

GEORGETOWN UNIVERSITY  
SCHOOL OF CONTINUING STUDIES  
BACHELOR OF ARTS IN LIBERAL STUDIES PROGRAM

ELECTRONIC THESIS RELEASE FORM

Student name: MICHAEL C. FICOCELLO  
Thesis title: ALTERNATIVES TO INCARCERATION

I hereby grant to Georgetown University and its agents the non-exclusive license to archive and make accessible my thesis in whole or in part in all forms of media, now or hereafter known. I retain all ownership rights to the copyright of the thesis, including the right to use it in whole or in part in future works. I authorize Georgetown University to archive my electronic thesis and to release the entire work immediately for access worldwide.

Author signature: Michael C. Ficoello

Date: 8/25/08

GEORGETOWN UNIVERSITY

What's wrong with jail? : Alternatives to Incarceration.

Michael C. Ficocello  
Final Seminar

Submitted in partial fulfillment of the  
requirements for the degree of Bachelor  
of Liberal Studies at Georgetown University.

April 15, 1983

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
THEORETICAL PERSPECTIVE	3
METHODOLOGIES	4
PRISON DOESN'T WORK	5
ALTERNATIVES TO INCARCERATION	8
OUTLOOK AND CONCLUSION	14
APPENDIX I: FACTS AND FALLACIES QUIZ	15
BIBLIOGRAPHY	19

I have paid no poll-tax for six years. I was put into a jail once on this account, for one night; and, as I stood considering the walls of solid stone, two or three feet thick, the door of wood and iron, a foot thick, and the iron grating which strained the light, I could not help being struck with the foolishness of that institution which treated me as if I were mere flesh and blood and bones, to be locked up. I wondered that it should have concluded at length that this was the best use it could put me to, and had never thought to avail itself of my services in some way.

- Henry David Thoreau

"On the Duty of Civil Disobedience"

## INTRODUCTION

This paper focuses on alternatives to incarceration. To provide this I will discuss why prison doesn't work, its impact on the U. S. society and why it no longer is a viable alternative for the majority of criminals. I also will offer several alternatives to incarceration available to the judicial system today and their implications. One immediate path to accomplishing reform in the prison system is the implementation of alternatives to incarceration.

Generally through the news media during the last two decades prison riots have focused the nation's attention on the inhumane conditions affecting prisoners. The punitive and nonrehabilitative nature of prisons now demands change.

If you've played MONOPOLY, you know what it's like to draw the card that says "GO TO JAIL, DO NOT PASS GO, DO NOT COLLECT \$200." You have to wait in "jail" while the other players continue to move around the game board. But, what-the-heck, you'll be back in the action soon and after all, it's only a game. For over five million Americans' it's not a game. Going to jail or prison is a grim reality. These men and women are confined in federal, state, city and county jails or prisons every year.

You ask, What's wrong with jail? Well for the most part jails are tanks, warehouses. Anyone not a criminal when he or she goes in, surely will be when they come out.

A prison commonly known as (a lock-up), a penitentiary defined as (a place to do penance), a correctional institution (a place to become "corrected"). These are all terms with different philosophical connotations but meaning essentially the same thing - a place where individuals are incarcerated for a few or many years as a penalty for an illegal act. A correction-

1. AMERICAN CORRECTIONAL ASSOCIATION'S PROJECT CULTURE, 1978.
2. A prison is a confinement facility having custodial authority over adults sentenced to more than one year.
3. A jail is a facility, usually operated by a local law enforcement agency, holding persons pending adjudication or incarcerated for one year or less.

al facility is charged with two responsibilities: first, to maintain security, to ensure that the offender does not escape or disrupt the environment; and second, to attempt to rehabilitate or reintegrate the offender into society upon his or her release. Due to severely limited budgets, correctional administrators are forced to assign the larger percentage of their budget to security functions, rather than rehabilitate or reintegrate. Additionally, the total rated capacity of America's prisons for adult offenders as designed, redesigned and expanded is 262,768<sup>3</sup>. On December 31, 1982 there were 405,371 adult prisoners in these institutions serving sentences of a year or longer. This means that our prison system is overfilled to 154 percent of its total capacity. Furthermore, at the end of 1978 there were 3,493 jails in the U. S. excluding federal and state prisons. The total number of inmates being held in these jails amounted to 158,394<sup>4</sup>.

