



After Conviction: The Problem of Prison

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detention
 crowding
 model
 convention
 monitoring board
 movement
 surveillance
 through labor (*laojiao*)
 labor (*laogai*)

Chapter 9 Learning Objectives

Describe unique correctional practices and current incarceration rates in each of the model countries.

Analyze the effects of prison crowding.

Explore suggested solutions to prison crowding.

Summarize the major international documents that encourage legal protections for prison inmates.

Explain how the sentences of supranational criminals are carried out around the world today.

After a full day of manual labor digging ditches in coal mines and breaking rocks, it has been reported that hundreds of Chinese prisoners were forced to play online computer games to build up credits for prison guards who would trade the credits for real money. The process, known as “gold farming,” calls for the building up credits and value through the monotonous repetition of basic tasks in games such as *World of Warcraft*. After accruing virtual assets, the gamers are prepared to trade real money for the online credits, which they use to progress in the online games against other players. If Chinese inmates did not reach their online work quota, they would be subjected to the unlimited power of the prison guards, who would use physical punishment to force compliance (Vincent, 2011). Unfortunately, this situation does not appear to be an anomaly for the Chinese. For decades, human rights groups and Chinese citizens have accused Chinese correctional officials of violence, intimidation, humiliation, isolation, brainwashing, harassment, and psychological torture.

In this example of the use (or misuse) of incarceration in China, one of the world leaders in the incarceration of criminals, one can see how prison administration and the treatment of offenders is often unique and at times quite troubling to the international community. Variation in the administration of prisons is created by a number of factors including a country's history, economics, politics, and recent trends regarding how certain offenders should be treated and what works in correctional (penal) practice. Such variation

makes the study of prisons both interesting and complicated. There is no single way to run a prison; every country has its own rationale for choosing one system over another. For those that hope to change their system, the main task is to determine how a correctional policy can work, for whom, and in what socioeconomic context.

Unfortunately, prisons today are often seen as symbols of the failure of the criminal justice system to achieve the changes in human attitudes and behaviors that would make their use worthwhile. It is not depriving people of their freedom is not a good way to teach them to act as proper citizens in courtrooms, which freedom of action and thought are essential in governmental and economic ideologies. It is not that no system has really devoted the necessary resources to programs of rehabilitation. Or it may be that no programs exist that can change conditioning patterns that individuals undergo in years. Despite the lack of evidence that show that it works, many governments from all around the world, especially the United States, continue to incarcerate people at an alarming rate. In this chapter, we will discuss some of the important issues related to incarceration. More specifically, we will describe the history of prisons; then, after an examination of the situation in our model countries, we will discuss some of the common problems that face penal systems around the globe, including prison crowding and the treatment of prisoners.

THE EVOLUTION OF PRISON SYSTEMS

The history of the birth of prisons is unclear and open to debate. We know that in ancient times the purpose of prison had a different purpose from in modern times. From the late 1500s, prisoners were

incarcerated for relatively short periods of time while they awaited draconian physical punishment or execution. History tells us that in ancient Greece the magistrate and politician named Dracon (hence the term *draconian*) was known for a legal setting that included the extensive use of the death sentence and other harsh punishment.

starvation, poisoning, death by exposure, and banishment. But notably absent in the historical records is the frequent use of long-term incarceration (DeLisi & Conis, 2010).

We also know about a large spring-water cistern that was constructed in Rome around the same time as Draco but later (in 64 B.C.) was used as a vast primitive prison and called Mamertine Prison. But again, only high-profile political and military prisoners were kept there, and only until they could be executed in public prior to some gruesome death. Roman law at the time did not recognize imprisonment itself as punishment. During the reign of Constantine I (306–337 A.D.), it is believed that the Christian Church began the custom of providing a sanctuary for penitence rather than physical punishments and death and that eventually led to a form of imprisonment and the formation of monasteries.

In the Middle Ages, prisons remained largely for minor offenses and for those in debt, but the purpose of some prisons became expanded to include longer incarceration terms as punishment rather than awaiting punishment. Prisons came to be viewed as an alternative to and an improvement on physical punishments and the inhumane treatment incurred while incarcerated. Some early prisons and their methods were greatly influenced by religious groups. For example, the medieval Roman Catholic Church expanded on the use of the monastic cell as a place for punishment for criminal offenders. In 1593 the Protestants of Amsterdam built a house of correction for women, and one for men in 1603. It is believed that the Dutch were the first Europeans to segregate serious criminals from vagrants and minor criminals, and Dutch courts were believed to be the first to regularly substitute imprisonment for corporal punishments. The term used to describe this sentence was *penal bondage*, which included all forms of incarceration (Spierenburg, 1995).

In England, secular houses of correction, called *houses of correction*, were instituted by King Edward VI in 1554 and later served as models for similar institutions in Holland, France, Germany, and Italy. These institutions were often used to house prostitutes, vagrants, debtors, and other minor criminals.

Inmates were subject to stern discipline and set to work with the goal of making a “habit of industry more conducive to an honest livelihood” (Fox, 1952; Hirsh, 1992). The early European prisons were rarely called prisons but instead went by the terms *dungeon*, *tower*, or *gaol*—the latter of which eventually evolved into the word *jail*. The ancient and medieval prisons, then, primarily served to temporarily house those awaiting trial, minor offenders, and those awaiting harsh physical punishments. Later, they were places where criminal offenders could be held more humanely, for longer periods of time, and with the hope that they would be reformed into better citizens.

The American Experience with Incarceration

The beginning of the modern prison is also up for debate, although we do know that Alexis de Tocqueville, Charles Dickens, and even Karl Marx spent time in the United States in the second quarter of the nineteenth century with the purpose of studying the American system of penitentiaries, which had achieved international fame as a major reform of the criminal justice process. Various American reformers hoped that a regime of solitude (the Pennsylvania system) or of silent, controlled work (the Auburn system) would provide a humane way to bring about a change of disposition and lifestyle in convicted criminals. The American prison system developed in response to the arbitrary, often cruel corporal punishments that were inflicted on offenders in previous eras in the hope that they would deter others from crime.

The American experiment rapidly became the focus of reform discussions in other countries. In France and England, prison systems began to take the place of transportation of offenders to remote prison colonies. The criminal law was reformed to provide sentences to prison instead of the prevailing corporal punishments and the excessive use of the death penalty for relatively minor crimes. By the middle of the nineteenth century, prison became the normative punishment rather than the

exception. Unfortunately, by the early twentieth century it was obvious that prisons were not fulfilling their promise and in fact were generally as cruel and inhumane as any previous method of punishment.

One of the hallmarks of the American **progressive movement** of the early twentieth century was the interest in a new approach to corrections: rehabilitation of the individual offender by specialists in corrections. A whole panoply of new or renewed proposals for change, including probation, parole, therapeutic prison regimes, and separate juvenile justice mechanisms became the dominant ideological, if not practical, reform proposals of the movement. However, the rehabilitation movement was short lived.

Faced with high crime rates and high recidivism rates, since the early 1970s criminal justice officials throughout the world and especially in the United States have turned to a **crime control model** of corrections. The crime control model, also called the “new penology,” assumes that criminal behavior can be controlled by more incarceration and other forms of strict supervision in the community (Shahidullah, 2014). As a result of the crime control model in the last half of the twentieth century, we have seen the decline of correctional rehabilitation and a punitive ethos that has led to dealing more strictly with drug offenders, violent offenders, and career criminals. Mandatory sentences, longer sentences, intensive supervision of probationers, and detention without bail have increased jail and prison populations to record levels in the United States and around the world.

In summary, it appears that the early penitentiary movement, subsequent reforms, and “get tough” strategies have not lived up to the expectations of the reformers who conceived them. Indeed, the only two goals of sentencing that prisons seem to achieve are the ones that admit to failure: retribution and incapacitation. The more optimistic goals of rehabilitation, deterrence, and more recently restoration have not been fully realized even in the most progressive, humane, and costly prison systems in the United States or elsewhere. As measured by recidivism figures, there is

little indication that we know how to change people by putting them in prison and subjecting them to various programs of reform.

PENAL POLICY IN THE MODEL NATIONS

There are many cross-national similarities in penal policy among modern nations. Each nation also has its distinctive approaches to this matter. These distinctive approaches are historically based, and we need to look at the factors that shaped them in today's organization and practices. An examination of penal policy in our model nations will show some of these similarities and differences.

England and Wales

The English correctional system has seen many major reforms and reorganizations over the last 200 years. Transportation to penal colonies was largely abandoned by the middle of the nineteenth century, overreliance on the death penalty was mitigated, and prison administration was moved from localities to the central government. Imprisonment became the major recourse for dealing with convicted offenders. Between 1842 and 1864, 54 fortress-type prisons were built, containing a total of 11,000 cells (Fox, 1952, p. 38). Many of these prisons continue to hold prisoners.

