

# Accountability and Oversight of State Functions: Use of Volunteers to Monitor Equality and Diversity in Prisons in England and Wales

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## Abstract

This article offers an evaluation of the use of volunteers in providing accountability of state detention in the prison system of England and Wales through a review of their efforts to monitor the humane and just treatment of those held in custody. A content and dialogical analysis was conducted on 280 reports submitted to the Secretary of State to analyze their practice of reporting and monitoring of equality and diversity. The article argues that the use of volunteers is appropriate to performing monitoring functions that act to enhance intelligent accountability, but volunteers are ineffective for the purposes of improving technical accountability. Evidence suggests some role confusion and use of volunteers for the achievement of both intelligent and technical accountability. The use of volunteers for the latter may result in poor quality repetition of other reporting mechanisms. In addition, it is argued that members require better training, and clearer communications concerning expectations from their reporting functions, which in turn is linked to the quality of their monitoring. The volunteers' monitoring and surveillance of the detention estate can be more than symbolic and may act as a crucial antidote to technical accountability, furthering the humane and just treatment of some of the state's most vulnerable citizens.

## Keywords

prison studies, criminology, social sciences, punishment, social change and modernization, sociology, accountability, volunteers, equality, diversity

## Introduction

The privatization of punishment through the use of private prisons dominated criminological debate in the late 20th century (see Anderson, 2009; Friedman & Parenti, 2013; James, 1997; Logan, 1990; McDonald, 1990; Ryan & Ward, 1989). It has stirred many academics and commentators and will continue to do so, while the punishment of those who the state labels criminal remains split between the public and private spheres. As part of this debate, authors such as Moyle (1999) and Schoombee (1997) have called for an identification of powers that may not be delegable within a democracy and services that should be immune from contracting out. Much of the concern relates to the delegation of state responsibility and the moral and ethical implications of contracting out the infliction of punishment on individuals often from groups widely recognized as having faced structural impediments to living noncriminal lives (McDonald, 1994; Pozen, 2003; Reisig & Pratt, 2000).

The neoliberal agenda of successive British governments has seen a shrinking of the overall size of the state

and attention being paid to outsourcing prison services, simultaneously reducing costs and increasing efficiency in service delivery (see Bottomley & James, 1997; Camp & Gaes, 2001; Lilly & Deflem, 1996; Pratt & Maahs, 1999). Questions of efficiency and accountability have often been at the forefront of these discussions and criticisms, and frequently, privatization, outsourcing, and delegation are understood as a reduction in accountability and perceived financial gains for the state that simultaneously masks capitalist motives (Chomsky, 1999). At the same time, there has been a move within penal systems toward increasing bureaucracy. Indeed, within the penal system, there has been an “administrative, rationalistic, normalizing concern to manage” (Garland, 1990, p. 180). The move toward

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Managerialism and New Public Management has brought with it the perception that it can offer enhanced accountability (Sinclair, 1995). However, the evaluation of prisons and new modalities of management has become concerned not with whether they are good or bad but with whether they are cheap, safe, and legal (Armstrong, 2003). Simultaneously, there has been an ascendancy of the use of public sector accounting instruments in prisons and a concentration on process rather than outcome (Mennicken, 2013). This focus on the expedient and technical measures of efficiency, Armstrong (2003) argued, has displaced attention from the fundamental issues of prisons' moral worth and practical accomplishments (see also Coyle, 2005). The debate concerning accountability has never been framed in terms of accountability of regimes of punishment and prisons generally, and has instead had an overt focus on the critique of private operation of penal establishments (Andrew, 2010). The overwhelming emphasis on efficiency and procedural accountability has helped obfuscate the ethical and moral dilemmas of the infliction of punishment within state institutions. At the same time, Nelson (1993) suggested that our understandings of accountability have been dominated by a technical emphasis; that is, the use of approaches to accountability that are technical, measurable, and procedural. Andrew (2007) argued that it is these technical mutations of accountability that have dominated the ability of the public, citizens, and state to scrutinize penal policy and operations (see also Robinson, 2003).

Technical accountability of prisons is often accomplished through the reporting of information, numbers, data, and statistics on, for example, escapes, drug and contraband finds, disturbances, and grievances (Andrew, 2007; Robinson, 2003). However, there remain incentives for the false reporting of such data, in particular in relation to meeting operational performance targets that are linked to the retention of lucrative contracts (Andrew, 2007). While there is still a need for these forms of technical accountability, there has been a growing focus on the need for something more. Concurrently within the European context, and in particular through human rights mechanisms such as the European Court of Human Rights, there has been recognition that "prisoners should not be degraded but treated with dignity and mercy" (Van zyl Smit & Snacken, 2009, p. 383). This recognition of the need for moral and ethical accountability in relation to the states' punishment of those convicted of crimes cannot be achieved through reporting of dry data and hollow statistics. While it is easy to criticize concepts such as dignity and humanity as lacking hard and identifiable content; Liebling (2011, p. 533) found that prisoners "know the difference between 'feeling humiliated' and 'retaining an identity.'" Liebling (2004) developed the concept of "moral performance" to provide an additional avenue of evaluation beyond standard key performance indicators (KPI) and developed the concept of a measurement of the quality of prison life (Liebling, Hulley, & Crewe, 2011). We have thus

come to understand that a human element is required, that is, an engagement with, and understanding of, the operation of the institutions and the impacts on those housed within them. Therefore, it is appropriate that we understand systems of state punishment, including prisons, as requiring moral and ethical accountability in addition to technical accountability.

