

CHAPTER 5

The Growth of the Supermax Option in Britain

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THE UNITED STATES HAS BECOME so prolific at incarcerating law violators (with the assumption that “practice makes perfect”) that our ideas and practices are now being seen as the model for others, including many European countries. It seems as if the exchange of correctional ideas across the Atlantic has come full circle, with the American system taking an idea originally developed in Western Europe, modifying it to make it more extreme, and peddling it back to Europe as “better” or even as the “best.” The idea of a level of security *more* secure than “maximum” (i.e., “the greatest amount possible”) is uniquely and unmistakably American, although the practice of removing problematic prisoners from regular prison environments for security and control has been used in many Western European countries for several decades with varying degrees of success.

Britain, for example, which encompasses the countries of England and Wales, has policies, procedures, and facilities to deal with prisoners who need extra security and additional control. Does this mean, however, that it has Americanized its systems, or has it resisted the trend toward bigger, harsher, tougher, and supermaximum punishment?

This chapter addresses this question by examining the philosophies, policies, procedures, and facilities used in Britain within Her Majesty’s Prison Service in England and Wales (HMPS) to handle prisoners who present management and/or security challenges within the prison environment. Current populations, classification systems, philosophies, environments, and brief histories of the treatment of problematic prisoners are described for HMPS, followed by a conclusion as to whether and to what extent it has been “supermaxed.”

A DESCRIPTION OF HER MAJESTY'S PRISON SERVICE IN ENGLAND AND WALES

The fifty-year history of formalized efforts by HMPS to control prisoners who pose specific types of threats to institutional safety and security, as well as to public safety, is complex and often inscrutable. Although well-intentioned, the government's continual and varied assessments and reviews of correctional policies and procedures, changes in social and political ideology, the 2004 creation of the National Offender Management Service (NOMS), the 2007 creation of the Ministry of Justice, the 2008 relocation of responsibility for oversight of HMPS from NOMS to the Ministry of Justice, and changes in legislation (e.g., Counter-Terrorism Act 2008; Criminal Justice and Immigration Act 2008; Coroners and Justice Act 2009; Crime and Security Act 2010) all have contributed to seemingly unending reversals of or amendments to these policies and procedures, making them extremely difficult to follow, to describe, and to interpret. As in the United States, this probably reflects underlying confusion about the purpose of ultra-high-security confinement as well as about the most humane and effective methods of accomplishing that type of confinement. Exacerbating this confusion for Britain is a rather rapid increase in the prison population.

In 2005, the incarceration rate in Britain was 139 per 100,000 (Christie 2005) but had grown to 153 per 100,000 by the end of 2008 (Walmsley 2009), making it the highest per capita incarceration rate in Western Europe (Ramesh 2010). As of March 1, 2011, HMPS held 85,206 prisoners (80,985 males and 4,221 females), 3,080 below maximum capacity (Ministry of Justice 2011), although the prison population had doubled since 1990 (Verkaik 2010) and increased 3 percent since this same time in 2010 (Ministry of Justice 2011).

Prisoners are distributed among 139 facilities, which includes 35 youthful offender institutions (YOIs) and/or juvenile detention facilities, 11 "contracted" or private prisons, 5 women's prisons, 3 immigration removal centers (IRCs), and 2 foreign nationals prisons (FNPs). The remaining 83 are for male prisoners, with 8 designated as high-security prisons (HSPs), 5 "dispersal" prisons (Frankland, Full Sutton, Long Lartin, Wakefield, Whitemoor), and 3 "core local" prisons (Belmarsh, Manchester, Woodhill) for newly sentenced high-security prisoners or for those awaiting trial (HM Chief Inspector of Prisons 2010b). These are discussed in greater detail below.

The structure of HMPS is complex, and oversight for its management currently resides within the NOMS, an umbrella agency that envelopes the Prison Service and the Probation Service (Spurr 2005) and reports to the Ministry of Justice, housed within the Home Office. Britain is divided into ten geographic areas, and all the prisons in each area are managed, respectively, by ten area managers. Management of the eight HSPs is an exception.

Despite geographic location, these all are managed by the director of high security (Spurr 2005).

The Prisons Act 1952 and Offender Management Act 2007 require that every prison in Britain be monitored by an Independent Monitoring Board (IMB) appointed by the minister of justice and composed of volunteer members from the communities that surround each prison. Each IMB is responsible for inspecting and evaluating its home prison to determine if prisoners are treated humanely and justly and if programs and services are adequate and for reporting annually to the secretary of state the extent to which the prison has or has not met standards and requirements (IMB 2009).

In addition to announced and unannounced inspections by IMBs, programs, services, treatment regimes, staff performance, and prisoner attitudes are monitored and evaluated regularly by several internal and external entities. Each prison is subject to Standard Audits by the HMP Standard Audits Unit, to annual announced and unannounced inspections by Her Majesty's Inspectorate of Prisons, and to review by the Commission for Racial Equality. In addition, each prison has a prison ombudsman who serves as a liaison between prisoners and administrators (Spurr 2005).

