

2011

American Prison Culture in an International Context: An Examination of Prisons in America, The Netherlands, and Israel

Lucian E. Dervan

Belmont University - College of Law

Follow this and additional works at: <https://repository.belmont.edu/lawfaculty>



Part of the [Legal Writing and Research Commons](#)

Recommended Citation

22 Stan. L. & Pol'y Rev. 413 (2011)

This Article is brought to you for free and open access by the College of Law at Belmont Digital Repository. It has been accepted for inclusion in Law Faculty Scholarship by an authorized administrator of Belmont Digital Repository. For more information, please contact repository@belmont.edu.

AMERICAN PRISON CULTURE IN AN INTERNATIONAL CONTEXT: AN EXAMINATION OF PRISONS IN AMERICA, THE NETHERLANDS, AND ISRAEL

Lucian E. Dervan*

INTRODUCTION

In 2004, British authorities arrested Abu Hamza al-Masri, an Egyptian-born cleric sought by the United States for his involvement in instigating terrorist attacks.¹ As authorities prepared to extradite him in July 2010, the European Court of Human Rights issued a stay.² According to the court, al-Masri's claims that maximum-security prisons in the United States violate European human rights laws prohibiting torture and degrading treatment warranted further examination.³ Regardless of the eventual resolution of the al-Masri case, the European Court of Human Rights' inability to summarily dismiss these assertions demonstrates something quite troubling. At a minimum, the court's actions indicate that a perception has developed in the world that the American penal system has gone astray. But are prisons in the United States that much different from those found in other parts of the world?

In the spring and summer of 2010, I traveled to prisons in the United States, The Netherlands, and Israel to compare the way each country detains its most violent and culpable residents.⁴ The results of this research indicate something quite striking about what makes prisons around the world successful

* Assistant Professor of Law, Southern Illinois University School of Law, and 2010 Academic Fellow of the Foundation for Defense of Democracies.

1. See Lindsay Fortado, *Islamist Abu Hamza's Extradition to U.S. Is Delayed by the European Court*, BLOOMBERG (July 8, 2010), <http://www.bloomberg.com/news/2010-07-08/abu-hamza-s-extradition-to-u-s-on-terror-charges-delayed-by-europe-court.html>.

2. *Id.*

3. *Id.*

4. Special thanks to the Foundation for Defense of Democracies for providing the Academic Fellowship that allowed for my travels in Israel and to the Southern Illinois University School of Law for the summer research grant that allowed for my travels in The Netherlands. Thanks also to my research assistant Elizabeth Boratto.

and offer a sobering examination of the deficiencies present in many underfunded American institutions.⁵

This Article will begin by examining the cultures of four prison facilities: two prisons in America (one federal and one state), a prison in The Netherlands, and a prison in Israel. For each institution, this Article will offer a narrative of my observations regarding the prison's structure and security, living conditions, and programming.⁶ In particular, the examination of each prison facility will include discussion of the apparent significant impact of each prison's culture on the perceived rates of violence, the financial costs of administration, and the achievement of moral obligations regarding the treatment of prisoners. Through this analysis, this Article will first propose that prisons with cultures that create a sense of community within the inmate population benefit from lower rates of violence. Second, the Article will contend that lower rates of violence also lead to reduced costs of administration. Finally, this Article will argue that regardless of the above-described benefits it is also morally correct to create positive prison environments rather than permit prisons to become warehouses for societal outcasts.

WALKING THE LINE

Upon visiting any prison, one inevitably journeys over the cusp that separates the outside world from the self-contained community within.⁷ In some settings, such as The Netherlands, the transition from one world to the next is subtle. One is simply buzzed through an unassuming door into a waiting room with tables and chairs before proceeding out into the main prison courtyard. In other settings, including several federal and state prisons in the United States, one passes through a large intimidating metal doorway. Once safely inside the confines of the prison, an enormous steel wall slides noisily into place behind you, leaving nowhere to go but deeper into the bowels of the

5. While the examination of prisons contained in this Article provides valuable insights and information regarding four specific facilities, this Article does not attempt to engage in a detailed empirical evaluation of prisons generally. As such, the information contained herein relates only to the four prisons examined and these prisons may not be a representative sampling of all prisons in the United States, The Netherlands, and Israel. Further, the conclusions reached in this Article apply only to the four prisons examined and more research is required to determine whether these observations might be relevant to prison systems more generally.

6. It is important to note that my research did not allow access to every facet of each facility. Therefore, the information contained in these narratives is limited to my personal observations during my visit to each prison. These narratives are offered, however, to provide a glimpse inside prisons around the world.

7. See Kathleen M. Dennehy & Kelly A. Nantel, *Commission on Safety and Abuse in America's Prisons: Improving Safety: Breaking the Code of Silence*, 22 J.L. & POL. 175, 180 (2006).

facility itself. Regardless of the exact types of sounds and sensations that accompany one's transition into a prison, the noises indicate that the outside world is now a mere memory, and, instead, one has entered a new community with its own rules, customs, values, social structures, and consequences.⁸

A. The American Federal Prison System

There are 195 prison facilities operated by the Federal Bureau of Prisons; the facilities house approximately 211,000 prisoners.⁹ One such facility is located on a large wooded tract of land in a rural region of the Midwest.¹⁰ Built in the 1960s, the prison, which houses approximately 1000 inmates, is an imposing structure with several guard towers and layers of razor-wire fencing sufficient to not only stop but, in some cases, kill any prisoner attempting escape. Upon entering the facility, one walks down a long corridor connecting the administrative building from the main prison structure. At one point in this journey, a bullet hole mars a walkway window, the only remaining evidence of a sniper rifle having been fired several years before at a fleeing inmate.¹¹

