

# Federal Probation

Implementing Community Service: The Referral Process ..... Probation Division, Administrative Office of the United States Courts

Strategies for Working With Special-Needs Probationers ..... Ellen C. Wertlieb  
Martin A. Greenberg

Do Correctional Industries Adversely Impact the Private Sector? ..... Robert C. Grieser

of State Correctional Officials regarding Causes, Court Orders, and Solutions ..... Fred Holbert  
Jack E. Call

Orientation of Prison Guards: Support Rehabilitation? ..... Francis T. Cullen  
Faith E. Lutze  
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# This Issue in Brief

**Implementing Community Service: The Referral Process.**—A community service sentence can serve many purposes—to deter, punish, or rehabilitate, while at the same time assuring that an offender receives a publicly discernable penalty. With increased interest in community service, many questions and issues have arisen regarding its use. This article, an excerpt from the monograph, *Community Service: A Guide for Sentencing and Implementation*, concentrates on the practical aspects of operating a community service program. Among the issues addressed are how to select appropriate agencies to receive community service; how to prepare the offender for community service; how to follow up after the offender is placed with an organization; and how to evaluate the success of a community service program. The information is especially directed to Federal probation officers but will also serve as a guide for other criminal justice and corrections professionals involved in sentencing and sentence implementation.

**Strategies for Working With Special-Needs Probationers.**—Authors Ellen C. Wertlieb and Martin A. Greenberg discuss the results of a survey of what alternatives to incarceration probation officers use with their disabled clients. Findings indicate a great deal of disparity regarding the approaches used within and across probation jurisdictions. All probation officers agreed, however, that they needed additional training to better serve their special-needs clients. The article concludes with some suggested strategies for improving service-delivery to probationers with disabilities.

**Do Correctional Industries Adversely Impact the Private Sector?**—Correctional industries have been the subject of much attention and often unfavorable publicity over the past several years. Complaints have gotten stronger in recent months as prison industries nationally are seeking to expand to keep pace with rapidly rising prison populations. Author Robert C. Grieser responds to those com-

plaints by addressing some of the numerous myths about prison industries that exist on the part of many in the private sector. The author also suggests ways in which the private sector and prison industries can work together to the benefit of both.

**The Perspective of State Correctional Officials on Prison Overcrowding: Causes, Court Orders, and Solutions.**—Overcrowding continues to be a major problem facing prison administrators

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# Rehabilitation and Correctional Privatization: Observations on the 19th Century Experience and Implications for Modern Corrections

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UNTIL THE mid-seventies the 20th century correctional mission had included an important explicit interest in the rehabilitation of convicted offenders. Although questions have quite properly been raised about the actual level of commitment to rehabilitation beyond correctional rhetoric,<sup>1</sup> there was little reluctance to include rehabilitation as an objective worthy of pursuit. During the past 15 years the importance of rehabilitation as a major goal of punishment has diminished. At the same time, a variety of problems, such as overcrowding and the increasing fiscal costs of corrections, have beset the correctional system. One solution proposed to address some of these difficulties is the privatization of punishment. In addition to handling the problems of crowding and costs, some advocates suggest that private corrections can enhance the potential of the system to rehabilitate offenders.

This article attempts to shed light on the rehabilitative claim through an examination of the early record of American correctional privatization as it pertains to rehabilitation. Examples drawn from the experience of New York State will be used to illustrate the kinds of difficulties that arose during the 19th century privatization experiment. New York represents a valuable exemplar because it was at the forefront of penal reform during the early period of penitentiary development in the United States. We begin with a statement of the problem, then provide descriptions of both the reformatory objectives of the 19th century prison and early privatization in New York. The effect of privatization on the fulfillment of the rehabilitative goals of the system is detailed, and the implications of the early 19th century experience for modern privatization reforms are discussed.

<sup>1</sup>Clear and Cole (1986: 88) point out that even during the 1950's, when rehabilitation was a vigorously pursued objective, only 5 percent of correctional budgets was allocated to rehabilitation-related correctional functions.

## *The Problem*

In the 1970's several lines of criticism of rehabilitation began to develop. Rehabilitation was criticized as being a pretext for the unwarranted extension of state control over the lives of institutional inmates (e.g., American Friends Service Committee, 1971; Mitford, 1971). Empirical assessments of the effectiveness of rehabilitative technology began to call into question the assumption that it was possible to change the character or behavior of inmates in any significant way (e.g., Martinson, 1974; Lipton et al., 1975). Finally, a number of critics argued that the proper role of the correctional system was to provide retributively based punishment, just deserts. In this view, offenders ought to be treated in accord with the seriousness of the criminal acts they had perpetrated, not with regard to their potential for rehabilitation (e.g., Morris, 1974; von Hirsch, 1976).