Security Categories

Upon receipt into the prison system, prisoners are "categorized" (i.e., classified) based on the severity of the crime committed, the sentence length, the probability of an escape attempt, and the danger they would pose to society if they were to escape and are "allocated" (i.e., placed) in prisons with corresponding security classifications. HMPS has four primary classification categories (A, B, C, D): category A prisoners are "highly dangerous" and for whom escape must be made impossible "no matter how unlikely that escape might be"; for category B prisoners, "escape must be made very difficult"; category C prisoners "cannot be trusted in open conditions," but lack "the resources and will to make a determined escape attempt"; and category D prisoners "can reasonably be trusted in open conditions" (Ministry of Justice 2000). Prisoners are reassessed at regular intervals and can move downward or upward in security categorization, although it is a rather complicated process requiring several levels of review.

Category A prisoners are further categorized as to the *actual* risk of escape they pose (1 = *standard risk*, 2 = *high risk*, and 3 = *exceptional risk*) and are distributed among the eight HSPs where they associate with category B prisoners (Ministry of Justice 2010b). This "dispersal" system avoids putting all of the most dangerous prisoners into "one 'Supermax' jail, because it enables prisoners to be moved around individually, preventing the building up of dangerous liaisons, prevents the conditioning of staff and dilutes the risk" (Spurr 2005, 53).

HMPS officials are not restricted by federal/state or state line boundaries and regulate “the mix” of prisoners by carefully monitoring the types of inmates placed together in any given facility. In the United States, the federal system is able to distribute prisoners in this manner, but any particular state system is able to do this only within its own state lines and to the extent it has available resources.

Within the high-security system is a group of smaller units called “close supervision centers” (CSCs) for enhanced prisoner control, similar to the American “supermax.” CSC units are scattered throughout the HSP system to hold a maximum of forty-four prisoners, although only twenty-five to thirty prisoners are confined there at any given time. The CSC system opened in 1998 and developed from various other attempts to secure and control problematic prisoners. This evolution is described below. Isolation in segregation units, recently renamed “separation and care units” or “care and separation units” (Kirby 2010), as a solution to short-term problems within the prison environment also is discussed as it is used with CSC prisoners. To understand the CSC system and whether it approximates the American “supermax” system, it is first necessary to understand the history of high security in Britain.

History of High Security in HMPS

The evolution of classification into high security in HMPS is an interesting study in trial and error. Although many things about high-security confinement in HMPS have changed over time, policy makers and administrators always have been aware of two important things: (1) that long-term confinement under high security, especially segregation and/or isolation, is detrimental and inhumane and (2) that there are differences between disruptive prisoners at serious risk of escape (who represent *control* problems) and long-term prisoners with significant outside criminal associations that could facilitate escape (who represent *security* problems). This awareness is clear from legislative history, public discourse, and changes in the use and management of facilities for high-risk prisoners. It also is clear from examining the historical evolution of major initiatives to deal with troublesome prisoners. These initiatives are briefly described below.

SPECIAL SECURITY UNITS. In the mid-1960s, three “special security units” were developed at Leicester, Parkhurst, and Durham to house high-risk prisoners in Britain (Walmsley 1989). These were developed for those who were such security risks that they could not be safely contained “without additional security precautions even within [the] most secure prisons” (Tuck, cited in Walmsley 1989, iii).

From the beginning, however, the public was concerned about the treatment of these prisoners. It is surprising that even the secretary of state and the minister of state argued “it would be wrong” to confine anyone in these facilities “for a prolonged period” (internal minute, as cited in Walmsley 1989, 9). In 1966, this sentiment was reiterated by Lord Mountbatten, when he advocated the use of these facilities only as short-term, “stop-gap” solutions. Alternatively, Mountbatten proposed a “purpose-built prison” for prisoners “who must in no circumstances be allowed to get out” (Mountbatten, as cited in Walmsley 1989, 10) and described these as spies or individuals so violent that they would threaten lives if they got out. He termed these “category A” (see above).

DISPERSAL FACILITIES. In 1968, Professor Leon Radzinowicz disagreed with Mountbatten and argued that such prisoners be *dispersed*, not concentrated, and that “small segregation units in larger prisons” were to be for *control* purposes, not *security* purposes (Home Office 1968, para. 209). Radzinowicz declared that security should be improved through the strengthening of perimeter security systems in the closed prisons within which these segregated units were housed. Following Radzinowicz’s recommendations, the Home Office announced a “dispersal program” for category A prisoners to be sent to one of eight HSPs so that the special security units would “cease to be used” for that purpose (Home Office 1968, chap. 2, para. 8).

Although they disagreed on logistics, Mountbatten and Radzinowicz agreed that prisoners should not endure long-term segregation because the units’ regimes were unsatisfactory for long-term prisoners (Home Office 1968). Terence Morris (1968, 313) supported this argument by connecting conditions inside these units with several incidents of unrest that had occurred within them and by actively denouncing as “execrable” the purpose-built prison Mountbatten had proposed.

