

REVIEW

The Expanding Prison

B. BURTCH,* C. RANE,**
& S. LINDFIELD***

The Expanding Prison: The Crisis in Crime and Punishment and the Search for Alternatives, David Cayley.
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I. INTRODUCTION

DAVID CAYLEY'S TIMELY ACCOUNT of trends in imprisonment and counter-trends toward community alternatives deserves a wide readership. Discussions of imprisonment are often shrouded in secrecy, ignored by academics, and subject to sensational, hence misleading, media coverage. *The Expanding Prison* corrects these trends, providing a detailed and thoughtful argument against the infatuation with prison expansion, embodied by the simplistic argument that "the public" wishes to get tougher on all criminals. Cayley balances intellectual arguments against the overuse of retributive practices, including incarceration, with a comparative, human-interest approach that should resonate for readers in Canada and abroad.

The book is organised into nineteen distinct, but related, chapters covering a range of topics. Cayley assumes a holistic approach to our fascination with prisons. He claims that,

* Professor, School of Criminology, Simon Fraser University.

** M.Phil Candidate in Criminology, Sheffield University; International exchange student, Simon Fraser University.

*** M.Phil Candidate in Criminology, Sheffield University; International exchange student, Simon Fraser University.

[how crime] is penalized depends on the enactments of legislatures, the practices of the police, the decisions of judges and parole boards, the biases of news media, and the social atmosphere in which all these agencies go about their work.¹

Cayley does a great service by articulating important ideas surrounding justice and prisons. He explores the political context within which alternative forms of conflict resolution can be situated, drawing on Pat O'Malley's concept of New Liberalism. He alerts us to the spectre of its more conservative cousin, market liberalism. Cayley is concerned that social services are reduced under this outlook, and a "sink-or-swim" approach is taken, placing the burden of change and blame on individual offenders.² We see how prison expansion has been linked to neo-conservative political thought, and we are introduced to key frameworks of postmodernism, globalisation, and alternative dispute resolution.

II. PRISONS AND THE MEDIA

IN CHAPTER ONE, ADDRESSING THE MEDIA, Cayley demonstrates how media outlets draw heavily on sensational examples of crime, particularly those relating to notorious criminals and heinous offences. This media bias effectively rules out less dramatic examples of crime or incarceration from public debate. The following excerpt is used to demonstrate how a prominent criminologist, Thomas Mathiesen, became involved in media work following a prisoner's escape and recapture in Norway. Media outlets had made much of the prisoner eating a gourmet meal during his escape. Mathiesen turned on his television to find that:

a single sentence—"I am for more liberal prisons!"—had been extracted from ... [a 10-minute] interview and intercut with pictures of breast of duck and Cardinal wine in crystal glasses against white damask. Against his assertion was thrown another single sentence from the director of the Oslo District Prison: "I am for more discipline, though not slavish discipline." His sentence was accompanied by pictures of an American prison in which uniformed prisoners ran in a circle while armed guards in battle dress shouted orders at them.³

Such stilted media coverage serves to minimise the positive contributions made by prisoners through community service or other efforts toward rehabilitation. It also obscures non-vindictive expressions by those who are affected by crime. For example, a victim may wish to express how he or she was harmed, yet still cooperate with the offender and others toward a more effective disposition.

¹ D. Cayley, *The Expanding Prison* (Toronto: Anansi, 1998) at 6.

² *Ibid.* at 162–164.

³ *Ibid.* at 29–30.

III. HISTORICAL EXPLANATIONS

THIS BOOK HIGHLIGHTS traditional folk mechanisms for conflict resolution. Many examples of informal restoration are presented, all with the aim of preserving a sense of community and not causing undue damage to individuals. Cayley contrasts this grassroots heritage with modern forms of law. Today, community input is eclipsed by the greater involvement of state officials acting as proxies for the social instincts and experiences of citizens. This state-controlled process has, for Cayley, profoundly undermined a key principle of folk law: the “satisfaction of honour by reparation.”⁴ Moreover, the belief that offenders can be corrected under state authority has led to an explosion in prison construction and the overcrowding of prisoners. Nonetheless, he perceives a “sea change” from retribution to “[a]pology, compensation, service, and a change in the offender’s behaviour”⁵

