

[sharamKohan](#)

Harvard Law School

- [Articles](#)
- [Contact](#)
- [Sharam Kohan](#)
- [Blog](#)

29
Jun
2014

•

[Re- or trans-institutionalization of Mentally Ill, A failure of Deinstitutionalization](#)

by Sharam Kohan

[\[Show thumbnails\]](#)



Although the number of conventional psychiatric hospital beds has continued to decrease in most states, recent data suggest that we may already be witnessing a new phenomenon of ‘reinstitutionalization’.[i] The provision of supported housing, the number of forensic beds and the prison population increased significantly in the United States. The number of conventional psychiatric beds tended to decrease. A number of scholars in 1970s predicted that prison decarceration would follow in the footsteps of the deinstitutionalization of state psychiatric hospitals (David Rothman was probably the best example of this), but they were proven

wrong.”[ii]

Whether this process should be described as deinstitutionalization or trans-institutionalization (suggesting a mere shifting of placements from one context to another) is an open question. Yet one might argue that significant numbers of patients who would have been hospitalized 50 years ago are now being cared for by teams in the community, at the same time as others are probably part of the drastically increasing prison population. Thus, the total number of patients in institutional care is likely to have increased.

In *Deinstitutionalization to Reinstitutionalization Correctional Mental Health Services*[iii], Dr. Robert J. Powitzky, Ph.D. reported that in September 2006, the Bureau of Justice Statistics within the United States Department of Justice issued a report[iv] based on a national study that concluded that more than half of all prison and jail inmates have a mental health problem. The study found that 56% of state prisoners, 45% of federal prisoners, and 64% of local jail inmates reported that they had a recent history or symptoms of mental disorders that occurred in the last year (which is not necessarily the equivalent of an official diagnosis of mental illness). Female inmates had higher rates than male inmates. About one in three state prisoners, one in four federal prisoners, and one in six jail inmates with mental health problems reported that they had received mental health treatment since admission. Nearly 63% of state prisoners who had reported a mental health problem had also reported they used drugs in the month before their arrest (compared to 49% of those without a mental health problem). State prisoners who had a mental health problem were twice as likely as those without such a problem to have been homeless in the year before their arrest (13% vs. 6%), and twice as likely to have been injured in a fight since admission (20% vs. 10%). Doris L. James & Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates*, Bureau of Justice Statistics, U.S. Department of Justice (Sept. 2006) (NCJ 213600).[v] In addition, a PBS TV documentary, entitled “The New Asylum,” has succinctly presented this crisis that has affected all states, and CBS’ February 11, 2007 “60 Minutes” segment on Michigan’s problems with mentally ill inmates gives a vivid picture of the consequences of ignoring this national problem.[vi] Oklahoma’s Challenge: Oklahoma is just now experiencing this phenomenon that other states have been experiencing for over two decades: jails and prisons receiving increasing numbers of persons with mental illness. During the last two decades, the Oklahoma’s state mental hospitals were being closed, theoretically to take advantage of the newly developed and less expensive medications that would allow persons with mental illness to function in the community rather than being warehoused in hospital settings. Unfortunately, the resources and planning necessary to turn this theory work into action were not in place. As a result many individuals with mental illness found themselves in conflict with the law as a direct consequence of their untreated mental illness. Thus jails and prisons soon became major providers of mental health treatment, the “**New Asylums.**”

There has been empirical and theoretical work drawing parallels between the levels of mental health institutionalization in the mid-twentieth century and prison incarceration today,[vii] though that research has not drawn parallels regarding deinstitutionalization. Some researchers, such as Marie Gottschalk, have begun to mention deinstitutionalization in the context of the current economic crisis and its impact on mass incarceration. [viii]

About 50 years ago state psychiatric hospitals were considered as “shame of the states” and were harshly criticized. The outrage led to the deinstitutionalization movement. Decades later, it appears that we didn’t solve the problem of locking up the mentally ill, nor our government has stopped treating them poorly. Instead, we have moved the mentally ill from state psychiatric hospitals into our ever growing prisons. We still treat the mentally ill poorly. I would nominate the United States modern prisons or the so-called “correctional facilities” and the justice system as the new “shame of the states” (including the federal government) and urge everyone to invest in our mental health system instead of building and expanding more expensive and costly prisons. We should be reminded that changing the label from “state psychiatric hospital” to “correctional

facility” does not solve the problem. There is a need for a substantive change in our mental health system.