In comparisons between high-security confinement in HMPS and “supermax” confinement in America, one cannot overstate the relevance of Radzinowicz’s argument that categorization should distinguish between prisoners who present *security* problems and those who present *control* problems. Security categorization in HMPS has a long history, but control categorization is still undefined (Price 2000), whereas America has security classifications for prisons (e.g., minimum, medium, maximum) and custody classifications for prisoners (e.g., low, medium, close, high). An American prisoner, for example, is *externally* classified to a prison based on the security level that he or she requires (minimum, medium, maximum), then is *internally* classified to a custody (i.e., *control*) level within that prison (low, medium, high), which determines his or her movement within that prison (with implications for jobs, programs, and services). The determination of

which prisoners should be under which type of confinement and how to accurately judge which individuals present control problems, which individuals present security problems, and which individuals present both security and control problems continues to be challenging but is the single most critical element in the humane and effective confinement of these prisoners.

CRC/SPECIAL UNITS, AND THE CONTINUOUS ASSESSMENT SCHEME. Eventually, overwhelming public and political consensus judged the “special security units” undesirable and the government decided to close them and disperse remaining prisoners to category A prisons. The units at Chelmsford and Durham closed by 1972, but Durham continued to hold high-security women until 2005, when an investigation revealed a high level of suicides and emotional distress among the women, who were eventually dispersed to more suitable prisons (*BBC News* 2005).

The mission to close all these units was nearly accomplished when plans were derailed by Irish Republican Army (IRA) bombings of London on March 8, 1973. British officials believed that detained IRA bombers would pose a significant security threat that might not be containable within the dispersal system. This led to a 1978 policy reversal in which officials not only abandoned the idea of closing the remaining units but also were convinced to open a third. Officials decided to house this unit within a new dispersal prison being built at Full Sutton (Walmsley 1989).

During construction of Full Sutton, considerable debate still surrounded the distinction between confinement for security and confinement for control. In response, the government formed the Control Review Committee in 1984 to evaluate the strategies and mechanisms for managing (i.e., *controlling*) long-term disruptive prisoners (Home Office 1984; Clare and Bottomley 2001). The committee formed an “advisory group” to plan, coordinate, and evaluate proposed new small “special units” for *control* problems within facilities, as opposed to “special security units,” which were for *security* problems (Home Office 1987). This advisory group, in an effort to improve conditions and minimize control problems within the proposed special units (also called “CRC units”), commissioned a report about “lessons-learned” to help develop more “forward-looking regimes” for the new units (Walmsley 1989, 1).

CRC units were introduced after 1989 for prisoners who were the “severest control problems” (Tuck, cited in Walmsley 1989, iii) but not necessarily significant risks to security (Walmsley 1989). Three units operated to hold a total maximum of thirty-five prisoners, although populations rarely approached this number (Bottomley 1995). Between 1989 and 1996, however, several events, including a major riot, high-profile escapes, and a series of five government investigations and six reports, resulted in the discontinuation of CRC units.

First, a merry-go-round called the “Continuous Assessment Scheme” emerged whereby dispersal prisons exchanged problematic prisoners for four- to six-week periods (Flynn 1998; King 1999; Morris 2006) because “[CRC units] didn’t work” (senior manager, as cited in Clare and Bottomley 2001, 133). This informal process was formalized and centralized in 1993 to “select more prisoners suitable for the CRC units” and to make the “‘underground’ process of frequent transfer, more visible” (Clare and Bottomley 2001, 134). The result, however, was that prisoners with difficulties in the CRC units were segregated on a long-term basis, in extremely restrictive conditions, with few opportunities to improve their behaviors and thus reduce their perceived risk (Morris 2006). While this scheme arguably decreased prisoners’ danger to others, it increased their risk of suffering significant mental health issues and their threat to public safety from constant transfers between facilities (HM Chief Inspector of Prisons for England and Wales 2000).

Second, the longest, most damaging, and most costly riot in English history at HMP Strangeways (now HMP Manchester) resulted in the Woolf Enquiry and Report, which emphasized the “need to balance security & control with justice & humanity” (Home Office 1991b, as cited in Waddington 1991). A 1991 white paper from the Home Office broadly accepted Woolf’s recommendations and provided a long-range strategy to accomplish them (Home Office 1991a).

Third, escapes from HMP Whitemoor’s “impregnable walls” in September 1994 and from HMP Parkhurst four months later resulted in the Woodcock and Learmont reports, respectively (Home Office 1994, 1995). The Woodcock report raised general concerns about the security of high-security units and dispersal prisons and triggered a broader investigation by Learmont that also encompassed an inquiry into the Parkhurst escape. Learmont’s one recommendation, a supermax facility as a long-term solution to managing prisoners who were seriously disruptive, was rejected as “not politically and budgetary feasible” (Resodihardjo 2009, 182). The government, however, commissioned a “supermax feasibility study,” but this was lost in the shuffle of Prime Minister John Major’s last days in office (Resodihardjo 2009).

Finally, a threefold investigation into system-wide security policies, management of prisoners who presented serious control problems, and the feasibility of a “strict regime CRC unit” (Clare and Bottomley 2001, 119) resulted in the 1996 Spurr report. This report concluded that some prisoners were too disruptive even for the CRC units and suggested their management within five CSCs characterized by a “coordinated system” of “graded regimes” (Clare and Bottomley 2001, 120). The CSC system was recommended to replace the expensive prior system because, instead of getting prisoners off of the special custody “merry-go-round” and successfully

reintegrated, the primary accomplishment of the former system was to “provide relief for the mainstream long-term prisons” (Home Office 1994, 16).