The Expanding Prison splices together historical and contemporary developments in prison. There is a useful sketch of the establishment of prisons in the 1700s, along with an outline of trends toward prison expansion. Cayley draws important parallels between current State-based systems of punishment and Christian influences through the ecclesiastical courts. Chapter Seven, “God Is Himself Law,” traces the tension between denouncing offenders through retribution, and forgiveness of offenders who may show contrition or even redemption. On the one hand, it can be read as an important historical account that shows how modern criminal justice is, in Louk Hulsman’s words, a “true copy” of Christian teaching.⁶ Yet, there is a mass of detail that may be of little interest to many readers; for instance, the densely-written account of the Anslem of Canterbury.⁷

Cayley is sure-footed in his assessments of key concepts. He correctly notes that the concept of community is often obscured by “a mist of positive connotations.”⁸ Similarly, the term “prison abolition” is “inherently confusing, imprecise, and potentially divisive.”⁹ Readers will find references to a wide range of theorists including Michel Foucault, Ivan Illich, Herman Bianchi, Maeve McMahon, and Zygmunt Bauman. Intellectually rich, Cayley’s book is an important resource for anyone working, or interested, in criminal justice.

⁴ Cayley, *supra* note 1 at 128.

⁵ *Ibid.* at 170.

⁶ *Ibid.* at 129.

⁷ *Ibid.* at 133.

⁸ *Ibid.* at 365.

⁹ *Ibid.* at 159.

IV. AMBITIOUS BUT LACKING

GIVEN THE AMBITIOUS SCOPE of *The Expanding Prison*, there are a number of areas that might be discussed or treated differently. Cayley alludes to some topics that, if explored further, would lend weight to his account of the toxic experience of imprisonment. These topics include suicide in prison, a subject that is compressed into a single paragraph. There have been several reports and articles on prisoner suicide in Canada, including annual reports on this phenomenon.¹⁰ Women in prison are also largely ignored. Prisoners are often referred to generically, losing such differences as gender in the process. Attention to gender would highlight discrimination against poor women, lack of educational and vocational services for female prisoners, and women's experiences of victimisation, especially sexual assault and domestic violence. Cayley could profit from the growing literature on women in prison, and the general area of women and crime.¹¹

The profile of prisoners is often quite vague, referring generally to people who have been marginalised. But the link between dispossession and criminal activity is not clearly set out. The piece requires that considerably more attention be paid to the causes of crime, a topic he alludes to very briefly in the conclusion of the book.

It would also be helpful to draw more on prisoners' current experiences of criminal activity and confinement.¹² In fairness, Chapter Six, "The Real World of Imprisonment," describes vividly the brutal realities for both prisoners and guards, and the danger of a "revolving door syndrome" where offenders become habituated to institutional life.

It is unfortunate that Cayley provides no credit to the late activist, Claire Culhane. Working for prisoners' rights and improved prison conditions in the short term, and the abolition of prisons in the long term, Culhane worked tirelessly for approximately twenty years producing hard-hitting critiques of the

¹⁰ N. Polvi, *The Correctional Service of Canada 1996-97 Retrospective Report on Inmate Suicides* (Ottawa: Correctional Services of Canada, 1998).

¹¹ See e.g., E. Adelberg & C. Currie (eds.), *In Conflict with the Law: Women and the Canadian Justice System* (Vancouver: Press Gang, 1993); K. Faith, *Unruly Women: The Politics of Confinement and Resistance* (Vancouver: Press Gang, 1994); E. Comack, *Women in Trouble: Connecting Women's Law Violations to Their Histories of Abuse* (Halifax: Fernwood Publishing, 1996); and R. Wiebe & Y. Johnson, *Stolen Life: The Journey of a Cree Woman* (Toronto: Alfred A. Knopf Canada, 1999).

¹² P.J. Murphy & J. Murphy (eds.), *Sentences and Paroles: A Prison Reader* (Vancouver: New Star Books, 1998).

prison industry.¹³ Similarly, there is no reference to the Elizabeth Fry Society, and only two pages devoted to the work of the John Howard Society.

