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Professionalism in Corrections and the Need for External Scrutiny: An International Overview

Andrew Coyle*

This paper argues that external scrutiny of prisons and correctional institutions can be of assistance to those who manage these institutions.

The Use of Imprisonment

As a preface to that discussion, it is worth noting a few facts about the context of imprisonment in the world today.

The International Centre for Prison Studies in King's College of the University of London collects data on prison systems from virtually every country.[1] From this data, we can deduce with some assurance that there are well over nine million men, women and children in prisons around the world.[2] Almost half of these are in just three countries: United States (2.29 million),[3] China (1.57 million),[4] and Russia (0.89 million).[5]

The rate of people in prison in each country is usually quoted per 100,000 of the entire population.[6] On that basis, the

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1. *See* International Centre for Prison Studies, King's College, London, http://www.kcl.ac.uk/schools/law/research/icps (last visited Mar. 9, 2010).

2. *See* ROY WALMSLEY, INT'L CTR. FOR PRISON STUDIES, WORLD PRISON POPULATION LIST 1 (8th ed. 2009), *available at* http://wwwcache1.kcl.ac.uk/news/wmprint.php?news_id=396&year=2005 (stating that "[m]ore that 9.8 million people are held in penal institutions throughout the world").

3. *Id.* at 3.

4. *Id.* at 4.

5. *Id.* at 5.

6. *See id.* at 1.

world average is about 145.[7] In the United States there are currently around 2.3 million people in prisons and jails.[8] With a population of just over 304 million, the United States has just less than five percent of the population of the world, but it has approximately twenty-three percent of its prisoners.[9] In Texas there are over 1,000 prisoners per 100,000 citizens: one percent of the whole population of the State.[10]

In the United Kingdom, there are about 90,000 men, women and children in prison.[11] That is 151 people in prison or jail for every 100,000 in the population.[12] According to the figures from the British Crime Survey for 2008-2009, since 1995, overall crime in the United Kingdom has fallen by 45%,[13] violent crime has fallen by 49%,[14] and domestic burglary has fallen by 58%.[15] Yet during the same period the number of people in prison and jail in the United Kingdom has increased by almost 70% (from 53,000 to 80,000).[16]

According to the U.S. Bureau of Justice Statistics,[17] serious violent crime levels have been decreasing since 1993, property crimes have been decreasing for many years, and firearms-related crimes have plummeted since 1993 (but showed a slight

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7. *Id.*

8. Adam Liptak, *Inmate Count in U.S. Dwarfs Other Nations*, N.Y. TIMES, Apr. 23, 2008, at A1.

9. *Id.*

10. *Id.*

11. *See* International Centre for Prison Studies, World Prison Brief, http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_stats.php?area=all&category=wb_poptotal (last visited Mar. 9, 2010) (stating that the prison population of England and Wales is 83,378).

12. Liptak, *supra* note 8. *See also* International Centre for Prison Studies, World Prison Brief, Prison Brief for United Kingdom: England & Wales, http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=169 (last visited Mar. 9, 2010) (stating that the number is 152 per 100,000).

13. HOME OFFICE, STATISTICAL BULLETIN 1: CRIME IN ENGLAND AND WALES 2008/09, at 3 (Alison Walker et al. eds., 2009), *available at* http://www.homeoffice.gov.uk/rds/pdfs09/hosb1109vol1.pdf.

14. *Id.*

15. *Id.*

16. *See* International Centre for Prison Studies, *supra* note 12 (stating that the UK prison population numbered 50,962 in 1995 and 80,216 in 2007).

17. BUREAU OF JUST. STATS., U.S. DEP'T OF JUST., www.ojp.usdoj.gov/bjs/ (last visited Mar. 16, 2010) (home page).

increase in 2005).[18] Yet during the same period the number of people in prison and jail has increased by 77% (1.3 million to 2.3 million).[19]

As Timothy Lynch of the Cato Institute's Project on Criminal Justice famously expressed, "one needs to put the 2-million-prisoner factoid into context. It . . . took more than 200 years for America to hold 1 million prisoners all at once. And yet we have managed to incarcerate the second million in only the past 10 years."[20] So, what is going on here?

Statistics such as these are a notorious minefield for academic and political debate and I do not wish to go too far down that path. But there are some conclusions that we can draw with respect to both the United States and the United Kingdom. Despite the fact that overall levels of crime have been going down for a number of years, rates of imprisonment in both countries have continued to increase. There is no proof, incidentally, that levels of crime have gone down *because* rates of imprisonment have gone up.

It is notoriously difficult to make international comparisons about levels of crime because of different legal definitions and different methods of collecting statistics. However, we can make broad comparisons between countries which we might otherwise expect to be similar.

For example, we now know that the rate of imprisonment in the U.S. is 751 per 100,000.[21] Yet if we slip across the northern border we find that the rate of imprisonment in Canada is a comparatively low 116 per 100,000.[22] Similarly in Europe, we have learned that the rate of imprisonment in the UK is about 150, while the rate in Germany is much lower at 88.[23] The rate in Spain is 165 per 100,000,[24] but nip across the

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18. *Id.* (follow "Crime Type" hyperlink).

