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Correctional Facilities and Correctional Treatment

International Perspectives

Edited by Rui Abrunhosa Gonçalves

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Meet the editor

Rui Abrunhosa Gonçalves is an associate professor with tenure at the School of Psychology, University of Minho, Portugal, where he obtained his Ph.D. in Forensic and Legal Psychology in 1997. He has consistently researched and published on the topics of violent and dangerous offenders, namely, psychopaths, sexual abusers, spouse abusers, and the correctional system. He also works as a forensic psychologist expert at the Counselling Unit of Forensic Psychology, University of Minho, where he evaluates and intervenes on juvenile and adult offenders. He has been the general director of the Portuguese Prison and Probation Services since 2022.

Contents

Preface

Writing about prisons is an endless project. Firstly, because prisons have been intimately linked to our society since ancient times and will remain linked to daily life as the ultimate step, at least in most countries, for those who break the law. Secondly, because prisons remain a continuous source of scientific research on human behavior in particular social conditions to test the efficacy of correctional treatment programs and to provide insight into the relevance of different forms of applying penitentiary laws. And thirdly, because correctional facilities attract great interest from the public, which leads to the formation of an array of fictional narratives that continue to play out in literature and cinema.

Although there is a line of opinion that condemns correctional facilities, pointing out their failures to deter crime, it seems difficult to find an alternative for protecting society from those who commit serious crimes and therefore should be punished. In 1961, when Goffman [1] postulated that prisons could be described as total institutions where individuals who were dangerous to society were allocated and had to comply with a strict set of rules, norms, schedules, and activities for a considerable amount of time in order to change their behavior, the rules of correctional treatment seemed quite clear. Additionally, each prison sentence had a functional character, as it could be an opportunity for the offender to change their criminal trajectory into a normative one. Notwithstanding the implications and the contribution of these postulates for the theorization of the crime, we know now that this approach should be interpreted with caution because we cannot assume that prison sentences automatically induce behavioral changes in a positive way and that incarceration provides the necessary opportunities for the offender to develop pro-social skills. This is perhaps the main reason for publishing this book. If some years ago, society believed that imprisonment would help inmates in their resocialization, this perception has been changing progressively, both in the psychological and criminological discourses. The potential of prison to rehabilitate offenders and prevent the occurrence of new crimes may be overstated. The optimism of the 1960s and the 1970s, characterized by the belief that imprisonment, by itself, could actually rehabilitate offenders, has since been widely discussed, whereas society has become much more concerned with personal safety. In the meanwhile, in several countries, the prison population increased substantially, incarcerating serious offenders along with those that have committed only petty felonies, and neither the introduction of alternative measures nor the growing body of empirical evidence towards the inefficacy of prison in reducing crime or in rehabilitating the offenders had a significant impact on imprisonment rates. Nevertheless, although the "nothing works" anathema heavily marked the judicial practices of many countries, it also instigated a lot of research on the effectiveness of prisoner interventions in reducing recidivism. There is increasing evidence that several programs, policies, and practices have been effective in crime prevention and offender rehabilitation.

This brief discussion shows that legislation and rationality about the correctional system have been gradually progressing from a more retributive and deterring

perspective to a recognition that offenders can be rehabilitated if a scientific and evidence-based model is used both during imprisonment and in community sanctions. The seminal work of Don Andrews and James Bonta [2], with the creation of the R-N-R model in the 1990s, is the most relevant step for correctional treatment and offender rehabilitation. Nevertheless, some countries and jurisdictions are in favor of a more restrictive and punitive legal framework and, in this sense, a book that can bring us international perspectives of what is going on in African or South American countries is useful for helping us remember that there is still a long way to go to fulfill the human rights agenda.

This book presents legal frameworks on corrections and applied research. It is a resource for a wide range of readers, including professionals, academics, and the public. In certain aspects, it still bears on some of the challenges that the COVID-19 pandemic imposed on correctional systems throughout the world. In several countries, the risk of COVID outbreaks inside facilities promoted a more or less controlled release of prisoners, which was useful for not only deterring overcrowding problems but also ensuring that the most vulnerable inmates would not be infected. While the impact of these measures on the rates of recidivism is not fully assessed, it is important to look at them carefully because they might bring us relevant knowledge of the importance of applying alternative measures to prison sentences more frequently, namely, in petty crimes or against individuals who are not considered dangerous [3]. Several countries have high rates of incarceration, and research on the impact of short prison sentences on the ability to impose prosocial behavior has shown negative outcomes [4]. In addressing so many issues, this book is useful and important for those who work in the correctional field, including prison, education, and probation officers.

I would like to thank all the contributors for their work that has made this book possible and the staff at IntechOpen, especially Author Service Manager Dolores Kuzelj, for their enduring confidence and trust.

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Section 1

Corrections and Law

Chapter 1

Perspective Chapter: Purposes of Judgment of a Person Convicted for International Crimes in Light of the International Criminal Law

Adu Yao Nikez

Abstract

Criminal law has the specificity of being more repressive than other branches of law, such as administrative law and civil law. Doctrinally, the purposes of any criminal judgment are to restore the social justice for the committed offense, to correct (educate) the convicted person, and to prevent the convicted person from committing a new crime in the future. However, the analysis of practices of international criminal law has shown that the aim of the judgment of persons convicted for committing international crimes differs from the doctrinal criminal law approaches. Thus, the purposes of the judgment for persons convicted of committing international crimes comprise the restoration of social justice and the prevention of further crimes but not to assist in correcting the convicted person. This scientific work consists of the analysis of practices of international bodies, in particular practices of the International Criminal Court and the other International Criminal Tribunals, to respond to the question of why the correction of the convicted person is not engaged in International Criminal Law.

Keywords: International Criminal Law, convicted person, purposes, social justice, correction, prevention

1. Introduction

In a normal social democratic state, criminal law has three main purposes: the reparation of social justice, the reform of the person convicted for criminal offense, and his social insertion. On the other hand, the International Criminal Law and the International Criminal Tribunals at the beginning did not take into account such goals and were very reprehensive.

Psychologically, the purpose of the punishment in International Criminal Law at the beginning has merely a punitive character (revenge). Therefore, in many cases, people characterize them as victims' justice [1]. The main purpose of the punishment in the International Criminal Law was the physical elimination of the convicted persons by death penalty, life imprisonment, or years of imprisonment.

Thus, the aim of International Criminal Law was the physical exclusion of the supposed criminal peoples. Therefore, the functions of personal reform and social reinsertion of the convicts were ignored. Over the last three decades, the International Criminal Law has become more humanizing. This process is due to the new approaches in international relations in the context of the humanization of international relations through international human rights approaches. This scientific work analyzes the process of the evolution of the humanization of the International Criminal Law and the related created international criminal mechanisms, judgments, and nature of the sentences (punishments) imposed on the convicted persons.

Thus, the following focuses are viewed:

1. Analysis of international crimes, their appearance, and development;
2. The purpose of the sentence (punishment) in International Criminal Law;
3. International criminal mechanisms, their appearance, and development;
4. Sentence analysis and prospectus;
5. Basics treatment standards for convicted persons for international crimes; and.
6. Psychological approach and characters of convicted person and problem of his social reinsertion.

2. Analysis of international crimes, their appearance, and development

International Humanitarian Law has played an important role in regulating the way states have to conduct their international hostility during the previous century before the first and the Second World Wars.

Unfortunately, there were no international mechanisms that could deal with huge crimes committed by states or by individuals despite the existence of many atrocities on an international scale. The idea of the necessity for international regulation for serious international crimes appeared after the First World War. In the early time, within the Leagues of Nations, there was an attempt to lay down a special code for this purpose within the Permanent Court of International Justice. However, this attempt was unsuccessful [2].

However, the atrocity of the Second World War changed the situation. The creation of mechanisms and the drafting and adoption of international instruments for this purpose have led to what is now known as International Criminal Law.

The International Criminal Law despite its appearance after the Second World War is considered a new branch of international public law, particularly International Humanitarian Law, in combination with national criminal law. For this reason, the International Criminal Law did not acquaint all tools and perfection compared with the national criminal law systems of states. International Criminal Law continues to be perfected today by elaborating the norms and principles necessary to tackle the challenges that the international community is facing regarding the commission of serious international crimes by individuals as well as by states.

Thus, the concept of an International Criminal Law began to operate after the Second World War, particularly with the beginning of the creation of different

International Criminal Tribunals, such as the Nuremberg International Tribunal and the Tokyo International Military Tribunal, to try Nazis criminals after the Second World War [3]. Thus, the concept of international law and international crimes at the time of creation of the Nuremberg tribunal and the concept of crimes with an international character have been considerably evaluated today.

The concept of International Criminal Law was based on the concept of an international crime at that time. Today, in addition to international crimes, the International Criminal Law embraces crimes with an international character. International crimes as well as crimes with an international character are crimes that could seriously affect the normal function of the international community (threats to international security). On the one hand, by the degree of their seriousness now the international crimes are dealing within special tribunals and courts especially created for these purposes: crime of genocide, crime against humanity, war crimes, and crime of aggression. Regarding their character and atrocity, *Drumbl* called them *"extraordinary crimes."*

On the other hand, crimes with an international character despite their seriousness are merely dealing with national courts but with the involvement or participation of international actors (except the International Special Tribunal for Lebanon). Crimes with an international character comprise crimes, such as terrorism, money laundering, narcotic traffic, and other transnational organized crimes that could affect many countries or citizens from different states and threaten international peace and security.

Ended the concept of international crimes from the moment of the creation of the first international tribunal to the establishment of a permanent International Criminal Court (ICC) is being truly shifted within the time and embraces new approaches today. The Nuremberg Charter of the International Military Tribunal (Nuremberg Tribunal) provided only three international crimes in its provisions in article 6:

1. The crime against peace (now known as a crime of aggression);

2. War crime; and.

3. Crime against humanity.

As we can remark, officially, the notion of crimes of genocide was not contained in the Nuremberg Charter of 1945 despite the evidence of the Holocaust. The Nuremberg Charter provided a minimum definition of these international crimes that were gradually extended with the development of international criminal norms and practices of international mechanisms created for these purposes. Therefore, The Nuremberg Charter in the provision of article 6 stipulated the following:

1. "Crimes against peace" consist of planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

2. "War crimes" were defined as any violations of the laws or customs of war, but not limited to, murder, ill-treatment, or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder

or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity; and.

3. "Crimes against humanity" are crimes, namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the tribunal, whether or not in violation of the domestic law of the country where perpetrated [4].

All these *"extraordinary crimes"* originate from national criminal laws and the laws or customs of war as stipulated by different international instruments [3]. For instance, there was no internationally common understanding of "war crimes" during the creation of the Nuremberg Tribunal. However, there have been already such practices at national levels when a Confederate army officer *Henry Wirz (1823–65)* for his maltreatment of Union prisoners of war during the American Civil War (1861–65) was executed [5]. The same trial took place in Turkey from 1919 to 1920 after the slaughter of Armenians in 1915–1916 (Armenian genocide).

Later, the concept of war crimes became broader and was legitimated through different international instruments, such as the Convention on prevention and punishment of the crime of genocide, Convention against torture, Convention against enforced disappearance, and Geneva conventions of 1949. Today, the adoption of aforesaid instruments and many other conventions has considerably improved the concept and definition of international crimes as enshrined in the Rome Statute of 1998. Today, the Rome Statute, taking into account the evolution of the International Criminal Law norms within the time, has considerably strengthened the definitions and content of each international crime that has been considerably modified [6], as we will see later.

Thus, The Rome Statute of International Criminal Court defines international crimes as follows:

1. War crime (Art 8): "War crimes" means:

   a. Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention;

   b. Other serious violations of the laws and customs applicable in international armed conflict within the established framework of international law;

   c. In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause;

   d. Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law; [...] [7].

2. The crime against humanity (Art. 7): For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

   a. Murder;

   b. Extermination;

   c. Enslavement;

   d. Deportation or forcible transfer of population;

   e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

   f. Torture;

   g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

   h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law; or any crime within the jurisdiction of the Court; [...] [7].

3. Crime of genocide (Art 6): For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:

   a. Killing members of the group;

   b. Causing serious bodily or mental harm to members of the group;

   c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

   d. Imposing measures intended to prevent births within the group;

   e. Forcibly transferring children of the group to another group [7].

4. "Crime of aggression" (Art. 8 bis): Crimes of aggression mean the planning, preparation, initiation, or execution, by a person in a position effectively to exercise the control over or to direct the political or military action of a state, of an act of aggression which, by its character, gravity, or scale constitutes a manifest violation of the UN Charter. Crimes of aggression also refer to the use of armed force by a state against the sovereignty, territorial integrity, or political independence of another state or in any other manner inconsistent with the United Nations Charter. As we can see, the definition of *war crimes* given by the Rome Statute almost differs from that contained in the Nuremberg Criminal Charter.

The Rome Statue refers more to international instruments adopted after the Second World War, such as the Geneva conventions of 1949 and others.

Concerning *crimes against humanity,* the definition given by the Rome Statute embraces practices of different criminal tribunals, such as ICTY and ICTR [7].

Crime of genocide coined by Raphael Lemkin[1] in 1944 was largely used later after the Nazis' trials. *Crime of genocide* appeared more later after the Nazis' trials due to the experiences and practices of Srebrenica, Khmer Rouges, and Rwanda genocides.

Finally, the *crime of aggression* refers more to the UN Charter and other UN instruments [8] that did not exist before the atrocity of the Second World War.

As already mentioned before, today, the norms of the International Criminal Law include all aforesaid norms and many other norms in the field of the International Humanitarian Law, Human rights Law, International Public Law, and national legislation of states. All of these make International Criminal Law more progressive today.

3. The purpose of the sentence (punishment) in International Criminal Law

The criminal law has the particularity to be reprehensive of any wrongful act (crime) that could breach or endanger the normal function of society. For instance, the Russian Criminal Code defines a criminal offense as any *socially dangerous act* (art. 14), and the Portuguese Criminal Code refers to *willful conduct* and *crime* in the France Criminal Code.

The cross-border formation of the principles and norms of the International Criminal Law through international cooperation is closed to the original functions of the national criminal laws, but at the international scale through the work of different institutions, scholars, and actors in the process of formation of the International Criminal Law [8].

Theatrically, the purposes of punishment in International Criminal Law are not elaborated in detail at the international level like the criminal code of states. There is not an international common code that is adopted by states. And there is no chance that such code could be adopted in the future (at less by these next decades). We can evaluate sentences only from the practical point of view through works of different international mechanisms and references to the purposes of national criminal laws of states. Usually, national criminal laws declare that their purposes consist of sanction, prevention, and reforming of the convicted person. For instance, the Russian Federal Criminal Law originates three main purposes of punishment of the Federal Criminal Law in these terms:

1. To restore the social justice for the committed offense;

2. To reform the convicted person for his further social insertion or reinsertion;

[1] Raphael Lemkin was a Polish Lawyer. He served as an advisor Jackson the American judge during the Nazis trial. In 1944, he coined the word "genocide." The word "genocide" is composed of the Greek "genos," which means "tribe", "race," and Latin "cide" which means "killings." Thus, Lemkin coined the word "genocide" to describe the systematic elimination of Jews by Nazis.

3. To prevent the commission of future crimes (art. 43 (2)).

The France Criminal Code adopts the same approaches regarding the purposes of the criminal law as stipulated by article 130-1 in these terms:

1. To punish the author of the crime,

2. To create conditions conducive to changing his behaviors, his social insertion, or reinsertion.

These purposes of the punishment of national criminal laws have purely humanitarian goals that are completely different from the goals of punishment in International Criminal Law. In other words, experiences have shown that these purposes of punishment of the national criminal laws are not always applied when referring to the International Criminal Law, or at less when referring to specific crimes such as international crimes. The purposes of the punishment of the International Criminal Law are extremely reprehensive than the national criminal law despite *Drumbl* found them softer by qualifying them as "ordinary sentences for extraordinary crimes" [9]. He confirmed that the International Criminal Tribunal for Yugoslavia in May 2006 did not issue a life sentence. The East Timor Special Panels were not empowered to issue a life sentence, while less than half of the International Criminal Tribunal for Rwanda convicts received only a life sentence [9]. Arguing so, *Drumbl* subscribes to the argument of the allied countries at the creation of the Nuremberg and Tokyo International Criminal Tribunals, which were intended to punish Nazis criminal without pardon (revenge). *Drumbl* also did not take into account the evolution of international law that enforces respect for human dignity and abolishes the death penalty as a sentence at the international level. To remind, before the creation of the International Military Tribunal, in 1943, the prior intention of the allied countries was to punish the Nazis criminals [10]. The Moscow Declaration of 1943 was clear in these terms in the dimension of the atrocity committed by Nazis criminals. Therefore, in these terms, the objectives of the allied countries and embodying International Criminal Law were clear: to punish.

This vision of the International Criminal Law after many decades passed did not change and did not pay particular attention to the human goals of the criminal laws as a whole despite the abolishment of the death penalty. The reprehensive approach of the International Criminal Law is revealed in the aims and sentences of international special panels, International Criminal Tribunals, and courts established for these purposes.

4. International criminal mechanisms, their appearance, and development

International crimes are usually devoted to the competencies of international permanent or *ad hoc* mechanisms created to deal with such crimes. In contemporary history, mankind has faced the creation of many mechanisms for this aim. In recent centuries, the International Criminal Court and International Criminal Tribunals and special panels have been created:

1. The Nuremberg International Criminal Tribunal (1945) [11];

2. The Tokyo International Criminal Tribunal / International Military Tribunal For The Far East (1946) [12];

3. The International Criminal Tribunal for the Former Yugoslavia (1993) [13];

4. The International Criminal Tribunal for Rwanda (1994) [14];

5. The Residual Special Court for Sierra Leone (2010) [15];

6. The Extraordinary Chambers in the Courts of Cambodia [16];

7. The Special Criminal Tribunal for Lebanon (STL);

8. Ad-Hoc Court for East Timor; and.

9. The International Criminal Court is an international permanent mechanism to deal with international crimes.

The above-mentioned institutions have played an important role in the consolidation and development of International Criminal Law.

The new evolution in the activities of the above international mechanisms is the creation of the Special Criminal Tribunal for Lebanon, whose competence targets crime with an international character and particularly terrorism but not traditional international crimes. This special criminal tribunal was created after the terrorist attack of February 14, 2005, in Beirut that killed the former Lebanon Prime Minister Rafic Hariri. Today, the activities of the international criminal mechanisms embrace together international crimes as well as crimes with an international character. Some national courts are also competent to deal with international crimes on behalf of the principle of the Universal Competence (France, Belgium, USA, etc.).

Apart from the tribunals that have been created for the purposes of the Second World War that could sentence convicts for death penalty, all the later tribunals provide life sentences as maximum punishment according to their Statutes: (art. 24 ICTY, art. 23 ICTR, art. 24 STL, etc.). Therefore, the death penalty cannot be pronounced by international mechanisms.

This change in severity of International Criminal Law is directly related to the humanization of criminal law at the national level as well as international levels. In 1989, the UN General Assembly adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Article 1(1) of the ICCPR stipulates that "No one within the jurisdiction of a State Party to the Protocol shall be executed [17]." Today, many countries worldwide are part of the Protocol.

Thus, all international criminal tribunals established after the adoption of the aforesaid UN protocol, including the sentences of the ICC, cannot apply the death penalty as a sentence to any person convicted for international crimes or crimes with an international character. This proves the humanization of the International Criminal Law at the national level as well as the international level.

5. Sentence analysis and prospectus

Analysis of sentences pronounced by different international criminal mechanisms has shown that the International Criminal Law is being humanized within time the same as the national criminal laws of states that are playing an important role in the

development of the International Criminal Law from the first Nazis process until today. It is important to stress that national criminal law and International Criminal Law are complementary and interconnected because International Criminal Law is influenced by national criminal laws, as previously demonstrated.

Thus, in the beginning, The Nuremberg International Military Tribunal and the Tokyo International Military Tribunal were strict in terms of the severity of criminal punishment of person convicts for committing international crimes. Sentences were more reprehensive and linked to the concept of revenge of the allied countries compared with the current International Criminal Law, which prohibited the death penalty as a sentence, even for what *Drumbl* calls *extraordinary crimes*. Therefore, among persons convicted during the Nuremberg trials, most of them were sentenced to death as follows. Examples of sentences pronounced by the Nuremberg Tribunal:

1. Defendants sentenced by hanging:

    i. Hermann Wilhelm Goering; 2. Joachim von Ribbentrop; 3. Wilhelm Keitel; 4. Ernst Kaltenbrunner; 5. Alfred Rosenberg; 6. Hans Frank; 7. Wilhelm Frick; 8. Julius Streicher; 9. Fritz Sauckel; 10. Alfred Jodl; 11. Arthur Seyss-Inquart; 12. Martin Bormann.

2. Defendants sentenced to life imprisonment:

    i. Rudolf Hess; 2. Walther Funk; 3. Erich Raeder.

3. Defendants sentenced to years' imprisonment:

    i. Karl Doenitz; 2. Baldur Von Schirach; 3. Albert Speer; 4. Konstantin Von Neurath [18]. As the three different lists above show us, during the Nuremberg trials, the first twelve persons were sentenced to death by hanging, three of them were sentenced to life imprisonment, and four of them to years' imprisonment from 10 to 20 years.

Psychologically, the classification gives the severity of the judgment, its revenge, its expedited form, and even barbary characters. There are the same remarks regarding the sentences of the Tokyo International Military Criminal Tribunal. According to the sources, from 1946 to 1948, among 28 defendants, seven (7) were sentenced to death by hanging, and 16 were sentenced to life imprisonment [19]. Today, national criminal laws as well as the International Criminal Law are more developed and humanized from the first Nazi trials from 1945 to 1948. Many national criminal laws today prohibit the death penalty as a sentence as well as International Criminal Law as a whole. Therefore, the maximal sentence that could be pronounced by the international criminal mechanisms is fixed to the term of life imprisonment in case of *the extreme gravity of the crime and the individual circumstances of the convicted person* (art. 77(2) Rome Statute) and as provided by other international criminal instruments. For instance, article 77 of the ICC stipulates that *the court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of the Statute*:

1. Imprisonment for a specified number of years that may not exceed a maximum of 30 years; or.

2. A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. In addition to imprisonment, the court may order:

   i. A fine under the criteria provided for in the Rules of Procedure and Evidence;

   ii. A forfeiture of proceeds, property, and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

Similar provisions contained in the above-mentioned international charters and statutes of international criminal tribunals, special courts, and panels were created later after the Nazis' criminal tribunals. In the cases of the ICTY, the maximum sentence is life imprisonment, and there has not been pronounced death sentence (*see Ratko Mladic case*) [20]. Additionally, in the cases of the ICTR, among 93 indicted persons, 62 were sentenced. The maximal sentence was also a life imprisonment (*see the cases AKAYESU, Jean Paul BAGARAGAZA, and al.*) [21] and there have not been pronounced death penalties.

The ICC also in its works has no competence to pronounce death penalty as already mentioned before. For instance, today, the maximum sentence pronounced by the ICC for *Bosco Ntaganda* is 30 years of imprisonment [22].

As we can remark, the International Criminal Law is being humanized, and it attempts to embody the human approaches to criminal law through the adoption of international instruments and the creation of international mechanisms.

6. Basics treatment standards for convicted persons for international crimes

International Residual Mechanism for Criminal Tribunals. All international basic treatment standards for prisoners are full part of standards for convicted persons for international crimes. In December 2010, the UN Security Council created the International Residual Mechanism for Criminal Tribunals [23]. The mechanism has the mandate to protect persons convicted for international crimes by the international criminal mechanisms (ICTY and ICTR).

Otherwise, the mechanism has the functions to carry out:

1. Tracking and prosecution of remaining fugitives;

2. Appeals proceedings;

3. Review proceedings;

4. Retrials;

5. Trials for contempt and false testimony;

6. Cases referred to national jurisdictions;

7. Protection of victims and witnesses;

8. Assistance to national jurisdictions; and.

9. Preservation and management of archives [23].

Today, the mechanism has agreements with many states all over the world to implement the decisions of international criminal tribunals (ICTR and ICRY) in accordance with all international standards on human treatments. International instruments regarding the international standards of prisoners are part of legal documents of the mechanism that must be implemented by the parties of the international criminal process. The mechanism applies the rules and principles laid down by the UN and other international organizations regarding the treatment of prisoners.

According to these instruments, not only the physical and moral integrity and security of all convicted persons for international crimes but also their social reinsertion should be guaranteed. For instance, the basic principles for the treatment of prisoners [24] in provisions 4, 6, 8, and 10 stipulate that the physical, moral integrity, and security of convicted persons should be guaranteed. In particular, provision 10 above refers to the social insertion or reinsertion of the prisoner. Other standards, such as the standard minimum rules for the treatment of prisoners [25] and the body of principles for the protection of all persons under any form of detention or imprisonment [25], are also applicable in terms of the social readmission of a person convicted for international crimes by international criminal mechanisms. Therefore, the humanization of the International Criminal Law regarding the treatment of persons convicted for international crimes started much later after the first international criminal tribunals were created. Today, all people convicted of committing international crimes must be treated in accordance with human dignity as provide international instruments.

However, there are many situations that could affect the proper application of the aforesaid new standards for many reasons, particularly regarding the personality of these supposed criminals.

7. Psychological approach and characters of convicted person and problem of his social reinsertion

Undoubtedly, the question of the social insertion or reinsertion of a person convicted of international crime remains disputable because of their status as criminal. A person convicted for an international crime is in general considered "a public enemy" in the different society where they are from. For these purposes, their reintegration into society and particularly into their country of origin is always subject to discussion. The experience has shown that there are many mechanisms applying for such integration; for instance, the "Pardon" and *national reconciliation* mechanisms used in post-genocide in Rwanda are good examples. The pardon consists of public recognition of one's responsibility (guilty) and further excuses for this purpose. This method was broadly used in the Rwandan criminal trial through the national instituted mechanism for this purpose named "The Gacaca courts." Despite critics, these mechanisms have played an important role in national cohesion and the reconstruction of the country after the genocide (*Brounéus, Rettig, Sarkin*) [26–28].

However, the experience has shown that these cases of *pardon* consisted only of persons who did not play the main role in the massacre of people. Therefore, it will be interesting today to conduct scientific research on this purpose regarding the social integration or reinsertion of "butchers" after completing their sentences and their history. This is the beginning of a new international criminal system that has started emerging after the attempt to humanization of the International Criminal Law by these decades.

Moreover, there are no internationally agreed-upon mechanisms, instruments, and practices for the social reinsertion of former criminals. As already mentioned before, their international code on post-prison will detail the social integration of convicted persons for international crimes. It is once more important to stress that three decades ago, such an approach to humanization did not exist in the International Criminal Law. Therefore, today, there is not sufficient study regarding the life of former criminals for this purpose and how they reintegrate into society.

8. Conclusion

The International Criminal Law is a full part of the International Public Law and particularly the International Humanitarian Law. International Criminal Law seeks a balance between justice and international crimes. If at the beginning the International Criminal Law was essentially a punitive law, today it becomes increasingly humanized, taking into account the human dimension. Today, the International Criminal Law prohibits the death penalty and any other inhuman treatments that can affect human beings and their dignity. The International Criminal Law is trying to embody the three main concepts of criminal law: social justice, reform of the convicted person, and his social insertion. However, the study has shown that the implementation of the social insertion at this stage requires particular attention because of the lack of a consistent legal base and the character of the person convicted for serious international crime. Ended the study has shown that the reform and the social insertion of the convicted person are in formation at this stage of the evolution of the International Criminal Law and require more attention from the international community.

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Chapter 2

Perspective Chapter: Phenomenology and Legal Framework for Recognition and Responding to Prison Discrimination

Martin Matijašević and Radovan Radovanović

Abstract

The paper analyzes the phenomenology and the international legal framework for recognizing and responding to discrimination. Members of the Security Service in prisons must know the legal framework for the exercise of official powers, but at the same time understand their rights and obligations, as well as the human rights of persons deprived of their liberty.

Keywords: Prisons, convicts, rights, equality, operative, discrimination

1. Introduction

The transition from the understanding of security, in which the main goal was the protection of state security, to the concept of human security, entails a changed role of subjects in the Directorate for Execution of Criminal Sanctions, which are no longer just bodies responsible for executing criminal sanctions. Today, they have a much broader and greater social responsibility and significance.

Today, members of the Security Service, employees of the Treatment Service, the Health Care Service, the Training and Employment Service and the General Affairs Service within the institutions for the execution of criminal sanctions must possess multidisciplinary knowledge. At the same time, they are civil servants, but also someone who should listen, advise and understand the problems of persons deprived of their liberty. In working with persons deprived of their liberty, different relationships are established and it is necessary that officials have the knowledge that will enable them to recognize and react to security threats, but also toprotect the human rights of persons deprived of their liberty.