There have been calls for new conceptions and understandings of accountability and new approaches to enacting it (Sinclair, 1995), and some of these have adopted critical theory frameworks as antidotes to administrative evil.<sup>1</sup> These can provide alternative approaches that reemphasize the lost ethical and moral components of accountability and evaluation (Dillard & Ruchala, 2005; Lehman, 2005). In relation to the expansion of accountability frameworks and measures in the field of education, O'Neill (2006) developed the concept of "intelligent accountability" that uses active inquiry to place the relevance and accuracy of indicators in context for them to be properly understood. Building on this concept, Roberts (2009) gave the example of a typical face-to-face encounter, rich with information, in which communication is less easily stage managed and rhetoric can be constantly compared with actual practice. For others including Genders (2002), the concern has been with the challenge of how accountability is operationalized and in identifying appropriate qualitative and quantitative performance measures, which appropriately address the concerns with what is seen as a 'successful' outcome.

Volunteers have been used in within the criminal justice system and for crime control purposes across police, courts, and corrections in many countries (see English, 2013; English, Baker, & Broadbent, 2010; Gaston & Alexander, 2001; Gravelle & Rogers, 2010; Morgan, 2013; Whittle, 2014). There has also been a recognition of the use of volunteers to enhance accountability more broadly within the criminal justice process. Examples include the now internationally utilized circles of accountability that are utilized to hold high-risk sex offenders to account within their communities (Wilson, McWhinnie, Picheca, Prinzo, & Cortoni, 2007). In this case, volunteers are utilized alongside professionals in the reintegration of sex offenders back into the community. Volunteers are used to hold the offenders to account rather than the system. However, Wilson et al. (2007, p. 12) noted issues of recruitment and training of volunteers, as well as appropriate screening mechanisms, stating "not everyone who steps forward is suited." There has similarly been a focus on the use of volunteers within government to strengthen government accountability (see Ackerman, 2004). Ackerman (2004) suggested the best way to tap into the energy of society is through a process of co-governance where social actors participate in core activities of the state. In particular, Ackerman gave examples of the close working together of beat teams with members of the community in Chicago, United States, to enhance policing. Rather than having direct powers, the volunteers provide information and pressure to attend to issues which have resulted in change.

Volunteers are found worldwide within the court processes where lay members of the public participate in decision making, for example, as magistrates (see Raine & Willson, 1995). Raine and Willson (1995) noted that a key reason volunteers can participate is the structural changes and system acceptance of the volunteers' needs. Nonetheless, they suggest that there are hidden costs to the use of volunteers; for example, in most magistrate's courts, "the majority of business is scheduled in the mornings only (few magistrates would be able to give up a whole day for court duties); and why the court clerks have legal qualifications (and are therefore generally better paid) unlike their counterparts in the Crown Court" (Raine & Willson, 1995, p. 38).

This article argues that the use of volunteers is appropriate to performing monitoring functions that act to enhance intelligent accountability; however, volunteers, in this case, are ineffective for the purposes of improving technical accountability. The use of volunteers for the latter may result in poor quality repetition of other reporting mechanisms. In addition, it is argued that members require better training, and clearer communications concerning expectations from their reporting functions, which in turn is linked to the quality of their monitoring. The volunteers' monitoring and surveillance of the detention estate can be more than symbolic and may act as a crucial antidote to technical accountability, furthering the humane and just treatment of some of the state's most vulnerable citizens.

To understand and analyze the use of volunteers in the enhancement of accountability, and delivery of oversight of state functions, the first part of this article details the history, role, and operation of the Independent Monitoring Boards (IMBs) today. The second part details the method of analysis before the findings are presented. The article concludes with a discussion of the use of volunteers in monitoring prison establishments and their capacity to enhance intelligent accountability.

## The IMB

Tracing back to at least 1166, under King Henry II, there has been a number of different forms of prison oversight in England and Wales (Boards of Visitors, 1998). In 1823, the government enacted the Gaol Act providing the first convict prisons with professional paid oversight. In 1877, a Prison Commission was created that took control of all local prisons and, for the first time, an unpaid Visiting Committee was appointed to every local prison. Although there was recognition of the importance of independent access to and inspection of prisons, it was recognized that the existing Visiting Committees performed poorly (Departmental Committee on Prisons, 1895). The Prison Act 1898 set up Boards of Visitors to operate in convict prisons with a similar role to the Visiting Committees. The Boards of Visitors were enshrined in all prisons through the Courts Act 1971 and replaced remaining Visiting Committees. They exist today as IMBs attached to

each prison, Young Offender Institute (YOI), Immigration Removal Centre (IRC), and Short-Term Hold Facility in England and Wales. The IMB is a quasi-autonomous non-governmental organization (quango), funded by the state, with the function of monitoring and reporting on the fair and respectful treatment of those in the custody.

The IMB is one of a range of bodies that seek to ensure state accountability of the detention estate. Established in 2009, the United Kingdom has a National Preventive Mechanism<sup>2</sup> (NPM) setup to comply with the international obligations under the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT) (United Nations General Assembly, 2002). OPCAT was adopted by the United Nations General Assembly in 2002 following the identification of a consensus at the international level that persons in detention are particularly vulnerable and at risk of ill-treatment. Underpinning OPCAT is the value identified in a system of regular independent assessments of state detention facilities that requires a monitoring system for prison establishments and a mechanism for the prevention of unjust treatment of individuals in custody. In England and Wales, accountability and monitoring of the state detention facilities is achieved through 20 statutory bodies operating within the NPM, such as the office of Her Majesty's Chief Inspector of Prisons, and those outside, for example, the Prisons and Probation Ombudsman (Harding, 2012).