Challenging, Dangerous, Disruptive, or Disordered?

In 1998, after fewer than ten years, the CRC/special unit system was discontinued and replaced with the CSC system to house up to forty-eight “really dangerous and disruptive prisoners who attack staff, take hostages, attack and murder other prisoners, and refuse to conform to normal prison conditions” (HM Chief Inspector of Prisons [HMCIP] 2000, 1). Guidance for the CSC system comes from Prison Rule 46, the “CSC Referral Manual,” and the “Managing Challenging Behaviour Strategy.” Prison Rule 46 provides the basis for the operation of the CSC system allowing the secretary of state to remove a prisoner from association, for safety or “good order or discipline,” and to confine him or her (in one-month renewable increments) within a CSC, defined as “any cell or other part of a prison designated by the Secretary of State” (Home Office 1999/2010). This strategy “bridge[s] the gap between segregation units and the CSC system” by providing “one coordinated system for managing difficult prisoners” (IMB—Woodhill 2010, 23). It also monitors prisoner movement out of the CSC system to assist in reintegration (HMPS 2009, 11). A local “challenging behaviour manager” coordinates local delivery of the strategy and is the point of contact for the central Case Management Group. This group, based at HMP Woodhill, consists of the CSC operational manager (a governor), a senior forensic mental health nurse, a chartered psychologist, and an administration manager (HMPS 2009).

A referral to the CSC system is “the last resort in the management of prisoners” (Ministry of Justice 2009, 8). HMPS aims to keep troublesome prisoners in their “home” prisons by exhausting all in-house management tactics. Prison governors must attempt “local” strategies, including individual case management in consultation with area managers. They must clearly document both the extent of the prisoner’s dangerous behavior and the risk he or she poses to others and himself or herself, ensure that all other control and management options under the strategy (ranging from “positive dialogue” to segregation to transfer) have been exhausted, and use evidence to illustrate that other strategies are inadequate for the protection of everyone involved (Ministry of Justice 2005).

The CSC Process

One of the first steps in the initial referral process is the completion by the prisoner’s home prison of a minimum of five reports including a psychology, mental health/psychiatric, and security and intelligence report. The psychiatric report is critical because it provides evidence of whether the prisoner should be referred to a CSC, to a high-security hospital, or to a unit for

“dangerous persons with severe personality disorder” (DSPD) (Home Office 1999/2010; Ministry of Justice 2009). These reports are reviewed by the local manager, who sends warranted referrals to the support manager at HMP Woodhill, who sends them to the Case Management Group (EIA 2009). The group reviews the reports from the referring prison and may ask for additional or supporting information.

Prisoners whose referrals are approved by the group are transferred from their home prison and confined for up to four months in either Woodhill or Wakefield during assessment; assessments of their suitability for CSC confinement generally take up to three months, followed by one month for report writing and the case conference to decide whether they should be placed in the CSC system. The CSC assessment process consists of six key stages, beginning with a series of reports to provide multidisciplinary risk assessments, including mental health issues and reports from a forensic psychiatrist and a forensic psychologist. During this twelve-week period, several reports from specialists are completed “to fully identify and assess the risks the prisoner presents” (Ministry of Justice 2009, 11). The CSC Management Committee approves or disapproves the referral, and the decision is ratified by the director of high security (UK Government 2009). Prisoners not selected for CSC confinement will be either managed under the strategy by the group and monitored through local panels at their home prisons or referred for confinement in highly secure hospitals or DSPD units (Ministry of Justice 2009; Home Office 1999/2010).

Once selected into the CSC system, prisoners either continue to be confined at Woodhill or are sent to Wakefield, Whitemoor, or a specially designated cell in one of seven other prisons (see the “CSC Units” section). Although the CSC system originally developed as a containment and control strategy with little consideration of working the prisoner toward reintegration back into the general prison population, since late 2005 it has been reframed as a “violence reduction strategy for disruptive prisoners” (HMCIP 2006, 10). This move came after several years of criticism from IMBs and others concerned specifically about the impact of this type of confinement on the mental health of the prisoners. In fact, since 2005, mental health professionals and others have been working directly with the Prison Service to develop and pilot specific violence reduction strategies and programs and have developed treatment models, particularly for DSPD prisoners (HMCIP 2006).

Within four weeks of acceptance into the CSC system, the CSC multidisciplinary team at the receiving prison develops a multidisciplinary “care and management” plan for the prisoner to manage or reduce disruptive and/or violent behavior. The ultimate aim of this plan, reviewed quarterly, is to *deselect* prisoners out of the CSC system and back to the general prison population (HMCIP 2006). In addition, prisoner behavior is evaluated

weekly, and monthly monitoring reports are forwarded to the committee. Each prisoner can review these monthly reports and make written comments, as well as review and comment on the report's feedback from the committee (Ministry of Justice 2009).