By the end of the decade a number of reforms had either been implemented or were in the works. States began to abandon the indeterminate sentence, long viewed as the raw material required to achieve rehabilitative objectives. By 1982 the majority of states had determinate or mandatory sentencing systems already in operation (Bureau of Justice Statistics, 1983: 72). Parole was eliminated in states such as Maine and Connecticut (Senna and Siegel, 1987: 528). In addition, the objectives of punishment were often explicitly re-prioritized. Florida, for example, re-drafted its law to read

The primary purpose of sentencing is to punish the offender. Rehabilitation and other traditional considerations continue to be desired goals of the criminal justice system but must assume a subordinate role. (Florida Criminal Laws and Rules, 1986: 648)

Thus explicit official recognition was accorded the de-emphasis on rehabilitation implicit in the just deserts approach to sentencing.

During the course of the 1980's these and other reforms have resulted in substantial changes in the

size of the populations held in state and Federal incarcerative institutions.<sup>2</sup> The number of inmates held in prisons has grown more than 80 percent during the period from 1980 to mid-1988, increasing from 329,821 to 604,824 at the end of June 1988 (Bureau of Justice Statistics, 1987: 1; *USA Today*, 9/12/88: 11A). The incarceration rate has also escalated rapidly, moving from a rate of 154 per 100,000 in 1981 to 224 at the end of 1987 (Camp and Camp, 1988: 7). These increases have occurred during a period of relatively stable crime rates (Flanagan and Jamieson, 1988: 319).<sup>3</sup>

The tremendous increase in the size of the institutional population has not occurred without a number of consequences. The American prison system is now severely overcrowded. Although more than 80 new prison facilities have been added during the last 2 years, as well as nearly 30,000 new beds through renovations or additions to existing facilities (Camp and Camp, 1987: 22-23 and 1988: 25), space additions have not kept pace with population increases. More than 30 states are under court order regarding conditions of confinement, chiefly related to crowding. More than 12,000 inmates are being held in local jails because state prisons lack space to accommodate them (Bureau of Justice Statistics, 1987: 4). The Federal system is also overwhelmed and is operating at 162 percent of capacity (Camp and Camp, 1988: 25).

Naturally, the maintenance of such a large and growing institutional population is becoming increasingly more expensive. One-hundred and thirty facilities or additions to facilities were under construction at the beginning of 1988, at a cost in excess of \$2½ billion (Camp and Camp, 1988: 26). Despite such expenditures, it is clear that facility space nationwide still will not be adequate to handle projected populations.

One of the solutions to the problems associated with the increasing correctional populations wrought by the reforms of the seventies and early eighties involves the engagement of the private sector in the administration of punishment. A variety of arguments have been adduced in support of this increased involvement. Not surprisingly, many of these arguments have focused upon the potential cost-effec-

tiveness of the private sector in the provision of corrections services. It is argued that the private sector can finance, build, and operate correctional institutions at less expense than can government. Moreover, because the private sector is not burdened by the bureaucratic processes which lead to ponderously slow response to changes in conditions, it is claimed that the private sector can respond more quickly and efficiently to changing needs.

In view of the fact that these claims have been both defended and questioned elsewhere (e.g., Anderson et al., 1985; Bowditch and Everett, 1987; Cikins, 1986; Elvin, 1985; Fenton, 1985; Logan and Rausch, 1985; Travis, 1984), it is not the purpose of this article to subject them to further scrutiny. Our interest is limited to one of the less frequently asserted, but possibly more significant, claims of advocates of privatization. Some advocates of privatization argue that private involvement in corrections may enhance the ability of the system to achieve rehabilitative objectives. This view has been expressed by both the academic community and the private sector.

... it may be opportune for progressives to capitalize on the current privatization trend and to explore ways in which this movement can be used to humanize prison environments. In particular, I have suggested that progressives consider linking rehabilitation to the ideology of private enterprise and weigh the potential benefits of the privatization of prison treatment programs. (Cullen, 1986: 15)

Joseph Fenton, a private corrections executive, expresses similar sentiments.

Corrections is not meeting its intended purpose. . . . Corrections is intended to positively modify criminal habit patterns, rather than reinforce them. Perhaps the private sector, which has a vested interest in the success of its program, can reestablish the intended purpose of corrections. (Fenton, 1985: 46)

Although this general argument does not necessarily repudiate the current view of the primary objectives of punishment, a view which accords rehabilitation a subsidiary role, it does suggest that rehabilitation is a more likely outcome of correctional processes that are the result of private initiatives.

This claim is important for several reasons. First, recidivism rates continue to remain at unacceptably high levels. To the extent that such recidivism is reflected by high crime rates, especially for serious crimes, its reduction is obviously desirable. Second, reduction of rates of return to prison through rehabilitative processes is an especially appealing goal in light of the current institutional crowding. Finally, there are substantial cost implications for the correctional system if the private sector can produce

<sup>2</sup>The case of Alabama is a good illustration of how such changes created serious increases in institutional populations. For a description of the origins and effects of the Alabama reforms see McCarthy, 1988.