As it exists today, the IMB is different in both form and substance to its predecessors. Specific duties have been removed over time, including Boards holding a managerial role in the establishments and taking part in the disciplining of prisoners. After its last review in 2001, their name was changed from *Boards of Visitors* to the more official sounding *Independent Monitoring Boards*, to better reflect the work they do and to distinguish them from other prison visitors (Stern, 2010). Nonetheless, the responsibility to ensure the fair and humane treatment of prisoners has remained unchanged since its inception (Boards of Visitors, 1998). It is supported by a Secretariat and has a National Council, and during 2011-2012, it received £2,549,000 in funding for its operations (Cabinet Office, 2012). Although there was a rush to reform bodies with delegated governance after the election of the Conservative-Liberal Democrat coalition government in 2010 and a review to rationalize them was quickly constituted, the 147 (now 133)<sup>3</sup> IMBs emerged unscathed. The Cabinet Office in the *Proposals for Change Documents* recommended that all IMBs should be "retained on the grounds of transparency" (Cabinet Office, 2010, p. 20). However, in other jurisdictions such as Scotland, steps have been taken to reform such bodies.<sup>4</sup>

Members of Boards are all ministerial appointments, number 1,684, and are all volunteers (Cabinet Office, 2012). Despite attempts to diversify the membership, the Boards have been known for having high numbers of magistrates and other former criminal justice officials. Board meetings

are often held during the working day, which typically precludes those in full-time employment from being able to attend, and practically affects the number and frequency of random visits conducted. General duties of the Boards include the need to satisfy themselves as to the state of the prison premises, the administration of the prison, and the treatment of the prisoners, as well as direct the attention of the governor to matters that call for attention, and report to the Secretary of State matters they consider expedient to report (Prison Rules, 1999: s.77(3) and s.77(1)).<sup>5</sup> The Boards are required to immediately inform the Secretary of State of any abuse which comes to their knowledge (Prison Rules, 1999: s.77(4)). The National Council has interpreted this brief to mean that each Board should “satisfy itself as to the humane and just treatment of those held in custody within its prison and the range and adequacy of the programmes preparing them for release” (IMB, 2007, p. s1). Board members have unfettered access to the establishment to which they are attached including all restricted areas, every prisoner and record, any time of day or night without notice (Prison Rules, 1999: s.79(2)(3)). Boards are informed immediately of any serious incident in an establishment, including fire, riot, or death in custody, and attend the incident or its aftermath as an independent observer. While the Prison Rules require only a monthly visit, in general, visits occur on a weekly basis though some Boards, especially in larger establishments, have twice-weekly visits. Members are granted private access to prisoners, and prisoners may request to see Board members.

Boards have full responsibility for writing their reports, and all reports are made public and are freely available to prisoners. The Prison Act 1952 s.6(3) requires Boards to “report to the Secretary of State any matter which they consider it expedient to report.” Although the reporting requirements, from a statutory basis, are rather vague (Prison Act, 1952, and Prison Rules, 1999: s.80), this request cannot be interpreted as requiring Boards to provide data already available from other sources, as this would be an inefficient duplication of the functions of other bodies and reporting mechanisms.

The Secretariat and the National Council have devised a standard template and issue guidance to assist Boards in the preparation of their reports (IMB, 2007). The contents of this template and the guidance provided call for, what is termed here, “factual knowledge.” This is, for example, numerical data and/or descriptive information and is the type of data often provided for purposes of ensuring technical accountability, discussed above (see Nelson, 1993). Examples of these factual data listed in the template include statistics measuring the quality of prison life, the numbers and types of request and complaints, whether there were enough places available in education and health care, and whether prisoners had been failing to attend educational courses. However, this information is already provided to ministers from the many reporting mechanisms in place through National Offender

Management Service (NOMS) reporting processes, as well as reporting for compliance with the Prison Service Performance Standards and the countless ad hoc requests from the Ministry of Justice.

In addition to the factual knowledge and data, the template indicates that Boards should report on and provide a second type of knowledge, termed here “personal or constructed knowledge.” An example of the template’s guidance and request for constructed knowledge in relation to diversity states the following:

This is a very broad area to monitor as it requires the Board to assess the impact of differences such as age, disability and sexual orientation, as well as religion and race, on prisoners/detainees. It also calls for an understanding of how needs and differences, such as those to do with mental health, literacy and drug addiction, cut across social and cultural categories. Thus of particular interest will be the Board’s views on:

- how far the prison/centre is alert to diversity in the fullest sense of the word and has the strategies and skills in place to recognise and address problems whenever and wherever they arise,
- and *most importantly*, whether prisoners/detainees feel safe and respected, and are able to access regimes and facilities equally.

The evidence is likely to come from personal observations; conversations; the minutes of relevant meetings; Measuring the Quality of Prison Life; Racist Incident Reports; Security Information Reports; Request & Complaints; Canteen Lists; Segregation, Monitoring and Review Group reports; Applications and Rota Visit reports. (IMB, 2007, p. B2, emphasis in original)

Board members gain such knowledge during their visits to the establishments as they undertake their monitoring duties and this knowledge comes from their active inquiry (see O’Neill, 2006). The template explicitly requests for the opinion of the Boards and their views on, for example, how far the prison is “alert to diversity” and whether the prisoners and “detainees feel respected” (IMB, 2007, p. B2). The guidance suggests, for example, the Board should provide “commonsense opinions as to how well the education provided in the prison is meeting the needs of prisoners” (IMB, 2007, p. B2).

