

# Punishing not-for-profit

## Implications of nonprofit privatization in juvenile punishment

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### Abstract

While a lively debate rages over the role of the private sector in the administration of punishment, this debate focuses nearly exclusively on for profit corporations, excluding the role that nonprofit organizations play. A study of the famous Massachusetts experiment in juvenile decarceration (in the early 1970s) and its aftermath provides information about how the nonprofit sector operates in juvenile justice. This information allows for an analysis of how reform rhetoric, and specifically the idealized concepts of 'community-based' and 'nonprofit', works in practice. 'Community' remains an under-theorized notion in criminology, and community-based treatment in Massachusetts often clones the disciplinary regimes of secure custody rather than play setting to less coercive forms of control that then link up informal with formal modes of social control. 'Nonprofit' evokes a number of positive images. However, the nonprofit contractors to the Massachusetts juvenile justice system behave in more complicated ways, displaying some characteristics in common with the for profit sector and some in common with the state bureaucracy. All of these qualities combine to create a unique dynamic of non-profits, which I describe as 'entrepreneurial bureaucracy'.

### Key Words

community • deinstitutionalization • juvenile justice • Massachusetts • nonprofit • privatization

## INTRODUCTION

There is a form of privatized punishment that goes largely unnoticed in the existing debate about private prisons – the involvement of the private *nonprofit* sector in offender treatment and punishment.<sup>1</sup> The limited attention devoted to charitable organizations cannot arise from the smaller role this sector plays since it manages a far larger number of persons under correctional control: while for profit correctional institutions continue to handle a very small percentage of all US inmates,<sup>2</sup> one would be hard pressed to find anywhere in the USA a jurisdiction that does not make use of the Salvation Army, a

private social services organization or some other nonprofit provider in both the assessment and management of criminal offenders. Instead the conventional wisdom seems to be that what charitable organizations do with offenders is less severe than what inmates undergo through the experience of prison, and thus does not amount to a 'real' loss of liberty, i.e. punishment. Perhaps there is also a sense that nonprofit organizations, given the absence of shareholders, are motivated mainly by altruistic reasons and a strongly rehabilitative, as opposed to retributive, ethic.

This article critically considers these implicit assumptions behind the neglect of the nonprofit sector in the private prisons debate, by focusing on the realm of juvenile justice, where privatization of punishment has proceeded at a faster pace than in adult corrections, and primarily through the involvement of nonprofit providers. I am drawing on fieldwork conducted in Massachusetts, site of the most famous experiment in the deinstitutionalization of juvenile offenders. Following from the 1970's decarceration of juveniles from reformatories and training schools, the commonwealth of Massachusetts continues to manage juveniles mainly through a community-based system of private nonprofit care.

The nearly 30-year experience of Massachusetts in setting up and overseeing a nonprofit approach to offender management (albeit juveniles) provides researchers with a great deal of information to assess the general assumptions that 'nonprofit' and 'community-based' care is inherently less punitive and more rehabilitative, and thus a feature of privatization irrelevant to those concerned about the moral and political tensions of delegating the state's role in punishment to the private sector. Massachusetts thus also provides an opportunity to analyze how ideals of reform translate into examples of practice.

I would like to critically consider whether a nonprofit organization *is* different than a for profit business or a state agency when it takes on the function of dealing with youths adjudicated as delinquent. There is a widespread assumption that because nonprofit organizations are typically made up of churches and charities and neighborhood groups, and because they do not distribute dividends to (or have) shareholders, they can be unconditionally trusted to behave altruistically.

At the same time, this article considers the concept of 'community' in the context of criminal justice. I begin with the presumption that reformers prefer a system of nonprofit community-based providers of juvenile treatment because there is something in the quality of being 'nonprofit' and 'community-based' that meaningfully improves upon the model of 'state' 'institutions'. I use evidence of the Massachusetts reform process to contextualize what these two terms meant to reformers and how they worked out in practice. However, I make no attempt to determine whether nonprofit, community-based care is better or successful in any sense; rather, the point of this exercise is to unravel the process by which reform becomes reality, recognizing that 'since unanalyzed abstractions cannot guide action, actual behavior will be determined not so much by professed ideas as by immediate experiences and specific pressures' (Selznick, 1966: 59).

This article first presents the background to the Massachusetts experiment suggesting how a vision of reform evolved as a reaction against the large institutions. The second section considers the conceptual and empirical meanings of 'community' in the context of residential juvenile services. The third section considers the positive imagery

associated with nonprofits and the particular contribution of 'nonprofitness' to the operation of juvenile programs. Finally, the discussion concludes by suggesting that the actual implementation of a new juvenile regime shows that private nonprofit organizations operating community-based services share qualities with both the bureaucracy of the state and the entrepreneurialism of for profit businesses yet play a distinctive role that cannot be entirely captured by analogizing their behavior exclusively either to state action or private markets. They adopt strategies of both sectors in a unique combination that I call 'entrepreneurial bureaucracy'. The implications of such an entrepreneurial bureaucracy for the extension of the state's powers or the strength of a penal realm independent of state control are briefly considered.

## THE MASSACHUSETTS EXPERIMENT

### Against the state

Jerry Miller was hired to head the Massachusetts Division of Youth Services (DYS) in late 1969 and attempted to carry out deinstitutionalization on a scale contemplated only by recent theorists of correctional abolitionism. Miller shut down the entire state system of institutions for juvenile delinquents, a system that included about a dozen training schools and reformatories capable of housing hundreds of youths each, almost half dating from the late 19th century (Miller, 1991). The deinstitutionalization of the Massachusetts juvenile system was a response to the perception of the state training schools' endemic problems. Ohlin et al. singled out the failure of institutions either to reduce recidivism or to house youths safely and humanely:

A key organizing principle of traditional training schools is punishment . . . the institutions are basically custodial and authoritarian . . . Resocialization efforts are commonly reduced to instruments for creating conformity, deference to adult authority, and obedience to rules. Regimented marching and shaved heads [for boys] and close haircuts [for girls], omnipresent officials and punitive disciplinary measures have been the authoritative marks of the training school, along with the manipulation of privileges such as cigarette smoking, TV watching, home visits, or release to reward compliance. (Ohlin et al., 1973: 2)

Early research observations of Miller's reforms identified both the general thrust of reform and its limitations. Miller had 'a *mandate* . . . to initiate more progressive policies and treatment of delinquent youth . . . [but] the mandate was in the main broad and undefined' (Ohlin et al., 1973: 9, emphasis in original). The mandate grew out of consensus about what was wrong: the state training schools had failed dismally to fix, to help, to befriend, or to deter. In other words, the juvenile system was under pressure to change things, to do something radically different, and yet lacked guidance on exactly what that would comprise. Given the sense that the problems of the juvenile system lay not in particular lapses in practice but in the nature of large-scale institutionalization itself, the solution could be constructed reactively out of the ashes of the old regime. Thus Miller and his staff focused on three strategies: 'regionalization, privatization and community integration' (Bakal, 1998: 110). *Regionalization* would alter the heavily centralized organization of the DHS bureaucracy, in which micro decisions concerning parts of the state were made at DHS headquarters in Boston. More important, though, was the aim of using regionalization to keep treatment of youth 'local': under the centralized

approach, a child committed for placement would be housed wherever space in the state-wide system was available, often many hours away from his or her home. Reform of the DYS entailed dividing the state into several regions, each with control over the resources within its district in order to make appropriate and nearby program placements.

