

Changing Punishment

Ole INGSTRUP*

In the management literature, people often say that if a hammer is the only tool you have, you identify all problems like a nail. I guess there is something to that. Like, for instance, when there is a suggestion that we should introduce more independent reviews of what the Correctional Service of Canada is doing. This is one of my pet themes because good friends keep reminding me of the importance of doing that. I think it is important to consider that idea because correctional systems could be the Achilles heel of society. Awful things can happen in these places if the system is not well-controlled.

Again, there is a new proposal to add an independent oversight function to the Correctional Service of Canada and I can understand where it comes from. It is in line with what we have seen. And there may be a need for such a mechanism. When I will tell you a few of the key oversight mechanisms that exist, you may feel that there is a need for another one.

We have the minister, the House of Commons, the Justice Committee, the Public Accounts Committee of the House of Commons, the courts that are looking into 40 to 50 cases on any given point in time, the Correctional Investigator, the Human Rights Commissioner, the Information Commissioner and the Privacy Commissioner. Then, we have a Human Rights Commissioner. We have an Official Languages Commissioner. We have the Solicitor General. We have disciplinary court judges. We have the John Howard Society, the Elizabeth Fry

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Society, the Canadian Criminal Justice Society, the media, coroners' inquests that are continuously going on. Judicial reviews or inquiries, Citizens' Advisory Committees, national inquiries and international accreditation panels. We put all of these reports on the Internet.

Some people think that we are actually shooting ourselves in the foot. Nevertheless, it is the environment one has to consider, whether we need another oversight committee.

In terms of changing, we also initiated a review of the Correctional Services compliance with human rights. It was obviously an issue raised by Madam Justice Arbour in her report on the Prison for Women. There was this difficult situation in the prison for women, and a thorough review of both our institutional and our community side has been done by the former Human Rights commissioner, presently the Commissioner member of the United Nations Human Rights Committee, Max Yalden.

In the context of considering whether we need more independent bodies to come and help us, I think it will be very important to examine to what extent it is possible to manage a system where authority and accountability are split between two different bodies. For instance, is it possible to hold the Commissioner of Corrections accountable for the consequences of decisions made by somebody else? Would it necessarily improve the conditions for the offenders if an independent judicial in depth review of corrections was conducted? Maybe. Then, the American and the French prisons would be seen as ideally monitored presence because they have in-depth external judicial control.

In those considerations, it is very important to think about whether the law and an independent body are the best ways of improving a system or if we should look at the qualities and the values of our employees, as well as the seriousness with which we relate to the law. In Correctional Service of Canada, we have people that are respectful of the law and who have the ability to learn. We have also trained people in the correctional law area quite extensively. Several thousand people have gone through our training program called Correctional Service of Canada and the law.

But let me now go to the key issues for this session. Is it possible to change the prison or the penitentiary? Or should the recourse to imprisonment, a form of punishment from another era, be drastically reduced as we move into the next century?

I do not think that one has to make a choice between one and the other. It is more productive to deal with the true questions, then to complete the separate questions. So the first question is the following: is it possible to change the prison or the penitentiary?

I believe that it is possible to change. The Correctional Service of Canada has, in fact, changed a lot and changed more than any other component of the federal justice system that I know of. Furthermore, the speed of change in the Correctional Service of Canada is greater than what we see in most other organizations. Just to help you understand where I am coming from, I would like to read to you a statement made by Mr. Justice McGuigan when he was the head of the so-called McGuigan Inquiry into the penitentiary system, an inquiry that produced a report almost 20 years ago.

At that time, Mr. Justice McGuigan wrote the following with the support of his Committee members. The fundamental absence of purpose or direction creates a corrosive ambivalence that subverts from the outset the efforts policy and operations of the administrators of the Canadian penitentiary system, saps the confidence, impairs the morale and sense of professional purpose of the correctional justice and ensures from the inmates' perspective that imprisonment in Canada, where it is not simply inhumane, is the most individually destructive, psychologically crippling and socially alienating experience that could conceivably exist within the borders of the country.

But changes have occurred and among the major ones is the soul-searching exercise that we went through a little over ten years ago when we discussed profoundly what we were in business for and what we should be in business for. So we went through, using a strategic planning model, a mission and values exercise that allowed us to understand that our focus should be on working with other components of the criminal justice system, at least the judiciary and indeed with other components of society in general to contribute to a safer society.

We became in other words part of the crime prevention set of activities. That started in the Correctional Service of Canada. It was endorsed by the Canadian Correctional and conditional Release Act, which changed fundamentally the way we do business. We have now fairly sophisticated assessments. We have research-based programs. We have culturally-sensitive programs. We have gender-sensitive programs.