<sup>3</sup>Despite stable crime rates, the ratio of prison commitments to adult arrests has increased from 25 in 1980 to 42 in 1985, a 68 percent increase (Bureau of Justice Statistics, 1987: 6). It is apparent that changes in justice system processes, rather than crime rates, are largely responsible for the enormous increase in the national prison population.

rehabilitative outcomes. Apart from the claimed general cost-efficiency of the private sector, effective rehabilitation of inmates obviates the need for the continued expenditures associated with processing the return of such inmates to both the criminal justice system in general and the correctional system in particular.

Given the possible implications for reducing recidivism, overcrowding, and costs, it is worth giving serious consideration to the claim that private sector involvement in corrections may enhance the rehabilitative potential of the correctional system. Like any reform proposal, of course, anticipation of its effects is largely a matter of speculation. In this case, however, the reform is not entirely without precedent. The American penal system experimented vigorously throughout much of the 19th century with various kinds of correctional privatization. Nineteenth century legislatures were more than a little interested in keeping the costs of their new penitentiary systems to a minimum and were thus often quite aggressive in their pursuit of private entrepreneurs to assume some of the burdens of the system (Sellin, 1976; McKelvey, 1977). There exists, therefore, a substantial record of performance that can be examined for insight into the likely consequences of privatization-related reforms of the modern system. It is to this record that we now turn our attention. We begin with a brief overview of 19th century penal objectives.

### *The 19th Century Prison: Reformative Objectives*

A variety of factors have been linked to the rise of the prison, such as shifts in economic conditions (Rusche and Kirchheimer, 1939), centralization of state power (Takagi, 1980), extension of state power over both the body and mind (Foucault, 1979), and expansion of industrialization (Ignatieff, 1978). However valid such linkages may be, it is apparent that during the early days of the penitentiary system there was also a substantial amount of contemporary interest in the reformation of the offender. The preamble to the constitution of Philadelphia's Society for the Alleviation of the Miseries of Public Prisons (founded 1787) proclaims that

such degrees and modes of punishment may be discovered and suggested, as may, instead of continuing habits of vice, become the means of restoring our fellow creatures to virtue and happiness (Barnes, 1972: 127)

Thomas Eddy, the motive force behind New York's Newgate Prison (opened 1797), identified several objectives for punishment, including the reformation

of the offender. In referring to the value of the prison Eddy wrote, "If society is effectually secured against future mischief by the imprisonment of the offender, it is that mode of punishment also which affords the only chance of reclaiming him from evil" (Knapp, 1976: 60). In his chastisement of society for its role in promulgating crime, Samuel Gridley Howe argued that "convicts are made so in consequence of a faulty organization of society. . . . They are thrust upon society as a sacred charge; and that society is false to its trust, if it neglects any means for their reformation" (Rothman, 1971: 75).

Of course, agreement that a major goal of the prison should be the reformation of the offender did not necessarily entail agreement regarding the means by which this ought to be accomplished. The well-documented battle between advocates of the silent and solitary systems raged throughout the formative years of the penitentiary system (Barnes and Teeters, 1959; Eriksson, 1976). However, despite disagreement regarding the value of solitary confinement, by the 1830's there was essential consensus about the value of labor in the reformatory process. Defenders of both the Philadelphia and Auburn systems saw merit in labor as a mechanism to instill discipline and order, promote development of economic skills, and establish what would become life-long personal habits of industrious acceptance of the obligation to earn one's keep in society. Defenders of the Auburn system, however, such as Louis Dwight, were attracted by the economic advantages of the congregate Auburn system and lobbied heavily on its behalf (Rothman, 1971: 88). Advocates of the Philadelphia system argued that the threats to convict reformation in the Auburn system were simply too great and that the additional financial costs associated with the separate system had to be regarded as both unavoidable and acceptable if there was to be any realistic chance of successfully reforming convicts.

The significance of this debate for our purposes is that the Auburn system became the dominant system in the United States. The system's use of congregate labor opened up opportunities for private entrepreneurs that could not exist in Philadelphia's separate system. Not surprisingly, therefore, it was in congregate system states such as New York that private industry was able to penetrate the correctional system most quickly and deeply.

### *Early 19th Century Privatization*

Early 19th century private involvement in the administration of punishment initially entailed par-

ticipation in prison labor programs.<sup>4</sup> One of the earliest states to engage the private sector in the operation of such programs was New York. From virtually the very outset, Auburn utilized private contractors as a method for energizing the reformative potential of labor and, more importantly, for fulfilling the legislature's interest in reducing the cost to the state of the prison's operation (Pettigrove, 1927). This latter concern was no minor interest. Furthermore, as is true today, many reformers were also persuaded that the involvement of the private sector in creating self-supporting penitentiaries would have therapeutic benefits for the inmates. Warden Enoch Wines summarized this view when he wrote

... prisons can be made self-sustaining and at the same time reformatory; and all the more reformatory because they are self-sustaining (Wines, 1870: 187).

