entire construction cost of the first. The second facility cost $5,200,000, or $52,000 per inmate, and it has been plagued with escapes, assaults, and grand jury investigations. The cost ratio for the two facilities is 1:79, and the efficiency of the first installation was far greater than that of the second.

There are other ways to reduce costs of incarceration. Since the inauguration of the industrial prison in New York about 160 years ago, prisoners have manufactured goods for the state with little or no financial compensation for their labor. Arguments for a slave labor system have no more than superficial merit, and fall in two categories: 1) Prisoners should be forced to work at hard labor, and thus learn to become good citizens. 2) It is repugnant to pay criminals to work when unemployment is high in the outside world.

What is needed now is an "industrial revolution" in concept and in practice within the prison. Many jurisdictions have *state-use* statutes which permit or mandate purchase of prison-made goods by state agencies if the quality and price are similar to those of private manufacturers. Such provisions should be broadened to encompass a wider range of prison-made goods. Private enterprise should be allowed to operate manufacturing facilities inside the prison. A revival of the *contract system* would relieve prison guards of supervisory tasks, remove the industrial component from prison administration, increase normal contacts with the outside world, and the operation could become more efficient. The prison could be compensated for rent and utilities, and the manufacturer would be responsible for quality control, marketing and related activities, which are usually beyond the training and expertise of prison administrators.

To be more creative, the prison industries could be inmate-owned and inmate-operated. A Mexican prison near Mexico City operates in this fashion. Various industries are totally operated by inmates under the custodial supervision of staff. Parolees become outside salespersons. Inmates are paid wages from the earnings of the industries. Prisoners have informally conducted their own industries by making crafts for resale in most prisons. By legitimizing such operations, profits could be shared with the state to reduce the costs of confinement.

Whether the private contractor model or the inmate-owned model, or a combination of the two is used, prisoners should be paid full wages in order that the prison product is not subsidized by free labor. Thus we can avoid unfair competition. The wage-earning prisoner would pay living expenses at the prison and reduce incarceration costs. With this earning capacity, the prisoner with dependents could also be required to support them, remove them from welfare roles, and sustain the family normal support function. Such a working prisoner could be assessed a portion of the court costs, and contribute toward restitution to the victim of the crime. How can the offender " pay" for the crime, when incapacitated for productive paid labor by confinement in a custodial institution?

When I was prison superintendent in Arkansas in 1967, we developed a plan to employ 17 inmates in producing cleaning supplies used by state agencies, such as schools and hospitals. This project would have yielded $500,000 annual income based on known consumption rates. The capital investment would have been less than $75,000. Under the guise of vocational training, complete installations can be built. A preliminary grant was approved by the U.S. Labor Department to provide funds for inmates to build a new prison as vocational training on an abandoned army base near Little Rock. There was a potential saving to the State of millions of dollars while the inmates learned useful technical skills. These plans were scuttled along with my administration, *but the concept was valid and cost effective.*

"The possibilities of human achievement are limited primarily by the arbitrary boundaries we ourselves place on our own imagination." (Murton 1982 285)

## MANPOWER UTILIZATION

An uncounted cost of imprisonment is the waste of prisoner manpower. Even with institutional maintenance, vocational training and prison industries, the prison is still largely characterized as housing idle men. The basic rule of prison management should be: Humane treatment of prisoners *in a productive environment.* Some possible labor projects to reduce costs and permit the prisoner at least partly to pay for the crime are as follows:

- Minimum custody prisoners could be assigned work with fish and game officers, in agriculture activities with universities, and in forestry projects.
- Roadside cleanup and maintenance along highways.
- Development of parks and recreation areas.
- Conservation work building sanitary fills, dam and water projects, watershed development, and shelter belts.
- Rest area campground facilities could be prefabricated and erected on site by inmates.
- Disaster crews could be trained to work with Civil Defense agencies during tornadoes, floods, earthquakes, fires, or other major disasters.
- Temporary camps to endure perhaps for several months could be built to deal with more involved projects such as highway bridge and interchange construction and highway restoration.

The key is innovation through adequate classification and selection of staff and inmates. The camp could be largely self-governing. There should be concentration on unfunded projects where there is no unfair direct competition with free labor. The labor should be paid at a fair wage, to permit restitution to the state and to the victim.

## LOOKING BACK TO THE FUTURE

I am advocating return to the *transportation system* of the past. Convicts would be transported to internal penal colonies to serve a state jurisdiction, or multiple jurisdictions of a group of states. State boundaries would become irrelevant if such a plan were implemented under the auspices of the Interstate Compact on Prisoners. Ideally, the prison

colony would be operated by private enterprise under contract for services by the correctional authority. Advantages are as follows:

- Offenders would be socially "banished."
- Offenders build facilities for confinement.
- Construction costs would be controlled and minimized by use of less expensive materials, group living, and inmate labor.
- Public works projects would become feasible.
- Prisoner idleness would be eliminated.
- Prisoners would be paid for working, and could be required to meet personal and moral obligations from honest earnings.
- Convicts would be tax payers, and less a tax burden.
- Convicts would learn trades and skills.
- Offenders' dependents could visit at the facility.
- Under certain conditions, civilian workers could have employment in colony industries at the usual wage.
- The colony could become self-supporting.
- A substantial part of confinement costs would be transferred from the public to the offender.
- The prisoner would learn to accept responsibility for the offense, any dependents, and self-support.
- There would be fewer incidents of institutional violence, escapes, and assaults.
- The transition to self-sufficiency on release would be made easier.

**NOTE:** No discussion has been provided on strategies of implementation. This is *not* an oversight. For the penal colony to be designed constructed, and organized into a positive entity, I can be hired to establish it.

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