

The Problem With Prisons

There are few institutions, if any, that inhibit liberty more than prisons. Although they have become deeply ingrained in Canadian psyche and political life, penitentiaries were not always a commonly accepted phenomenon. Mass incarceration is not an inevitability, and we should envisage a society which does not lock away its most vulnerable people. Prison abolition is a controversial objective, but it is one which anyone concerned with liberty and freedom should actively pursue.

Harsh authoritarianism, violence, and seclusion are imposed upon the unfortunate habitants of these institutions. Indeed, they are the systems entire reason for existence. Incarcerated populations, usually from already marginalized communities, become more isolated, broken, and dysfunctional with every day spent inside. Oftentimes prisoners are themselves previous victims of violence and crime.¹ Coming from communities without adequate resources to address the problems there, the people who end up in prison have often faced years of traumatic cycles of being victimized and victimizing others. When finally released, these individuals will return to their communities institutionalized: lacking basic life skills, unused to making their own decisions, and with more criminal contacts than when they went inside. Every day spent inside is another day that these individuals go without practicing or learning new life skills. When they are eventually released, all they will have gained inside is from the very limited programing, and from their peers. They didn't have the skills to contribute meaningfully to society before they were imprisoned, and they certainly won't when they come

¹ Melissa Hagenboom, "Locked Up and Vulnerable: When Prison Makes Things Worse", *BBC Future* (2018) <www.bbc.com/future/article/20180411-locked-up-and-vulnerable-when-prison-makes-things-worse>.

out. These convicts will rejoin a community reeling with other problems, unable to approach the task of rehabilitating a damaged offender. A litany of other issues often surfaces. Trouble finding housing and legitimate employment is common.² Reintegrating with those they have hurt can be impossible.

The time spent inside generally creates people less able to integrate with the outside world than when they were first incarcerated.³ Although there are some programs for education and vocational training, these fall far short of what is needed. These opportunities pale in comparison to the challenges that arise for inmates. Surrounded by other criminals and correctional officers, inmates have little to no contact with the world they are supposed to be learning to rejoin. Lucky inmates may have money for phone calls, or even occasional visits from their family. Unlucky inmates will be too far for relatives to travel and won't be able to pay the exorbitant prices of phone calls charged by the private companies responsible for the service. These individuals are expected to go back to their families after release as though nothing has changed. Although they will have missed birthdays, holidays, or even the births of their children, inmates are still expected to carry the burden of emotionally and financially supporting the family from which they have been forcibly alienated.

When faced with the prospect of prison abolition the first concern for many is safety. There are indisputably people who cannot safely reside in society. In my view, however, it is a mistake to abandon dangerous offenders in a concrete box for untold years and expect them to become harmless by their inevitable release date. There should be no doubt that causing harm to

² Elena Holodny "It Still Haunts Me': What It's Like to Get a Job After Prison in America", *Business Insider* (2017) <www.businessinsider.com/finding-job-after-prison-2017-7>.

³ Simmons Staff, "The Challenges of Prisoner Re-Entry Into Society" (2016), online: *Simmons University* <socialwork.simmons.edu/blog/Prisoner-Reentry/>.

another human being is not the action of someone who is mentally well. The more severe the harm caused, the more damaged the individual who carried it out must be. Criminal behavior is often described as “deviant”, and this is exactly how it should be approached. This type of anti-social behavior is deviant because it departs from the usual standard expected of someone. Instead of punishing someone for this, every effort should be made to help them return to the standard expected. This deviation should not be looked at as an active choice to subvert the standards expected of us. Most crimes are driven either by necessity, ignorance, mental illness, or lack of other pathways to achieve meaningful goals. Thus, an approach prioritizing social justice, mental health, rehabilitation, and restoration is more prudent and humane.