*Privatization* was seen as the only means of challenging the political power of the juvenile workers' civil service. While shutting down the state schools may have seemed the most radical solution to the DYS's problems, it may have been the easier path compared with taking on and attempting to reform a deeply hostile state workforce. The image of the state worker that emerged during the reform effort was an uncaring and incompetent person who was either indifferent or actively vicious toward his charges and biding the time to a state pension. Could a 'youth counsellor', the employee of a private agency, possibly be worse?

*Community integration* of juvenile programs would closely complement the goal of regionalization. Isolation is an inherent feature of state facilities; their size requires large tracts of land, and nearly all of the state's reformatories were located in rural areas, although most delinquent youth came from the urban parts of Massachusetts.

The articulation of this three-pronged strategy flowed directly from the three main criticisms of the state's previous approach. The failure of the DYS, under its old regime, had been to exert centralized control over a handful of rural training schools operated by uncaring state employees trained to rely on overtly coercive forms of behavioral control. The answer, then, would be to establish a system that did the exact opposite. This reasoning process finds the direction that reform should take in the nature of the problem itself; the vision of the future becomes a photo negative of the failed present.

For example, Miller assumed that since the state had persistently failed to help kids, the private sector would necessarily do a better job. The private sector would do a better job because it must be able to avoid all of the reasons that the state had become a persistent failure: overly bureaucratized staff and administration, complex planning processes that stifled initiative and creativity, excessive bureaucratic size in which individual cases could not be treated as unique and special. Thus, in 'community settings greater professional resources would be available to provide volunteer and purchased services in relation to which traditional expectations about juvenile prisons might no longer have force' (Ohlin et al., 1973: 39). This assumption is supported by the tacit logic that simply shaking things up by trying something new would undermine the entrenched strategies of the state which had proved to be chronically incapable of realizing any rehabilitative goals. Privatization through nonprofit organizations would glean the best of both private and public sectors: setting up a vendor contracting system would encourage competition that would maximize innovation in the kinds of programs offered. Also, programs that failed to address needs of youth would wither away in a market system to be replaced by more efficient ones. And the limitation of a vendor system to nonprofit organizations would avoid an over-emphasis on the bottom line at the expense of humane services.

The vision was utopian in that it idealized the consequences of reform, and because this idealization had as yet no empirical manifestation it could encompass everything that was opposite to what was bad about state institutions. Exhortations to 'put kids back into their communities' and provide 'humane care' through small private providers found few opponents, apart from the soon to be defunct state employees. Articulating reform goals in terms of 'negating' the status quo is a standard strategy. It is also an

effective strategy, for the conceptualization of reform goals as anything and everything that would improve upon a widely discredited existing practice allows one to secure broad-based public and political support. Selznick reminds us that 'language used for self-protection and for exhortation develops terms which are unanalyzed, and persistently so, for their effectiveness depends upon the diversity of meanings with which they are invested' (1966: 59). But the 'unanalyzed terms must be closely examined, for it is also a reliable expectation that some covert adaptation in terms of immediate necessity will have provided content for emotion-laden but procedurally indefinite terms' (1966: 264).

The organizations hired to run the community-based programs that would take up what was left of the DYS caseload can be divided into two kinds. First, charitable organizations that had long provided child welfare and social work services developed programs to deal specifically with the delinquents constituting the DYS's caseload. This includes various YMCAs throughout the state and Catholic charities. For example, the DYS contracted with one local YMCA to run a detention program (i.e. secure residential beds for children awaiting adjudication and held to require custodial supervision) out of a closed-down mental hospital (Miller, 1991).

The second group filling the vacuum comprised nonprofit organizations founded largely by non-professionals. One significant example is the Key, Inc. program, founded by two young university graduates looking to support Miller's efforts.<sup>3</sup> The Robert F. Kennedy Children's Action Corps (RFKCAC) presents another example of this non-professional type, and its name captures the animating spirit behind the establishment of juvenile programs during this period. The status of these groups as incorporated organizations probably presents a misleading picture of this early community-based system as a sophisticated continuum of child welfare and juvenile justice professionals. Many programs that contracted with the DYS in the early days were simply private individuals who incorporated as charitable organizations in order to comply with the legislative prerequisite to form contracts with the DYS.

Since both the traditional charities and the newcomer organizations lacked specific experience in working with or housing juvenile delinquents, it came as no surprise that many former DYS staff (made obsolete through reformatory closures) were recruited to help manage and staff programs. So while Miller was successful in transforming the juvenile care system from mainly publicly run to mainly privately run, the staff of the public and the private programs was held, to some degree, constant. 'The majority of the [old state] staff that actually operates programs for youth are now in private agencies contracting services to the state' (Ohlin et al., 1973: 61–2).

### **The legacy of the Massachusetts experiment**

While Miller had marvelled at his department contracting with over a hundred different program providers in the earliest days of deinstitutionalization – encouraging just the kind of program smallness, diversity, and competition he had hoped for – others presented this kind of contracting system as disorganized, inefficient, and unregulable (Miller, 1991). Hence pressure existed early on to rationalize the system of community treatment for juveniles, by limiting the number of contractors in order to achieve economies of scale and accountability. Whether in response to this pressure or due to the natural evolution of the market, a small number of organizations has been

concentrating its control by running more and more of the programs which the DYS uses. This has occurred through development and monopolization of more services or through mergers with and acquisitions of smaller organizations.

These developments form the basis of some dissatisfaction with the outcome in Massachusetts. Bakal, deputy chief of the DYS under Miller, recently assessed the success of the experiment he helped implement: 'We hoped to stimulate a new way of thinking and unleash creative energy nationwide. Some hopes were realized, while others were stillborn' (1998: 110). The incomplete success of deinstitutionalization – in failing to maintain a thriving market of numerous and ever changing providers – is not understood as an inadequacy, or under theorization, of the reform strategy itself however: like 'privatization, regionalization fails in implementation . . . We failed to help [the small community grassroots] organizations, which were left to sink or swim. Central office bureaucrats were only too happy to keep the power centralized. Central power seemed more efficient' (Bakal, 1998: 114).

The willingness to remain convinced of reform values, and to blame failure on constraints of the implementation process typifies the literature following the 'nothing works' turn in criminological research. The focus on problems of implementation occurs at the expense of examining reform values themselves, which then necessarily closes off consideration of the possibility that these values, and the ways in which they were deployed, would entail implementation problems (Foucault's (1977) 'prison failure thesis' captures this problem well). Despite the negative review Bakal offers in the aftermath of his own reforms, he maintains the reformer's idealism: 'the fight remains a good one, and the cause remains just. Our strategies did not go far enough . . .' (1998: 116).