The dedicated CSC units at Woodhill, Wakefield, and Whitemoor are designed and staffed for varying levels of control and privilege in a "progressive system" from the most restrictive and least privileged "basic" to the least restrictive and most privileged "standard plus." Segregation, not considered part of the progressive scheme, is reserved for those who require even more restriction and control and complete loss of privileges (see below) (Ministry of Justice 2009).

Entering prisoners are placed in a "standard" environment for induction and assessment period with a basic, structured regime, under the assumption that they will then progress to "standard plus" and eventually out of the CSC system. Standard regime prisoners are expected to work or engage in other constructive activity for a specified number of hours per week and are paid accordingly. Prisoners on this regime also may be allowed open association with other prisoners on a limited basis and open association with visitors (Ministry of Justice 2009).

Standard plus prisoners are the most privileged and least restricted in the CSC system. These prisoners are expected to be productively engaged a specified number of hours per week, are allowed more cell furnishings and personal possessions, access to a communal kitchen and meals, and significantly more and lengthier associations, and can wear and launder their own clothing. Prisoners also can shower and make phone calls at any time when they are "unlocked" (i.e., out of cell). This regime also is marked by educational opportunities.

Prisoners on the "basic" regime are under the most stringent controls and restrictions in the progressive system. Basic prisoners are allowed personal possessions of a limited type and number (e.g., twelve photos), a limited number of books and education materials, limited associations with others, cardboard cell furnishings (if assessment deems this a necessary precaution), exercise within secure outdoor exercise yards that resemble cages, and daily showers. In addition, these prisoners are allowed only two pre-booked thirty-minute visits per month and up to three prebooked ten-minute phone calls per week (Ministry of Justice 2009).

The CSC Units

The CSC system is composed of three prisons with twenty-eight cells in dedicated CSC units (HMPs Woodhill, Wakefield, and Whitemoor) and sixteen designated cells within the segregation units of seven other high-security dispersal prisons (HMPs Belmarsh, Full Sutton, Frankland, Long

Lartin, Manchester, Wakefield, and Whitemoor). All together, forty spaces are allocated for CSC prisoners. The facilities within which these CSC cells are located are described below.

Woodhill has a “certified normal accommodation” (CNA) of 661 and a maximum capacity of 819. Currently, the prison confines 813 prisoners (HM Prison Service 2011a). Woodhill’s A wing is the main national assessment center for prisoners being referred to the CSC system, including preselection CSC referrals and CSC inductees on a “restricted regime,” as well as those progressing toward a less restricted regime. The restricted regime on A wing is “equivalent to segregation” (HMCIP 2006, 23), although three levels of regime (basic, standard, standard plus) theoretically make the wing “progressive.” In the most restricted regimes, prisoners are fed through hatches and have minimal, if any, daily direct contact with anyone. Overall, however, Woodhill generally is praised for its treatment of CSC prisoners (IMB—Woodhill 2010), but the CSC unit could benefit from a “more structured evidence-based violence reduction programme” (HMCIP 2010b, 35).

Wakefield has a CNA of 751, a maximum capacity of 749, and a current population of 739 (HM Prison Service 2011a). It is a main “lifer” prison housing both category A and category B prisoners, but focusing on serious sex offenders serving more than five years. Wakefield houses up to eight CSC prisoners “in a unique self-contained unit” within its segregation unit on F wing (HM Prison Service 2011b). All of the cells have electricity, and two are fitted with CCTV for constant observation, when necessary. Each cell has both an inner gate that remains locked and an outer door that can be left open, allowing for more interaction between the prisoners and the staff. Despite this unit being described as “a positive development” (HMCIP 2006, 13), Wakefield has been criticized for not adequately differentiating between CSC prisoners and those in segregation, for lacking mental health treatment, and for providing an environment that seems focused on containment rather than progression (HMCIP 2008b; IMB—Wakefield 2010).

Whitemoor has a CNA of 473, a maximum capacity of 458, and a current population of 444 (HM Prison Service 2011a, 3). This unit, newly opened in 2004, provides “a structured and meaningful regime” for up to ten CSC prisoners, focused on reintegrating them back into the prison mainstream (HMCIP 2006, 28). Most CSC prisoners here come from the more restricted regime at Woodhill because they have proven themselves ready for a more open regime. The primary criticism levied again Whitemoor by CSC prisoners is a lack of activities, leading to boredom (HMCIP 2006).

High-Control Cells

Under Prison Rule 46, “high-control cells” are designated to hold CSC prisoners for open-ended periods within the segregation units at dispersal

prisons Wakefield, Whitemoor, Frankland, Full Sutton, Long Lartin, and Manchester, and within the segregation unit of Belmarsh. These cells, while primarily used for control, also may be used for the more positive purposes of accumulated visits (“saving up visits” and accumulating them to allow for visits of longer periods of time) or *deselection* (leaving the CSC system) (HMCIP 2006), although this use is “highly unlikely” (C. Hodson, pers. comm., March 25, 2011). Although the CSC system makes frequent use of these cells, record keeping related to their use is poor (HMCIP 2009c). With the exception of Wakefield and Whitemoor, discussed above, these prisons are all described below.