Despite its initial intimidating and overbearing presence, once inside the main prison facility one finds a surprisingly organized, quiet, and clean environment. Prisoners are housed in large pods that contain several dozen three-person cells. Though small, the cells are in pristine condition, with fresh paint, comfortable mattresses, dressers, sinks, toilets, and small windows. Each unit of pods is controlled by a single guard station located near the entrance, which is run by a single officer who successfully maintain order. The cellblock

8. *See id.*:

In many ways a prison is like a small town. In this town the inmates are the citizens. And, like your town and mine, the citizens of this town must be kept safe and secure. They are provided with housing that meets public health standards. They have access to medical and mental health care that meets national standards, food that meets basic nutritional requirements, and program opportunities that facilitate their successful reentry into the free communities in which we live.

9. *See* FED. BUREAU OF PRISONS, WEEKLY POPULATION REPORT (2010), available at http://www.bop.gov/locations/weekly_report.jsp (last visited Aug. 5, 2010); *Quick Facts About the Bureau of Prisons*, FED. BUREAU PRISONS (Aug. 5, 2010, 3:24 PM), <http://www.bop.gov/about/facts.jsp#2>.

10. For reasons related to the security of each prison facility discussed herein, the name and exact location of each prison is excluded from inclusion in this Article. This information, however, remains on file with the author. It can be revealed that each of the facilities examined in this Article housed only male inmates.

11. *See* Henry v. Perry, 866 F.2d 657, 659 (3d Cir. 1989) (concluding the Eighth Amendment was not violated when deadly force was used to stop a prisoner from escaping); *see also* MODEL PENAL CODE § 3.07 (1962) (discussing proposed standard regarding when use of deadly force to stop an escaping inmate is permissible); Robert B. Harper, *Accountability of Law Enforcement Officers in the Use of Deadly Force*, 26 HOW. L.J. 119, 128-34 (1983) (discussing varying standards regarding the use of deadly force to prevent prison escapes); Padraic P. Lyndon, *Escape: A Deadly Proposition? Prisoners and Pretrial Detainees*, 21 NEW ENG. J. CRIM. & CIV. CONFINEMENT 203, 213-18 (1995) (tracing the history of the use of deadly force to prevent escapes).

I entered had approximately fifty inmates socializing around stationary metal tables and watching television in the middle of the recreation area. Though the prisoners' chatter echoed around the sterile enclosure, their conduct was by no means uncontrolled or uncontained.

A key aspect of this prison's ability to maintain a controlled system is its efforts to make the inmates feel a sense of investment in their environment. There are two methods of achieving this sense of investment that I will describe in this Article. First, inmates are free to move unaccompanied around the prison facility during designated ten-minute periods each hour. During these periods, inmates may walk from their cellblock to another approved area, such as their work assignment, the canteen, or the recreation center. As a result of this self-guided movement, as opposed to the labor-intensive officer supervised movements found in other facilities, this prison is able to save substantial costs. Further, by granting the inmates what is perceived as a significant privilege, the prison population is incentivized to ensure there are no disruptions or regulatory violations that might jeopardize the continuation of this program.¹²

During a portion of my visit, I entered the gymnasium, a well maintained and welcoming athletic facility for the inmates, particularly during the cold winter months. While standing in the bleachers discussing prison policies with the facility's officials, I heard the announcement indicating that the ten-minute period for movement was underway. Shortly thereafter, a group of excited inmates arrived and began preparations for a game of basketball. They arrived unescorted and prepared to engage in their activities under the watchful eyes of only one guard and a number of video surveillance cameras. This small freedom to move throughout the facility for recreation, study, and work appeared to create a sense of ownership and community that likely contributes to the successful administration of this facility.

Second, the prisoners at this facility are required to engage in either educational studies or work five days a week. For inmates who arrive at this federal facility without a high school diploma, participation in the GED program is required.¹³ Importantly, education does not appear to be a mere talking point. The classrooms are well stocked and inmates with the relevant educational background are charged with conducting classroom and tutorial sessions. Further, inmates who have already achieved a high school degree may

12. See Lawrence Rosenthal, *Policing and Equal Protection*, 21 YALE L. & POL'Y REV. 53, 82 (2003) (describing the manner in which a sense of investment in one's community leads to greater incentives to maintain the status quo).

13. See MILES D. HARER, PRISON EDUCATION PARTICIPATION AND RECIDIVISM: A TEST OF THE NORMALIZATION HYPOTHESIS 16 (1995), available at http://www.bop.gov/news/research_projects/published_reports/recidivism/orepredprg.pdf (noting that significant evidence demonstrates that prison education programs reduce the "prisonization" of inmates and increases the presence of pro-social norms resulting in significant budgetary savings).

continue advanced studies during the evenings.¹⁴ Just as prisoners at this facility are expected to participate in a base level of education, work is also not an option. With regard to work assignments, however, unlike other prisons in which the only available work details are mowing the lawn or cleaning the kitchens and bathrooms, this facility has invested heavily in programs that are both profitable to the prison and that provide inmates with specialized job training. As an example, one of the available prison work details involves the creation of advanced electronic cables. Far from a mundane assignment, the prisoners I observed were highly engaged in their trade and exhibited skills that would make them competitive in the technology job markets after their release.¹⁵