John Harris, member of the Georgia Senate and the representative for the firm of Grant and Alexander in its contract negotiations with the state, argued that convict leasing to private firms could yield significant revenue to the state. In addition, he noted that

The leasing of the Penitentiary is an important experiment, and I have great confidence in the result of that experiment; and am fully satisfied that the labor of the convicts can be managed as to ... greatly promote the reformation of criminals. (Proceedings of the Joint Committee—Georgia, 1974: 132)

In the light of the 19th century understanding of the importance of labor as an effective reformative instrument, with its strong association with discipline and order, it is not surprising that this view possessed substantial contemporary appeal.

Thus, part of the rationale for permitting private sector involvement in the operation of the prison was that it would facilitate the rehabilitation of the inmate. The relationships between labor and deference to authority, assumption of responsibility for one's own economic welfare, discipline, and personal habits of order and regularity were unambiguous for contemporary reformers. As Rothman (1971) points out, the lack of order and regularity in society was viewed as an important cause of crime, and the remedy was discipline and routine. Lean, well-structured,

instrumentally oriented labor programs could provide such a regulated environment.

There were other interests, of course. Most states were concerned with the growing costs of maintaining penal institutions and were attracted by the potential cost-savings associated with private involvement. Although state-operated programs had been tried initially in New York's Newgate Prison, by 1816 it was evident to the state legislature that engagement of private contractors would be necessary if prison labor programs were going to be successful in meeting economic objectives (Lewis, 1965: 44).

With regard to fiscal objectives New York did, in fact, experience some success. Although it was more than a decade after the opening of Auburn before privately operated prison labor programs began to show a consistent profit, through most of the 1830's and into the early 1840's the programs were fiscally successful. During this period, the hope of the legislature that the drain on the public treasury could be stemmed was essentially fulfilled.<sup>5</sup>

New York was not alone in this regard. With the help of the private sector, Massachusetts, Maryland, Ohio, and Connecticut were also successful in creating profits beyond what were required to run their prisons (Killinger and Cromwell, 1973: 51; McKelvey, 1977: 21).

Unfortunately, this success could not be maintained. Protests from free labor and business in New York resulted in the labor law of 1842, which established a number of economically debilitating restrictions (Lewis, 1965: 197). In addition, the rehabilitative objectives identified with private sector involvement were often compromised in pursuit of economic goals. It is to consideration of such compromises that we now turn.

### *Rehabilitation Under the Private Sector*

Although a number of prominent 19th century prison reformers possessed a strong interest in the rehabilitative potential of the penitentiary, there was considerably less interest in rehabilitation among the general public.

Northerners as well as Southerners resisted the environmentalist conception of human nature the reformers preached—at least when it came to crime. Most Americans, North and South, then as now, ultimately blamed criminals for their crimes and did not expect them to change their ways after a term in the state penitentiary. (Ayers, 1984: 71)

The public was far more interested in the fiscal costs of punishing criminals. This interest, and the lack of public concern with rehabilitation, was reflected

<sup>4</sup> Later involvement assumed more extensive form. In the South, for instance, entire facilities were turned over to entrepreneurs (Sellin, 1976). Even in states that did not formally turn over their facilities to the private sector, however, the power of entrepreneurs within the institutional environment increased well beyond that required to maintain prison labor programs (Lewis, 1965).

<sup>5</sup> From 1830 through 1842, Auburn was able to produce a \$21,000 surplus. Sing produced a surplus of \$93,000 during the period from 1833 through 1841 (Lewis, 1965: 186).

in the priorities of legislators. In his discussion of the New York experience, Lewis notes that "Prison officials in the Empire State were under constant pressure to make their institutions pay" (1965: 178). Legislators were willing to provide prison officials with the tools, such as the 1817 law establishing the private account system in New York, to facilitate achievement of economic self-sufficiency. It was then up to prison officials to make effective use of those tools. The reality of the period was that a prison warden unable to make economically productive use of those instruments was quickly dismissed (McKelvey, 1977: 55-56).

Once again, the experience of New York state represents an interesting case in point. In 1830 Robert Wiltse was placed in full charge of Sing Sing. Reversing the earlier trend, from 1833 through 1841 a surplus of more than \$90,000 was produced (Lewis, 1965: 186). Not only did Sing Sing become self-supporting, it managed to create revenue beyond the cost of its maintenance. To accomplish this Wiltse had, however, imposed both rigid discipline and conditions of severe inmate deprivation, such as limitations on food that led to illness and hunger (Lewis, 1965: 154-155). These austere conditions were in large part responsible for the fiscal success of both private contractors and the institution itself during his 10-year reign.