The latter part of the nineteenth century saw many of the same arguments about the value of rehabilitation, sentence length, and prison conditions that are familiar to us today. English prisons, however, were notorious for their rigid rules and harsh conditions, with prisoners forced to perform hard labor and essentially go without amenities. Later, when they were permitted a more comfortable existence, with a mattress, a few books, and correspondence with the outside world, the results were mixed. One author, “For death itself the [British] had substituted a living death” (Fox, 1952, p. 38).

The twentieth century saw movement toward reform, new ideas, and new

POLICY IN THE NATIONS

similarities in penitentiary systems. Each nation nevertheless has its own perspective on this matter. Cultures are historically or culturally different, and these are the factors that determine the practices. An examination of the practices of different nations will reveal these differences.

England and Wales

The English system has experienced significant changes over the past century. In the middle of the nineteenth century, the death penalty was the primary method of punishment. The government began to experiment with imprisonment for dealing with crime between 1842 and 1845. Prisons were built, containing prisoners to the nineteenth century. There were complaints about detention length, and prison reform. English prisons had their rigid regime. Prisoners forced to do hard labor without amenities. There was a more "comfortable" regime with a few books, and access to the outside world. As a result, the [British] government saw movements in the ideas, and new

inspired by the progressive movement in the United States, some reformers called for less reliance on prison as a way of punishing offenders. The early twentieth century also saw increased concern for juveniles, through the development of separate court processes and the Borstal training system, which soon became famous as a way of dealing with youthful offenders. During the 1970s a series of prison riots began that continued into the 1980s. The Woolf Report, published in 1991, identified that overcrowding, poor food, limited programs, and ineffective grievance procedures were cited as the reasons for the uprisings and that security, control, and justice needed to be restored to the prison system. According to the report, it appears that security and control have been realized but the third element—justice—has been neglected (Cavadino & Dignan, 2007).

The current prison population in England and Wales, including remand inmates, has increased from over 66,000 in 2001 to almost 87,000 in 2012. Not only do England and Wales have the highest number of inmates in Western and Northern Europe, their prison population rate increased from 127 per 100,000 population in 2001 to 154 per 100,000 in 2012 (ICPS, 2012).

The reader can refer to Table 9.1 to find the prison statistics for model countries and the United States.

To address the considerable increase in the prison population, the English government began a series of prison expansion projects, including adding over two dozen new facilities since the 1980s and modernizing some nineteenth-century facilities. The expansion was fueled by the "Prison Works" slogan adopted by Home Secretary Michael Howard and addressed three main issues: (1) the rise in the use of custodial sanctions by courts, (2) the increase in the length of sentences, and (3) the increase in the time served by those in remand prisons (Ryan & Sim, 1998; Roberts et al., 2003). To address the costs of this endeavor, the British have turned to the privatization of prisons and prison services. In short, privatization is the use of private companies to provide services or facilities rather than relying totally on public agencies and their employees to administer programs or deliver services. England has decided to utilize the services of several private prisons, although some argue that they add to the correctional problems rather than help the situation (Cavadino & Dignan, 2007). We will discuss private prisons in greater depth later in this chapter.

TABLE 9.1 Prison Statistics for Model Countries and the United States

	PP	PR	OR	% Female	% PT	# Facilities
England and Wales	86,708	154	108.9%	4.7	13.2	134
France	67,373	102	117.4%	3.4	25.2	191
Germany	67,671	83	86.6%	5.7	16.5	186
United States	1,640,000	121	n/a	5.1	n/a	700*
Sweden	69,876	55	83.3%	7.6	11	188
Canada	49,000	173	n/a	5.7	58.7**	116
Japan	2,266,832	730	106%	8.7	21.5	4,575

*Estimated does not include 320 reeducation centers

PP = total prison population

PR = number of inmates per 100,000 population

OR = recidivism rate

% Female = percent of inmates that are female

% PT = percent of inmates that are pretrial or remand

Facilities = number of correctional institutions

Source: ICPS (2012). Accessed October 2, 2012, from <http://www.prisonstudies.org/info/worldbrief/>.

The 134 prisons in England and Wales are of five basic types: (1) remand centers; (2) local prisons for offenders awaiting trial or sentencing or serving very short sentences (similar to county jails in the United States); (3) closed and open training institutions that hold the majority of British inmates, who generally are sentenced to between eighteen months and four years, or long-term prisons that house inmates serving more than four years; (4) highly secure prisons, formerly called dispersal prisons, that handle high-security and dangerous inmates; and (5) closed and open institutions that incarcerate only young offenders. Prison rehabilitation programs are available in the training and long-term institutions, but because of crowding, not all programs are available to all inmates.

There have been considerable changes in the administration of the prison service in recent years. For decades the prisons were centrally administered under the office of the Home Secretary, who is equivalent to an interior minister in other European countries. However, in 1993 the Prison Service was formed as a civil service agency to decentralize the administration of corrections and improve its efficiency. The chief executive officer of the Prison Service is appointed by the minister of justice, who since 2007 is also the lord chancellor. In 2004, the National Offender Management Service (NOMS) was created. The NOMS serves as an agency that coordinates in 10 geographic regions the services of both the prison system and the probation service so inmates who are leaving prison are supervised and provided with the best release plan possible (Joyce, 2006).

Despite these changes, there are still considerable challenges for the English correctional system. The familiar combination of increasing crime, hardening of attitude, crowding of prisons, deterioration of conditions and relationships within prison, and desperate temporary measures to decrease the prison population characterizes the English system today. The crisis is exacerbated by the racial tensions that have followed the influx of immigrants from Britain's former colonies. This influx has created an urban underclass that suffers from severe political, social, and economic disadvantages in

English society and is disproportionately represented in the English prisons. The United Kingdom has been the defendant in a number of cases that have been brought to the European Court of Human Rights (ECtHR).

In response, considerable efforts are being made in England and Wales to address the problems of human rights of inmates. Three institutions—the Prison Service, the Probation Service, and the Prison and Probation Inspectorate with right of entry to all prisons—provide checks and balances to the prison system. **Independent monitoring boards**, until 2009, were the boards of visitors or visiting committees that brought outsiders into the prisons to monitor problems of administration and discipline. In 2009, 2,000 volunteers, an average of 15 members on each board, act as an independent watchdog on the prison system, meeting with inmates and staff to safeguard the rights and being of all prisoners. Their origins are in nineteenth-century committees set up by the Prison Service to inspect the local prisons.

The government of England and Wales has made an effort in recent years to develop noncustodial sanctions. For example, the number of those on probation supervision of offenders has ballooned from 51,000 in 1990 to over 100,000 in 2009. Since 2001 probation in England has been under the supervision of a new agency, the National Prison Service. The noncustodial sanctions in England include warnings or admonitions, restitution, community service, fine suspended sentences, and an idea called **community order**, which includes aspects of probation and community service (HEUNI, 1999; Terrill, 2013). Those on probation may be placed in a probation hostel. This facility is designed to provide probationers with a residence while they are working, paying off restitution, or learning to acquire skills to become productive members of the community. One nongovernmental organization in England and Wales that is deeply involved in the promotion of hostels is the National Association for the Care and Resettlement of Offenders (NACRO). The agency fully supports the use of vo

proportionately increase supervision and placement of offenders, increases. The United Kingdom has diversion programs, and the reduction of a number of custodial sentences. In the United States, the European Commission on Crime and Criminal Justice-based corrections center or halfway houses serves the same purpose.

able efforts are made to address the protection of free institutions—entry to all prisoners, an ombudsman, and boards—all are subject to the prison's and, on the record, somewhat worse. (Owers, 2006) The boards, until 2006, were committees of 15 members, including the prisons to discipline and discipline. The watchdog on the staff to safeguard the prisoners. Their original purpose was set up by

France

the generally dismal worldwide history of treatment of criminal and political offenders, France occupies a place that is at least as undistinguished as England's and, on the record, somewhat worse. The numbers of real or imagined enemies of the state were incarcerated without trial in France during the sixteenth and seventeenth centuries through the infamous *lettres de cachet*, which were orders of the king that a person be imprisoned indefinitely. Transportation to work colonies was used to man the oars on French ships, which were equivalent to death sentences in the colonies since few prisoners survived the appalling conditions in these places for more than a few years. Imprisonment as a sanction was used chiefly for men and for women and juveniles, who were sent to the galleys. As in England, the prison as a sentencing option was preceded by workhouses that housed not only criminal offenders but also political prisoners, who had no other means of survival. In England, a great wave of reform sentiment accompanied the Enlightenment of the late eighteenth century, and in the nineteenth century controversial changes made large-scale imprisonment the major sentencing mode. In the nineteenth century, the same effort was made to introduce certain sentencing possibilities, such as suspension of sentences, that characterized first the English and then the English correctional system. Probation and parole, however, which played a major role in American corrections throughout the nineteenth century, were not used in France until after World War II. In addition, France persisted in the use of transportation of prisoners long after the practice had been phased out in England. The closing of the final prison colony in French Guiana did not occur until 1946 (Wright, 1983).

