

Prison Legal News

Working to Extend Democracy to All

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The Prison Privatization Debate

By Ed Mead

"Prisons are by their very nature coercive and oppressive institutions, *designed* to disempower and destroy the resistance of those confined within them, so any discussion of 'reform' is largely meaningless and futile. Prisons, whether controlled and operated by the state or private companies, are weapons utilized by the powerful to keep the powerless in check, and to maintain an economic and social status quo beneficial to the former."

John Bowden,
British Political Prisoner

When approaching any political question on the inside of the nation's prisons, it is important for us to start from a radical rather than a liberal or reformist perspective. This is just as true when considering the growing issue of prison privatization.

My starting point is that it is good and progressive to work to extend democracy, as the ultimate realization of that ideal will necessarily result in the complete abolition of prison slavery and the establishment of a social order in which economic justice is an integral element of what today's rulers cynically call freedom. In other words, struggling to extend democracy is a battle that will extend all the way to the gates of power.

The struggle to merely change prison conditions, on the other hand, is one that can be readily granted. Indeed, reform is the state's second response to demands for cosmetic change (the first response, of course, being the iron fist of repression). But more comfortable prisons are not what we seek. To quote John Bowden again, who was writing in the January 1993 issue of *Fight Racism Fight Imperialism (FRFI)* when he said:

"Prisons, good or bad, can have no 'positive emphasis' beyond controlling and disciplining prisoners, and in fact the so-called 'good' prison regimes are far more sinister in terms of the way they seduce and brainwash prisoners into conformity. Living in a velvet-lined coffin is essentially no different from confinement in an obvious hate-factory -- either way one is controlled and imprisoned against his will."

Comrade Bowden goes on to note that our terms of reference must be shifted when discussing how prisoners' rights might be extended, "from a rather unrealistic and counter-productive paradigm of 'improved' prisons and 'caring' prison officers, to one that situates the struggle of prisoners clearly in the context of revolutionary class struggle and anti-capitalist politics."

It is from within this context that we examine the privatization question. It should be clear from the foregoing that privatizing prisons would in no way diminish the fundamental nature of these institutions. But will bringing in corporate management make conditions better? This is an important

consideration for our many liberal readers, whose vision of the future fails to extend beyond the issue of more comfortable cages. I'm writing on this subject because it is an important topic of consideration in Great Britain, where large-scale plans are underway to implement a prison privatization campaign, and because many prisoners in this country believe private corporations would do a substantially better job of running the various prison systems.

One argument put forward in support of privatization, this one by Stephen Windsor, a man who has spent eight years in Scottish prisons, is that the program has worked so well in the United States that it should be implemented in Britain. Windsor, writing in the January 1993 issue of *FRFI*, says: "In America prisoners benefit greatly from private companies investing in training and employing prisoners with a guarantee of employment upon release." That perception, however, lacks a material basis in fact.

A closer look at the reality of private prisons in the U.S. reveals a somewhat different picture. For example, as we reported in the January issue of the *PLN*, prisoners from a privately-run joint in Louisville, Kentucky have been used as scabs in the strike by UFCW Local 227 against Fischer Packing Company. The prisoners were brought into the plant after the strikers rejected the company's "best and final offer" by a margin of 402 to 2. Fischer was demanding large concessions.

According to a story in the *Louisville Courier-Journal*, the private prison "has been supplying inmates to a temporary employment agency that has used them as strikebreakers at Fischer Packing." The union objected to the local government, but the inmates were still working in the plant. The Union was forced to call for a boycott of Fischer products. So you see, far from being well paid workers by our corporate masters, we can easily end up being underpaid scabs who bolster capitalist profits at the expense of the working class.

The concept of private prisons are not some new wave of the future, but rather a holdover from medieval England that were litigated out of existence in the U.S. 25 years ago because of dark and evil practices. As one trial judge put it, a practice "of physically abusing inmates and profiting from their labor." The revival of this push to return to the barbaric practices of the past, where prison labor was farmed out for personal profit, is the brainchild of the most reactionary element of the ruling class. In this country these backwater notions attained a sense of legitimacy from the likes of former president Reagan, who wanted to "privatize" all sorts of government services. And also by former Chief Justice Warren Burger's campaign to make prisons into "factories with fences," where prisoners would be forced to work to offset the cost of their incarceration.

As for vocational training from any privatized prison, I am not aware of a single example where such teaching takes place.

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Nor have I ever heard of any prisoners having guaranteed employment upon release, except in the case of the former Soviet Union. Every prison industry I've worked in had one goal, and that was to make a profit. We are not even given vacations, paid or otherwise. While wages sometimes appear to approach the minimum wage, when taxes and mandatory payments for the cost of imprisonment are factored in, the prisoners often wind up making more money by working in some non-industrial area of the prison. In any event, virtually all prison industries are jobs long ago shipped to Mexico and the so-called Third World, or which are done by illegal migrant labor (i.e. sweatshops) or at best on the outside making minimum wage, like telemarketing (the boilerroom). These are not the kind of jobs through which one is able to acquire meaningful employment skills or likely to result into a decent paying job on the outside. If they were, they would not be in prison to begin with. What we are talking about is more low paying, dead-end shit jobs.