19. *Id.* (follow "Corrections" hyperlink).

20. Timothy Lynch, *All Locked Up*, WASH. POST, Feb. 20, 2000, at B7.

21. Liptak, *supra* note 8.

22. International Centre for Prison Studies, World Prison Brief, Prison Brief for Canada, http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=188 (last visited Mar. 9, 2010).

23. Liptak, *supra* note 8; International Centre for Prison Studies, World Prison Brief, Prison Brief for Germany, http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=139 (last visited Mar. 9, 2010).

border to France and the rate is only 96.[25]

These discrepancies cannot be explained by any differences in crime rates.

The message that we learn from around the world is that rates of imprisonment bear little relevance to crime rates. Put bluntly, the number of its citizens a country imprisons is a matter of political and social choice. It is essential that legislators at all levels be involved in the debate about the number of persons in prison. If they are to be involved, they need to be aware of these statistics.

Independent Scrutiny Can be an Aid to Good Prison Management

Having set the scene, we can now turn to the main subject of this paper, the contribution that external inspection can make to improving professionalism in prison management. At the beginning of the 1990s I was asked to become Warden of Brixton Prison in London. Brixton was one of the biggest prisons in the country at that time, with around 1,200 prisoners. It had the largest budget of all the prisons in the system because of the number of staff it needed to carry out an unusually wide variety of tasks. It was the oldest prison in London, having been opened in 1819.[26] Many of its buildings were unreconstructed and not fit for purpose. Its resources were very limited. Shortly before I went there two prisoners accused of terrorist offences managed to have a gun smuggled in and they shot their way out of the prison.

Just before my arrival, there had been two separate independent inspections of Brixton Prison. The first was carried out by the independent Chief Inspector of Prisons. He

24. International Centre for Prison Studies, World Prison Brief, Prison Brief for Spain, http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=165 (last visited Mar. 9, 2010).

25. International Centre for Prison Studies, World Prison Brief, Prison Brief for France, http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=138 (last visited Mar. 9, 2010).

26. *Brixton Prison "Recycling' Prisoners"*, POLITICS.CO.UK, Oct. 22, 2008, http://www.politics.co.uk/news/policing-and-crime/brixton-prison-recycling-prisoners--$1245810.htm.

published a damning report which factually listed all that was wrong with the prison.[27] The only good thing he had to say about it was that there was some fine lead work on the roof of the administration block. The second inspection was by the European Committee for the Prevention of Torture.[28] This is a regional committee which has the right of unsupervised entry to all places of detention in the forty-seven member countries of the Council of Europe. After its visit to Brixton in 1990, this committee concluded that the combination of overcrowding, poor sanitary facilities and lack of activities for the prisoners amounted to "inhuman and degrading treatment."[29]

At one level, these two reports were a shattering blow for an incoming warden. They resulted in a tremendous amount of negative coverage in the media and, in the short term, were very damaging for the morale of staff. However, they were both factually correct. I had been aware upon taking my command that there was a mountain to climb and that I needed to quickly develop a strategy to manage the radical change which would be necessary in the prison. These two objective and independent reports provided me with tools that I could use to convince staff of the need for change, to demonstrate to government ministers and national officials that the prison had set impossible targets, and to demand that sufficient resources be provided so that we deliver decent and humane care to prisoners. The reports also provided an opportunity to engage with the media and local public about what was going on in the prison, what could be expected of it, and what should not be expected of it. This latter initiative carried a great deal of risk, but it bore fruit when one of the national daily newspapers carried a major feature headed, "The shame of Brixton is the shame of the nation."[30] The article describes the unacceptable conditions in the prison, while at the same time recognising the commitment and hard work of

27. HM Inspector of Prisons, Report of an Inspection of Brixton Prison (London: Home Office) (1990) (on file with author).

28. Council of Europe, *Report to the United Kingdom Government on the visits to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 29 July 1990 to 10 August 1990*, Doc. No. CPT/Inf (91) 15 [EN], *available at* http://www.cpt.coe.int/documents/gbr/1991-15-inf-eng.pdf.

29. *Id.* at 37.

30. THE INDEPENDENT, Dec. 11, 1991 (newspaper) (on file with author).

staff. It went on to question the purpose of sending so many mentally ill, addicted, homeless and marginalised persons to prison instead of dealing with them in other ways.[31]

The process of change and improvement which we began in Brixton in 1991 was greatly assisted by these two independent reports because they were able to draw public attention to all the pressures which made it difficult to manage the prison properly. These were pressures which everyone connected with the prison were already aware of, but it took external inspections to get them on the public agenda.