In the postwar years, France moved from an emphasis on prison reform to a generally harsher philosophy of punishment. The large increase in the crime rate during the 1970s contributed to a repressive mood on the part of the public and the government. The socialist government that came into power in the 1980s tried through a number of reforms to soften punishments, but public reactions to murders and terrorist bombings soon took precedence over reform sentiments. During the 1990s there was a slight increase in the number of violent crimes in France, and the public clamored for more punishment. The government responded with tougher policies in the form of longer sentences, which is thought to be the most significant factor in the increase in the incarceration rate (Roche, 2007). To mitigate the problems associated with a growing prison population, in 2011 then-president Nicolas Sarkozy called for the building of 20,000 additional prison beds. Since his ouster in April in early 2012, the issue has been largely dismissed.

The numbers clearly reflect the increase in prison as a sentencing option in France. In 2001 there were 44,618 inmates in French prisons with a rate of 75 per 100,000 population. By July 2012 the numbers had risen to 67,373 and 102 per 100,000 population (ICPS, 2012). See Table 9.1 to find the prison statistics for France and our other model countries. The 191 French correctional institutions are one of three general types: jails, prisons, and special institutions. Jails, as in most countries, are for pretrial inmates and those serving very short sentences. The prisons are either detention centers, penitentiary centers, or high-security facilities. Special institutions are for those inmates who have physical handicaps, those with psychological disorders below the level of insanity, females, juveniles, and the aged (Terrill, 2013).

Two distinguishing features of the French penal system are the proportion of pretrial detainees and the office of corrections judge. With respect to pretrial detainees, figures show that almost 25 percent of French inmates are remand (unconvicted) or serving less than a one-year sentence. Although Civil Law nations typically have long pretrial

detention while the case is being thoroughly examined, France has acquired a reputation of excessiveness in this area. Some detainees are kept in jail for several years while their cases are being investigated by the examining magistrates. The good news is these numbers are down over 10 percent from five years prior (ICPS, 2012). Reasons for the drop include the increased use of pretrial diversion programs and rules stating that a maximum of one year of pretrial detention is allowed in less serious cases (those that would result in a sentence of less than five years).

The French have also tried to deal with the problem of increasing incarceration rates through the office of *juges de l'application des peines* (corrections judges). These judges are appointed by the government to perform several functions, including determining the length of time that a particular prisoner remains in prison and whether the prisoner should be released on parole. Most interesting, however, is the function of overseeing prison conditions and prison disciplinary procedures. The corrections judges have the responsibility of visiting the prison or prisons in their jurisdictions at least once a month; hearing individual inmate complaints; and keeping informed about prison programs, physical plants, and general conditions. Although this program has met with a good deal of opposition, especially from prison administrators, and can hardly be considered an unqualified success, it represents an effort to make the dark world of French prisons somewhat more open to outside scrutiny and thereby more accountable to the government and the public. In this sense, the office of corrections judges performs some of the same functions that the boards of visitors have served in England for almost a century. At the same time, these officials have a major influence on the actual sentences served by particular inmates.

The French have lagged behind the rest of Europe in developing and implementing a range of alternatives to incarceration. Recently, however, efforts have been made to increase their usage. There are primarily four noncustodial sanctions in France: fines, suspended sentences, community service, and probation. The French have also used

pardons and amnesties more than most to high incarceration rates, resulting in reduced populations for short periods of time (Lev

Germany

Germany, with its federal system of government, administers prisons at the level of the *Länder*. With the exception of the period of National Socialism, when all German institutions, including corrections institutions, were centralized, each German state has run its own prisons since the creation of the German Empire. Within the German *Länder*, prison administration falls under the jurisdiction of the Ministry of Justice, with varying kinds of administrative and subdivisions.

During the latter eighteenth century, workhouses incarcerated petty criminals, and poor people in the German states (N Pavarini, 1981, p. 49), but these states soon took part in the early nineteenth-century movement to develop large-scale prisons as the major institution for criminal corrections. The infrastructure of the prison system of today was established in the German states prior to the 1871 unification.

For over a century, Germany operated under the post-unification penal code of 1871, which itself was based on the Prussian Code. The Prussian Code was heavily influenced by the repressive French Code of 1810 and the Code of 1813. These various codes embodied the classic philosophy of punishment under which was prevalent in the nineteenth century. Although there were many amendments to the 1871 code, a complete overhaul did not occur until the Prison Act of 1976.

The Prison Act of 1976, formally known as the Code on the Execution of Prison Sentences, set forth all of the principles and methods to be used in German correctional facilities. The code states the correctional system goal of rehabilitation and reintegration into society for offenders. At the same time, the code includes provisions for safeguarding certain rights accorded to prisoners, including the right to work, home leave of up to 21 days per year,

than most to engage in productive paid work. The law sets the minimum wage for prison labor at 9 percent of average outside wage, but inmates can opt to increase from 5 percent in the 1990s (Levy, 2004). To be sure, these rights were tempered by the discretionary power of prison administrators to grant or deny them in accordance with circumstances, including availability of work and the inmate's ability to pay for prison labor. Nevertheless, the German system of government, at the federal level of the state, represents a major comprehensive statement of the German institutional approach and a major effort to codify the regulations governing the German penal system (Feest, 1982; Dammer, 1996).

In 2012 there were 186 correctional institutions in Germany, but less than 10 of these institutions had a capacity of over 500 prisoners, making Germany quite progressive in terms of prison size. Interestingly, Germany has actually decreased its incarceration rate over the years. In 1992 the Germans incarcerated inmates at a rate of 71 per 100,000 persons. By 2004, the rate had increased to high levels of 81,166 per 100,000 in 2004. But since 2004 the rate has dropped. As of January 2012, over 83,000 offenders were incarcerated with rate of 83 per 100,000 persons (ICPS, 2012).

Prisons within Germany have various levels of security. Inmates integrated within the institution. When they enter prison, they begin at a high level of security. As they serve their sentences and show progress toward rehabilitation, they can move to a lower level of security. Special units within the prisons are used to discipline inmates who repeatedly break the rules. Inmates who are at risk of hurting themselves or others are placed in maximum-security institutions in Germany. Inmates who are escape-risk inmates, terrorists, and those who are proven to be unmanageable in other institutions are placed in maximum-security institutions.

A new feature of German corrections is that the German Prison Sentences Act has formed a special unit for sex offenders. The unit is staffed by extra psychologists (Bindzus, 2004). The unit uses a variety of methods to be rehabilitative. German prisons are known for their extensive use of rehabilitation programs. In a study of five German prisons, it was determined that at least three features support the rehabilitative philosophy: (1) extensive environmental conditions, (2) extensive work and training opportunities, and (3) community programs (Dammer, 1996).

Of the unique environmental conditions in German prisons, the physical location and structural design are most obvious. German prisons are almost always located within cities or in nearby suburban communities. Because of a scarcity of unutilized land, the Germans cannot afford to use valuable agricultural land for correctional institutions. Having prisons in cities and nearby towns also makes it easier for families to visit and for inmates to utilize the community for home leave, work, and educational opportunities. Although some large monolithic structures remain, many prisons in Germany look less like secure correctional institutions and more like factories or hospitals. The belief is that keeping the physical appearance more like that of a factory and creating more "normal" living conditions will foster rehabilitation.

German prisons also often provide inmates with extensive work and training opportunities to prevent idleness, reduce institutional costs, and help inmates improve themselves so they can become better citizens upon release. A large percentage of the inmates in German prisons engage in some work or rehabilitation program.

A third common rehabilitative practice is the frequent use of three community reintegration programs: home leave, conjugal visiting, and half-open release. Home leave is one of the rights included in the 1976 Prison Act that has been increasingly implemented. These leaves are given at the discretion of the authorities in specific prisons, with most of the leaves from low-custody as opposed to high-custody institutions.

With the **conjugal visiting** program, inmates can receive private visits from their spouses and children for four hours every two months. They obtain this privilege after being incarcerated for two to three months and lose it only if they violate a serious prison rule or are involved with drugs. Another program that promotes rehabilitation and reintegration is the *Freigänger*, a half-open work release program. In this program, inmates who have served at least one-half of their sentence can earn the privilege to leave the institution during the day for school or work and then return to the institution in the evening. The *Freigänger* program is

guided by the belief that gradual release will assist in the inmates' successful reintegration into the community. Many state correctional systems in the United States implement programs, called work release programs, that are similar to the half-open German programs.