This second type of knowledge is different in substance to the factual or numerical data: it is a constructed knowledge formed from the subjective assessment by the IMB of the prison’s operation. It uses lay members of the public in its construction and uses their assessment to hold the state to account in its treatment of prisoners and detainees. Establishments are subjected to this face-to-face encounter between volunteers and prisoners on a regular and ad hoc basis, making the assessment of accountability less easily stage-managed (see Roberts, 2009). The knowledge sought



from and generated by the volunteers speaks to the ethical and moral operation of the state establishment. They become the eyes and the ears of the general public in holding to account the Government in the treatment of fellow citizens that the general public are unable to access. It requires an interpretive understanding of how well the establishment is operating including underlying problems and tensions. The personal observations, conversations, and visits provide a basis on which the Board is required to form an opinion about and communicate knowledge on the standards of detention.

## Methods Utilized to Analyze the Reporting Functions

In light of the foregoing, it can be seen that the fundamental component of the Board's reporting function is the communication of this secondary category of information, the personal or constructed knowledge concerning the conditions of detention and thus contributing toward increasing intelligent accountability of the state's detention facilities. This is a role the Boards have played since their inception. The analysis of the reports therefore responds to this dual-knowledge framework, and two methods of analysis were utilized. The data were coded manually and analyzed through NVivo software and come from the 280 Annual Reports that Boards provided to the Secretary of State for the reporting years 2009 ( $n = 136$ ) and 2010 ( $n = 144$ ).<sup>6</sup> The data were accessed and gathered from the publicly available government-hosted IMB website.

Initially, content analysis of the reports was used to identify the presence of factual data. Krippendorff (1989) suggested that "content analysis is indigenous to communication research" (p. 403) and that it rarely aims at a literal description of communications content. Holsti (1969) offered a wide definition of content analysis being "any technique for making inferences by objectively and systematically identifying specified characteristics of messages," (p. 14) though he noted that latent (in other words interpretive) analysis always requires corroboration. Content analysis is also appropriate to understand that which was "outside the immediately observable physical vehicles of communication" (Krippendorff, 1989, p. 403) and thus renders unobserved context of data analyzable. There are a number of approaches to content analysis, and a summative content analysis (see Hsieh & Shannon, 2005) was utilized to count and compare the production of knowledge by Boards, and to interpret the underlying context. In this case, summative content analysis was used to understand the Boards' reporting of factual knowledge. It allowed for an assessment of the Boards' awareness of protected characteristics (through a counting of its presence in reports) and consequently their awareness of the need to monitor protected characteristics. It helps answer the research question; which protected characteristics are the Boards aware of, and reporting on, to the Secretary of State? Protected characteristics within the coding scheme include age, disability, gender

reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation as defined in the Equality Act 2010.

When conducting the analysis, the reports were read thoroughly, before the specific section on diversity within each report was read and reread. The reports were coded positively for the presence of "factual knowledge" when a protected characteristic was mentioned by name or synonym. It was not necessary to identify frequency, as a single positive coding satisfies the research question relating to the presence of factual knowledge. For example, the mention of age in a diversity statement would be sufficient for the report to receive a positive coding for "factual knowledge" for the protected characteristic "age"; in addition, "older prisoners" would also satisfy this requirement. In this example, the Board has communicated that the establishment is aware of the need for protection on the grounds of age and that the Board is monitoring for this. This is a form of technical accountability, and the data generated allow for an understanding of the Boards' knowledge of what they are expected to monitor and their interpretation of their task of reporting. Validity, thus credibility, relies on internal consistency; textual evidence allows for checking and assessment of the interpretation (Weber, 1990).

In seeking to understand the presence and content of "constructed knowledge," a different approach was adopted. A dialogical analysis which sought to understand the communication of information in terms of a dialogue, or a response to the Secretary of State (and Secretariat/National Council) to the request for constructed knowledge, was used. It helps answer the question, are volunteers communicating constructed knowledge capable of improving moral and ethical accountability of the prison estate? And, what protected characteristics are they communicating constructed knowledge of? Dialogical analysis, associated with Bakhtin (1986), theorizes that the individual speech act<sup>7</sup> should be understood as a communication and as part of a broader series of acts and interactions between different perspectives. Steinberg (1999) suggested that "dialogists emphasize that talk and texts people use in any specific exchange in part drive their meanings in relation to the wider sphere of talk and texts in ongoing communication" (p. 744). Bakhtin noted,

The utterance is related not only to preceding, but also to subsequent links in the chain of speech communication . . . from the very beginning, the utterance is constructed while taking into account possible responsive reactions, for whose sake, in essence, it is actually created. As we know, the role of the *others* for whom the utterance is constructed is extremely great . . . From the very beginning, the speaker expects a response from them, an active responsive understanding. The entire utterance is constructed, as it were, in anticipation of encountering this response. (p. 94, emphasis in original)

Dialogical analysis reorients the narrative analysis away solely from structure and content toward its production