Frankland was the first purpose-built dispersal prison. It has a CNA of 859, a maximum capacity of 844, and a current population of 822 (HM Prison Service 2011a). It also accommodates 80 DSPD prisoners and has twenty-eight cells in the segregation unit. Two additional cells within the segregation unit are set aside for CSC prisoners. The most recent inspection praised the segregation unit for its treatment of prisoners, for its prisoner/staff relations, and for its regime (HMCIP 2011a). Problems, however, were noted in overrepresentation of black and minority ethnic prisoners and of Muslim prisoners in segregation, as well as in support for foreign national prisoners (IMB—Frankland 2010; HMCIP 2011a).

Full Sutton has a CNA of 604, a maximum capacity of 608, and a current population of 598 (HM Prison Service 2011a). The segregation unit has forty cells, with thirty allocated for “normal” segregation, eight for other types of segregation (e.g., dirty protest), and two for CSC prisoners. Reviews of Full Sutton are fairly positive in terms of progressive treatment of prisoners in segregation. During the most recent IMB review, one CSC prisoner was held in Full Sutton, and his treatment and progress were extolled as an “excellent example of patient, sympathetic development” (IMB—Full Sutton 2010, 28). However, inspections express concerns about the growing threat of gangs, particularly Muslim gangs, whose members tend to become segregated more frequently, resulting in their overrepresentation (HMCIP 2011b).

Long Lartin’s “Security Care and Control Unit” (i.e., segregation unit) houses up to thirty-eight prisoners in single-cell accommodation and includes four designated cells for CSC prisoners. Two of these cells are monitored by CCTV. Long Lartin has a CNA of 629, a maximum capacity of 622, and a current population of 616 (HM Prison Service 2011a). It generally is praised for good programs, services, and management but suffers from disproportionate confinement of black and minority ethnic and Muslim prisoners in segregation and in the detainee unit (IMB—Long Lartin 2010). Muslim prisoners also express perceptions of poor treatment by staff (HMCIP 2009a).

Manchester, formerly known as Strangeways, was the site of a series of major disturbances between April 1 and April 25, 1990, during which one

prisoner was killed and 147 staff and 47 prisoners were injured. Much of the prison was destroyed and had to be rebuilt. In 2003, Manchester became part of the high-security system, and its segregation unit contains two cells designated for CSC prisoners. Manchester's CNA is 965, its operational capacity is 1,250, and its current population is 1,181 men (HM Prison Service 2011a). In the most recent inspection, the chief inspector reported that one CSC prisoner had spent more than three months on the unit and that, in general, "use of special accommodation was high" (HMCIP 2009b, 77). However, staff in the segregation unit were broadly commended for their professionalism.

Belmarsh primarily serves the Central Criminal Court and Magistrates' Courts in South East London but also holds high-security prisoners awaiting trial and on remand (IMB—Belmarsh 2010). It has a CNA of 800, a maximum capacity of 933, and a current population of 866 (HM Prison Service 2011a). It is a large complex prison with a segregation unit that has fourteen regular segregation cells, four other special cells, and two cells for CSC confinement. Reports commend Belmarsh on its treatment of foreign national prisoners and, in general, for taking positive steps toward violence reduction. However, four deaths in custody between 2007 and 2008 were still awaiting inquests as of year-end 2010 (IMB—Belmarsh 2010). Inspectors also are critical of deteriorating health care, mental health care, and support for prisoners with disabilities, insufficient provision of productive activity, insufficient resources for prisoner resettlement (i.e., release and reentry), poor prisoner/staff relations, and negative perceptions of staff and treatment among the black and minority ethnic and Muslim populations (HMCIP 2009c). Although recently abandoned, Belmarsh used to hold CSC prisoners under a "refusal" regime allowing "only sub-basic privileges with the aim of discouraging prisoners from staying" (HMCIP 2006, 19). In general, current reviews of Belmarsh indicate "a predominant focus on security" at the expense of "some important areas of prisoner care and rehabilitation" (HMCIP 2009c, 6).

CSC and Segregation

Although confinement in a CSC and confinement in segregation differ philosophically and practically, there are overlaps. Most individuals referred to the CSC system have spent significant amounts of time in segregation. Even after prisoners have been selected for CSCs, they will still spend time in designated cells within high-security segregation units for adjudication, punishment, "good order or discipline," their own protection, or "reasonable management" (HMCIP 2006). Moreover, some prisoners actively refuse to "progress" because they do not want to be put in general population or because they hope to be transferred to another CSC or segregation unit at another prison.

Early inspections of the CSC system raised concerns over the use of segregation with CSC prisoners, particularly as it affected mental health (HMCIP for England and Wales 1999). CSC prisoners who could not be trusted even within the “basic” regime were provided regimes more restricted than segregated regular prisoners (HMCIP for England and Wales 1999), locked down twenty-three hours per day with no direct daily human contact, little indirect human contact, few or no visits from family (many of whom have to travel great distances to visit a maximum of thirty minutes twice a month), and two prebooked ten-minute phone calls per week. As a result, “prisoners were isolated from anyone who might encourage them to review their position . . . and unable to demonstrate improved behaviour whilst permanently locked away” (HMCIP for England and Wales 1999, 10). Moreover, weekly risk assessments to determine the continued need for segregation became “self-fulfilling paper exercises” because restrictions that “equate[d] with punishment” (HMCIP for England and Wales 1999, 3) made showing change difficult.