In addition to being overcrowded, more than two-thirds of the inmates in maximum security prisons are in facilities designed and built more than a century ago. Some inmates are crowded into outdated factory buildings or mental hospitals converted for prison use. Furthermore, prisons are also generally stark, institutional and impersonal.

From my own personal experience and in all fairness to correctional personnel it is not that they are insensitive to these conditions, but are often without the resources to make substantive changes in the prison system.

3. American Correctional Association's Project CULTURE, 1978.

4. Source: U. S. Law Enforcement Administration, Census of Jails and Survey of Jail Inmates, 1978; and Unpublished data.

### THEORETICAL PERSPECTIVE

My approach to the study of alternatives to incarceration combines the sociological elements of both functionalism and conflict theory.

From the functional side I make certain assumptions about the nature of imprisonment. Chief among these is the assumption that imprisonment is part of a system operating within our society, namely the criminal justice system. Therefore, from a functionalist point of view, the operation of the criminal justice system, particularly incarceration of criminals, is necessary for the continuing operation of a peaceful society, for it helps prevent the advent of a destructive social disorder.

On the conflict side the concept of incarceration involves inequality of power within our society, generally criminals imprisoned are from a lower economic stratum, are from a minority group, are coerced and exploited by the very group of people who profess to rehabilitate them.

Both of these perspectives will be discussed at a macro level of analysis.

I feel a blending of both the functional and conflict theories are necessary in order to provide a full account of the prison system and my personal experience in the prisons along with its larger social implications.

METHODOLOGIES

The basis for this paper is mainly archival research, supplemented with my actual experience doing volunteer work at the Fairfax County Virginia Adult Detention Center and State of Virginia prison work camps.

One of the major strengths utilizing this supplementary approach is my actual experience allowed me to verify what was being written about overcrowding in our jails and the need for alternatives to incarceration.

This also serves as my major weakness in that my experience was regionally limited to the Northern Virginia area. However, since I have completed my work during the year 1980, the overcrowding I witnessed seems to be a microcosm of what is happening all over the country. Virtually every day the news media reports on some jail or prison experiencing a riot, uprising or some sort of demonstration because of overcrowded conditions. The need for alternatives to incarceration has become a national problem.



PRISON DOESN'T WORK

At the end of 1982 there were 405,371<sup>5</sup> persons in federal and state prisons compared to 314,272<sup>6</sup> at the end of 1980 showing an increase of 22.5% in spite of the facts which indicate prisons don't work. Prisons do not "correct", they do not deter crime, or provide a long term solution for the protection of society. They do serve the fantasy of revenge and they do allow us to put the question of "what will we do with convicted criminals" in the closet.

The fact is, the more we build, the more prisons we fill.

"The effect of federal prison construction during the past fifty years has been merely that of relieving crowded conditions. Since the creation of the Master Plan for prison expansion under President Nixon in 1969, the number of federal prison facilities has doubled, with the previous forty. History shows that, if new cells are built they will be filled whether populations are sufficient to fill them or not."<sup>7</sup>

According to Justice Department figures, prison populations have been growing at near record rates in 1981 and 1982, and Justice Department officials have attributed this largely to new state laws imposing mandatory sentences and restricting parole.

The total 1981 increase was 11.8 percent. The record annual increase in the 57 years that records have been kept was 12.2 percent in 1939.

Additionally, Federal prisoners accounted for 29,403 of the total as of September 30, 1982, or about 20 percent more than the rated capacity of federal prisons.

During the third quarter of 1982 according to the Justice Department the prison population increased in 41 states and the District of Columbia and decreased in only nine states. The two states with the largest percentage increases were Oregon with 12.1 percent and Alaska with 11.3 percent.

5. Department of Justice, Bureau of Statistics, 1983.

6. Statistical Abstract of the United States, 102nd edition, 1981, U. S. Department of Commerce, Bureau of Census.

7. National Moritorium on Prison Construction.

The largest percentage decrease, 4.4 percent, occurred in Kentucky when officials then stopped counting those state prisoners who are held in local jails because of prison overcrowding.<sup>8</sup> I wonder whatever happened to accountability? Interestingly enough, of the 3,493<sup>9</sup> local jails in the United States, 630<sup>10</sup> of them are used to hold prisoners for other authorities because of overcrowding.