The creation of a positive prison environment should in itself be a sufficient justification for any penitentiary to adopt the type of strategies that have been successful at this federal prison, as it is a moral responsibility to care adequately for those within the custody of the state. There are, however, additional significant benefits that can be derived from such policies.¹⁶ First, by

14. See Beth A. Colgan, *Teaching a Prisoner to Fish: Getting Tough on Crime by Preparing Prisoners to Reenter Society*, 5 SEATTLE J. SOC. JUST. 293, 325 (2006):

Recent studies indicate that the expense [on education programs] is justified not only because of the significant reductions in recidivism and corresponding increases in public safety, but also due to the economic benefit per dollar spent. The return on such an investment is significant. Providing adult basic education and post-secondary education programs has been found to provide a cost benefit of \$10,669 per participant. Vocational education programs produce a per participant cost benefit of \$13,738. In fact, correctional education programming has been found to be twice as cost effective as increasing prison capacity for greater incarceration. Likewise, correctional industries programs create a cost benefit of \$9,439 per participant. Work release programs have been found to create approximately \$6.16 in benefits per dollar of cost.

15. See Christopher Stafford, *Finding Work: How to Approach the Intersection of Prisoner Reentry, Employment, and Recidivism*, 13 GEO. J. POVERTY L. & POL'Y 261, 261 (2006) (describing the advantages of prison work programs for inmates upon release):

Finding and maintaining living-wage employment is an essential element of a successful reentry into society. Involvement in vocational training while incarcerated may lower recidivism by up to 20%. Employment services provided outside of prison have been shown to be even more successful; the Safer Foundation in Chicago has reported that participation in their non-profit work program has reduced recidivism by over 60%.

16. Along with governmental moral obligations regarding prison conditions, the U.S. Constitution imposes minimum standards regarding prison conditions. See U.S. CONST. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."). Oversight programs to ensure minimum humanitarian standards are met in prisons have grown in recent decades, including internationally. See Silvia Casale, *The Importance of Dialogue and Cooperation in Prison Oversight*, 30 PACE L. REV. 1490 (2010) (discussing international prison oversight programs); Nicholas de B. Katzenbach, *Reflections on 60 Years of Outside Scrutiny of Prisons and Prison Policy in the United States*, 30 PACE L. REV. 1446, 1495 (2010) (discussing the importance of prison oversight):

I recall being told by one prison director that the CPT delegation was quite mistaken when we pointed out that the living areas in the prison were not adequately heated. Having observed staff wearing double pullovers and prisoners huddling for warmth, while our own fingers grew stiff with cold as we worked, we invited him to see for himself. When he put on his overcoat to come with us, he rather proved our point. Moreover, our equipment for

providing accommodations, educational opportunities, and work programs which create a sense of community and instill a sense of purpose, this federal facility is able to motivate inmates to maintain order in an effort to ensure they continue to receive these privileges and benefits.¹⁷ Just as studies have demonstrated that non-prison residential neighborhoods with a strong sense of community have reduced rates of crime, a prison with an inmate population invested in its own success will be less dangerous.¹⁸ Though violence certainly occurs at this facility, as is true of any penitentiary, it is neither widespread nor out of control.

Second, lower rates of violence in a prison can have a significant fiscal impact on a prison's budget.¹⁹ Prisons with lower rates of violence and more orderly inmate populations require less staff, one of the largest expenditures faced by prison systems.²⁰ Further, institutions with lower rates of violence require less funding for medical expenditures, overtime, and sick days.²¹ From a global perspective, therefore, particularly during a time when many prison systems are severely underfunded, the humane treatment of prisoners can be both a fiscally sound and morally righteous endeavor.²²

measuring ambient temperature told its own story. Then we got down to discussing the roots of the problem and it became apparent that the allowance for fuel set by the central authorities was woefully inadequate. Later, after an urgent recommendation from the CPT, the fuel allowance was increased. The important point arising from this example is that identifying problems is not an exercise in laying blame. It is the necessary first step in the process of finding solutions and encouraging change.

17. See John Buntin, *Mississippi's Corrections Reform: How America's Reddest State – and Most Notorious Prison – Became a Model of Corrections Reform*, GOVERNING (Aug. 2010), <http://www.governing.com/mississippi-correction-reform.html> (discussing the influence certain privileges have on prisoner behavior).

18. See GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* (1998) (discussing the “broken windows” theory which linked disorder and crime prevention); see also James M. Cronin, *Juvenile Violence and the Massachusetts Transfer Statute*, 21 NEW ENG. J. CRIM. & CIV. CONFINEMENT 371, 374 (1995) (noting that crime rates during the period 1930-1950 were particularly low due to a greater “sense of community” resulting from WWII and the Great Depression); Rosenthal, *supra* note 12, at 82 (discussing the “collective efficacy” theory, which states that rates of violence in communities are highly related to indicia of collective efficacy); Whitney S. Wiedeman, *Don't Spare the Rod: A Proposed Return to Public, Corporal Punishment of Convicts*, 23 AM. J. CRIM. L. 651, 663 (1996) (noting that individuals with a stronger “sense of community” are less likely to commit crimes).

19. See Buntin, *supra* note 17 (discussing the budgetary benefits of lower rates of violence and greater cooperation by inmates).