The argument is sometimes raised that nobody could do a worse job of running the prisons than the people who are doing it now, that any change at all would necessarily be an improvement. Even if true, the logic of such reasoning must be short lived. The moment the corporation must make a decision between the quality of your food, education, or medical care, on the one hand, and company profits on the other, you will not need a calculator to figure out which priority will come first. Just look at their track record now, when they are trying to put their best foot forward. A case that readily comes to mind is the 1988 death of Rosalyn Bradford, a black woman prisoner at a place run by the Correctional Corporation of America (CCA), the Silverdale Work Farm in Tennessee. The woman died of complications from a tubal pregnancy after guards, believing she was faking, let her scream in her cell for 18 hours before taking her to a hospital. The CCA prospectus, in language repeated almost verbatim in the contracts, pledges that "employees must undergo at least 160 hours of training by the company before being allowed to work in a position that will bring them in contact with inmates." But the guard who attended Ms. Bradford says that she, like many others, was put to work a few hours after being hired, and that she did not receive first aid training until a week after Bradford died!

Steven Windsor believes incidents such as the example just cited will not happen because "a government inspector...would make sure certain standards were set and adhered to." Yeah! Just like the government regulates the industrialists around today's feeble environmental, health, and safety laws; just like they regulated our savings and loan institutions. In point of fact, private prisons are essentially unregulated. This is because few state or local governments are willing to establish strict standards for fear of creating a set of entitlements that would encourage inmate lawsuits. Moreover, even modest standards, whether or not they were implemented, would work to discourage corporate investment in this area.

David Wecht, writing in the March 1987 issue of *The Yale Law Journal*, cautions that standards would be hard to enforce, especially "several years after the life of the [privatization] contract, when corporate control of the state's penal system may have reached the point that the government no longer has the expertise, personnel, facilities or fiscal resources to run the prisons." Also, according to the August 1988 issue of *In These Times*, "More than one local government, after contracting out its prison or jail, has later asked

how it is being run only to be told that such information is 'proprietary'."

Capitalists are driven to seek higher profit margins; it's the nature of the beast. When you go to a disciplinary hearing in a prison that is operated by a private company, you can bet you will lose good time credits. Terms will be extended to ensure there is never any empty bed. The existing system is already capacity driven; putting direct profit into the picture would only mean there would never be the lost revenue represented by an empty prison bed.

I for one have no desire to see this budding trend carried to its logical extreme: where we are treated to the sight of a multinational corporation like General Electric pulling the switch on some poor sap strapped into an electric chair, while airing the event on its NBC television network to the theme music of "GE brings good things to life." If the ruling class wishes to continue their enslavement of a segment of society, they should not be permitted to do it directly, for the purpose of profit. Their intermediary instrument of repression, the bourgeois state, is quite well suited to that task.

Pre-trial Detainees Don't Have to Work

Jorge Martinez is a federal pre-trial detainee. He filed suit claiming that while he was held at the US Medical Center for federal prisoners he was denied proper medical care for a dislocated shoulder, was force fed after seven days on hunger strike, and was placed in segregation for refusing a work assignment. The district court dismissed the complaint, before service on the defendants, as being frivolous.

On appeal the court of appeals for the eight circuit affirmed in part and reversed in part and remanded.

The court affirmed dismissal of the medical treatment claims because attachments to the complaint showed he did receive medical treatment. The court notes that prisoners' disagreement with the course of medical treatment does not give rise to a constitutional claim. Likewise, the claim that he was forced fed after seven days of a hunger strike also failed to state a claim.

The court held that Martinez' claim that he was placed in ad seg for refusing to work does state a claim and should not have been dismissed prior to service.

The court notes that pre-trial detainees are presumed innocent and may not be punished. The determination of whether a particular restriction or condition of pre-trial confinement is punishment turns on whether the restriction or condition is reasonably related to a legitimate governmental objective. "Requiring a pre-trial detainee to work or be placed in ad seg is punishment and thus forbidden," according to the court.

The court notes that requiring pre-trial detainees to perform general housekeeping chores is allowed. Federal regulations provide that pre-trial detainees may not be required to work in any assignment or area other than housekeeping tasks in the detainee's cell.

The lower court erred in dismissing the suit because, due to the lack of a record, it could not determine what, if any, work was being demanded of Martinez. The claim was remanded to the district court for reinstatement and service on the defendants. See: *Martinez v. Turner*, 977 F.2d 421 (8th Cir. 1992).