The four states with the largest prison populations were Florida with 26,986; New York with 27,572; California with 33,502 and finally Texas with 35,354.

Phyllis Clark points out:

"For America to restructure its prison system, there would have to be a great deal of public pressure. There isn't. The American system of criminal justice reflects American values. Thus, even the most radical reformers in American corrections dedicate themselves to achieving limited change. It is the kind of change the public will accept." (Clark, 1980:139)

However, the United States continues to rely on incarceration as its primary response to crime. We lock up approximately 250 per 100,000<sup>11</sup> citizens in this country, the highest percentage of any western industrial nation.

We have, in proportion to our population, 1000% more people in prison than do the Dutch; 500% more than the Spanish; 437% the Japanese; 330% the Swedes; 249% the English; 239% the West Germans; and 223% the Canadians. There are, of course, great cultural differences between our country and these, but none that justify our position as the most criminalogic and the most punitive of western industrial nations.<sup>12</sup>

8. Source of all prison increases or decreases, obtained from Department of Justice, Bureau of Statistics, 1983 figures.
9. Bureau of Census, 1981, Statistical Report.
10. Bureau of Census, 1981, Statistical Report.
11. Bureau of Census, 1981.
12. Federal Bureau of Prisons

About 95% of the U. S. inmate population will eventually be returned to the community and there is much evidence that the prison experience contributes to crime rather than deterring it. Prisons have been characterized as schools for crime where criminals learn from each other the techniques of crime. The experience of institutionalization is often so detrimental that an offender returns to society more maladjusted than when he went in.

Chief Justice Warren E. Burger points out:

"The operation of a correctional or penal institution is no place for amateurs. It calls for substantial professional training and the highest order of sensitivity, beginning at the guard level. We need look only to the volume of complaints, the disorders, and riots in these institutions over the past decade to find abundant evidence of this. If the only problem were the control of disorders it might be manageable, even if only by use of raw force, but force is not the solution. In a limited sense these institutions can be compared with the production lines of Detroit: Recidivism is the penologists word for "Product Recall." When prisons turn out "Products" with a high rate of recall we have disaster. And our current rate of recall - recidivist offenders is a disaster. And you will inherit that disaster."<sup>14</sup>

13. Federal Bureau of Prisons
14. Remarks of Warren E. Burger, Chief Justice of the United States at George Washington University, Sunday, May 24, 1981, Commencement Exercises.

ALTERNATIVES TO INCARCERATION

Why incarcerate? Some of the purposes are: to protect society, to deter potential violators, to punish and to rehabilitate. All of these reasons have been discussed previously. However, once a person is punished, what then? Rehabilitation efforts may have helped him or her to get started on the right track, but too often overcrowded institutions with limited staff do not have the funds, specialized facilities or expertise for effective rehabilitative efforts. Some question the idea of rehabilitation as a viable goal. For example, Sociologist David Greenberg states: "Rehabilitation serves as the source of a good deal of bitterness to prisoners: despite much talk and slick government brochures (often printed in prison print shops) about rehabilitative programs, very few such programs can be found inside most prisons. Rehabilitation is still regarded as a luxury, something to think about after security and maintenance are insured. As a result neither adequate funds nor staff is available for rehabilitation or treatment programs in most prisons." (Bender, 1980:80).

Others point out that it has seldom been given a fair chance. In any case, few people point with pride to the success of our prison system. If incarceration does not seem very effective, what is or can be?

Decriminalizing minor offenses and those which primarily offend moral norms (gambling, possession of marijuana, homosexuality, prostitution, etc.) might lessen the court's load but as few people are jailed for such offenses it would not decrease incarceration greatly. In fact, in many locations of all the felons convicted only about one-third are incarcerated, while two-thirds are given suspended sentences, fines or placed on probation. Norman Carlson, Director of the Federal Bureau of Prisons stated: "Without question the use of community alternatives should be maximized to the fullest extent possible,

consistent with the public interest. They are less corrosive to offenders than institutions and are far less costly to the taxpayer. For those offenders who repeatedly commit crimes, particularly violent crimes, however, we will continue to need prisons." (Bender, 1980:27).