The apparent contradiction between the conditions in Sing Sing and the reformatory mission of the penitentiary disappears when the distinction between advocates of the system of reform and many of the individuals who actually operated the system is understood. The legislators and wardens responsible for the form and function of the new system had interests and views often at variance with those of reformers such as Thomas Eddy, Samuel Howe, and Louis Dwight. Wiltse had little faith in the reformatory potential of the offender. In an official document attributed to Wiltse, he made clear his personal view of rehabilitation.

Having been in habits of association with the most infamous and degraded of their species, they can feel nothing but that which comes home to their bodily suffering. . . . The hope once entertained of producing a general and radical reformation of offenders through a penitentiary system, is abandoned by the most intelligent philanthropists. (Wiltse, quoted in Lewis, 1965: 101)

Wiltse's sentiments were far from unique. His more famous counterpart, Elam Lynds, well-known for his own stern discipline, held a similar view of reformation (Lewis, 1965: 87-88). Both Lynds and Wiltse were eventually removed from power subsequent to

investigations of their regimes, but not before inmates had been exposed to many years of institutional management under their control.

Thus, neither the public nor the keepers shared the enthusiasm for or interest in the reformatory objectives so vigorously pursued by many prison reformers. The lack of interest in such objectives led, not surprisingly, to a lack of concern with development of monitorship mechanisms. As long as correctional relationships with the private sector produced cost-offsetting revenue, there was relatively little interest in scrutinizing institutional conditions and measuring achievement of rehabilitative goals. This lack of monitorship made possible not only dismal institutional conditions, but in addition resulted in the transfer of unintended kinds of power to the private sector.

Early views of the relationship between the private sector and the prison clearly emphasized the importance of keeping contractors out of the business of institutional management, especially as it pertained to relations with inmates. In his remarks to an investigative committee, pioneer Thomas Eddy outlined his view of the proper relationship between public and private sectors.

The most preferable plan would be, to make contracts for the labor of the convicts, with shoe makers, stone cutters, &c. &c. the contractors furnishing the raw materials; but no contractor should be allowed to enter the prison, or to have any intercourse whatever with the convicts. (Knapp, 1976: 88-89)

Elam Lynds, despite a far less optimistic view of rehabilitation, articulated similar sentiments.

I believe it is very useful to let the labour of prisoners by contract, provided that the chief officer of the prison remains perfect master of their persons and time. When I was at the head of the Auburn prison, I had made, with different contractors, contracts which even prohibited them from entering the penitentiary. Their presence in the workshop cannot be but very injurious to discipline. (quoted in Melossi and Pavarini, 1981: 180)

Warden Gershom Powers expressed the same view.

This mode of employing convicts is attended with considerable danger to the discipline of the prison, by bringing the convicts into contact with contractors and their agents, unless very strict rules are rigidly enforced. (quoted in Mohler, 1925: 558)

Thus it was clear that the threat to penal practice represented by according private entrepreneurs too much opportunity to interact with inmates was well understood by those at the forefront of penal development. Nonetheless, despite recognition of the impact the presence of private entrepreneurs might have on discipline and the reformatory mission of the prison, in practice contractors gradually acquired greater



freedom and power. New York contractors were at first allowed to enter the workshops under the stipulation that they would provide work instructions to inmates only through prison officials. It quickly became evident, however, that such officials lacked sufficient knowledge of the work being done to act as effective information conduits. Company representatives were thus eventually permitted to communicate directly with inmates (Lewis, 1965: 181).

As had been anticipated by Eddy and Lynds, the increase in contact between private entrepreneurs and prison inmates resulted in various abuses. Contractors attempted to exploit inmates through bribes offered in an effort to increase inmate productivity (Proceedings of the Joint Committee—Georgia Penitentiary, 1974: 5, 69; Pisciotta, 1985: 161). There is evidence that at Sing Sing contractors were even encouraged by officials to use violence to discipline disobedient inmates (Lewis, 1965: 150). Of course, the power of 19th century contractors reached its apogee in states which permitted private businessmen to take over prison facilities entirely or to remove inmates from the prisons altogether (Ayers, 1986; McKelvey, 1977; Sellin, 1876).<sup>6</sup>

Part of the reformatory process in the 19th century prison was supposed to include participation in work activities that would equip convicts with both the technical skills and philosophy of life to ensure their success in becoming self-supporting upon release. Ironically, it was the success of the prison labor programs that contributed to the demise of this aspect of the reformatory process. Free labor lodged continuing protests that it was being denied a livelihood because of the competition represented by cheap inmate labor (Lewis, 1965: 188-193). Businessmen not favored with contracts for this inexpensive labor complained that the bid system was rigged and that the state had favored a small group of contractors that were virtually assured automatic contract renewal (Lewis, 1965: 188-89). Such objections eventually resulted in restrictions on the awarding of contracts, notification required to offer contracts, kinds of products that could be produced, and types of training that inmates might receive while participating in prison labor programs.