The Standards on which Independent Scrutiny Should be Based

Sometimes the question is asked, "What happens if the independent inspectors get it wrong?" One way of ensuring that this does not happen is to have an objective set of standards against which to inspect. Objective standards are to be found from a variety of sources. In the first place, a number of them have been agreed to at an international level, many of them at the beginning of the second half of the twentieth century, with the United States playing a leading role in their drafting and in their international acceptance by individual sovereign countries working together. Some of them are contained in treaties, which are legally binding on the parties which have signed and ratified them. One of the most important of these is the International Covenant on Civil and Political Rights, which has been ratified by every country represented at the symposium and therefore has the force of law in all of them. The most relevant article of that covenant is Article 10, which states that, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."[32]

The broad principles contained in these binding treaties are covered in greater detail in a variety of instruments which have been approved by the General Assembly of the United

31. *Id.*

32. International Covenant on Civil and Political Rights art. 10(1), G.A. Res. 2200A (XXI), at 54, U.N. GAOR, 21st Sess., 1496th plen. mtg., U.N. Doc. A/6316 (Dec. 16, 1966).

Nations, of which the United States, Canada, Sweden, the Netherlands and the United Kingdom are constituent members. These instruments include:

- The Standard Minimum Rules for the Treatment of Prisoners[33]
- The Basic Principles for the Treatment of Prisoners.[34]
- The Principles of Medical Ethics[35]
- The Code of Conduct for Law Enforcement Officials[36]

There are also various standards which have been agreed to by independent states operating on a regional basis. The most obvious example for this region is the Inter-American Convention on Human Rights,[37] which the United States has signed but not yet ratified. The most developed regional standards are to be found within the greater European region. They include binding treaties, such as the European Convention on Human Rights[38] and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.[39] They also include standards which individual countries have agreed to implement. One relevant example is the European Prison Rules.[40] Their latest

33. Standard Minimum Rules for the Treatment of Prisoners, U.N. Econ. & Soc. Council [ESCOR] Res. 663 C (XXIV), at 11, ESCOROR, 24th Sess., 994th plen. mtg., U.N. Doc. E/3048 (July 31, 1957), *amended by* ESCOR Res. 2076 (LXII), at 35, ESCOROR, 62nd Sess., 2059th plen. mtg., U.N. Doc. E/5988 (May 13, 1977).

34. Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, at 199-200, 45 U.N. GAOR, 45th Sess., 68th plen. mtg., U.N. Doc. A/RES/45/111 (Dec. 14, 1990).

35. Principles of Medical Ethics, G.A. Res. 37/194, at 210-11, U.N. GAOR, 37th Sess., 111th plen. mtg., U.N. Doc. A/RES/37/194 (Dec. 18, 1982).

36. Code of Conduct for Law Enforcement Officials, G.A. Res. 34/169, at 185-87, 34th Sess., 106th plen. mtg., U.N. Doc. A/RES/34/169 (Dec. 17, 1979).

37. Inter-American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123.

38. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222.

39. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Nov. 26, 1987, Europ. T.S. No. 126.

40. Council of Europe, Comm. of Ministers, *Recommendation of the Committee of Ministers to Member States on the European Prison Rules*, 952nd mtg., Doc. No. Rec(2006)2 (2006), *available at*

revision was adopted in January 2006 by the Foreign Ministers (equivalents of the U.S. Secretary of State) of the forty-seven member countries of the Council of Europe. They begin with the following set of basic principles:

> 1. All persons deprived of their liberty shall be treated with respect for their human rights.
> 2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.
> 3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.
> 4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.
> 5. Life in prison shall approximate as closely as possible the positive aspects of life in the community.
> 6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.
> 7. Co-operation with outside social services and as far as possible the involvement of civil society in prison life shall be encouraged.
> 8. Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.
> 9. All prisons shall be subject to regular government inspection and independent monitoring.[41]

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https://wcd.coe.int/ViewDoc.jsp?id=955747&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

41. *Id.* at pt. 1, ¶¶ 1-9.

Finally, in most countries there are standards that have been set at the national level, and in the case of the United States, at the state level.

These international, regional and national standards are not merely theoretical, nor are they simply aspirational. They are intended to be applied in practice in the day-to-day management of prisons. In her contribution, Anne Owers writes about the standards she applies in her inspection of prisons in England and Wales.[42] These are not standards that she has thought up out of her own head. All of them are referenced to the various human rights standards previously mentioned. The International Centre for Prison Studies has just worked with the Chief Inspector of Prisons for Scotland to produce a set of standards that he will use in his inspections and they are all referenced in a similar way.[43]

Conclusion

The problems that face prisons across the world are broadly similar and the situation in the United States is no different from other countries. The common problems generally relate to under-resourcing and overcrowding; poor health (including mental health) of many prisoners; issues relating to staff, such as low pay, poor training and little public respect for what they do.

If indeed the problems of prisons are common, it may be that the solutions also are common and that some of the solutions are to be found in adherence to the objective sets of standards that are described in this paper.

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42. Anne Owers, *Prison Inspection and the Protection of Prisoners' Rights*, 30 PACE L. REV. 1535 (2010).

43. *See* HM CHIEF INSPECTOR OF PRISONS FOR SCOTLAND, STANDARDS USED IN THE INSPECTION OF PRISONS IN SCOTLAND (2006), *available at* http://www.scotland.gov.uk/Resource/Doc/140391/0034521.pdf.