Distinctions should be made among segregation as punishment, segregation to control immediate risk of harm, and segregation as part of a structured regime, which should mean differentiation among regimes. Property and privilege loss, for example, should accompany segregation as punishment, but prisoners in segregation to control risk of harm or as part of a structured regime should not lose property and privileges and should have safe access to staff at all times. More important, all prisoners “should have the opportunity to make personal progress in prison, and none should be exposed to regimes which might cause a deterioration in their mental or physical health” (HMCIP for England and Wales 1999, 46–47).

A more recent review of “extreme custody” indicates that the system has implemented more mental health support, added a unit at Wakefield for managing extremely dangerous prisoners, developed more ways for prisoners to progress, and abandoned the punishment regime in favor of a “violence reduction model” (HMCIP 2006). Concerns still remain about the lack of clinical involvement in the case management of these prisoners, especially those with severe mental health needs, and although use of segregation for control has declined, when used it is for significantly longer periods of time (HMCIP 2006).

Of additional concern is confusion over “ownership” of these segregated CSC prisoners and lack of clarity about the role of IMB monitoring. The chief inspector noted that “disproportionate use of segregation and unfurnished cells for black and minority ethnic prisoners was not being picked up in monitoring” (HMCIP 2006, 6). In one unit, for example, the inspection showed that 73 percent of those segregated in unfurnished cells were from black or ethnic minority communities (HMCIP 2006).

Nationality, Race, Religion, and Politics

Legislation targeted at terrorism (e.g., Terrorism Act 2000; Terrorism Act 2006) has resulted in more Muslims in custody, and an increase in gang-related activities has led to an increase in black and minority ethnic prisoners. Moreover, Muslim prisoners and black and minority ethnic prisoners are at increased risk of referral to the “managing challenging behavior strategy” if evidence suggests that they are also involved in any extremist or gang-related activity “that is unsuitable and adversely impacting on the good order of an establishment” (HM Prison Service 2009, 7). Currently, 37 to 55 percent of prisoners in high-security prisons are black or minority ethnic prisoners (HM Prison Service 2009), and Muslims, who compose about 3 percent of the population in the United Kingdom, are about 12 percent of the prison population (HMCIP 2010b), although in some prisons this percentage is much higher. Although the current representation of Muslim prisoners in the CSC system is unclear at this time, the representation of black or minority ethnic prisoners in CSC confinement was 29 percent as of April 2009 (HM Prison Service 2009).

Problems surrounding disproportionate confinement of these populations were illustrated in a review of the “specialist unit” for category A detainees at Long Lartin. Seven Arabic-speaking Muslims were detained, six on suspicion of international terrorism and a seventh on an extradition warrant. These prisoners were held for an indefinite period in an extremely isolated and confined environment without appropriate mental or physical health care. Many of these detainees feared and had perhaps previously experienced mistreatment or torture overseas, and most had diagnosable, often severe, mental health issues. Although funds were set aside for their health care, it was not actually being spent for this purpose, partially because the prisoners did not trust the health care staff (HMCIP 2008a).

These issues recently came to the forefront in HMPS, in judicial review proceedings initiated by the Equality and Human Rights Commission. A High Court of Justice decision ruled that NOMS “failed to comply with disability and race laws in its treatment of foreign national prisoners” in May 2009 when it entered into an agreement with the UK Border Agency for the “effective management and speedy removal of Foreign National Prisoners” (Equality and Human Rights Commission 2010, 1). HMPS implemented this transfer policy without considering the impact it might have on ethnic minority or disabled prisoners despite significant evidence from HM Inspectorate of Prisons and IMBs about widespread discrimination and disadvantage already faced by these populations.

HMPS violated the law by failing to conduct an “equality impact assessment” before changing policy. This assessment uses a two-stage process to determine whether any particular policy or function may have a

disproportionate impact on any particular group of people by race/ethnicity, gender, gender identity, disability, religion or belief, sexual orientation, or age (HM Prison Service 2009).

The Prison Service's assessment of relevant policies did not happen until several months after the initiation of judicial review of the transfer policy. The first assessment in November 2009 reviewed the "managing challenging behaviors strategy" (HM Prison Service 2009) and identified three issues by which this strategy could have a disproportionate impact: race/ethnicity, religion, and disability. However, only one disabled prisoner was confined at this time under the strategy, and he had refused to participate in the assessment, so disability was identified as an issue only because the evaluators had no information. Race/ethnicity and religion were both related to the presence of Muslim prisoners in the system who were being disproportionately affected by this strategy.