The focus of studies of the Massachusetts system reproduce this perspective, examining *how much* Massachusetts has privatized or relocated programs to the community (e.g. Krisberg and Austin, 1993). Little attention has been drawn to the nature of the community programs themselves: what makes them more humane? What makes them community-based? And what makes community-based more humane? One of the only doubts expressed about the Massachusetts reform in the quarter-century since its start comes in the earliest days of the change from the Harvard University team contemporaneously studying it: 'The experience of other states justifies vigorous quality control procedures. The professional or sectarian orthodoxies of private agencies may prove as inflexible and ultimately as harmful to youth as the regimen of traditional training schools' (Ohlin et al., 1973: 60).

Nevertheless, Massachusetts remains a model for juvenile reformers in the USA who triumphantly claim that the 'juvenile justice system in Massachusetts today is among the best in the country' because it 'has created a more humane system of juvenile justice without compromising public safety' by building 'a broad spectrum of community-based, residential and non-residential programs' run by private nonprofit agencies (Lerner, 1990: 21). Advocates still support the Massachusetts model because, though its implementation may be lacking, no other state has yet exceeded its accomplishment in reducing state involvement in the management of youthful offenders.

While community-based care currently remains the domain of private contractors, the state's role has gradually increased as it opens more secure detention and treatment beds. Data from the DYS for 1998 show that the state operated or contracted for nearly 12,000 (residential and non-residential) placements for juveniles awaiting adjudication

or already adjudicated delinquent.<sup>4</sup> Private vendors operated all 283 beds classified by the DYS as 'community-based' care. The average number of beds per community-based residential program was 13; the smallest program housed only three youths and the largest housed 18. Most of these programs are short term (up to six months), and there were 59 beds available for long-term residential care.

### THE COMMUNITY IDEAL

The deployment of 'community' as a main prong of the deinstitutionalization reform strategy in Massachusetts evoked richly positive imagery to contrast with the negative image of the isolated state institution. 'Community' connotes smallness, close-knit social groupings, a kind of Rockwellian suburbia. A community suggests an ecosystem of people – parents, children, grandparents, neighbors – interdependent, stable, and happy. Community programs would be in family-friendly neighborhoods where one would never be far from the sound of a child laughing or a lawn being mowed. Implicit in the concept of community-based programs is the idea that simply by being located within this thriving ecosystem, delinquent youths would become an integral part of it. Their rehabilitative treatment would lie partly in integrating with these families, learning about healthy relationships and acceptable behavior for children their age. Hence, community is not just the setting of treatment but also its modality. Crawford's research into community policing and partnerships observed a similarly circular and vague understanding of the concept: "community" constitutes a means to an end, and an end in itself. It is both the vehicle to a better life and the better life' (1997: 151).

The concept of community continues to exert its hold over criminal justice policy reform movements despite the fact that it remains under-theorized. The symbolic attraction of the idea never seems to be overshadowed by the reality that communities are empirically difficult to define and their potential for reforming criminals or producing solidarities against criminal activity even more so. Cohen (1998: 21) argues that 'community' is an 'essentially symbolic' term, and 'symbols are effective because they are imprecise,' echoing Selznick's analysis. The symbolic aspect of community necessarily dominated the rhetoric of reform in Massachusetts given the reactive nature of the reform itself. The fight to improve the conditions of care for juvenile delinquents did not originate as a fight *for* a particular approach but as a reaction *against* existing state practice. The deployment of the community ideal fit perfectly within this reform dynamic as a 'relational idea', a notion that rather than standing for something specific itself provides the positive contrasting image to notions of 'the state' and 'modernity' representing in the most general terms 'an aspiration to common interest which is all too obviously missing in reality' (Cohen, 1998: 11–13).

The contextualization of this central term of reform rhetoric is then the necessary first step in analyzing the anticipated and unanticipated consequences of reform in Massachusetts, especially with politically exhortatory which suggests much and specifies little (Merton, 1936). The context within which community took on empirical meaning for the juvenile justice programs captures the process by which reform becomes reality, in which certain ideals immanent in the concept are prioritized over others, in which, in fact, certain aspects of the ideal are discovered to be incompatible with others. The existing literature on Massachusetts, and on decarceration generally, focuses either on

the failure of anticipated consequences (extinction of prisons and insane asylums) to materialize, or the emergence of troubling unexpected consequences (net-widening effect of community corrections). But here we are concerned with the way that operationalization of goals determines the framework within which certain consequences are possible and even unavoidable though they may be unforeseen.

### **The logic of community as treatment**

In Massachusetts, reformers wanted to develop a continuum of community-based programs that would 'support the efforts of offenders to become re-established and functioning in legitimate roles' (Ohlin et al., 1977: 24). In this simple descriptive statement, we are confronted with potentially conflicting objectives. On the one hand, juvenile workers sought to place juveniles in the community so that they might, through integration in 'everyday situations' develop age-appropriate social skills. They are to be supported in their own efforts, just as parents might support, since they cannot continuously control, the development of their adolescent children. Yet in this aspiration lies a challenge to the idealized vision of community *as* treatment: through the identification of the youthful subjects as 'offenders', these are *not* simply teenagers to be supported in their independent development, they are people who have done something that now requires a state response. And, in the implication that because these are 'offenders' and not just kids, a greater degree of supervision is entailed. The claim (e.g. Lerner, 1990) that Massachusetts provides a more humane system without compromising public safety, provides another example of internal contradiction: how can programs which must never lose sight of public safety (measured subjectively in terms of the public's desire to be entirely free from the fear of crime and objectively in terms of stable low crime rates) also allow for the kind of freedom necessary to a community program which would allow kids to discover themselves, a process which must involve occasionally putting themselves and others at risk?

In the case of youths adjudicated wards of the state, constant control is mandated, no matter how radical Miller's efforts were in reducing the immediate physical structure of that control. The group homes and shelter care facilities in Massachusetts occupy ordinary homes in, typically, working class neighborhoods. Programs were located in the community, but the kids involved in them are not necessarily themselves part of that community. Regular community outings are organized – trips to restaurants and movies – and youths may eventually attend the regular local school (following an assessment period during which the youth makes it through an initial probationary period during which he must abide by the disciplinary rules of the house). But these outings are en masse with the home's other residents, and they are used as rewards for good behavior (chalked up in points or gold stars earned over the course of a week or month) and they are led by 'counsellors', professional staff who may be quite close in age to their charges. These counsellors, meant to secure the kind of trust a child has in its parent, actually provide less of a family model than a peer group mentorship model. But the peers in this case are clearly superior in their power and work their persuasion not through the dynamic and informal pressures that friends have over one another but through coercive behavioral modification techniques of the token economy or point system.

Finally, interaction with neighbors in the community is discouraged if not actually forbidden (again the public safety concern). These programs which attempt to mimic

family life seem instead to highlight the fundamentally non-familial dynamic of the group home marking out the children as in the community but not of it, living in a free world but restrained from experiencing the freedom itself. Learning 'legitimate roles' for the non-delinquent includes engaging in behavior that would not be approved of by parents, making mistakes and learning from them, having close calls, and putting oneself and others at risk (a rare thing it would be to find a teenager who had not drunk before the legal age of majority, and not also driven a car after consuming alcohol). For the delinquent child, learning legitimate roles cannot allow these kinds of indiscretions and risks, which not unusually amount to criminal offenses, at least not while the child is in the custody of the state.

