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## Productive Assistance—A Proposed Structure for the Prison Community

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## PRODUCTIVE ASSISTANCE—A PROPOSED STRUCTURE FOR THE PRISON COMMUNITY

*Whatsoever is brought upon thee, take cheerfully,  
And be patient when thou art changed to a low estate,  
For gold is tried in fire  
And acceptable men in the furnace of adversity.*

—Wall Inscription, United States Penitentiary, Terre Haute, Indiana<sup>1</sup>

The mounting dissatisfaction with our correctional institutions and the increased discussion of correctional reform have led to a general awareness of the weaknesses in our present correctional system.<sup>2</sup> Commentators generally agree that some form of incarceration is required for wrongdoers but concede that the typical prison experience makes no substantial improvement in an individual's life.<sup>3</sup> "In fact, it is felt by many people in corrections that the environment of a jail or prison is so negative that it cannot prepare a person to return to society."<sup>4</sup>

The threat of punishment in the form of imprisonment will remain a principal part of the criminal justice system; but punishment alone is not protecting society from the offender. This is demonstrated by the excessive rate of recidivism. "[Eighty] per cent of all felonies are committed by repeaters. Four-fifths of our major crimes are committed by people already known to the criminal justice system."<sup>5</sup>

In an attempt to solve the recidivism problem, and thereby significantly reduce the crime rate, two possible solutions are often suggested. The first alternative is to increase prison facilities, eliminate the parole and probation programs and extend the terms served to the maximums prescribed by law. The warehousing of inmates, however, is very expensive. In the fiscal year 1972-1973, the average annual per capita

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1. Quoted in CRIMINAL BEHAVIOR AND SOCIAL SYSTEMS 399 (A. Guenther ed. 1970).

2. See California Human Relations Agency, Board of Corrections, *Correctional System Study Prison Task Force Report*, in COORDINATED CALIFORNIA CORRECTIONS: INSTITUTIONS (1971) [hereinafter cited as *Prison Task Force*].

3. See, e.g., THE JAIL: ITS OPERATION AND MANAGEMENT 5 (N. Pappas ed. 1970) [hereinafter cited as Pappas], where it is stated that: "Generally, confinement may restrict the prisoner's opportunity to commit crime, but does not teach him more acceptable ways of behaving."

4. *Id.*

5. R. CLARK, CRIME IN AMERICA 215 (1970).

inmate cost in California alone was \$4,413.00.<sup>6</sup> Besides the direct financial burdens, there is a loss of productivity which is difficult to measure.<sup>7</sup> Despite long terms served, many ex-convicts continue to lead unproductive lives and commit new crimes, and they are often returned to prison, thus adding to the loss of manpower and other prison costs.

A more satisfactory solution would be to rehabilitate inmates so that, upon their release, they will have learned more acceptable patterns of behavior and will not return to crime. The question of what will rehabilitate inmates becomes the key to the recidivism problem.

In the past, degradation of the inmate, as a part of punishment, has been imposed to accomplish rehabilitation. The high rate of recidivism, however, indicates that the imposition of degradation has not led to rehabilitation. In fact, a current report indicates that the studied imposition of degradation as a part of punishment may be the antithesis of rehabilitation:

The prisoner's self-respect should be cultivated to the utmost, and every effort should be made to give back to him his manhood. There is no greater mistake in the whole compass of penal discipline, than its studied imposition of degradation as a part of punishment.<sup>8</sup>

While it is acknowledged that many diverse causes of recidivism exist, an individual's inability to enter into the mainstream of economic

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6. STATE OF CALIFORNIA, BUDGET SUPPLEMENT FOR HUMAN RELATIONS 138 (1972-1973).

7. Inmate industries in California experienced a decrease in net profits from 14.1% of sales in 1961 to 0.7% of sales in 1968. CALIFORNIA ASSEMBLY OFFICE OF RESEARCH, REPORT ON THE ECONOMIC STATUS AND REHABILITATIVE VALUE OF CALIFORNIA CORRECTIONAL INDUSTRIES 14 (1969) [hereinafter cited as 1969 REPORT].