We have seen how the British prison system, with its boards of visitors, and the French system, with its corrections judges, have dealt with some aspects of inmate grievances. Germany has also addressed this matter, albeit in a somewhat different manner. The Prison Act of 1976 provides for inmate access to courts for any violations of prisoners' rights spelled out in the act. Special court panels are constituted to consider inmate grievances, and appeal to the state high courts is possible. This procedure, which involves litigation, is thus more formal than either the French or the English procedures and has resulted in an increase in court claims involving prisoners' rights.

If we compare the use of noncustodial sanctions in England, France, and Germany, we can see that Germany is clearly the leader in the use of such sanctions. Over the past 30 years, Germany has tried to follow a policy of reduced use of imprisonment. In addition to extensive measures to prevent the use of pretrial detention, Germany has implemented community service, fines, day fines, offender-victim mediation, and educational programs for juveniles (HEUNI, 1999; Dunkel, 2004).

China

China in the post-1949 communist era has developed a correctional system that retains remnants of both the Confucian and legalist perspectives. The basic principle of Confucian thought—bringing out the good nature of people and creating change through imposing moral education—has meshed with the communists' need to reeducate the people in socialist values. The ancient legalist view promoting the use of strict punishments to punish wrongdoing and prevent crime is also within the philosophical framework of the communist regime, which believes that punishment and reform go hand in hand.

Over the past 65 years, the government of the People's Republic of China has developed a correctional system that retains, in essence, historical perspectives. Informal social mechanisms such as the people's mediating committees (see Chapter 7) support both traditional and socialist ideologies in families, neighborhoods, rural areas, work units, and schools. The important aspect of the legalist perspective fused with the concept of reform and reeducation through labor is implemented through formal social control mechanisms. Westerners may call prisons or correctional facilities. Technically, the Chinese do not use the terms *corrections* or *correctional facilities* (Wilson, 2008), but we use the term *prison* for those who are familiar with similar institutions in the United States. The types of formal social control mechanisms include (1) jails, (2) reeducation-through-labor camps, (3) reform-through-labor camps, (4) (5) detention centers, (6) drug detoxification centers, and (7) schools of discipline and education for young adults and juveniles (Shaw, 2010). In addition, there are drug detoxification centers, jails, and drug detoxification camps in the United States, house arrest, pretrial sentencing and those serving less than a year in prison. Education and manual labor are a commonplace in these institutions.

Reeducation through labor is a form of rehabilitation through labor and, in China, is both a policy and the name of the correctional facility that incarcerates those with administrative detention status. **Administrative detention** is a form of punishment in the People's Republic of China that allows authorities to detain and incarcerate people without a trial and formal adjudication as criminals. It is typically a noncriminal sanction that can be applied to both youths and adults, and it can include incarceration for up to four years. This policy has the legal support for the incarceration of tens of thousands, if not hundreds of thousands, of persons for their involvement in the Tiananmen Square incident (Lawyers Committee, 1994). The kinds of actions that would warrant incarceration in these institutions include disturbing the public order.

the government has developed a weapon, breaking and entering, theft, offenses, prostitution, gambling, distributing pornography, and some drug violations (Yong, 2009). Recently, prominent lawyers in China called on the government to reform the *laojiao* because of reports of citizens being sent to forced labor without first undergoing a trial (Human Rights Foundation, 2012).

Reform through labor is also both a policy and the name of the kind of correctional facility for inmates who have been tried and convicted of a crime or offense, in most cases a serious one requiring between one and ten years of incarceration. Only adult and serious criminals who are considered as dangerous are placed in these institutions. These camps, called *laogai*, are most famous for their forced labor policies and their extreme thought reform (Wu, 1992). They are based on the military practice model, and the inmates participate in agricultural or industrial production, construction, or service work (Shaw, 2010). Our vignette at the beginning of this chapter is an example of the exploitation that has been common in Chinese prisons.

Prisons in China generally house the more serious inmates, including those with a sentence of more than 10 years, a life sentence, or a sentence of death. These inmates require total separation from society and are usually confined to their cells. They perform only simple labor, and receive little thought reform. There are also camps of discipline and education designed for inmates who have caused trouble and committed minor criminal offenses such as theft, gambling, or fighting (Bracey, 1988).

Work-study schools provide the discipline and education designed for youths who have caused trouble and committed minor criminal offenses such as theft, gambling, or fighting (Bracey, 1988). These schools of education, akin to reformatory schools, are for serious juvenile inmates between the ages of 14 and 18, who are placed in intensive work and moral education (Shaw, 2010).

Reform through labor is an important element of the Chinese correctional system through all the forms of incarceration. Although labor is not formally recognized as important as reform and rehabilitation, it is the main activity in many of the prisons,

and other facilities. Its primary purpose is to augment the education and reform process: Correctional labor teaches work skills, helps inmates pass the time, and also provides financial assistance to the institutions (Shaw, 1998, p. 192). For years, China's leaders have boasted that prison labor is vital to the country's economic growth. They claim that using inmates to staff prison factories that do light assembly work and even to work in coal and asbestos mines contributes funds to the Chinese treasury that can be reinvested in the economy. Chinese officials have estimated that 350,000 inmates are in some form of prison labor program (Judicial News, 2010c), although the numbers reported from human rights groups are much higher. The financial success of these Chinese *laogai* has even been challenged in an extensive study by James Seymour, who argues that prison businesses make "no significant contribution" to the Chinese economy. He claims that an unmotivated work force that is often skilled at sabotage has negated the positive benefits of inmate labor (Seymour & Anderson, 1998).

Among the most controversial of the educational and reform methods used in Chinese correctional facilities are programs that promote thought reform. Thought reform includes having inmates confess to their wrongdoing, attack their criminal identity, and construct a new self-image that fits with the beliefs of the socialist agenda. Other tactics used to encourage thought reform include the study of socialist doctrine and the constant recitation of important texts.

The incarceration figures for China are difficult to determine because China often fails to report such data and does not allow outside scrutiny of its correctional system. The large number of work camps located throughout the vast regions of China and the frequent transfer of inmates between the camps contribute to the counting problems. Although some sources claim China has almost 1,500 correctional facilities, official reports claim to have only 700 correctional facilities (Shaw, 2010; ICPS, 2012). The official number of correctional inmates in China is around 1.64 million. If we use the conservative number of facilities

provided by the Chinese government, the numbers of inmates and correctional facilities do not match—the United States, with around 600,000 more inmates, has less than 5,000 correctional facilities. We also know that the incarceration rate in China has increased from 101 per 100,000 population in 1995 to 121 per 100,000 population in 2012 for sentenced inmates (ICPS, 2012). The number of acknowledged inmates also does not account for at least 800,000 in administrative detention and around 100,000 in pretrial detention centers (ICPS, 2012). For example, in 2009 Human Rights Watch reported on interviews with dozens of Chinese citizens who claim they were detained in “black jails” or “black houses.” These facilities, run by provincial law enforcement officials, are believed to be used primarily to detain citizens who come to large cities to complain about governmental policies, such as those displacing them from their homes or local corruption (CNN, 2010).

As a supplement to the extensive informal and formal social control mechanisms, the People’s Republic of China also provides various forms of noncustodial sanctions. Probation, called **public surveillance**, can be imposed from three months to two years and requires that the offender report regularly to the local public security agency. Suspended sentences can be handed out to non-dangerous offenders with a sentence of less than three years. Fines and two lesser-used sanctions are restricting offenders’ right to vote and confiscating offenders’ property (Terrill, 2013).

The Chinese have made some effort to improve, at least in appearance, their record on human rights for inmates. In 2009 the government launched the National Human Rights Action Plan (2009–2010). Included in the plan is a pledge to “improve the legislation concerning prison management and take effective measures to ensure detainees’ rights and humanitarian treatment.” A second initiative calling for a new prison management system that would direct prisons in China on the main task of providing jobs for the rehabilitation of offenders was also put forth in 2009 (Wang, 2010). It is not clear at this time whether these or other plans meant to improve the situation

for Chinese prisoners have been implemented or how we know about their efficacy.

Japan

A visitor to Kawagoe Youth Prison notices first the beautiful landscaping in Japanese style, with carefully placed small trees not only in the large prison yard but also in the small courtyard between the interview rooms where prisoners are tested, and assigned to work and education. Additional facilities include a drill ground where prisoners exercise in military formations in the direction of guards for at least one hour.