This assessment prompted a "thematic review" of Muslim prisoners' experiences (HMCIP 2010a). The primary conclusion was threefold. First, staff had difficulties working with small terrorist or radical prisoner groups while also working with larger groups of Muslim prisoners and "often did not distinguish adequately between the two," and "a focus on identifying extremism, promoted questionable assumptions about the presence and prevalence of radicalisation" (HMCIP 2010a, 19). Second, Muslim prisoners distrusted the staff and felt that they stereotyped all Muslims from having to deal with small numbers of extremists charged with or convicted of terrorist activities. Third, the Muslim prisoners felt more at risk than non-Muslims; 46 percent of Muslim prisoners felt unsafe, compared to 36 percent of non-Muslim prisoners. The difference between Muslims and non-Muslims was greatest in the dispersal prisons from which CSC populations primarily are drawn (HMCIP 2010a). On a positive note, a significantly larger proportion of Muslim prisoners reported positive interactions and feelings of safety than in a 2007 report (HMCIP 2010a). As a result of the findings from the assessment and from the thematic review, the chief inspector recommends "a national strategy for Muslim prisoners . . . outlining how the needs of Muslim prisoners will be met" (HMCIP 2010a, 43).

DOES CSS EQUAL SUPERMAX?

In theory, the idea of the American "supermax" has been proffered, evaluated, and rejected outright by Britain. According to Clare and Bottomley (2001, 166), "[C]ontemporary United States does not provide a model that we wish to buy wholesale." In practice, however, the CSC system shares several characteristics with the American supermax, including seemingly disproportionate confinement by race/ethnicity for long periods in ultrasecure facilities with extra control, supervision, and deprivation more significant

than any other prisoners. In addition, both the CSC system and American supermax are meant for those prisoners who have demonstrated histories of disruptive behavior in general prison populations.

Although these are shared characteristics, several things distinguish the British system from the supermax system in America. Primary among these is the emphasis on the provision of humane treatment and services for CSC prisoners that is evident in the language of the policies, training, manuals, and guides related to the confinement of these prisoners. Second is the transparency of the system to reviewers from both within and outside of the prison establishment (e.g., HM Chief Inspectorate, Institutional Monitoring Boards). The entire prison system is open to daily review and inspection on both announced and unannounced bases, which makes improper or inhumane practices much less likely, whereas in the United States, few are given access to observe daily life in the supermax and only rarely.

Another difference is that Britain seems committed to keeping populations very low in the CSC units. Currently, forty spaces are reserved for these prisoners, and these rarely have been filled. The criteria for CSC confinement, however, recently were expanded to “enable the system to work with offenders who undermine security and good order by their covert activities” (C. Hodson, pers. comm., March 25, 2011), which includes “prisoners considered to be at the heart of extremist activities on the wings” (IMB—Whitemoor 2010, 24). Although the chief inspector expressed concern over this criteria change (HMCIP 2010b), some IMBs were pleased that the criteria had been widened because bringing in more prisoners to the CSC units provides “better value for the cost” (IMB—Whitemoor 2010, 24). Even with the expansion of the criteria, however, the rate of confinement in ultra-high-security prisons in the United States is four times higher than in Britain; about 2 percent of prisoners in the United States are confined in supermax facilities, compared to less than 0.05 percent in CSC units in Britain. Prisoners, however, accuse the CSC and the “managing challenging behaviors strategy” of “trying to institutionalise a system of repression that violates the basic human rights of prisoners” by broadening the definition of “challenging” and by widening the net of high-security confinement to include prisoners who may not present control and/or security problems at the highest levels (Bowden 2009, 29).

Discouraging signs that Britain may be becoming more harsh and following in US footsteps indicate that an American-style supermax system may not be too distant on the horizon. In response to changes in sentencing laws and increasing prison populations in Britain, a recent report recommended the creation of a Sentencing Commission to develop and enforce sentencing guidelines and the construction of three “Titan” prisons that each would hold 2,500 prisoners (Carter 2007). As a result, the Coroner’s and Justice Act 2009

established a Sentencing Council for England and Wales and the adoption of Sentencing Guidelines for judges and magistrates (Coroner's and Justice Act 2009). To address burgeoning prison populations, Britain is expanding capacity to 96,000 by 2014 (UK Government 2009). While the government disregarded the "Titans," construction has commenced on five smaller prisons to accommodate up to 1,500 prisoners each (UK Government 2009). A more determinate sentencing structure coupled with prison construction hints at a hardening of the British system, which might eventually reach the CSC system.

Although money apparently is available for prison construction, HMPS has been asked to severely slash spending due to a 23 percent decrease by 2014 in the Ministry of Justice budget (Blunt 2010). It is unclear how these cuts will affect the CSC system, but a recent announcement by the NOMS may give some indication. CSC, DSPD, and segregation units are being "collapsed" into a new division called "Specialist Units" (HSE) for the "care and supervision of high risk offenders within the custodial environment in dedicated and specialist units . . . provided to the highest possible standard of security" (Ministry of Justice 2010a, 3).

This merging of provisions for the severely mentally ill (DSPD), for those who are segregated for various reasons (not all because of patterns of misbehavior), and for the CSC prisoners may indicate a relaxing commitment on the part of the government to maintain high levels of humane treatment and the differentiation necessary to provide treatment, programs, and services relevant to each population. In fact, with increasing populations, accusations of racial and ethnic bias, significant proportions of mental illness among incarcerated populations, decreasing budgets, sentencing guidelines, and more prison construction, perhaps Britain may be following in the footsteps of the United States after all.