20. See Kurt Erickson, *Overtime Cuts Key in Prison Budget Plan*, PANTAGRAPH (July 8, 2010), http://www.pantagraph.com/news/state-and-regional/illinois/article_14c3aeac-8aed-11df-abce-001cc4c03286.html.

21. *Id.* (discussing the significant impact of overtime costs on prison budgets).

22. See PEW CHARITABLE TRUSTS, *ONE IN 31: THE LONG REACH OF AMERICAN CORRECTIONS 2-3* (2009), available at http://www.pewcenteronthestates.org/uploadedFiles/SPSP_1in31_report_FINAL_WEB_3-26-09.pdf. The report notes:

With the costs of imprisonment rising and the benefits falling, our ability to keep communities safe depends more than ever upon our ability to better manage the 5 million

B. The American State Prison System

Sitting on the banks of a major U.S. waterway is a large conglomeration of buildings dating back to the late 1800s. Surrounding these deteriorating and, in some cases, condemned structures is a massive brick wall, razor-wire fencing, and several guard towers containing snipers standing at the ready to regain order in this state maximum-security prison.²³ Though the prison is considered to be at full capacity once it houses 2,000 inmates, it currently holds over 3,500.²⁴ In stark contrast to the organized, quiet, and clean environment at the federal prison described above, this state maximum-security prison demonstrates the long-term and wide-spread negative consequences of dramatic underfunding and a lack of commitment to establishing any sense of community or purpose for inmates.

Upon entering the main housing unit at this state facility, one feels an immediate sense of foreboding. Only the central wing of the building is currently inhabited, each side wing having already been condemned. In the occupied central wing, cells line the wall reminiscent of the movie *The Shawshank Redemption* and guards must manually open all doors and cells with keys and cranks.²⁵ The entire structure's lighting is dim, its floors, walls, and ceilings are damp, and its mortar is crumbling. Each cell contains two inmates lying on metal bunk beds with thin mattresses, the only light emanating from an exposed bulb that dangles from the ceiling and a small television perched in the corner. Strikingly, almost all of the inmates in this housing unit are lying on their bunks even though it is midday, but they have little choice. These dwellings are so narrow that there is no room even for the two inhabitants to walk past each other without turning to the side.²⁶ Though these

offenders on probation and parole.

The current budget crisis presents states with an important, perhaps unprecedented opportunity to do so. Rather than trying to weather the economic storm with short-term cost saving measures, policy leaders should see this as a chance to retool their sentencing and corrections systems.

23. See *Whitley v. Albers*, 475 U.S. 312, 319-20 (1986) (establishing a test regarding when the use of force in quelling a prison disturbance violates the Constitution).

24. During the writing of this Article, the reported inmate population at this facility continued to steadily grow. See Craig Haney, *The Wages of Prison Overcrowding: Harmful Psychological Consequences and Dysfunctional Correctional Reactions*, 22 WASH. U. J.L. & POL'Y 265, 271-72 (2006) ("Not surprisingly, exposure to 'long-term, intense, inescapable crowding' of the sort that now characterizes many prisons results in high levels of stress that 'can lead to physical and psychological impairment.' In addition, overcrowding has been associated with higher rates of disciplinary infractions."); Christian Misenas, *Chapter 16: Of Prison Beds and Budget Woes*, 41 MCGEORGE L. REV. 607, 607 (2010) ("In 1998, a California Court of Appeal recognized that prisons are 'seriously overcrowded' and '[t]he alleviation of overcrowding creates a more secure and stable prison environment for both inmates and staff.'"); see also *In re Rhodes*, 61 Cal. App. 4th 101, 106 (1998).

25. SHAWSHANK REDEMPTION (Castle Rock Entertainment 1994).

26. See *supra* note 24 and accompanying text; see also Craig Haney, *Counting Casualties in the War on Prisoners*, 43 U.S.F. L. REV. 87, 109 (2008) (noting that the more

inmates are usually permitted a short time out of their cells each day for activities, such as visiting the cafeteria or canteen, this particular unit is currently on twenty-four hour lockdown because one of its residents assaulted a guard.²⁷

Even when these inmates are not on lockdown, however, there is little to do other than watch television. Only a portion of the 3,500 inmates here work, while the rest are confined to their bunks most of the day.²⁸ In contrast to those working in high-tech fields at the federal prison, the prison industry at the state maximum-security prison has inmates running simplistic textile machines and package clothing and towels for shipping as the products come off the line.²⁹ With regard to education, while the prison offers a GED program, there appears to be little commitment to making it an effective and widespread undertaking.

There are three significant ramifications for the prison as a result of its policies regarding work and education. First, the prison loses a significant source of much needed revenue as a result of the vast majority of its inmates whittling away their time in their cells each day.³⁰ Second, inmates who have little to occupy their time and no investment in the institution have no incentive—other than avoiding segregation—to follow institutional regulations and avoid violence.³¹ Third, the vast majority of inmates at this institution who are

intensely stressful the prison conditions, including those conditions resulting from overcrowding, “the greater the negative psychological consequences”).

27. For a discussion of the psychological impact of being confined to one’s cell, see Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL’Y 325 (2006); Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. REV. L. & SOC. CHANGE 477 (1997).

