

Excerpt from:

Sensible Justice

Alternatives to Prison

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The New Press

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Community Service A Productive Way to Punish

1. Homeless at the age of 46, Martin "boosts" goods from New York City department stores, resells them for money to purchase a week or two at a cheap hotel, then steals again when the money runs out. This way of life often lands him in court, where he faces the standard sentences of sixty or ninety days in jail. Some judges, however, consider that a waste: Cells cost money, and Martin isn't that dangerous. They would rather use the leverage his conviction has given them to get some honest work out of him, and the city's Community Service Sentencing Project gives them a reliable way to do so.

2. That suits Martin just fine. "Jail is overcrowded," he complains. And you have a lot of gangs going on in jail now.... People get stabbed up, killed." But many other New Yorkers also see the benefit of his alternative sentencing: He has cleared lots for communal gardens, cleaned up a YMCA, painted low-income housing units, and performed other sundry tasks for neighborhood groups around the city. As he and hundreds of other petty criminals do such jobs under supervision of the courts, they demonstrate both the possibilities for saving on jail costs and constructive use of work as a sanction.

3. Courts have ordered convicts to work in communities for hundreds of years; under ancient legal systems based on restitution, criminals labored to compensate their particular victims for injury or loss. The Romans used criminals as laborers for public works, like road construction, or as galley slaves. In the seventeenth century, offenders in England could be impressed into the navy or indentured to settlers heading out to the colonies.

4. The Thirteenth Amendment to the United States Constitution bans slavery and involuntary servitude but exempts work "as punishment for crime whereof the party shall have been duly convicted." For most of United States history, however, courts made little use of forced labor as a criminal sentence.

5. The modern era of community service sentencing began in 1966 in Alameda County, California. Judges there began imposing work assignments as an alternative to jail for indigent offenders who could not pay traffic fines. Eventually they extended use of the sanction to other low-level convicts as well.

6. The practice spread across the country in the late 1970s, as the federal Law Enforcement Assistance Administration (LEAA) pumped out funding to encourage it. Sentencing offenders to unpaid labor inspired some judges' creativity as they combined community service with jail or a fine or both. Offenders did low-level maintenance work for public agencies--clearing

litter from playgrounds, sweeping up around public buildings or housing projects, cutting grass and raking leaves in parks, washing cars in an agency motor pool. Others did clerical work or answered phones. Thousands more were sent off to help out at hospitals, nursing homes, social service centers, and other nonprofit organizations.

7. There were fewer problems with unions than some predicted. Offenders in community service were doing jobs no one else would do, or jobs for which no funds were in place, so they posed no threat to union workers.

8. Many of these programs withered in the 1980s after the LEAA well dried up. But the concept was established. Judges appreciated the new option--more punitive than traditional probation, less punitive and more productive than incarceration. Community service sentencing provided free labor for public works or nonprofit groups, held offenders accountable for the damage they caused, and perhaps even left them with some new job or life skills to help keep them out of further trouble.

9. Where no special agencies existed to keep track of people sentenced to community service, probation departments took over. But with no federal program in place to monitor the practice or set standards, wide disparity characterized the imposition of community service sentences and raised troubling questions about its fairness. Debates continued over whether judges gave white middle-class offenders community service sentences for crimes that routinely landed the poor black or Hispanic criminal in prison.

10. Scholars like Norval Morris and Michael Tonry, in *Between Prison and Probation* (1990), could theorize about the capacity of community service to afford precision--a judge might measure a sentence to fit the seriousness of a crime in increments of days or even hours. Yet perceptions of how to do so varied widely from place to place as judges, program executives, and criminal-justice bureaucrats debated how punishment for crime ought to equate with work. In New Jersey a recidivist drunk driver might get 90 days of community service; in California the same crime drew only 90 hours.

11. Larger urban states continued to make extensive use of community service sentencing through the 1980s and 1990s. "Judges like it; it's relatively cheap," observes Alan Harland, a professor of criminology at Temple University who has studied community service sentencing nationwide. In recent years state legislatures have even mandated community service as part of the sentence for certain offenses. "It's seen as punitive and rehabilitative at the same time," says Sandy Seely, former head of the National Community Sentencing Association.

12. Thus in New Jersey, on any given day, some 40,000 people are under an order of community service. In Harris County, Texas, which surrounds Houston, 5,500 defendants perform community service each month. In the populous counties surrounding Los Angeles and San Francisco, California, judges impose the sentence on thousands of offenders per week. And even in a more rural state like North Carolina, more than 20,000 offenders are performing sentences of community service at any one time.

13. Judges typically impose the sentences according to formula--for example, six hours of work equal one day of jail. The offenders are interviewed to determine their skills and availability, then matched with jobs at government or nonprofit agencies. The probation

department handles enforcement and eventual referral of failed cases back to the court for resentencing.

14. Rates of completion vary from place to place, depending on how well the programs are managed and how effectively probation departments or other law enforcement agents actually go after absentees. In New Jersey, Bill Burrell, the state's chief of Adult Probation Services and Community Service, claims a completion rate of 85 percent for his large community service work force, while in Indiana the programs run by Prisoners and Community Together (PACT) show completion rates of about 80 percent. PACT assigns caseworkers to work full time on supervision of offenders, visiting the work sites and documenting their progress. In other places, however, supervision and follow-up are much more haphazard; all too often a court learns that offenders failed to complete community service orders only when they are arrested for new crimes.

15. It is hard to determine how much community service serves as a substitute for jail or prison. The argument for the sanction looks compelling: Sentencing a person to community service spares the huge expense of incarceration. Yet during the 1970s and early 1980s, researchers seeking out genuine cases of convicts doing community service instead of time behind bars came up relatively empty handed.

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16. There is some reason to believe that use of the sanction as a genuine alternative increased in subsequent years. As courts continued to feel the pressures of jail crowding, the advantages of community service appeared more obvious than ever, and judges sought ways to make the most of it. As the federal government brought pressure for tougher laws against drunk driving, for example, community service became the sentence of choice, especially for offenders with stable jobs and families. Seely says that today, even drunk drivers found guilty of vehicular homicide may wind up working off their debt to society at a community service site rather than doing time behind bars. "It's a sentence that the victim's family usually agrees to, she says.

17. In addition, states that impose escalating sanctions--intensive probation supervision, electronic monitoring, day treatment, restitution--that substitute for jail may include community service as part of a sentence package. And a few jurisdictions have set up programs that substitute community service for jail but call it something else.

18. California, for example, runs a sizable "work release" program for people who otherwise would be serving jail terms of a few days or a week. Offenders sentenced to the custody of the county sheriff may qualify if they have roots in the community, family ties, and a nonviolent record. Elsewhere work release means allowing inmates to work at paying jobs on the outside as they approach the end of jail or prison confinement. But California's work release offenders never see the inside of a county jail. Instead they report for work cleaning beaches and parks, painting public buildings, or doing other work under constant supervision of a deputy sheriff. In most places that would be called a community service sentence.