(Whooley, 2006). Dialogical analysis was used here to conduct an analysis that appropriately valued the Boards' understanding of the embedded communicative significance of their reporting function. The report they produced is treated as a response to the request for information from the Secretary and thus is part of a larger dialogue. The speech act can therefore be used as a site for understanding phenomena that exist beyond the communication itself. Ascertaining the existence of "constructed knowledge" requires the speech act to be interpreted in light of the Board's role and requirements placed on them to communicate constructed knowledge to the Secretary of State.<sup>8</sup> For them to have successfully communicated constructed knowledge, they must have provided something in addition to, for example, simple numerical data on the number of health care visits. The reports received a positive coding in NVivo for "constructed knowledge" when they provided information regarding, *inter alia*, fair and humane treatment of prisoners and equality and diversity within the prison. It is possible for a report to communicate "constructed knowledge" concerning one protected characteristic, for example, race, but not in relation to another, for example, sex. Therefore, the "constructed knowledge" descriptor was ascribed in relation to the relevant protected characteristic when the report communicated an interpretive assessment, which went beyond the mere technical provision of information.

Where a Board simply reported the yearly number of Racist Incident Reporting Forms (RIRFs) completed by prisoners, this was not sufficient to be coded as "constructed knowledge"; however, it was sufficient to be classified as "factual knowledge." Relating the dismissal of a Race Equality Officer or the closure of the Race Equality Unit to an increase in the number of RIRFs completed, and the subsequent increase in tensions within the establishment, would have satisfied the communication of "constructed knowledge." Equally, the Boards' view of the impact of a hostile or poor management style of the governing (Number 1) governor to racist incidents would display "constructed knowledge." It is within this framework that the analysis was conducted, and the key observations and analysis are presented in the following section.

## Findings

### *Failure to Report and Inadequate Content*

The analysis indicates a number of Boards failed entirely to comply with the requirements to provide mandatory reports on equality and diversity, for example, Liverpool (2009), Huntercombe (2010), Stoke Heath (2010), Wolds (2010), North and Midlands (2009, 2010), and Heathrow (2010). The absence of a report is regrettable and a missed opportunity to detail the situation at these locations notable for their highly diverse populations; Liverpool is one of the largest prisons in Western Europe, Stoke Heath is a YOI, Heathrow

is the largest airport in the United Kingdom, and North and Midlands comprises a number of short-term holding facilities including Birmingham, Liverpool, and Manchester International Airports.

Despite the attempts by the National Council to guide a uniform approach to reporting, the reports that included information on equality and diversity did not follow a standard form of presentation. The mandatory reports on diversity ranged from some extremely short reports, including some that provided only two lines: "The Board has representation on the Race Equality Action Team and reports to every Board meeting. No major problems concerning diversity have been highlighted" (Lincoln, 2009, p. 5). On the contrary, some reports have placed a much greater focus on diversity, with one report having provided a six-page extensive detailed analysis on the state of diversity in the establishment (Lancaster Farms, 2009). While it is expected that primary and (in some cases) secondary legislation is lacking in detail as to the expected contents of the Boards' reports, the template provided to Boards did not effectively communicate the requirement to provide "constructed knowledge" as opposed to "factual knowledge." Explicitly mandated is the requirement and communication of points of importance to the Secretary of State: the analysis indicates that this is interpreted very broadly by the Boards, with lack of consistency in the type and volume of knowledge reported on.

The results, detailed in Table 1, indicate that over the reporting period, there was an increase in the number of Boards providing factual knowledge across all protected characteristics. The data indicate that by 2010, a majority of Boards provided reports containing factual knowledge regarding the protected characteristics of age, disability, race, and religion or belief.

Across the reporting period, there was also an increase in the number of Boards providing constructed knowledge across all characteristics with the exception of pregnancy and maternity. Boards often communicated constructed knowledge to the Secretary of State when discussing issues of race. They appear attuned to the need to provide constructed knowledge with regard to this characteristic and capably demonstrate examples where issues of race are addressed in the establishment, to improve the prisoners' experience while in detention; examples include reports detailing the lack of training for officers in the post of Race Equality Officer (Woodhill, 2010) and the impact on the establishment. The data indicate that even if the Boards are conducting their visits, gathering information and creating knowledge on the fair and humane treatment of their detention on issues outside of race, they often fail to communicate this within their reports. Nonetheless, even across the small reporting period, the data signify progress being made in improving reporting of constructed knowledge across all characteristics. The dialogic analysis also indicates that Boards mix the issues of race with religion and belief, and similarly often mix or discuss issues of (old) age and disability together.

**Table 1.** Presence of Factual and Constructed Knowledge in Reports.

Protected characteristic	2009 (n = 136)				2010 (n = 144)			
	Factual		Constructed		Factual		Constructed	
	n	%	n	%	n	%	n	%
Age	47	35	29	21	80	56	64	44
Disability	77	57	56	41	102	71	91	63
Gender reassignment	9	7	3	2	14	10	10	7
Marriage and civil partnership	6	4	0	0	6	4	0	0
Pregnancy and maternity	0	0	0	0	1	1	0	0
Race	124	91	101	74	130	90	120	83
Religion or belief	71	52	50	37	94	65	83	58
Sex	23	17	7	5	22	15	9	6
Sexual orientation	33	24	14	10	46	32	28	19

