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“MAKING ROOM”: A PRELIMINARY STAGE TOWARD IMPROVING PRISON AND CORRECTIONAL MANAGEMENT?

REPRESENTATIONS AND MANAGEMENT OF PRISON OVERCROWDING IN FRANCE AND CANADA

Anyone observing the prison question in France today cannot but be stricken by the dominant place of facility expansion in prison policy: in 2011, after the launching and/or completion of three successive programs involving the creation of more than 30,000 extra beds (1), the Ministry of Justice announced yet another “new prison construction program.” On the whole, between 1980 and 2014, the number of beds in French prisons tripled, rising from about 20,000 to nearly 60,000. (2) This focusing of political attention and budgetary resources on buildings policy directly

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followed from the French media coverage and presence in the political debate of prison overcrowding, particularly after two parliamentary inquiry committees pointed to a “discourse of shame” in 2000.

Of course, the French prison administration had for decades deplored the lack of resources responsible for the dilapidation of buildings and the chronic shortage of beds in prisons in numerous reports. At the same time, international bodies had regularly emphasized the disastrous consequences of prison overcrowding in terms of inmates’ fundamental rights. Increasing the number of prisons became a preferred – if not the sole – response to the evils of the prison institution even if it failed to resolve the overcrowding issue. Why build more prisons? Is this building policy related to the objective situation of prisons? Is it possible to do without new prisons or to delay building them?

In a former study, (3) we showed that other contemporary societies made opposite choices. In Canada, for example, increasing the number of prison beds was not a public policy priority until the 2010s. The first Canadian report on prison overcrowding was published in May 2014. In that report, the Auditor General of Canada aimed to “determine whether the Correctional Service of Canada (CSC)(4) had increased the capacity of its correctional facilities in a manner that met its needs and was cost-effective.” (5) He reported the installation of more than 2,500 beds since 2009. That year, CSC had anticipated that “changes in criminal justice legislation would result in longer sentences for many offenders, leading to an increased offender population.” However, the offender population did not grow as much as expected. This at least had the virtue to bring CSC to update its forecast on its institutional capacity, something it had not done in the last thirty years despite a rapid population growth rate similar to that observed in France, particularly in the 1990s. In short, moderation prevailed on both federal and provincial levels, with the exception of Ontario in the early 2000s.

(1) These include a 13,000-bed program launched in 1986, a 4,000-bed program in 1994, and a 13,200-bed program announced in 2002.

(2) French prisons counted 58,082 available beds on December 1, 2015. OPALE, 12/28/2015.

(3) Alexia Venouil, “Une politique des murs. Décision de construction de prisons et politiques pénales au Canada et en France (1980-2005),” doctoral dissertation, University of Grenoble, France, 2014.

(4) “In Canada, responsibility for corrections is divided between the federal and provincial governments. The Correctional Service of Canada (CSC) is responsible for offenders serving sentences of two years or longer (including life sentences) in federal correctional institutions and under community supervision. The provinces are responsible for offenders sentenced to terms of less than two years.” <https://www.publicsafety.gc.ca/cnt/cntrng-crm/crrctns/fdrl-prvncl-rspnsblts-eng.aspx>, retrieved November 3, 2016.

(5) 2014 Spring Report of the Auditor General of Canada, Chapter 4, Expanding the Capacity of Penitentiaries, Correctional Service Canada, Introduction, http://www.oag-bvg.gc.ca/internet/English/parl_oag_201405_04_e_39335.html#hd3a, retrieved November 3, 2016.

Our hypothesis is that the way in which the political and administrative elites perceived, and more generally, dealt with the prison overcrowding issue partly explains the sharp contrast between the two countries' political choices.

CONSTRUCTION OF “PRISON OVERCROWDING” INTO A PUBLIC ACTION ISSUE

Starting in the 1980s, prison overcrowding was gradually turned into a genuine public action issue by French governments, becoming a favorite justification ground for the adoption of prison building legislation. There was fear that worsened detention conditions due to overpopulation might call into question the reputation of the “country of human rights.” Increasing media coverage of monitoring bodies of prison conditions – the European Council, the comptroller general of custodial centers, NGOs – made things worse. Refusal to increase the capacity of correctional facilities in a situation of overcrowding would then amount to a denial of humanity: the modernization of facilities offered a way out of this shameful situation.

Without negating the reality of prison overcrowding or the fact that historically, the needs of the French prison system were not sufficiently addressed, one has to admit that the overcrowding argument gradually became an essential part of the discourse of successive French governments. However, one is stricken by the fact that the moment when prison population growth was at its highest (the 1980s and 1990s) does not coincide with the moment when the term “overcrowding” gained greater prominence in national debate (the 2000s). In 1986, promiscuity was already one of the explicit reasons given by the Ministry of Justice to justify the “13,000 Program” (6) – which shows that the authorities had taken up overcrowding to turn it into a political issue long before its dissemination in public space. At the time, the term “overcrowding” was not widely used in the Ministry’s discourse.