Another example revealing the process whereby ideals translate into practice comes from the mission statements of the DYS providers. The Massachusetts Halfway Houses, Inc., articles of incorporation, for instance, propose a set of programs that aim:

to provide rehabilitative facilities for former criminal offenders, both male and female, juvenile and adult . . . to provide residential vocational training, job placement, social and recreational facilities, to provide assistance and adequate training in social and work adjustments toward responsible community living; employment opportunities, residence in a good home atmosphere, along with whatever practical individual or group therapy that the board may deem warranted . . . to provide whatsoever professional or nonprofessional staff as the Board of Directors may decide are necessary to meet the current requirements to promote a sense of friendship, of mutual self-help and of other elements in helping such a person adjust to the society outside by practical, down-to-earth aid, support and guidance.<sup>5</sup>

A statement of purpose is obviously aspirational. And this articulation of mission includes conceivably anything that might be of some value to the human condition. And yet even within this very comprehensive and idealistic vision appears the first emergence of context, the first stage in translating high hopes into more specific actions that will secure financial and political support. In its emphasis on employment and vocational training the organization subtly conveys the message that amid the plethora of services available to delinquents and offenders, an important subsection of these will ensure that a primary aim is rendering subjects useful and contributing members of society. The proffered friendship and support find focus within an overall recognition that community-based contractors will have to *do* something that funding sources believe can justify their investment.

### **The role of 'community' in webs of social control**

Net-widening theorists, and Foucault (as picked up by Cohen), treat community corrections as the link between the disciplinary network of family and school on the soft end to the prison on the hard end. Implicit in the metaphor of the carceral archipelago is an assumption that in some ways places the skeptics on the same side as the advocates of decarceration. Community corrections in both accounts *is* softer than prison; it *does* mimic a social setting more like that within a household than within a prison, providing a less overtly restrictive disciplinary environment. The disagreement between reformers and the more pessimistic critics (sometimes the same people caught at different moments – see, for example, Austin and Krisberg, 1981; Stan Cohen, 1985, 1987; Krisberg and Austin, 1993) is over the latent meaning of this approach: the critics see

community corrections as an insidious means of netting more people into the formal criminal justice realm for more reasons, by connecting less formal institutions of control with more formal ones. Any attempt to soften the coerciveness of the approach represents merely the improvement of the linkage between formal and informal through the more masterful obfuscation of coercion. At base is the function of giving low-level offenders records that will ensure any future contacts with the system result in a stepped up response, ever nearing the correctional continuum's pinnacle of incarceration.

Rather than performing a linkage function by providing a connection between softer and harder forms of punishment, I argue that the community-based group homes, residential care centers and the like *reproduce* rather than replace prison regimes. Hence, the metaphor that both correctional practitioners and academics use of a 'continuum' of care that increases in coerciveness ought to be replaced by a metaphor of cloning the penal institution. Basing programs in the community means reducing the size and dispersing the institutional regime in a more invisible way. The invariable use of token economy systems presents the first dimension of this penal reproduction. The structuring of the youth's entire day into productive activities is another. The Boys Shelter Care Unit program run by the Old Colony Y (a YMCA enterprise) is a 'structured residential program [that] serves males from 12–17 years of age' where '[r]esidents in the program spend leisure time engaged in wholesome recreational activities.' The 'staff security' of programs, which claims to make treatment more humane by removing the bars from windows and doors means that 'when a youth creates a disturbance' he may be 'sent to his room for 12 to 24 hours' (Lerner, 1990: 29, describing the Westboro Secure Treatment Facility). Providing all day structure, through the same programs for 12–17-year-olds, and locking youth in rooms for up to 24 hours is the community style of discipline. It attempts to mimic the way parents might discipline and organize their own children's lives. But the strategy is fundamentally different with its emphasis on demanding compliance rather than building self-discipline out of trust and respect.

## IMAGES OF THE NONPROFIT ORGANIZATION

The department may expend such sums as may be appropriated . . . for the purchase of services. . . from private nonprofit agencies to carry out any of the program and purposes of the department. (Massachusetts Statute, Chapter 18A, Section 1, Department of Youth Services, 2001)

As with any movement that organizes itself largely in reactive terms, reform of juvenile justice in Massachusetts stacked the deck against the status quo and thus in favor of any change that fundamentally undermined the existing system. Framing the battle in reactive terms pitted the actual failure of the public training schools and reformatories against the idealized benefits of private, community-based care of delinquents. Since the community-based system did not yet exist, arguments in favor of this approach necessarily relied on representations, or images, of what such a system might accomplish, or how this alternative might improve upon existing methods. The legislation authorizing the DYS's community-based system of care in fact only specifies that the department may contract with 'private nonprofit agencies', and does not mention how these agencies ought to be

organized (e.g. by locating services in the community or focusing on small groups of youths). It is as if the very requirement of 'nonprofitness' would suffice to secure the reality of the community-based, diverse and small programs that Miller had envisioned.

What images of the nonprofit agency suggest the promise of effective and humane treatment of delinquents? A review of the literature on the reform suggests there are at least four implied qualities of nonprofits that facilitated the support of Massachusetts for this form of private sector involvement, and which probably also underlie the neglect that this sector continues to undergo in the ongoing national debate over the privatization of punishment. First, of the range of programs available to deal with criminal offenders and delinquents, we imagine nonprofit organizations to offer the kinds of services that look least like *punishment*. They exist on the fringes of the penal realm, in the fuzzy boundary between criminal justice and social welfare services – providing diagnostic and assessment services (Lucken, 1997), specialized forms of treatment (e.g. drug dependency classes), and the non-custodial services that make up the 'soft' end of the correctional continuum (Ericson et al., 1986).

A second image of nonprofits, one which strengthens their representation as the softer, more rehabilitatively inclined edge of the penal system, is the nonprofit as a small 'mom and pop' operation. We think of nonprofit organizations, possibly by virtue of their nonprofit-making status, both as less economically sophisticated (by being less instrumentally aware of and focused on market concepts of efficiency) as their for profit counterparts, and as less bureaucratic than the state agencies they supplement or replace. Community health clinics, child care programs, and drug treatment centers are the kinds of organizations evoked when we consider what nonprofit social services are.