This lack of constructed knowledge results in the reports failing to communicate anything about the progress or failure of the establishment in question in achieving conditions of fair and respectful detention. Lack of clarity burdens the communication of information. For example, the report from East Sutton Park (2009) discusses issues of education under the heading of diversity, but it is not clear as to the point or issue that is being raised. Another very brief report noted, "There are no real problems in this area" (Brinsford, 2009, p. 15). However, data indicate that of all the "Race/Religion Problems" reported to this Board between July 2004 and June 2009, 40% occurred within the 2009 reporting period. The report also noted that "BME [Black and minority ethnic] groups make up 30-40% of the population at any one time" (Brinsford, 2009, p. 15) in an establishment with an operational capacity of 569. While the Board made an interpretive view of the operation of the establishment that there were "no real problems," no evidence was provided to substantiate such assessment. The high number of race/religion incidents in the reporting period in an establishment with a high BME population merited investigation and discussion. The Board did not report on RIRF completions or any variation in the number and the nature of these, nor did it report the absence of any race-related incidents. A number of such incidents would be anticipated in an establishment of this size and composition, and this omission may be an indicator of failures in the reporting and monitoring mechanisms. Thus, although some "factual" knowledge was communicated, the Board did not report "constructed knowledge" for the operation of the prison to be understood in terms of ethical or moral accountability. The Board's assessment that there were "no real problems" in this report is unlikely to accurately reflect reality. The Governor was removed following an unannounced visit and inspection by HM Chief Inspector of Prisons (HMCIP) in 2011, where it was noted the prison was not achieving in a number of areas and "diversity provision and promotion were in a state of transition, and the comprehensive equality policy had yet to be finalised and published"

(HMCIP, 2012, p. 14). It was noted in the Inspectorate's report that there was no support for gay prisoners or travelers, and outcomes for BME prisoners were poor (HMCIP, 2012). These were not discussed or reported on by the IMB. Thus, although there was content capable of broadly satisfying the requirements concerning the communication of factual knowledge, there is significant space for improvement.

Some of the volunteers (and Boards) appear to have understood their task and conducted their reporting function competently in light of the requirements and to a high standard. They have provided reports rich with constructed information, drawing on their monitoring of the establishments and communicating meaningfully about the conditions of detention. In one succinct example, the report communicated and evidenced constructed knowledge:

There were some quite dramatic changes last year when Diversity issues were restructured and all aspects of Diversity were encompassed under one diversity and equality strategy document. This year has been a period of solid progress on a broad front which has validated and reinforced the reasons for those changes. The Action Plan which stemmed from the Diversity & Equality Vision and Strategy document has been constantly refined and brought up-to-date; it is now a robust and pragmatic document which provides clear guidance on all aspects of Diversity. (Full Sutton, 2009, p. 14)

In another example, material from an HMCIP report was used, and the IMB report contrasted observations from visits to the establishment to explain the problems noted. For example, in addition to detailing facilities available for religious use, the Board detailed their condition, operational ability, and progress and changes regarding these (Campsfield House, 2010). The report contained sufficient information that allowed the reader to understand the treatment of diversity within the prison and its potential to affect the fair and respectful detention. This is exactly the type of information that the lay volunteers are positioned to understand in relation to impacting prisoners. Board members become aware,

through their visits and conversations with prisoners, of the failings in the operation and are well placed to communicate how, for example, increasing budgetary pressure is preventing the replacement of toilet seats leading to unsanitary conditions. This type of reporting helps the Minister triangulate information from the (technical) NOMS reporting and Standards Audit processes, as well as from HMCIP to get a holistic understanding of the situation within the establishment and facilitates intelligent accountability.

However, even where reports were not coded for providing factual or constructed knowledge across a number of characteristics, there are examples where Boards have provided a report that could be understood in terms of reporting that furthers intelligent accountability and fair and humane treatment. Such a report also helps ensure the moral and ethical accountability of an establishment; for example, the report for Yarl's Wood (2010, p. 5) stated, "The IMB has noted in successive annual reports that the Centre operated without a written Diversity policy. This has now been addressed."

### *Problematic Reporting and Contents*

Some Boards are reluctant to report on issues of equality and diversity. As noted above, the annual report is a key component of the Boards' effective operation. IMB Kirkham's (2010) report stated, "I personally hope that in the future that diversity is not a mandatory section for the IMB report and is referenced only if there are problems" (p. 10). Such statements suggest that this Board and its author(s) conceptualize their task as requiring them only to report the negative, and thus, they fail to communicate areas of success to the Secretary of State. In addition, the neutrality and position of the Board and the IMB members that comprise it was also called into question by some contents. An example of this, from the same report, included statements such as,

We are fortunate too that the Area Chaplain is based here but it is a sad reflection on our society that the Christian Chapel is one quarter of the size of the Multi Faith Room. (Kirkham, 2010, p. 10)

Such reporting does not appropriately further technical nor intelligent accountability. Although there is an increase in reporting of protected characteristics across factual and constructed knowledge categories, some Boards produced the same reports almost word for word, year after year (see Stanford Hill, 2009, 2010). This type of repetitious reporting raises questions including whether the Board is appropriately monitoring and thus is capable of reporting on diversity issues.

A number of reports contained words, whose presence is cause for concern. Although these words indicate that the volunteers were aware of the need to monitor the fairness and humane conditions of detention, and thus received

a positive coding in the analysis, they suggest that the volunteers draw heavily upon their knowledge from their lives outside of the prison environment. Concepts and terminology such as being "Wheelchair bound" (Swaleside, 2010, p. 20; Wormwood Scrubs, 2009, p. 5) were used to describe mobility-impaired prisoners, and volunteers in Long Lartin's (2010, p. 8) report referred to "demented prisoners." At worst, the words could signal prejudice, malice, or discriminatory intent and a refusal by the Boards to conduct their activities in good faith and in compliance with relevant legislation. Through their reports, a number of Boards communicated their failure to understand the sensitivity and significance of the matters they were tasked with monitoring.

