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Focus on Disability

Prison Reform on the Cheap

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Tony Cameron is a prominent Scottish prison administrator who has served multiple terms as president of the International Corrections and Prison Association. Several months ago Mr. Cameron wrote a challenging editorial in the ICPA's journal *Advancing Corrections*, which begins with the following assessment of world-wide prospects for prison reform:

The current economic crisis is of a magnitude that many reading this article will not have experienced in their lifetime ... What is fair to say — without fear of contradiction — is that ... the field of corrections will feel the impact more than most other areas of social policy ... It is all very well to suggest that we can make economies and savings in what we do but the reality is that for several decades in most of the Western World we have already been operating our prisons and community corrections operations against a backcloth of increasing prisoner numbers and reduced budgets. The consequence is that there is little scope for further cost savings and economies ... Perhaps what we have ahead of us is an opportunity to rethink and to influence the way our business operates and in particular how politicians and public view the use of imprisonment.¹

Mr. Cameron sensibly suggested that the time may be ripe for a recalibration of prison sentences so as 'to make less use of imprisonment for many who currently find themselves in the 'prison net,' and to make more use of community sanctions and treatment programs.' Such a move has intuitive merit, and might be very attractive for tapped-out governments, though it might not be quite as enticing for tapped-out municipalities that would be docked for the 'community sanctions and resources' that Cameron alludes to. The prospect might be even less enticing to many members of the general public, who subsist on a steady diet of lurid headlines about violent crime — even when crime rates go down across the board.

Fortunately, the question of how one can reduce prison populations against these discouraging odds is

outside the purview of my self-assigned mission. I had resolved to think about prison reform, and prisons do not control their intake populations. Nor do prisons exercise a great deal of influence over the duration of inmates' confinement, which tends to be heavily pre-specified or circumscribed by stingy parole boards.

The availability of prison space has also not noticeably affected prison populations. At one juncture, decades ago, prison-moratorium-advocates operated under the presumption that to the extent that we stopped building prisons, fewer offenders would be sentenced and sent to prisons.² This supposition rested on the notion of some sort of built-in homeostatic process in the criminal justice system whereby prosecutors, judges and parole agencies would respond to the availability or non-availability of prison space. Prosecutors, judges and parole board, however, had never claimed to take prison space into account, and the theory was eventually buried with full academic honors when it became obvious that even with a frantic, last-minute construction boom prisoners could end up being obscenely stacked like sardines — multiply-bunked in over-stuffed cells and hallways and gymnasias — and that 'prison capacity' specifications had come to be regarded as a joke.

Having to Make Do

In one sense prisons have had to be adaptable beyond the point of human adaptability. In thinking about this fact I recall once saying that a prison is like my stomach, which has to do the best it can with the inexcusable mess that I feed it. In the case of prisons, the indigestibility can easily rise to crisis proportions. One contributing factor is the inhospitality of the prison environment to many vulnerable sub-populations we are sentencing to prison — Mr. Cameron pointed out in his editorial that prisons have become wholesale repositories of substance abusers and have also come to function as mental-hospital-equivalents. But the crisis has come about because any of the problems experienced by prisoners tends to be exacerbated by overcrowding.

In its current (2010-2011) Session, the US Supreme Court will have to ponder the Indigestibility Question when it reviews an appeal from a decision by a U. S. District Court in California.³ In this decision the district

1. Cameron, T. (2010) 'A Time of crisis or an opportunity for change?' in *Advancing Corrections*, Spring, p. 2.

2. The most eloquent exposition of the perspective was offered in a Quaker-sponsored symposium entitled 'Struggle for Justice,' but the view permeated many introductory criminology and criminal-justice texts of the period.

3. *oleman vs. Schwarzenegger*, 2010WL 99000 (E.D. Cal).

court mandated a reduction of the State's prison population, based on 'clear and convincing evidence that crowding is the primary cause of the constitutional inadequacies in the delivery of medical and mental health care to California inmates and that no relief other than a 'prison release order' ... is capable or remedying these constitutional deficiencies.' The 'relief' the court was alluding to was an earlier intervention mandating improvements in health care, which the State had refused to fund.