Third, the involvement of nonprofit organizations in core state activities is not perceived as a threat to welfarism. In fact, the increased involvement of charitable organizations complements the perception that the state is committed to welfarist and rehabilitative approaches in social and criminal justice services. Salamon (1987) reminds us that nonprofit organizations were integral, after all, to the foundation of the USA's welfare state and have always played some role in the implementation of a welfarist strategy. When for profit corporations contract to perform fundamental government activities such as prison management, however, the state makes itself vulnerable to claims that it is abandoning its core responsibilities and also its support for rehabilitation. This dichotomous reaction to privatization, depending on the profit-making status of the privatizer, shows how a scholar like John DiIulio can claim consistency in his rigid opposition to private for profit prisons (1988, 1990) and yet enthusiastically accept the presidential appointment to head up a commission that will be seeking to expand the role of charitable organizations in the provision of public services, including to the criminal and delinquent.<sup>6</sup>

Finally, the nonprofit organization provides symbolic affirmation of the belief that a linkage of profit with punishment is morally repugnant. Whatever nonprofit organizations in criminal justice do, all are unified by the fact that what they do not do is seek out profit, at least as an ultimate objective. Even with the rise of a managerialist ethic in government services – the increasing pressure on bureaucracies to justify themselves in market terms and to guide their operations with business plans – nonprofit organizations can claim that an admitted interest in efficiency and financial growth serves a higher end, such as providing for the welfare of children. This symbolic value of the 'nonprofit'

descriptor is very powerful; it encourages us to think of nonprofit status as the most important means of categorizing extremely diverse organizations. Harvard University with an endowment in 2000 of nearly \$19 billion is regulated identically under Massachusetts laws as Project Coach, an outreach program for troubled youth, which received just under \$12,000 a year from the DYS. This shows that despite drastically differing levels of income and kinds of services performed, these two organizations are grouped together for the purposes of government regulation. This then raises the question as to whether a multi-million (or even billion) dollar nonprofit agency can or should be analyzed in similar terms as a neighborhood-based organization with income in the tens of thousands, even if both provide services to the same population, i.e. delinquent youth.

In summary, the sector is perceived as necessarily more humane than the state or the for profit private sector because, nonprofits are perceived:

- to operate at the 'soft' end of the penal continuum where a rehabilitative ethic is strongest;
- to be smaller, less sophisticated organizations, operating in community-based settings;
- to complement and support a welfarist approach by the state, rather than undermine or supplant such an approach as for profits are perceived to risk doing; and finally,
- in their very status as charitable organizations, to stand for the idea that the role of the private sector, if there is any role at all, should be to help rather than profit from criminal offenders.

This section now considers these images in the context of privatization as it actually occurred in the Massachusetts juvenile justice system.

### **The image of nonprofit juvenile services as the softer side of punishment**

The first and third images above of the nonprofit supports the sense that nonprofits operate at the soft end of the continuum of punishment, and are mainly oriented by welfarist or rehabilitative aims.<sup>7</sup> One obvious sign that what nonprofits do in the criminal justice system is less severe, restrictive and punitive than what the state does (in prison) is the labelling of nonprofit work as 'treatment' or 'offender services' rather than punishment. Even though juvenile justice systems have carefully recast the familiar terms of the adult criminal justice system in welfarist terms (so 'delinquents' rather than 'criminals' are adjudicated delinquent rather than found guilty at which point they are not 'sentenced to prison' but committed as wards of the state into 'care'), nonprofits seem to benefit from this softer terminology even when what they do is difficult to describe as welfarist.

The biggest growth both in terms of DYS expenditure and in number of places from the 1981 through 1998 has been in detention beds, that is, secure residential placements for youths awaiting adjudication of their charges. This bed type is equivalent to the pre-trial incarceration of adult offenders. Serious efforts at treatment are not possible in the detention setting for two reasons. First, the amount of time that any given offender spends in pre-adjudicatory detention is quite short, often allowing inadequate time to perform even a basic assessment of treatment needs. Second, the rapid growth in the

number of detention beds in Massachusetts barely keeps pace with the demand for spaces, so that detention programs tend to operate at or over capacity. Staff-to-resident ratios are highest in detention programs compared with any other kind of residential program, and result in the tendency for staff to mainly be preoccupied with security (minimizing escapes and fights) rather than with treatment.<sup>8</sup> The relatively short stays of youth in detention and the high demand for this type of residential space means that there is constant turnover of the entire population which creates further obstacles to implementing a treatment approach. Juvenile detention is concerned by necessity, as is the case with adult pre-trial incarceration, with security. While this does not thus amount to punishment, it would be accurate to say that incapacitation is the primary value of pre-adjudicatory detention: youth are held pre-adjudication not because they would benefit from treatment while awaiting a court appearance but because they are assessed as presenting a threat to public safety or at risk of flight if allowed to remain at home.

Most detention programs in Massachusetts are operated by the DYS itself, but a substantial proportion are run by the private providers (148 out of 456 detention beds were private in 1998). It might seem churlish to challenge the treatment orientation of the private nonprofit sector when they handle but a third of this 'market', while they dominate in other areas like non-residential treatment and residential shelter care. The point of the analysis, however, is to show that in Massachusetts the private sector, while indeed monopolizing the soft end of the treatment continuum (through non-residential day treatment programs) are also involved at the hard end. It would not be accurate therefore to characterize nonprofit involvement as exclusively constituting the most treatment-oriented or least restrictive aspects of juvenile services. The nature of involvement at both ends of this continuum also raises a question about how private vendors came to be involved in the more secure end of the market: did the creation of a relationship with the state through contracts for non-custodial and non-punitive services allow for the development of a business relationship that then made expansion into the hard end possible?

The earlier discussion in this article on the ideal of 'community' in juvenile treatment is also relevant to this section's consideration of the perception of private community-based care as self-evidently less punitive than institutionalization in a public facility. The perception that nonprofit services tend to be rehabilitative rather than punitive derives from the logic of understanding the community *as* treatment. Conceptualizing community in this way seems to reject the possibility that what happens in a community program might also be understood as punishment in a formal social control sense.

Here I would like to point out once more that, contrary to conventional wisdom even among criminological academics, the style of discipline in community programs clones that of the large institutions and contradicts the logic of using the community itself as the treatment process. This style comes from the reliance on token penal economy systems (or point systems) first engineered in the large-scale mental hospital (Rachman, 1997), which grant residents rewards that would be taken-for-granted aspects of living with one's family at home, and punish them with sanctions that do not exist in ordinary families (e.g. the denial of a home visit to a group care resident). It also derives from the fundamentally unhome-like qualities of group homes, such as padlocking the refrigerator or kitchen at night. I did not conduct an exhaustive survey of the specific disciplinary rewards and punishments available in each of the community programs

operating in Massachusetts, and speculate that this disciplinary strategy is probably more obvious or extreme in the larger group care programs (e.g. of 10 or more youths) than in the smaller ones (e.g. fewer than eight youths). But the state seems to be moving in the direction of running or contracting for larger programs run by a smaller number of agencies, as is discussed below, and shown in the fact that one of the smaller programs of six beds closed in 1999 when its elderly one-woman operator retired (only four of the total 22 residential community programs extant in 1998 operated with fewer than eight beds).

The image of the nonprofit agency as responsible for the softer forms of control comes up against the empirical evidence that nonprofit providers, in Massachusetts at least, are involved in the least treatment-oriented aspects of the system. This image also falters against the deconstruction of the community as a place of healing and infused with an ethic of welfarism. The main differences between the institutional setting of the training school and the community setting of the group home is not in disciplinary regime or the availability of treatment (ironically the state institutions in Massachusetts can run specialized programs, such as for sex offenders, in a way that group homes cannot because of the larger concentration of offender types). The difference is in the size of the respective programs and the use of security hardware. The residential programs that the state operates have the look and feel of the public institution: housing is generally organized in wings along corridors with bedrooms locked at night and windows covered with mesh steel. Activities such as eating occur in large groups requiring staff to move residents from sleeping areas to cafeterias just as prisoners are moved in correctional facilities. Community care, in contrast, is described in Massachusetts as 'staff secure' meaning that escapes are prevented and disorder is minimized not through door locks but through the employee's management of their wards.

