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Getting the Genie Back in the Bottle:

California's Prison Gulag

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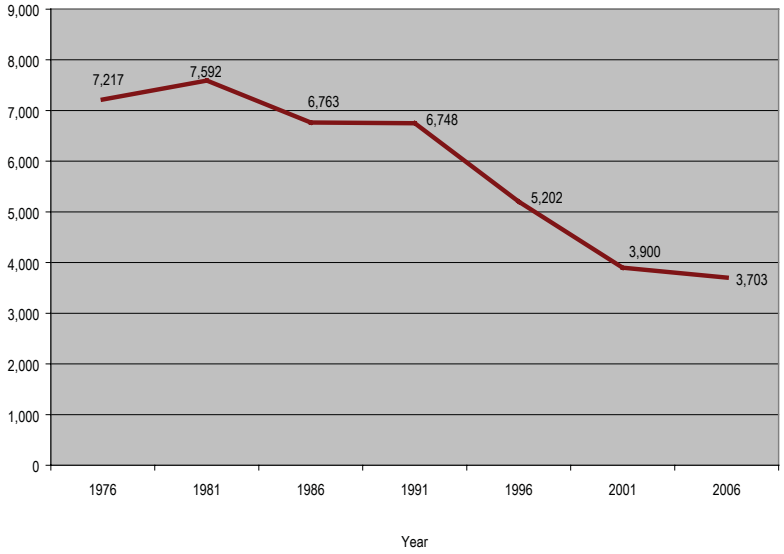
Caleb Foote would have been horrified.* The California prison population pushed past 172,000 in 2006, even though it rarely exceeded 30,000 during most of the 20th century. In fact, as late as 1976, the inmate population was just above 20,000 (NCCD, 2008). While there are several reasons for this phenomenal growth in the prison population, there is little doubt that changes in sentencing laws enacted by the Legislature or passed through voter initiatives fed the ever larger correctional leviathan. Crime rates actually declined during these three decades, with the largest declines occurring between 1991 and 2000; crime rates have remained low since the mid-1990s.

California Crime Rates
The number of serious offenses per 100,000 inhabitants



Source: FBI, 2008.

Distorting the Scale of Punishment

What happened in California was an extraordinary increase in the scale of penalties, especially for violent offenders, and a redefinition of parole as an added penalty after incarceration—not release in lieu of secure confinement. Persons sentenced to state

* Caleb Foote (1918-2006), was a pacifist in the Quaker tradition who resisted the draft during WWII, served 2 separate prison terms for doing so, and eventually was pardoned by President Truman. Foote earned a master's degree in economics from Harvard, spoke out against internment of Japanese-Americans, and dedicated himself to furthering social justice.

prison served much more time, and a higher number of felons were sent to state prisons than to local probation and jails. Moreover, the proportion of released prisoners who were returned to prison on parole violations more than doubled (LHC, 2003).

The defining event that let the punishment genie out of the bottle was the passage of the Determinate Sentencing Law (DSL) in 1976. That law replaced the existing California Indeterminate Sentencing Law (ISL) that had existed for nearly a century. The DSL sought to substitute fixed prison terms for most offenses in lieu of the judgments of the parole board. Caleb Foote and a working group assembled by the American Friends Service Committee (AFSC), among others, denounced the older system as flawed in a classic statement on penal reform, *Struggle for Justice* (1971). First, they argued that individualized sentencing under DSL allowed the broad exercise of discretion that rarely benefited poor defendants and people of color. Second, the authors of *Struggle for Justice* expressed grave doubts over the presumed value of current rehabilitative programs. In their view, these programs were coercive in nature and rarely benefited inmates. Third, Caleb Foote and his colleagues argued that existing penalties were far too harsh and that California prisons were degrading and brutal places that did more harm than good. *Struggle for Justice* became a rallying cry for progressives who wanted to limit state power over individuals, to shrink the justice system, and to seek community solutions to the crime problem. The AFSC working group did observe that determinate sentences alone would not solve disparity in the justice system as long as police and prosecutorial discretion were not also limited.

Paradoxically, attacks on the ISL were not limited to the left. More conservative critics of ISL complained that the broad discretion led to excessive leniency in sentencing. It was alleged that prior governors such as Edmund Brown, and even Ronald Reagan, had used the power of the parole board to release many inmates early to avoid building more prisons. Conservatives criticized the supposed hypocrisy of the sentencing system in which judges pronounced lengthy prison sentences but the parole board released most offenders after a too short stay in custody. Some conservatives, such as Alameda County District Attorney Lowell Jensen, called for the total abolition of parole.