28. See Jennifer R. Wynn & Alisa Szatrowski, *Hidden Prisons: Twenty-Three-Hour Lockdown Units in New York State Correctional Facilities*, 24 PACE L. REV. 497, 522 (2004) (discussing the warehousing of prisoners in the New York state system):

A key problem with disciplinary lockdown in New York is that inmates are basically warehoused. Whereas some states, such as Colorado, use disciplinary confinement as an opportunity for intervention, New York provides no meaningful programs in which inmates can engage, no jobs to perform or congregate activities to prepare them for increased social interaction in general population or society. Using lockdown to simply punish and warehouse inmates is shortsighted and ultimately costly, as it jeopardizes the safety of inmates and officers in the facilities to which inmates return.

See also Leena Kurki & Norval Morris, *The Purpose, Practices, and Problems of Supermax Prisons*, 28 CRIME & JUST. 385 (2001).

29. See Stafford, *supra* note 15 (discussing the work programs at the federal institution).

30. See THE FLA. LEGISLATURE’S OFFICE OF PROGRAM POLICY ANALYSIS & GOV’T ACCOUNTABILITY, GOVERNMENT PROGRAM SUMMARIES, <http://www.oppaga.state.fl.us/profiles/1037/> (last updated May 4, 2010) (discussing the revenues generated by the Florida prison systems’ work programs).

31. See Ahmed A. White, *The Concept of “Less Eligibility” and the Social Function of Prison Violence in Class Society*, 56 BUFF. L. REV. 737, 737-38 (2008) (discussing the prevalence of prison violence in many institutions):

In reality, violence thoroughly defines the prison experience. Prisoners face a substantial risk of being beaten, raped, and even killed at the hands of their fellow inmates or keepers. In a

eventually released—and many are eventually released—have acquired no skills or education with which they might compete for jobs as they attempt to reenter society.³²

Perhaps the most striking item in this large and overcrowded prison is a large rifle target that hangs in the middle of the cafeteria building.³³ So uncontrolled are the inmates at this facility, that they eat meals while an officer with a shotgun and a sniper rifle sits perched in a steel and cement bunker high on a wall. When violence breaks out—which, according to individuals who work at the facility, occurs often in the cafeteria—a warning shot is fired into this target in an attempt to quell the behavior.³⁴ If this tactic is unsuccessful, the officer high in the perch will shoot to kill.³⁵ In fact, one guard told me that he had been shot by a stray bullet fired from the bunker at an inmate who was attacking him during a meal. As a testament to the frequency of inmate violence, the target was rife with bullet marks when I examined it. Needless to say, I did not visit the cafeteria during mealtime.

Just as the cafeteria at the state maximum-security prison presented a stark contrast to the dining hall at the federal facility, the recreation areas also illustrated the distinctions between these two prison cultures. As described above, the gymnasium at the federal facility was reminiscent of a high school athletic structure. In comparison, the only athletic facility I was shown at the state maximum-security prison was a collection of several unkempt outdoor basketball courts surrounded by high fencing. Unlike the gymnasium at the federal facility, these basketball courts do not provide much of an escape from the reality that one is a resident of a harsh and unforgiving facility. Next to the courts is a large sign with a picture of a helicopter. The sign reads, “Inmates approaching helicopters will be shot.” As most inmates at this facility spend their days lying on their bunk beds, however, such an event seems unlikely.

While there are certainly various factors that contribute to the sense of chaos and disorder at this state maximum-security prison, the living conditions and lack of thoughtful education or work programs are likely a significant cause. Unlike the federal prison reviewed above, this state facility has established no sense of community amongst the inmates, has provided prisoners with little purpose other than to survive and avoid segregation, and has failed to establish any sense of investment in the institution on the part of

way that is sometimes difficult for those who are unfamiliar with prison to appreciate, prisoners inhabit a world comprehensively defined by this kind of violence. Such violence is the dominant arbiter of social status in prison. It is the means by which authority, hierarchy, and privilege are articulated among prisoners and between prisoners and their keepers. And it is, paradoxically, the most reliable protection against being the victim of violence.

32. See Stafford, *supra* note 15.

33. See *supra* note 11 (discussing the use of deadly force in prisons).

34. See *id.*

35. See *id.*

its residents.³⁶ A similar level of idleness and disengagement permeated the New York prison system prior to the deadly 1971 Attica prison riots. Officials in New York quickly realized after the riots that prisoners with little to do and few incentives to cooperate create a highly flammable and dangerous situation. According to one official, “The experience in New York in 1975 was colored by Attica. Governor Carey and subsequently Governor Cuomo wanted to assure that nothing like Attica happened in New York again. From that point on we single-celled nearly all inmates, and had nearly full employment or school assignments.”³⁷

As discussed above, just as a facility with a strong sense of community and purpose can motivate inmates to abide by rules and regulations, a prison without any such incentives will experience significant negative consequences.³⁸ In the case of this state maximum-security prison, one consequence is a higher rate of violence than might otherwise be present.³⁹ Further, higher rates of violence not only signal that a prison is failing to provide a safe and morally defensible environment for its inmates, but also lead to fiscal strains as administrators attempt to hire additional guards to merely maintain a minimal level of order.⁴⁰ The cycle then perpetuates itself as shifting

36. See *supra* Part A regarding the conditions at the federal prison. Segregation itself has significant long-term impacts on the prison population:

A number of adverse and presumably unintended long-term consequences are likely to follow from this scenario [of placing inmates in segregation]. Prison officials typically use an inmate’s disciplinary segregation status to bar him from participation in educational or vocational programming. Moreover, time spent in segregation simultaneously places prisoners at risk for developing a host of adverse psychological reactions that are associated with long-term isolation. The lack of even minimal forms of programming and exposure to potentially disabling solitary confinement jeopardizes subsequent adjustment in the mainline prison population as well as the free world.