2. The concept of human rights and the rights of persons with personal freedoms

Human rights in their present form are a recent achievement, and were first formed as a legal acquis in the Declaration of Independence of the United States from 1776 [1] while significant progress was made by the French Revolution, i.e., the Declaration of the Rights of Man and Citizen from 1789 [2]. The need to respect human rights is required to ask an important question: what are contemporary human rights and freedoms, as well as judicially related to the content of states and the rule of law? The answer is: first of all, these are subjective rights that every human being possesses as a member of the human race [3]. Nevertheless, the governments of many countries arbitrarily granted or denied these subjective rights in certain periods [4]. Placing human rights at the very top of international politics and social issues is largely the result of nations facing the Nazi Holocaust [5].

In modern human rights law, the principle that all people are equal is generally accepted. The principle of equality is observed as well as the principle of non-discrimination. The word discrimination is of Latin origin and means distinction, which in the case of human rights would be an "impermissible distinction". It is in international law it is forbidden for anyone to suffer the consequences because he differs from other people in skin color, gender, religion, political belief, social origin, property. Common to all the basics in the distinction is that these are mostly human traits that people do not acquire of their own free will and make them members of a larger group against which discrimination is directed, and "where human happiness, well-being, security — finally human life itself it depends on someone else's alms and charity, no matter how generous the occasion, that there can be no talk of a life worthy of a man [6]."

The term human rights originates from the period after the Second World War and the founding of the UN, when this term replaced the original phrases "natural law" and "human rights" [7]. All human rights are universal, indivisible, interdependent and interconnected. They are universal, which means that they belong to every human being equally. Like any other type of right, human rights are protected through various mechanisms—the Constitution, laws, international treaties and the like. In these documents, individuals are seen through a certain category (citizen, woman, worker, foreigner) or through classification into a certain group (ethnic group, political party, association).

This classification does not jeopardize the universality of human rights, but primarily serves for more efficient and precise protection. Human rights are inalienable, inseparable from the individual. They are not and cannot be a matter of merit, reward or choice, they cannot be sold, given away, earned or taken away. Human rights are irrevocable, which means that the state or someone else cannot revoke them. Human rights are indivisible. They are of the same importance and interdependent, so one group of rights cannot be achieved at the expense of another group of rights [8]. Jasmina Hasanbegović states that: "Without human rights, there is no citizen—there is only Untertan (which is a German word for subject, more precise than the English word subject). Without human rights, there is no modern democracy, no modern constitution or constitutionalism, no rule of law understood as the rule of law [9]".

Human rights have gone through several categories throughout history and there is a tendency that with the globalization and development of society, the corpus of human rights is constantly expanding. Some of the basic human rights are in the domain of civil, political, economic, social and cultural rights, among others:

the right to life, the right of a person not to be subjected to torture or inhuman or degrading treatment or punishment, the right of a person not to be held in slavery or subordination, or to forced or compulsory labor, the right to personal liberty and security [10].

Personal freedoms and rights encompass multiple individual human rights. "These are freedoms and rights that protect the physical and spiritual integrity of a person and his privacy ... and these rights and freedoms, enshrined in the constitution, set the boundaries of state power [11]." The range of human rights is diverse and wide and still includes: the right to a fair hearing in civil and criminal matters and other rights related to criminal proceedings, the right to private and family life, home and correspondence, freedom of thought, conscience and religion, the right to decent Life, in accordance with the provisions of the International Covenant on Economic, Social and Cultural Rights, the right to safe and healthy working conditions, the right to advancement in accordance with years of service and abilities, the right to rest, leisure, reasonable limitation of working hours, the right to freedom of association, the right to social security, the right of family, children and minors to protection, the right to an adequate standard of living and protection from hunger, freedom of expression [10].

Basic political rights and freedoms include: freedom of opinion and expression, freedom of peaceful assembly, freedom of association, freedom of the media, the right to information and access to information held by public authorities, the right to vote, the right to participate in public affairs and the right to petition [12]. Other important rights are: the right to marry and to found a family, the right to property, the right to education, the right to freedom of movement and residence. The right to property, the right to work, the right to a fair wage and equal pay for work of equal value, the right of the individual to the highest degree of physical and mental health, the right to education, the right of parents to religious and moral education of their children in accordance with their beliefs, the right to participate in cultural life, the right to use science and technology. Derive from copyright, the right to freedom in the fields of science and creativity, the right to conditions that ensure the preservation, development and dissemination of science and culture, the right to equality of peoples, the right to development, the right to peace, the right to a healthy environment [10].

Finally, when it comes to human rights and actions of the subjects of the system of execution of criminal sanctions, the most important is the following corpus of human rights and their respect: the right to life, prohibition of abuse and position of persons deprived of liberty, prohibition of slavery and forced labor, right to liberty and security personalities, the right to privacy and the secrecy of correspondence, protection of personal data and protection of privacy, freedom of expression, right to work, labor rights, right to social security, minority rights, position and rights of Roma, problems and rights of persons with disabilities, position of persons of different sexual orientation or gender identity, gender equality and special protection of women and other rights of persons deprived of their liberty.

A 2002 Human Rights Watch report stated that standards for the protection of persons deprived of their liberty in most countries of the world were "astonishingly low." Namely, in some countries, corporal punishment and routine use of shackles and chains are still allowed today. Explosions of violence are not uncommon, so in some countries murders between prisoners are common, e.g. in Brazil, Kenya, Venezuela, Panama). The number of persons deprived of their liberty, especially prisoners, who die during deprivation of liberty worldwide, especially in suicides, is in constant

progress, so that the suicide rates of persons deprived of their liberty are many times higher than the suicide rate in the general population [13].

Each of the human rights of persons deprived of their liberty may be restricted by some form of discrimination, so it is crucial to point out the concept of discrimination. Discrimination is any unjustified discrimination or unequal treatment, i.e., omission (exclusion, restriction or preference), in relation to persons or groups as well as to members of their families, or persons close to them, in an open or covert manner, based on actual or presumed personal property [14].

Simply put, discrimination is unequal treatment of a person or a group on the basis of some of their personal characteristics, which results in inequality in the chances of exercising the rights guaranteed by the constitution and the law. It is unequal treatment, exclusion, the bringing into a subordinate position of individuals or groups of people who are in the same, similar or comparable situation [15].

It can be discriminated against by doing or not doing. A good example of inaction may be when the prison administration does not display notices in the language and script of persons deprived of their liberty from national minorities, even though the conditions prescribed by law are met. Discrimination can happen to anyone: prison employees (individuals and groups of employees), persons deprived of their liberty, but also a legal entity. A person who discriminates in one social situation may in some other circumstances be a discriminator, i.e., a person who discriminates [15]. Having in mind the powers it possesses, the situation is especially dangerous when the state is in the role of a discriminator. An act of discrimination can be directed at an individual, but also at a wider group of persons deprived of their liberty [16].

Discrimination can be direct or indirect. Immediate discrimination exists if a person deprived of liberty or a group of persons, due to his or their personal characteristics in the same or similar situation, by any act, action or omission is placed or placed at a disadvantage or could be placed at a disadvantage. Dušan Pokuševski states that direct discrimination is easily recognizable, it is visible, and the discriminator does not try to hide his actions [17].

Indirect discrimination exists if a person deprived of liberty or a group of persons, due to his or her personal characteristics, is placed at a disadvantage by an act, action or omission which is ostensibly based on the principle of equality and non-discrimination, unless justified by a legitimate aim. Achieving that goal are appropriate and necessary [18].

When it comes to the necessary conditions for respect for human rights and protection against discrimination in deprivation of liberty and execution of all criminal sanctions, certain principles that must be respected are important. Namely, it is necessary to respect and consistently apply all laws and bylaws in this area, then act humanely with all persons deprived of liberty without degradation of their personality, without discrimination and humiliation. Torture, abuse or experimentation are also prohibited. Persons deprived of their liberty must be provided with contact with the outside world and family and informed about events outside the institution where they are detained or serving a prison sentence, they must be provided with occupational therapy and professional training, as well as appropriate measures and treatments rights, which will be discussed in more detail later [19].

2.1 International legal framework for the protection of the human rights of persons deprived of their liberty

The protection of human rights, and the rights of persons deprived of their liberty in general, can be viewed from two aspects—domestic and international. The internal

system of human rights protection is older, institutionally better built, because national institutions are almost always institutions of protection. The basis of such protection is the constitution as a fundamental document, as a lex fundamentalis and a lex superior. International protection of human rights is more recent and has been intensively developed after the Second World War.

The basis of such protection are international treaties of states, and one of the ways to realize the rights contained in these documents are international institutions, primarily with the characteristics of a judicial body. "First, an international agreement should be signed, which precisely defines and carefully enumerates various individual rights. Each state should then undertake to take the necessary measures to implement the law in question into its constitutional law. Finally, an international body of an administrative or judicial nature should monitor the exercise of this constitutional right [20]...".

To date, more than 40 treaties, resolutions and other multilateral (universal and global) documents of a binding nature have been adopted, which are considered international sources of human rights and are in conflict with the domestic law of the signatory states. In some cases, they defined human rights even more precisely and concretely, and in some cases they even expanded certain rights and protections. In doing so, it should be borne in mind that charters, conventions, agreements and treaties on human rights are dynamic documents, i.e., "living instruments" that should be interpreted in accordance with the development of modern circumstances. On the other hand, several declarations of a recommendatory-normative character were adopted, namely: "Universal Declaration of Human Rights of 1948", "Geneva Convention of 1948, revision of 1949", "International Convention on Human Rights Asylum of 1951." "Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief of 1981", "Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985", "Declaration on protection of all persons from enforced disappearance in 1992." "Declaration on the Rights of Persons Belonging to National, Ethnic, Religious or Linguistic Minorities of 1992 [21]".

International instruments that have an undoubted impact on penological law and the system of standards for the execution of criminal sanctions are numerous and diverse:

Standard Minimum Rules for the Treatment of Prisoners [22] were adopted in 1955. at the First UN Congress on Crime Prevention and the Treatment of Delinquents, as a result of the work of the International Prison Commission. They were confirmed on July 31, 1957. by the UN Economic and Social Council in Resolution 663 C I (XXIV).

Given the progressive development of human rights since 1955, in December 2015, the Standard Minimum Rules for the Treatment of Prisoners were revised, with revised rules known as the "Nelson Mendela Rules" in honor of the late South African President who 27.god. Spent in captivity during his struggle for global human rights, equality, democracy and the promotion of culture and peace [23].

These rules proclaim several basic principles in the treatment of prisoners. First of all, the approach to protection from crime through punishment, which has the basic goal of re-education, is important. It is important to apply adequate corrective, educational and other methods, which lead to resocialization. Furthermore, the treatment of prisoners should be such as to enable them to perform normal roles in freedom, and prison conditions must be adapted to the conditions of release so that convicts may be prepared for life at large after serving a prison sentence [24].

These rules must be applied impartially. There must be no discrimination based on race, color, sex, language, religion, political or other beliefs, national or social origin, property status, birth or any other status. The religious beliefs and moral principles of prisoners must be respected. For the purpose of the practical application of the principle of non-discrimination, prison administrations must take into account the individual needs of prisoners, and in particular the most vulnerable categories in prison settings [23].

The Republic of Serbia, as well as the Republic of Romania and the Republic of Northern Macedonia are bound by all major international human rights treaties, namely: the International Covenant on Civil and Political Rights and two protocols to the Covenant, the International Covenant on Economic, Social and Cultural Rights, the International Convention on Abolition all forms of racial discrimination, the International Convention on the Elimination of Discrimination against Women and the Protocol to this Convention, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Protocol to this Convention, the Convention on the Rights of Persons with Disabilities and the Protocol and other international acts [25].

International Covenant on Civil and Political Rights [26] in Articles 9 and 10, it proclaims fundamental rights when it comes to persons deprived of their liberty. In relation to these persons, the principle of humanity and non-discrimination is proclaimed. The principle of humanity is reflected in the provisions of the Covenant, which stipulate that persons deprived of their liberty are treated humanely, with respect for human dignity, which is inseparable from the human person [27]. This principle is also reflected in the prohibition of torture, cruel, inhuman or degrading treatment or punishment. It is especially forbidden for persons deprived of their liberty to undergo medical or scientific research. In accordance with the principle of non-discrimination, the provisions of this act state that all persons, without any discrimination, are equal before the law and in court and that member states are obliged to prohibit any discrimination based on race, sex or color within their national dignity., language, religion, political or other belief, national or social origin, property status, birth.

Basic principles for the treatment of prisoners [28] no. 45/111 of 14 December 1990 emphasizes the prohibition of discrimination against prisoners on any ground, and they must be treated with respect for the innate dignity they possess as human beings. Prisoners have the right to take part in cultural activities, and are guaranteed the right to access health facilities available in the country without discrimination on the basis of their legal status. Prisons must, as far as possible, create the conditions for reintegration so that former prisoners can be easily integrated into the social environment after release.

In 1984, the UN General Assembly adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [29]. This Convention obliges States to criminalize acts of torture, attempted torture and all other acts of any person complicity in an act of torture, and to prescribe appropriate penalties commensurate with the gravity of the offense.

The European Convention on Human Rights is also very important to us (European Convention on Human Rights, фр. la Convention europeenne des Droits de l'Homme) as a legal act of the Holy Europe on the protection of freedom and rights, passed in Rome, Italy, on November 4, 1950. In the period from 1950 to 2004, 46 countries signed the Convention. The signing marked the acceptance of the obligation to respect rights and freedoms, as well as the recognition of the jurisdiction of the

European Court of Human Rights. The Convention has a total of 59 articles, of particular importance is Article 1, which sets out the obligations of all signatory states to respect the rights and freedoms they guarantee. Pursuant to the provisions of Article 3 of the European Convention, no one shall be subjected to torture or to inhuman or degrading treatment or punishment. Article 3 absolutely prohibits torture, inhuman or degrading treatment or punishment and as such does not provide for any exceptions or derogations from it in accordance with Article 15 of the European Convention on Human Rights, even in times of war or other danger to the survival of the nation.

The rights and freedoms guaranteed by the Convention are: the right to life (Article 2), the prohibition of torture, inhuman and degrading treatment (Article 3), the prohibition of slavery and forced labor (Article 4), the right to liberty and security (Article 5), the right to a fair trial (Article 6), punishment only on the basis of law (Article 7), the right to respect for private and family life (Article 8), freedom of thought, conscience and religion (Article 9), freedom of expression (Art. 10), freedom of assembly and association (Art. 11), the right to marry (Art. 12), the right to an effective remedy (Art. 13), the prohibition of discrimination (Art. 14) [13].

The Short Guide to the European Convention on Human Rights emphasizes the importance of individual freedom and security, in Article 5 of Protocol No. 1. 4: "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law, (in the case of lawful arrest or deprivation of liberty for failure to comply with a lawful court decision or for ensuring fulfillment of an obligation prescribed by law; competent authority due to a well-founded suspicion that he has committed a criminal offense or because it is justifiably considered necessary to prevent him from committing a criminal offense or to flee after the commission, in case of deprivation of liberty of a minor on the basis of a legal decision on educational supervision; in the case of lawful deprivation of liberty to prevent the spread of infectious diseases, mentally disturbed persons, alcoholics, drug users or vagrants, in the case of lawful arrest or deprivation of liberty to prevent unauthorized entry into the country or to ensure expulsion and extradition). Any person arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of the possible charge against him [30].

The portal "Safety in the palm of your hand" presents the relationship between human rights and security actors in prisons, which is said to be: "Human rights are innate rights of every human being. Security sector actors who use force are obliged to respect human rights in the performance of their duties and powers in accordance with international human rights law and human rights standards in the security sector. Each state has an obligation to ensure that members (employees) of security sector actors who use force respect and implement human rights and fundamental freedoms that are reflected in instruments of international law and that are in accordance with the relevant national constitutional and legal provisions [31].

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [32] was adopted in 1987, and entered into force in 1989. and sets out in more detail the mechanism for the protection of persons restricted by freedom of movement from public authorities from torture, inhuman or degrading treatment or punishment, and establishes a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The most important documents that have established and regulated standards for the humane treatment of convicted persons at the international level are the European Prison Rules, regarding prison treatment between the member states of the Council of Europe.

The European Prison Rules, adopted in 1987 (revised in 2006), set out a detailed system of rules for the protection of persons deprived of their liberty in European countries.

The first part states the general principles and determines the scope of application. Among the general principles are: respect for human rights and freedoms, minimum restrictions on persons deprived of their liberty, proportionate to the legitimate aim for which they were imposed, approximation of prison conditions to conditions of freedom, prison staff perform a public function and should therefore be carefully selected and trained to provide the necessary working conditions...

The Second Part contains provisions on the conditions for closure: Admission to the institution—is possible only with a referral order, issued in accordance with the law; upon admission, data is first recorded, familiarized with the rules, medical examination ... Referral to prison and accommodation—if possible, prisoners are sent to prisons that are close to their homes and families. Accommodation conditions should be such as to respect hygiene, privacy, lighting, heating ... Hygiene—all prison premises must be constantly maintained and cleaned, prisoners must have access to hygienically correct premises, bathing conditions must be provided every day or at least twice a week. Clothing and bedding—clothing must not be degrading or degrading and must correspond to climatic conditions. Nutrition—Prisoners have the right to a diet appropriate to their age, health and physical condition, religion, culture and nature of work. Legal aid—The prison administration is obliged to provide conditions for the provision of free legal aid. Contacts with the outside world—Prisoners have the right to communicate, without restriction, by letters, telephone, or otherwise with family members, other persons, and prison services assist them in doing so. Prison regime—within the prison regime, a program of activities is envisaged that will enable all prisoners to spend enough time outside the prison premises for social integration. Labor—It should never be used as a punishment and prison authorities must strive to provide enough useful work for prisoners, without discrimination on the grounds of genderPhysical activity and recreation—Every prisoner should be able to exercise for at least 1 hour in the fresh air each day if weather conditions allow. Education—Education as a treatment for convicts must be available to all, especially to illiterate persons and young people. Freedom of opinion, conscience and religion is guaranteed to all persons. Transfer of prisoners—must be done in such a way that care is taken to keep the person as exposed as possible to the public eye. Release from Prison—All prisoners are released without delay, after the expiry of the transfer order or when a court or other authority orders their release.

The third part pays attention to the health of convicts: health care, mandatory professional staff, at least one health worker, who also has knowledge of psychiatry. The fourth part contains recommendations regarding the maintenance of order and security in the prison, where it is said that order is maintained by taking into account the need for security, while providing prisoners with normal living conditions that respect human dignity.

Part Five discusses the administration and staff, bearing in mind the prison system as a public service, and states that prisons are managed in an ethical spirit, and that prisoners are treated in a humane manner. The sixth part includes provisions on inspection and supervision, which provide for both state inspection and independent supervision. The seventh part is dedicated to the detainees, and their status, clothing, contact with the outside world. Increase suffering [33].

3. Migrants as a vulnerable group in prisons and their legal status

In recent years, the analysis of the situation and trends in the Balkan and European countries show increased migration and movements of migrants and refugees, many of which belong to vulnerable categories of persons, such as: unaccompanied children, potential and victims of trafficking, single parents with children, the elderly and people with disabilities. There has also been a significant increase in the number of illegal migrants and this trend is expected to continue in the next few years. The routes of illegal migration through Turkey, Greece, Northern Macedonia, Bulgaria, Romania and Serbia are current, one branch goes through the Mediterranean Sea to Italy, as well as through Spain, and lately routes through Belarus have been appearing. Migrants most often transit through the Republic of N. Macedonia, because the country is a crossroads of international corridors. There is also the so-called the "Western Balkans" route, through which over one million migrants and a large number of illegal migrants have passed in the last two years alone. Countries of origin of illegal migrants are Syria, Afghanistan, Pakistan, countries in the Middle East and Africa. Illegal migrants usually enter from the southern border of the Republic of N. Macedonia with the Republic of Greece, on the territory of the municipality of Gevgelija and the surrounding area. They leave the country mostly on the northern border with the Republic of Serbia, through illegal crossings in the municipalities of Kumanovo and Lipkovo. In addition, illegal centers of entry and exit from the country were discovered on several occasions. There is also a branch through Kosovo, which is used as an alternative to the existing corridor to the Republic of Serbia. Transit through the Republic of N. Macedonia is implemented in an organized manner by criminal groups. Transportation is usually done by passenger motor vehicles or by busses, rare trains. The number of unaccompanied foreign children is also remarkable. The growing number of legal migrants has caused incidents and tensions at the border, which has required the involvement of an increasing number of security forces to prevent illegal or unregistered migrants from entering. To discourage illegal entry, control and channel the flow of migrants to legal entry and migration crossings, a security fence was erected, reinforced in parts of the border suspected of being used for illegal crossing. Macedonian security forces managed to prevent the entry of over 7000 illegal migrants in 2016 alone. Macedonian authorities have requested bilateral assistance from EU member states with border surveillance and equipment, as well as relocation of border police, to assist Macedonian border police with patrols, registration and identification and security checks. So far, several countries have decided to send police representatives: Croatia, Hungary, Serbia, Slovenia, the Czech Republic, Slovakia and Austria. Also, tackling human trafficking is still a challenge for the state. Republic of N. Macedonia is not desirable place for the migrants. They just transit in the way to their destination. Most often, these are people from vulnerable categories, motivated by various social, economic and social factors, such as: poverty, gender discrimination, domestic violence and other personal conditions of the victim, such as age, health status, special needs and the like. Often these people are the target of attacks by certain criminals who rob them. In the period 2013–2015, 27 victims of human trafficking were identified who were the target of exploitation, as follows: labor—3 persons, sexual—9 persons, labor and sexual—9 persons and forced marriage—6 persons. Most often it is about women. Consequently, the competent institutions documented 244 cases related to human trafficking and illegal migration. In the period 2013–2015, human trafficking and illegal migration were reported against 338 persons, and 186

persons were sentenced. Of these, 11 received suspended sentences and 175 received effective prison sentences. Migrant detainees have the right to be treated like any other person deprived of their liberty. Therefore, from the very beginning, they have the right to be informed about the situation in which they find themselves and about their rights that belong to them in accordance with the legal regulations [34]. All persons are equal before the law, regardless of gender, race, religion, nationality and have the right to protection in accordance with the Constitution and positive legal regulations. They had the right to an interpreter and to communicate with the relevant diplomatic and consular representatives. In this sense, migrants enjoy all the rights and freedoms guaranteed by international instruments, the Constitution and legal regulations, including the right to asylum [35]. Migrations are a modern, global phenomenon that means any permanent change in the place of residence of individuals or social groups, or any form of temporary or permanent movement of individuals in space. Emigration is the act of leaving or leaving one country for the purpose of settling in another country. Immigration is the reverse process, in which citizens of other countries immigrate to the country for settlement purposes. Foreigners are all migrants who are on the territory of the Republic of Serbia, Northern Macedonia or Romania, and do not have Serbian, Macedonian or Romanian, but foreign citizenship. Foreigners can stay legally and illegally on the territory of these countries. Foreigners who do not have a legal basis to stay in these countries are called illegal migrants. This is any foreigner who enters the territory of these countries illegally (entry outside the border crossing, entry with a forged or otherwise irregular travel document) or legally enters the country, but has not left the territory of these countries after the expiration of his legal residence [36]. The analysis of illegal migrants includes different categories: economic migrants, political migrants—asylum seekers, underage illegal migrants, women, families, victims of human trafficking, potential illegal migrants, illegal migrants as perpetrators of crimes and misdemeanors and domestic citizens as illegal migrants [37]. A refugee is a person who, due to a justified fear of persecution because of his race, sex, language, religion, nationality, belonging to a group or due to his political beliefs, is not in his country of origin and is unable to be placed under the protection of that State, as well as a stateless person who is outside the State of his or her previous permanent residence and who is unable or unwilling to return to that State. Migrant detainees should have the right, in the same way as other categories of persons deprived of their liberty, from the outset of their deprivation of liberty, to inform the person of their choice of their situation and to have access to a lawyer and a doctor. Furthermore, they must be explicitly informed, without delay, in a language they understand, of their rights and of the procedure to be followed in their case [38]. All persons are equal before the law and are entitled without any discrimination to equal protection of the law. Everyone has the right to freedom of thought, conscience and religion, and persons from ethnic, religious or linguistic minorities have the right to their own culture, religion and language. A prisoner who does not properly understand or does not speak the language used by the authorities has the right to receive relevant information immediately in a language he understands. Prisoners of foreign nationals will be provided with reasonable opportunities to communicate with appropriate diplomatic representatives. Refugee or stateless prisoners shall be given reasonable opportunities to communicate with a diplomatic representative of a State which assumes their interests or of any national or international body tasked with protecting such persons . Human rights, which are guaranteed by the European Convention on Human Rights and are particularly important for migrants, are:

- the right to dignity and free development of personality;
- the right to life;
- the right to inviolability of physical and mental integrity, i.e., prohibition of torture;
- prohibition of slavery, slavery-like positions and forced labor;
- the right to liberty and security;
- the obligation to treat a person deprived of liberty humanely;
- the right to a fair trial;
- the right to legal certainty in criminal law—prohibition of retroactive punitive measures, presumption of innocence, ne bis in idem, etc.;
- the right to citizenship;
- freedom of movement;
- freedom of thought, religion;
- prohibition of inciting racial, national and religious hatred;
- the right to asylum;
- the right to health care;
- the right to social protection and.
- the right to education [39, 40].

The only way to save migrants is to seek asylum in one of the safe countries. Asylum is the right to residence and protection enjoyed by an alien who, based on the decision of the competent body that decided on his application for asylum in the submitted state, was granted asylum or other form of protection provided by the Asylum Act. The RS Law on Asylum prescribes the principle of care for persons with special needs and states that asylum seekers with special needs will be taken into account in the asylum procedure, such as:

- minors;
- persons completely or partially deprived of legal capacity;
- children separated from their parents or guardians;
- persons with disabilities;

- the elderly;
- pregnant women;
- single parents with minor children;
- and persons who have been subjected to torture, rape or other severe forms of psychological, physical or sexual violence [41].

In addition to the Asylum Act, an asylum seeker enjoys a number of rights guaranteed by other relevant laws. The following rights are in question:

- An asylum seeker shall not be penalized for illegal entry or stay, provided that he submits an application for asylum without delay and provides a valid explanation for his illegal entry or stay;
- The competent authorities will take all available measures to maintain family unity during the asylum procedure as well as after obtaining the right to asylum. A person who has been granted the right to asylum has the right to be reunited with members of his family. If a person applies, the right to asylum will be granted to a member of his family who is outside the territory of the state in which he is applying for asylum. A person who has been granted subsidiary protection has the right to family reunification in accordance with the regulations governing the movement and stay of aliens;
- An alien who has expressed his intention to seek asylum has the right to be informed of his rights and obligations during the entire asylum procedure;
- An asylum seeker can use free legal aid and representation from UNHCR and non-governmental organizations whose goals and actions are aimed at providing legal aid to refugees;
- Asylum seekers who do not understand the official language of the procedure will be provided with free translation services into the language of the country of origin, i.e., into a language they understand. He may hire a translator of his choice and at his own expense;
- The asylum seeker has the right to contact authorized UNHCR officials at all stages of the asylum procedure;
- All documents in the procedure are delivered personally to the asylum seeker or his legal representative. It is considered delivered in writing when received by any of the above persons;
- The asylum seeker will be provided with a hearing by a person of the same sex, i.e., he will be provided with an interpreter or interpreter of the same sex, except when this is not possible or is disproportionately difficult for the body conducting the asylum procedure;

- The asylum procedure will take into account the specific situation of persons with special needs seeking asylum, such as minors, persons completely or partially deprived of legal capacity, children separated from parents or guardians, persons with disabilities, the elderly, pregnant women, single parents with minors and persons who have been subjected to torture, rape or other severe forms of psychological, physical or sexual violence;

- An unaccompanied minor, as well as a legally incapable person who does not have a legal representative, the guardianship authority will, before submitting the request for asylum, appoint a guardian, in accordance with the law. The guardian must be present at the hearing of the unaccompanied minor, i.e., the incapacitated person;

- Every asylum seeker has the right to be heard orally and directly by an authorized official of the competent organizational unit of the Ministry of the Interior, on all facts relevant to the recognition of the right to asylum or the granting of subsidiary protection;

- The data on the asylum seeker, which are obtained during the asylum procedure, are an official secret.

4. Conclusions

Having in mind the exposed matter, as well as the goal of the publication, we can point out that for every human being and action, it is necessary to start from ourselves. At the individual level, we must constantly work on ourselves, on our individual, improve, strive to help ourselves and others, to understand other people's problems, needs, differences, to be objective, because we are all just one segment, part of the system. At a higher organizational and hierarchical level, the basis of action and protection of human rights is ethics and legality in action. After that come those entities within the system that evaluate and control our work. Finally, when the oversight mechanisms within the system are exhausted, there is external control, which must be multisectoral and independent, control that seeks control in order to improve the operation and functioning of the system, and not control for control itself. The recipe is in partnership with the society and the convict community, because we all have a common goal, a better and safer society through successful resocialization in the rehabilitation of convicts, and finally there are those who will evaluate the work and operation of the system, control and direct it.