DSL passed with bipartisan support and immediately opened the floodgates to an escalated scale of penalties in California. This was somewhat unexpected, since the proponents of DSL tried to set the new penalties at the same levels as existing average prison sentences. The proponents of DSL failed to anticipate that the new law, in effect, made the Legislature the new sentencing authority in California. The pressure to escalate the scale of sanctions proved irresistible. The discussion on sentencing took on the character of "bidding wars." Legislators competed to prove to voters who could be tougher on crime. Victims groups, district attorneys, and the newly emerging prison guard union poured gasoline on the punishment fire. In all these deliberations, there was virtually no consideration of the potential costs or benefits of tougher sentences. No one estimated the extent of prison crowding that would result from the new penalties. No one seriously discussed the need to build new prisons. The Legislature passed hundreds of bills to increase criminal penalties.

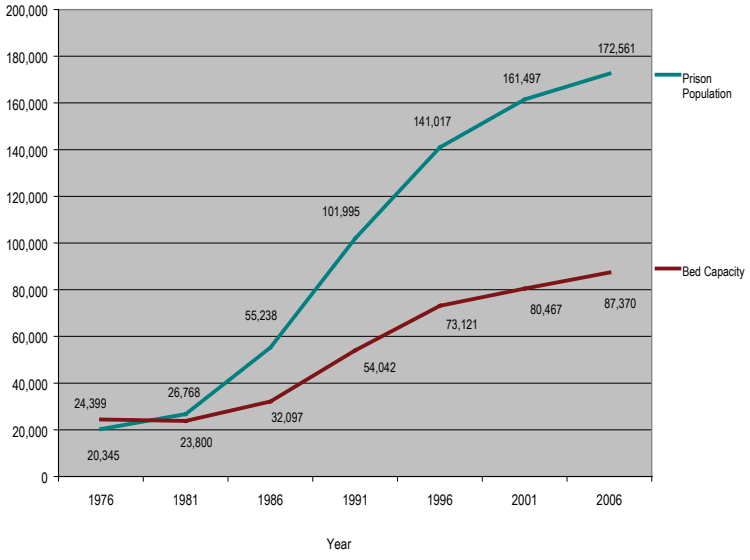
The impact of these new sentencing laws can be observed in the data on the median time served until first parole by men and women sent to California prisons. It is difficult to compare changes in time served in prison because the California Department of Corrections and Rehabilitation (CDCR) has changed its methods of presenting these data, and there have been numerous changes in the penal code that affect how different criminal acts are classified. However, it does appear that prisoners are serving much more time to first parole for virtually all violent crimes and sex offenses and less time to first parole for drug crimes and property crimes. For example, in 1978, men served a median of 37 months for manslaughter and women served a median of 28 months. By 2006, the median time served until first

parole for manslaughter was 83 months for men and 64 months for women (CDCR, 2008). In 1978, the median time served by men for rape was 43 months compared to 60 months in 2006. Time served for lewd acts with a child jumped from 52 months to 60 months from 1978 to 2006. On the other hand, time served until first parole declined for many drug and property crimes during this same time period. However, remember that virtually all of these offenders were returned to prison on parole revocations to serve additional time (YACA, 1979; CDCR, 2008).

The thirst for tougher punishment seemed virtually unquenchable. Over the next decade, the Legislature passed laws requiring mandatory imprisonment for a wide range of crimes. Governor George Deukmejian's "Use a Gun Go to Prison" campaign was only the beginning. The Legislature, responding to lobbyists from the retail industry, made petty theft with a prior minor conviction cause for a mandatory prison sentence. Then there was the hysteria around drugs that led to substantially enhanced punishment for even minor drug offenses. Mandatory incarceration for drug offenders had a particularly adverse effect on women. In 1976 there were fewer than 600 women in California prisons; by 2006 that number had grown to over 11,000. The rate of growth in female incarceration exceeded that for men. In general, women inmates are imprisoned for less serious crimes than men, and drug offenses play a large role in female incarceration (Wolf, Bloom, and Krisberg, in press).

Strict sentencing enhancements for alleged gang members were also stirred into the bubbling caldron of criminal penalties. The Legislature signaled its contempt for offenders by removing the word "rehabilitation" from the mission of the prison system. There were budget cuts to eliminate all "frills" from prisons, including exercise equipment, as well as educational, vocational, and counseling programs. Most voters enthusiastically supported these political moves (Domanick, 2004; Starr, 2004). Rather than being abolished, parole in California was changed to add additional time after offenders served their determinate prison terms. Parole restrictions got tougher, and rates of return to prison rose dramatically. In recent years, parole failures have come to constitute the largest number of admissions into the prison system. The philosophy of parole was no longer rehabilitation (if it had ever been) but "surveil'em, nail'em, and jail'em."