Some of the over 1,000 inmates are enrolled in vocational courses including hairdressing, carpentry, woodworking, gardening, construction, and so on. The remainder work in large, hangar-like workshops, each containing a different industry. They include auto repair and manufacturing of small ornaments and tatami mats. A correctional foreman in each industry salutes, checks attendance, and reports on the productivity of the prisoners. The prisoners work 44 hours each week, including on Saturday.

After 5:00 p.m., inmates are confined to their cells, where they also receive their meals. The man cells are neat but rather bare, with tatami mats for bedding stacked in one corner and a television set in the center. There are also women cells, smaller but also furnished with tatami mat and stacked in the corner and a small television receiver, for prisoners who present problems and cannot adjust to the group life of the other cells.

Kawagoe Prison illustrates several aspects of Japanese prison life and penal philosophy: a strong emphasis on work, with prisoners performing tasks contracting to manufacture products or provide services. Prisoners receive some compensation for their work, although much of the money is used to offset prison maintenance costs. The system is also strongly regimented, with little freedom of movement or individual programming.

been implemented. Each inmate has been assigned to a particular regime. Inmates have few rights as such, and Japan does not provide the kind of treatment staff that most European and American prisons have. Correctional officers are trained, however, to emphasize resocialization into the community as one aspect of the prison program.

Prison near Tokyo is landscaped in a traditional Japanese style, with many shrubs and a large courtyard behind the main building. Inmates are tested and education programs are provided. There is a drill ground and formations under the sky. Inmates are given one hour a day for recreation. Inmates are encouraged to work on hairdressing, construction, and carpentry. There are hangar-like facilities for the automobile industry. The manufacture of goods is quite low compared to other countries. A correctional facility was 69,876 with a rate of 55 per 100,000. These numbers represent a drop from when over 80,000 were incarcerated at a rate of 60 per 100,000 were recorded (ICPS, 2012). Figure 9.1 for a more detailed view of the incarceration figures for Japan.

Inmates are confined to their cells. They are given their meals. They are likely to administer fines, which account for 10 percent of all sanctions for crimes. As a result of these sentencing practices, fewer offenders are incarcerated. There are a few offenders and still fewer receive other traditional sanctions such as probation. When an offender is placed on probation in Japan, he or she is required to have contact with one of the nearly 100,000 volunteer probation officers (VPOs) who are full-time officers in community supervision. Nearly two-thirds of all defendants sentenced are granted a suspended sentence. When an offender does actually receive an incarceration sentence, it is often quite short, especially in comparison to sentences in the American criminal justice system. Of those imprisoned in 2004, for example, 14.9 percent were sentenced to less than one year and another 72 percent received a term of less than three years (Terrill, 2009, p. 364).

Inmates in Japanese prisons reportedly are afforded individualized treatment that allows them to become rehabilitated and reintegrated into the community. As in the Chinese system, offenders progress through a system that allows them more privileges and freedoms as they successfully serve their sentence. Success is measured by prisoners' ability to work well in the prison factory or maintenance job, get along with others, abide by prison rules, and otherwise be actively involved in rehabilitation programs. Because of the industrial arrangements in most prisons, the system actually operates without cost to the Japanese government. One example of a unique rehabilitative program that is practiced in many Japanese correctional facilities is *naikan*, a method of therapy in which individuals use introspection to understand the impact of their behavior on others and that of others on themselves.

However, it should not be implied that all is well with the Japanese prison system. There are at least three key issues of concern. First are the unflattering reports about the treatment of offenders in Japanese prisons. Human rights groups have in the past accused Japanese prisons of being overly repressive and restrictive in regime. In particular, they voiced concerns about the "cruel, inhuman and degrading treatment through the use of handcuffs and other instruments of restraint, and the imposition of severe penalties for minor infractions of complex prison rules" (Amnesty International, 1998). To address matters of prisoner treatment, the Japanese passed the Act on Penal Detention Facilities and Treatment of Inmates and Detainees in 2005. Among the changes in the Act is a call for authorization to appoint citizens to a visiting committee for each correctional institution. Each committee will be charged with the task of making recommendations to prison administrators. It is hoped that these committees can provide the supervision necessary to improve the treatment of inmates in the Japanese prison system.

Second is the growing number of inmates who are member of gangs or organized crime groups. It is estimated that more than 25 percent of Japanese inmates are involved in these security threat groups.

Finally, as in many prisons around the world, an increasing number of inmates are coming into prison with drug abuse and mental health issues (Nomura, 2009; Terrill, 2012). This problem is sure to tax the strict regime methods of the Japanese prison system. Because of the strong emphasis on conformity in Japanese life, prisons are a symptom of failure, and being a prisoner is a particular disgrace for both the inmates and their families. The Japanese believe that the tough methods used in prisons are necessary costs for a safer society (Kristof, 1995). These methods are believed to break down a prisoner's resistance and force him to acknowledge guilt and remorse. The goal is to integrate the inmate back into society, an obedient and peaceful citizen once more. What an American might view as abuse the Japanese see as rehabilitation. The Japanese also believe that such harsh treatment is necessary to control prison violence and protect inmates. The extremely low levels of prison violence, especially in comparison to the high U.S. rates, provide support for their position. Thus, there is little public involvement in prison conditions, and the correctional process remains an operation that receives little scrutiny.

Saudi Arabia

Prison is not the conventional sentencing recourse in Saudi Arabia that it is in our other model countries, primarily because of the tendency to use other methods, such as the corporal punishments outlined in Chapter 8. Nevertheless, prisons, managed under the Interior Ministry, do exist to house those awaiting trial and also those intractable offenders who are not deterred by the corporal punishments. A supreme council for prisons, chaired by a representative from the Interior Ministry, has been established to conduct studies relevant to improving prisons. This same council has been commissioned to consider the development of alternatives to incarceration, because noncustodial sanctions are almost nonexistent in Saudi Arabia. Terms of imprisonment are sometimes reduced and pardons provided during the religious holiday of Ramadan (United Nations, 1999).

As of October 2011, the prison population reported by the National Prison Administration in Saudi Arabia to be 49,000 with a rate of 100,000 population, in 116 correctional institutions including 12 reformatories. This is an increase from 2002, when 28,617 inmates and a rate of 100,000 were reported (ICPS, 2012). It is difficult to assess the kind and quality of the correctional facilities in Saudi Arabia because of the lack of available information.

Saudi correctional theory implies that the rules to regulate the prison system are unique because the rights of prisoners are defined according to Islamic law (Shari'a) (United Nations, 1999, p. 7). The Shari'a forms the basis of Islamic codes and regulates all principles of justice system, including corrections. In fact, it is the fundamental principle that governs the correctional system in Islamic law, whether by the police or the correctional system. Westerners sometimes are aghast at the way "justice" is meted out in Saudi Arabia, claiming it is unduly harsh. But the notion of justice for Muslims is different. As explained by expert Frank Vogel, "What the Saudis consider obedience to God's direct commandments, the Westerner often calls arbitrary, capricious, and cruel" (Daniszewski, 1997).

Efforts to persuade the Saudis to accede to various international treaties that outline standards for inmates have been unsuccessful. For example, the Saudis have rejected the 1987 Convention for the Prevention of Torture or Inhuman or Degrading Treatment because it contains provisions that would forbid countries to deport or extradite individuals where there is risk of torture. The rejection of such conventions would mean that they condone such methods.

Based on individual accounts reported by human rights organizations, we can determine that, by Western standards and those outlined in international human rights conventions, the imprisonment conditions in Saudi Arabia are quite harsh. The use of corporal punishment, arrest and incarceration, torture, and capital punishment have been said to be common in both political and criminal cases in Saudi Arabia. Human Rights Watch recently reported

the prison population in Saudi Arabia. Prisoners and detainees in several prisons in Saudi Arabia are reported to be in inhumane conditions (Human Rights Watch, 2012). Until international organizations and private researchers are allowed to visit and conduct studies in Saudi Arabia on a regular basis, the quality of the information about what we hear about corrections in Saudi Arabia will remain negative and anecdotal (Human Rights Watch, 2008).

PRISON CROWDING

Prison crowding in prisons exists in rich and poor countries, in Islamic and in Common and Civil Law jurisdictions. Consider that in the one month of July 2012, stories about prison crowding surfaced in more than 11 countries, including Australia, Canada, Iran, Uganda, and the United States (News Digest, 2012). It is clear that prison crowding is the single most pressing problem faced by the police, courts, and corrections systems across the world today. In this chapter we discuss the extent of, reasons for, effects of, and solutions to this worldwide problem.