It should be noted that the key to successful control is to determine the system of responsibility of all actors in the system of execution of criminal sanctions, which must be understood as follows: Responsibility is primarily based on a properly established and organized chain of command. Accountability implies respect for the principle that rules and regulations exist in order to be respected, and any violation of them must be punished. Responsibilities are based on the existence of mechanisms of civil control and supervision of all security actors, including the system of execution of criminal sanctions. Accountability implies the existence of a set of rules, procedures, methods and resources established by law to ensure that the control and supervision of the system of execution of criminal sanctions functions effectively and efficiently, as well as that the security sector fully performs its tasks.

In the end, we all have a special and personal responsibility as individuals, as part of society, responsibility for everything that has been done and not done, just the above-mentioned key and message of this publication is that we must improve and improve every day, primarily on an individual level and strive to through good deeds and understanding of others, we understand ourselves, the environment, society and diversity.

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Chapter 3

Forgive and Regret: A Comparative Analysis of the Role of Forgiveness in the US and Rwandan Criminal Justice Systems

Daniel Patten and Jeremy Storch

Abstract

Rwanda's reconciliation process after the 1994 genocide highlights the power of forgiveness in successfully reintegrating people who have committed serious harms back into society. In contrast, the US criminal justice system has struggled with successful prisoner reenter. One possible factor contributing to this struggle is American's levels of forgiveness and vengefulness. This study is a comparative analysis between Rwanda and the United States guided by a central research question: What are the sociocultural factors provided for a societal capacity of forgiveness? First, the importance of forgiveness at a societal and individual level and its consequences is documented. Then, through comparative analysis several key factors emerged as contributing to increasing societal forgiveness and/or decreasing societal vengefulness including violence in media and entertainment, a punitive criminal justice system including the highly publicized nature of crime and punishment, gender roles and gender equality, religion, and societal collectivism. Above all factors, the occurrence of a national tragedy such as the genocide in Rwanda was found to create the opportunity for radical criminal justice reform.

Keywords: Rwanda, genocide, forgiveness, criminal justice reform, gender equality, collectivism, religion, media, restorative justice

1. Introduction

One of Baz Dreisinger's stops when traveling to prions around the world was Rwanda [1]. While there, she took several college-aged genocide survivors, many of which lost their parents in the genocide, to visit a prison where around 80 percent of the prisoners were perpetrators of the genocide. The idea that victims of a genocide would want to meet and speak face-to-face with the perpetrators is likely already shocking to an American audience. Most Americans would likely expect the victims to be enraged and speak with extreme hostility. Yet, when asked what do you want to do when you meet them, the young Rwandans replied, "Play football. Sing. Dance. Have debates. Watch movies. Comedy." Without meeting them, they had already

forgiven them for their past heinous crimes. After meeting them, it was no different. The young Rwandans declared the visit was "amazing", stating "their ideas were really amazing", "they are bright", "they show us that they have new things to teach us", and "they will come home and we all live in peace." Crucially, the story Dreisinger tells is not an outlier about Rwanda. Nearly every Rwandan she interacts with espouses ideas of forgiveness.

From this story, the current research was born. By comparison with the United States, Rwanda sounds like a fairy-tale. What explains the seemingly radical difference in forgiveness between the two nations. Thus, the following is a comparative cases study of these two nations that seeks to answer the following research question: What are the sociocultural factors that provide for a societal capacity of forgiveness (as seen in Rwanda)? The study will start by briefly defining forgiveness, distinguishing between individual and societal forgiveness, and documenting the consequences of embracing forgiveness at an individual and societal level. Then, the major factors that help explain the difference in forgiveness seen in the United States and Rwanda will be discussed including the catalytic impact of tragedy, human nature, political influences on criminal justice, religion, collectivism, media, and gender. Finally, the study concludes by discussing the implications of its findings.

2. Defining forgiveness

Forgiveness is one such action that, while never clearly defined and perhaps changing from person to person, is a daily and normal action carried out in a society. To create a clear picture of what it is to truly forgive, a proper definition would be helpful in this pursuit, although the concept of forgiveness is part of an ongoing centuries old philosophical debate [2]. Montiel describes forgiveness as "remembering, not forgetting, the unjust act ... [b]ut the remembrance is experienced without bitterness," and describes two different types of forgiveness, personal/private and sociopolitical/public [3]. These two types of forgiveness are what will be explored in the following pages: the concept of forgiveness at both the personal level and that of an entire group towards another. As forgiveness can vary from nation to nation, being heavily culture-laden, these definitions can never be precise in each instance. Montiel's description, remembering the unjust act yet lacking bitterness, will be the most assumed definition when discussing forgiveness. It's important to note that forgiveness is different from reconciliation, as one may reconcile but not forgive and vice versa [4].

Forgiveness at the societal level is not only a key factor in this exploration but the importance and consequences of this forgiveness to society and the groups living in said society. What does forgiveness do to society? Is the act of forgiving an important factor in any aspect of a culture? These questions are vital to better understand the ways Rwanda has handled forgiveness compared to the United States. These consequences better help shape how forgiveness has been used, and whether it is due to any one cultural factor or multiple. At an individual level, forgiving does not only concern the one who is forgiven but also the mental state of the one who is doing the forgiving. The consequence of forgiveness is well documented, including that of the mental health of the forgiver. Most simply, forgiveness promotes positive mental health and character growth [5]. In the realm of interpersonal conflict, forgiveness seems to make the forgiver less likely to suffer mental disorders and more emotionally stable than failing to forgive any transgressors [6].

Mental health and forgiveness, while exclusively linked, are connected whereas an individual forgiving may experience less mental health strain, as seen by those of Rwandan genocide victims who had forgiven their offenders. These victims were reported, after the forgiveness process, to having "emotional liberation, a growing sense of well-being, self-esteem, and hope."1 The use of forgiveness, while the concept varies across cross-cultural and national institutions, the basic use of forgiveness seems to be similar. Forgiveness, seeking forgiveness, and forgiving oneself have been found to be similar across non-Arab Middle-Eastern Muslims, Africans, and Westerners [7]. Yet, as will be seen in Rwanda, African countries appeared to be more prone to forgive or seek forgiveness compared to Middle Eastern and Western countries.

3. Genocide and Rwanda's response

Possibly the most important factor explaining Rwandan forgiveness stems from the events of the 1994 genocide. This atrocity served an integral role in shaping the nation. This genocide happened between April 7 and July 15, 1994, where it's estimated between 800,000 deaths occurred, with some figures upward of over 1 million deaths [8, 9]. These deaths were carried out by Hutu militia groups, neighbors, police, and military, where Tutsi were targeted and killed over the course of 100 days [10]. While historically safe places for refuge, schools, churches, and stadiums were the target of the most intense killings and mass graves. These acts were not only carried out by the government or militia groups, but it was common for neighbors to turn on neighbors and ordinary citizens to turn on another. In addition to the murders, it is estimated that 250,000 to 500,000 people were raped during the genocide, along with survivors of assault suffering lifelong injuries such as missing limbs [11].

The end of the genocide occurred due to the Rwandan Patriotic Front (RPF) taking control of the major government buildings and structures, thus controlling Rwanda and ending the massacre. This movement led for many Hutus to flee to the nation of Zaire (Congo) and initiated the First Congo War, along with various other conflicts over the remaining few years of the 1990s [12]. Soon after the genocide, the need for justice was sought out by the Tutsi-led government. While the judicial court systems were inoperative, the need to convict those who took part in the genocide became a national issue for Rwanda. Created in 1996–1998, Rwanda recreated their national judicial court system to begin processing the more than 120,000 peoples arrested in connection with the genocide [13]. The initial response of the Rwandan government was retributive driven by a desire to harshly punish the perpetrators of the genocide. However, the enormous amount of cases overwhelmed the Rwandan justice system, thus Rwanda also created the legal practice of *Gacaca courts*, which were intended to be used by smaller communities to hold lower-level offenders accountable for their crimes. At the same time, the United Nations established the International Criminal Tribunal for Rwanda (ICTR), which focused on the higher level offenders, ending with the conviction and sentencing of 62 individuals [13].

With over 120,000 offenders sentenced, Rwandans prisons quickly became overcrowded and reports of inhumane conditions followed [14]. The response was to release low-level offenders back into the community and avoid creating new and larger prisons. Between 50,000 and 60,000 prisoners had been released since 2003 by the Rwanda government. The primary reason for the mass release was practical and logistical. Such a radical shift in criminal justice policy would need a stronger

cultural backing that was not in effect at the time of this shift. The Rwandan government appears to have recognized these needs in 1999 establishing the National Unity and Reconciliation Commission (NURC), with the mission to establish reconciliation between Rwandans through unity and truth [15]. The NURC played an integral role in resocializing Rwandans to embrace the radical criminal justice changes necessitated by the genocide. The NURC emphasized unity as a mechanism in response to the genocide. As seen in their various programs and mission statements, the NURC focused on national programs to promote unity between Rwandans, such as between victims and offenders [16]. One of the main goals of the response by the government has been the "eradication of divisionism among Rwandans" including the ethnic history of the Tutsi and Hutu which led to outlawing ethnic speech [15, 16].

4. Role of forgiveness in Rwanda

The role of forgiveness plays a vital role in regard to how both offender and victims have responded to the reconciliation efforts by the government. Forgiveness is at the heart of the NURC, and it is the best example of the Rwandan government institutionalizing forgiveness into society [17]. This institutionalization appears to have occurred after the genocide best demarcated by the actions of the NURC, although cultural elements existed in Rwanda prior which laid the foundation for a successful institutionalization as grand and rapid as seen after the genocide. One such preexisting cultural characteristic of Rwanda was the philosophical, African notion of *ubuntu*, which is defined as a "worldview or a moral quality and depending on the context, it evokes notions of personhood, interconnectedness, communal harmony, 'universal human interdependence, solidarity and communalism" [18]. *Ubuntu* likely helped ease the institutionalization of forgiveness and can be seen in most of the major efforts towards reconciliation after the genocide.

The more informal *Gacaca courts* that were established play a crucial role in resocialization. Without their success, it would have been much more likely for Rwandans to reject the criminal justice shift and view it as a top-down governmental maneuver. Instead, forgiveness was central to the *Gacaca* courts where those on trial were required to ask forgiveness to their victims and the community as a first step in the reconciliation process [17]. This communal or sociopolitical involves one group of people to forgive another [3].

While forgiveness begins with the offender and may be pushed by the government, it is the victims that must either choose to forgive and/or reconcile with the offenders. The type of justice that relies on reconciliation over punitive measures may never be possible without the acceptance of the victim which involves the restoration of a relationship between both victim and offender. The NURC effectively accomplished this by implementing the Association Modeste et Innocent (AMI), a program created in 2000 that primarily focused on creating sustainable and enduring relationships between offenders and victims of the genocide [19].

The AMI uses a three-step process of forgiveness that is essential to a successful dialog between victim and offender [19]. The first step involves the victims and offenders to express the truth of what happened and allowing each party to express themselves regarding the offense. The second step involves overcoming the initial reaction of the offense and allowing each party to express their feelings on the offense, for the hope of empathy and altruism to settle into the minds of both parties. The third and last step involves the commitment to the forgiveness process and

expressing such forgiveness. This process of forgiveness seems to be effective for both parties. See one example of an exchange between offender and victim:

> *"Now I feel free, joyful, and happy. I am 61 but when I see her, I feel like 18." (1A[ggressor]).*
>
> *"I have forgiven him from the bottom of my heart. Before, I was sad; now we are well; forgiving has cleaned my heart; I feel after forgiving, my heart is free; I feel relaxed; now life is like normal." (2V[ictim]).*
>
> *"After forgiving him, we started to collaborate (joint projects); we have rebuilt trust with each other." (3V[ictim]).*

The AMI program is supported by evidence that positive mental health of genocide victims in Rwanda is linked to successful interpersonal reconciliation and unconditional forgiveness sentiments [20]. Even though the initial urge among many victims is not forgiveness, Rwanda's institutionalization of such programs and their successful resocialization has led to successes at a societal level, leading to more Rwandans seeing benefits, even if unnatural, of forgiveness.

5. Civil war: a comparative tragedy

The Rwandan genocide served as a catalyst altering the direction of Rwanda's criminal justice system and changed the way its people reacted to forgiveness [17]. The United States' comparable tragedy would be that of their Civil War, fought between 1861 and 1865 and is still the bloodiest and only true homeland war to take place in the country. It is estimated that between 650,000 and 850,000 deaths occurred, with over a million total casualties as a result, roughly 2% of the population died within those 4 years of fighting [21]. While the Rwanda genocide resulted in the death of over 10% of that nation's population at a much faster pace, such a death toll and homeland fighting (non-foreign conflicts) is significant and comparable [19]. Did this comparable tragedy lead to calls of forgiveness and reconciliation like in Rwanda?

Once the end of the Civil War had been reached, the consequences were similar to that of Rwanda. A large portion of the population had been involved in not only unlawful acts, but inhumane and treasonous actions against fellow neighbors and citizens. While the actions can be viewed as similar, this is where the comparison ends between the two events. The United States, while leading towards more humane practices after the war, such as abolishing slavery, did little to unify the nation and peoples. The attempts of Reconstruction have been agreed upon by most scholars as a failure, doing little to remedy the bounds between the Southern and Northern states and the peoples in them [22]. Newly freed Black Americans were treated as second-class citizens under the *Black Codes*, and the economy of the wrecked Southern states never fully recovered, leaving a deep resentment and hostilities between Northerners and Southerners. The failure to properly unify and create equality between Northerners and Southerners, between Black and White Americans, can be viewed as opposite of the response by the Rwandan government and its unification between Hutu and Tutsi, between offenders and victims. Although the US government did institutionalize unity via its reconstruction efforts, an accompanying campaign to

resocialize citizens to be more forgiving and inclusive of their former enemies was not existent like in Rwanda.

5.1 United States: retribution over restoration

A national tragedy like genocide is less of a cause to creating unity and societal forgiveness, rather it appears to create a crucial opportunity for it. In other words, genocide (or comparable tragedy) is not a sufficient cause. The US Civil War did not spark a major change in the criminal justice system, and it was the Great Depression and the empowering of the Federal government that gave birth to a new and grand correctional system [23]. The creation of new prisons by the federal government, probation and parole systems, and indeterminate sentences started the country on a new path towards a national system to handle criminals. This system does not focus on the restoration of trust or mutual understanding between two parties, rather the victims of crimes are typically left out of the process entirely or seek retributive measures. The US correctional system focuses on a punitive response to crimes in order to reach justice [24]. It is not only the criminal justice system that focused on punitive measures, the rise of Jim Crow in the south and "separate but equal" outcome from *Plessy v. Ferguson*, led to use of violence throughout the country against Black Americans [25]. This "othering" of African Americans highlights the exact opposite of unity.

While the United States did focus on rehabilitative measures in the 1950s–1970s, with some work done on reconciliation between offender and victim, any real change was dismantled after the War on Drugs and "tough on crime" politics arose in the 1980s [23]. While there is a plethora of research done on these subjects, the end result is clear—mass incarceration became the main punishment for criminals in the United States. Since mass incarceration started in the 1980s, the prison population has quadrupled, whereas the United States population is only 5% of the world's population yet makes up over 20% of the prison population in the world; it would take a 75% reduction to return the country's prison population back to 1970s levels [26]. This truth has carried over into the twenty-first century for the United States, where mass incarceration and retributive measures of punishment are still at the forefront of the criminal justice system [24]. Restorative justice, leading to reconciliation and forgiveness, seems to be lacking in the United States, although current trends denote slow decarceration. It seems pertinent to ask if the United States needs a truth and reconciliation commission to address mass incarceration.

6. Factors for forgiveness

6.1 Human nature

Before exploring the various factors within Rwandan and American society, it is worth asking, "What is the natural state of humans?" Is seeking revenge or reconciliation the more natural instinct of humans when they experience some harm or grievance? One such explanation could be that of the natural aggression that one feels when they are wronged, with the natural instinct to lash out and seek some sort of revenge [27]. It has been shown that revenge may be pleasurable and even a natural instinct, but it comes with negative mental health associations and the pleasure typically only lasts during the initial reaction period [7]. Yet, this suggests the act of revenge and its rewards can be quite addictive. While understanding revenge as

a biological process is useful, it does not help us distinguish between Rwandans and Americans as there is no reason to suspect one would have these natural tendencies while the other would not. Judging from the responses to tragedy, it would seem Rwanda was better able to counteract this human nature.

6.2 The political dimension of criminal justice

One possible explanation of why the US has embraced punitiveness is often discussed within the context of "tough on crime" politics which typically refers to how the political system rewards more punitive approaches to punishment. One recent analysis highlights two crucial factors about the US system that explain its punitiveness [28]. First, responsibility is fractured across multiple levels of governance including city, county, state, and federal agencies which leads to a lack of accountability. Furthermore, this fragmentation leaves political leaders uncoordinated and often contradictory which can disrupt any reform efforts at other levels. Second, the US political system is designed to overact to increases in crime and to underact to decreases in crime. Being too lenient on crime is much more politically damaging than being too harsh. Voters more likely to respond to fear associated with rising crime rates, rather than disgust with overincarceration. Add to this that voters who more commonly show up at the polls, wealthy, white, suburbanites, are voting with relatively little information about crime in urban areas and prison gerrymandering that gives more power to rural white voters, and the end result has been seen as punitive policy making.

6.3 Religion

Another factor that may contribute to societal forgiveness is the cultural trends inside a nation, which can involve various socio-cultural factors. While it is difficult to isolate a single factor and its influence on societal forgiveness, a few are highlighted here. Religion is one such cultural aspect that tends to be at the forefront of forgiveness in American and Rwandan society. The United States and Rwanda share the context that both have a strong religious upbringing and religion tends to be integrated into much its culture, with Evangelical inputs found throughout American life and Catholicism in Rwanda. A review of a collection of studies by Choe reveal that there seems to be a strong link between forgiveness and religion/spirituality [7]. These studies, while focused on interpersonal forgiveness, would seem to imply that the major religious ties would appeal to forgiveness. Yet it is seen that in the United States, the evangelical approach seems to feed into the nation's Puritan past and tough-on-crime attitude of harsh punitive punishment for crimes [29] For Rwanda, the Catholic church has been immensely invested in reconciliation, with an emphasis on opening up dialog and relationships between peoples [30]. So, while the research may show that forgiveness and religion/spirituality may have a correlation, it can be implied that the practices a religion teaches in society will affect the implementation of forgiveness.

6.4 Collectivism

Why is it that Christianity in the United States may have led to retribution while it has led to forgiveness in Rwanda? The answer may be Rwanda's more collectivist society emphasizes reintegration while the individualism of the United States focuses

on personal responsibility. Thus, in the United States moral responsibility is placed at an individual level which would lead to individual punishments, whereas a more collectivist approach recognizes that moral responsibility at least in part lies with the structural conditions of a society. American culture was bred of the idea not to allow any one or group to control another, independence from the King of England, and all others who came after. Rwanda, post-genocide, seems to have embraced *Ubuntu* and a more collective ideology set forth by the government. Yet what do these two ideologies contribute to the concept of forgiveness? As explained by Worthington and Wade, collectivism involves placing precedent of the group over the one and limiting or eliminating personal competitiveness for the group to benefit [7]. Retribution, part of personal competitiveness, would be less beneficial to the group which would imply that forgiveness would be a better alternative to issues. While individualism allows, and arguably promotes, revenge and *enemyship*, it does little to see forgiveness as a beneficial tool. However, cross-cultural studies have not been this straightforward. Some collectivist societies have embraced retribution, particularly East Asian societies. In a series of studies comparing American to Chinese culture, while American retribution was fueled by an emphasis on the actor's agency, Chinese retribution focused on the severity of the crimes that were seen as existential threats to society [31]. In the case of Rwanda, there immediate response was intense retribution for the extremely serious crimes of genocide, but only later changed strategies to forgiveness. This shift may have had less to do with collectivism and more due to with the practical reality of punishing such a large number of offenders. Yet, their collectivist roots may have allowed them to look past the agency of the actor easier and move towards forgiveness.

6.5 Media and entertainment

The use of media, including news and entertainment, may have a factor in how a society views and inhibits the capacity for forgiveness. While there is little data showing the actual connection between media and forgiveness, the comparative analysis between Rwanda and the United States may at least start a dialog for future studies. Due to the capitalism economy of the United States, typically the press and media will try to maximize profits and present what sells, per business sense [32]. The introduction of yellow journalism, true crime in novels and television, violent crime headlines in newspapers, video games, and various other outlets deliver aggressive and naturally retributive outlooks on social issues; the criminal justice system in the media seems to be there merely for entertainment in the United States [23]. It may ultimately allow Americans to indulge their natural tendencies of desiring retribution rather than operate as a challenge or check to them. Studies investigating the impacts of these various media outlets including media coverage of real crime and Hollywood produced crime-related film and television tend to find a positive relationship between their consumption and more retributive attitudes of punishment [33]. In some cases, a relationship does not exist, but when it does it typically is positive.

Rwanda does not seem to value freedom of the press nearly to the extent of the United States, which can be seen at the various censorship laws and actions taken by the government over the last two decades [34]. While media censorship and governmental control over the press can be harmful to democracy, there may be a benefit. Post-genocide, the Rwandan government, with its reconciliation programs and initiatives, could use the media to turn public opinion towards forgiveness over revenge. Could the same be accomplished without strict government censorship? As

Moore puts it, the Rwandan "government plays a more direct role in the individual moral imagination than in the United States" [17]. While it is difficult to isolate any affects Hollywood or American media have on Rwanda, the infant Rwandan film-making industry is an interesting contrast. This industry was born out of the 1994 genocide and has been heavily influenced by the government's mission of reconciliation. Currently, Rwandan filmed covering the genocide has and is becoming more and more nuanced, offering multiple perspectives and delivering deeper messages of explanation and understanding rather which has helped further reconciliation and fostered forgiveness [35].

6.6 Gender

One last cultural factor of potential importance is gender. Recently, social scientists have explored the role of toxic masculinity in US culture [36]. To briefly summarize, toxic masculinity is the cultural socialization of men towards problematic characteristics of masculinity such as violence, homophobia, sexism, and domination. Furthermore, toxic masculinity can lead to more revenge-oriented approaches to justice with US culture. The macho, aggressive mentality or toxic masculinity dates back decades in American culture, such as the use of wild west gunfighters, lynch mobs in the South, gang members in poor neighborhoods, aggression to look tough and survive in prisons, and so many other examples [23]. Despite this history, US society has trended towards gender quality which is a force that counteracts toxic masculinity.

Prior to the genocide, Rwanda was a patriarchal society, but it appears to have served as a catalyst for women's empowerment leading to a change in women's legal status and more political involvement [37]. However, this is not to imply Rwanda has achieved gender equality. For this study, the changes in gender catalyzed by the genocide may run parallel with the shift in punishment philosophy from retribution to forgiveness. Thus, it is difficult to decipher which factor played the larger role. It is important to note that no major strides towards gender equality occurred after the US Civil War. Was this a major reason why societal forgiveness was not adopted?

7. Conclusion

Forgiveness, the act of remembering an unjust act yet lacking bitterness towards it, is an action that seems to transcend any one nation or culture, with the ability existing all throughout the world. While forgiveness seems to be capable for any society, the capacity for it to exist varies in many different forms and in various conditions. As researched above, looking at Rwanda and the United States, one can begin to see what factors condition for forgiveness to exist and how it may be used in said society. The emerging factors that begin to distinguish between the United States and Rwanda were the response to a national tragedy, politicization of criminal justice, religion, collectivism, media, and gender.

Rwanda shifted its ideological focus of criminal justice dramatically after the genocide to a heightened emphasis on forgiveness. However, as seen in the United States after the Civil War, such a tragedy alone is not sufficient to produce this change. It was better explained by the way in which Rwanda deeply institutionalized forgiveness, unity, and reconciliation while also resocializing its citizens to be more favorably towards forgiving serious offenders. While the US attempted to institutionalize unity

with the reconstruction, it ultimately failed because the government was not able to convince its citizens, largely in the South, of its merits. In contrast, Rwanda's resocialization has had much more ubiquitous acceptance.

Future research should investigate what factors are most important in creating these successes. Given the benefits of embracing forgiveness, any society would be prudent to seek ways to increase it. However, fomenting a civil war or perpetuating a genocide are not morally responsible methods of producing forgiveness. One emergent factor from this analysis that may explain why forgiveness is more accepted at a national level was gender equality. The Civil War did not spur women equality while the Rwandan genocide did. This may be an important explanation of the differing outcomes. Empowering women and elevating more women in leadership roles may lead to more societal forgiveness. Yet, it is not as straightforward as women being more forgiving than men as gender studies have found mixed results [38]. It is possible that it is related to a more holistic version of equality including not only gender, but racial, class, and other forms of equality as well. Reducing "othering" and in-group/out-group divisions in a society should lead to a greater capacity of forgiveness. Reducing divisions could be influenced by a multitude of factor some explored here like media and religion, but this works both ways with media and religion also having the potential to increase divisions. The results of this study suggest that if we seek building societal forgiveness, we must focus on reducing barriers to unity whatever they may be.

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Section 2

Correctional Treatment

Chapter 4

Predictors Hampering Treatment of Offenders in Nigeria's Custodian Centres

Awunghe Achu Ayuk and John Thompson Okpa

Abstract

This study examined silent variables that influence the treatment of offenders in Nigerian custodian centres. The research was conducted using both primary and secondary data. Questionnaires were distributed to 400 respondents randomly selected from correctional institutions across the three senatorial districts of Cross River State, while the in-depth interview was conducted on 6 participants each across the selected custodian centres. The presentation of data was done using frequency distribution tables, and relevant narratives. The test of hypotheses was done using Pearson product moment correlation (PPMC) and the qualitative data were analysed using content analysis. The study found that corruption, inadequate rehabilitation equipment and low funding strongly influence the treatment of offenders in custodian centres in Cross River State, Nigeria. The study, therefore, recommends that the government through a special committee constituted should judiciously oversee the execution of the previously suggested prison reforms, which include but are not limited to provision of the needed infrastructures that will cater for the welfare of the inmates, pardoning awaiting trail offenders that have spent reasonable number of years in custody without conviction, this will help solve the challenge of overcrowding in correctional institutions across the country.

Keywords: criminal justice system, corruption, rehabilitation equipment, working tools, awaiting trial, custodian centres, victimisation, funding, and Nigeria

1. Introduction

Globally, custodian centres are built to serve as rehabilitation and correctional institutions for individuals who are guilty of breaching the law [1]. In other words, custodian institutions are established to be places of rehabilitation and reformation for proper reintegration of offenders on release from the centre [2, 3]. Indubitably, treatment services have been considered an important factor in the treatment, transformation and reintegration of offenders, a position that has been re-echoed by scholars, criminal justice system practitioners, social workers, psychologists, counsellors, government, non-governmental organisations and the public at large [4, 5]. These group of experts agree that rehabilitation programmes will assist offenders in

acquiring critical social skills, vocational training, attitude and behavioural adjustments and knowledge that will enable them to be more helpful to themselves and society upon release and reintegration to the society [6]. The treatment and subsequent reintegration of convicts may be aided by the available plethora of rehabilitation programmes such as education programmes, vocational training and capacity development [7, 8]; which are designed to equip convicts with relevant life skills and knowledge that would empower them to be self-reliant after serving their jail term [7, 8]. Validating the above submission, Murhula & Singh [9] noted that there is no better way to help offenders happily reunite in their respective society than to provide them with skills that they need to succeed in the outside world.

Similarly, Okala et al. [10] indicated that rehabilitation programmes in correctional centres attempt to prepare the inmates for their reintegration into society, using the criminal punishments as a chance to change the convict into patriotic and disciplined member of the society. They further stated that for appropriate reintegration of offenders in custodian centres in Nigeria, inmates should be encouraged to engage in any available rehabilitation programme(s) while serving their jail term. This is particularly significant for offenders since many of them were taken into custody with a variety of social, economic and educational disadvantages. Singh [11]; Adetunji and Nel [1] reported that the lack of basic rehabilitation infrastructure, corruption, congestion and awaiting trial problem, among other perennial issues have severely hampered rehabilitation programmes in correctional centres in Nigeria and the world at large. Other challenges affecting the treatment of offenders include but are not limited to 'poor feeding of inmates, lack of adequate medical care for inmates due to lack of requisite facilities and lack of recreational and vocational training for inmates'. As a result of the above conditions, ex-convicts who have been released from custodian centres face many difficulties in finding work and reintegrating into society [8, 12, 13].