California State Prisons (1976-2006)
30-year Annual Population and Capacity



Source: CDCR, n.d.

Not satisfied with just toughening penalties under DSL, the Legislature cut back on time off for good behavior for prison inmates. Even politically conservative governors such as Pete Wilson had supported increasing good time credits as a method to moderate prison crowding. But, the coup de grace was a voter initiative known as Three Strikes (Zimring, Hawkins, and Kamin, 2001; and Domanick, 2004), which gave the Golden State the harshest sentencing system in the nation. The advocates of these ballot measures complained that the liberals in the Legislature had bottled up tougher sentencing laws and the people needed to take back control of the sanctioning process. A few short years later, state voters passed Proposition 21, which made it easier to prosecute juve-

niles in the criminal justice system. In 2006, California voters overwhelmingly supported Jessica's Law, which greatly enhanced penalties for sex offenders. Efforts to revise the harshness of the Three Strikes Law failed with the voters.

In November of 2008, the California electorate passed a ballot initiative proposed by conservative elected officials and law enforcement, which will further aggravate prison crowding and continue to escalate the scale of punishments. The quest for more punishment by politicians, many police, and most prosecutors has not ended. The one extraordinary exception was the passage of Proposition 36 in 2000, which mandated that minor drug offenders be diverted from prison and jail to treatment facilities. I will discuss the political and policy implications of Proposition 36 later in this paper.

It is worth noting that few of these tougher sentencing laws came with funding for prisons. The voters consistently rejected ballot measures that allowed borrowing for more prison building.

To stave off dire prison crowding, and driven by the growing political influence of the California Correctional Peace Officers Association (CCPOA), certain politicians, especially Governors George Deukmejian, Pete Wilson, and Gray Davis, went outside the normal electoral process to borrow money from the private equity market. But, the construction could not keep pace with the demand for more beds. Between 1976 and 2006, California added almost 63,000 new prison beds as the inmate population grew by over 152,000. The more cells that were built, the more jammed with inmates they became. The State built and started filling 22 new prisons, while opening only one small new campus of the University of California and converting an abandoned military base into a new campus of the California State University system. Annual state budget expenditures for prisons and parole now exceed $10 billion, more than the amount allocated for higher education.

Distorting the Balance of State and County Corrections

Another significant step in the transformation of the California corrections system was a ballot measure that rolled back property taxes and made it very difficult for the counties to raise additional revenue to support local probation and jail operations. Known as the "People's Initiative to Limit Property Taxes," Proposition 13 resulted in a cap on property tax rates, reducing them immediately by 57% (Smith, 1998). More importantly, Proposition 13 mandated a supermajority, or two-thirds vote, in local elections to raise taxes. This was the beginning of the famed "Taxpayer's Revolt" that led to the requirement that the state budget also be passed by a supermajority.

California has a long-standing and sharp division between state and county government in the criminal justice area. It was not until the late 1990s that the state unified its court system and provided statewide funding for the judiciary. California is alone among the 50 states in that it funds its probation systems from county tax revenues. The State also supplies very limited grant support for the operation of county jails and other local corrections programs. The Corrections Standards Authority provides very limited state oversight of state standards for jails and juvenile facilities. County governments have consistently and loudly complained that the Legislature's evolving criminal law and penal policies have placed a series of onerous "unfunded" mandates on the counties (see, for example California State Sheriff's Association, 2006).

Proposition 13 put counties that had relied heavily on property taxes to raise revenue in a very difficult situation. Although school districts were also affected by Proposition 13, the State later enacted substantial subsidies for local school districts; this funding was partly due to court decisions that required an equalization of spending on K-12 education. No such mandate has been asserted for local corrections programs. California counties have faced serious financial difficulties resulting from the limits on new revenue imposed by Proposi-

tion 13. Local funding battles intensified, and, whereas elected officials such as sheriffs could exert some local political muscle, probation departments found it very hard to compete with other local needs such as law enforcement, health care, libraries, senior services, federally mandated welfare payments, and similar institutions.