The original (district) court held that California's prison population could be reduced to specified levels⁴ 'without creating an adverse impact on public safety or the operation of the criminal justice system.' The State of California disagreed with this contention, and voiced concerns about enormous increments in crime and the prohibitive expense of controlling crime. With respect to costs, the district court had already conceded that California counties might 'need additional financial resources in order to fund the additional costs of ongoing rehabilitation, re-entry, drug or alcohol, educational and job-training programs.' The court pointed out, however, that releasing the prisoners could save a great deal of money.

The District Court ended its order by explaining that it had been forced to intervene by the State's recalcitrance and continued failure to remedy prison conditions. The court wrote that

As we have repeatedly stated, we do not intervene lightly in the State's management of its prisons. However, the State's long-standing failure to provide constitutionally adequate medical and mental-health care to its prison inmates has necessitated our actions, and our prison population reduction Order is the least intrusive remedy for the Constitutional violations at issue (p. 7).

The court made its long-term frustration obvious when it referred in its decision to the State's 'long-

standing failure.' However, the court sounded an apologetic note ('least intrusive remedy,') that reflected its awareness of the fragility of its position. The court's decision was about to undergo review by a Supreme Court that is not known for endorsing brave and noble interventions based on expansive readings of strictures or generous interpretations of narrowly-gauged exceptions.⁵

Penny-Wisdom and Pound-Foolishness

On the judicial front — in the U. S, at least — prisons could expect little help with the crisis situations they were experiencing, and American State governments had already made it clear that they are being forced to curtail popular programs and services while facing tax-payer revolts. Prison administrators have thus come to realize that the prospects of anyone coming to their rescue range from dismal to nonexistent. Their response to this realization has been the campaign to engage in 'cost savings and economies' that Cameron alluded to.

Most of the initial efforts to save and economize were panic-driven, and many were counter-productive. Some decisions almost appeared designed to invite public ridicule. Thus, in 2003, *Newsweek* reported that 'Last week in California some inmates in three prisons were put on 'fiscally-driven lockdowns' because staffing levels were so low. Some states have even resorted to feeding inmates less ... Texas has reduced the daily calorie intake for prisoners from 2,700 to 2,500.'⁶ The Texas system concurrently announced that 'inmates now are being supplied with a roll of toilet paper once every 2 weeks as opposed to 1 roll a week' and that the paper 'was not [of] the soft and cuddly content that one would find at the supermarket.'⁷

One of the more popular categories of 'economy' moves in the United States was to assess inmates newly-invented fees, such as charges for prisoner visits to the infirmary and medical procedures including diagnostic tests, and substantial surcharges for

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4. The specified level was a population cap of 137.5 per cent of prison capacity. This fell appreciably short of the population levels of several California prisons, which bordered on 200 per cent of their rated capacity.
5. Strictures were deliberately embodied by the U. S. Congress in legislation ironically entitled the Prison Litigation Reform Act (PLRA), a law designed to discourage court-mandated correctional interventions that are not narrowly tailored to achieve circumscribed objectives. In summarizing oral arguments before the Supreme Court relating to the California case, *The New York Times* thus indicated that 'most of the justices seemed convinced that conditions in California's prisons are so awful that they violate the [U. S.] Constitution . But it was not clear that the majority was ready to endorse an order ... to reduce the prison population by as much as 45,000 over two years, to address what (the court in California) called longstanding constitutional violations in medical and mental health services.' (Liptak, A. [2010] 'Justices hear arguments on California prison crowding' in *New York Times*, December 1).
6. Tyre, P. (2003) 'Nickel-and dimed: How states keep prison costs down.' *Newsweek*, June 23.
7. *Huntsville Item* (2003) March 20.

telephone calls to family members. These punitive moves were undertaken with limited concern for their adverse repercussions, or for the obvious fact that they were targeted at a captive impecunious population.

One reality prison administrators have been facing in trying to reduce expenses is that prisons are labor-intensive enterprises, but that they present severe limits to the savings that can be effectuated through staff reductions. Down-sizing the custody staff of a prison, for example, almost always results in overtime costs that exceed the economies that can be attained. Other — less tangible — costs are high stress levels among overworked officers, and appreciably higher stress levels among prisoners who have to deal with the stressed officers.