Unfortunately, due to the inherent lapses in the system, the correctional institution, which is supposed to be reformatory has eventually turned to be punitive, thereby defeating its true essence at the first instance of its establishment [14]. The implication of this reversed system of prison administration is that the inmates come out more criminally minded than they were before conviction in Nigeria. Moreso, the transpose practised in Nigeria is contrary to what is obtainable in developed clime, where offenders are denied only their freedom upon incarceration; and genuinely allowed the benefits of enjoying infrastructure accessible to people outside the custodian centres and, as such, easily get reintegrated into society when they finish serving their terms; they are not stigmatised on regaining their freedom. To address these concerns the Nigerian Correctional Service Act was signed into law in 2019, to improve the welfare of inmates and enhance the treatment programmes for offenders in Nigerian custodian centres. The new legislation guiding the operation of custodian centres was segmented into 'Custodial Service' and 'Non-custodial Service'. The new law stipulates that while offenders are serving their jail terms, the focus will be on correctional service geared towards their reintegration into society, rather than punishment and incarceration. 'The new Act is also targeted at empowering inmates through the deployment of educational and vocational skills training programmes, and facilitating incentives and income generation through Custodial Centres, farms and industries' [15, 16].

Beyond the enactment of the new Act, the government is expected to work assiduously with all stakeholders to ensure that mechanisms are put in place to achieve the needed reform in all custodian centres across the country that would transform the country's correctional centres from punitive facilities to rehabilitation/correctional centres. For this to be achievable, it is imperative to anatomise certain variables that

are fundamentally frustrating the rehabilitation and reformation trajectory of inmates in Nigeria's correctional centres. The following research questions guided this study (i) to what extent has corruption hampered the treatment of offenders in custodian centres in Cross River State? (ii) how does rehabilitation equipment affect treatment of inmates in custodian centres in Cross River State? (iii) To what extent has funding affected the treatment of inmates in custodian centres in Cross River State?

2. Theoretical background

2.1 Rehabilitation theory

The rehabilitation ideas propagated in the 19th century is primarily concerned with the treatment and training of the offender with the sole aim of assisting them to become a productive, patriotic and functioning member of the society. The submissions of the theory are derived from the positivist's argument that the causes of crime are inherent in society, and if they are understood, it is feasible to develop programmes for the benefit of criminals to prevent them from committing future crimes [17]. In its most basic form, rehabilitation implies that an inmate would be held in custody for a lengthier period of time in order to transform the offender to avoid reoffending [18].

Rehabilitation theory posits that convicts should be treated as an individual whose special needs and problems must be known in order to enable prison officials to deal effectively with him/her (Packer as cited in [19]). Thus, the ideology of rehabilitation is to strive to reform the offenders because of the assumption that by providing training programmes for offenders, they would be able to live a more meaningful life upon regaining their freedom from incarceration. Rehabilitation of inmates remains a travesty in Nigerian custodian centres because of the absence and terrible experiences offenders are subjected to. 'Life in Nigerian correctional centre, in general, is overly regimented to the extent that there is strict control in virtually all activities of the inmates'. Inmates are typically left in a state of mental and physical devastation as a result of this treatment, which ultimately destroys them.

The inadequacy and ineffectiveness of existing institutional programmes, such as recreational services designed to ease the pressure of confinement and make inmates more receptive to rehabilitation as well as less depressed, hostile and asocial, are negatively affecting the treatment of offenders. Also, the dysfunctional nature of existing religious programmes, academic and vocational programmes as well as medical services has made rehabilitation of inmates burdensome in Nigeria [2, 20]. The implication is that an unrehabilitated inmate is a huge liability to himself and society at large. Because they see themselves as victimised rather than changed and transformed, such a person is frequently filled with a desire for vengeance. If true involvement in criminal behaviour is based on specific causative variables, then re-offending can logically be reduced if correctional interventions can change these factors and how they have influenced offenders.

3. Methods

The study design incorporates a combination of cross-sectional, self-report confessions of inmates from selected custodian centres in Cross River State, Nigeria.

Data collection was carried out between April and June 2019, in custodian centres across the three Senatorial Districts of Cross River State, Nigeria namely, Southern, Northern and Central Senatorial Districts. The instrument for data collection was a structured questionnaire consisting of 31 items. Information and clarifications about the survey and its purpose were provided to potential participants on the very first page of the instrument, so everyone was adequately informed about the philosophy of the study. The survey instrument was distributed to both inmates and warders who expressed interest in participating in the survey. A snowball sampling approach was also used, where participants were asked to help recruit other inmates and warders who may be interested in partaking in the study. Participants filled out the questionnaire with four Likert-type options ranging from strongly disagree to strongly agree. The administration of the questionnaires was conducted in three months, (one month each in the three senatorial districts), during which participants congregated at the common rooms in the correctional centres except for most warders who were given the privilege to complete the questionnaires in their respective offices. The questionnaire consists of closed-ended questions, which were segmented into three parts. Section 'A' of the questionnaire contain respondents' demographic data including their age, sex, marital status and level of education. Section 'B' contained information on substantive issues of the study raised in the research questions and hypotheses (corruption, rehabilitation equipment and funding). Section 'C' of the instrument was designed to measure the dependent variable, which is the treatment of offenders. A consent form was also included in the questionnaire stating that those who would decide to proceed with answering the questions had expressed their consent to participate in the study.

The custodian centres in the three Senatorial districts had a total of 1231 inmates as at the time this study was conducted. The sampling process generated an initial, non-random sample of 400 inmates and correctional officers who agreed to participate and received the survey. Among them, 384 inmates and correctional officers completed and returned the research instrument. Both the prison population as a whole and the samples taken from across all the prisons varied very significantly with regard to gender, marital status, educational qualifications and location. The in-depth oral interview technique was designed to be interactive. Respondents were permitted to freely explain how certain factors negatively influence the rehabilitation and reformation of inmates. In certain instances, where the issues raised were not clearly understood or explained by the subjects, word association and/or sentence completion were employed. The interviews were conducted by the researchers, who were assisted by a research assistant and equipped with a written interview guide. Interviews took place in prison chapels. The interview guide was in-depth, logical and sequential. The in-depth interviews (IDIs) were conducted using a guide that contained both 'lead and probe questions' prepared in accordance with the research questions. The participants who were inmates and prison warders were purposively selected from the study area with logistics and security, and to ensure that the researchers observed prison rules. The survey was approved by the University's Ethics Committee. Anonymity and confidentiality two important ethical principles were maintained throughout the process of this study. The mixed method seems to have significantly contributed to the preservation of the validity and reliability of the study.

The reliability of questionnaire *was established using Cronbach Alpha reliability formula. The questionnaire was trial tested on fifty respondents in the population who did not participate in the main study. After the administration, Cronbach Alpha was used to analyse data and determine the reliability estimate of the instrument.* The instrument

yielded reliability indices of 0.71–0.73 respectively for each subscale, with an overall reliability index of 0.72. According to Nenty and Umoinyang [21], any instrument with a reliability value above 0.50 is reliable and can be used for the investigation. Thus, the instrument was considered suitable to be used for this study. To ensure face and content validity the documents were validated by two Sociologists and two Criminologists in the Department of Sociology, University of Calabar, Nigeria.

Pearson product moment correlation (PPMC) and content analysis were adopted in analysing data gleaned from the field. The final sample of 384 respondents revealed that 83.00% were male while 17.00% were female. The data further shows that 5.00% of the respondents are below 20 years of age, 42.00% are between 21 and 30 years of age, 35.00% are between 31 and 40 years of age, 13.00% are 41 and 50 years of age while only 5.00% are 51 years and above. The majority of respondents 38.00% of the inmates had no formal education. This is followed by 35.00% of the respondents who had first school leaving certificate, 20.00% of the respondents had GCE/SSCE, 5.00% of the study participants had NCE/OND/Diploma. Again, 2.00% of the study participants had HND/BSC/B.Ed/BA while 0.52% of the respondents had M.S.c/Ph.D. The majority of the respondents 49.00% were single, 24.00% were married, 15.00% were divorced/separated while 12.00% were widows/widowers. Finally, 54.00% of the respondents were from Calabar custodian centre, 26.00%, 11.00% and 9.00% were in Ikom, Ogoja and Obudu, respectively.

4. Presentation of results

4.1 Research question one

To what extent has corruption hampered the treatment of offenders in custodian centres in Cross River State? Frequency and percentage were applied in providing responses to the first research question. Participants' responses, as presented in **Table 1**, show their responses as follows; embezzlement of funds by correctional officers is a major problem affecting the rehabilitation and reformation of inmates: 125 (32.5) respondents strongly agreed and 240 (62.5) agreed, while 10 (2.6) disagreed and 9 (2.34) strongly disagreed. On whether funds budgeted and released for the treatment of offenders are diverted for other purposes that do not contribute to the rehabilitation of inmates: 139 (36.2) strongly agreed, 204 (53.1) agreed, 19 (4.9) disagreed and 22 (5.7) strongly disagreed. When asked why inmates are not well feed: 191 (49.7) strongly agreed, 158 (41.1) agreed,

S/N	Variables	No of items	Mean	SD	*R*
1	Corruption	5	13.74	3.52	0.71
2	Rehabilitation equipment	5	13.58	3.54	0.73
3	Funding	5	11.24	3.00	0.70
4	Treatment of offenders	5	12.63	3.84	0.71
	Overall	20	15.74	4.21	0.72

Source: Field survey.

Table 1.
Cronbach Alpha reliability co-efficient test (N = 50).

20 (5.2) disagreed and 15 (3.9) strongly disagreed. Drugs meant for the treatment of sick inmates are diverted by warders for reasons best known to them; 201 (52.3) strongly agreed, 159 (43.22) agreed, 13 (41.4) disagreed and 11 (2.9) strongly disagreed. Rehabilitation equipment are inadequate because funds meant for that purpose are not used in acquiring rehabilitation equipment: 170 (44.3) strongly agreed and 180 (46.9) agreed, while 14 (3.6) disagreed and 20 (5.2) strongly disagreed.

4.2 Research question two

How does rehabilitation equipment affect treatment of inmates in custodian centres in Cross River State? Descriptive statistics (frequency and percentage) was used to answer the research question. Participants' responses as presented in **Table 2** show their responses as follows; there is a sufficient number of machines used in the training of inmates for sewing in custodian centres in Cross River State: 16 (4.2) respondents strongly agreed and 21 (5.5) agreed, while 148 (38.5) disagreed and 199 (51.8) strongly disagreed. On whether there are enough carpentry tools in the workshop used in training inmates on furniture making; 17 (4.4) strongly agreed, 21 (5.5) agreed, 149 (38.8) disagreed and 197 (51.3) strongly disagreed. The available rehabilitation equipment are all working well and in good condition; 15 (3.9) strongly agreed, 10 (2.6) agreed, 185 (48.2) disagreed and 174 (45.3) strongly disagreed. The officers working in this workshop are well trained and motivated to perform their duties; 22 (5.7) strongly agreed, 24 (6.3) agreed, 159(41.4) disagreed and 179 (46.6) strongly disagreed. The equipment used in the training of offenders is modern equipment: 21 (5.5) strongly agreed and 29 (7.6) agreed, while 164 (42.7) disagreed and 170 (44.6) strongly disagreed.

4.3 Research question three

To what extent has funding affected the treatment of inmates in custodian centres in Cross River State? Participants' responses as presented in **Table 3** show responses

S/N	Statement	SA	A	D	SD
8	Embezzlement of funds by correctional officers is a major problem affecting the rehabilitation and reformation of inmates	125 (32.5)	240 (62.5)	10 (2.6)	9 (2.3)
9	Funds budgeted and released for the treatment of offenders are diverted for other purposes that do not contribute to the rehabilitation of inmates	139 (36.2)	204 (53.1)	19 (4.9)	22 (5.7)
10	Inmates are not well feed because funds and available food items are diverted by correctional officers for their personal use	191 (49.7)	158 (41.1)	20 (5.2)	15 (3.9)
11	Drugs meant for the treatment of sick inmates are diverted by warders for reasons best known to them	201 (52.3)	159 (43.22)	13 (41.4)	11 (2.9)
12	Rehabilitation equipment is inadequate because funds meant for that purpose are not used in acquiring rehabilitation equipment	170 (44.3)	180 (46.9)	14 (3.6)	20 (5.2)

Source: Field survey.

Table 2.
Response on corruption and treatment of offenders.

S/N	Statement	SA	A	D	SD
13	There are sufficient number of machines used in the training of inmates for sewing in custodian centres in Cross River State	16 (4.2)	21 (5.5)	148 (38.5)	199 (51.8)
14	There are enough carpentry tools in the workshop used in training inmates on furniture making	17 (4.4)	21 (5.5)	149 (38.8)	197 (51.3)
15	The available rehabilitation equipment are all working well and in good condition	15 (3.9)	10 (2.6)	185 (48.2)	174 (45.3)
16	The officers working in this workshop are well trained and motivated to perform their duties	22 (5.7)	24 (6.3)	159 (41.4)	179 (46.6)
17	The equipment used in the training of offenders are modern equipment	21 (5.5)	29 (7.6)	164 (42.7)	170 (44.6)

Source: Field survey.

Table 3.
Response on rehabilitation equipment and treatment of inmates.

as follows: budgeted funds are hardly released to officials of correctional centres; 199 (51.8) respondents strongly agreed and 98 (25.5) agreed, while 36 (9.4) disagreed and 51 (13.3) strongly disagreed. On whether the use of old equipment in the treatment of offenders is as result of government failure to adequately fund the correctional centres: 140 (36.5) strongly agreed, 199 (51.8) agreed, 19 (4.9) disagreed and 26 (6.8) strongly disagreed. The inability of correctional officers to go for training and attend workshops that would enhance their capacity is as a result of limited funds at their disposal: 180 (46.9) strongly agreed, 160 (41.7) agreed, 30 (7.8) disagreed, and 14 (3.6) strongly disagreed. The poor funding of the correctional centres is the reason why the repair of faulty equipment is difficult: 191 (49.7) strongly agreed, 160 (41.7) agreed, 19(4.9) disagreed and 14 (3.6) strongly disagreed. Inmates have access to all the necessary

S/N	Statement	SA	A	D	SD
18	Budgeted funds are hardly released to officials of correctional centres	199 (51.8)	98 (25.5)	36 (9.4)	51 (13.3)
19	The use of old equipment in the treatment of offenders is as result of government failure to adequately fund the correctional centres	140 (36.5)	199 (51.8)	19 (4.9)	26 (6.8)
20	The inability of correctional officers to go for training and attend workshops that would enhance their capacity is as a result of limited funds at their disposal	180 (46.9)	160 (41.7)	30 (7.8)	14 (3.6)
21	The poor funding of the correctional centres is the reason why the repair of faulty equipment is difficult	191 (49.7)	160 (41.7)	19 (4.9)	14 (3.6)
22	Inmates have access to all the necessary equipment required for their rehabilitation and reformation	15 (3.9)	20 (5.2)	169 (44.0)	181 (47.1)

Source: Field survey.

Table 4.
Response on funding and treatment of inmates.

equipment required for their rehabilitation and reformation: 15 (3.9) strongly agreed and 20 (5.2) agreed, while 169 (44.0) disagreed and 181 (47.1) strongly disagreed.

As for the treatment of offenders, results of the analysis, as indicated in **Table 4**, show participants' responses as follows: as for whether the rehabilitation and reformation of inmates is a difficult task because of the absence of the required treatment infrastructure: 134 (34.89) respondents strongly agreed and 162 (42.18) agreed, while 52 (13.54) disagreed and 36 (9.37) strongly disagreed. On whether released inmates do not find it difficult to re-integrate into the society: 14 (3.64) strongly agreed, 21 (5.46) agreed, 171 (44.53) disagreed and 178 (46.35) strongly disagreed. Released inmate becomes productive to the society: 93 (24.21) strongly agreed, 98 (25.52) agreed, 96 (25.00) disagreed and 97 (25.26) strongly disagreed. Released inmates do not go back to crime: 52 (13.54) strongly agreed, 36 (9.37) agreed, 134 (34.89) disagreed and 162 (42.18) strongly disagreed. As if recidivism is high in correctional service in Cross River State: 165 (42.96) strongly agreed and 144 (37.5) agreed, while 22 (5.72) disagreed and 43 (11.19) strongly disagreed.

5. Test of hypotheses

5.1 Hypothesis one

Corruption has no strong relationship with the treatment of offenders in custodian centres in Cross River State. The data in **Table 5** were tested using the Pearson product moment correlation statistics.

The result of the statistical analysis as presented in **Table 5** indicates that the calculated r value of .144 is greater than the critical p-value of .000 at .05 level of significance and 382 degree of freedom. With this result, the null hypothesis was rejected. This, therefore, implies that corruption strongly relates to the treatment of offenders in custodian centres in Cross River State, Nigeria.

5.2 Hypothesis two

Rehabilitation equipment has no significant relationship with the treatment of offenders in custodian centres in Cross River State. Data in **Table 6** were tested using Pearson product moment correlation technique.

The data presented in **Table 6** indicates that the calculated r-value of .146 is greater than the critical p-value of .000 at .05 level of significance and 382 degree of freedom. With this result, the null hypothesis was rejected. This, therefore, implies that rehabilitation equipment has a significant relationship with the treatment of offenders in custodian centres in Cross River State, Nigeria.

5.3 Hypothesis three

Funding has no significant relationship with the treatment of offenders in Cross River State, Nigeria. Data in **Table 7** were tested using the Pearson product moment correlation technique.

Data in **Table 7** indicate that the calculated r-value of .270 is greater than the critical p-value of .000 at .05 level of significance and 382 degree of freedom. With this result, the null hypothesis was rejected. This, therefore, implies that funding has a significant relationship with the treatment of offenders in Cross River State, Nigeria (**Table 8**).

S/N	Statement	SA	A	D	SD
23	The rehabilitation and reformation of inmates is a difficult task because of the absence of the required treatment infrastructure	134 (34.89)	162 (42.18)	52 (13.54)	36 (9.37)
24	Released inmates do not find it difficult to re-integrate into the society	14 (3.64)	21 (5.46)	171 (44.53)	178 (46.35)
25	Released inmate becomes productive to the society	93 (24.21)	98 (25.52)	96 (25.00)	97 (25.26)
26	Released inmates do not go back to crime	52 (13.54)	36 (9.37)	134 (34.89)	162 (42.18)
27	Recidivism is high in correctional service in Cross River State	165 (42.96)	144 (37.5)	22 (5.72)	43 (11.19)

Source: Field survey.

Table 5.
Response on the treatment of offenders.

Variables	N	SD	p-value
Corruption	382	22.95	6.08
		144	.000
Treatment of. Offenders	382	22.97	5.96

**p < .05, df = 382.*
Source: Field survey.

Table 6.
Summary of PPMC analysis of **c***orruption and treatment of offenders.*

Variables	N	XSD	p-value
Rehabilitation Equipment	384	23.03	6.05.
		.146	.000
Treatment of offender	384	22.97	5.96

**p < .05, df = 382.*
Source: Field survey.

Table 7.
Pearson product moment correlation result of rehabilitation equipment and treatment of offenders.

Variables	N	XSD	p-value
Funding	384	22.78	6.03
		.270	.000
Treatment of offender	384	22.97	5.96

**p < .05, df = 382.*
Source: Field survey.

Table 8.
Pearson product moment correlation result of funding and treatment of offenders in custodian centres.

6. Discussion of findings

6.1 Corruption and treatment of offenders in custodian centres

The findings of the first hypothesis revealed that corruption has strong nexus with the treatment of offenders in custodian centres in Cross River State. The implication of this result is that corruption is visible in custodian centres in Cross River State and it is a predisposing variable negating the treatment of offenders. Information about corrupt practices in the correctional centres is not made public because of the closed nature of the institution and the inherent risk of insufficient public scrutiny in the form of both internal and external auditing, monitoring and inspection mechanisms of the activities of custodian managers. Although there are limited empirical studies that support the findings of this study, it is obvious that corruption is a major issue affecting the treatment of inmates and hampering the reintegration of offenders in Nigerian correctional centre [4, 5]. Corruption has a disproportionate impact on the well-being of inmates and most vulnerable persons in detention [2, 4, 5, 16, 22–25]. It has increased the cost of running the correctional institution and reduced offenders' access to services, including health, welfare and justice. A number of those spoken to during the in-depth interview session within the custodian centres revealed that corruption resides solidly in the system, from where it is extended to other security agencies. A participant observed that:

> *Too much corruption has permeated the public sector under this government. To your surprise, you will find that inmates in Nigerian correctional centres around the country are completely reliant on non-governmental organisations (NGOs) to provide them with basic necessities like beds, blankets, medications and soap. All these are where the managers of the centre make their money because they believe that they are not accountable for it and so they will never supply them instead utilise the money totalling billions of naira for personal advantage.*

It is sad to note that officers-in-charge of prisons make their money from prisoners' food, and from prisoners themselves, while the inmates, both prisoners and Awaiting Trial, suffer the consequence of these corrupt practices and illegalities. While in custody, offenders are supposed to learn new hands-on skills with which they can earn legitimate income after serving their time. But corruption has made many of the workshop centres non-functional and ineffective.

6.2 Rehabilitation equipment and treatment of offenders in custodian centres

Rehabilitation equipment has a significant relationship with the treatment of offenders in custodian centres in Cross River State. The study revealed that creativity training is stalled in correctional services in Cross River State as a result of inadequate and poorly maintained correctional equipment. The findings agree with the study of Nweke and Ajah [26]; Okpa et al. [6] on challenges facing vocational training of prison inmates in Nigeria. Results reveal that the following vocational facilities do not exist in the Nigerian prison system as a result of the unavailability of the training equipment viz.: barbing and hairdressing salon, auto repairs and mechanics, shoe making, fashion designing, carpentry and electrical repairs. The recreational facilities that are lacking include table tennis, basketball and volleyball. The only recreational facility available is football. In addition, the Nigerian prison system also lacks the

following educational facilities: libraries and teaching aids. Oluyemi and Amajuoyi [27]; Ukwayi et al. [14]; Ukwayi et al. [13] findings have been validated by this present study. Oluyemi and Amajuoyi [27] reported that there is a significant difference in the creativity motivation score of participants in the experimental group when compared with that of their counterparts in the control group. However, there is no significant difference in the creativity motivation score of participants in the experimental group on the basis of nature of the offence. Similarly, the finding further affirms.

Onyekachi's [28] study revealed that lack of correction facilities for the rehabilitation of offenders in Nigerian prisons is positively related to the increase of recidivism among prison inmates. The study recommended among other things that the federal government should increase the funding of Nigeria Prison, and the need for government to amend the extant laws on prison to emphasise punishment and grant the rehabilitation of both Awaiting Trial Men (ATM) and the convicted. The aforementioned submission is consistent with the qualitative data since majority of the participants indicated that there is a correlation between correctional equipment and treatment of offenders in Cross River State, Nigeria. One of them made the following assertion:

> *It is only in the main office that rehabilitation equipment for prisoners may be located. The available rehabilitation equipment is/are limited and some are not in good conditions, thus affecting the rehabilitation of inmates who are interested in the rehabilitation venture. It is very common for prisoners at this facility to do menial tasks such as labouring on people's farms or hewing wood for others. Rehabilitation of convicts is impossible without the proper rehabilitation equipment.*

Another participant's response further supports the above position, thus:

> *Since I was admitted into this correctional facility, I have not seen anything that looks like equipment used to train inmates for a better life after serving their gaol terms. Recently, the name was changed from prison to correctional centre, without any strategic plan to equip the centres with correctional equipment necessary for the rehabilitation of inmates. A lot of things are not just right with correctional centres across Nigeria. Inmates are treated like they are less human, their health needs are not taken seriously and they are being fed with substandard meals. Tell how do u rehabilitate a person in such condition.*

Both the qualitative and quantitative data suggest that an inadequate supply of correctional equipment is positively affecting the treatment of offenders, thus increasing the rate of recidivism among offenders in Nigeria.

6.3 Funding and treatment of offenders in custodian centre

The findings of the third hypothesis revealed that funding has significant relationship with the treatment of offenders in Cross River State, Nigeria. The study revealed that the budgetary allocation available to correctional services in the country is grossly inadequate to cater for the holistic needs of inmates in correctional services across the country. This problem is further exacerbated by increase in the number of detainees, chronic economic crises and devaluation of Nigeria's currency. The study observed that there is little or no funding for the rehabilitation of inmates in Nigerian

correction centres - this is evident in the lack of facilities for the reformatory and rehabilitative purpose abinitio design for the inmate [13, 29, 30]. The study noted that correctional services in Cross River State are poorly funded and most of the resources meant for rehabilitation are either diverted for personal use or are used for the wrong purpose, resulting to poor feeding regime of the inmates' vis-a-vice poor response to their health needs.

These findings are highly in support of Onyekachi [28], Ukwayi et al. [14] who reported that poor funding of the Nigeria correctional service largely affects the development of the human capacity resources within the Nigeria correctional service (NCS); also, the findings agree with the postulations of Nwosuji [31], whose study on the challenges of prisoners and the various government agencies in coping with the rehabilitation of prisoners after serving their various prison sentences reveals thus there are several rehabilitation programs in existence but they are generally faced with the primary constrain of resources and contributions of private individuals and non-governmental agencies are not adequate. Similarly, Onyekachi [28] study, which focused on the extent to which funding affects the administration of Nigeria correctional service (NCS) revealed that inadequate funding of prisons by federal government of Nigeria constitutes an impediment to the effective administration of Nigeria prisons. Consequently, inmates serve their gaol terms without being properly rehabilitated.

It is clear from the qualitative data that prison warders unequivocal assert that, a significant impediment to officers' operational effectiveness and convicts' successful rehabilitation is a lack of financial resources. Response from one of the warders who was questioned shows that:

> *Government efforts to rehabilitate offenders in correctional facilities around the nation are severely impeded by insufficient finance. The system has seen a drop in financing, which, along with the ongoing growth of gaol prisoners, has resulted in prison overcrowding.*

In response to a question on how financing affects the treatment of offenders in correctional facilities, an official from the Calabar correctional facility asserts that:

> *A significant issue confronting all government parastatal in Nigeria is finance. Occasioned by government's declining income and the growing number of projects to complete. However, corruption in managing the correctional institution has shown that the institution is not funded by the government. Not only that the inmates are dissatisfied with the correctional epileptic services but prison personnel are also dissatisfied with the way in which their well-being is/are not taken seriously due to insufficient and smart utilisation of scarce resources. The custodian system, which should have been designed only for the purpose of correcting incarcerated convicts via counselling, rehabilitation and reform, has evolved into a breeding ground for hardened criminals who grow worse than they were before entering correctional institutions.*

7. Conclusion and recommendations

Custodian institutions in Nigeria exist to 'take into lawful custody all those certified to be so kept by courts of competent jurisdiction, produce suspects in courts as and when due, identify the causes of their anti-social dispositions, set in motion mechanisms for their treatment after conviction and training for eventual reintegration into

society as normal law-abiding citizens on discharge'. The failure of Nigerian correctional centres to rehabilitate and reform offenders is undisputably tied to the current neglect of the institution by the government, which has culminated and resulted to abysmal welfare condition of inmates and officers alike. This is a problem that can be addressed if the political class through the ministry of interior supervises constantly the activities going on in the correctional institutions and adequately fund the rehabilitation programmes and other needs of the inmates to enable them to enjoy minimum comfort while serving their gaol term in these centres across Nigeria. The political elites should judiciously oversee the execution of the previously suggested prison reforms, which include among other things to; providing the needed infrastructures that will cater for the welfare of the inmates, pardoning awaiting trial offenders that have spent reasonable number of years in custody without conviction, this will help solve address overcrowding hiatus in correctional institutions across the country.

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Chapter 5

Penitentiary Treatment: Its Perspectives in Argentina – Legal and Criminological Analysis

José Daniel Cesano

Abstract

Argentine legislation (Law 24,660 and its amendments) regulates penitentiary treatment both as a stage of the progressive regime and as the activity of prison administration itself, made up of specific programs, whose objective is the social reinsertion of the convicted person. This chapter proposes, on the one hand, to analyse the issue of treatment from a regulatory perspective, outlining its distinctive notes, while also describing and problematizing the criminological aspects that characterize it. In this way, this integration (legal and criminological analysis) allows for accounting for those key elements related to carrying out treatment in prison facilities in Argentina.

Keywords: prison, penitentiary treatment, treatment programs

1. Introduction

Everyone knows the diverse critiques – that come from different conceptions of Criminology – of the objective of resocialization. However, and despite the seriousness of those objections, it is clear that the State must offer some sort of treatment, oriented toward achieving those objectives, to a person who is deprived of their freedom (in fulfillment of a sentence).

It is not lost on us that, those critiques of attempts to achieve resocialization also carry a certain mistrust of the idea of treatment. Rivera Beiras has acutely raised the issue in the following terms: "treatment has... a special role in the dialectical struggle between those who support the current form of intervention and those who criticize it. The former, usually those with some responsibility for its implementation, exalt the purpose and brag about programs and their supposed results. The latter oppose it based on the inconsistencies of the legal text itself..., the role of treatment as a disciplinary instrument..., the ideological connotations of intervention..., even including its contradictions and irregularities... or its contribution to the 'devaluation' of fundamental rights" [1].