Reasons for Crowded Prisons

It is difficult to clearly understand the reasons for prison crowding throughout the world because the problem is complicated by a combination of historical, cultural, and economic factors. As we discussed in Chapter 8, much of the rise in the incarceration rates in many countries may be directly tied to sentencing policies made by policy makers. Relatedly, earlier chapters we discussed how the crime control policies have helped to exacerbate the rise in the prison population. However, there are certainly other reasons for prison crowding, because some countries have not changed their laws and policies. For example, we have experienced the problem in international prisons. It does not appear to be the case in most Western countries. One reason may simply be that the increase in crime rates has not kept pace with the increase in correctional resources. It is also possible that in some countries, such as Pakistan, Malaysia, and Saudi Arabia, a lack of correctional resources is a major reason for prison crowding, along with a

slow and inefficient criminal justice system and lack of alternatives to incarceration (UNAFEL, 2001). Another possibility may be that the criminal justice system in any country may have gained in competence or reduced corruption, leading to more arrests and more convictions. Or maybe there has been a single incident or kind of crime that has led to the incarceration of a large number of offenders such as increased organized crime activity or mass violence. Two examples of this are the jump in arrests and incarcerations in Germany immediately following their reunification and the more drastic case of Rwanda, where over 100,000 Hutu leaders and supporters were incarcerated for their part in the 1994 massacres in the Rwandan civil war. Whatever the reasons, it is clear that the problem of prison crowding has a definite impact on corrections internationally.

Prison Crowding Data

In Chapter 8 we discussed the problems associated with using stock designs to determine incarceration numbers and incarceration rates. The same problems exist with such a methodology if we wish to measure the extent of prison crowding. Nevertheless, we continue to use them because they still represent the most easily understandable and most accessible data about the topic. The most common way to measure prison crowding is to use the occupancy rate. This is accomplished by comparing the number of prison beds with the number of prison inmates on a given day. If the number of inmates exceeds the number of beds, then we can conclude that the occupancy rate is beyond 100 percent. In Table 9.2 we list the countries with the most inmates in the world and their respective incarceration rates. In Table 9.3 we list the countries with the highest occupancy rates. The reader can refer to Table 9.1, Prison Statistics for Model Countries and the United States, to find the same data for our model countries.

Some observations can be made from a perusal of the incarceration numbers. First, as we have mentioned earlier on a number of occasions, the United States is clearly the world leader in

TABLE 9.2 Top Ten Countries by Number of Incarcerated Persons and Rate of Incarceration

Country	Total	Rate*
1. United States of America	2,266,832	730
2. China	1,640,000	121
3. Russian Federation	722,200	505
4. Brazil	514,582	260
5. India	368,998	30
6. Iran	234,678	333
7. Mexico	237,580	206
8. Thailand	234,678	337
9. South Africa	157,375	310
10. Ukraine	153,318	338

*Rate is per 100,000 persons. Rates listed are not ranked.
 SOURCE: ICPS (2012). Retrieved October 2, 2012, from <http://www.prisonstudies.org/info/worldbrief/>.

TABLE 9.3 Top Ten Countries by Occupancy Rates

Country	Occupancy Rate
1. Haiti	335.7%
2. Benin	307.1%
3. Philippines	~300%
4. Iran	294.1
5. Burundi	258.7%
6. Sudan	255.3%
7. French Polynesia	254.5%
8. El Salvador	253.57%
9. Mozambique	245%
10. Bangladesh	237.2%
11. Uganda	223.0%

SOURCE: ICPS, 2012. Accessed October 2, 2012, from <http://www.prisonstudies.org/info/worldbrief/>.

incarceration. To keep pace with the increase from 200,000 inmates in 1970 to slightly under 2.3 million in 2011, the United States built more prisons than any country in history. Yet, even with the

massive building of prisons in the United States to relieve crowding, some court decisions had to force prison administrators to improve poor conditions related to crowding.

However, as we move deeper into the twenty-first decade of this century, it appears that the pace of United States prison building and incarceration have slowed. For the first time in over 40 years, the United States has seen a decline in the total number of persons incarcerated. Prison construction has been halted in almost all jurisdictions. And in some states correctional facilities have actually been closed. It appears that these factors are the major reasons for these developments. And those who advocate a reduction in the rate of incarceration and the promotion of alternatives to incarceration, now is a good time to move their agenda forward.

One also notices that the rates of incarceration for our European countries are relative to the United States well below the average rate of the world. The rate has been estimated at 146 per 100,000 (Walmsley, 2011). The exception, and the outlier in incarceration in Europe, is England. Interestingly, England is the country most like the United States relative to its crime policy.

A third observation about the numbers is that all of the countries on the occupancy list, and most of the incarceration rates list, are poor or under-resourced. The exception, of course, is the United States. One might surmise that the reason for this is that persons in these countries (not the United States) have few opportunities for employment and many lack the hope of a better life. Or it might be that after committing a crime, the justice system is unable to provide any alternatives to incarceration or any forms of rehabilitation to cost factors.

Finally, it should be mentioned that some data are missing from the imprisonment statistics mentioned here. China may be the *real* world leader in incarceration, but because of incomplete and questionable data we are unable to accurately

in the United States to change its imprisonment status. And some incarceration court decisions in Saudi Arabia are even more difficult for administrators to deal with than those from China, so we are not too far off from the truth about the total numbers of those incarcerated and the occupancy rate in that country.

It is deeper into the problem of overcrowding and incarceration that we must go. It appears that even in the United States, the problem of overcrowding and incarceration is a first time in almost a century.

There has been a drop in the number of people incarcerated. Prison overcrowding is almost all jurisdictions of prison crowding in the world today. In correctional facilities, prison crowding can limit the ability of correctional officials to do their work and clearly appears that economic conditions limit the potential for violence. For example, crime to 1970s levels. These developments have led to a reduction in the reliance on incarceration. The promotion of alternative sentencing has led to a reduction in the reliance on incarceration. The rates of incarceration are relatively low in the United States and six others injured when a gang-related riot broke out in La Reforma, Costa Rica's largest prison. The Justice Minister has been warning for months that violence in the prisons would be a problem because of overcrowding due to a lack of funds to build more prisons and hire more guards and support staff (Inside Costa Rica, 2012). These examples of prison unrest are not the exception but the norm in many prison systems around the world.

Twenty-five people were killed and dozens were injured during a riot at Yare prison in Venezuela where two groups of prisoners waged a gun battle inside the prison while hundreds of relatives were watching (Caribbean 360, 2012). Two prisoners were killed and six others injured when a gang-related riot broke out in La Reforma, Costa Rica's largest prison. The Justice Minister has been warning for months that violence in the prisons would be a problem because of overcrowding due to a lack of funds to build more prisons and hire more guards and support staff (Inside Costa Rica, 2012). These examples of prison unrest are not the exception but the norm in many prison systems around the world.

is the United States. The reason for this is that in many countries (not countries) where the opportunity for rehabilitation is limited, the hope that the person committing a crime will be able to make any alternative arrangements of rehabilitation is limited.

is the United States. The reason for this is that in many countries (not countries) where the opportunity for rehabilitation is limited, the hope that the person committing a crime will be able to make any alternative arrangements of rehabilitation is limited. The United States is the only country in the world where the rate of incarceration is higher than in the general population (News Digest, 2012). Communicable diseases such as HIV/AIDS, tuberculosis, hepatitis, and sexually transmitted infections have contributed to a high rate of inmate deaths and post-release mortality. To address this problem, a conference of prison

health care officials gathered in 2009 and developed the Madrid Recommendation to emphasize that health protection in prisons is an essential part of public health in Europe today (World Health Organization, 2011).

The United States is not exempt from this problem. In 2004 it was estimated that over 23,000 inmates in the U.S. prison system were infected with HIV or AIDS (Clear, Cole, & Reisig, 2009).

Solutions to Prison Crowding

Responses to prison crowding have varied among countries. The Scandinavian countries and the Netherlands, which have earned a reputation for enlightened penal philosophy, are particularly noteworthy (Lappi-Seppala, 2009). Even in Denmark, which suffered from a large increase in crime between 1960 and 1980, authorities responded by instituting a program of decriminalization, abolishing indeterminate sentences, and expanding the probation system. Japan has been able to avoid the problem of prison crowding because it has created a system that prevents the situation from arising. More specifically, Japan has made frequent use of noncustodial sanctions, adequate use of bail, effective use of parole, and required prosecutors to handle cases in an expedient manner (UNAFEI, 2001, p. 375). Other countries have made laws that mandate release of prisoners when the prisons become crowded. This practice has also been adopted in the United States in jurisdictions where judges have ordered emergency release of inmates in crowded jails and prisons. Yet others have judiciously reviewed their sentencing laws and moved toward reducing the kinds and lengths of prison sentences for certain crimes (Tonry, 2007b).