De-Escalating Custodial Overkill

Fortunately, much can be accomplished through staff redeployment, reallocation and retraining. The most promising of the staff-related interventions is the least obvious one: It involves curtailing the use of segregation settings, which look like they ought to be cheap to operate (since they offer no programs,) but which tend to be inordinately expensive. A high priority ought to be assigned to inventorying and reviewing the recourse to punitive and administrative confinement — and especially, the confinement of perpetrators who have committed other-than-violent infractions.⁸

An obvious first step would be to reserve segregation terms for offenses that have demonstrably occurred, rather than hypothetical acts that someone assumes could take place in the future because an inmate has a shady past, runs with the wrong crowd, or has an antagonistic attitude. It would be particularly nice if prison staff were to occasionally remind themselves that their charges have been imprisoned as punishment, and not *for* punishment — and certainly not to be routinely placed in quasi-dungeons for technical violations of penny-ante rules. A meaningful

appeals process is also essential for procedural fairness, and 'meaningful' ought not to include incestuous administrative self-reviews. Due process should not be routinely ending at the prison gate.

A de-escalation of punitive and administrative segregation would not only decrease the expense of imprisonment but recapture a measure of trust among inmates who feel that they are treated unfairly. Such a de-escalation would also reduce the prevalence of mental illness among prisoners, because mental health problems in prisons are reliably precipitated or exacerbated by periods of solitary confinement.⁹ Lastly, the curtailment of super-high-custody settings would make correction officers available for different types of assignments, and these assignments could be less stultifying than patrolling segregation tiers. It is well to recall in this connection that 'segregation units can become places that damage both staff and prisoners.'¹⁰

Maximizing Human Resources

For prisons to be improved without the infusion of *financial* resources, we must undertake the imaginatively-enhanced deployment of existing (and therefore, inexpensive) *human* resources. What such a move comes down to is that we have to enlist and include our correction officers, prisoners, and citizen-volunteers in the running and improving of prisons. This approach may be difficult for some persons to envisage because they have learned to define the denizens of prison in stereotypic terms — they are mostly used to casting prison inmates as unregenerate hoodlums, officers (and their unions) as hopeless reactionaries, and community members as zealots. To conceive of prisoners, officers and volunteers as credible change agents, we would have to stop conceiving of them — as most of us now *reflexively* conceive of them — as impediments to reform and impervious targets of change.

Admittedly, a change in perspective would have to occur at the receiving end as well, and the requisite

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8. A very successful effort at such a review was recently reported by Terry Kupers and his colleagues, in a report that was accurately subtitled an 'experience rethinking prison classification and creating alternative mental health programs.' (Kupers, T. et al (2009) 'Beyond supermax administrative segregation' in *Criminal Justice and Behavior*, 36, 1037-1050.)

9. Haney, C. (2009) 'The social psychology of isolation: Why solitary confinement is psychologically harmful' in *Prison Service Journal*, # 181, 12-20.

10. Fenwick, S. and Bennett, J. (2009) 'Issues for staff working in segregation' in *Prison Service Journal*, # 181, 26-28, p. 28.

readjustment could be especially difficult for self-selected spokespersons for officers and inmates. These spokespersons include officers and inmates who make themselves available to some of the media. The officers and their rusty collections of home-made weapons, and the heavily-tattooed 'gang leaders,' have spent considerable effort on practiced routines (such as stale war stories) in which they caricature each other and themselves, and project presumptively photogenic images of hyper-manly obduracy and intractable recalcitrance. The routines may be entertaining in a gruesome sort of way, and they are ego-enhancing for everyone involved. There is special payoff for the TV producers, who can highlight their intrepidity and that of their reporters and interviewers. As for the inmates, they look impressively extra-tough, while the officers acquire heroic stature as they describe laying their lives on the line. Unfortunately, the result of the enterprise is that it discourages outsiders from working with prisoners and prison staff members, which constitutes a serious impediment to getting things done.

Nurturing a Mini-Culture

There is of course no need to initiate change by tackling the most inhospitable persons to work with. Change is most effectively accomplished by recruiting individuals who feel that they can achieve their own purposes and goals, and further their own personal development, through participation in the change efforts. In appealing to prison officers, for example, one would want to target officers who feel that they would like to spend their time doing variegated, meaningful and interesting work. One would not start a program by enlisting officers who like to play cops and robbers, or want to put in eight (or seven) hours a day with the least possible expenditure of effort. Along the same lines, one would not start recruiting prisoners by approaching inmates who are happily inclined to vegetate in their cells.