Haney, *supra* note 26, at 116-17; see also Kerry L. Pyle, *Prison Employment: A Long-Term Solution to the Overcrowding Crisis*, 77 B.U. L. REV. 151, 157 (1997) (discussing the link between inadequate prison conditions and prison violence).

37. See Chase Riveland, *Prison Management Trends, 1975-2025*, 26 CRIME & JUST. 163, 172 (1999).

38. See *supra* note 18 (discussing the theory that a sense of community contributes significantly to the rates of violence and criminal behavior in that community, a theory that is as applicable to an urban or suburban neighborhood as a prison cell block); see also Haney, *supra* note 26, at 110 (“[I]t is widely understood that crowding can significantly worsen the quality of institutional life and increase the destructive potential of imprisonment.”).

39. See Riveland, *supra* note 37, at 174:

Idleness has long been a major threat to the orderly operation of prisons (it certainly was a contributing factor at Attica) and is a reality in many of our prisons today. Work and educational opportunities have frequently not kept pace with population growth, and in some instances have been intentionally reduced, most frequently due to the actions of legislative bodies.

See also U.S. GOV’T ACCOUNTABILITY OFFICE, GGD-82-37, IMPROVED PRISON WORK PROGRAMS WILL BENEFIT CORRECTIONAL INSTITUTIONS AND INMATES 2 (1982) (“Corrections officials believe that extensive inmate idleness can lead to destructive behavior and increase violence within institutions. Moreover, idleness does little to prepare inmates for re-entry into society.”).

additional funding to increase the number of guards means, making it impossible to invest in better living spaces and beneficial education and work programs.⁴¹

C. The Dutch Prison System

While both prisons described above are located in sparsely populated locations, one of the largest prisons in The Netherlands is located in the middle of an expensive and highly desirable suburban neighborhood.⁴² Nestled between million-dollar houses and tree-lined streets is a large prison complex dating from the late 1800s surrounded by a high brick wall. There are no razor-wire fences and no guard towers filled with snipers. Nevertheless, some of The Netherlands' most serious criminals reside here in conditions that are strikingly different from those found in the state maximum-security prison examined above.⁴³

The most remarkable feature of The Netherlands' prison is its living quarters. Inmates at this facility are assigned to one of several residential wings, each of which is divided into two sections. The first section consists of approximately ten private bedrooms, each of which must be at least 107 square feet in size. Inside each room, inmates have a toilet and sink, a dresser, a cable television, a work desk, a single bed, and a full size window. Each prisoner may decorate this room in any way he chooses. Further, inmates may stock their bedrooms with any types of food and drink they choose, as long as the beverages are not alcoholic. In fact, according to prison officials, if the inmate desires an item not contained on the prison list of available food and drink, it will simply be added. I toured the room of a young man who enjoyed cooking pasta with truffles, so he showed me his extensive collection of cooking supplies, which included olive oils and spices.

The ten inmates who share the sleeping quarters also share an adjoining

40. For a description of the connection between higher rates of violence and increased prison budgetary strains, see Buntin, *supra* note 17; Erickson, *supra* note 20; PEW CHARITABLE TRUSTS, *supra* note 22.

41. See Buntin, *supra* note 17 (discussing the difficulty of funding new initiatives).

42. See Gerard de Jonge, *Prisoners' (Human) Rights and Prisoners' Litigation in the Netherlands*, J. INST. JUST. INT'L STUD. 23, 26 (2002) ("[T]he Dutch prison system consists of 52 penitentiary institutions (PI), organized in 20 regional clusters.").

43. Due to the closure of an older section of the prison shortly before my arrival, many of the prisoners had been transferred to other facilities. Nevertheless, I was able to tour a forensic facility in a more modern housing unit within the prison. Though the forensic unit is used to house prisoners who are undergoing psychological counseling during their incarceration, I was informed that this unit is representative of the modern approach to incarceration in The Netherlands. While this claim could not be independently verified during my trip, the treatment of these prisoners alone indicates a fundamentally distinct philosophy regarding incarceration in The Netherlands.

living space.⁴⁴ This large room consists of a full kitchen, a dining room table, a sofa collection, a cable television, exercise equipment, and two computer terminals. At meal times, the inmates are provided basic necessities to cook, but may supplement their meals with any food items they have purchased. Prison officials informed me that some wealthy prisoners enjoy steak on a regular basis. During my visit to the residential wing, several inmates were preparing the dining room table for dinner by placing glasses and cutlery alongside ceramic plates and bowls. At the same time, other inmates worked diligently preparing various dinner items at the stove.

It is important to note that prisoners in the residential wing I visited were not required to wear a prison uniform.⁴⁵ Rather, inmates bring their own clothing with them to prison and have additional clothing shipped to them during their stay. This simple distinction between American prisoners and those in this facility creates a significantly different environment.⁴⁶ As an example, upon entering the residential wing, I began speaking with two individuals, both dressed in jeans and short sleeve shirts. It was only after several minutes that I realized one was a prisoner and the other was one of the wing's administrators. During my many prison tours over the years, I have never experienced a scenario where the line between prisoners and staff was so unclear. Yet, in The Netherlands, this dynamic of the prison culture assists in their mission of creating a controlled and peaceful environment in which inmates are safe and can focus on participating in rehabilitation programs that prepare them for their eventual release.⁴⁷

Though this Dutch prison contains serious criminals who enjoy remarkable freedoms, including the use of cooking knives and pots of boiling water, there is very little violence. This is, perhaps, not surprising given the significant

44. See Buntin, *supra* note 17 (discussing the success of giving inmates valuable privileges):

[The National Institute of Corrections] said, 'Commissioner, you've got to get them something . . . You've got these guys locked up in a cell, 80 square feet, with Plexi on the door. It's not air-conditioned. So when they shout out or hurt someone, what can you do?'