One of the hardest things to do is getting the system to use some of the resources of the community, along with recognizing the humanitarian aspect of incarceration that is, it brutalizes the one's who have not been brutalized. Judges seem to possess the necessary power and authority to filter out the people that do not belong in prison. If not for any other reason they could do it in the name of saving taxes rather than coddling the offender. It certainly becomes cost effective.

Community-based correctional programs are felt to be more humane, less expensive and helpful in reducing recidivism. However, many of the available programs help primarily in the pre-trial or post-sentence period, rather than being alternatives to serving time in jail or prison. Most alternative programs are relatively untested and many pilot projects are too limited in scope and funds to evaluate their effectiveness conclusively. The following programs are described in an effort to show what is available in the community as an alternative to incarceration. Although not inclusive they do provide a broad spectrum of the various sentencing alternatives available.

RESTITUTION TO VICTIMS OR VICTIM COMPENSATION: The initiation of this program requires the court to suspend the sentence upon conviction and order the defendant to make restitution to the victim in one or a series of payments. This program would be particularly useful involving crimes against property. If the defendant fails to make restitution the suspended sentence may be revoked. This concept teaches convicts they have a responsibility and obligation to society by requiring them to pay restitution to their victims.

It could be carried even a step further by requiring convicts who are released prior to the completion of their sentence to pay the State or Federal Government for part of the costs of their incarceration. It seems to me this would be a good idea for inmates to pay part of the costs of housing them and really shouldn't have any more legal ramifications than any other law requiring criminals to pay restitution or provide a variety of community services. The amount paid could at least partially defray the cost of incarceration and relieve some of the taxpayers burden.

DEFERRED PROSECUTION: Utilizing this concept a district attorney may agree to defer filing of criminal charges for a period of month's or even a few years depending on the nature of the offense. During this time, the defendant may provide restitution or community service. In the case of burglary or theft the stolen property could be returned to the victim.

If the defendant satisfactorily completes the program, the state will not file charges. Again, priority would be given to first-time and non-violent offenders.

PRE-RELEASE OR WORK RELEASE CENTERS: This is a community-based program that is designed to provide soon-to-be released convicts a transition back into free society, after serving several years in prison. The inmates are given a taste of freedom and responsibility by being permitted to work at jobs in the community during the day and then are confined at the center at night.

This type of program has several advantages in that inmates

could generate millions of dollars in family support, tax revenues and money to support the very work release center they are a part of.

Furthermore, this type of program allows the inmate to adjust to the routine of returning to work versus being released into society at the end of his prison term with no job and no money.

Another variation of this program could require an offender to be sentenced directly to a work release center.

DISPUTE MEDIATION: A program developed to divert offenders completely from the judicial system. Under this concept, prosecutors would bring together victims and non-violent offenders and resolve the situation without a court procedure or incarceration.

FINES: Increase in the use of fines with or without restitution rather than confinement.

NIGHT AND WEEKEND INCARCERATION: Under this alternative the courts may order a person convicted of a non-violent felony to be incarcerated in the county jail for one or more nights or weekends. The court may also require the offender to perform certain work duties to reimburse the county for his food or other expenses.

HOUSE ARREST: This program is relatively new and allows qualified offenders to serve their sentences away from the prison facility or local jail.

A recent innovation to house arrest is taking on a new meaning in Albuquerque, New Mexico,<sup>15</sup> where 30 misdemeanor offenders are serving probation in their homes under the watch of electronic bracelets that will snitch on them if they leave.

Each bracelet emits a digital code that is picked up by a telephone in the wearer's home. Centrally located probation officers will be able to monitor the signal. If an offender tries to remove the bracelet or goes farther than 1,000 feet from his telephone, a signal is sent to the monitoring officers to show the probation rules have been broken.

Receivers in the probation officer's telephone will allow the system to record the times of departure and arrival to make sure

15. Oklahoma City Times, March 9, 1983.

they are working properly and are being worn by the offender.

This 90 day pilot project will focus primarily on people convicted of drunken driving and sentenced to probation. An increase in the use of this supervised probation for non-violent offenders is certainly preferable to confinement in the local jail.