Despite shrinking revenues, local corrections faced an ever larger caseload. From 1985 to 2004, the number of convicted and sentenced persons grew by over 100,000, but the vast majority of these offenders (roughly 80%) were handled in county jails and probation programs. Further, the tougher sentencing laws meant that more defendants were likely to delay pleading guilty, thus increasing the number of county jail inmates awaiting trial (California State Sheriff's Association, 2006). Crowding at state prisons led to practices of holding convicted felons in local facilities until a state bed was available. A growing number of parole violators awaited the disposition of their cases in county jails. Counties were willing to accept these practices because the state would pay to house these offenders, providing some revenue to sheriffs in tough budgetary years (California State Sheriff's Association, 2006).

Counties faced a difficult task to persuade voters to support funding for new jail space. Moreover, the private equity market for prison construction financing was very competitive, given the needs of the State were so enormous. Since 1980, the counties have been able to add or replace about 50,000 jail beds, but the increased inmate population quickly filled all of these beds. The county jail population crisis led to a series of lawsuits resulting in 22 counties having court-imposed capacity limits on their inmate population. These caps led to a massive release of minor offenders. From 1996 to 2006, over 1.7 million offenders were released early from California jails, and judges looked for more creative ways, such as Drug Courts, to manage offenders on probation.

Probation did not fare well in the county budget skirmishes after the passage of Proposition 13. Chief probation officers usually lacked the political influence of sheriffs, judges were limited in how much they could advocate for more probation funding, and the public, in general, equated probation with being "soft on criminals." Many probation leaders tried to toughen their images by arguing that they were also law enforcement officers. Some probation agencies allowed their officers to carry guns and to don uniforms that made them look like SWAT teams. Local officials were more inclined to spend scarce local dollars on juvenile probation programs, especially detention centers, county juvenile facilities, and residential placements for juveniles, as probation budgets for adult supervision were reduced. Caseloads for adult probation officers greatly increased, and the amount of supervision time declined. Felony offenders on probation typically spent less than one hour per month in direct contact with their probation officers. Counties also responded to the growing number of adult probationers and shrinking dollars by establishing "banked caseloads," which were persons on probation, often for very serious offenses, who rarely, if ever, saw a probation officer. Mental health and drug treatment services for offenders on probation were inadequate to the needs. Training funds for probation were severely limited. Not surprisingly, the recidivism rates of probationers grew, which only fueled jail and prison admissions.

Efforts by the judiciary and probation leadership to obtain stable statewide funding for probation went nowhere. In the Legislature, the growing problems of the prison system drew the most attention, with few law makers willing to advocate for more funding of county corrections programs for adult offenders.

Proposition 36

A notable exception to the steadily deteriorating state and local corrections scene was the passage by the voters of the Substance Abuse and Crime Prevention Act of 2000, or Proposition 36. This voter-approved initiative mandated diversion of minor offenders from prisons and jails to community-based treatment programs. Interestingly, most criminal justice professionals and legislators opposed Proposition 36. They favored an expansion of funding for Drug Courts and for treatment

administered by the criminal justice system. Opponents of Proposition 36 expressed concern that treatment would be ineffective without the threat of incarceration, which allegedly motivated offenders to comply. But, the voters rejected these arguments.

Internal polls by the Proposition 36 advocates showed that almost 70% of Californians reported that they had a loved one with a serious addiction problem. Also, the voters thought that jails and prisons were too expensive to use for addicts. Despite less optimism about the efficacy of drug treatment, most California voters still preferred to keep their loved ones out of jails and prisons. Unlike other ballot measures on criminal sentencing, the proponents of Proposition 36 possessed substantial funds donated by philanthropist George Soros, who favored decriminalizing many drugs, especially marijuana. The "Yes on Proposition 36" campaign could purchase ample paid media advertising. For other voter initiatives, such as Three Strikes and Jessica's Law, it was the conservatives who controlled the airwaves.

Although successful as a political move, it is unclear whether Proposition 36 has succeeded in policy or practice. There is scant evidence that Proposition 36 has diverted many drug offenders from prisons and jails. Nor does it appear that the measure expanded meaningful drug treatment resources. Two issues have reduced the impact of Proposition 36. First, the judges and probation officials did not support the reforms and thus never really worked to actualize its potential to divert offenders from incarceration. Second, the available drug treatment facilities remained too limited and most had a poor record of reducing recidivism. It appears that Proposition 36 has been used for offenders who were already being diverted by the justice system, and that the quality of new treatment programs has been, at best, uneven. In his most recent budget, Governor Schwarzenegger proposed a large cut in funding for Proposition 36 programs.