After consulting with Sparkman, Epps decided the MDOC would try a different – and deeply counterintuitive – approach. It would respond to the worst outbreak of prison violence in recent history by loosening the controls on Unit 32. The inmates would be given a chance to return to the general prison population by displaying good behavior. Unit 32 would have group dining, recreational activities and even classes

Today, Unit 32 is but a shadow of its former self.

45. Compare this penal approach with that of Sheriff Joe Arpaio in Arizona, who makes his inmates wear pink underwear, or that of Cleveland County, Oklahoma, where prisoners are required to wear bright pink and yellow uniforms. Randy James, *Sheriff Joe Arpaio*, TIME (Oct. 13, 2009), <http://www.time.com/time/nation/article/0,8599,1929920,00.html>; Jane G. Cannon, *Hot Pink and Bright Yellow Means You're in Jail in Cleveland County*, OKLAHOMAN, June 1, 2010, at 9A, available at <http://www.newsok.com/article/3465251>.

46. See Buntin, *supra* note 17.

47. See Colgan, *supra* note 14, at 293 (discussing the significant benefits of preparing prisoners for their eventual reintroduction into society at large).

focus this facility has placed on providing accommodations and rehabilitation programs that create a sense of community and purpose. Compared with the other institutions I visited during this research, this Dutch facility did the most to create an environment in which the inmates felt highly invested in the institution's success. Though housing prisoners in individual rooms requires the utilization of additional space and the expenditure of resources on significant renovations, the long-term impact of these acts is positive. Not only is a humane and morally righteous environment created, but order may be maintained in the prison with far fewer staff than might be required if violence were rampant.⁴⁸ As a result, fiscal resources can be preserved and, in cases, redirected to additional programs aimed at increasing the likelihood of successful reintegration of inmates into society following their release.⁴⁹

In The Netherlands, an example of directing resources towards reintegration programs is the successful creation of transitional prison units for those inmates completing their sentences. Those transferred to these unique facilities are permitted to leave prison during the week for work or education and may also spend weekends at home reintegrating into their communities. Resources in these transitional facilities are also directed towards job placement services to ensure inmates have secured full time employment prior to leaving prison.⁵⁰

D. The Israeli Prison System

The final facility on my journey was a prison in Israel.⁵¹ Due to significant security concerns, I am prohibited from discussing its location or the security features of the facility, including the manner in which inmates are housed. Without revealing any specific aspects of the prison's structure or administration, I can note that while the living conditions were by no means as luxurious as those found in The Netherlands, they were far superior to the American state penitentiary I examined.

Despite the security restrictions regarding my discussion of this prison, a simple description of a conversation that occurred between an official from the prison, three convicted terrorists, and me will suffice to illustrate the type of

48. For description of connection between higher rates of violence and increased prison budgetary strains, see Buntin, *supra* note 17; Erickson, *supra* note 20; PEW CHARITABLE TRUSTS *supra* note 22.

49. See Buntin, *supra* note 17.

50. In the United States, a limited number of inmates are afforded the opportunity to transfer to "half-way" houses prior to completion of their prison sentences. See *Community Corrections*, FED. BUREAU OF PRISONS, <http://www.bop.gov/locations/cc/index.jsp> (last visited Sept. 26, 2010).

51. See *Israel Prison Service*, IPS – SPOKEPERSON'S DEP'T, http://www.ips.gov.il/NR/rdonlyres/CD985B51-45D2-4FE8-9638-0C7EF008316A/0/Shabas_Id_Eng_08.pdf (last visited Aug. 5, 2010) (stating that Israel has thirty two prison facilities throughout the country).

environment that exists inside this facility. Given the charges of terrorism leveled against these inmates, one might expect that a perceivable tension and animosity would exist between the prison official and these inmates. The reality, however, was quite the opposite. Upon entering the area in which the meeting was to occur, the official was greeted with respect and offered coffee the prisoners had brewed for the occasion. At the same time, the official shook hands with the men and expressed his gratitude for their agreement to meet with me. Each side treated the other with respect. This was but one indication from my visit that prisoners in this facility were treated as people, even though they had committed acts more violent than any of the other prisoners I had encountered during my travels.

The calm and controlled environment I experienced in the Israeli prison was not an anomaly. Prison officials informed me that prison facilities in Israel experience relatively little violence. Based on my observations, I believe this is due, in part, to a clear sense of community that exists among the prison inmates as a result of the manner in which the facility is administered.⁵² This sense of community means that prisoners possess strong incentives to cooperate in an effort to ensure that the positive environment survives and the available privileges continue to be offered.⁵³

CONCLUSION

What makes one prison a violent and uncontrollable badland, while another is a calm, relatively safe, and productive facility for both staff and inmates? From my travels to three continents in search of an answer to this question, one aspect of each prison seems to contribute significantly to its success or failure. Where prisoners believed they were treated like human beings and were provided with reasonable living conditions and opportunities to utilize their time in meaningful ways, the prison environment was relatively healthy and rates of violence were low. In comparison, where prisoners were subjected to abhorrent living conditions and no efforts were made to treat them with a modicum of respect or provide them with even a scintilla of meaningful stimulation during the day, the prison environment was poisoned and violence ran rampant.