Another common strategy is the use of amnesty and/or pardons to shorten sentences to counteract the large increase in crime and convictions. Thailand recently released 25,000 prisoners to commemorate the recent birthdays of the Queen and Crown Prince. In India 750 prisoners held in Tihar Prison were granted remission on their sentence of up to 45 days as part of the country's sixty-sixth Independence Day celebrations (ICPS News

Digest, 2012). Similarly, Sweden and France have responded to their prison population problems with large-scale amnesty or pardons programs as well as determined efforts to cut down on sentencing and increase community-based sanctions (Levy, 2009).

In many countries, the answer to the problem of prison crowding has more often than not been simply to build more prisons. This practice has been criticized by a number of well-respected academics and social reformers who claim that it is illogical to think that prison can be offered as its own remedy (Foucault, 1979; Tonry, 2001; Clear, 2007).

Building prisons to reduce the crowding problem has been called the construction strategy (Blumstein, 1995). This policy is the result of a generally more conservative and hard-line attitude toward crime and criminals. Prison building has been a growth industry in many countries, especially the United States, but even the prison explosion cannot keep up with the burgeoning prison populations. Antiquated fortress prisons built in the nineteenth century continue to be used in Russia, Mexico, England, Germany, and the United States, to name just a few. In some cases, as in Lancaster, old castles in England have been converted to prisons in order to deal with the crush of prisoners. And in 1996 England even purchased a large ship from the United States and turned it into a low-security prison (Stern, 1998, p. 280).

One way in which the construction strategy has been advanced in the United States and, more recently, in other countries has been through the development of **private prisons**—correctional institutions operated by private firms on behalf of governments. Although various aspects of prison administration have been privatized since their inception, such as food services or medical care, the first entirely private prison is believed to be in the United States. The first such institution was opened in Pennsylvania in 1975, and by the end of 2007 there were over 150 private prisons holding over 125,000 inmates in the United States, Puerto Rico, and the District of Columbia (Clear, Cole, & Reisig, 2009). The private prison business worldwide is dominated by the European company Sodexo and two American companies, the

Wackenhut Corporation and the Corrections Corporation of America (CCA). These corporations have formed alliances with businesses throughout the world, and private prisons are operating in Poland, Belize, France, New Zealand, Australia, South Africa, Canada, and England (Stern, 1998, p. 297; Roth, 2006).

Some supporters feel that private prisons save money for some correctional systems; others dispute this claim (Pratt & Maahs, 2004). Other criticisms of private prisons include low wages and conditions for employees, inadequate services for inmates, and the ethical argument that the government should not delegate social functions to private money-making organizations (Reisig & Pratt, 2000; Nathan, 2004). Interestingly, in 2004 the Israeli legislature passed a law permitting the establishment of private prisons. In 2009 the Israeli Supreme Court ruled the law unconstitutional (Zarchin, 2009).

In addition to the construction strategy, Alfred Blumstein (1995) proposed three ways to address the crowding crisis: the null strategy, the intermediate sanctions strategy, and the prison population reduction strategy. Blumstein presents these in a North American context, but they can be applied across boundaries: a number of countries have already implemented them in various forms, as in Scandinavia.

Proponents of the null strategy say that prisons should be allowed to become increasingly congested. The hope is that criminals will be deterred by living in such conditions or that a change in the demographic crime cohort will resolve prison crowding. This may be the cheapest and most politically palatable approach in the short run, in the long run it may not solve the crowding problems and may lead to some of the problems mentioned previously, such as riots, disease, and general system failure.

Proponents of the intermediate sanctions strategy call for the development of punishment alternatives to incarceration. Probation, which allows an offender to remain outside of prison, and parole, whereby offenders are released to the community after a period of incarceration, are

poration and the Corrections Corporation of America (CCA). These corporations have formed alliances with business, government, and private prisons are operating in the United States, Belize, France, New Zealand, South Africa, Canada, and England (Pratt, 2000; Roth, 2006). Many people feel that private prisons are more cost-effective than some correctional systems. Some people claim (Pratt & Maahs, 2000) that the advantages of private prisons include cost savings for employees, increased productivity, and the ethical argument that the government should not delegate its responsibility to private money-making companies (Pratt, 2000; Nathan, 2004). In 2003, the Israeli legislature passed a law for the establishment of private prisons. In 2009, the Supreme Court ruled that the law was unconstitutional (Zarchin, 2009). In 1995, the construction of a new prison (1995) proposed three strategies to deal with the crowding crisis: the null strategy, the intermediate sanctions strategy, and the population reduction strategy. Although these strategies are applied across boundaries, some countries have already implemented some of these forms, as in Scandinavia. Some of the null strategy say that the population of prisons should be reduced. The hope is that the population will be deterred by living in such a crowded environment. A change in the demographic composition will resolve prison crowding. The null strategy is the cheapest and most politically acceptable. In the short run, in the long run, the crowding problems and the problems mentioned above will be resolved by the development of punishment systems. Probation, which allows offenders to remain outside of prison, and parole, which allows offenders to be released to the community after a period of incarceration, are

important mechanisms for decreasing prison populations. Other intermediate punishments, as we discussed in Chapter 8, include fines and day fines, community service, restitution, home confinement, and electronic monitoring. They continue to play a role in reducing the prison population, even in the crime-control, post-progressive, and (as the Europeans call it) neoclassical period of disillusionment with rehabilitation efforts.

Finally, proponents of the population reduction strategy call for a two-step process of changing sentencing practices and developing more methods of letting inmates out of prison. With regard to the former, called "front-door strategies," those who determine sentences (legislators) must write laws that limit the use of imprisonment. The importance of this strategy was explained in Chapter 8 when we discussed the recent directions that some countries have taken to "get tough" on crime. With regard to the latter, "back-door" strategies such as parole, work release, and good time must be implemented to get offenders out of prison before the end of their terms in order to free space for new inmates (Blumstein, 1995). Different countries have implemented a variety of strategies to address prison crowding. A mixture of approaches that best suits the needs of a particular correctional system is probably the optimal solution to the problem.

RIGHTS OF PRISONERS

A report issued by a group of Egyptian human rights organizations revealed that prisoners are subjected to 'inhumane' tests following visits by their family members. The report said inmates at Tora prison are forced to drink water with soap, which causes severe vomiting and diarrhea, so that the prison administration can make sure their stomachs do not contain any prohibited items.

A federal court judge says Canada's prison system is breaking the law by failing to deal with prisoner grievances in a timely manner, saying the backlog is contributing to growing tensions and violence within the system.

A prisoner released by the police in Georgia following the arrest of the 19th person in Gldani found that the prison had been awaiting transfer for a long time and without being provided with a diet suitable for their needs. Prisoners are only allowed 15-20 minutes of exercise per day, the prison shop lacks food products such as fruit and vegetables, and prisoners are only allowed brief phone privileges twice per month (GCP News Digest, 2012).

In each of these stories, we see example violations of international and in some cases national laws that prohibit torture and ill treatment of persons in custody. Legal challenges to prison conditions and prisoner treatment have become common only in the past 30 or so years, although they did occur earlier. These challenges were especially prominent in the United States, where litigation regarding prison conditions, especially prison crowding, has become a major consideration in corrections administration. The legal basis for challenges to prison conditions in the United States comes from the Eighth Amendment of the Constitution, which states that "excessive bail not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

In the international community, legal challenges relative to a number of human rights arise from a number of covenants and conventions. The foundation for these documents is rooted in the UN Universal Declaration of Human Rights, which states that "no one shall be subjected to torture, or cruel, inhuman or degrading treatment or punishment" (Article 5). The declaration, originally proposed in 1948 by the United Nations and subsequently ratified by a large number of nations, is the result of the desire to combat the massive violations of human rights that occurred in World War II (Margaryan, 2010). Since then, other international organizations have produced documents that support Article 5, such as the European Convention on Human Rights, the African Charter on Human and People's Rights, and the Inter-American Convention on Human Rights.

In 1955 the United Nations developed what has become the most well known of prison guidelines, the Standard Minimum Rules for the Treatment of Prisoners. The rules include 95 standards that address a plethora of prisoner issues, including prison living conditions, amenities and programs, methods of discipline, and the treatment of those who are unconvicted. In 1953 the European Convention on Human Rights was developed by the newly formed Council of Europe (1949), which in 1987 revised its own set of prison rules, a more detailed set than the UN standards (Stern, 1998). A recent development in the formation of inmate rights was the 2010 approval by the United Nations of the Bangkok Rules. More formally called the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, the Bangkok Rules are new in the sense that they are the first specific UN standards for the treatment of women offenders. The UN Standard Minimum Rules for the Treatment of Prisoners did not draw sufficient attention to women's particular needs. For a more inclusive list of international treaties that deal with these issues see the box below.