When in Doubt, Let's Build Some More Beds and "Rediscover" Rehabilitation

When Arnold Schwarzenegger became California's chief executive, he inherited a dizzying array of problems in the state corrections system. Previous governors had negotiated incredibly generous contracts with the CCPOA, which gave California prison guards the highest salaries and most generous retirement and benefit packages in the nation. Even more, Governor Wilson and Governor Davis gave the guard's union unprecedented powers to control the daily operations of the prisons. At a meeting convened by prison director Cal Terhune, he announced that California had four branches of government, adding CCPOA to the usual three. The corrections budget was skyrocketing. Stories of financial mismanagement, waste of taxpayers' money, and abusive practices were constant topics of media accounts about California prisons.

Successful lawsuits brought against the CDCR transferred almost every aspect of the adult and juvenile prison and parole systems to court supervision. The federal court placed the prison medical system under the control of a receiver who had virtually unlimited power to allocate state dollars and to demand compliance with his orders. Failures to meet court mandates resulted in a hearing before a three-judge panel to consider setting a population capacity limit on the prisons and the accelerated release of thousands of inmates.

The "Governator" started his tenure with the characteristic boldness of a Hollywood action figure. He declared that the prisons should actually rehabilitate prisoners and proposed adding "Rehabilitation" to the name of the California Department of Corrections. Governor Schwarzenegger named pro-rehabilitation leaders Roderick Hickman and Jeanne Woodford to run the CDCR. The Governor asked former California Governor George Deukmejian to lead a comprehensive review of sentencing and prison issues. It was hoped that a past Governor with unimpeachable law and order credentials could provide the political cover for a major correctional reform agenda.

Governor Schwarzenegger submitted a budget that assumed a decline in the inmate population by 15,000 inmates, mostly through reforms of the parole process and through expanded reentry programming. There were Administration proposals to reform corrections programs for women offenders and to move some

inmates into community-located reentry facilities within a year of their parole dates. Governor Schwarzenegger announced that CCPOA was no longer "calling the shots" in terms of correctional policies. There were several press conferences to inform the citizenry of the impending changes; however, little followed these media events in the way of sustained action.

Within a short time, Hickman and Woodford resigned, charging lack of support for reform from the Governor's Office. CCPOA officials found the new CDCR Secretary, James Tilton, much more acceptable as a negotiator for the annual union contract. While the overall political influence of CCPOA was on the wane, the union still had friends, among them the Governor's Chief of Staff Susan Kennedy, and lots of money to spend on electoral campaigns. Schwarzenegger's planned parole reforms were shelved after a series of media stories detailing implementation problems and after victim rights groups vocally opposed releasing more prisoners. Most importantly, the Governor could not win the support of members of his own political party, as Republicans blocked a variety of corrections reform proposals in Governor Schwarzenegger's budgets.

The crisis in state prisons was only getting worse. On October 4, 2006, the Governor issued a proclamation declaring a state of emergency in prison crowding. The Prison Law Office had written a powerful brief demanding urgent action. The proclamation called for the "voluntary transfer" of some inmates to prisons in other states. It also asked for an immediate special session of the Legislature to remediate the crisis.

The Legislature's special session on prison crowding failed to agree on any actions. Once again, the Governor could not move many of his Republican colleagues. Faced with worsening prison conditions and few prospects for sentencing reform or the expansion of community corrections, the Governor abandoned most of his proposals to reduce the prison population and instead backed a massive bond measure that would add over 70,000 prison and jail beds to the California gulag. Neither the Administration nor the Legislature could agree on a strategy to revise the current sentencing laws.

In an attempt to get liberals to back the massive prison building plan with minimal to no sentencing reforms, the Governor added some window dressing about expanding in-prison treatment programs. The Governor and the Legislature seemed shaken by the thought that a federal judge would order the immediate release of inmates. The Governor and the Legislature agreed to a compromise plan, Assembly Bill 900, which authorized massive expenditures for new prison building, expanded out-of-state involuntary transfers of inmates, and contained modest funding to increase rehabilitation programs in the prisons. The entire Legislature voted for AB 900 with only four dissenting votes. The Republicans liked the idea of more prison beds as the primary way to avert the significant release of inmates. For some Republicans, the new prison beds would be located in their districts, bringing jobs and boosting the local economy. The Democrats did not want to be blamed for the releases, and they argued that some commitment to expanded treatment had been achieved. Despite the self-congratulatory rhetoric by the Governor and the Legislative leadership, it seemed clear that neither the federal court-appointed receiver nor the members of the three-judge panel viewed AB 900 as a realistic immediate solution of the prison crowding crisis.