One final story from my travels will summarize the distinction between treating inmates like human beings and treating prisoners as mere objects for confinement.⁵⁴ As I described above, when I traveled to Israel three prisoners

52. See *supra* note 18 (discussing the theory that a sense of community contributes significantly to the rates of violence and criminal behavior in that community, a theory that is as applicable to an urban or suburban neighborhood as a prison cell block).

53. See *id.*

54. See James M. Binnall, *Respecting Beasts: The Dehumanizing Quality of the Modern Prison and an Unusual Model for Penal Reform*, 17 J.L. & POL'Y 161, 162-63 (2008) ("However, those that oversee our 'modern-day houses of the dead' value inmates as

were asked if they would volunteer to meet with me and, for their services, they were personally thanked by a prison official. During my visit to the state maximum-security prison, however, the treatment of the prisoners was quite different. At one point, a prisoner was sitting inside his cell reading a book. A guard, who was showing me this particular wing of the facility, decided to demonstrate how he could control the lights inside this prisoner's cell from outside. Without acknowledging the prisoner was even present, the guard then began switching the light on and off several times. When he was finished with his demonstration, still not having even acknowledged the presence of the prisoner inside the cell, he simply continued to walk down the corridor. It is striking to observe that the guards at this state facility treated prisoners with considerably less respect than the officers tasked with supervising convicted terrorists in Israel.

In conclusion, it is important to clarify why we care what type of environment exists inside a prison.⁵⁵ It is certainly not clear that how prisoners are treated has any positive impact on recidivism rates. In fact, of the four prison systems examined in this Article, the one with the highest rate of recidivism is The Netherlands.⁵⁶ Nevertheless, the environment inside prisons is vitally important. First, prisons in which inmates feel a sense of community appear to be less violent than those that serve as little more than warehouses for the one out of every hundred Americans currently behind bars.⁵⁷ Second, prisons with high rates of violence are expensive facilities to administer because they require large staffs and incur incidental costs associated with medical treatment, overtime, and sick days. As such, prison systems can perform their functions in a more economically efficient manner by creating environments where prisoners are provided with incentives to cooperate and reject violence.⁵⁸ Finally, treating prisoners as human beings and creating

little more than warehouse stock, seldom acknowledging them as human or even considering the notion of respect.”).

55. See PEW CHARITABLE TRUSTS, *supra* note 22, at 1 (stating that 2.3 million Americans are currently in prison and one in every thirty-one Americans under some form of correctional control).

56. See MINISTRY OF SEC. & JUSTICE: RESEARCH & DOCUMENTATION CTR., WETENSCHAPPELIJK ONDERZOEK-EN COUMENTATIECENTRUM (WODC), SUMMARY: RECIDIVISM FOLLOWING RELEASE FROM PRISON 55-56 (2005), available at www.wodc.nl/images/ob228_summary_tcm44-58996.pdf (noting that three quarters of all former inmates in The Netherlands have been reconvicted within eight years); U.S. DEP'T OF JUSTICE OFFICE OF THE INSPECTOR GEN. AUDIT DIV., THE FED. BUREAU OF PRISONS INMATE RELEASE PREPARATION AND TRANSITIONAL REENTRY PROGRAMS (2004), available at <http://www.justice.gov/oig/reports/BOP/a0416/final.pdf> (stating that approximately 41% of federal inmates are rearrested or have their parole revoked within three years); *Israel Prison Service*, *supra* note 51, at 2 (stating that recidivism rates in Israel is 52%).

57. See PEW CHARITABLE TRUSTS, *supra* note 22, at 1.

58. See Buntin, *supra* note 17 (describing the positive impacts on permitting inmates additional liberties in the Mississippi prison system):

Sparkman moved gradually, introducing one small group of inmates to new liberties and

positive prison environments is simply the morally correct manner in which to administer a penitentiary.⁵⁹ Fyodor Dostoyevsky stated, “The degree of civilization in a society is revealed by entering its prisons.”⁶⁰ Even without the significant added benefits of reducing violence and lessening the administrative costs of running our prison systems, treating prisoners with dignity is the moral duty of any government. That abiding by this duty creates a safer environment for both staff and inmates and provides for the possibility of creating better prisons with less money should merely be considered a significant and wonderful ancillary benefit.

rules at a time. . . . At first, Sparkman slept “with one eye open.” But the process went far more smoothly than he thought. At the same time, other pleasant surprises emerged. Most inmates quickly embraced the new rules. Physical takedowns and the use of immobilizing gas by prison staff plummeted. The number of incidents involving prisoner-on-prisoner violence (and the smaller category of prisoner-on-staff violence) also fell by 70 percent.

59. See *Rough Justice in America: Too Many Laws, Too Many Prisoners*, ECONOMIST, July 22, 2010, at 33, available at www.economist.com/node/16636027 (discussing the American prison system and arguments that a less punitive system could be more effective).

60. See Erwin James, *Prisoners Must be a Priority for Brown*, GUARDIAN (June 25, 2007), <http://www.guardian.co.uk/society/2007/jun/25/1>.