The type of work required of inmates varies. Some inmates work in food preparation, laundry, and general maintenance for the institution itself. In addition, some institutions specialize in the manufacturing of certain limited product lines to be used by various branches of state government. In California, the prison industries consist of wood working, metal working, textile manufacturing, food processing, laundry services, miscellaneous manufacturing, dairy farming, other farming, and a service department. See *Prison Task Force*, *supra* note 2, at 27. In California, 3,365 inmates work and 8,690 attend vocational training. The total prison population is approximately 19,200. Interview with John W. Dietler, Industrial Relations Consultant, Job Training and Placement, California Department of Corrections, Oct. 25, 1972. The percentage of those who do not work is not necessarily representative of those who cannot and would not work if given the opportunity. The lack of adequate numbers of work assignments results in featherbedding and idleness. See *Prison Task Force*, *supra* note 2, at 26.

The maximum amount which may be earned by an inmate is thirty-five cents per hour; the minimum is two cents per hour. CAL. PENAL CODE § 2700 (West 1972).

8. AMERICAN CORRECTIONS ASSOCIATION, A MANUAL OF CORRECTIONAL STANDARDS 410 (1966) [hereinafter cited as CORRECTIONAL STANDARDS].

life is universally recognized as one of the major causes.<sup>9</sup>

As noted in one statistical study, unemployment is one of the principal causal factors involved in recidivism of adult male offenders.<sup>10</sup> If an individual does not feel that he is part of society, he may "feel that he does not owe anyone any loyalty or that he hasn't any responsibility to anyone. He may find it easy to rob or steal since he may feel that the people around him are his enemies."<sup>11</sup> Moreover, employment

not only . . . effects a releasee's ability to support himself without recourse to crime, but also . . . is a major influence in the nature of his associates, his expectation of the future. It seems reasonable to infer that employment . . . is a major factor making possible an integrated "style of life" which includes non-recidivism, successful marriage and satisfaction in other social relationships.<sup>12</sup>

The importance of unemployment as a causal factor in recidivism was revealed in a study undertaken by Professor Glaser which indicated that

after the first month out of prison the rates of unemployment were over twice as high for the failures as for those who were successful in avoiding further serious difficulties with the law. While this is not evidence that unemployment alone causes recidivism, it is one more piece of correlational data in our findings which suggest that unemployment may be among the principal causal factors involved in recidivism of adult male offenders.<sup>13</sup>

In discussing the relationship between employment and the rate of recidivism, Professor Glaser also noted that "[t]he ex-prisoner's primary barrier to employment is not his criminal record so frequently as it is his lack of extensive or skilled work experience."<sup>14</sup> This observation is substantiated by a descriptive profile of the typical inmate. It has been observed that regular work during imprisonment (for even as little as one year) would be the longest work experience most youthful prisoners have ever had.<sup>15</sup> Most men in state prison are young, with a median age of 32 years. The intelligence level is the same as that of the outside society, but the inmate is generally a

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9. See D. GLASER, *THE EFFECTIVENESS OF A PRISON AND PAROLE SYSTEM* 329 (1964) [hereinafter cited as GLASER].

10. *Id.* at 170, 231.

11. Pappas, *supra* note 3, at 6.

12. GLASER, *supra* note 9, at 333.

13. *Id.* at 361.

14. *Id.* at 233-38.