An Expert Panel created by the CDCR on reducing recidivism and expanding rehabilitation programs offered an alternative set of policy proposals that would have achieved major reductions in crowding through model sentencing reforms, but the panel's blueprint was rejected by CDCR Director James Tilton and garnered limited interest in the Legislature (CDCR, 2007). The hearing before a three-judge federal panel occurred in the fall of 2008. Efforts to bring the various parties together for a settlement have broken down.

Is There a Way Out of the California Corrections Imbroglio?

The problems of sentencing and corrections in California are so profound that few can imagine any easy remedies. While many ideas for reform have circulated in the past several years, most of these proposals are politically

difficult and would take a very long time to produce results. We have a series of reports on corrections and parole reforms issued by the Little Hoover Commission (2003, 2004), the Legislative Analyst's Office (2006), the Office of the Inspector General, the Independent Review Panel (appointed by Governor Schwarzenegger and led by former Governor George Deukmejian), and a CDCR-organized Expert Panel on Adult Offender Recidivism Reduction Programming (2007).

In connection with a special session of the Legislature that was called by the Governor, the leadership of the California Senate asked me to quickly pull together a prestigious task force of respected national and state criminal justice leaders. Former Attorney General John Van de Kamp agreed to chair the panel. Our diverse group ranged from researchers, law professors, correction system practitioners, and probation officers, to prosecutors, concerned citizens, and advocates for victims and prisoners (NCCD, 2006b). The Senate wanted a limited number of practical ideas that could be enacted into law and supported through the budget process. The resulting recommendations were favorably received by some editorial boards and were, surprisingly, endorsed by the CCPOA. The Governor included several of the Task Force's ideas into his own proposals during the special session. A statewide public opinion poll commissioned by the NCCD showed overwhelming voter support for the underlying assumptions of the Task Force recommendations (NCCD, 2006a). However, it is sobering to report that not one proposal of the Task Force passed the Legislature—another example of how difficult it is for the California political class to "put the genie back in the bottle."

I would like to briefly outline some of the key proposals of the Task Force, which were very similar to suggestions made by former Governor Deukmejian's Independent Review Panel. These ideas represent modest, but very significant steps that California could implement to reduce its grossly crowded prisons. After reviewing the substantive proposals for reducing the correctional mess, I will briefly comment on ways to affect the political and ideological stranglehold that the "tough punishment" lobby continues to exert on California crime policies.

Decarcerating Women Prisoners

The NCCD Task Force recommended that California move forward aggressively to reduce the number of women in state prisons. As noted earlier, the number of women inmates grew from less than 700 in the late 1970s to almost 12,000 today. The data are clear that these women have been locked up for less serious crimes than male inmates, and they are generally regarded as the lowest risk inmates based on the CDCR custody classification system. California's women inmates perform better on parole and possess lower recidivism rates compared to their male counterparts (Wolf, Bloom, and Krisberg, in press).

The CDCR has already worked with national experts on gender-responsive programming to develop a strategic plan for reforming the State's management of female offenders (Bloom, Owen, and Covington, 2003). There also has been some legislative support to expand community reentry centers for women. The Little Hoover Commission (2004) found that a significant number of women inmates posed a minimal threat to public safety and could be better managed in community corrections settings (Little Hoover Commission, 2004).

Using the CDCR's own classification system, nearly 6,000 women inmates qualified for community corrections programs in early 2006, but fewer than 900 beds were available. Most women continue to be housed in high-security prisons located in the Central Valley, hundreds of miles from their children and families.

The CDCR has consistently proposed that at least 4,500 women inmates be moved to community correctional centers. In 2007, the CDCR sought to identify contractors that would provide these beds. The proposal ran afoul when claims by advocates of abolishing all prisons alleged that the shift would just "widen the net" and lead to more female incarceration. Some unions opposed the idea, fearing that it would reduce jobs for workers in women's prisons. The Legislature got cold feet and refused to support the plan to move a large number of women out of traditional prisons. This was a classic illustration of how the far left groups, the right, and unionists combined to defeat a reasonable proposal.

Although women comprise less than 7% of the overall state prison population, a significant and concerted effort to divert female offenders from state prisons to expanded community corrections beds could provide short-term relief to the severely stretched prison system. Women inmates are the most obvious population subgroup for alternative placements, given the very low public safety threat they pose. Moreover, the blueprint for action has already been developed and can be quickly implemented (CDCR, 2006).

Repairing the Prisoner Reentry System

Another reform proposal that would substantially improve both overcrowding and public safety is to fix California's broken parole and reentry system. In 2006, parole violators constituted 64% of all admissions to CDCR (2006). While some of these parole violators had committed new crimes, a significant number were technical violators who had breached the rules of their supervision. Fully 8% of CDCR beds are occupied by technical parole violators (CDCR, 2006). For many prisoners, release from CDCR is soon followed by a re-incarceration for another 90-day period. There are few, if any, programs for the parole violators. So CDCR's correctional model consists of inmates sitting in their cells or dayrooms for three months—and then being returned to the streets.