However, behind this debate lies a confusion of terms: the possible offer of treatment programs is seen as synonymous with the so-called *ideology of treatment*, *a theoretical model that – erroneously (as we will see below) – reduced the concept to therapeutic interventions derived from behaviorism, according to which logic, the author*

of the crime appeared as a negative and dysfunctional element for the social system and therapy was thus the only means for achieving the miracle of rehabilitation. Francisco Bueno Arús has correctly differentiated the two notions: "A lack of resources leads to supplanting treatment with the 'ideology of treatment', which distorts the realist terms in which the offer to the prisoner of means that would allow them to overcome their socialization conflicts and carry out a future 'life without crime' and, in fact, replaces it with unsubstantiated faith in the program of activities aimed at overcoming values, which can oscillate between a contentless utopia and the illicit invasion of a person's intimacy" [2].

But then, what is the treatment?

Beyond the ambiguity of that expression, there is a certain consensus in which it is understood as a set of activities that should be offered to the incarcerated person, which aim to achieve the objectives laid out by Argentine criminal law. Those objectives include that the convicted person acquire the capacity to understand and respect the law, thus ensuring their adequate social reinsertion (Article 1, Law 24,660).

Undoubtedly, this concept instead has an instrumental value, since it does not reflect the existing dispute (identified above) regarding the content of activities constituting treatment. Cervelló Donderis [3] has described the evolution of the content guiding those activities emphasizing that, in their origins, they were of a clinical nature, "because they sought the pathological cure of the delinquent." Not long ago, Spanish authors even affirmed that assertion. For example, García Valdés [4] argued that the essence of treatment is found in the intervention of behavioral sciences on personality, categorizing all other activities as "marginal assistance". On the other hand, currently – and we agree with this assessment – behaviorism's monopolistic tendency is losing ground. According to Rodríguez Núñez [5], those therapeutic methods, while still having a significant value, are no longer the only activities taken into account.

There are different factors that can explain the abandonment of this **exclusivity.** However, there is one factor that should not be underestimated: the exhaustion of the behavioral theoretical model on which the training of professionals (psychologists) who provide services in prisons was (and, in some cases, still is) based. Roberto Bergalli [6] has made a lucid critique of this aspect: "Evidence of this [referring to the objectives of 'discipline and order' as the only goal of prison policy] can also be found in the decisions adopted by the Administration regarding the use of certain techniques applied to what is known as 'treatment' and that is translated into the type of training given to officials or that they seek to emphasize through the activity of experts who make up the teams observing prisoners' behavior...". He then immediately remarks that "it is worth asking in virtue of what principle is a framework of interventions legitimized that is designed to obtain the mere adhesion to behaviors through a system of 'prizes' from the institutional authority or whoever represents it. Those prizes, that are granted on a legal basis, however, respond to psychological techniques of purely provoked reflexes that, obviously, have a limited effect over time, aimed at obtaining an immediate result, conditioned to a predetermined goal. The general critique of the versions of behaviorism descending from Pavlow's reflexology, and continuing through the approaches of Watson, Skinner, and Jones, becomes even more acute when analysing the consequences of any therapy in an enclosed setting". We adhere to this assessment primarily because, in the history of psychological ideas itself, the behavioral model – based on concepts of stimulus and response and their interactions – has, since the 1970s, faced "a growing opposition from very different fields", which has led many researchers "toward alternative models that take into

account what happens within a subject when dealing with situations in their surroundings, before responding one way or another" [7].

Faced with this panorama, it is logical that, currently, an evolution has taken place – in regards to the content of activities making up treatment – "toward a more social conception in which the objective of social rehabilitation is directed toward the prisoner's social relations through education, culture, sport, and work, and even toward the institution itself through the improvement of its material and human resources" [3].

An example of this – and appealing to a jus comparative perspective – can be seen in how the treatment is addressed in the Spanish Penitentiary Regulation of 1996, which – departing substantially from the traditional conception of the 1979 General Penitentiary Constitutional law, even when, without ignoring the possible use of psychological therapeutic techniques – advocates, in article 110, for a more ambitious program. This program is laid out through the following objectives [3]: a) to design educational programs to develop prisoners' aptitudes, enriching their knowledge and improving their professional capacity; b) to use psychosocial techniques to improve the capacity of the convicted, working on problems that could have influenced their criminal behavior, such as, acting on the incarcerated person's specific shortcomings, such as self-control of an aggressive personality, and c) promoting spaces of contact between the prisoner and the outside world. Thus, the aforementioned Regulation took a position in support of a concept of institutionalized and globalized treatment, a broader and more modern conception, consolidating a model more in line with current approaches to behavioral sciences and legal dogma, emphasizing the resocializing component more than the clinical concept [8].

Regarding the characteristics that treatment must take, several clarifications must be made:

a. First, its voluntary nature. It is indisputable that treatment must be voluntary, so that – as Barja de Quiroga [9] reminds us – "it will be the inmate who freely takes the decision that they consider appropriate and, therefore, refusal of treatment cannot lead to disciplinary responsibility" [1] [11]. This characteristic is fundamental since, Roxin stated, "even the best therapy is meaningless if the convicted person does not accept it. Therapeutic efforts can only be successful if the prisoner voluntarily cooperates in the rehabilitation effort out of their own free will (…) The condemned person, therefore, is no longer the mere object of punishment (…) but rather possesses more and more chances to become a subject and co-organizer of the enactment of their sanction. The phenomenon of punishment is no longer exclusively an imposition of authority; it contains many calls to the prisoner's own initiative and thus becomes aid for self-help" [12].

b. Second, this offering must be of a general character. This means, on the one hand, that it is not lawful to carry out any type of discrimination regarding the possibility of access to treatment, based on any consideration other than the individualized character that treatment must have (Article 8, Law of Execution of Imprisonment in Argentina)[2]. From another perspective, and as a consequence of that character, penal doctrine considers that this offering should not be limited to convicted people, but likewise, should seek compatibility with the

[1] NOTEREF _Ref112018434 \f For a broader look at this aspect, cf. [10], pp. 55/74.

[2] See, Cesano [13], 43/46.

principle of the presumption of innocence and also be available to those who are in pretrial detention. In fact, in comparative legislation, Article 3.4 of the Spanish Penitentiary Regulation allows for this. To a certain extent, the aforementioned Argentine law declares itself applicable to the accused (Article 11). In this regard, at the federal level, Title IV of the General Regulation of the Accused (Decree No. 303/96) provides for a system of voluntary early execution of sentences. At the personal level – regarding the latter possibility – we cannot ignore the difficulties that the most qualified doctrine has been pointing out regarding this regime of early execution, the difficulties, and tensions that arise from the undeniable contradiction that underlies this issue. However, we think that the attempt to provide defendants with a beneficial activity and incentive against the eventuality of a future sentence is worth holding onto, as long as the qualifications registered and the phase reached are maintained and respected at the time of their definitive incorporation into the penal regime, thus allowing them to more quickly arrive at more flexible modes for carrying out their sentences.[3]

c. To conclude, one feature that modern literature focused on treatment has been reclaiming is its necessary opening to the outside. This enables it to not be reduced to the always limited means available within the institution itself, but rather also allows for collaboration with public and private institutions that, from the outside, can access the prison in order to contribute to the implementation of social rehabilitation activities.

2. Principles of treatment and their implementation in programs

Treatment programs must respond to certain fundamental principles, which could be stated as:

a. Treatment must start with a scientific study of an interdisciplinary nature, based on a prior diagnosis that has been formulated during the observation stage.

b. Furthermore, it must be individualized. This principle refers to the subjective and personal character of treatment in relation to the prisoner's personal characteristics.

c. It is complex. Therefore, it should be the result of the integration of several coordinated methods, thus avoiding any simplification structured on monopolistic pretensions.

d. It must be continuous and dynamic. Its adaptation to the prisoner's evolution requires treatment to be adjusted to the prisoner's needs, which can vary throughout the entire sentence. A static and unalterable application, which turns its back on the evolution that the prisoner might experience, must be avoided.

e. Lastly, it is necessary for treatment to be programmed. This refers to the need to implement it through a wide range of programs that, adequately coordinated, allow for obtaining the social rehabilitation goals sought by the law.

[3] NOTEREF _Ref112018436 \f See, [14], 74/75.

In this regard, Daniel Alberto Domínguez [15] has – correctly – pointed out that it is important that treatment be implemented through an articulation of programs: "based on its configuration, a program delimits the field of application, its objectives, how it seeks to obtain them, the time and inputs that it will require, the number of people responsible for carrying out and those who can be included as beneficiaries, acknowledges its costs and possible scope of its benefits, is obligated to follow known quality control norms, establishes systematic forms of control for managing and monitoring the results achieved, allows for being included in a sequence or form part of a broader project, which makes it a useful way to attempt to meet the objectives of penal systems."

According to our understanding, the design of treatment programs is a job for the executive power, since that activity is framed within the responsibilities of the body in charge of implementing penal policies, as part of the State's criminal policy. That layout is certainly not easy. Therefore, it is worthwhile detaining ourselves, even if only briefly, on some issues that must be taken into account by those responsible for their design.

Clearly, a central aspect that must be addressed has to do with studying the organizational culture within the penal institution in which it seeks to be applied.

In connection with this analytical perspective, Domínguez [15] has dealt with the issue by specifically addressing how these programs are elaborated. He emphasizes the need to carry out a profound analysis of the places in which these programs will be implemented, seeking to predict all possible circumstances. In his words: "Each prison has its own characteristics which make it unique within the system, not only because of the building structure and the possibilities it offers in terms of the place's layout but also in the particular form of the relationships established between staff and prisoners. Those makeup different systems of social networks of what we consider organizational culture. This culture undoubtedly facilitates certain practices and can create obstacles for others, therefore it is important to identify them before implementing a program. It also requires specifically adapting the environment for the program's application".

3. Problems in the application of treatment programs

When we put forth this proposal, any expert on the penal system will be able to object: *from a theoretical perspective, its positioning can be reasonable. But I invite you to go to our prisons and you will see the serious difficulties that exist in putting such programs into practice.*

The concern raised by our hypothetical opponent is – undoubtedly – very serious. However, it is necessary – for their peace and ours – to test out some sort of response. The thorniness of the question makes it necessary to proceed gradually:

a. First, it must be recognized that – in general terms – the premise from which the concern stems is true and verifiable. Thus, in Argentina, successive reports by the Procuración Penitenciaria [Prison's Ombudsman] are extremely troubling. For example, in 2002/2003, in regard to job training programs, they point to: "the high percentage of inmates – to whom the Federal Penitentiary Service is obliged to provide employment – without assigned work activity. In March 2001, 52/64% were unemployed, in the same period in 2002, 53%, and lastly, in 2003, 60.77%

were unemployed". [4] The balance is no less worrying in more recent reports. For example, according to the 2021 report, while job positions decreased 5% between 2017 and 2019, the number of people confined increased by 19%. This led to an abrupt decline in the employment rate from 68 to 55 out of every 100 incarcerated persons. The budget cuts imposed by the national government and measures implemented by prison administrations to redistribute a more meager budget, which ended up affecting workers' rights, must also be considered in this context.[5]

On the other hand, while it is true that significant improvements could be seen in relation to educational programs following the reform of Law 26,695 (27/12/2006), as a consequence of the COVID-19 pandemic [11], new inconveniences arose that impacted that right. Indeed, as a consequence of this health situation, educational institutions in general and at all levels were forced to reformulate their content and how they teach it, promoting the use of different virtual platforms when it became impossible to maintain the regime of face-to-face meetings. This problem was even more intense in Argentinean prisons. In that regard, the aforementioned report from 2021 indicates that in the context of confinement in federal penitentiary establishments, education continued to not be in-person until September 2021, when a gradual process of returning to the in-person regime began. The suspension of in-person classes at all levels and modalities, including workshops, courses, and non-formal recreational activities, while students deprived of freedom were not able to use virtual educational platforms and information and communication technology in general, as has been used by education outside of prison, negatively impacted their educational processes, deepening the gap with the free environment.[6]

b. However, the recognition that this reality **does not mean that we agree with our hypothetical opponent that the overwhelming state of things causes concerns over this issue to lose their meaning. We openly disagree with anyone who think so.** Indeed, the fact that these difficulties exist does not mean that we should not worry about everything related to the implementation of treatment programs. Precisely the opposite, we must start from that reality to search for the causes of that problem and intensify our efforts to reverse the situation. Otherwise, we would do nothing more than ignoring the constitutional mandate that requires that prison time not be dead time but rather, through the implementation of treatment programs, at least be an attempt to achieve the rehabilitation or resocialization of the prisoner. Because one thing must be made clear: neither necessary treatment programs nor social rehabilitation imply subscribing to a sort of *miraculous* posture, according to which, these programs would supposedly cure all ills. That would be hypocritical. But it would be much more hypocritical to continue critiquing them without seeking systems that, always respecting the fundamental rights that the convicted person must not lose, at least offer them

[4] NOTEREF _Ref112018437 \f See, Procurador Penitenciario [16]. *Informe Anual 2002/2003*, published by the Ministry of Justice, Security, and Human Rights, Buenos Aires, 2004, pp. 50/51.

[5] See, Procurador Penitenciario. *Informe Anual 2021*, Published by the Ministry of Justice, Security, and Human Rights, Buenos Aires, 2021, p. 295.

[6] NOTEREF _Ref112018439 \f See, Procurador Penitenciario. *Informe Anual 2021*,Published by the Ministry of Justice, Security, and Human Rights, Buenos Aires, 2021, p. 291.

(through treatment) the possibility of returning to freedom with a series of aptitudes that would permit them – using the terminology of certain recent theoretical conceptions – to reduce their vulnerability in the face of a highly selective system, such as that of the criminal justice system. If we are not clear about this and ignore the issue, we are legitimizing what the sentence, by constitutional rule, should never be: pure retribution.

c. Recognizing the problem and defining our axiological attitude to it, the next step must consist of attempting to systematize the diverse causes that hinder the design, implementation, and application of these programs. In that regard, we believe that identifying the causes of these difficulties will make it easier to reverse the situation.

We believe that we are not mistaken in identifying the three most significant difficulties as the following:

c.1) First, the excessive bureaucratization of prison management tasks through the requirement to issue constant reports, makes it difficult for technical teams to dedicate themselves to carrying out and monitoring treatment programs as such.

c.2) Second, the lack of material and human resources for implementing these programs.

Let's look at a specific example.

We have said that today therapeutic programs derived from behavioral sciences should not be the only ones on which the concept of treatment is based. However, as we have already insinuated, that does not mean that we deny their value. Let's look at the case represented by sexual criminality. In fact, regarding those crimes, we can currently observe an effervescent discussion about the possible legitimation of selective innocuousness [7]; especially from criminal political conceptions close to the criminal law of the enemy[8]. Obviously – due to strict constitutional principles – such legitimation among us would be inadmissible. However, underneath this debate seems to lie, among other determining factors, precisely that growing disenchantment – discussed at the beginning of this text – regarding the possibility of a resocializing intervention by the State, through treatment. Once again, here we find it necessary to make a distinction.

Are there therapeutic programs specifically linked to this form of criminality?

Specialized literature seems to provide an affirmative response. Therefore, it has been said that cognitivist perspectives can offer certain help to those who have been found guilty of those types of crimes, preventing eventual relapses. According to the literature, the main objective of these programs is to reduce future abusive actions by helping prisoners become more aware and develop alternative responses to the triggers associated with their deviant behavior and have empathy for their victims and other people. "The cognitivists argue that it is necessary for the abuser to 'reprocess' their own history as a victim, which entails the resignification and development of motivations for understanding, modifying, and continuously revising the maladapted behaviors for the rest of their lives." Holzwarth et al. [19])[9].

[7] NOTEREF _Ref112018440 \f Jesús María Silva Sánchez [17] describes this tendency.

[8] Regarding this conception, in particular for sexual criminality, see Jurisprudence. Revue critique, *Droit penal et politique de l'ennemi*, sous la direction de Jean - François Dreuille [18].

[9] NOTEREF _Ref112018442 \f The subject is widely discussed in comparative criminology. For the case of Portugal, see the important investigations of Gonçalves [20, 21]; See also [22].

The same scientific opinion that we have been using as a source, regarding the effectiveness of those therapeutic programs, mentions, as an example, the Canadian experience in 1981 for the prevention of recidivism in these forms of crime. That investigation "compared two groups of subjects who committed sexual crimes: a sample of 1,160 untreated people and another 257 people treated with cognitive therapy over 10 years, with a 5-year follow-up period. The results demonstrated that there was a significant difference in recidivism among the treated, in comparison to the non-treated" ([19], 83). Thus, in conclusion, it proposed a cognitive behavioral program that can reduce the rates of recidivism specifically in regard to high-risk sexual crimes. More recent work has confirmed this tendency. For example, a study carried out with sexual aggressors in 2006 in the Brians prison (Barcelona, Spain) sought to evaluate the effectiveness of behavioral treatments in relation to sexual aggressors. The study created two equivalent groups (a treatment group and a control group). The treatment group was made up of 49 subjects who fully received the planned psychological treatment, while the control group was made up of 74 sexual aggressors who had not received treatment. The results suggested a considerable rehabilitating potential of applied cognitive-behavioral treatment. That study proves, in scientific terms, that the application of treatment reduces the recidivism rate of treated sexual aggressors from an expected rate of 18% to 4%, for an average follow-up period of almost four years [23].

The advantages of those treatments have been described by different criminological studies. Returning to the case of the Brians prison, the program oriented in cognitive-behavioral therapy lasts an average of 10–12 months, in its group phase, with four weekly sessions of two hours each. The program's general therapeutic objectives are 1) to encourage a more realistic analysis by the participants of their criminal activities; 2) to improve their capacities and skills in interpersonal relationships; 3) to improve their chances of reinsertion and of not reoffending. "More specifically, the program is structured in modules or ingredients that target the most common deficits or 'criminal need' factors of sex offenders" [23].

Of course, the viability of such a therapeutic program will be strongly conditioned by the existence of a significant number of psychological professionals. In this regard, in the prison system of the Province of Cordoba, Argentine Republic, "no treatment experiences have been reported" in that direction [19] or, if they do exist, there is not a sufficient number of professionals to generalize their offering.

The auspicious results of these treatments have led to their implementation in various countries, as can be seen in comparative criminology studies, for the case of Uruguay [24] and Colombia [25].

It is true that this problem is not limited to the Province of Cordoba. It is something more widespread and has been pointed out for some time now. Domínguez [15], for example, analysing the situation in Buenos Aires affirms that only three of the thirty-eight detention units in the Buenos Aires Penitentiary Service have, in light of the incarcerated population, a relatively acceptable number of professionals. In sixteen units, the proportion is unacceptable and in the other three, there are not even any psychological professionals.

c.3) Finally, a certain existing confusion between the penitentiary regime and treatment also conspires against the effectiveness of these programs.

This is also a generalized problem. Thus, Cervelló Donderis [3] clearly differentiates two models that (a) prioritizes treatment and (b) respond to a custodial conception.

The first supposes permeating all of prison life with treatment interests, subordinating regimental issues to treatment.

The second, on the other hand, is characterized by conceptualizing individualized action on the convicted person as an element to ensure internal order. Thus, the preponderance of order and security in the prison is the basis grounding actions of the individual, since the primary interest is to maintain discipline.

4. Conclusion

We wanted to share a concluding reflection. The prison sentence is a necessary evil that, at least for now, we do not foresee can be left aside. As Zolo [26] states very clearly, "it is easy to foresee that prison will continue to be the central modality for executing sentences in [...] Europe and the rest of the Western world. And currently, nothing allows for thinking that the social evolution underway could make the system of penitentiary punishments obsolete, as the theorists of penal abolitionism imagine. Abolitionism is, yesterday as today, an elemental moralistic utopia, which denies the essential function of the political system: that of guaranteeing safety...".

This does not mean that we should give up on the search for possible alternatives to prison or, even – **in areas of minor crime** – design mechanisms that would replace criminal punishment. However, in parallel to that, it must be accompanied by a discussion regarding the need for a major reform of penitentiary practices.

In this regard, prison must be a sentence that – imposed to the strict extent of the utilitarian purpose assigned by the Constitution – is carried out following closely adhering to the paradigms that not only arise from the text of the Fundamental law, but also from the plexus of guarantees derived from International Human Rights Law, as a common, minimum and inalienable, axiological basis.

Therefore, as long as this punishment continues existing, prison time should be used for the implementation of treatment programs oriented toward that minimum purpose of social rehabilitation, programs that must always be respectful of those fundamental rights that emerge from the federal constitution. These programs must be individualized, interdisciplinary and effectively realized. But in addition, it must be programs that are structured with social content (educational and labor) and psychological interventions, that respond to cognitivist perspectives.

Undoubtedly, to place rehabilitation – I insist, understanding it as a model of minimum resocialization – in the center of initiatives, action at different levels is required. It will certainly be necessary for the Executive Power to remove the main obstacles that have been identified, especially those related to de-bureaucratizing the work of technical teams and providing human and material resources for carrying out those tasks. It will be up to legislators to correct those aspects that still, under current law, allow for a confusing regimen of treatment. And the Judiciary, beyond its role of constantly controlling the execution of sentences, is responsible for attempting to ensure that treatment truly exists and is not merely formal.

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Chapter 6

Preventive Prison as the Last Ratio

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Abstract

There are many debates that arise in relation to the deterrent, social and even rehabilitative utility of pretrial detention. This work starts from the assumption that it should be used as a last ratio and not prima facie as it currently happens, by virtue of the fact that it has no preventive or rehabilitative function in the commission of crimes and, on the contrary, it sometimes causes irreparable harm, particularly in the case of primary offenders. Legal hermeneutics and epistemology are used as research methods and as the main technique for the review of specialized literature and statistics that allow confirming the hypothesis and reaching valid conclusions.

Keywords: pretrial detention, rehabilitation, primary offender

1. Introduction

The changes to the constitution and postretirement in the ordinary law were reforms that implied a great change in the delivery of justice in criminal matters in Mexico. However, some of the most popular figures of the previous system seem not to have lost their prominence. Such is the case of preventive detention, which incidence instead of decreasing has become the central axis in the so-called *new criminal justice system*.

In this chapter we analyzed the reasons why this is happening and examined the main scholars' perspective on the topic, the definition of preventive detention, its purpose in the context of human rights and the world's outlook on reparative justice to generate this proposal.

It seems that the constitutional content that incites the penal reform and transforms the justice system of this nature into an accusatory system derives in precepts that could seem ambiguous. We can reach this conclusion if we examine the figure of preventive detention in the face of the presumption of innocence.

Rosa Rodriguez ([1], p. 147–171) says, paraphrased to Buscaglia, "the change of political parties in 2000 strengthened both ordinary and organized criminality. In this scenario, the emphasis of government security institutions was mainly focused on the second one. Consequently, lawmakers' discussions before the adoption of the constitutional reforms in 2004 and in 2007 emphasized this problem" ([1], p. 149).

The constitutional reform was imperative for human rights protection and the progress made in this aspect is undeniable. The administration of justice has been

transformed and a comprehensive reform of the prevailing system is being undertaken at a national level.

In this new legal environment, figures such as the presumption of innocence and the diversification of measures other than preventive detention are a privilege. In this context, we have found that judges use preventive detention as a prima facie measure in most cases, leaving aside the rest of the precautionary measures that seek to avoid this.

Scholars have many papers [2] about the problem of the preventive detention in relation with insecurity and organized crime. It is important for criminal law to have the same view about high penalties, given that their increase is not dissuasive for the commission of offenses. Legislators do not seem to realize that increasing penalties does not solve high crime rates in the country and that establishing preventive detention for all crimes cannot be the solution either.

If we examined the results of the reform, we could find positive aspects that have influenced the administration of justice and the reduction of impunity. In 2019 Hinojosa and Meyer [3] consider,

> *More than eleven years and two presidential terms have passed since Mexico approved sweeping constitutional reforms mandating the nationwide adoption of an adversarial criminal justice system, a tool meant to strengthen Mexico's capacity to counter violence and impunity. A shift away from the country's previous inquisitorial system—in which court procedures were largely oriented around written documents presented to a judge— the new system is based on oral trials in public courtrooms.*

But what do we understand by pre-trial detention and what are its purposes?

This is an important point to elucidate in this section in order to address the main point of this investigation. It is very important because this is not a problem exclusive of Mexico. For example, in the United States more than "400,000 people are currently being detained pretrial – in other words, they are awaiting trial and still legally innocent. Many are jailed pretrial simply because they can't afford money bail, others because a probation, parole, or ICE office has placed a 'hold' on their release. The number of people in jail pretrial has nearly quadrupled since the 1980s".

In general terms, we can say that preventive detention is a precautionary measure. That is, it is a prevention or insurance measure that is imposed by judicial determination to achieve the ends of the criminal procedure, as Arteaga Sandoval [4, 5] tells us. In this sense, pretrial detention refers to the detaining of an accused person in a criminal case before the trial has taken place. A more complete definition is: "Measure ordered by the liberty and detention judge at the request of the investigating judge. The latter may request that a person charged with a crime or misdemeanor punishable by at least three years in prison be placed in jail, prior to his or her trial. Pre-trial detention must be justified in accordance with the conditions laid down by law" (Pretrial Detention, 2022).

We can find several elements in this definition. In the first place, in any country it must be ruled by a judge; and although it is true that each legislation enshrines different figures in the criminal process, in all legislations preventive detention can only be dictated by a judge. Secondly, preventive detention, as its name indicates, only takes place before the start of the trial. And thirdly, there must be the presumption of the possible commission of a crime. It is in this point where scholars have conflicting positions when considering that preventive prison collides with the constitutionally enshrined presumption of innocence.

Garderes and Valentín ([6], p. 133–136) consider that in order to dictate it, the judge must start from the principles that they consider emanate from the constitution itself and that we can reduce to the following ones. The first principle starts with the impossibility of using pre-trial detention as an advance payment of a penalty. The second refers to presumption of innocence. The third contemplates the right of the accused to remain free during the processing of the criminal process and therefore the exceptional nature that should govern pre-trial detention. A fourth principle is based on the precautionary nature of pretrial detention, which forces the judge to assess the possibility of the accused being subtracted or the possibility of obstructing the evidence. The fifth part of the accusatory principle establishes that preventive detention should only be decreed at the request of the public ministry or prosecutor's office. A sixth principle is derived from the principle of proportionality, which some legislations evaluate by means of the degree of dangerousness and others by taking into consideration the legal minimum sentence established for the crime for which the accused is prosecuted. The seventh establishes the requirement of a reasonable duration of the process. And finally, the eighth principle determines the necessary impartiality of the judge in such a way that the same judge who decrees preventive detention cannot pass a penalty.

An essential aspect for preventive detention to become an exceptional measure is the establishment of alternative measures to this, so that the judge will be able to choose other mechanisms without focusing on pre-trial detention. However, it is not enough that these alternatives exist, it is transcendental that a change of mentality be brought about not only in court but also in the prosecution processes [7].

2. Legislation applicable to pretrial detention

In the Latin-American reality the Inter-American Commission on Human Rights (IACHR) considers that, historically, and particularly in performing its monitoring mandate, the Inter-American Commission has consistently referred to the excessive use of pretrial detention as one of the main problems affecting the respect for human rights of people deprived of their liberty in the Americas [8]. In the previous report, it is determined that Mexico, "where in mid-1996, of a prison population of approximately 116,000, more than half were being held in pretrial detention" [9]. While this Commission establishes the minimum rules for the providence of pretrial detention, the percentage of cases is higher than in Europe. In the chart made by the world prison brief, cited by Garcia Castro ([10], p. 3), Paraguay has the highest rate of people prosecuted in pre-trial detention with 77.9%, followed by Bolivia with 69.9% and Uruguay whith 69.7%. In this chart Mexico occupies the eleventh place with 39.4% of people in pre-trial detention.

The United Nations (Human Rights Council's resolution 42/22) cited by Wola (April 2020:1), considers that "prison populations are growing at alarming rates in Latin America and the Caribbean, mainly driven by harsh and disproportionate drug laws. Indeed, the countries of the region have the highest rates of incarceration for drug-related offenses in the world". In consequence, those circumstances cause prison overcrowding, given the obligatory use of pretrial detention for many offenses.

The Mexican Constitution (1917) establishes the guarantees of due process essentially in Articles 18 and 19, enshrining the presumption of innocence and the requirements to be able to order preventive detention. The latter is subject to the

condition that the crime in question deserves a corporal punishment and establishes that it must be decreed in a place other than the one destined for extinction of the penalties [11].