It would be interesting to know whether and to what degree juvenile delinquents prefer group care to state residential care (in the same way that research among adult offenders showed that many would prefer a short term of jail to a longer term of probation), but this information is not essential to the conclusions that nonprofits are not simply the softer side of juvenile justice, and clone rather than link up overtly coercive forms of control with more informal forms.

### **The image of nonprofit agencies as small organizations**

The example above of Harvard University, with its multi-billion dollar endowment, shatters the image of the nonprofit as a small neighborhood group. This is not to say that the image never matches reality, and Miller's recruitment of private providers specifically targeted small neighborhood-based organizations. The incipient system of private, contracted services in Massachusetts was better captured by the image of the small 'mom and pop' organization than in the image of the Harvard University-sized organization. Although large and long-existing charities like the Catholic Church and the YMCA were among the early providers of juvenile services, contracts with smaller, often non-professional and local groups were more numerous.

Despite this start, in which the actual process of privatization closely matched an idealized reform vision, the trend over the subsequent 30 years has been the monopolization of juvenile services by a small number of high earning organizations. In 1981, the DYS contracted for 70 different juvenile programs, residential (including foster care)

and non-residential run by 31 different agencies (including a minority of programmes run by the DYS itself). By 1998 there were 92 programs run by 32 agencies (again including the DYS, which by 1998 was the single biggest provider of juvenile programs), which demonstrates a degree of concentration among providers: fewer groups were providing more services.<sup>9</sup> And while many of the 1981 organizations survived to continue providing services to the DYS by 1998, a handful of organizations account for the lion's share of the DYS's contracting budget. Five agencies dominate the field through regionalized monopolies: the value of their contracts accounted for 42 percent of the total 1998 DYS budget for private services (residential and non-residential).<sup>10</sup> A sixth provider, JRI, Inc., dominates in a different way by monopolizing the high security end of the privatized juvenile treatment field. Table 1 shows that these six organizations control nearly half the DYS's monies for contracted services.

Life Resources (to the extent that it is a Catholic Church charity) and Old Colony Y (a YMCA branch) are the only two of this group with long-standing experience in private social services. The other four organizations started out in the late 1960s or in the early 1970s as small agencies run by young, recent university graduates, not dissimilar from the dozens of other organizations that obtained contracts with the DYS in its early days of deinstitutionalization. From these humble beginnings, these six agencies were able to develop into multi-million dollar corporations that have expanded from juvenile delinquency services into child welfare, foster care and adoption services, mental health services, and more. At least one of these nonprofits has begun to compete successfully for private social service contracts in other states (Key, Inc.). See Table 2.

Describing the success of these organizations in consolidating their gains and managing their operations to grow into major corporate entities is not intended to induce skepticism about the altruism of the nonprofit sector. All nonprofits seek to maintain their own existence and to stabilize it through the long-term security of substantial income. Hence, the Massachusetts nonprofit sector has followed a standard trajectory in which some organizations fall by the wayside for failure to remain competitive for any number of reasons, while others have increased their role thereby maintaining stability in the state's privatized system of juvenile services.

Only if particular patterns of growth in the nonprofit sector undermine the original vision of reform should there be cause for concern. One part of this vision was the

**TABLE 1** Contract value of largest DYS vendors in 1998

ORGANIZATION	CONTRACT VALUE	AS % OF ALL DYS CONTRACTS
JRI, Inc.	\$4,187,924	9
Key, Inc.	\$4,211,171	9
Life Resources, Inc.	\$2,695,504	6
NFI	\$2,182,921	5
Old Colony Y	\$7,059,720	15
RFKCAC	\$6,905,365	14
<b>Total</b>	<b>\$23,054,681</b>	<b>48</b>
Total value of all DYS contracts	\$47,812,183	

Source: Massachusetts Division of Youth Services.

**TABLE 2** Founding date and total revenue of major DYS vendors

VENDOR	FOUNDING DATE	1998 REVENUE
Justice Resources Institute	1973	\$50,273,000
Key Program	1974	\$30,982,000
Spectrum Health Systems	1971	\$21,970,000
Center for Human Development	1972	\$21,839,000
NFI	1974	\$14,755,000
Old Colony Y	1910	\$14,104,000
Behavioral Health Network	1992	\$13,598,000
R. F. Kennedy Children's Action Corps	1969	\$12,592,000
Servicenet	1973	\$12,567,000
Comcare Services	1968	\$11,817,000
Corporation for Public Management	1980	\$10,031,000
Massachusetts Halfway Houses	1964	\$8,733,000
Tri-County Youth Programs	1980	\$8,361,000
Mentor	1980	\$7,933,000
Life Resources	1978	\$5,530,000
Volunteers of America of Mass.	1934	\$5,326,000
Accept	1985	\$2,211,000
Roxbury Youth Works	1981	\$1,264,000
Dare Family Services	1967	unk
Eliot Community Human Services	1963	unk
CSI		unk
Lynn Youth Resources Bureau	1994	<\$1,000,000

*Source:* Massachusetts Department of Youth Services and Public Charities Division, Public Protection Bureau, Massachusetts Office of the Attorney General.

flourishing of numerous program providers to provide an overall continuum of services responsive to diverse youth needs. By turning to the private sector, the reformers hoped to benefit from the advantages of the market – innovation and efficiency. The trick is to provide support for a market-like infrastructure that provides the continuity of services while encouraging innovation and diversity through turnover in the market participants or easy entry access to new market participants. These features of the market contrast with the inertia and waste of bureaucracy.

To have well-run neighborhood based organizations . . . it is important that the process of birth and death continue. Services may be lost when an NBO fails, but the infrastructure of a community does not depend on this free clinic or that food co-operative existing from decade to decade. (Milofsky, 1987: 283)

The stable existence of a few vendors over the 30 years, and their growth through acquisitions of other juvenile services vendors as well as through increases in the numbers and amounts of contracts with the DYS suggests that a market analogy no longer applies in Massachusetts even though the system is still largely operated by the private sector. The substantial growth achieved by the major nonprofits in Massachusetts also reflects

their diversification into all kinds of juvenile services from outreach to at risk youngsters, to assessment and diagnostic services, adoption services, short-term foster care, detention, and long-term treatment.

### **The symbolic role of the nonprofit in penal discourse**

The final dimension of the nonprofit that I would like to address, and the one which most influences the neglect of charitable organizations in the private prisons debate, is the symbolic power the term 'nonprofit' lends corporations constituting this sector of the economy. Federal and state tax codes require that to become a tax-exempt organization, the corporation must exist mainly for a charitable purpose. Hence the nonprofit sector comprises corporate entities whose primary justification is to promote some social good. This contrasts with the for profit corporation's primary interest in profit without regard to social good, symbolically separating out the morally driven organization from the amoral or possibly immoral organization. The nonprofit may even be accorded a higher degree of credibility for its altruistic motivations for action compared with the state. The state, even when conceived of in welfarist terms as the guarantor of a basic standard of living, provides public services out of a 'duty to govern' (DiIulio, 1990). In other words, the state has an obligation to do good, an obligation which must be constantly supervised and enforced to ensure fulfilment, while the nonprofit organization voluntarily accepts to undertake a service to the public.