Some of these restrictions had direct impact on rehabilitative opportunities within the prison. For instance, New York's labor law of 1842 mandated that inmates could not learn new trades while working for a contractor (Laws of the State of New York, 1842: 181-183). Only inmates already in possession of a trade upon admission were to be permitted to use that trade in prison. This provision was included in the law to satisfy those who objected that prisons had become trade schools for convicts, who upon release would then have an advantage over non-convicts in seeking employment. The law also stipulated that only products not produced domestically could be produced by inmates. Inmates gaining experience in the production of such products thus found themselves without employment opportunities in that industry when they were released. Both limits on skill acquisition and on the kinds of tasks available for inmate enterprise ultimately reduced convict economic fitness upon release.

Thus during New York's period of private sector involvement in prisons, inmates experienced severe physical abuses, rigid discipline, hunger, and extremely limited opportunities to acquire marketable skills. Interest in economic objectives clearly operated to blunt general concern with such difficulties, yet these problems did not go undetected or uncondemned by contemporary penal watchdog organizations. For instance, according to the New York Prison Association, by mid-century only 1 percent of prison expenditures were being allocated for conventional kinds of rehabilitative services. The association argued that although reducing the costs of prisons and their operation was a reasonable objective, "if this cannot be effected but at the expense of reformatory action, it had better be abandoned than attempted" (quoted in Lewis, 1965: 225).

The decline of the reformatory ideal in New York was an utterly typical phenomenon. Enoch Wines and Theodore Dwight conducted a nationwide investigation of American prisons in the mid-1860's. Their research led them to their widely cited conclusion that "there is not a state prison in America in which the reformation of the convict is the supreme object of the discipline" (Wines and Dwight, 1976: 287-288). They discovered that in virtually all the institutions they visited private contractors were dominant forces in institutional operation and management. Furthermore, the focus of prison officials was almost exclusively devoted to production of revenue. Wines and Dwight noted that "one string is harped upon ad nauseam—money, money, money" (Wines and Dwight, 1976: 289).

<sup>6</sup>In the South it was common for states to enter into lease arrangements wherein the company was permitted to take the inmate out of the state penitentiary and put him or her to work under company supervision. The company was typically responsible for providing the convict with clothing, food, and shelter, while the state received a fee for the company's use of the convict. Such arrangements led to extraordinary abuses and created an environment that had nothing whatsoever to do with rehabilitation. Of course, in the South, where such arrangements flourished, there were reformers asserting the virtues of the rehabilitative mission. For discussion of the lease system in the South see Sellin (1976) and Ayers (1984).

During the first half of the 19th century, therefore, the rehabilitative potential associated with privately operated prison labor programs was compromised by the intense interest in the generation of revenue. It would be overly simplistic, however, to attribute this failure solely to the involvement of the private sector in correctional operations. First, the vigorous interest in economically productive prisons created conditions inconducive to rehabilitative objectives. This interest did not necessarily express itself in private involvement. States such as Pennsylvania were not particularly successful in reaching reformatory goals, despite prohibitions on private sector participation in corrections. (Pennsylvania initially utilized the public account system [Jackson, 1927: 224]). Second, in large numbers of states the flood of inmates created institutional congestion that taxed the resources and capabilities of even well-designed systems (Lewis, 1965; Sellin, 1976; Ayers, 1984). Then, as now, overcrowding was a problem that had dramatic repercussions on most important aspects of institutional life.

It is clear, therefore, that the activities of private entrepreneurs and government in creating the conditions under which private enterprise operated were not the only influences militating against the success of the rehabilitative ideal. Nonetheless it is evident that at least some of the responsibility can appropriately be placed on this aspect of 19th century penal operations. The purpose of examining the historical record, however, is not to produce summary judgments regarding the ultimate value of 19th century privatization. What is important for modern concerns is the identification of hazards revealed by the historical record that may have implications for current efforts to resolve correctional dilemmas through privatization. It is to such implications that we now turn.

### *Implications for Modern Correctional Privatization*

Discussion of the advantages of privatized corrections in meeting the rehabilitative objectives of the penal system often tends to take place in an ideological or abstract context. Analysts persuaded of the general effectiveness of the private sector are often receptive to the notion that there is an important

role for private enterprise in the correctional system. On the other hand, those suspicious of the claimed efficiency and motives of the private sector possess reservations about placing important aspects of the administration of punishment in private hands. Like most ideologically grounded debates, the discussion of the proper role of the private sector in corrections often generates more heat than light. Enthusiasts offer optimistic scenarios of smoothly operating correctional institutions producing rehabilitated inmates at minimal fiscal expense. Critics counter that the profit motive will drive corrections even further from its rehabilitative objectives.