Prisoner rights litigation and international agreements regarding human rights do not guarantee that prison conditions will be safe and humane. In fact, according to the United Nations and Human Rights Watch, a number of countries have been unable to

meet the minimal standards outlined by the Nations, and few if any prison systems observe their prescriptions (United Nations, 1996; Human Rights Watch, 1999).

However, it is clear that the creation of enforceable international standards concerning sentencing and the imposition of punishment is inevitable in the next century (Tonry, 2000). The United Nations has worked toward that end with the development of a treaty called the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OPCAT was adopted by the General Assembly on December 18, 1999, and has been in force since June 22, 2002. As of January 2010, 146 nations are parties to the treaty and another 10 countries have signed but not ratified it. The treaty provides for the establishment of "a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment" to be monitored by a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The UN subcommittee would make detailed recommendations to national authorities regarding necessary improvements to their detention facilities, and the authorities are expected to implement these recommendations.

International Treaties Related to the Treatment of Offenders and Those in Custody

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| <ul style="list-style-type: none"> ■ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) ■ UN Standard Minimum Rules for the Treatment of Prisoners ■ Basic Principles for the Treatment of Prisoners ■ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ■ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | <ul style="list-style-type: none"> ■ International Covenant on Civil and Political Rights ■ The Second Optional Protocol to the International Covenant on Civil and Political Rights (aiming at the abolition of the death penalty) ■ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ■ Rules for the Specific Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules) |
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INCARCERATION OF SUPRANATIONAL CRIMINALS

standards outlined by the United Nations, 1996; Human Rights Commission, 1999).

It is clear that the creation of international standards concerning the imposition of punishment in the next century (Tonry, 2001). The United Nations has worked toward that end with the adoption of a treaty called the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OPCAT was adopted by the General Assembly on December 18, 2002, and entered into force since June 22, 2006. As of 2006, 146 nations are parties to the treaty. Many other countries have signed but not ratified it. The treaty provides for the establishment of a system of regular visits undertaken by independent national and national bodies to places where persons are deprived of their liberty, in order to guard against torture and other cruel, inhuman or degrading treatment or punishment" to be overseen by a committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The UN subcommittee has issued detailed recommendations to governments regarding necessary improvements in prison facilities, and the authorities would be required to implement these recommendations.

Those in Custody

International Covenant on Civil and Political Rights

and Optional Protocol to the International Covenant on Civil and Political Rights (aiming at the abolition of the death penalty)
United Nations Standard Minimum Rules for the Treatment of Juvenile Justice (The Beijing Rules)

United Nations Rules for the Treatment of Women Prisoners and the Specific Treatment of Women Prisoners (The Bangkok Rules)

As we discussed in previous chapters, supranational courts have been formed to deal with those accused of crimes such as genocide and other crimes against humanity. As these courts begin to pass verdicts and sentences, the international community must decide how and where to place the criminals. The International Criminal Tribunal for Rwanda (ICTR) has built within the Arusha prison in Tanzania a United Nations Detention Facility (UNDF) that has 56 cells. Other African countries, including Mali and Benin, currently incarcerate 32 prisoners in addition to the thousands that have already been tried, convicted, and incarcerated in Rwanda for the atrocities committed during its civil war in 1994.

Another example is the International Criminal Tribunal for the former Yugoslavia (ICTY), which has indicted 161 persons since beginning operation in the 1990s. As of April 2011, 17 nation-states have signed an agreement stating they would be willing to incarcerate those convicted in the ICTY. Until being transferred to one of the 17 participating facilities, the ICTY's Detention Unit (DU) is the temporary remand center (jail) and is located within a Dutch prison complex in The Hague. As of 2011, 48 convicted criminals are incarcerated in European countries for a variety of crimes against humanity. The most famous of the ICTY criminals, Slobodan Milosevic, died of natural causes in detention in March 2006 prior to sentencing. For the list and location of the ICTY criminals currently incarcerated in European prisons, see <http://www.icty.org/sid/10276>.

In October 2005 the Federal Minister of Justice of Austria and the President of the International Criminal Court (ICC) signed an important agreement that will affect the penal systems in a number of countries for years to come. That agreement was the first between any country and the ICC that will allow the enforcement of ICC sentences handed down by the Court. Austria is

now able to incarcerate persons who will be convicted by the ICC in The Hague. Such developments are important because they help fulfill requirements of the Rome statute (Article 101) which states that sentences handed down by judges "shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons." Other countries that agree to the incarceration of international criminals will be required to meet international standards set forth in those proposed by the UN Standard Minimum Rules for the Treatment of Prisoners. The incarceration of criminals who are tried and convicted in supranational courts will be an interesting topic for those who study comparative penology in future years.

TREATMENT OF OFFENDERS IN THE CUSTODY OF THE UNITED STATES

The treatment of criminal offenders in the United States has been a major issue in correctional management for the last 40 years. Prior to that, the judicial policy was one of noninterference with internal administration of prisons. However, in the case of *Cooper v. Pate* (1964) the federal courts ruled that prisoners could sue state officials over prison conditions, poor treatment, or the denial of rights. After *Cooper v. Pate*, the number of lawsuits brought by state inmates in federal courts rose from 218 in 1966 to 41,952 in 1996 (Farrington & Cole, 2003, p. 98). Although the U.S. Constitution may be the primary legal force behind the treatment of offenders, there are others. Statutes passed by legislatures at all levels of government, case law created by judges in certain cases, and regulations formed by federal, state, and local agencies also support the legal rights of people under correctional supervision.

In addition to domestic laws, a number of international documents prescribe the legal obligations of any U.S. official, military personnel,

representative of the U.S. that prohibits torture and other ill-treatment of any person in custody in all circumstances. Those documents include the international humanitarian law and **Geneva Convention** (also called “the laws of war”), the relevant treaties listed in the box on page 232, and special domestic laws developed to incorporate international prohibitions against torture and mistreatment. Among the special domestic laws recently created are the Uniform Code of Military Justice, the War Crimes Act of 1996, the Military Extradition Act of 2000, and a federal anti-torture measure enacted in 1994 that provides for prosecution of anyone in the United States for actions committed outside the country (Human Rights Watch, 2004).

This issue of the treatment of those in custody by American officials was brought to the international stage in 2004 when it was found that detainees held by the United States in Iraq and Afghanistan were subjected to numerous abuses. In July 2004, U.S. Army investigators announced 94 cases of confirmed or alleged prisoner abuse in Iraq and Afghanistan (Kelly, 2004). More telling was a 53-page report written by Army Major General Antonio Taguba, completed in February 2003, that concluded that there were “institutional failures of the Army prison system.” Specifically, Taguba found that between October and December of 2003 there were numerous instances of “sadistic, blatant, and wanton criminal abuses” at Abu Ghraib prison in Iraq. Evidence to support the allegations included, according to Taguba, “detailed witness statements and the discovery of extremely graphic photographic evidence.” Some of the wrongdoing included:

Breaking chemical lights and pouring the phosphoric liquid on detainees; pouring cold water on naked detainees; beating detainees with a broom handle and a chair; threatening male detainees with rape; allowing a military police guard to stitch the wound of a detainee who was injured

after being slammed against the wall cell; sodomizing a detainee with a candle light and perhaps a broom stick; using military working dogs to frighten and intimidate detainees with threats of attack, and in one instance actually biting a detainee. (Hersh, 2004)

As of September 2012, the United States holds 167 detainees in the Guantanamo Naval Base. Over the course of the last decade, almost 800 persons have been incarcerated and 9 have died while in custody. Adnan Farhan Abdul Latif, a Yemeni who had been held in the base since 2002 and died in September 2012 (American Civil Liberties Union, 2012).

In addition to this highly controversial custody and treatment of those abroad, U.S. prisons on the federal and state levels have been criticized by Human Rights Watch for the spread of ultramodern “supermax” security prisons and for the issue of custody abuse related to woman inmates. It should be noted, however, that by most measures the U.S. correctional system is considered one of the world’s leaders in innovation and in meeting standards to support the fair treatment of those in custody. Very few countries except perhaps one or two Scandinavian countries can boast of better overall prison conditions than those in the United States.

Not coincidentally, countries that are generally more amenable to human rights concerns are the ones that have been at the forefront of protecting prisoners’ rights, while countries that chronically violate the human rights of their citizens typically also pay little attention to prisoners’ rights. Nevertheless, the fact that this issue has become prominent in the context of litigable rights, rather than as a reform effort, has led to greater scrutiny of prison conditions and the problems facing prisoners.