Thus, there was a significant time lag between the reality of the situation and the visibility it acquired in political discourse and preoccupations. Overcrowding was brought to the fore in 2000, when it was largely highlighted by two inquiry committees and set off a wave of emotion among deputies. The increased number of parliamentary items dealing with it at the French National Assembly attests to that: from none before 1985, they passed to three during the eighth Parliament (1986-1988), which marked the launch of the first important building program, and to more than a hundred during the twelfth Parliament (2002-2005), whereas the number of missing beds had been considerably reduced. In 1987, for instance, the number of inmates exceeded the capacity of correctional facilities by 17,000, and so did it in 2000.

(6) The 13,000 Program [programme 13 000] is the name of a real estate project instituted by the law 87-432 of June 22, 1987 on the prison public service.

In Canada, however, the prison overcrowding issue was often underestimated or even put into perspective by authorities and caused less sensation than in France. Does this mean that Canadian correctional institutions did not exceed their rated capacities? Far from it. In the mid 1990s, overcrowding and its consequences were exposed in the correctional investigator's public reports, but policymakers did not take up the issue. Institutional archives documents show that provincial correctional administrations, particularly the most populous ones (Ontario, Quebec, and British Columbia) also coped with the problem. However, they did not turn overcrowding into a first-order public action issue, judging that it would be short-lived. The same was true at the federal level, where the word "overcrowding" seldom appeared in the political debate, emphasis being rather on "shared accommodation" and "double bunking" – to use CSC's euphemistic but eloquent expressions. (7)

The fact that prison overcrowding did not concern all the correctional facilities of the Canadian territory may explain why political attention on the issue was limited. Its existence may also have been called into question by civil service officers – who did not submit it as evidence to apply for funding – or by association representatives. The latter considered that while new cells would relieve an a priori short-lived pressure, they would also be automatically and lastingly filled, and this would result in a de facto growing offender population. Another reason is the policymakers' representation of overcrowding and ability to solve it. While French political and administrative authorities viewed it as inexorable, their Canadian counterparts considered it a transitory phenomenon, an "accident" in Canadian penal history rather than something inevitable, thinking that the correctional system had its own relief mechanisms in temporary absences (8) and parole.

OVERCROWDING VS. OVER-SENTENCING

Another issue, over-sentencing, caught the attention of Canadian policymakers to such a point that it warranted priority public action. Indeed, the Canadian justice system was widely thought to be excessively punitive. The overrepresentation of certain specific categories of the population (women, juveniles, ethnic minorities) led Canadian policymakers across the political spectrum to realize that incarceration rates were inordinately high. At the federal level, even ministers who were the most conservative about criminal justice issues were compelled publicly to lament the overrepresentation of Aboriginals in prisons – their incarceration rate is six times

(7) "Shared accommodation cells" are designed for two inmates. "Double bunking" is the practice of holding two offenders in a cell designed for one. They are contrary to the intent of CSC policy.

(8) Temporary absences "provide inmates with opportunities to access the community for medical, administrative, parental responsibility, compassionate reasons, community service, family contact, personal development, and for rehabilitative purposes," <http://www.csc-scc.gc.ca/lois-et-reglements/710-3-cd-eng.shtml>, retrieved November 1, 2016.

that of the national average – and to propose measures addressing a situation unacceptable in a society so deeply concerned with the rule of law.

It must be said that starting in the 1990s, many actors from the academic world, organizations, or independent administrative authorities, became “civic leaders” who brought to the attention of government and parliament officials the socially unjust character of problems engendered by over-incarceration rather than life conditions in overcrowded facilities. The argument on over-sentencing was twofold. On the one hand, the development of a “differentiated” statistical approach to the prison population had shown that the penal system imprisoned a disproportionate number of certain offender types, which could damage the reputation of a system that had been striving for justice and equity, particularly since the 1982 implementation of the Canadian Charter of Rights and Freedoms. On the other hand, it turned out that the incarceration rate in Canada exceeded that of other western countries, except for the US, whose penal policy acted as a foil to Canadian political and administrative officials. For these reasons, Canadian political authorities chose not to settle for informal and piecemeal measures (9) to relieve prisons and adopted substantial legislative reforms which included revamping of the legislation on juvenile delinquents.

In France, however, increasing concern about delinquency and security in public debate during the same years limited political authorities’ ability to talk about reducing incarceration rates. The idea that overcrowding could result from over-sentencing went unheeded. Organizations involved in the protection of the rights of inmates were reluctant to lose focus by taking a stand on the questions of reductionism or abolitionism. As a matter of fact, political measures toward reduction only concerned remand.

While it is true that generally and historically, Canadian correctional institutions have less qualitative inadequacies than their French counterparts, the fact is that both countries fundamentally differed from each other on the perception and choice of which problem to solve – this explains why different policies were implemented. While French elites often tend to consider that the improvement of detention conditions is inseparable from the state of infrastructures, in Canada, improvement is achieved less by material modernization than by access to rights.

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(9) These practices include placing mattresses on the ground or accommodating supernumerary inmates in specialty cells – segregation, medical, or observation cells.