15. *Prison Task Force*, *supra* note 2, at 26.

school drop out with limited academic achievement. The median educational level is the 8th grade. The inmate does not possess a skill and lacks experience in regular employment.<sup>16</sup>

Since unemployment is a major cause of recidivism, prisons must deal with this problem in a meaningful way. To achieve rehabilitation, prisons must provide the inmate with an opportunity to engage in an effective and useful form of employment and training. This must be accomplished in the prison so that the inmate can secure a job upon release from the institution. Further, the use of employment as a training medium is thought by many contemporary authorities in the field of corrections to be effective in breaking down the inmates' crime-oriented values as it affords the opportunity for the inculcation, or reactivation, of attitudes, skills, and habit patterns which can be instrumental in the rehabilitation of many offenders.<sup>17</sup>

#### PRODUCTIVE ASSISTANCE: A PROPOSAL

*How often, in former ages, by eternal Creeds, eternal Forms of Government and the like, has it been attempted, fiercely enough, and with destructive violence, to chain the Future under the Past; and say to the Providence, whose ways with man are mysterious, and through the great deep: Hitherto shalt thou come, but no farther! A wholly insane attempt; and for man himself, could it prosper, the freightfullest of all enchantments, a very Life-in-Death.*<sup>18</sup>

A correctional system which detains individuals only to return them to a life of crime must be changed, for it is certainly not serving societal interests. As an alternative to "traditional" correctional institutions, this Commentary proposes a plan under which the penal institution would assume a new role, a role which would provide the inmate with the means and motivation necessary to function effectively in free society.

The principal change from the present system would be an emphasis on productive, meaningful employment and training, with a corresponding de-emphasis on punishment as degradation. This plan is entitled "Productive Assistance" and is based upon the assumption that most individuals would support themselves if they could acquire employment that was relatively stable and that provided some opportunity for an expanding future. By providing such employment, Productive

16. Interview with Walter Dunbar, New York State Director of Probation, by telephone, May 30, 1974.

17. See Pappas, *supra* note 3, at 6; CORRECTIONAL STANDARDS, *supra* note 8, at 387.

18. T. CARLYLE, *Characteristics* in 28 THE WORKS OF THOMAS CARLYLE 37 (1969).

Assistance would hopefully produce a greater possibility of lasting rehabilitation and a corresponding decrease in recidivism.

The proposal suggests an employment and training program within a new prison community. Such a program would utilize inmate labor to support the prison system and to provide a constructive environment in which inmates could obtain valuable skills necessary to survival in society.

Basically, inmate-employees would be compensated at the federal minimum wage rate<sup>19</sup> according to the number of hours worked per week and would receive paychecks which would be subject to all taxes charged individuals similarly employed in the private sector.<sup>20</sup> These wages would be used by the inmate to pay for all the services received by him from the institution. Such services include room and board, meals, clothing, entertainment and a variety of miscellaneous expenses. A portion of the money retained by the inmate after paying his expenses could be used to provide assistance to his dependents, to reimburse the victims of his crime, or to build-up a savings account in preparation for his release.<sup>21</sup>

Since many inmates have never been gainfully employed,<sup>22</sup> a program of training and education would be necessary to enable them to reach the level of competency required to compete in the free market.<sup>23</sup> Thus, comprehensive training programs would be an integral

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19. The Federal minimum wage would be used for two reasons. First, uniformity would be promoted among inmates. Second, use of the minimum wage would guarantee that employees in the private sector would not be making less than prison inmates.

20. A serious obstacle to successful rehabilitation under the present correctional system is the extremely low wages paid inmates, wages which in California are fixed at between two and thirty-five cents an hour. CAL. PENAL CODE § 2700 (West 1972). Furthermore, no prisoner is to be considered as an employee for purposes of the California Workmen's Compensation Insurance and Safety Act. *Id.* Such requirements do nothing to reinforce rehabilitative objectives; they do nothing to encourage the inmate to think of himself as a productive citizen and worker. Such self-concepts may carry over into the ex-convict's life when released from prison, and may significantly affect his or her reintegration into society. By providing compensation for inmate labor at a "decent" amount, it is hoped that this obstacle will be removed.

21. Inmates with outside income or wealth would not be permitted to bring funds into the institution. They would have to support themselves by their employment within the institution like other inmates. A prisoner could, however, be ordered to use outside funds to support his family or to make restitution.

22. *Prison Task Force, supra* note 2, at 26.