It also follows from these precepts that preventive detention must be requested by the public ministry. This is clearly stated in the second paragraph, which is of the following literal tenor:

> *[...] The Public Ministry may only ask the judge for preventive detention when other precautionary measures are not sufficient to guarantee the appearance of the accused in the trial, the development of the investigation, the protection of the victim, witnesses or the community, as well as when the accused is being prosecuted or has been previously sentenced for committing an intentional crime.*

Consequently, the constitution requires the determination of the criminal type to be able to establish if it has a custodial sentence. In addition, it establishes preventive detention once it has been shown that there are no other sufficient precautionary measures for the protection of the victim, witnesses, or the community, as well as when the accused is being prosecuted or has been previously sentenced for committing an intentional crime. We can demonstrate with this content of the constitutional norm under study the breadth that is conferred on the investigative body since it must ensure not only the protection of the victim and witnesses but also the community itself. This results in a reality not wanted by the legislator but consented through the drafting of the norm in question, why is it that the public ministry almost always gives preventive detention.

Therefore, pretrial detention is applied in a general way to any crime with corporal punishment, regardless of the other requirements mentioned above, we could speak of an abuse of preventive prison.

These situations are more problematic when the judge officiously applies preventive detention when the crimes listed by the article in question are updated. These crimes are: in cases of sexual abuse or violence against minors, organized crime, intentional homicide, femicide, rape, kidnapping, human trafficking, robbery home, use of social programs for electoral purposes, corruption in the case of crimes of illicit enrichment and abusive exercise of functions, theft of cargo transport in any of its modalities, crimes related to hydrocarbons, petroleum products or petrochemicals, crimes related to forced disappearance of persons and disappearance committed by individuals, crimes committed with weapons and explosives, crimes related to firearms and explosives for exclusive use of the Army, Navy and Air Force, as well as serious crimes determined by law against the security of the nation, the free development of the personality and health.

The catalog is so broad that we could truly say that the judge has a very wide discretionary power to establish pretrial detention without the need for a request from the Public Prosecutor's Office. Consequently, pretrial detention is inevitably happening on a daily basis, leaving aside other mechanisms provided by the law.

In this sense Arteaga [4, 5] says "therefore, if the presumption of innocence, the guiding principle of the criminal procedure and the fundamental right of the accused, implies that throughout the criminal procedure the accused must be treated as innocent and, therefore, their freedom should be privileged at all stages of the criminal procedure, unofficial preventive detention clearly departs from this core principle and contradicts this fundamental right, in addition to opposing the

precautionary nature of this measure, insofar as it fails to observe the characteristics and guiding principles of precautionary measures, since it implies, de facto, an a priori legal trial in which any possibility of defence is prohibited for the accused, who is anticipated to suffer a probable penalty and any evaluative scope of the control judge for its imposition is eliminated".

At this point it is important to distinguish preventive prison in general from the unofficial. The first requires a justification, the second does not, which has implied a rejection of the latter by legal doctrine. We consider that informal preventive detention violates the presumption of innocence as a procedural principle.

The Mexican legislator recognizes this problem in the initiative of reform to the constitution and says in the motive's exposition:

> *When the felony system was first created for the origin of provisional release on bail, he intended these to be exceptional. However, state and federal experience has shown that this exceptional process has colonized the rest of the system. Today there is an enormous abuse of preventive detention since most of the crimes are classified as serious by ordinary legislation. In order to overcome this state of things, the Constitution must determine those exceptional cases for which it will suffice to accredit the alleged material so that, in principle, preventive detention may proceed* [12].

The question now is whether the reform solved the problem or, on the contrary, continues to facilitate the excessive application of prima facie pre-trial detention given that facts show continuity in the excessive application of said precautionary measure, privileging it with respect to any other that could be applied.

The code of criminal procedures determines what is related to preventive detention in Article 165 [13] which says:

> *Only for a crime that deserves a custodial sentence will there be a place for preventive detention. The preventive prison will be ordered in accordance with the terms and conditions of this Code. Preventive detention may not exceed the time that the law establishes as a maximum sentence for the crime that motivates the process and in no case will it exceed two years, unless its extension is due to the exercise of the right of defense of the accused. If after this term a verdict has not been pronounced, the accused will be released immediately while the process is being conducted, without this precluding the imposition of other precautionary measures.*

The code considers preventive prison with exceptional character, when other precautionary measures cannot be used because they are not sufficient to guarantee the appearance of the accused at the trial, the development of the investigation, the protection of the victim, the witnesses or the community as well as when the accused is being prosecuted or has been previously sentenced for the commission of an intentional crime [13].

There are exceptions to the informal application of preventive detention when it comes to people over seventy years of age or who suffer from a terminal illness, as well as pregnant women, mothers during lactation. It may be established that preventive prison is carried out at home, but even in these exceptional cases the judge may decree preventive detention in a discretionary manner [13].

The code provides for informal preventive detention in certain tax crimes, but these provisions have been considered unconstitutional by the Supreme Court [14].

3. The Jurisprudence

The Interamerican Court of Human Rights [15], considers that preventive prison only proceeds when "there are sufficient indications to persuade an objective observer that the defendant will hinder the development of the trial or elude the action of Justice": in other case the Court says that,

> *[...] the general rule must be the freedom of the accused while his criminal responsibility is resolved, since he enjoys a legal status of innocence that requires him to receive from the State a treatment commensurate with his status as an unconvicted person. In exceptional cases, the State may resort to a measure of preventive incarceration in order to avoid situations that could jeopardize the achievement of the ends of the process. For a custodial measure to be is in accordance with the guarantees enshrined in the Convention, its application must entail an exceptional character and respect the principle of presumption of innocence and the principles of legality, necessity, and proportionality, essential in a democratic society* [15].

Furthermore, the Court specified that it is not enough for it to be legal, it is necessary that it is not arbitrary. For it not to be, it must have a purpose compatible with the Convention, it must be appropriate, necessary and proportionate, so that any restriction on freedom that does not contain sufficient motivation that allows to evaluate "if it [does not] adjust to the indicated conditions, [it] will be arbitrary and, therefore, will violate the Article 7.3 of the Convention. Thus, in order to respect the presumption of innocence, when ordering precautionary measures restricting freedom, it is necessary for the State to justify and prove, in a clear and motivated manner, according to each specific case, the existence of the referred requirements demanded by the Convention" ([15], pp. 110–111).

The Supreme Court of Justice of the Nation in Mexico considered with respect to preventive detention prior to the reform that there was indeed an abuse in its practice and with that order of ideas, subsequent to the reform,

> *[...] under the understanding that the informal preventive prison is a constitutional restriction to freedom personnel, which under international regulations must be a measure exceptional for its imposition, it can be affirmed that neither the legislator of the Constitution nor the ordinary legislator favored distinction of any of those figures in terms of the possibility of review, cessation or prolongation. In any case, pre-trial detention (in any modality) is profoundly restrictive of the right to liberty of the defendants in the accusatory criminal process and, therefore, must be reviewable* [12].

In this way, the court limits the powers of the judge, even when preventive detention proceeds ex officio. The Court can review the decision that determines it and even revoke it for not conforming to constitutional requirements.

The Court insists that the singular character of preventive prison presupposes a figure of an exceptional nature, whose purpose is to "ensure that the accused appears at trial, to protect the development of the investigation and the protection of the victim and the witnesses, as long as other precautionary measures are not sufficient to fulfil the purposes pursued". ([12], p. 74–76).

In this situation, the Court has considered unconstitutional the inclusion of informal imprisonment in crimes that do not seriously affect society, as is the case of crimes of a fiscal nature. By majority of votes, the plenary session of the Supreme

Court of Justice of the Nation (SCJN) declared unconstitutional the informal preventive detention for tax fraud, and for the issuance, sale, transfer, purchase or acquisition of false tax receipts. The plenary session of the SCJN began the study of the constitutionality of the decree of November 8, 2019, which amends, adds, and repeals various provisions of the Federal Law against Organized Crime, the National Security Law, the National Code of Criminal Procedures, the Fiscal Code of the Federation and the Federal Criminal Code. These reforms are in terms of tax declaration and apocryphal tax receipts.

4. The preventive prison in Mexico

Bergman y Azaola [16] says that.

> *The intensive use of imprisonment is irrational. In our codes 95 percent of crimes have contemplated prison. In fact, there are no alternative sanctions to jail because there are no mechanisms or infrastructure to make them operable. In our environment of opinion so aggrieved by crime, we insist that prison is an exemplary punishment for all type of crimes. However, in the case of misdemeanors and non-violent crimes, other sanction mechanisms could be more effective and less expensive in social and economic terms.*

The Mexican reality shows an oversaturation of prisons that derives in the non-compliance of the purposes that are supposedly pursued with it. If we add to this the problem of separating those who are subject to pre-trial detention from those serving a sentence, we find a material impossibility to comply with it. The catalog of crimes that lead to unofficial imprisonment seems endless and in no way are there elements to consider that it fulfills a deterrent purpose, since the commission of illicit acts has not decreased. Therefore, the Inter-American Commission on Human Rights recognizes it by estimating the need to reconsider the use of custodial measures, such as preventive detention, given it has not contributed to lowering the levels criminals in Latin America [7].

Gutierrez Roman [17] considers that "the abuse of preventive detention in Mexico is alarming. There are currently 222,600 people deprived of liberty throughout the country; of that total, 95,424, that is, 42.8%, are under this precautionary measure. These figures show the great structural flaws in the criminal justice system".

The National Institute of Statistics, Geography and Informatics [18] in Mexico is obliged by the law on the execution of sentences to carry out the National Survey of Population Deprived of Liberty. Accordingly, the results of the 2021 survey indicate that there were 67, 584 people deprived of their freedom. From the above figure, it can be deduced that 72% of them already had a sentence and 38% have penalties of 21 years or more.

In consequence, the remaining 38% by exclusion are people who were sentenced to preventive detention, which allows us to determine the seriousness of the problem and the incidence of using preventive detention as prima facie and not as determined by law in an exceptional manner. However, it is also important to establish that of the percentages mentioned with penalties, 73% were men compared to 53.7% of women, a fact that is relevant as an indicator of the increase of crime amongst women, since if in them the pending number of sentences is much greater, the increase is evident ([18], p. 84).

Although the numbers cited by Gutierrez Roman dating from 2013 to those put forward by INEGI in 2021 [18] show a significant reduction in people deprived of their liberty, this is not derived from a reduction in the use of preventive detention.

5. Conclusions

The pretrial detention is the most popular measure used by the judges in all Latin America. The law previews in many offenses' pretrial detention as obligatory, while the other measures are few usuals, therefore affecting the presumption of innocence principle. All of this even though the measure has not proven to be a deterrent to crime and, on the contrary, has saturated detention centres.

From the analysis carried out, both, constitutional text and the ordinary laws that are mentioned, we can conclude that despite the penal reform and its undeniable advances, there is still much to be addressed about favoring alternative precautionary measures to preventive detention. It is an issue in which there seems to be no progress, since the legislators themselves have focused on increasing penalties and making an exhaustive enumeration of crimes that allow it, in an informal manner, and which is so broad that it seems the exception is on the contrary, those crimes that do not have said unofficial imprisonment.

How can Mexican judges bring about a change of paradigms? We consider that the law is the main obstacle for its own change. Whilst the constitution establishes in its article 18 that preventive detention can be applied whenever the crime merits corporal punishment, and in article 19 it consecrates it as an exceptional measure, inconsistently in the subsequent paragraph it makes an exhaustive enumeration of crimes where it should be dictated informally. Such crimes being the following: in cases of sexual abuse or violence against minors, organized crime, intentional homicide, femicide, rape, kidnapping, human trafficking, robbery home, use of social programs for electoral purposes, corruption in the case of crimes of illicit enrichment and abusive exercise of functions, theft of cargo transport in any of its modalities, crimes related to hydrocarbons, petroleum products or petrochemicals, crimes related to forced disappearance of persons and disappearance committed by individuals, crimes committed with weapons and explosives, crimes related to firearms and explosives for exclusive use of Army, Navy and Air Force, as well as serious crimes determined by law against the security of the nation, free development of the personality, and health.

We can conclude that it is the legislator who makes an excessive use of preventive detention and with little legal technique makes the enumeration proper to an ordinary procedural system and not to the fundamental charter.

It has reached the point of considering even informal imprisonment for fiscal crimes in which the Supreme Court determined its unconstitutionality. It is this precedent which represents an important effort in the construction of a fairer penal system. The road ahead is long since it also requires a change of mentality of the judges and of the Mexican State itself, which have focused a lot on the so-called criminal law of the enemy [19–22].

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Section 3

Correctional Problems and Solutions

Chapter 7

Mental Health Burden and Burnout in Correctional Workers

Mansoor Malik, Samar Padder, Suneeta Kumari and Haroon Burhanullah

Abstract

Working in correctional facilities is inherently stressful, and correctional workers have a high rate of anxiety, depression, PTSD, and professional burnout. Correctional workers faced an unprecedented set of challenges during the COVID-19 pandemic, exacerbating an already dire situation. There has been a relative shortage of studies evaluating effective interventions for the psychological consequences of working in correctional facilities. Well-being and mental health Interventions for correctional workers should be embedded in a general framework of support, reducing occupational risk factors, improving mental well-being by developing a positive work environment, improving mental health literacy, and identifying and treating mental health issues. The backbone of the correctional system is its workforce and the mental health and well-being of correctional workers are of paramount importance in an effective correctional system.

Keywords: correctional facilities, well-being, burnout, mental health, stress

1. Introduction

The work of correctional officers has long been pointed at as among the most stressful in the world. Correctional staff across the world work in very difficult circumstances. For example, the United States (US) prison system, which holds almost 2.3 million prisoners, and employs more than 500,000 correctional officers and health care staff, is chronically understaffed and under-resourced [1]. Added to these significant challenges is the impact of the COVID-19 pandemic, which has significantly increased the work demands for correctional workers. One in every five state and federal prisoners in the United States has tested positive for COVID-19, a rate more than four times higher than the general population [2]. The COVID-19 pandemic has brought a sharp focus on the correctional health system and correctional workers.

Correctional work environments are stressful by their nature. Correctional facilities often work in a paramilitary style with inflexible and overwhelming schedules. Correctional institutions have generally low wages and routinely use mandatory overtime. Correctional workers face a complex and unique set of challenges as a result of their confined workspaces and their daily interactions with incarcerated individuals. Correctional workers have to often work for long hours without breaks.

In the 2017 report, the United States Department of Justice identified several of the challenges faced by correctional officers [3]. These included work-related challenges (e.g., prisoners with infectious diseases or mental illness, gang violence, aggressive and traumatizing inmate behavior), institution-related dangers (e.g., role ambiguity/conflict, inadequate resources, poor leadership/trust), psychosocial dangers (e.g., media/political scrutiny), mental health risks (e.g., stress, burnout), and physical health risks (e.g., injuries, death). In addition, prisons have a high prevalence of chronic diseases and mental illness and house an increasingly aging population. Correctional staff shares all the risks of the physical environment and the additional risks listed above as well as uncontrolled physical contact with inmates as they move prisoners or intervene in altercations or when performing physical examinations and medical procedures.

The backbone of the correctional system is its workforce. The correctional system relies on qualified, trained, and dedicated staff for effective, professional, and competent operations. Correctional staff can be classified in different ways. For example, institutional staff works within the prison systems, while community staff such as probation officers work outside of the prison. Another way to classify is based on the role, such as correctional administrators, correctional officers, correctional medical workers, correctional counselors, etc. In addition, correctional staff has been defined as both custody-oriented workers and non-custody workers. Custody-oriented workers have a primary focus on the security and control of the inmates. Custody-oriented workers include correctional officers, supervisors, and security management. Non-custody workers provide other services to support the operation or mission of the correctional facility. These workers include education, medical, maintenance, kitchen, and business support staff.

However, a perennial shortage of correctional officers and a very high turnover rate are common in all classifications of correctional workers. Correctional officer vacancy rates in some prisons approach 50% [4]. Although community supervision agencies typically fare better, probation and parole officer vacancy rates have been reported as high as 20% [5]. It is particularly hard to recruit and retain trained medical staff such as physicians and nurses in correctional facilities. These efforts are challenged by the fact that the public does not consider corrections to be a high-status occupation. Turnover in correctional facilities can be as high as 50%, and job satisfaction in the correctional industry is in the bottom 5% [6].

2. Studies evaluating stress, mental health burden, and burnout in correctional staff

2.1 Stress

Stress can be seen as the result of a person's interaction with their surroundings. The psychological distress or strain brought on by both individual and organizational pressures at work is known as job stress. Approximately, 37% of correctional staff are thought to experience job stress and burnout at correctional facilities [7]. This is significantly more than the generally estimated stress rate of 19–30% in the working population. A meta-analysis of 20 studies revealed that the specific issues facing correctional officers (such as perceived danger and role challenges) and work attitudes (such as involvement in decision-making, job satisfaction, commitment, and turnover intention) generated the strongest predictive relationships with job stress [8].

Correctional staff have to be constantly alert to their surroundings and may have to use force to defend themselves and others inside correctional facilities. This constant hyper-vigilance makes working in a correctional environment psychologically and physically draining. Correctional staff is at high risk of depression, suicide, obesity, hypertension, accidents, and early mortality from chronic illness [9–12]. There is strong evidence that the morbidity and mortality rates for correctional workers are higher than those of nearly all other occupational categories [13]. Of all occupational categories, law enforcement had the highest prevalence of workplace injuries; the rate for correctional officers was lower but still comparable with that of the police [14]. In the United States, correctional officers have suicide rates that are 40%–100% higher than those of police officers. Studies have shown similar rates of stress in multiple other countries. However, it is difficult to track natural history and risk factors due to significant turnover and a lack of systematic data for correctional staff. Due to inherent methodological difficulties, correctional employees' surveillance and injury data studies are of limited utility when compared with other disciplines of public safety (such as police and fire).

Cross-sectional studies of correctional staff have consistently found high indicators of stress. Cheek and Miller [15] found that correctional officers had unusually high average rates of divorce and stress-related illnesses (such as heart disease, hypertension, and ulcers), while a different study found that their average life expectancy (59 years) was 16 years lower than the US average [16]. Adwell and Miller [17] discovered that correctional officials were more likely to experience heart attacks, high blood pressure, and ulcers than members of the general public. The results from a systematic review of such studies indicated that the organizational structure and climate of correctional institutions have the most consistent relationship with correctional officers' job stress [18].

2.2 Burnout

Burnout is a syndrome of depersonalization, low self-esteem, and emotional weariness. Although this syndrome can affect any type of worker, it is most noticeable in professionals who work with the public, such as social workers, nurses, and correctional officers. Energy depletion (emotional exhaustion), increased mental distance from one's job (detachment cynicism), and reduced professional efficacy are considered to be characteristic components of burnout.

According to Maslach [19], the core of occupational burnout syndrome is the pattern of work overload and the ensuing emotional weariness. Correctional employees are exposed to high mental, physiological, and cognitive requirements. Over time, these working conditions can lead to strain and ultimately to burnout. In addition to lowering organizational commitment, workers who exhibit signs of stress and burnout may also demonstrate a lack of motivation and dedication. In the case of correctional workers, this can lead to counterproductive attitudes and actions. Negative attitudes and actions jeopardize the rehabilitation of inmates as well as the safety and security of the prison population. Helping prisoners commit crimes while they are incarcerated is an illustration of conduct that is a counterproductive attitude and may stem from burnout [20].

Several studies have demonstrated very high rates of burnout in correctional employees [21]. However, little research has been done to elucidate the factors associated with burnout among correctional employees. It is generally believed that the working environment is more closely related to burnout among correctional workers

than personal characteristics. There is also little research comparing the burnout factors among correctional health employees such as nurses and correctional officers.

Role issues, work overload, difficult social contacts (with convicts, coworkers, and supervisors), and low social standing were the four main factors contributing to burnout in correctional staff as identified by Schaufeli and Peteers [22]. Dowden and Tellier [8] looked at the factors that predict stress in the workplace for correctional officers. Results showed three different sets of conclusions. The factors that were most strongly correlated with job stress were work attitudes and specific issues facing correctional officers (such as perceived risk). A moderate link between job stress and custody orientation (correctional officers' attitudes toward prisoners) was found. Finally, work characteristics and demographic factors were the least reliable predictors of occupational stress.

In a study comparing correctional officers and nursing staff, the level of emotional exhaustion and personal accomplishment of nurses were significantly higher than that of correctional officers. The mean depersonalization score of correctional officers was significantly higher than that of nurses. Correctional officers demonstrated a higher prevalence of burnout syndrome compared with nurses [23].

2.3 Mental health burden

Unsparingly, correctional workers show high rates of mental health symptoms. In a nationwide Canadian study, 44.5% of PSPs (public safety personnel) reported having significant clusters of symptoms consistent with at least one mental disorder [24]. The most common mental disorders identified by screening measures were PTSD (23.2%) and major depressive disorder (26.4%). Rates of mental disorders among PSP were consistently higher than diagnostic rates in the general population. Another Canadian study found that reported rates of mental disorders (i.e., PTSD, generalized anxiety disorder, panic disorder, social anxiety disorder) correlated positively with the number of exposures to potentially psychologically traumatic events [24].

In a study of 3,599 correctional workers in the United States, the rate of PTSD was 27%. Individuals screening positive for PTSD experienced a greater number and variety of potentially psychologically traumatic events (resulting in violence, injury, or death) and had experienced more severe assaults than those who screened negative for PTSD [25]. Another study found that correctional workers screening positive for PTSD demonstrated statistically significant higher frequencies of memory impairment, depression, sleep difficulties, digestive problems, heart disease, skin conditions, and obesity than those screening negative [26].

In a recent survey of US correctional staff, approximately 48% of healthcare workers and 32% of correctional officers reported mild to severe depressive symptoms, 37% reported mild to severe anxiety symptoms, 47% of healthcare workers and 57% of correctional officers reported symptoms of burnout, and 50% of healthcare workers and 45% of correctional officers reported post-traumatic stress symptoms. Approximately 18% of healthcare workers and 11% of correctional officers reported mild to moderate sleep disturbance. Healthcare workers had significantly higher depression and sleep disturbance scores than correctional officers, while correctional officers had significantly higher burnout scores. Female correctional workers scored significantly higher on anxiety than their male counterparts. Increased workload, workplace conflict, younger age of employees, trust in institutional isolation practices, and lower work positions were associated with increased burnout. Despite experiencing a high mental health burden, correctional workers showed high resilience (60%) [27].

Title and authors	Objectives	Methods	Outcome Measures	Conclusion
Mental Health of Staff at U.S. Correctional Facilities during COVID. By [27]	To determine the perceived mental health burden of COVID-19 on correctional workers Explore the relationship between workers' mental health, social demographics, and environmental/work factors	A cross-sectional study survey was conducted in 78 correctional sites in Pennsylvania, Maryland, West Virginia, and New York from November to December 2020,	Healthcare worker mean PHQ-9 depression score (M = 5.74, SD = 5.15) was higher than that of correctional officers (M = 3.96, SD = 3.86) Healthcare worker mean PHQ-9 depression score (M = 5.74, SD = 5.15) was higher than that of correctional officers (M = 3.96, SD = 3.86	There was a high prevalence of psychological symptoms among correctional workers. In all but the burnout and posttraumatic stress domains, health care workers, on average, had higher scores on these measures than correctional officers. Thus, correctional healthcare workers appear to have a particularly high risk of developing psychological distress during COVID-19
Exposure to Traumatic Events and the Experience of Burnout, Compassion Fatigue and Compassion Satisfaction among Prison Mental Health Staff: Bell et al. [29]	**An Exploratory Survey**	In this exploratory study, 36 mental health professionals and correctional officers were recruited from a prison in England and completed a series of questionnaires on their demographic and professional characteristics. The exposure to traumatic events, support from managers and colleagues, and levels of burnout, compassion fatigue, and compassion satisfaction.	Staff had high exposure to traumatic events, and the level of support provided by managers and colleagues was mixed. Most staff were not at high risk of burnout, compassion fatigue, and reduced compassion satisfaction but higher levels of burnout, compassion fatigue, and reduced compassion satisfaction	These findings should be interpreted cautiously based on the small sample size and limited power in larger surveys of staff working in prison mental health settings are needed to confirm these results across a wider number of sites. This study highlights the need for providers to consider staff's exposure to traumatic events and to promote supportive working environments.
Workplace burnout and health issues among Colombians correctional officers [30]	This study aimed to characterize the burnout profile of correctional officers and to associate their burnout profile with health issues and lifestyle factor**s.**	The full sample comprised 219 Colombian correctional officers with a mean age of 30.18 years. A questionnaire composed of three sections was employed: Demographic data, Burnout, Health information	A high proportion of participants reported burnout indicators, which also significantly correlated to their health indicators, and lifestyle factors. Cluster analyses were used to characterize the burnout/age (model A) and burnout/age/psychological disturbance profiles of correctional officers. Furthermore, significant differences were found when comparing frequencies of alcohol consumption and physical exercise (lifestyle indicators) and perceived social support of officers depending on their profile.	This study highlighted the negative impact of burnout on health and on the importance of strengthening occupational programs aimed at reducing the impact of hazardous working conditions that contribute to the development of burnout.

Title and authors	Objectives	Methods	Outcome Measures	Conclusion
COVID-19's Impact on Black, Female Correctional Officers (CO) and Justice-involved individuals at Rikers Island Jail Martin-Howard [31]	This study focuses on understanding Rikers Island CO perceptions and interactions with justice-involved individuals and the challenges they encountered during the COVID-19 pandemic. **(1) Prior to the COVID-19 pandemic, what physical and mental health resources did the Department of Correction provides for correctional officers and justice-involved individuals. (2) What are the challenges, if any, that correctional officers faced and continue to experience during the COVID-19 pandemic? (3) During the COVID-19 pandemic, what are the challenges, if any, that justice-involved individuals endure as perceived by correctional officers?**	Fifteen Black female COs participated in this study. Forty percent of the sample are between 25 and 35 years old, 36 and 45 years old (53%), and only one participant is between 46 and 55 years of age. This descriptive and exploratory study was conducted through in-depth interviews to ascertain the lived experiences and perceptions of Black, female COs at one of the country's largest jails—Rikers Island. A nonprobability sampling procedure, common in qualitative studies, was applied, and snowballing techniques were utilized to select interview participants. Qualitative interviewing was utilized in this study to capture the individual's point of view and obtain rich, thick descriptions of experiences among Black female COs.	The thematic results are presented in three sections: (1) Lack of Mental Health Services for Correctional Officers, (2) COVID-19 Stressors among Correctional Officers, and (3) The Impact of COVID-19 on Physical and Mental Health among Justice-Involved Individuals. Fourteen of the 15 participants or 93% believe that justice-involved individuals get better care than COs and that differences in access to mental health services among COs and justice-involved individuals existed before the onset of COVID-19. These differences remain throughout the ongoing coronavirus pandemic. Eighty percent of the sample described feelings of stress, burnout, anxiety, and chronic health challenges that started as a result of working at Rikers Island and exacerbated during the global pandemic. Seventy-three percent of participants, or 11 COs, believed that the pandemic worsened health conditions among those detained at Rikers Island.	Using qualitative data from 15 COs at Rikers Island Jail in NYC, three main themes emerged: lack of mental health services for COs; COVID-19 stressors among COs; and the impact of COVID-19 on physical and mental health among justice-involved individuals. Through narratives, this study illustrates the differences between access to mental health services among justice-involved individuals and COs. COs believe that their needs are not being met by the DOC and provided examples of the disparities.

Title and authors	Objectives	Methods	Outcome Measures	Conclusion
The Mental well-being of prison staff in England during the COVID-19 pandemic: a cross-sectional study [32]	To examine the mental well-being of prison staff in England during a pandemic and determine the factors associated with well-being.	Design Cross-sectional study, with self-completed hardcopy and online surveys. Setting 26 prisons across England, chosen to be representative of the wider closed prison estate in England Participants All staff within the 26 prisons from 20th July 2020 and 2nd October 2020 were eligible.	Well-being was measured using the Short-version of the Warwick-Edinburgh Well-being Scale (SWEMWBS). Staff well-being was compared to that of the English population using indirectly standardized data from the Health Survey for England 2010–13 and a one-sample t-test. Multivariate linear regression modeling explored associations with mental well-being scores. 2534 individuals were included (response rate 22.2%). The mean age was 44 years, 53% were female, and 93% were white. The sample mean SWEMWBS score was 23.84, and the standardized population means the score was 23.57. The difference in means was statistically significant (95% CI 0.09 to 0.46) but not at a clinically meaningful level. The multivariate a linear regression model was adjusted for age category, sex, ethnicity, smoking status, presence of comorbidities, occupation, and HMPPS region. Higher well-being was significantly associated with older age, male sex, Black/Black British ethnicity, never having smoked, working within the health staff team, and working in certain prison regions. The overall model had a low predictive value (adjusted R2 = 0.0345).	Unexpectedly, prison staff well-being as measured by SWEMWBS was similar to that of the general population. Reasons for this are unclear but could include the reduction in violence within prisons since the start of the pandemic. Qualitative research across a diverse sample of prison settings would enrich the understanding of staff well-being within the pandemic.

Table 1.
Studies highlighting mental health issues among correctional workers.