Reference was made to prisoners' "sexual persuasion" (Low Newton, 2010, p. 10), and while it was reported that, in relation to gay prisoners, staff had been reminded during a Safer Custody Meeting to challenge "mickey taking," the volunteers at the IMB at Edmunds Hill (2009) used the term "homosexual prisoners" (p. 13). Such terms are widely regarded as offensive to the gay community, rather than the more appropriate term "gay" (Civil Service, 2011). The term creed was found in a number of reports (Dovegate, 2009; Lindholme, 2009, 2010; Morton Hall, 2010) and African-Caribbean and/or African, Caribbean, has replaced the term Afro-Caribbean, when referring to the descent of the individuals referenced (The British Sociological Association, 2005), and the older-terminology was found in a number of reports (Gartree, 2009<sup>9</sup>; Huntercombe, 2010; Low Newton, 2010; Reading, 2010). As members of the communities that they serve, the volunteers are thus drawing on some long-held understandings. These understandings, including what it is to treat someone in detention with fairness and humanity, are integral to intelligent accountability and the production of constructed knowledge as compared with simple administrative and reporting practices that provide for technical accountability.

There are other examples of phraseology that are sufficiently ambiguous to allow for the reader to draw into question the reporting and monitoring of the Board. Both the reports from the Board at Werrington (2009, p. 8, 2010, p. 9) contained the following statement: "It is explained to BME young people why 'playing the race card' is undesirable and can put them in jeopardy." While this appeared in the context of having explained to those in custody in YOIs, the problems of improper allegations of racism, this statement may cause the belief that racist incidents are treated with skepticism and not the seriousness they deserve. The Board at Foston Hall (2009, p. 11) discussed "bona-fide members of all faiths," giving the impression of the need for some verification and assessment as to the validity and veracity of a prisoners religious standing. Use of such terminology may adversely affect the prisoner's perceptions of the Boards and may prevent individuals contacting the Boards with concerns they wish to raise, in turn, preventing the Boards from



effectively fulfilling their monitoring role. The unintended negative impact of such statements may therefore resonate beyond the intended recipients.

## Discussion: Volunteers and Intelligent Accountability

A number of problems can be seen to exist with that state's use of volunteers in the oversight of the fair and humane detention of prisoners and detainees. This is particularly the case when they are being tasked with monitoring and reporting on issues of equality and diversity. The use of volunteers by the state for any task must match their capabilities. A number of Boards, comprised of members drawn from the public, have shown that they are capable of monitoring and reporting on the establishments to judge the treatment of prisoners within an ethical and moral, humanitarian framework. It is clear from the historical creation of the Boards, their setup, and how they are tasked today that the state does not want the IMB to perform a function of merely technical monitoring and reporting of information (see Robinson, 2003). The lay members are called upon to provide a humanistic assessment of the operation of the most disciplinary, retributive, and vengeful of state mechanisms, and they are providing an additional avenue of evaluation beyond standard KPI (see Liebling, 2004). However, such volunteers cannot be used as experts unless they possess that particular expertise. Nonetheless, they are able to comment on whether the state is doing a good or bad job from a lay perspective and whether they are treated with dignity and mercy (see Armstrong, 2003; Van zyl Smit & Snacken, 2009). It is therefore pertinent to question whether it is appropriate to use volunteers in the monitoring of equality and diversity.

Volunteers must also understand how they are being utilized by the state and how this meets the state's needs. The Secretary of State must therefore indicate to volunteers, with greater clarity, their position and how their role is part of a state mechanism to deliver oversight of state penal institutions. Peter Selby, the Chair of the National Council in an address to the organizations' National Conference, reminded members that the "I in IMB does actually stand for 'Independence' and not 'impartiality'" (Horan, 2010, p. 14). He indicated that the organization should be questioning if policy is correct and that it would be increasingly difficult for IMBs to isolate themselves from the politicization of contentious issues. The volunteers therefore need to understand their role in the achievement of ethical and moral accountability. The analysis indicates that some Boards resist the requirements imposed upon them by the Secretary of State; this could be because Boards are attempting to resist being utilized in the achievement of merely technical accountability. Despite this, the mandatory requirement to report on diversity does not conflict with the statutory requirement to report that which they deem expedient; the Secretary solicits both mandatory and ad hoc reports. Although open to interpretation in

a number of ways, the mandatory requirement to report on diversity would be an appropriate place to communicate issues of both success and concern. Boards would be furthering moral and ethical accountability by providing a good faith report rather than resisting the requirement. Moral and ethical accountability does not require merely the reporting of problems. There is therefore an urgent need to clarify the task of the Boards in relation to their reporting. It is likely that the limited guidance presented in the template, and an inability of the individual Boards to grasp the importance of the report alongside their monitoring, results in Boards providing sometimes superfluous, and in some cases no knowledge, to the Secretary of State.