Prison abolition is a difficult goal to undertake. The path towards it is one of many steps, however, concrete steps which are entirely achievable. An alternative system must be created before the current one is abolished. This system can form in any number of ways. A first step could be prioritizing the principles of rehabilitation and restoration in sentencing, promoted through public pressure for better Gladue reports and stronger reliance on them. These reports are often undertaken in a rushed manner, sloppily done, and payed little mind by judges.⁴ We can see the results of this in the steadily increasing Indigenous prison population. Better Gladue reports would help to focus the system on rehabilitation and restoration instead of punishment. Gladue reports cannot fix the problem on their own, however. If there are no restorative options available for a judge to utilize in sentencing, then the prison will become the only remaining option. More reliable funding is needed for restorative organizations. This will ensure they can sustain themselves, offer competitive pricing to their staff, and potentially even expand. While at

⁴ “Spotlight on *Gladue*: Challenges, Experiences, and Possibilities in Canada’s Criminal Justice System” (2018), online: *Department of Justice* <www.justice.gc.ca/eng/rp-pr/jr/gladue/p3.html>.

risk of losing funding every four years, these organizations cannot offer guarantees to staff, perform renovations or repairs, and certainly cannot plan expansions. With a budget in the billions, the prison system sees none of these problems, and its expansion is directly tied to the availability of funding.⁵

Mental health courts and better mental health care in general are also keys. Far too many people with mental illness are treated not by a system that prioritizes their health, but one that imprisons and stigmatizes them. Instead of getting the medical treatment that they need, these people are subjected to conditions likely to exacerbate their illness – loneliness, fear, and isolation.

Although some therapy and counseling is available in prison, a person should not have to be arrested in order to access adequate healthcare. Therapy and counseling need to be much more widely available to society at large, starting from a young age.

Social justice in general is also necessary for prison abolition. Many crimes are driven by a profit motive, by people who have no legitimate means to achieve wealth. Children often want to emulate successful people. For lots of children from impoverished neighborhoods, the only ones who are successful are those who have succeeded through a life of crime. Legitimate opportunities for success are needed in these communities, not only because social justice requires it, but also because it gives the next generation a set of role models who aren't involved in the criminal justice system. Without these positive examples, the only roles these children will be familiar with are ones headed towards the penitentiary. Without bringing these opportunities to marginalized neighborhoods we are setting young people up to fail.

⁵ "Financial Facts on Canadian Prisons" (2018), online: *The John Howards Society of Canada* <johnhoward.ca/blog/financial-facts-canadian-prisons/>.

Ameliorating the worst aspects of the current system is another important objective. Until we can do away with them completely, harm reduction is important. Solitary confinement and violence against inmates must be challenged vigorously in court and through public protest. These techniques are some of the most traumatizing to inmates, and cause the system to be more harmful than it needs to be. Solitary confinement has even been considered cruel and unusual punishment in a number of jurisdictions.⁶ Violent, abusive measures such as these magnify the worst aspects of the system. Feelings of alienation, abuse, disconnection, and dissatisfaction are bound to grow as a result of being subjected to even more punishing controls than the norm. Before any broader abolition goals can be addressed these measures need to be dealt with. Removing these practices is a clear and concrete way to improve the justice system.

Challenging these practices has and can continue to have a transformative effect.

Mandatory minimum sentences are another major issue with the current system. Charges with a minimum sentence don't allow judges any leeway to take a holistic view of the charge. There is also no room for creative sentencing options. Instead of alternative measures, which are often highly effective, judges are shoehorned into a single approach, a lengthy prison sentence.

Another criticism is the negation of Gladue factors. As explained above, Gladue factors are a key component of moving away from a carceral society. When forced to rely on statute mandated sentences, instead of these factors, judges are not able to live up to their obligation to properly consider all relevant factors in a sentencing. Instead, they are forced to simply rely on the one-dimensional time period set out in the statute. Clearly there are a number of issues with the

⁶ Michael Cook, "Is Solitary Confinement 'Cruel and Unusual'?", *BioEdge* (2019) <www.bioedge.org/bioethics/is-solitary-confinement-cruel-and-unusual/12898>.

current approach to sentencing. Abolishing mandatory minimum sentences would be a huge step in fixing the enormous problems in front of us.

Penitentiaries are an inescapable threat to the liberty of Canadians. Although some argue they are justifiable, a wealth of research on their effects would suggest that there are better alternatives for nearly all situations. Anyone who wants to advocate for human rights and freedoms in Canada must recognize the issue right in front of us. We have a tremendous opportunity to be on the forefront of change in the way we deal with freedom and justice in Canada. Change cannot be too immediate for risk of destabilization, but if we are striving for a society that is truly free and just then prisons as they currently exist can have no place in it.