Massachusetts perhaps exemplifies this contrast in the dramatic way that some of the biggest players in the juvenile justice market came into being in response to Miller's call for volunteers to support his vision of a non-institutional system. No one who took up Miller's challenge could possibly have entered the field expecting significant financial reward, given the budget available to the DYS for contracting.

But if we acknowledge that even for profits do occasionally produce social goods (pharmaceutical companies have, after all, substantially improved the ability to combat disease), does it follow that nonprofits occasionally behave in profit seeking ways? And if so, what are the implications of this?

The clearest evidence that nonprofits are not immune from a profit motive might be if they converted into for profit corporations. This has occurred in health, social service and child welfare organizations nationally, but Massachusetts technically prevents this from occurring through its restrictive legislative language.<sup>11</sup> One way around this, though, is for a for profit corporation to establish a nonprofit corporation through which it receives contracts. In Massachusetts this has happened with at least one out-of-state for profit organization creating a Massachusetts-registered nonprofit, and a Massachusetts-based for profit with a nonprofit corporation affiliated with it.

This kind of corporate shell game, however, does not dilute the power of the nonprofit's image as devoted to public service; it only shows, perhaps, that some for profits have discovered a means of exploiting this image. If anything, this kind of maneuvering shows how powerful the cache of the nonprofit designation is; even were the Massachusetts DYS to allow contracting with for profit organizations, we still could see an advantage to claiming nonprofit status.

Nonprofits can and do behave entrepreneurially and in pursuit of economic growth, and this is certainly true of the nonprofits contracting with the Massachusetts DYS. Such behavior, as discussed above, is necessary to sustaining the capacity of the organization

to fulfill its charitable mission. So while 'nonprofitness' seems to confer a kind of immunity which protects the nonprofit sector from scrutiny, pursuing profit is a necessary activity of realizing socially valuable goals. The question then becomes, when or how does pursuit of profit ever eclipse the framing and pursuit of these morally admirable goals? And, should we spend more time thinking about the role of the nonprofit sector even if profit always remains secondary to mission?

The dividing line between profit in support of socially valuable objectives, and socially valuable objectives justifying pursuit of profit is not a clear one. The Massachusetts DYS vendors lobbied and eventually received a concession which allows them to accumulate contract surpluses (contract value not actually expended in the year of the contract) over a period of five years, thus providing a source of income and the ability to accumulate capital. While this looks like a way of making profit on a contract, it also reflects the reality that sometimes youth numbers are not accurately predicted in contracts and vendors should be protected against this.<sup>12</sup> Accumulation of capital could also allow nonprofits to develop the capacity to try out new, innovative ideas of servicing youth populations without having to wait for the state's cumbersome procurement process to identify a new need and design a program tender around it.

It is clear that nonprofits should not be ignored in considerations of whether and to what extent states privatize criminal and juvenile services, and so it would be helpful to begin thinking about how to include this sector in future debates.<sup>13</sup>

## CONCLUSION: NONPROFITS AS ENTREPRENEURIAL BUREAUCRATS

To understand the role of nonprofits in those parts of the justice system contracted to the private sector, we must reach past the imagery of what we think they are and do and seek out clear understandings of how they actually behave and interact with government agencies and the for profit sector. This article deals with the limited scope of private juvenile providers in Massachusetts, but with the hope that insights about this jurisdiction can contribute to a more general debate. The discussion of the imagery surrounding nonprofits suggests that first, while this sector may emerge first in the softer areas of punishment, they have come to provide a diverse set of services including those at the most secure, least treatment-oriented end of the correctional continuum; and second, the relationship between public service mission and quest for profits and organizational stability is murky.

We might characterize the nonprofit juvenile provider as an *entrepreneurial bureaucrat*, to capture the ways in which it behaves according to private sector norms and yet also tends to take on the qualities of the state system that it was designed to replace. The biggest juvenile providers, organizations that started out on shoe-string budgets run by idealistic university graduates, are earning in the tens of millions of dollars. To achieve this extraordinary growth these agencies have expanded the size and kinds of programs they offer to the DYS. This includes developing new program ideas and selling them to the DYS. They have also expanded beyond juvenile justice services to become major vendors to social services and mental health agencies. And, in reaching outside the boundaries of juvenile justice, demonstrate a responsiveness to changes in the market. For example, from the mid-1980s there was a shift in funding priorities from traditional

social service and juvenile justice provision toward mental health programs (in Massachusetts and nationally). During this period a number of the original DYS vendors changed their articles of incorporation to describe themselves as 'mental health providers'; this both allowed them to compete for new funding streams and to successfully hold off competition from major mental health providers attempting to enter the juvenile justice market (Armstrong, forthcoming).

There is some evidence that nonprofits 'respond less readily to market changes than for profits' (DiMaggio and Anheier, 1990: 148). This suggests a tendency toward entrenchment of bureaucracy. It is not clear, however, if the causes of reduced responsiveness lie as much with the state contractor as with the private nonprofit vendor. The procurement regulations for Massachusetts are contained in a telephone book-sized manual and include onerous requirements for obtaining insurance, managing real estate, and so on. Once a vendor has made it through this difficult process, not only does this create a major obstacle for a new competitor to the procurement process, but requires substantial state time to process applications, review that requirements are met and oversee new contractors' work in the short term. Sticking with established players in the field is the most efficient choice facing the state. This may explain how tenders for contract bids, which require services that ostensibly seem at odds with the mission statements of the nonprofit provider (e.g. providing secure detention) favor agencies that already have contractual relationship with the DYS.

A system born in the 1970s guided by liberal political ideals has grown into a multi-million dollar system dominated by five or six agencies. The commitment of Massachusetts to a privatized and community-based system of managing juvenile delinquents means that there is little risk of a major shake-up to the existing balance of providers. In the case of the for profit prison, there is no American jurisdiction which is dependent for correctional services primarily on the for profit sector and so the stakes of closing down any particular private for profit facility are small, at least in the sense that shutting down a private system does not mean shutting down the penal system of a state period. Ironically, it was the success of Miller's reform in transforming the state's overall approach from public to private nonprofit that makes it so difficult to change systemic features of this system. But in any juvenile justice system that looks to private nonprofits to manage some of its delinquency caseload, conscientious attention to sound fiscal management and operational oversight can lead to the encouragement of private bureaucracies and the impossibility of nurturing the kind of small, specialized neighborhood organizations that 'nonprofit' symbolizes. The conundrum is

how to encourage resource mobilization at the community level without destroying voluntary associations by the very process of making resources available. If we have large grants available to local organizations, either those grants are won by large social service agencies or their size and accountability requirements transform voluntary associations into social service bureaucracies, destroying their participatory elements. (Milofsky, 1987: 283)

The problem is not simply that nonprofits risk becoming part of the state bureaucracy: they can develop as independent bureaucracies with the power to resist pressures to change both from the Government and for profit and nonprofit competitors. The reason for this is that nonprofits work from a position of power that for profits do not.