While we admire Cayley's balanced approach to restorative justice, he could have gone further. Some critics of restorative justice point to the very limited basis for evaluating the impact of such alternatives, and also the minimal effect such procedures have on changing individuals' economic circumstances.¹⁴ Chapter Eleven, "Rights and Reservations," explores how alternative justice practices balance individual rights with community rights, but it could have been usefully extended beyond its focus on sentencing alternatives in First Nations' communities. This balance is a key issue for aboriginal and non-aboriginal applications of restorative principles. It would have been interesting to hear about the overrepresentation of African-Americans in U.S. prisons, and how alternative justice practices may assist in the reversal of that situation.

Cayley writes very clearly, but occasionally cites examples that could be better explained. As early as page two, he cites a study of recidivism rates for prisoners who are held until the end of their sentence on the ground of dangerousness, and prisoners who are released under statutory release provisions at the two-thirds mark of their sentences. Cayley infers that the higher rate of recidivism for those released before expiry of sentence (37% vs. 16%) shows that dangerousness can not be reliably predicted. He quickly discounts the proposition that holding certain offenders longer may somehow lower recidivism. Cayley occasionally drifts into hyperbole, for example, drawing an analogy between contemporary western prisons and a "concentration-camp model,"¹⁵ and making the sweeping statement that "[p]risons, by definition, are totalitarian institutions."¹⁶ He overstates the adversarial aspects of criminal trials, glossing over evidence that many trial outcomes are foreclosed by plea-bargaining or other negotiation techniques.¹⁷

¹³ C. Culhane, *Barred From Prison* (Vancouver: Pulp Press, 1979); *Still Barred From Prison: Social Injustice in Canada* (Montreal: Black Rose Books, 1985); *No Longer Barred From Prison: Social Injustice in Canada* (Montreal: Black Rose Books, 1991). See also M. Lowe, *One Woman Army: The Life of Claire Culhane* (Toronto: MacMillan Canada, 1992).

¹⁴ See R. Barsh & C. Mallors, "Alternative Paradigms: Law as Power, Law as Process" in N. Larsen & B. Burtch, eds., *Law in Society: Canadian Perspectives* (Toronto: Harcourt Brace Canada, 1999) at 132.

¹⁵ Cayley, *supra* note 1 at 8.

¹⁶ *Ibid.* at 6.

¹⁷ R. Ericson & P. Baranek, *The Ordering of Justice* (Toronto: University of Toronto Press, 1982).

V. CONCLUSION

TO SUMMARISE, CAYLEY'S INTERDISCIPLINARY APPROACH and careful balancing of public interest, victims' rights, and prisoners' issues makes for important reading that deserves a wide audience. Cayley writes clearly, combining human-interest accounts with erudite commentaries on philosophy, law, politics, and criminology. He illustrates political and theoretical debates with conversational excerpts from a wide range of sources. He moves deftly from England to Canada, from Scandinavia to the United States, from Latin America to Africa and the former Soviet Republic. Cayley explores why some jurisdictions embrace prison expansion while others stabilise, or even reduce their prison populations.¹⁸ This comprehensive approach makes for a compelling articulation of many facets of imprisonment and its alternatives. For example, restorative justice initiatives such as circle sentencing in First Nations cultures, and family group conferencing for young offenders are presented as desirable alternatives.

David Cayley begins with Winston Churchill's famous quotation on prisons, which equates our "treatment of crime and criminals [as] one of the most un-failing tests of the civilisation of any country,"¹⁹ and concludes with Nils Christie's powerful image of Western-style gulags.²⁰ Between these two icons, Cayley identifies many other exemplars who favour such innovations as support circles for offenders who have just been released from custody, or the radical de-institutionalisation of offenders. Without question, *The Expanding Prison* provides a persuasive argument against using prisons as dumping grounds, and for transforming justice at the community level.

¹⁸ See A. Doob, "Understanding Provincial Variation in Incarceration Rates" (1998) 40 Can. J. Crim. 305.

¹⁹ Cayley, *supra* note 1 at vii.

²⁰ N. Christie, *Crime Control as Industry: Towards GULAGS, Western Style* (London: Routledge, 1994, 2nd edition); see Cayley, *supra* note 1 at 348, 365.