In other words, one would postulate that

1. *In initiating prison reform activities, the participants one would enlist would be volunteers — prisoners and staff members*

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who feel attracted to the proposed activities, and anticipate that they can personally develop through their participation.

The immediate order of business would be to reinforce one's change program by protecting participants from the predictable pressures that tend to originate from within the surrounding (staff and inmate) culture. At the inception of reform, persons who become involved risk being rejected by peers who are wedded to fashionably obdurate posturing and game-playing. As noted by Crawley and Crawley 'an officer's willingness to work ... in regimes which espouse values contrary to traditional occupational norms may expose him/herself to hostility and ridicule from others and to claims that this is not 'proper' prison work.'¹¹ To counter possible feelings of estrangement, a program must rapidly turn to building its own culture.

As one means of doing so,

2. *Periodic convocations must be organized in which program participants can discuss their experiences in the program, digest what they have learned, and exchange information and advice.*

Periodic convocations of program participants not only serve to cement their loyalty and reinforce their commitment, but can be crucial developmental experiences. In conventional (non-cheap) professional programs, 'training' consists of top-down academic lectures, the content of which is at best only remotely applicable to the needs of trainees. Learning that takes place 'on the job,' however, is usually more effective because it starts by being more relevant. 'Academic' content can always be provided if participants feel the need for concepts or general knowledge to help them make sense of their experiences.

In other words,

3. *The organizational structure of reform efforts ought to be democratic, not primarily because the mode of organization is 'cheap,' but because the*

11. Crawley, E. and Crawley, P. (2008) 'Understanding prison officers: Culture, cohesion and conflict,' in Bennett, J., Crewe, B. and Wahidin (eds) *Understanding Prison Staff*, Willan Publishing, 134-152, p.146.

peer-centered process can be enriching, in the sense that cross-fertilization contributes to staff development and prisoner rehabilitation. Insofar as possible, both officers and prisoners should thus function in paraprofessional capacities.

Job enrichment for prison officers requires that they transcend conventional custodial responsibilities — it means that officers ought to feel free to work closely with prisoners under their supervision — to coordinate their activities, monitor their work, assess their progress, and assist them with their problems. In comprehensive reform efforts, officers would be expected to work collaboratively with prisoners in groups to complete change-related tasks.

Prisoner-participants in reform-related ventures would be expected to work on projects that are useful but also afford learning experiences. Such projects can include making contributions to the quality of life of the prison or providing assistance to fellow-prisoners or persons outside the prison who suffer from some disability, have remediable deficits or are otherwise in need. Projects could also be rehabilitative, in the sense of addressing a re-entry problem shared by members of the group. (Formal rehabilitative endeavors tend to require the inclusion of professionals as members of the group, but they can function as team members or consultants):

4. *High priority among program objectives should be assigned to activities that make a contribution to the prison environment. But priority should also be assigned to tasks that benefit the environment outside the prison and any activities that can make the prisoner-participants feel socially useful.*¹²

In the past, non-profit organizations have supported activities of prisoners that furthered specific socially-useful objectives, such as preparing materials for the blind or training lovable (and promising) puppies to serve as guide dogs. There are no doubt various types of charitable enterprises that could benefit from

There are no doubt various types of charitable enterprises that could benefit from prisoner participation, and that in return might provide training, equipment and resources, and material support.

prisoner participation, and that in return might provide training, equipment and resources, and material support. Among sponsored activities that prisoners ought to especially welcome are any that allow for the acquisition of skills or that yield tangible results that can serve as evidence to the prisoners that they have made positive contributions that make up for past transgressions.

Change-oriented reform ought to be based on a comprehensive inventory of the interests and skills of prisoners and staff members. Data on such matters are ritualistically collected at prison intake in the course of inmate classification. These could provide a starting point, as could background information that is languishing in the personnel folders of officers. Skill- and interest-profiles ought to be brought up to date through interviews (which ought to be conducted by fellow-prisoners and officers), and the information should be relied on in considering tailor-made assignments and activities.