We have focused on reintegration, not just the last couple of years but basically since 1988. We have moved significant amounts of our resources into the reintegration efforts to make sure that it is done as safely as possible. Consequently, today, and I think this is unique in the world of corrections, we have one-third of our budget, 400 million dollars, invested into directly crime preventative future oriented activities.

We have architectural designs that are based on the reintegration model. We have healing lodges, as you have heard, and we have other activities in the Aboriginal area. We have accepted cultural leaders and spiritual leaders in exactly the same way as religious leaders from other areas.

We have a section in the law that permits us, if it is possible, to transfer the operation and administration of Aboriginal healing lodges to local communities. We already have a number of those in place. One of the interesting things is, by the way, that these culturally specific and unique institutional settings seem to produce very good results. We have already had a fairly good recidivism level. We have ten per cent on an annual basis, which is on the world basis extremely good, and which also is 37% lower than what we had five years ago.

What is interesting about the Aboriginal approaches to corrections which happens primarily in the healing lodges is that recidivism is extremely low. With an observation period of a little over two years on average, we have a recidivism rate of 6%. It is lower for the women in the healing lodges. When you think of the kind of women that are in the program, you might say that they have had such terrible conditions throughout their lives that a 50% recidivism rate would not have been any surprise. But it is not what is happening. The recidivism rate is a lot lower.

So, yes is the answer to the first question. Corrections can change. We are also taking in restorative justice models. We are still searching and learning at the same time. Nobody can tell us exactly what it means to have restorative approaches, but we have a good sense of what would be compatible with restorative thinking and we have people who are working hard on trying that approach within our system.

The second question is not really for me to respond to, but of course it will not prevent me from doing it anyway. The question is should the recourse to imprisonment, a form of punishment from another

era, be drastically reduced? There is no easy answer, but there are some views. And I would like to share with you some views that I think would be important here.

Over the last number of years, we have gone from a nothing works ideology to there seems to be something that works for most people ideology. To say today that we do not know if correctional programs work is simply meaningless. When people are saying that a large proportion of the population thinks programs do not work, I always compare that to the fact that 16% of the American population believes that Elvis Presley is still alive.

So our programs seems to be efficient, and very few of them require a long time behind bars to work. There is no indication that we need a lot of time from a purely correctional point of view. For example, while we have improved our recidivism numbers by 39%, the length of time that we have had our offenders at the institutional level has been reduced from 48 months on average to 44 months.

There is no magic number of days or months or anything else that should be determining the length of sentences. The length of sentences will have to be decided primarily from non-correctional points of view.

We know that a lot of the programs that we have in place are a lot better when they are delivered in the community. For instance, our cognitive skills training program yields absolutely no reduction in recidivism if it is delivered in the institutions to offenders, but if it is delivered in the community, it gives a lot of positive results.

One point of view that I also share is that prisons seem to be better before they are being used. Once individuals have been institutionalized, they do not care all that much whether they have a second stint within the institution or not. So, it is very important to make sure that people do not get in touch with institutions until such time that judges and society deem it absolutely necessary.

There is something dangerous in getting too many people through the penitentiary system, because most of them will start by very short sentences. Then, they will believe that it is manageable, and, suddenly, will they end up in the penitentiary with much longer sentences and a completely different story.

Also, one should not expect that by using longer sentences or expanding sentences, we are going to see a lot more happiness in the general population. If I listen to the conversations or the discourse in the newspapers in Texas and California, it is exactly the same as in Holland and Norway, namely if the government just got serious about these things and gave people longer sentences, everything would be better. To me, there is not any relationship here between public satisfaction and the length of sentences.

This is indeed a huge challenge for the judges. What would I do if I were a judge? I do not know, but I would probably try to get out of my head the idea that I can use less imprisonment because we are already very tolerant, I do not believe we are that much so. I would maybe rethink the meaning of the whole question. Does it really matter if as a judge, I give a little bit more or a little bit less? Well, if our offenders in the federal system served one month fewer per year that they already are, we would have a thousand prisoners less imprisoned.

It matters. It matters what we do here. I also believe that judges should translate the cost of imprisonment into economic terms when deciding the length of a sentence.

If I were a judge, it would affect me if I saw a person for the tenth time, and he had committed theft under 200 dollars. I would then give him as much imprisonment as possible for 20,000 dollars, which would be about six months. If I considered the investment in his imprisonment and the loss that society had already suffered, that would help me to be as cautious as I could under the circumstances.

In my opinion, the restorative model is probably one of the best to pursue, if we want to reduce the use of imprisonment, although I agree with previous speakers that it is not always possible to define exactly what it means.

In that respect, I hope that the ideas around restorative justice will be permitted to flourish and that we lawyers will not get into the mood of legislating and regulating and procedurally safeguarding the restorative justice system. If we do, I am afraid that we could kill this flower in its very early stages. So let us leave it a little bit on its own and let us see what it can become.