The NCCD Task Force suggested that California focus on a true reentry model that would link offenders to needed services while in prison, include gradual step-down options to prepare inmates for release, and build links with community groups and local service providers to assist the parolee in a successful transition to the outside. Part of this process would include the use of evidence-based assessment tools to guide reentry planning. For example, Florida found that it could reduce its parole failure rates by 44% with better assessments and improved case supervision strategies (Leininger, 1998).

Another unfortunate turn in California parole laws meant that all offenders would receive similar parole supervision terms regardless of the risk the offender posed to public safety. The resulting caseloads are too big, include a number of low-risk offenders, and services and supervision are not necessarily targeted to the higher-risk parolees. The CDCR has attempted to implement a risk assessment tool to better manage parolees, but it is unclear if the CDCR approach has any empirical validity.

Some states, such as Arizona, have developed a more nuanced response to parole violations, including a range of intermediate sanctions in lieu of returning all violators to prison. The CDCR Expert Panel recommended some promising approaches to manage parole violators without using up scarce prison space. Some of these alternatives include community service orders, electronic or GPS monitoring, mandated drug treatment programs, short stays in local jails, and day reporting programs. The CDCR has made some efforts to implement these intermediate sanctions with mixed results (Office of the Governor, 2006). In recent months, the CDCR has been able to reduce its inmate population by diverting some parole violators from prison. In the case of *Validivia v. Schwarzenegger,* the CDCR agreed to increase the number and quality of intermediate sanctions as part of an overall agreement to reform the broken parole system.

In the past, efforts to reduce the number of returning parole violators have been subverted by frightening media coverage about a particular parolee who committed a terrible crime. Victim advocates have often seized on these sensational crimes to call for the elimination of programs that divert some parole violators from custody. State officials usually react by quickly ending diversionary efforts and cracking down harder on other parolees in the community. Given that over 120,000 prisoners are released in the state every year, it is likely that a small number of them will be involved in serious new crimes. But, state leaders should refrain from panic and continue to support programs of proven effectiveness.

Creating a New State-Local Partnership

Offenders do not parachute in from outer space. They come from real communities and most often return to those same communities. Truly effective correctional interventions must consider these contextual realities of

the criminal justice enterprise. The state–local partnerships that California made famous in the 1970s, especially the Probation Subsidy Program, need to be rebuilt. Rebuilding means creating state–local planning and shared funding that ensures an adequate supply of local corrections programs, as well as effective community-based reentry services.

Some successes in this venture have already occurred within juvenile corrections. In 2004, the State funded a number of counties to establish innovative juvenile programs, insisting on rigorous evaluations of these efforts. The early and very encouraging results led to the expansion of this effort under the Crime Prevention Act. In effect, probation departments were asked to "put up or shut up" in terms of their capacity to launch strong rehabilitation programming.

The state continues to explore the potential for partnerships with counties. In the area of mental health, sheriffs have utilized state grants to build better responses to managing mentally ill offenders at the local level. In the past year, the CDCR has explored limited partnerships with counties and community-based organizations to provide for pre-prison diagnostic services and to expand reentry programs for released prisoners (Senate Bill 618). Recently, the Legislature made a small amount of funding available to probation agencies to develop innovative corrections models for offenders aged 18-25. State officials, under Senate Bill 81, have funded counties to divert nonviolent, non-dangerous juvenile offenders from state youth prisons.

While these "baby steps" are laudable, much more must be done. California needs to move beyond a series of very modest demonstration efforts to build a genuine community corrections structure. This will require a reallocation of part of the state budget to counties. It will also require building a strong and independent correctional agency to administer these funds, conduct evaluations, and oversee quality assurance. Such a central body must have active and meaningful participation from counties.

A clearer definition of state–local responsibilities could go a long way to reduce sentencing disparities among counties. Locally administered programs also allow victims and the family members of offenders to play a more meaningful role in the sentencing process.

Local corrections programs should be managed at the community level—not by state bureaucrats in Sacramento. However, funding must come from the State to assure stability and equity in its allocation to various communities. There must be careful and ongoing planning in which counties identify the penal needs of the offenders coming through their court systems or reentering communities after incarceration. The plans should be data-driven and require that communities implement programs of proven effectiveness. State funding should be specifically tied to the plans submitted by the counties. There also should be regular information sharing and training to upgrade the quality of the local correctional programs.

