

PREFACE

In the last decade virtually every state's prison system witnessed population growth of unprecedented proportions—we will defer the definition of “overcrowding” to our authors and panelists. Yet we remain aware that a limited amount of physical space, correctional staff and both tangible and intangible services are being allocated to a consistently increasing number of prisoners.

The answers seem simple. If the problem is too little space for the people we must confine, we need only to build more prison cells. Yet, citizens are reluctant to shoulder the enormous tax burden of prison expansion. This is but one of many reasons why we cannot simply build our way out of the crisis. We contend as well with a Parkinson's law that the pool of potential inmates is sufficiently large, given current attitudes, to fill, crowd and overcrowd any expanded capacity.

Others may say that we need only to tinker with sentencing and parole policies in order to manage prison population figures. However, we are at a time when the public perceives a drastic increase in the incidence of violent crime and when support for the death penalty and mandatory sentencing seems stronger than ever. The political tide is unlikely to favor any significant scaling down of sentence length or plans for more rapid prisoner release.

Even direct attacks on the symptoms of crowding, through legal challenges to the conditions of confinement, may be foreclosed because of confused standards and muddled doctrine. The courts have provided little guidance for determining when crowding has reached an unconstitutional level of overcrowding. Naturally reluctant to tell states how they should remedy their crowding problems, the courts at times have shown signs of retreating wholesale from the business of adjudicating the issues of prison conditions.

In the absence of expansion or innovation, the prison system has attempted simply to absorb more inmates. “Double celling,” housing two prisoners in a cell designed for one, has become commonplace. States also house prisoners in tents and other makeshift accommodations. In more extreme cases crowding has caused institutions to explode in violence. A crisis situation exists in our prisons and society must decide whether it can continue policies of incarceration that have pushed prison crowding to the brink of inhumanity.

The urgency and the complexity of the issues of prison crowding inspired the editors to choose this topic for the 1983 colloquium. In this colloquium, the *Review* editors chose to focus on questions raised in the search for solutions, both short term and permanent, to the prison overcrowding crisis. We hoped to put aside momentarily the issue of cause. We therefore chose not to raise the debate over whether rising crime or harsher sentencing policies should bear the blame for the present situation, or

whether the crisis is the demographic and therefore temporary result of the postwar baby boom passing through its crime prone years.

The editors also chose to focus full attention on various individual solutions and issues in turn. Naturally, solutions cannot be divorced from causes and any comprehensive strategy for resolving the crisis must address problems at every stage in the criminal justice system. We hope that the reader shares our satisfaction with the way in which the authors and panelists have blended a sensitivity for the broad context of the crisis with the need to analyze closely more particular approaches to solving the problem of crowding.

We believed that the pivotal question of how, and indeed whether, sentencing policy should be changed to respond to crowding ought to occupy a major portion of the colloquium. The question of appropriate sentences, therefore, was addressed from the perspective of examining alternatives to incarceration and from the perspective of whether adjusting sentencing standards for such purposes conforms to or confounds our constitutional notions of just and equal punishment. In this context, an entire panel was devoted to whether we should adopt a predictive model for targeting and selectively incarcerating those most likely to commit future crimes.

Day two of the colloquium was designed to center on strategies that assume that the current growth and existing sentencing policies would continue. Panels discussed the legal issues and the political dynamics of prison expansion as well as what the problem of crowding demands of the conscientious prison administrator. Finally, the colloquium confronted the issue of where prisoners' rights litigation stands in the wake of *Bell v. Wolfish*,¹ and *Rhodes v. Chapman*,² and the grim prospect that our standards of legal decency may be continually lowered to accommodate the need to put growing numbers of prisoners in the only available facilities.

The importance of this topic at this time in 1983 could not be underscored more dramatically than by the participation of the outstanding scholars, lawyers and corrections experts from across the country who collaborated as authors and panelists. The editors are particularly indebted to two men, Dan Pochoda and James Jacobs of the New York University School of Law faculty, for giving us their time and their vast knowledge of the field. Their help allowed us to assemble a program capable of attracting the truly distinguished authors and panelists that make this colloquium a notable event in the scholarship of law and corrections.

The *Review's* editors would like to thank Dean Norm Redlich for his generous support and his encouraging that the *Review* strive to use its colloquium as a tool to bring about social change through legal scholarship. We also wish to thank the other members of the New York University

1. 452 U.S. 337 (1981).

2. 441 U.S. 520 (1979).

School of Law community, former Dean Robert McKay, Professor David Richards, Professor Graham Hughes, Assistant Professor Claudia Angelos and Adjunct Professor William Hellerstein for their valuable participation and counsel. Lastly, we would like to thank our keynote speaker Judge Morris Lasker, and the distinguished panelists whose ideas, insights and efforts made the colloquium possible.

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