23. There are many federal and state statutes which tend to hinder effective rehabilitative programs by placing restrictions upon the type of employment in which an inmate may engage. An effective productive assistance plan would require that many such statutes be removed from the statute books.

part of a Productive Assistance program. Formal classroom experi-

The principal concept behind such statutes is the fear that convict labor may compete with free labor. See 1969 REPORT, *supra* note 7, at 19. To prevent such competition, therefore, the legislatures have enacted statutory schemes which make it unlawful to ship goods made by convict labor (18 U.S.C. § 1761 (1970)), prohibit states from "contracting out" convict labor to private employers (CAL. CONST. art. X, §1; see *Pitts v. Regen*, 14 Cal. App. 3d 112, 92 Cal. Rptr. 27 (1971)), and which place maximum levels upon convict production. CAL. PENAL CODE § 5091 (West 1972). Congress has enacted legislation which makes it a crime to:

knowingly [transport] in interstate commerce . . . any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution . . . .

18 U.S.C. § 1761 (1970). Exempted from this statute are:

commodities or parts for the repair of farm machinery, [and] commodities manufactured in the federal District of Columbia, or State Institution for use by the federal government or by the District of Columbia, or by any state or political subdivision of a state.

*Id.*

Thus, under federal law, goods manufactured by state prisoners outside the institution may not be supplied to anyone but a political entity. This hinders effective work-release programs since it limits the industries which may be utilized:

Until 30 years ago American prisons were busy places. In the late 1920's and early 1930's Federal and State laws were passed to eliminate alleged unfair competitions arising from the sale of prison-made goods. From this blow the prisons have not recovered. The result has been that only a few offenders in institutions have productive work, while the others are idle or engaged in trying to look busy at routine housekeeping tasks.

NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, CORRECTIONS 387-88 (1973).

In addition to the previously mentioned federal restrictions, there are sections of the California Penal Code which limit the levels of production of convict labor (CAL. PENAL CODE §§ 5091(b), 5093 (West 1972)), restrict the nature and types of products which may be produced by convicts (*id.* §§ 2701-02), and maintain convict wages at low levels. *Id.* § 2700. For instance, industrial and agricultural enterprises are limited to a maximum adjusted gross annual production of between \$25,000 and \$350,000. *Id.* § 5091(b).

By arbitrarily limiting maximum production, the availability and variety of jobs which can be created may be unduly restricted. A larger prison industry may be able to provide the variety of jobs found in private industry. The diversification of jobs and the skills intended to be developed, for the primary objective of rehabilitation, should be substituted as the criteria for determining prison industry size, rather than a figure which is set for the sole purpose of avoiding competition with the free market.

An indirect limitation on industrial rehabilitation is found in California's requirement that a public hearing be held before any new product line or industry is established in an institution. *Id.* § 5092. Private interest groups are thus allowed to testify against the addition of new product lines which may adversely affect their economic situation. This is true even though such products would be sold only to governmental agencies. While such testimony does not necessarily foreclose the implementation of new lines of production, it has limiting effects when the interest group is strong.

Such statutory limitations unduly hinder the development of an effective program of industrial rehabilitation and should be closely re-examined. Expansion of prison industries need not and would not destroy competing private industries. If prisons are to effectively achieve their purpose, legislative reforms are drastically needed.

ence would be required for some individuals, particularly those without high school diplomas. Others would acquire skills through on-the-job training. Inmates participating in formal classroom education would do so after they had worked each day.

The responsibility for placing inmates in particular jobs, after their education, employment experience, skills, and past history are evaluated, would be given to trained correctional workers. These workers would also be responsible for following the progress of inmates involved in Productive Assistance and would provide necessary assistance in resolving such problems as absenteeism, tardiness, and medical incapacitation. An important aspect of the duties of these workers would be to counsel inmates concerning the availability of training and educational programs which would lead to meaningful employment upon release.