Much of this debate has, of course, been purely speculative. The experience with correctional privatization during the first half of the 19th century may, however, prove useful in providing insights which can help to move the discussion beyond ideologically based speculation. Scrutiny of this experience suggests that there are at least four kinds of rehabilitation-related difficulties which merit consideration prior to commitment of resources to large-scale correctional privatization. These include problems associated with the lack of interest in rehabilitation, the existence of substantial interest in management of correctional costs, the consequences of free-market instability on program integrity, and the potential for abuses of inmates produced by a profit-driven system.

First, it is evident from the 19th century experience that even in an atmosphere charged with relatively high levels of interest in rehabilitation, other concerns may dominate the execution of policy. Many prominent early 19th century penal reformers were vigorously interested in the rehabilitation of criminals, although they often disagreed about the best way to accomplish such rehabilitation. Despite this interest, they were unable to overcome the lack of general public interest in rehabilitation and the powerful political interest in reducing the costs associated with the correctional system. Although there was an extensive and visible advocacy for inmate reformation, in practice the capacity of this advocacy to create and sustain policies and practices conducive to reform was relatively limited.

The modern situation is somewhat different. Although there are those who anticipate enhancement of rehabilitative processes as a result of the infusion of private energy into the correctional system, even among penal reformers there is a relatively limited amount of interest in rehabilitation as a major correctional objective. As noted earlier, rehabilitation is no longer viewed by policymakers and scholars with high levels of enthusiasm.<sup>7</sup> In the absence of

<sup>7</sup>It ought be noted that, as Cullen (1986: 10-11) points out, although rehabilitation may not be as popular as it was 20 years ago, attitudinal data suggest that it nonetheless remains an important rationale for punishment among both the public and policymakers. Of course, it can be argued that in view of the policy enactments that have typified legislative activity during the past 15 years, this attitudinal support is merely apparent.

anything like a coherent general advocacy for rehabilitation, and in light of the limited success experienced by the relatively powerful advocacy in the 19th century, it can be wondered what the prospects for creating and maintaining rehabilitation-related policies really are in the current political context.

Apart from difficulties associated with the lack of direct interest in rehabilitation, problems may arise which are related to the presence of high levels of interest in the other potential products of correctional privatization. As previously noted, the potential for cost-savings drives much of the current argument in support of a privatized system. The 19th century experience suggests that such an interest may well become dominant and determinative in influencing the form assumed by the correctional system. As 19th century legislative reports in states such as New York revealed (e.g., New York State Assembly, 1833, vol. 3, # 199: 15-16), and as Wines and Dwight (1976) found in their survey of the American correctional system in the mid-19th century, the focus on economic productivity overwhelmed the reformative mission of large numbers of privatized 19th century penal systems. The compromises in rehabilitative objectives wrought by fiscal goals eventually reduced many 19th century prisons to factories whose main manifest objective was the production of cost-offsetting revenue (Melossi and Pavarini, 1981).<sup>8</sup> The current reluctance of legislatures to provide adequate funds to support growing correctional populations, such as exists in Florida,<sup>9</sup> reflects a similar kind of pronounced interest in minimizing the economic cost of corrections. Thus those who would argue that privatized corrections will provide opportunities to develop and apply rehabilitative programs need to consider how such programs can be protected against the withering effects of the concern with correctional costs.

One approach to this dilemma might be to link profits and rehabilitative effectiveness (Cullen, 1986: 14). Companies unable to achieve rehabilitative effects could be denied contract renewals. Presumably this would provide incentives for entrepreneurs to commit resources to rehabilitative activities and

functions. Unfortunately, at least two kinds of problems make this solution untenable. First, the perception will likely exist among those responsible for determining and implementing policy that it is unreasonable to insist that private companies achieve what government has been largely unable to accomplish during most of the 20th century. Furthermore, given the minimal expectations regarding the potential for rehabilitation, it is unlikely that a legislature or contract award committee would be willing to terminate a contractor that successfully generated profits and achieved high levels of institutional security merely because its convicts were undistinguished in terms of recidivism rates. There is no evidence of such willingness in the 19th century and little reason to believe it would exist under current conditions.

Second, even if there were interest in adopting a "rehabilitative success" clause in the contract, it would be difficult to settle upon standards for measurement of success. Would failures involve those rearrested, reconvicted, or reincarcerated? What would be the followup period? Would commission of an offense of much lesser severity than the original offense be counted the same as commission of an offense of similar or greater severity? How many "failures" would be required to justify contract termination or non-renewal? Furthermore, who would pay for the collection and analysis of the relevant evaluation data, and how would the integrity and objectivity of the evaluation process be maintained? These are but a few of the questions that will need to be carefully considered before the establishment of a link between profits and rehabilitation can be viewed as a viable mechanism for preventing the pursuit of profits from compromising rehabilitative efforts.