Senate Bill 81 defined the types of juvenile offenders that must be served at the local level. A similar idea could be implemented with adults. The state might agree to only accept certain very serious offenders and those serving terms of more than 3 years. The counties would be required to develop programs to manage the remaining offenders, including non-dangerous parole violators. This idea, which has already won some surprising support from the CCPOA, could go a very long way to resolve the California prison mess and save the taxpayers money.

The Need for a Sentencing Commission

I have argued that the passage of the Determinate Sentencing Law opened up the floodgates and let the punishment genie out of the bottle. After 30 years of experience with DSL, few knowledgeable observers would proclaim it a success. The goal of sentencing uniformity has morphed into an overly rigid penal system that handcuffs judges from individualizing penalties that more accurately reflect the potential for rehabilitation or the offender's responsibility for victim harm.

Further, DSL placed the burden squarely on politicians to define the state penal system, which led to endless tinkering with the sentencing laws in response to media attention or the influence of certain powerful interest groups. When the Legislature has attempted to show restraint in this race to be the "toughest" on crime, ambitious politicians and their financial backers have used ballot measures to bluster about crime policy and exploit citizens' fears. It has been a vicious game often won by those with the money to buy public opinion through the airwaves.

DSL never abolished parole, but rather transformed it into a post-prison punishment system. Disparity in sentencing continues as prosecutorial discretion has become the centerpiece of the criminal justice system. There is little evidence that victims are better treated or more satisfied with the sentencing process.

Prominent elected officials such as Senator Dianne Feinstein and Attorney General Jerry Brown (who helped birth DSL) have called for a return to an Indeterminate Sentencing Law (ISL), but there is little political support for these proposals. Too many criminal justice system leaders are comfortable with the status quo. The public has virtually no understanding of the complexities of the sentencing process, and a return to ISL is not a political likelihood.

Another approach would be to follow the lead of the federal system and more than twenty states and create a California Sentencing Commission. As an administrative body, a sentencing commission enacted by the Legislature would develop uniform and consistent rules to actualize the State's broad policy goals. Very conservative states such as Virginia and North Carolina, and more liberal jurisdictions such as Minnesota and Washington, have employed sentencing commissions to refine their penalty structures so that proportionate punishments are strengthened and prison and jail crowding is reduced.

A California Sentencing Commission could clear up the debris of 30 years of ad hoc, overlapping, and contradictory sentencing laws. The essential role of the Commission would be as a nonpartisan decision maker, with professional staffing and research capacity. The Legislature would ultimately have to approve the recommendations of the Commission, but most states using the model require an "up or down" vote for the whole reform package—an approach that worked well when the military was considering the very sensitive issue of military base closings.

So far, the Legislative leadership and the Governor have both proposed the creation of a California Sentencing Commission, but they have differed over the power and independence of this body. More conservative lawmakers have opposed any such reforms, asserting that this would just be a "Trojan Horse" for the early release of prisoners. It is worth noting that former Governor George Deukmejian strongly endorsed the idea of a sentencing commission in his Independent Review Commission. Although a California Sentencing Commission would not offer short-term remedies to the prison crowding crisis, it is a rational process to help the Golden State out of its sentencing disaster.

Final Considerations

Frank Zimring and his colleagues were right—democracy is not a terrific political system for fashioning penal laws (Zimring, Hawkins, & Kamin, 2001). This is particularly true when the populace is not well informed by its political class. Moreover, interest group politics are alive and strong and have defined California's 30-year journey into criminal justice policy madness. As long as duplicitous or misguided public officials are willing to exploit the public's fear of violent crime, there is little practical hope to turn around the California corrections nightmare.

At present, many are watching for the decisions of the panel of three federal judges, which may offer short-term remediation of the severe problems of the state prison system. There is some hope that the evolving leadership of the CCPOA will play a more constructive role, along with the prisoner advocates, in proposing new solutions. The deep state budget crisis might just

raise the consciousness of the public on the price we are all paying for our corrections system—sacrificing advances in higher education and services for vulnerable Californians such as the poor, the elderly, and those with serious health challenges. We are at the point where what occurs behind prison walls is directly linked to whether California can salvage its aging infrastructure of roads, levees, and schools.

I can only imagine that Caleb Foote would have been very skeptical that the current prison nightmare will improve in the near term. But, his spirit would also urge us to pursue the humanistic values of compassion, nonviolence, and fairness—continuing his lifelong "struggle for justice" to reclaim the moral compass of the criminal justice system.

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