Futhermore, an increased number of people utilizing this type of alternative to incarceration would decrease the cost, as alternatives are generally cheaper than imprisonment. For example, "state institutional costs are about six times that of parole and about fourteen times that of probation for adults".<sup>10</sup> In addition, the offenders ties with the community are not severed and his/her chances for making a contribution to the community is increased.

Probation success rates range as high as 90%<sup>16</sup> because probation takes place in the community and supervision accelerates adjustment to society.

RELEASED ON RECOGNIZANCE (ROR): This program allows greater use of pre-trial release without payment of the bondsman's fee. This has an immediate effect of reducing the jail population since misdemeanor offenders are not serving time prior to trial dates.

I had a personal experience with an inmate arrested for shoplifting in Fairfax County. When I interviewed him I discovered he had spent 32 days in jail for failure to post a \$25.00 bond. He had not been given a trial date. ROR programs would eliminate this type of human waste.

COMMUNITY SERVICE WORK OR RESTITUTION: Community service restitution is a form of sentencing that holds the offender to account for a wrong-doing. Non-violent offenders are given the opportunity to symbolically pay back the community by working in a local service agency (volunteer work), instead of receiving a fine, being put on probation, or going to jail.

It appears to me that community service is a common sense approach to criminal justice. Unlike the traditional, paternalistic approach, community service sentencing assumes offenders are capable of taking

16. From "Federal Prison Construction: Alternative Approaches," Congressional Budget Office, January, 1977, p.8.



responsibility for their actions. The judge who hands down a community service sentence is telling offenders, not how they will be punished, but how they can make up for the offense.

Another aspect of this form of sentencing is that it saves the community money by sidestepping the cost of processing and jailing offenders, at the same time providing a needed service in the community that might otherwise not be provided.

There are also benefits for the offender who would otherwise have gone to jail. The community service sentence means that his or her relationship to the community and the family is not disrupted. In some cases such a sentence helps break the revolving door cycle of prison and a repeat of the original offense.

This program is very successful in Fairfax County where hundreds of first time shoplifters have participated and completed restitution contributing thousands of dollars of volunteer time.

## OUTLOOK AND CONCLUSION

Everyone agrees prison overcrowding is a problem but the solution is so complex it hardly can be achieved without addressing all of the inadequacies of the whole judicial - penal system or without finding a stopper for the inexorably increasing flow of criminality, which is a national as well as international phenomenon.

At least two factors suggest there will be no slackening of that growth. For one thing, there is nothing to indicate any significant change in the human condition, one that would bring about a reduction in our appalling crime rate. There's no end in sight to the soaring incidence of crime, particularly the more serious, violent felonies such as homicide, armed robbery, burglary and rape. For these, alternatives to incarceration simply do not work.

For another, there is the understandable public reaction to the crime statistics - a growing demand for tougher prosecution, sentencing and parole policies which in turn feeds the need for more prison cells. Consequently, alternatives to incarceration suffer as a result of this type of public reaction to crime and criminals.

It is not enough to study all these facts presented and assume that we understand why people are in prison. It is too easy to come to the conclusion that crime is simply the result of imperfect individuals. But crime is also a problem with its roots deep in the social structure, not just a group of problems experienced by individuals. Understanding the experience of poverty with its powerless, anxiety, and frustration is also an important factor. Finally, it is more difficult for an inmate to feel good about himself/herself, because the experience of incarceration can only intensify the alienation felt previously.

FACTS AND FALLACIES

Below is a short quiz to test your knowledge about jails and criminal justice. You may be a little surprised to find out how much you do or do not know.

Indicate letter of answer in blank for multiple choice and T (True) and F (False) for true-false questions.

- \_\_\_\_\_ 1. What percentage of crime is reported?  
(a) 50% (b) 75% (c) 90%
- \_\_\_\_\_ 2. If you are charged with a crime, what is most likely to happen to your case? (a) a plea of not guilty (b) a plea of guilty to the original charge (c) a plea of guilty to lower charges (d) a dismissal.
- \_\_\_\_\_ 3. Why do prosecutors plea bargain with offenders to reduce charges as frequently as they do?  
(a) lack of personnel and time (b) bad arrest and insufficient evidence (c) proof of innocence.
- \_\_\_\_\_ 4. What proportion of persons arrested are released before going to trial? (a) 70% (b) 50% (c) 25%
- \_\_\_\_\_ 5. For those unable to post bond, how long is the average wait in jail for trial? (a) 30 days (b) 60 days (c) 6 months
- \_\_\_\_\_ 6. Of those released on minimum bond or on their own promise, how many fail to appear? (a) 5% (b) 10% (c) 40%
- \_\_\_\_\_ 7. What percentage of those who appear in court on criminal charges actually go to trial? (a) 5% (b) 10% (c) 50%
- \_\_\_\_\_ 8. How many crime reports lead to conviction? (a) 40% (b) 15% (c) 5%
- \_\_\_\_\_ 9. Jail is just another word for prison, in fact they are words that describe the same kind of correctional institution. T or F