Apart from issues related to the relative lack of interest in rehabilitation and the presence of interest in cost-efficiency, there are potential threats to the integrity of rehabilitative programs associated with the instability of private sector enterprises. As noted by Sechrest et al. (1979), one of the major hazards faced by 20th century rehabilitative programs has been the threat of in-stream program modification, often to meet some "practical" exigency. Program processes may be altered to accommodate for changes in financial, legal, institutional, or political circumstances. The 19th century experience suggests that the vagaries of the private sector may create similar hazards. For instance, in the 1850's the contractor responsible for Auburn's carpet shop fell on hard economic times. As a result he was unable to meet his convict labor payments. Although such a default

<sup>8</sup>Melossi and Pavarini also argue that the produce of the contract system was not limited to the manufacture of goods. Through "subordinated work" under the contract system, the prisoner was transformed into a compliant worker whose loss of liberty and autonomy corresponded to that experienced by the "free" worker (1981: 187).

<sup>9</sup>The experience of Florida is typical in this regard. Florida governor Robert Martinez expressed his frustration with the legislative resistance to his revenue-requiring proposals to create more facility space. "Prisons represent an immediate crisis. We can't put it on the back burner . . . Everything (other legislative priorities) is getting an awfully high profile . . . no one is walking the halls promoting the building of prisons" (Gainesville Sun, April 30, 1987: 8B).

was supposed to result in contract termination, the prospect of rendering idle 350 inmates, with the associated threat to the penal discipline thought to be so important to the reformatory process, as well as the loss of potential future revenue, caused the institution to absorb the loss. In addition, a new contract was drawn offering even more attractive terms to the contractor (Lewis, 1965: 264-265). Thus, the natural instability of the competitive private sector created a threat to the integrity of the processes that had been established at Auburn. Only by forgiving the indebtedness of the contractor, and forfeiting the expected revenue that had been largely responsible for the contractor's presence in the prison in the first place, was the facility able to maintain its established routine. The dependency of the state upon the private entrepreneur for the maintenance of institutional processes forced fiscal compromises that largely defeated the purpose of bringing the entrepreneur into the system.

The final problem involves the possibility that the pursuit of profits may result in a variety of abuses perpetrated upon institutional inmates. As previously noted, 19th century New York inmates were subjected to austere conditions which produced hunger and illness. Inmates were subjected to production-driven discipline administered, not only by state officials, but also by the entrepreneurs themselves. In addition, private entrepreneurs were able to exploit inmate labor through the use of bribes of officials and inmates (Lewis, 1965: 266; Pisciotto, 1985: 161). The general conditions which led to these practices are hardly unique to the 19th century. Modern efforts to re-create the privatized system which fail to fully consider the range of institutional processes that might be stimulated by private involvement, processes both legal and illegal, may result in the same kinds of practices, with similar consequences for rehabilitative initiatives.

Having identified some of the hazards to successful achievement of rehabilitative objectives in the privatized correctional environment, two observations must be added in closing. First, whatever the likelihood of successful implementation of effective private rehabilitation programs, the value of private sector involvement in corrections will likely not be judged on this dimension alone. As noted at the outset of this discussion, there are a number of potentially valid arguments that can be adduced in support of private sector participation in the administration of punishment. It is important, however, to be clear about precisely what is reasonable to expect from such a system. Examination of the previous record

of correctional privatization century and rehabilitation raises serious questions about the rehabilitative potential of the privatized system. While other merits of correctional privatization may justify increasing the participation of the private sector in the administration of punishment, reformers ought nonetheless possess no illusions about the likely achievement of rehabilitative objectives.

Second, it is crucial that care be exercised in the selection of criteria to determine the success of the private sector in accomplishing rehabilitation-related goals. Although the failure to rehabilitate substantial numbers of offenders can form the basis for reasonable inquiries into the utility of the private sector in the rehabilitative process, it can be argued that the effects of traditional government-devised and imposed rehabilitative strategies must be the benchmark for assessment. The failure to anticipate and resolve all the problems associated with privatized correctional rehabilitation need not occasion a rejection of private involvement. Even minor gains may be better than what might otherwise be obtained under conventional government arrangements. Furthermore, if these gains accumulate with other kinds of benefits, such as those related to cost-efficiency and flexibility, there may be good reason to consider further enlargement of the role of the private sector in corrections.

Scrutiny of the historical record can provide insight into the processes that limited early privatization efforts in the achievement of rehabilitative objectives. Such insight may be useful in either avoiding the commitment of resources to a doomed reform, or in shaping the structure of the reform so as to avoid the calamities experienced during the 19th century. Although analysts may differ in their reading of the historical record, failure to at least consult this record represents a sure path to the repetition of serious errors already committed in the American penal experience.

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