As an outcome of the process,

- (5). *Prisoners and officers would have been mobilized to fill in for professionals that the prison could no longer afford, and would supplement the work of the remaining professionals by functioning as aides or as trainees. It ought to be possible in many individual instances to design paraprofessional career paths that officers and prisoner could consider.*

The Mobilization of Community Volunteers

It may come as a surprise that there are many persons in the community who think that volunteer work in prisons can be fulfilling and rewarding, and who would expect no compensations for their involvement. Most of these persons are motivated by religious convictions that place a high value on charitable work, inculcate some sense of obligation to societal outcasts, or prize available opportunities to disseminate their beliefs among groups that might benefit from them.

12. The process whereby such activities can contribute to rehabilitation is delineated in Toch, H. (2000) 'Altruistic activity as correctional treatment' in *International Journal of Offender Therapy and Comparative Criminology*, 44, 270-278.

Motives such as charitable impulses can be helpful to reform efforts by providing exemplars that participants can aspire to and emulate. Sectarian missionary work, however, can present a challenge to reformers. Proselytizing — especially, among captive populations in public settings — raises ethical questions, and (in the U.S., at least,) violates legal strictures.¹³

The challenge is to provide volunteer-work in prisons that religiously-motivated volunteers can define as subsumable under their (religiously-framed) mission, but that does not violate the rights of inmates who do not wish to participate in sectarian religious experiences, or those of tax-payers who do not want to fund such experiences. Fortunately, the work of volunteers nowadays is mostly framed as contributing to the rehabilitation of prisoners, and the plausibility of this claim is enhanced by the fact that volunteers (or fellow-members of their churches) often work with prisoners after their release, and facilitate their reentry. To claim rehabilitative goals, however, can be a double-edged sword, because one's activities can invite follow-up studies, which almost invariably yield inconclusive or negative findings.¹⁴

The Whole Nine Yards

There are a number of composite enterprises that combine many of the attributes that I have alluded to, in conveniently packaged form. One of these is the so-called 'TC' or *Therapeutic Community*.¹⁵ A TC is an intervention-modality designed to make the delivery of treatment and rehabilitation programs less professional, and therefore less expensive. (It is obviously even less expensive not to undertake any treatment or rehabilitation program at all — an option that is frequently exercised).

There are different versions of prison TCs,¹⁶ but all TCs converge on the premise that prisoners in groups can act as change agents for each other. All prison TCs also nurture a culture that is different from that of the prison, and assiduously reinforce it. Despite this firewall,

however, prison TCs can provide strong linkages to the outside world because they often replicate counterpart TCs in the community. Such replication permits cross-fertilization through exchange of professional and non-professional staff, and alumnae reunions, with graduates of prison programs returning to prison as trainers, counselors or coordinators.

TCs acquired stature in American prisons during a time when substance abusers were civilly-committed to the prison system. This fact has turned out to be a mixed blessing. Long-term membership in residential TCs has been shown to be effective as a treatment modality for drug addicts, but provisions for long-term living/learning environments in a crowded prison system are difficult to arrange. The usual compromise involves setting up special residential units staffed by trained correction officers from which inmates gravitate to relevant programs, including therapeutic groups.

TCs were often initiated by a core staff with expertise in group process and group dynamics. In the course of events, this expertise tended to be disseminated to other members of the community because the 'therapeutic' process of TCs centered on reviews of personal interactions and relationships that occur in and around the groups. This process can be intense in some TCs, but de-escalated versions of these reviews have often proved helpful elsewhere — especially in settings in which prisoners (and staff members) have had to learn to live and work closely together.

I have not intended to suggest in the above that there are ready-made prescriptions for prison reform, beyond elementary attributes of any decent program, such as innovative and collaborative management, provisions for personal development and the availability of opportunities to make some improvements in the world. What I have tried to imply is that inexpensiveness can be an asset — though not a goal — of reform efforts. Frugality is undoubtedly a virtue, but one would not select '*This Prison Governor was Cheap*' as the inscription on one's tomb stone.

13. Toch, H. and Acker, J. (2006) 'Accommodation, sponsorship and religious activities in prison,' in *Criminal Law Bulletin*, 42, 261-288.

14. Burnside, J. (2005) *My Brother's Keeper: Faith-based Units in Prison*, Willan Publishing.

15. Jones, M. (1953) *The Therapeutic Community: A New Treatment Method in Psychiatry*, New York: Basic Books.

16. Toch, H, ed (1980) *Therapeutic Communities in Corrections*, New York: Praeger.