- \_\_\_\_\_ 10. Courts are sending fewer first offenders to jail now than five years ago. T or F
- \_\_\_\_\_ 11. Juveniles are never held in jail pending trial. T or F
- \_\_\_\_\_ 12. Half of the people in jail have not come to trial yet. T or F
- \_\_\_\_\_ 13. A jail sentence depends solely on the seriousness of the crime. T or F
- \_\_\_\_\_ 14. Overhalf the prisoners in jail have been convicted of or are charged with crimes of violence, i.e., mugging, robbery, rape. T or F
- \_\_\_\_\_ 15. Persons charged with victimless crime make up about 5% of the jail population. T or F
- \_\_\_\_\_ 16. 90% are males in their early 20's. T or F
- \_\_\_\_\_ 17. 10% cannot read or write. T or F
- \_\_\_\_\_ 18. 25% were living below the poverty level. T or F
- \_\_\_\_\_ 19. 40% were out of a job when arrested. T or F
- \_\_\_\_\_ 20. 5% are mentally retarded. T or F
- \_\_\_\_\_ 21. 48% will return to jail within 2 years. T or F
- \_\_\_\_\_ 22. Programs for women in jail are required to be equal to programs for men. T or F
- \_\_\_\_\_ 23. Most jails do not have recreational and educational facilities. T or F
- \_\_\_\_\_ 24. Most jails have alcohol and drug treatment programs. T or F
- \_\_\_\_\_ 25. How many jails are there in the U. S.? (a) 800  
(b) 1000 (c) almost 4000
- \_\_\_\_\_ 26. How many persons are in America's jails each year?  
(a) 50,000 (b) 100,000 (c) 5 million
- \_\_\_\_\_ 27. Businesses lose more money by (a) shoplifting  
(b) employee theft (c) hijacking, robberies and  
burglaries.

- \_\_\_\_\_ 28. Who commits crimes of highest dollar value?  
(a) Hispanic (b) black (c) middle class white  
(d) derelict
- \_\_\_\_\_ 29. Jail incarceration is the cheapest method of  
dealing with offenders. T or F

Some questions were taken from a criminal justice test prepared by the U. S. Jaycees Criminal Justice Programs.

ANSWERS

- |           |                |
|-----------|----------------|
| 1. a      | 16. T          |
| 2. c      | 17. F 20 - 50% |
| 3. a      | 18. F 25%      |
| 4. a      | 19. T          |
| 5. a      | 20. F 10%      |
| 6. a      | 21. F 60%      |
| 7. a      | 22. F          |
| 8. a      | 23. T          |
| 9. F      | 24. F          |
| 10. T     | 25. c          |
| 11. F     | 26. c          |
| 12. T     | 27. b          |
| 13. F     | 28. c          |
| 14. F     | 29. F          |
| 15. F 50% |                |

BIBLIOGRAPHY

- American Correctional Association Project CULTURE.  
1978
- BENDER, David L.  
1980 America's Prisons-Opposing Viewpoints,  
St. Paul, Minnesota, Greenhaven Press.
- CLARK, Phyllis Elperin  
1980 Doing Time - A Look at Crime and Prisons,  
New York Hastings House.
- Department of Justice, Bureau of Statistics  
1983
- Federal Prison Construction: Alternative Approaches,  
Congressional Budget Office.  
1977
- MITFORD, Jessica  
1973 Kind and Usual Punishment, New York, Alfred  
A. Knopf.
- National Moritorium on Prison Construction  
1978
- Oklahoma City Times  
1983
- Statistical Abstract of the United States, 102nd Edition,  
U. S. Department of Commerce, Bureau of Census.  
1981