In a recent Canadian study, self-reported mental health data from a survey on correctional workers mental health and well-being were analyzed for 491 correctional workers. Over half (57%) of respondents screened positive for mental health disorder, most commonly major depressive disorder, and over one-third of respondents (37%) screened positive for more than one disorder. Positive mental health screens for all mental health disorders were associated with statistically significantly increased odds of lifetime suicidal ideation, and positive screens for most disorders were associated with past-year suicidal ideation [28].

Table 1 summarizes some of the recent the mental health studies for healthcare workers.

2.4 Suicide

As noted above, studies in the United States have indicated that the prevalence of death by suicide among correctional workers may be double that of police officers. Death by suicide rates for correctional workers appears as high as 105 per 100,000, which is more than seven times higher than the US national rate for the general population (i.e., 14 per 100,000). Results from the United States National Occupational Mortality Surveillance database suggest correctional workers are at a significantly higher age-adjusted risk for death by suicide. This risk is an even higher risk for women correctional workers. Canadian studies have shown correctional workers' lifetime suicide ideation rate at 35.2%, planning at 20.1%, and attempts at 8.1%. Regarding past year ideation, correctional workers screened positive for ideation at a prevalence of 11%, planning with 4.8%, and 0.4% had past year attempts.

3. Well-being and mental health interventions for correctional workers

3.1 General framework of mental health support at the workplace

The widespread stress and job stressors experienced by correctional officers have catalyzed growing support for the development of mental health interventions that prevent, identify, and support the well-being of these workers. Mental health interventions in the workplace generally follow the framework laid out by LaMontagne et al. [33], consisting of three different approaches to mental health support, with each intervention typically falling under one of the three categories.

The first approach, or "thread," is to prevent mental health issues by reducing risk factors for mental health that may be present in the working environment [33]. Interventions that prevent and control job stress can be conducted on the primary level by modifying the job or work environment, on the secondary level by improving the worker's ability to withstand job stressors, and on the tertiary level by treating and supporting workers who develop mental health issues.

In the context of correctional facilities, primary-level interventions would involve reducing the stressors associated with correctional officer work, such as inmate violence, understaffing, extensive overtime, and other sources of stress [34]. Though the review encourages a comprehensive implementation of this risk-reduction approach that entails all three levels of the thread, prevalent practices direct focus on secondary intervention while neglecting primary intervention.

The second thread is to improve mental well-being by developing a positive work environment and focusing on worker strengths [33]. Rooted in positive psychology,

this approach cultivates a supportive work environment by identifying and enhancing the strengths of workers rather than focusing on what has been done "wrong." A positive workplace focuses on future aspirations and oversees that work is meaningful. Positive-focused strategies are newer and thus less common but result in a greater presence of positive feelings, engagement with work, and psychological capital.

The third thread is to treat mental health issues that arise among workers. Workplaces have accomplished this by promoting mental health literacy, which teaches employees to recognize mental illnesses and seek help. Several OECD (Organization for Economic Cooperation and Development) countries have implemented the program Mental Health First Aid (MHFA), which aims to reduce stigma and increase understanding of common mental disorders, their causes and identification, and their treatments [33].

The review discusses the necessity of integrating these three threads into a comprehensive workplace mental health literacy approach. In this integrated approach, workplaces would increase knowledge surrounding mental illness prevention and treatment, consider the positive and negative effects of work conditions on mental health, and address mental health issues that arise in workers.

While this piece presents an optimal approach to workplace mental health support, current interventions tend to fall under one of the three threads rather than being an integrated practice. The National Institute of Justice (NIJ) conducted seven case studies that illustrate different mental health interventions employed in correctional facilities [34]. The Rhode Island Department of Corrections Stress Unit consisted of professional evaluations and counseling services, as well as a trained group of peer supporters who help officers experiencing chronic stress and check in with officers after critical incidents. Illness-focused approaches such as this follow the third thread by centering around the treatment of mental health issues after they arise. Similarly, The Counseling Team in Southern California provided individual counseling and debriefing after critical incidents. Providing counseling appointments for those who develop mental health issues is an intervention that focuses on the individual rather than the workplace [33]. If counseling services are not supplemented with a reduction of work-related risk factors or the development of a positive workplace, then the services provided by the facility fall solely under the third approach outlined by LaMontagne et al. Post-incident support for officers partially adheres to the first and third threads, as counselors aim to improve the officer's ability to cope with the job-related incident, but the intervention only supports officers after they have been negatively affected by a stressful incident rather than preparing them to withstand stressors beforehand.

The seven case studies analyzed by the NIJ report consisted of professional counseling or referral to clinicians and critical incident debriefing [34]. Thus, these interventions can be categorized under the third thread, given that they address mental health issues that develop, and partially under the first thread by supporting officers after incidents in an effort to help them withstand the stressors associated with correctional work. The stress programs varied in whether they are offered within the correctional agency or by an outside private service provider [34], but ultimately, they followed the same general framework of mental illness treatment, while lacking the primary level of the first thread—reducing work-related mental health risk factors—and the second thread—developing the positive aspects of work and worker strengths [33].

A review and meta-analysis of mental health programs offered to correctional workers studied nine additional interventions that consisted of crisis interventions, psychoeducational programs, and an exercise program [35]. The studies that

delivered crisis intervention stress debriefings either offered individual, family, or group interventions or a mixture of the three. Similar to the interventions analyzed by the NIJ Report, they focused on providing therapeutic services for PTSD symptoms and developing coping mechanisms post-incident. Different intervention types explored in this study include group psychoeducation programs and a non-traditional on-site exercise program. The psychoeducation approach focused on stress management and reduction and assisted officers with implementing the training. This strategy aligns with the secondary level of the first thread because of the risk-reduction practices that sought to increase worker ability to withstand job stressors. The on-site exercise program, which departed from typical well-being interventions, aimed to improve work-related attitudes and overall emotional wellness. This intervention relates to the second thread because it develops a more positive work environment, and it connects to the secondary level of the first thread because it prevents harm by improving individual attitudes [33].

As noted previously, mental health interventions in the workplace generally center around the second level of the first thread, prevention by improving worker ability to withstand stressors, and the third thread, addressing existing mental health problems. Strategies that concentrate on modifying the work environment to reduce stressors, developing positive aspects of work, and focusing on worker strengths are not as commonplace or well-developed [33]. This trend was reflected in the prevalent treatments analyzed, as the well-being interventions explored in these evaluations mostly consist of crisis interventions and psychoeducation programs.

4. Evaluation of mental health interventions

The aforementioned meta-analysis assessed the effects of nine different interventions on the stress and psychopathology of correctional officers [36]. Studies 1, 2, and 6 delivered support in the form of group psychoeducation programs. Study 3 also offered group-format stress management training but lacked details on program length, frequency, and content. Study 7 delivered a group-format stress reduction training and assistance with implementation of the training. Studies 4, 5, and 8 offered crisis intervention stress debriefing. Study 9 consisted of a 46-day on-site exercise program meant to improve mood and attitude.

The review conducted two separate meta-analyses to evaluate the effectiveness of these treatments. The first meta-analysis assessed measures of stress outcomes, while the second meta-analysis assessed measures of psychopathology outcomes. Studies 1, 3, 4, 5, 8, and 9 were excluded from the first meta-analysis for either not including a stress measure, or not reporting meta-analysis appropriate data, or not measuring post-intervention. Studies 3, 4, 6 were excluded from the second analysis for not providing meta-analysis appropriate data for psychopathology assessment, and Study 9 was excluded for not measuring any dimension of psychopathology.

From the results of the meta-analysis, the interventions were found to have no effect on stress when compared with the control group (standard mean difference [SMD] = −0.15; 95% confidence interval [CI] = [−0.50, 0.20]; p = .40) [35]. Similarly, Studies 3 and 6, which were not included in the meta-analysis, also reported no significant reductions of stress in correctional officers. The treatments were also found to have no effect on psychopathology when compared with the control group (SMD = −0.01; 95% CI = [−0.22, 0.20]; p = .92). The studies that were excluded from this meta-analysis but measured some form of psychopathology had mixed results.

Study 6 found no significant differences in anxiety, Study 4 presented a decrease in PTSD symptoms except for intrusive results for which there was an increase, and Study 3 found decreases in state and trait anxiety. However, Study 3 was characterized by poor data reporting that limited any definitive conclusions that the decrease was a result of the treatment.

The meta-analysis results demonstrate that mental health interventions do not have a significant effect on the well-being of officers in terms of stress and psychopathology. The review faced difficulty in conducting the meta-analysis due to the methodological issues associated with the individual studies of the interventions [36]. After searching through 11 databases, the nine studies previously mentioned were identified to have met the eligibility criteria for the review. Only four out of the nine studies utilized a randomized controlled trial design, which negatively affected the confidence in the findings of the research studies. The review identified several potential sources of bias in the studies, including allocation concealment, blinding, and selective reporting. Additionally, three of the nine studies lacked a comparison group, limiting the ability to determine if the outcome was a result of the treatment and not other variables.

Assessing intervention effectiveness was also made difficult by the wide variety of assessment outcomes measured by the different studies. The nine studies employed 27 different measures of officer well-being, and only two measures were used in more than one study. The lack of consistency in outcome measurements restricted the comparison of findings across studies. In order to conduct the meta-analysis, the review summarized the array of measures into six categories intended for comparison through meta-analysis. The six categories included physical health markers, measures of stress, measures of psychopathology, measures of positive markers, measures or negative markers, and attitudes toward work. The review did not find it possible to conduct a meta-analysis of the other four categories outside of stress and psychopathology due to the limited amount of meta-analysis appropriate data and incomparable measures across the studies. The variety of measures across the studies raises the questions of what constitutes a correctional officer's well-being and how such studies can be standardized to measure the same factors.

The review observed a lack of consistency in the intervention outcomes, which can be attributed to the lack of planning and comprehensiveness regarding the treatments that may have affected their success. It was noted that the interventions applied to correctional officers were drawn from interventions designed for general populations and were not customized to the prison work context. Given that correctional officers experience unique stressors, such as the confinement and dangerousness associated with the job, the non-specificity of the interventions may have contributed to their lack of effectiveness. The review also suggested that the treatments were not successful because they did not include a planning phase to take baseline measures of the needs of correctional officers. This data would have helped identify effective interventions for the prison setting.

Finally, the number of measures used to evaluate effectiveness in each study likely affected the results. The number of measures varied from two to 14, with treatments that used three or fewer measures reporting positive outcomes and treatments that used three to 14 measures reporting no effect or negative outcomes. These results could have several different explanations. According to the review, this pattern reflects the difficulty of determining an appropriate standard for measuring the well-being of correctional officers. Studies with fewer measures may not have been able to assess outcomes as thoroughly as the studies with several measures. It is also possible

that studies with several measures were longer and thus prompted participants to answer in a manner that resulted in increased or unchanged results due to priming effects and increased awareness of their emotional situation, among other factors.

Given the findings of the meta-analysis and the critiques of the intervention studies, there is an evident need for better correctional officer treatment development and more methodologically rigorous intervention research. The meta-analysis conducted with limited data concluded that the interventions had no effect on the stress and psychopathology of the officers, suggesting interventions should be more methodically constructed and implemented [35]. While some of the studies indicated significant results in well-being improvement, they were characterized by poor data reporting, lack of control, and other methodological issues that compromised their results and disallowed conclusions of causality. To improve the methodological rigor of future intervention research, the review advises that studies should utilize well-validated measures that are appropriate for the intervention, and studies should aim to lessen any bias. Baseline measures of correctional officer well-being should be taken beforehand to develop an intervention that is suited for the job context. There should also be specific definitions constructed for the well-being of correctional officers, and studies should include standard, objective outcome measures. To avoid the negative effects of poor data reporting, data should be completely and thoroughly reported.

Beyond the room for improvement in intervention research, the interventions themselves should be carefully constructed and developed while considering the specific situations and stressors affecting correctional officers in prison settings [36]. A review published in the International Journal of Environmental Research and Public Health discussed why workplace interventions may not be effective for correctional officers in Canada using two theories: the Job Demand Control Support (JDCS) Model and the Social Ecological Model (SEM) [37]. The JDCS Model consists of two hypotheses, the first being that in order to improve mental health outcomes in jobs that are low in control and high in demand, interventions should decrease job demands and increase job control. The second hypothesis is that increasing just job control and social support can improve mental health outcomes related to the job.

Research testing the success of the second hypothesis found that social support can increase psychological outcomes among correctional officers; however, social support should be provided by supervisors rather than peers [37]. Studies did not find that peer social support was successful in lessening job strain and improving well-being outcomes for correctional officers, but most social support programs for officers were found to be provided by their peers. In a survey of 134 workplace employees, 31% of the personnel agreed that running a coworker support program increased job strain and that participation in the program was negatively affected by mental health stigma. Thus, the prevalence of support programs led by peers rather than leaders displays a disconnect between successful interventions and current practices.

The review further suggests that workplace support programs have not been effective in improving correctional officer well-being because the demands of the job remain high. The Social Economical Model (SEM) emphasizes that structural factors that are beyond the individual level influence the work environment and impact mental health. Several structural factors increase job demand and may impact individual officer behavior, such as policy changes that increase the number of inmates, budget cuts to rehabilitative programming that result in more frequent exposure to violence, and reduced staffing. The SEM approach implies that prevalent interventions may not be successful because although they typically increase social support, they do not

affect job demands. This view reiterates the point made by LaMontagne et al. [33] that current interventions tend to focus on improving worker ability to withstand stressors, while the strategy of modifying the work environment to reduce stressors is not commonplace.

The meta-analysis did not find that the interventions offered improved the well-being of correctional officers in terms of stress and psychopathology [36]. The individual intervention studies did not provide definitive results on the effectiveness of the treatments due to the lack of randomization, comparison groups, and standardized measurements of mental health outcomes. The review suggested more methodologically rigorous intervention research and better development of interventions that are attuned to the needs of correctional officers. The Canadian review emphasized that prevalent practices are not deemed effective in reducing the occupational stress and adverse mental health outcomes experienced by Canadian correctional officers [37]. Examining current interventions through the lenses of the SEM and JDCS Model, the review suggests that the effectiveness of interpersonal support programs is limited due to the peer-led aspect and the lack of attention to structural factors that contribute to job strain.

5. Recent trends and future directions

The meta-analysis of nine interventions [35] and the review of Canadian interventions found that the treatments were not effective in improving well-being and lacked specificity to the occupational context of prison work [37]. In order to identify how interventions can be improved, a study collected data from Canadian correctional officers to determine their needs and establish which initiatives would improve their well-being [32]. The responses indicated four central recommendations for workplace mental health. The first recommendation was to expand mental health resources to make them accessible, consistent, and specialized for the needs of correctional officers. Respondents requested ongoing and timely support that was convenient to access. The second recommendation was for changes in work structures and schedules to increase the stability of daily life. Some officers felt that their stress was aggravated by the instability in their schedule and position, such as alternating between day and night shifts and lack of available leave time for emergencies. Another common theme in the responses was eliminating the perceived disconnect with upper management by building positive relationships and forming trusting connections with staff. Finally, respondents recommended changes to the physical work environment, which could be accomplished by creating spaces for meditation, physical exercise, and other activities that promote wellness.

In considering new interventions, Moghimi et al. [38] have detailed the potential for digital cognitive behavioral therapy programs that align with the primary recommendation of increasing the accessibility and quality of mental health services. Online therapy programs are appealing due to the accessibility of the option and the stronger preservation of anonymity. Digital interventions may decrease the stigma surrounding mental health, as greater mental health knowledge is associated with a greater willingness to seek mental health care. It is noted though that empirical research on digital interventions offered to correctional workers is necessary to determine the type of online intervention appropriate for the population.

Digital interventions are also considered flexible and cost-effective in the sense that they allow for e-CBT programs in addition to proactive interventions [38].

Evidence-based interventions such as CBT have shown effectiveness online and in-person, and these interventions suggest greater improvements in mental health outcomes for correctional officers than prevalent programs. Proactive interventions that can be widely customized in an online format can help correctional workers cope with daily stressors and mental health issues that do not necessarily fall under psychological distress. Online implementation of mental health services can provide e-CBT and proactive interventions to cater to the specific needs of each individual.

Though digital mental health interventions improve well-being by reducing PTSD symptoms and developing coping abilities, online interventions for public safety personnel have shown low engagement and un-sustained use [38]. However, the review suggests that digital interventions can increase user engagement by tailoring the programs to the specific needs and experiences of correctional workers. Online programs can be personalized by employing correctional work-specific examples and case studies that officers can relate to.

Digital interventions offer a unique format of treatment given their personalization and adaptability [38]. Future research on how correctional workers feel about online therapy programs could inform the development of such interventions. The review notes that online interventions alone are not sufficient to improve the well-being of correctional officers. As mentioned by LaMontagne et al. [33], an integrated approach to workplace intervention reduces work-related risk factors for mental health problems on an individual and organizational level, promotes the positive capacities of workers, and appropriately treats mental health problems. Considering the perspectives of correctional staff, conducting conclusive intervention research, and developing integrated treatments that are attuned to the needs of correctional officers can foster improved well-being outcomes among workers.

6. Conclusions and recommendations

The correctional staff shows a high rate of stress, burnout, and mental health symptoms. Dealing with mental health struggles can be isolating and challenging for the correctional staff due to stigma, shame, lack of awareness, and limited resources. Open dialogue with supervisors of the prison systems should be encouraged, along with linking correctional officers to appropriate mental health resources, and counseling services depending upon need assessment.

Digital delivery of trauma therapies for correctional officers and staff is a critical area for further research. Limited data are available about the application and effectiveness of digital therapy among people employed in correctional settings. Although promising evidence exists regarding the effectiveness of digital health within other populations (Civilians, Veterans), many questions remain unanswered, and a cautious approach to more widespread implementation and reassessment is warranted. Policies and procedures in correctional settings must be examined to improve support services for staff. Raising public awareness and addressing the needs of this important demographic require political advocacy and changes in public policy to address this pressing public health crisis.

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Chapter 8

"This Place Is Going to Burn": Measuring Prison Climate in Three Facilities

Edward L.W. Green, L. Susan Williams and William A. Chernoff

Abstract

Despite the common adage that prison facilities often carry a unique mark of the "warden's world," few studies have compared characteristics among individual facilities over time. This study utilizes two waves of prison surveys (N = 525) that produce markers of perceived prison climate at the facility level; contributions fill three voids in correctional literature: facility-level comparison of prison climate; interactions of institutional characteristics; and predictors of change over time. Research is conducted within three facilities in one U.S. Midwest state, utilizing social climate instruments (primarily EssenCES) established internationally. Three main findings result: First, facilities-as-place share commonalities but also exert distinguishable and independent effects on perceived livability. Second, the study confirms several metrics that exert influence on livability, including staff support, inmate support, and inmate threat. Third, statistical models capture climate change over time and identify significant predictors, including measures of support, threat, and "assurance" (sense of belonging and purpose). Four regression models consistently capture meaningful change during a particularly volatile state-wide environment, with each facility responding somewhat differently. The authors suggest that measures of prison climate over time may indicate a conceptual tensile strength, or potential breaking point, in institutional stability.

Keywords: prison climate, corrections, inmate threat, rehabilitative environment

1. Introduction

On August 8, 2017, a Kansas correctional officer scribbled on the back of his survey, "This place is going to burn." A few weeks later, on September 6, 2017, the *Kansas City Star* released a report entitled, "Inside Kansas prison riot where inmates 'tried to burn the place down'" [1]. The officer's odd prediction had been borne out. Continuing, the *Kansas City Star* wrote that "correctional officers compared the Kansas prison to 'a Third World country'" (para. 1). The institutional or prison climate seemed to be *felt* by staff while prisoners reported business as usual. This chapter

presents a case study that measures prison climate at two points in time, assessing whether such anecdotal observations can be captured by survey data collection.

Prison climate has been defined as "the social, emotional, organizational, and physical characteristics of a correctional institution as perceived by inmates and staff" ([2], p. 447). In a recent publication on prison climate, Auty and Liebling [3] analyzed 24,508 surveys of inmates in the United Kingdom, conducted between 2009 and 2013. The authors concluded that positive prison climate (defined as moral quality of life while incarcerated) supports better outcomes for prisoners on release including lower rates of reoffending. These findings are significant with far-reaching implications for prison policy and programming. However, as the authors warn, "One of the limitations of existing prison effects research is the failure to adequately distinguish between prisons" (2020, p. 358).

The current study offers insight into the void that Auty and Liebling [3] identify. Using surveys of inmates and prison staff (n = 525), the data measure perceptions of prison climate among three facilities in the United States, all in close proximity within one midwestern state, Kansas. The research took place over a 20-month period, coinciding with a terse period in which the state was undergoing fiscal and political revisions. The initial data collection [4] established that certain social climate distinctions exist among the three facilities. The current analysis adds the second data collection point and identifies observable change over time, coinciding with environmental unrest in the state.

Employing the EssenCES social climate scale to assess two points of data collection, this chapter supports three primary objectives: (a) to reinforce reliability of an EssenCES social climate scale; (b) to assess distinguishing facility-level characteristics of prison climate; and (c) to analyze possible climate change within the three facilities, all during a particularly volatile political-economic environment. The assessment instrument focuses on inmate and staff perceptions of support, livability, and threat, factors known for measuring a rehabilitative atmosphere. The chapter closes by discussing a possible conceptual threshold to institutional function or what we refer to as the tensile strength of a social institution. While an acute tensile strength is beyond the empirical support of this research, the concept suggests theoretical consideration of diminished function of a prison facility.

2. Climate studies

Casey et al. [5] state, "[6] seminal study of U.K. prison environments revealed that staff and prisoners alike place particular value on things such as fairness, order and decency" (2015, p. 258). Historically, qualitative work has described the pains of imprisonment and what emotions are experienced in an (in)secure institution. The qualitative approach has led modern climate studies [7]. Over the past two decades, quality of life and climate studies have focused on the pains of imprisonment and understanding the rehabilitative impact of longer sentences [8, 9]. Internationally, climate studies measure indicators of perceived support and threat in prisons with implications for rehabilitation and reoffending.

While qualitative studies have identified conceptual shortcomings in prison administration, legislation efforts demand empirically replicable metrics of institutional functions. Wright's [10] work developed around the prison environment inventory, which focused on safety, structure, and privacy. To a lesser degree, his research found that support, social stimulation, and freedom were important

predictors of internal environment, subsequently building a list of items that could be identified and measured as "climate."

While perceptions of social climate can be complex, specification is necessary for full analysis. As Wright [10] asserts, a "conceptualization that specifies a few interrelated dimensions that accurately predict some behaviors within the organization [is] particularly desirable." Underscoring such application, Toch's [11] *Living in Prison: The ecology of survival* found that privacy, activity, safety, emotional feedback, support, structure, and freedom are all major elements of prison adaptation, which, in turn, is vital to managing prison populations. However, it is important to note that during the 1980s, the administrative approach to managing prisons in the United States took a punitive turn toward what Christie has identified as crime-as-industry [12].

Subsequently, Haney and Zimbardo [13] have argued that the lack of contemporary prison research has created an "ethical and intellectual void that has undermined both the quality and legitimacy of correctional practices" in the United States (p. 721). Certainly, some research exists. For example, the U.S. Federal Bureau of Prisons has administered The Prison Social Climate Survey (PSCS) to field staff since 1988; prisoners, however, do not participate. Nevertheless, research on U.S. prisons remains limited. In a recent study, Dewey and Prohaska [14] utilize rare ethnographic-like methods, including semistructured interviews in eight different facilities. The authors argue that prison educators hold the potential for shaping prison climate while also collaborating with inmates and staff within the facilities. In sum, while the United States leads the world in incarceration rates, we lag behind our international counterparts in researching prison climate.

International studies, on the other hand, use the Measuring Quality of Prison Life (MQPL) and the Staff Quality of Life (SQL) to survey both inmates and staff [15]. Relatedly, van Ginneken et al. [16], employing the Prison Climate Questionnaire, administered a robust survey of all 28 prisons in the Netherlands. They found more positive scores in minimum security and extra-care regimes. Overall, more positive climate translates into less psychological stress, which results in better rehabilitative outcomes.

Concerning rehabilitative programming, French and Gendreau [17] conducted a meta-analysis of 68 studies, concluding that prisons providing behavioral treatment programs and those supported by professional counseling staff experienced the lowest rates of prison misconduct. Such conditions are salient for inmate rehabilitative atmosphere and staff anxieties of inmate threat. Goncalves et al. [18] found that negative perceptions of correctional climate were the strongest covariates of young prisoners' declining mental health. These findings further support Beijersbergen et al. [19] longitudinal study, which established a causal relationship between procedural justice and psychological well-being.

In a comprehensive assessment, Schalast et al. [20] employed the Essen Climate Evaluation Schema (EssenCES), which measures staff perspectives on inmate progress as well as inmate perspectives on social cohesion, support, and perceived threat. Soon after, Schalast and Goenewald [21] applied the EssenCES to German prisons, approximating previous Australian results. Following, Day et al. [22] combined questions from EssenCES, Corrections Victoria Treatment Readiness Questionnaire (CVTRQ), and Working Environment Scale (WES-10) to capture a metric of perceived willingness to change toward evolving protocols—a common issue in prison environments. As a result, Day et al. research found a negative association between staff stress and inmate scores on social climate metrics. In other words, the stress on

staff translated into negative conditions for inmates. Overall, these works suggest that social climate in a prison facility is associated with facility efficiency, and that staff support creates an environment more conducive to offender rehabilitation.

3. The current study

The Williams et al. [4] conducted a pilot study on prison climate, surveying both inmates and security staff in the three facilities described herein, establishing what was to become a baseline. Early results established commonalities but also distinct traits among the three facilities; most regarded relationships among livability, inmate threat, and perceived support, supporting the notion that significant differences in prison climate could be measured at separate facilities. Multivariate analysis established that both inmate support and staff support contributed significantly to *livability*, or what is argued to be varying degrees of a supportive and rehabilitative environment. The second wave of data collection occurred somewhat serendipitously. The research team noted the volatile environment described in area news reports, then contacted the wardens for access to conduct a second wave of data collection.

It is important to note that the research includes security staff and prisoners. Both groups share a concentrated physical institution with high-stakes formal rules, together with an unstable set of informal norms. While observing state-level structural stresses—low wages, understaffing, and changing state administrations—our aim was to measure prison social climate to reflect staff well-being coupled with inmate responses to a changing environment. During the 20-month timeframe of this study, perceived climate in two of the three facilities demonstrated a significant downward trend.

The current study adopted the survey instrument validated by Day et al. [22] with minor modifications; the EssenCES instrument provides the bulk of content (see measurement section for details). While the initial collection phase established the capability of the instrument to measure significant differences at the facility level [4], the current analysis measures change and predictors in each facility, all within a particularly disruptive political-economic environment.

4. Research sites

The study takes place in Kansas, a largely rural state in the U.S. Midwest, during a period of growing tension that produced extreme economic duress for many states [23]. Amidst a national mass incarceration trend, the incarcerated population in Kansas rose dramatically; the cost burden has grown 179% since 1985, with 43% of the state's Department of Corrections budget allocated to operation of prison facilities [24]. As the budget crisis deepened, so too did conditions within facilities, including overcrowding, wage and hiring freezes, staff shortages, and what appeared to be deteriorating relationships between staff and prisoners [25]. Demographically, Kansas ranks 41 in population density among the 50 U.S. states, averaging 35.6 persons per square mile; its population is disproportionately white (86.5%) yet the state ranks 18th in disproportionate ethnic incarceration patterns, generating a 7:1 ratio for Black/White incarceration rates [26]. Research sites include three state-run adult male correctional facilities.

Among the three facilities, Winston Correctional Facility (WCF; pseudonym) represents the first research site and is a 913-capacity adult male facility, primarily medium custody; it was built in 1986 and accommodates a 68-acre open-air campus style. WCF routinely sponsors public events such as a dinner theater through volunteers and inmate-organized groups. The facility sponsors several educational, religious, work-related, and behavior therapy programs located within the central Spiritual Life Center.

San Marcus (SMCF; pseudonym) is the second facility surveyed and represents the newest facility in the state, opening in 1991 with expansions in 1995 and 2001; the current capacity is 1955, though it regularly runs over capacity. The facility is designed to house repeat violent offenders and those assigned long-term administrative segregation. Each housing unit can be locked down individually, with a central yard as well as secure exercise pens. San Marcus also houses the state's Reception and Diagnostic Unit (RDU); RDU is not included in this study. Notably, construction of SMCF resulted from a 1988 lawsuit concerning overpopulated prison conditions.

Harlingen (HCF; pseudonym) became the third site and is the second oldest prison and second largest in the state, housing an inmate population of 1862. HCF was built in 1885, designed after the New York reformatory style, and houses four custody levels; several living pods retain the linear cell design, common in early twentieth - century design. HCF has several work programs, including a wild mustang program under Bureau of Land Management and often runs over capacity.