While for profits can claim instrumental advantages over the state in their efficiency or innovation, nonprofits can claim in addition that they serve some special charitable purpose that the state ought to support. The for profit contractor exists only to the extent the state itself deems the cause of the contract worth funding. The legitimacy of nonprofits arises independently of state determinations and can be used against state attempts to retrench or reorganize its funding. The nonprofits of Massachusetts's juvenile system have built up thriving enterprises through their successful claims that they best serve the interests of the child and can perform a child welfare or treatment role. Even though Massachusetts, like the rest of the USA, has also taken on board a stronger emphasis on juvenile accountability and punishment for crime, it is difficult to see how the DYS could reduce its contract commitments to the private sector when the private sector's mission is so admirable. In this way nonprofits trade on their charitable image, successfully employing this quality to legitimate their existence (Galaskiewicz, 1985: 297).

The legitimating power of the nonprofits is not absolute. The relationship between the Massachusetts DYS and its vendors is a dynamic one. While the nonprofit vendor is in a strong position to claim a treatment focus, it cannot ignore changes in the larger political climate. So while the mission statements of the nonprofits have remained fundamentally rehabilitative, they are careful to include their attentiveness to other needs of the system as well. In a recent contract competition, one vendor promised to focus on:

- Strengthening the family and teaching them to take responsibility for their lives and their children; . . . and
- Adherence to DYS' four levels of supervision whereby the most serious offenders receive the highest degree of intervention.<sup>14</sup>

This language that mixes treatment with accountability perfectly captures the idea of 'entrepreneurial bureaucracy' as the vendor responds to changes in penal discourse (a political market) to expand its stake in the juvenile services market, building up its bureaucratic-like control over a range of different programs by adopting the offense categorizations of the DYS itself.

When Lemert (1981) was moved to ask 'What Hath Been Wrought?' he was referring to the net-widening effects of community corrections strategies. A reform which sought to reduce the coercive intervention of the state into people's lives instead created new and more insidious ways for the state to intervene in the first place. This review of the Massachusetts experiment in juvenile decarceration, an experiment that was successful in its ability to significantly and fairly permanently reduce reliance on managing delinquents through 19th-century training schools and reformatories, raises Lemert's question for different reasons. I have sought to show first that debate over reforms undertaken in Massachusetts, and to varying degrees throughout the USA, occurred through the deployment of concepts treated almost exclusively in symbolic terms.

The tracking of the terms 'community' and 'nonprofit' to their empirical manifestations reveals some important questions that are not otherwise able to emerge, and which have remained neglected both by the advocates and opponents of Massachusetts's experience and those on both sides of the private prisons debate. Speaking at a conceptual level and exclusively in terms of success or failure entails neglect of fundamental

questions: how does community-based care differ from state-operated institutional confinement? How do nonprofits compare in their behavior to the state and the for profit private sector? The research from Massachusetts suggests some surprising answers to these questions, providing evidence that community-based care clones the disciplinary regimes of large-scale institutional care, and that nonprofits behave in ways contradictory to their image. We cannot and should not move from these findings to the conclusion that nonprofits and community providers simply extend the net of state control or mindlessly reproduce state-operated forms of control. This is the folly of the nihilistic net-widening literature, to reduce every change to no change at all. Instead, these findings suggest that more attention, not less, to reform of juvenile justice is warranted. By remaining open-minded about the meaning of reform we can better understand the implications of its consequences.

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### Notes

- 1 Private nonprofit organizations are also known as charitable organizations, 'not-for-profits' and in the United Kingdom are referred to collectively as the voluntary sector. The nonprofit sector operates in the United States as tax-exempt organizations on the grounds that they perform some charitable or public service to which they answer rather than shareholders. Although the federal tax code provides the overall regulation of this sector, each state may regulate this sector as well. For example, Massachusetts requires that these organizations, referred to as 'public charities', must keep five years worth of tax returns on file with the state and also provide a wide range of information such as the members of the board of directors, the salaries of top management, and a description of any relations with for profit organizations. (Because of federal regulations and state administrative rules prohibiting the nonprofit sector from receiving a certain margin of income over costs, the larger nonprofits set up separate, for profit corporations that act as holding companies of the nonprofits' real property.)
- 2 McDonald (1994) noted that by the early 1990s, the percentage of adult inmates in privately run facilities never exceeded 2 percent of the total adult inmate population.
- 3 Key, Inc. was founded as CAP, Inc. and eventually split up between the two founders into Cap and Key by the mid-1970s. Interview with Bill Lyttle, President, Key, Inc.
- 4 This excludes DYS money reserved to contract for up to 69 specialized care in private programs (e.g. money to pay for the housing of a youth with severe mental illness).
- 5 Articles of Incorporation, Massachusetts Halfway Houses, Inc. (1964) on file with the Massachusetts Corporations Office.
- 6 DiIulio was appointed early in the George W. Bush presidency to head an advisory board on expanding the role of voluntary associations and 'faith-based' organizations in providing various social services now monopolized by the state.
- 7 The corollary of this view of the private sector operating at the softer end of the penal continuum is the notion that private organizations also deal with the least seriously delinquent youth (Shichor and Bartollas, 1990).

- 8 The supply of detention beds was outstripped by demand in Massachusetts so much that for a number of years in the late 1990s, the DYS operated detention beds by placing beds in an old gym as 'emergency' housing. Treatment under these circumstances would be understandably impossible.
- 9 Source of data: Massachusetts DYS and original data collection by author, October 2000.
- 10 RFKCAC, Inc. is the biggest DYS contractor in western Massachusetts; Key, Inc. is the biggest contractor in the central region of the state; NFI, Inc. is the biggest contractor in the northeastern section of the state; and, Old Colony Y is the biggest DYS contractor in the southeastern portion of the state. Services provided in the Boston Metro area are not monopolized, although Key, Inc. and Life Resources, Inc. have substantial contracts for services in this area.
- 11 The DYS may only contract with 'private nonprofit agencies' (Massachusetts Statute 2001, Chapter 18A, Section 1).
- 12 For example, a three-year contract might allocate funding to a detention program assuming 100 youths would use the service each year. If 80 used it one year but 120 used it the next, the vendor is protected against having to refund the state in the year when the program was under capacity while having to pay out of its own funds for the overcapacity experienced in the subsequent year.
- 13 It is equally important that in locating nonprofits in the larger debate about penal policy, larger issues about the shape and need for punishment itself are not ignored. Sparks (1994) points out the tendency of the privatization of prisons debate to assume that prisons themselves are legitimate so that only their management by the state or the private sector comes under review. The nonprofit dimension of this problem in particular should focus our attention into the legitimacy of punishment (and its contemporary forms) itself: if nonprofits really are intended to provide 'treatment' as opposed to 'punishment' how can we justify using the criminal justice process in order to allocate what are, fundamentally, social services?
- 14 Key, Inc. 'Response to DYS RFR 98-08 Community Supervision Network,' 29 June 1998.

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