[i]“Trans-Institutionalization” (Criminalization of the Mentally Ill)

<http://www.namisasacramento.org/advocacy/docs/Mental%20Health%20Court-Board%20of%20Sup-3-9-07.pdf>

[ii] Reducing Mass Incarceration: Lessons from the Deinstitutionalization of Mental Hospitals in the 1960s. Bernard E. Harcourt, OHIO STATE JOURNAL OF CRIMINAL LAW Vol 9:1, 53.

[iii]<http://digitalprairie.ok.gov/cdm/ref/collection/stgovpub/id/71055>

[iv] Doris J. James and Lauren E. Glaze *BJS Statisticians*, Mental Health Problems of Prison and Jail Inmates, Special Report Bureau of Justice Statistics, <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>

[v]<http://www.ojp.usdoj.gov/bjs/abstract/mhppji.htm>

[vi]http://www.cbsnews.com/sections/i_video/main500251.shtml?id=2458916n

[vii] Bernard E. Harcourt, An Institutionalization Effect: The Impact of Mental Hospitalization and Imprisonment on Homicide in the United States, 1934–2001, 40 J. LEGAL STUD. 39 (2011) [hereinafter Institutionalization Effect]; Bernard E. Harcourt, From the Asylum to the Prison: Rethinking the Incarceration Revolution, 84 TEX. L. REV. 1751 (2006) [hereinafter Rethinking]; see also Steve Raphael, The Deinstitutionalization of the Mentally Ill and Growth in the U.S. Prison Populations: 1971–1996 (Sept. 2000) (unpublished manuscript), available at <http://ist-socrates.berkeley.edu/~raphael/raphael2000.pdf>

[viii] Marie Gottschalk, Cell Blocks & Red Ink: Mass Incarceration, The Great Recession & Penal Reform, DAEDALUS, Summer 2010, at 62. Gottschalk discusses deinstitutionalization and argues that it involved a complex set of factors including political leadership, psychiatric profession changes, media and litigation, which represented a larger context that cannot be reduced to economic crisis. Id. at 67–69.

Be Sociable, Share!



Tweet < 3

Mi piace < 1

Share 13

Pin

More from my site

- [Visit To Doctor To Pick Up Prescription Refill Not Considered Treatment Under FMLA](#)
- [Judgment, a Priori Itself](#)
- [The Role of Judgment, Intuition and Intelligence in Manager’s Job](#)
- [Egalitarianism: Improving Lives](#)
- [Sartre’s Conception of Freedom](#)
- [Optimization Techniques and Problem Analysis for Managers](#)

Related

[Optimization Techniques and Problem Analysis for Managers](#)
In "Management"

[A "New Ethos" Needed in the War on Poverty](#)
In "Egalitarianism"

[Myth of the One Big Brain](#)
In "Management"

This entry was posted on Sunday, June 29th, 2014 at 3:19 pm and is filed under [Law](#), [Social Justice](#). You can follow any responses to this entry through the [RSS 2.0](#) feed. Both comments and pings are currently closed.

« [A "New Ethos" Needed in the War on Poverty](#)

Comments are closed.

[Weblogs at Harvard Law School](#) - Powered by [WordPress MU](#) & designed by [Aditya Naik](#).
[Entries \(RSS\)](#) and [Comments \(RSS\)](#).

[Protected by Akismet](#) • [Blog with WordPress](#)