5. Measurement, sampling, and survey administration

Research is based primarily on the EssenCES [27, 28] survey instrument, a 17-item scale designed to measure social cohesion, which has been validated in Australia, Germany, and UK prisons [22, 29]. The current research employs a slightly revised instrument, adding items measuring work satisfaction and readiness to change, for a total of 23 items. Survey items consist of short statements accompanied by a five-point Likert-type scale (see **Appendix A**).

The dependent variable (*livability*) is represented by the composite sum of two items on the survey (v.1 "livable atmosphere" and v.17 "comfortable in facility"). Independent variables include instrumental measures such as experience, age, and time in facility, demographics (age, race/ethnicity), as well as composite measures of perceptions of support and threat by inmates and staff. These researchers constructed an additional variable ("assurance"), comprising two questions addressing community perception ("sense of belonging") and clear goals ("sense of purpose"); these concepts emerged from an earlier qualitative study [30]. Surveys were administered to samples of staff and inmates, conducted in separate rooms for each group, typically up to six participants simultaneously; each room offered space for privacy among respondents. Consent forms were included and signed by all participants in accord with the Institutional Review Board's recommendation. Further these consent forms were stored under lock and key and quickly entered into data sheets, then stored separately from the data key with respondent's facility of participation, thereby maintaining confidentiality throughout the data collection process. Materials consisted of paper copies with writing tools provided; average time for survey completion was around 20 minutes per survey. In a few cases in which the participant was unable to read, researchers read the questions to the prisoner.

Stratified random sampling was utilized throughout the study. Complete lists of inmates and staff were stratified by living units and shift teams. Each cluster was then randomized for participant selection. A total of 637 participants were selected; 24 refused to participate, primarily because of access (e.g., language) or general disgruntlement, yielding a response rate of 95.43%. The high response rate, while remarkable, can be accounted for by a number of factors. First, the researchers had established a significant history of rapport with administrators involved, constructing the sampling frame which accounted for (a) inmates who were given advance notice, (b) staff who were assigned to the available shift, and (c) full support of the warden in each facility. While researchers stressed the voluntary nature of participation, we also acknowledge implicit encouragement of wardens for staff participation. Finally, researchers sensed that some respondents, both staff and prisoners, found the survey to represent a way to voice significant and ongoing concerns.

Below are the numbers and dates of each wave, each facility. Note that the number surveyed in Wave 2 (262) was significantly lower than Wave 1 (351) due to staff shortages during a particularly volatile time in two facilities; accordingly, researchers were asked to reduce the sampling frame. A total of 613 respondents participated in the study; due to missing values, a total of 525 cases were analyzed. Each facility was surveyed twice during a 20-month period. Date and times were dictated largely by wardens in each facility, as follows:

Wave 1: San Marcus 12/15/2015
Winston 12/16/2015
Harlingen 6/21/2016
Wave 2: San Marcus 10/19–20/2017
Winston 10/19/2017
Harlingen 8/8–10/2017

6. Survey data and analysis

Table 1 below summarizes numbers and demographics of respondents.

To highlight, racial makeup of the inmate sample is 42.5% White, 43.3% Black, and 14.2% other; staff sample is 90.9% White and 72.5% male. Mean age for inmates is 36.6 and for staff 40.8. Average time incarcerated ranged from 7.41 in Wave 1 to 9.26 years in Wave 2. Median age of staff decreased slightly from 41 to 40.6, and average months employed decreased from 9.26 to 8.89 years.

Using statistical software SPSS, descriptive statistics are employed in the analysis, followed by a series of multiple regression models testing for the effect of the dependent variable *livability* on sets of independent variables. Four multivariate regression analyses were conducted to further assess the effects of time and place on perceptions of environmental livability and associated independent variables.

7. Findings

Figure 1 visually encapsulates how perceptions of environment livability differed, on average, among survey participants by facility location and time. The mean environment livability rating (y-axis) for Winston (red) appeared to increase slightly from Wave 1 to Wave 2 (by .16), indicating that overall prison climate measured slightly more positively at Wave 2. In stark contrast, average climate ratings for

		Inmates		
Facility	**WCF**	**SMCF**	**HCF**	**Total**
# of Respondents				
Wave 1	54	49	67	170
Wave 2	41	55	50	146
Race				
Wave (1 + 2)	38.9% White 42.1% Black 18.9% Other	58.7% White 28.8% Black 12.5% Other	45.3% White 37.6% Black 17.1% Other	47.8% White 36.1% Black 16.1% Other
Age (Mean)				
Wave 1	34.5 (SD = 10.2)	40.0 (SD = 12.3)	35.5 (SD = 11.6)	36.5 (SD = 11.5)
Wave 2	33.0 (SD = 10.7)	40.7 (SD = 11.6)	35.4 (SD = 11.7)	36.7 (SD = 11.8)
Months Incarcerated (Mean)				
Wave 1	47.5 (SD = 46.4)	121.3 (SD = 128.1)	89.9 (SD = 115.3)	85.5 (SD = 106.6)
Wave 2	69.2 (SD = 75.6)	149.6 (SD = 112.1)	94.2 (SD = 112.9)	108.0 (SD = 108.2)
		Staff		
Facility	**WCF**	**SMCF**	**HCF**	**Total**
# of Respondents				
Wave 1	28	45	57	130
Wave 2	33	15	31	79*
Gender (M/F)				
Wave 1	85.7%/14.3%	62.2%/37.8%	73.7%/26.3%	72.3%/27.7%
Wave 2	75.8%/24.2%	60.0%/40.0%*	77.4%/22.6%	73.4%/26.6%
Race				
Wave (1 + 2)	88.5% White 1.6% Black 9.8% Other	88.3% White 3.3% Black 8.3% Other	90.9% White 2.3% Black 6.8% Other	89.5% White 2.4% Black 8.1% Other
Age (Mean)				
Wave 1	43.3 (SD = 15.5)	36.9 (SD = 13.6)	42.8 (SD = 13.5)	40.9 (SD = 14.2)
Wave 2	45.7 (SD = 14.4)	36.6 (SD = 11.0)	37.7 (SD = 12.9)	40.8 (SD = 13.7)
Months Employed (Mean)				
Wave 1	80.4 (SD = 98.2)	95.8 (SD = 110.1)	142.7 (SD = 120.0)	113.1 (SD = 114.6)
Wave 2	128.2 (SD = 115.5)	88.6 (SD = 78.7)	100.8 (SD = 119.6)	109.9 (SD = 111.2)

*Note. *Staff response on Wave 2 was due to lack of staff availability.*

Table 1.
Demographics of inmate and staff sample by Wave 1 and Wave 2 (N = 525).

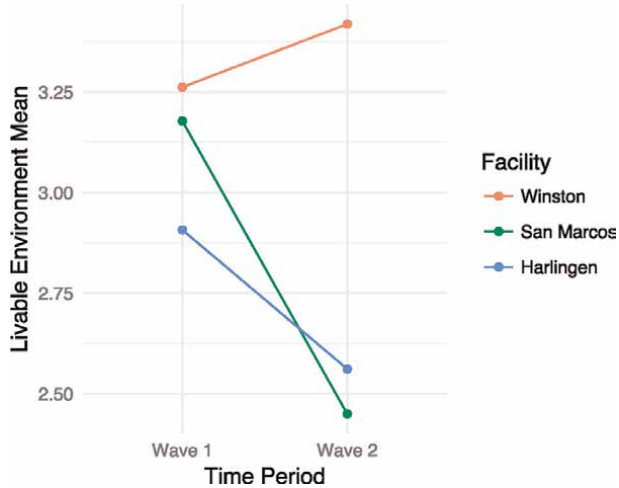

Figure 1.
Estimated marginal mean contrasts of rehabilitative environment within facility between time periods (N = 525).

livability at San Marcus (green) and Harlingen (blue) appeared to drop precipitously from Wave 1 to Wave 2, decreasing by .73 and .35, respectively. After adjusting for multiplicity (Sidak method), contrasts of estimated marginal means demonstrate significant decline in prison climate over time for San Marcus and Harlingen (see **Appendix B**).

Four separate multivariate regression analyses were conducted to further assess the effects of time and place on perceptions of environmental livability (see **Table 2**). The first regression (Model 1) tests for differences among individual facilities; Model 2 examines independent effects of average staff versus inmate perceptions of livability; Model 3 explores effects of staff support, inmate support, inmate threat, and assurance (belonging, purpose) on livability; and the final regression (Model 4) includes the full set of variables including demographics. Together, the first two models address the effects of time, place, and inmate-staff status on reported measures of facility livability, while the second two examine effects observed after accounting for perceptions of place (such as levels of support, threat) and self (e.g., sense of belonging, purpose). The full set of regressions support earlier findings of Wave 1 [4], adding the dimension of time.

Beginning with Model 1 (see **Table 2** column 2), the analysis shows results from regressing the dependent variable "livable environment" (hereafter referred to as *livability*), on facility location (Winston is the comparison facility), time period, and interaction effects between time and place (see **Table 2**, Model 1). The omnibus F-test shows that one or more of these variables had a non-negligible effect (alpha = .05) on perceptions of *livability*. The adjusted R-squared (see bottom of column 1) shows that 13.9% of the variation in *livablity* was accounted for by the time/place interaction effect. Consistent with **Figure 1**, t-tests show there was sufficient evidence (alpha = .05) of a joint effect between time and place on *livability.* SMCF and HCF demonstrate significant declines in *livability* in Wave 2 (posttest) (See **Appendix B** for added analysis of marginal mean contrasts).

Model 2 in **Table 2** (see column 3) extends results of regressing livability on the interaction of facility location by time period and introduces a main effect for inmate-

	Environment			
Independent Variables	**Model 1 (N = 525)**	**Model 2 (N = 525)**	**Model 3 (N = 525)**	**Model 4 (N = 525)**
SMCF (ref WCF)	−0.084 (0.122)	−0.180 (0.112)	−0.016 (0.095)	−0.045 (0.097)
HCF (ref WCF)	−0.355*** (0.115)	−0.438*** (0.105)	−0.271*** (0.089)	−0.0288*** (0.091)
Post (ref Pre)	0.157 (0.130)	0.084 (0.118)	0.094 (0.099)	0.092 (0.100)
Staff (ref Inmate)		0.699*** (0.067)	0.0205*** (0.078)	0.145* (0.085)
Staff Support			0.361*** (0.045)	0.345*** (0.046)
Inmate Support			0.0160*** (0.047)	0.170*** (0.047)
Inmate Threat			−0.090*** (0.034)	−0.093*** (0.035)
Assurance (square root)			0.542*** (0.112)	0.543*** (0.112)
Race/Ethnicity (ref White)				−0.150** (0.064)
Male (ref Female)				−0.019 (0.096)
Age (logged)				0.106 (0.099)
Months (logged)				−0.006 (0.026)
SMCF Pre (ref Post)	−0.885*** (0.182)	−0.627*** (0.168)	−0.572*** (0.142)	−0.558*** (0.142)
HCF Pre (ref Post)	−0.502*** (0.174)	−0.375** (0.159)	−0.238* (0.134)	−0.214 (0.135)
Constant	3.262*** (0.089)	3.024*** (0.084)	1.152*** (0.222)	0.924*** (0.390)
Model Adjusted R^2	0.139	0.288	0.499	0.502

*Note. ***p < .001; **p < .01; *p < .05.*

Table 2.
Results of OLS regressions, dependent variable rehabilitative environment regressed on independent variables (N = 525).

staff status (inmate status is the omitted category). The omnibus F-test shows sufficient evidence that one or more of the variables considered had an effect on livable environment. That is, staff reported a significantly higher average score on livability as compared with inmates. Further, SMCF and HCF each posted significantly lower scores in Wave 2 (posttest) than in Wave 1 (pre-test). Net inmate-staff status, sufficient evidence was again observed (alpha = .05) of a joint effect between facility location and time period on livable environment. Comparing the fit of Model 2 to

Model 1, the ANOVA F-test shows a significant reduction in the residual sum of squares. After controlling for inmate-staff status, the adjusted R-squared more than doubled, rising from 13.9% to 28.8%, which shows an overall decrease in livability (3.262–3.024).

To further assess stability of these findings, perceptions of staff support, inmate support, inmate threat, and assurance were introduced into the model (**Table 2**, Model 3). Consistent with previous models, the omnibus F-test shows sufficient evidence ($p < .05$) that one or more of the variables considered explained perceptions of environment livability. Staff support, inmate support, and assurance (belonging, purpose) significantly increased livability scores in this model, while inmate threat is significant in a negative direction. That is, greater support and assurance corresponded with higher perceptions of environment livability, while threat exerted a downward effect on livability. Notably, with the addition of these social environment measures, the F-test comparing Model 3 with Model 2 shows significant gains in model fit. The adjusted R-squared shows that 49.9% of the variation in environment livability is explained with the introduction of the added social variables.

Even after controlling for relevant variables, sufficient evidence was observed of a joint effect between facility location and time period. Contrasts adjusting for the false positive rate (**Appendix B**) show there was a statistically significant difference for San Marcus regarding average environment livability between the first and second time periods. The direction of the effect observed suggests that perception of environment livability at San Marcus was lower, on average, at Wave 2 than at Wave 1, after controls. That is, the decrease in livability within HCF, which approaches significance ($p < .10$), was largely explained by the addition of perceptions of place factors in Model 3.

Finally, effects of the study variables were assessed by introducing the demographic variables race (white is the omitted binary category), gender, age, and months of correctional involvement (**Table 2**, Model 4). The omnibus F-test for the full model, consisting of the time by place interaction, perceptions of self and place, as well as demographic variables, shows sufficient evidence that not all effects were equal to zero. Relevant variables continue to hold explanatory power in Model 4, although the decrease over time at HCF continued to fail to demonstrate significance, net controls.

A statistically significant (alpha = 0.05) effect was again observed for facility and time period on environment livability, net of the full set of controls, and demographic variables. Adjusting for multiplicity, a statistically significant difference in average perception of environment livability was observed between Wave 1 and Wave 2 at San Marcus, all else held constant. The direction of the effect again supports the claim that perception of livability at San Marcus (net relevant control variables) decreased significantly at Wave 2; a portion of the decrease remains unexplained by these models.

Notably, racial/ethnic status posted a significant and negative effect on the dependent variable, net other variables, suggesting that, as a body, racial minorities hold lower perceptions of livability than whites.

An improvement (alpha = .05) in the residual sum of squares was also observed, favoring Model 4 over Model 3. However, the adjusted R-squared showed only a small improvement. The independent variables in Model 4 accounted for 50.2% of the variation in average environment livability, compared with 49.9%, as shown in Model 3.

The findings presented suggest it is possible that respondents at Winston maintained a consistent perception of livability between the first and second survey

waves. Harlingen experienced a decline in livability, and it was explained by accounting for the perception of place variables in Model 4. For San Marcus, however, perception of environment livability decreased substantially and could not be fully explained by the models; these findings underscore clear distinctions among individual facilities. Further, staff support, inmate support, inmate threat, assurance, and race/ethnicity were observed to affect perception of environmental livability in the expected directions.

8. Discussion

The overarching goal of the current study was to provide replicable measures of prison social climate at the facility level over time, amidst notable episodes of disturbance. Employing a revised instrument utilized by a host of studies in at least four other countries and validated in an earlier pilot study in the United States [4], we were able to administer a measure of prison climate as reported by inmates and staff at two points in time. While we consider this research a modest case study, results provide evidence that prison climate measures can reflect significant change in perceptions of livability. Observable change occurred as threat exerted a negative effect on livability, including increased staff stress.

Several noteworthy incidents occurred during the period of data collection that likely affects prison climate. As the state continued in a state of fiscal crisis, budget cuts affected day-to-day operations of state prisons, including non-replacement of security staff departures. Further, the oldest prison in the state was vacated for renovation, and inmate movement escalated dramatically. A number of disorderly events—some described as riots—occurred in state facilities, including within San Marcus, approximately 12 months following the Wave 1 data collection. Problems cited by news media included extended use of lockdown, double bunking of inmates, large numbers of inmate movement between facilities, and reported curtailment of recreational time [31].

As facilities experienced budget cuts, staff shortages, and constant movement and overcrowding, makeshift tactics surfaced; some were predicted, as in the previous statement, "This place is going to burn." In July of 2018, inmates organized a riot at San Marcus, causing a fire and resulting standoff, with damages estimated at $177,000 [32]. Another concern was described as "the brown flu," referring to correctional staff (who wore brown uniforms) calling in "sick" as facility conditions worsened. Administrators attributed the phenomenon to a decline in mentorship between veteran and younger staff, while others described it as "contagious." This series of events prompted the Wave 2 collection.

This study has several limitations. The subjective nature of responses concerning environmental perceptions is subject to an array of conditions beyond the scope of a 23-item survey. Further, the nature of threat and support are based on many unseen or unaddressed experiences of both prisoners and correctional staff. Prison environments, as harsh or humane as they are conceptualized, built or administrated, could be measured more meaningfully if centered on the human experience through longer, individualized interviews, observation, and group study. Yet, deeply derived qualitative methods are also challenged due to issues of generalizability. Further, panel-type studies are impractical with moving prison populations, and multi-wave research is very expensive. Even with large-scale data collection, comparing cross-sectional data

captures only a thin and linear image of the complex nature of operating a prison facility.

Nonetheless, the current study documents change in perceived livability during an unstable state-level environment. Results demonstrate distinctive responses within three separate prison facilities and identify distinguishable and independent effects within each. Such findings provide rare insight into the shifting climate of prison environments. These differences are not inconsequential. Social climate matters and is measurable, including the influence of environmental stress, inmate threat, and staff anxieties on livability. Concurrently, several measures show positive influence on prison climate, including staff support, inmate support, and assurance (purpose and belonging). Importantly, these variables are shown consistently in the literature as conducive to rehabilitative efforts.

Assurance represents a concept unique to this study. Previously, Green [30] explored the idea of liminality as it pertains to prisoner identities over the course of a long prison sentence. That analysis discovered that an absence of purpose and belonging created an elongated suspension of adaptation or change in personhood and prison identity. The added questions concerning purpose and belonging constitute the measure called assurance, which is shown in the current study to be significantly associated with increased social cohesion.

Overall, results of the study capture meaningful change over time at the facility level. Regression models consistently demonstrated evidence of a joint effect between facility location and time period. Specifically, results reveal stressors that contribute to negative perceptions of livability over time. Further, the research contributes to the growing literature on general effects of prison climate, including potential predictors of environmental effects on eventual reoffending [3, 33].

Prison facilities are often described as a "world apart" for good reason; those who work and reside behind the walls are quite literally segregated from the "outside" for much of their lives. In reality, state-level actions influence day-to-day activities within facilities and vice versa. It is also true that administrative discretion within facilities prompts effects felt by those on the unit floor. Anxieties are generated among officers and inmates, each attuned to their own plight with a keen eye to effects on the other population. Each group is attuned to conflicts between administrators and staff, without a full understanding of challenges each faces. While the two groups interact physically every day, the prison as institution revokes meaningful exchanges.

At the same time, it is notable that each facility maintained some unique responses to the larger state milieu. That is, individual facilities may respond to similar structural conditions differently over time. Winston maintained a fairly consistent level of livability over the study time frame, while San Marcus and Harlingen declined significantly. Winston is a smaller facility, maintaining a population of just under 1000 prisoners and is a lower custody facility. Winston also experienced fewer prisoner transfers than did Harlingen and San Marcus. Further, Winston consistently offers more programming and employs public events such as dinners and theatrical productions. As this research team has been doing work within Winston for some time, we have consistently corroborated a different "feeling" about the facility. One such example is a centralized programming location where coordinated efforts of counselors, educators, and spiritual leaders coalesce. While these factors remain unmeasured, the current data provide hints for future exploration.

Harlingen and San Marcus data also are instructive for future research. The two facilities are similar in size, structure, population, and custody level. Yet, data presented in the final regression model (4) explain the declining climate change

between Wave 1 and Wave 2 for Harlingen, while a significant degree of change for San Marcos remains unexplained by our model. Certainly, much work remains.

9. Conclusion

Like prisons all across the United States, facilities in the current study are at or above capacity, spurred by expanding prison population growth largely due to longer prison sentences. Yet, according to previously cited meta-analysis, long prison sentences do not increase public safety [17, 34, 35]. Nevertheless, the state government in this study has sided with increased punitivity over the past three decades. One piece of legislative evidence came in August 2013, when the then-sitting governor, against congressional claims of unconstitutionality (*Alleyne v. United States*, 2013), doubled down on the "hard fifty" sentences for first-time offenders with aggravating circumstances [36]. Ignoring Federal level designations of unconstitutional sentencing practices at the state level, this case study represents a clear example of cultural punitivity and a move toward increasingly punitive reforms coupled with decreasing correctional budgets.

Since collecting these data (between years 2015 and 2017) much has continued to challenge this Midwest Department of Corrections. Staffing concerns are persistent but also the COVID-19 pandemic has further interrupted operations. Yet falling recidivism (17% decline over the past two and a half years) has stemmed some staffing issues. Tidd [37] reported that Kansas Department of Corrections spokesperson, Carol Pitts stated that staffing, "continues to be a challenge in this competitive job market" (para. 2). Tidd also reported, however, that extensive lockdown has been employed, which resulted in prisoners receiving less programming time over the past 3 years. An incident was reported on April 14, 2020 in Winston, which maintained a fairly consistent liveability between our samples, wherein some 125–250 men were involved in a brief incident [38]. Fortunately no staff or prisoners were injured and minimal property damage was reported.

At the facility level, an official Department of Corrections report published on July, 72, 022, (Kansas Department of Corrections, Population Report, 2022) [39] noted that there has been a total of 23 deaths state-wide due to COVID-19 [40]. San Marcus has reported cumulative 419 staff and 1234 prisoner cases of COVID-19 and, as of June 28, 2022, is holding 1832 prisoners. Harlingen has reported cumulative 178 staff and 651 prisoners that have had COVID-19 and, as of June 28, 2022, is holding 1788 prisoners. Winston has reported a cumulative 178 staff and 651 prisoners that have had COVID-19 and, as of June 28, 2022, is holding 899 prisoners. All three facilities have less (SMCF 123; HCF 74; WCF 14, respectively) prisoners now than when we surveyed each facility.

As illustrated in this chapter, measurable predictors revealed in this study are associated with a decline in livability for prisoners and increase in anxiety for staff, thereby taxing the institutional functionality of a rehabilitative facility. Punitivity and austerity measures seem to work in opposite directions regarding institutional operations, one calling for more lengthy punishments and the other for less operational resources. Together, however, both are harsh and rigid for staff and prisoners. Working in tandem, the two ideologies test the *tensile strength* of social institutions. Tensile strength is a metallurgical term indicating a structural breaking point. The unforeseen opportunity of measuring climate before and after hostile events presented itself as a potential test of institutional fortitude, one which was felt by both staff and prisoners.

While the absolute meaning of tensile strength—which would have required total institutional failure as a metric—was not observed, the study does offer the concept of observing fractures in the rehabilitative environment of a correctional facility. These suggestions must be interpreted, of course, in accordance with limitations of the study.

It is the position of these authors that critiques from outside of prisons should be coupled with independent research conducted within correctional facilities. The most experienced voices (administrators, staff, correctional educators, and prisoners) in correctional facilities are rarely included for critique or reform at the legislative level. More research is needed to understand the human consequences of current correctional practices, if for no other reason to stave off the continued expansion of the worst parts of current correctional practice and politicized punitivity. Further research needs to be conducted concerning a number of foci and populations. In no particular order, minority populations (as found in this work), female inmates, and transgender or gender-fluid populations require more focused attention regarding rehabilitative environments, assurance, and the livability of court-ordered confinement at the facility level.

Punishment as a function of the state operates through several parts of the criminal justice apparatus. Understanding requires transparency. Since the 1980s, the United States has experienced (arguably) an intellectual and operational drift from rehabilitative assessment research to increasingly punitive sentencing trends. If we, as a society, are to marshal resources to humanely contain and correct offenders, then the justice system must meet with commensurate reform. Returning to the seemingly odd prediction by a Kansas correctional officer—"This place is going to burn"—such indicators stand as a reminder that we must include those on the ground who can provide valuable insight toward supportive environments in correctional institutions. Measuring prison climate at the facility level, including both correctional staff and prisoner participation, provides one tool to that end.

It is our hope that correctional research continues the scientific task of understanding empirically the impact of how we punish and a glimpse of prison climate within a growing rift between ideologies and realities of state institutions. Ideally, case studies such as this would instigate a reconsideration of who, why, and to what extent we use prisons toward social correction.

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Appendix A

Inmate Survey** Survey ID#_____

Your participation is voluntary. This survey helps researchers at Kansas State University to better understand the environment within correctional facilities. In turn, we hope to provide other researchers and the Department of Corrections with ideas about how to improve the climate in which inmates and correctional staff both live and work. In no way will the information you provide here be attached to your name or personal identification.

Thank you very much for your feedback.

Date of Birth _____ Gender _____

Race/Ethnicity _____

	Not at all	Little	Somewhat	Quite a lot	Very much
1. This facility has a livable atmosphere.	☐	☐	☐	☐	☐
2. The inmates here care for each other.	☐	☐	☐	☐	☐
3. Really threatening situations can occur here.	☐	☐	☐	☐	☐
4. In this unit, inmates can openly talk to staff about all their problems.	☐	☐	☐	☐	☐
5. Even the weakest inmate finds support from his/her fellow inmates.	☐	☐	☐	☐	☐
6. There are some really aggressive inmates in this facility.	☐	☐	☐	☐	☐
7. Staff take a personal interest in the progress of inmates.	☐	☐	☐	☐	☐
8. Inmates care about their fellow inmates' problems.	☐	☐	☐	☐	☐
9. Some inmates are afraid of other inmates.	☐	☐	☐	☐	☐
10. Staff members take a lot of time to deal with inmates.	☐	☐	☐	☐	☐
11. When inmates have a genuine concern, they find support from their fellow inmates.	☐	☐	☐	☐	☐
12. At times, members of staff feel threatened by some of the inmates.	☐	☐	☐	☐	☐

13. Often, staff seem not to care if inmates succeed or fail in daily routine/program. ☐ ☐ ☐ ☐ ☐

14. There is good peer support among inmates. ☐ ☐ ☐ ☐ ☐

15. Some inmates are so excitable that one deals very cautiously with them. ☐ ☐ ☐ ☐ ☐

16. Staff know inmates and their personal histories very well. ☐ ☐ ☐ ☐ ☐

17. Both inmates and staff are comfortable in this facility. ☐ ☐ ☐ ☐ ☐

18. Generally, I can trust other people. ☐ ☐ ☐ ☐ ☐

19. I want to change. ☐ ☐ ☐ ☐ ☐

20. Treatment programs don't work. ☐ ☐ ☐ ☐ ☐

21. I am well organized. ☐ ☐ ☐ ☐ ☐

22. Inmates here have a sense of belonging. ☐ ☐ ☐ ☐ ☐

23. Inmates here maintain a sense of purpose. ☐ ☐ ☐ ☐ ☐

Additional comments or concerns: _____
_____
_____
_____

Thank you very much for your time.

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**In a separate process, we will ascertain the following information about inmate participants. Only the PI and associate will have access to the matching information, and it will be used only in summary fashion.
Length of sentence
Total time served
Time served at current facility

Appendix B

Controls	Contrast	Estimate	DF
None	WCF W1 v. W2	−0.157	519
		(0.130)	
	SMCF W1 v. W2	0.728***	519
		(0.128)	
	HCF W1 v. W2	0.346**	519
		(0.116)	
Inmate-Staff Status	WCF W1 v. W2	−0.837	518
		(0.118)	
	SMCF W1 v. W2	0.543***	518
		(0.118)	
	HCF W1 v. W2	0.292*	518
		(0.105)	
Inmate-Staff Status	WCF W1 v. W2	−0.094	514
Staff Support		(0.099)	
Inmate Support	SMCF W1 v. W2	0.478***	514
Inmate Threat		(0.102)	
Assurance	HCF W1 v. W2	0.144	514
		(0.090)	
Inmate-Staff Status	WCF W1 v. W2	−0.092	510
Staff Support		-(0.100)	
Inmate Support	SMCF W1 v. W2	0.466***	510
Inmate Threat		(0.102)	
Assurance	HCF W1 v. W2	0.122	510
Demographics		(0.091)	

*Note. ***p < .001; **p < .01; *p < .05.*
Note. P. value adjustment: Sidak method.
Note. Results averaged over interaction effects and control variables.

Table B1.
Estimated marginal mean contrasts of livable environment within facility between Wave 1 and Wave 2 (N = 525).

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This book provides international perspectives on corrections, correctional treatment, and penitentiary laws. Although its focus is on African and South American countries, the information provided can be easily expanded to North America and Europe. The chapters present legal frameworks and applied research on prisons and their potential to deter crime and reduce recidivism rates. The book puts the human rights agenda at the forefront and is a useful resource for those who work in corrections, including prison, education, and probation officers.

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