Not only employment patterns would be changed under Productive Assistance, but the entire nature of a prison would be transformed. The ideal prison community under this program would not have the cell-block or warehouse configuration, but would have small cottages or bungalows in which the inmates would live. A prison community with individual living quarters would be more likely to encourage individual responsibility. Each inmate would be responsible for his particular quarters as are individuals in the free society. Each inmate would pay a weekly or monthly rental fee.

The inmate should also be given a chance to elect officials from the inmate population to help govern the prison community. Officials elected by this procedure would serve on an advisory board which would meet with prison supervisory personnel. This would provide a legitimate means by which prisoners could express grievances and suggest changes, thereby lessening the possibility of violent confrontation, which is often attributed to lack of communication.

An important part of the reform suggested here would be the allowance of family visits. An inmate should be able to have his wife and children visit him at the facility with the permission of the staff. Such visits would promote morale, help keep the family intact and reduce deviant sexual patterns within the institution.<sup>24</sup> Although it is often said that such a plan would be contrary to the mores of our society, this is not necessarily true; maintenance of the family rates high on the list of American values. Family visits would most likely be of real value to society in terms of rehabilitating inmates and preserving the family.<sup>25</sup>

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24. S. RUBIS, *THE LAW OF CRIMINAL CORRECTIONS* 298 (1963).

25. *Id.*



It is apparent that one of the keys to Productive Assistance is an increased responsibility placed upon the individual inmate. As the inmate begins to function within this system he will be gainfully employed with a chance to continue working upon release. He will be responsible for his living quarters, will have access to educational and training facilities, will support himself and will be contributing to a savings program. He will also be in closer contact with his family. The combination of these factors should increase the inmate's chance for a successful integration into society upon release.

When an inmate is released on parole his freedom is subject to certain conditions imposed by the releasing authority, and he is placed under the supervision of parole officers.<sup>26</sup> One of the common conditions imposed upon offenders is that they secure employment before release, or that they actively seek employment upon release.<sup>27</sup> This condition presents a serious problem for prisoners since many of them lack the skills and experience with which to secure a job.<sup>28</sup> As one commentator noted:

[I]nmates generally have little sustained work experience in the free community and few skills. They are predominately from poor families and from broken homes.

The consequence of this situation is that some men granted parole remain in prison long after their parole date waiting to get a job.<sup>29</sup>

If inmates, upon their release to the free community, could move directly from their prison employment to a similar position in the community, the rate of crime and recidivism would be significantly reduced. If, however, employment is not available in the private sector, public sector jobs should be made available to those on parole. After undergoing training in prison the search for employment should be easier. An inmate will have established a work record in prison and will have accepted responsibility. As one commentator noted: "There is reason to believe that good work habits have a stabilizing effect upon behavior."<sup>30</sup> Hopefully, an inmate trained to have good work habits will successfully complete his period of parole.

### CONCLUSION

Crime is a critical and very expensive problem in the United States

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26. D. DRESSLER, PRACTICE AND THEORY OF PROBATION AND PAROLE ch. 13 (2d ed. 1969) [hereinafter cited as DRESSLER].

27. *Id.* at 244.

28. B. KAY & J.C. VEDDER, PROBATION AND PAROLE 110 (1963).

29. GLASER, *supra* note 9, at 321.

30. DRESSLER, *supra* note 26, at 244.

today. Most crimes are committed by persons previously sentenced to prison who have returned to criminal activity upon release. Recidivism, therefore, becomes the focal point in addressing this problem.

The prison system must begin to rehabilitate inmates in order to reduce the rate of recidivism. Since employment is both an effective means of teaching skills and attitudes and a necessary element for economic and social assimilation of the inmate into society, Productive Assistance would use employment as the chief rehabilitative tool of the prison system. In addition, the productivity generated by prisoners' efforts could be used to support the system by producing goods that would generate income to the system. Such a program would take advantage of the confinement of inmates to educate them and to maximize their potentialities in a manner essential to the preservation of a civilized and peaceful society.

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