The research indicates that while a minority of Boards have written very comprehensive reports communicating constructed knowledge, a substantial number do not provide constructed knowledge regarding fairness and respect for those in custody in relation to the different protected characteristics. The failure to communicate the constructed knowledge gained while monitoring the establishments may simply be a problem of instruction. As discussed above, the guidance issued in the template is less than clear in articulating that the Boards are not to provide similar information to that the Secretary of State can gain through other channels. The guidance calls for factual knowledge (in addition to the constructed knowledge) and can be interpreted such that it is acceptable for Boards to provide information that the Secretary may already have access to. That they are to provide their evidence-based opinions, understandings, and assessments must be made sharper. Providing clearer, more detailed instructions to volunteers may help to alleviate this problem. These observations may reflect the fact that some Boards, although adequately monitoring, did not attribute much importance to their reporting function.

The National Secretariat has sought to offer more structured training in recent years for both new and continuing members, including residential courses for new members. However, much of the training is done at the local level and provided by the longer serving members on each Board, occurring as the trainee member accompanies the longer serving member around the establishment, learning while they are conducting the visits. One reason for the training to be both vocational and not centralized is the huge variation in establishments and their operation across the detention estate. Nonetheless, when unchecked, this provides the opportunity for poor monitoring and reporting practices of existing members to be replicated and mimicked by newer members. The research here indicated that some Boards might have insufficient training and knowledge for them to adequately monitor and report. Thus, although it is appropriate to have members of the public reporting on fairness and respect in detention, they must be properly equipped with the training and knowledge to be able to successfully monitor and report on the conditions of detention. Indications of lack of knowledge and training from poor reporting by

implication raise questions concerning the quality of their monitoring function. As lay members of the public, the report's authors (members of the individual Boards) may simply have been unsure how to appropriately communicate on issues surrounding protected characteristics.

The use of inappropriate terminology when discussing protected characteristics indicates that Boards draw upon familiar social constructs when writing the reports. The inability of Boards to identify and appropriately name protected characteristics suggests deeper issues beyond simply communication errors, and raises the question whether Boards only monitor that which they are familiar with. A number of Boards were unsuccessful in communicating any interpretive knowledge concerning protected characteristics other than race, suggesting that their monitoring focuses on this characteristic at the expense of others. Again, further training may alleviate this and attune the Boards, for example, of the need to monitor age across the life course and not merely in relation to older age. Without holding adequate knowledge as to what they are required to monitor and report on, their ability to increase moral and ethical accountability through their reporting function is diminished.

The volunteers must also reflect the populations that they serve. The IMB recognizes this and has sought to increase the diversity of its membership. However, more must be done to ensure a representative monitoring organization. A diverse population of lay members will likely comprise a wider skills set, greater capabilities, and different knowledge and perspectives, and assist in providing a more comprehensive assessment of the humane and fair conditions of detention. Some statements within reports communicate the presence of partial reporting (in addition to monitoring) of equality and diversity issues and a lack of valuing detainees of all religions equally. Comments such as those found in IMB Kirkham's 2010 report are an indicator that the Board (or those with the responsibility for writing the report) hold the view that diversity is ostensibly a bad thing. The knowledge that is constructed and communicated within such a report is a lack of tolerance, and of a monitoring body that does not value diversity. Such reports do contribute toward enhanced ethical and moral accountability.

Questions of accountability, in particular a move toward technical accountability at the expense of accountability in ethical and moral terms, have been at the forefront of many concerns to changes in the administration of justice in recent years. Volunteers humanize the accountability endeavor of monitoring prison establishments, and the IMB has done so for many years. As such, the IMB provides an avenue for the public, citizens, and state to scrutinize penal policy and operations (see Andrew, 2007). There is little doubt, in its numerous incarnations, that the IMBs' existence has benefited the prisoners, the state and the community over the last 100 years. Their value in the contemporary penal landscape may simply be their ability to use active inquiry (O'Neill, 2006) to understand what occurs in detention from an ethical and

moral framework that is not stage managed and capable of going beyond qualitative performance metrics (see Genders, 2002; Roberts, 2009). The Chair of the National Council suggested that although the question "Do we actually make any difference?" vexes many members, they ought to focus not on their power to do things but consider what might happen if they were not there (Horan, 2010, p. 13).

The state should ensure that the mechanisms in place to oversee state functions operate adequately. In this study, there are indications that a number of Boards fail to fulfill the requirements placed on them. This is unsurprising considering the ambiguities and lack of clarity within the sparse guidance given to the Boards. No other body within the NPM is as well placed to assess ethical and moral accountability with regularity like the IMB. However, the findings indicate the need for an urgent review to strengthen the operation and effectiveness of the IMB.

To facilitate a more effective monitoring system, it may be that a "professionalized" body of volunteers is established, who visit multiple establishments less frequently. It may be that governments limit requirements (and expectations) placed on volunteers, or it may be that governments communicate more clearly the expectations placed on bodies such as the IMB. Members of the public can be used to ensure that accountability is not simply reduced to a technical form. The reports indicate that volunteers can and do draw upon ethical and moral qualities to ascertain the fairness and humanity of detention. This analysis indicates that the core function and reason for such body's existence is the achievement of intelligent accountability. The Boards comprising the IMB undoubtedly need to improve the communication of their interpretations of the treatment of prisoners and should not attempt to poorly replicate other reporting mechanisms. The analysis has shown that the current corps of volunteers requires further guidance and training to enable them to satisfactorily deliver their role. Nonetheless, it can be seen that they are capable of monitoring and reporting on ethical and moral accountability of state detention of one of society's most vulnerable populations.

### **Independent Monitoring Board Reports (available from [www.imb.org.uk](http://www.imb.org.uk))**

Brinsford 2009  
 Campsfield House 2010  
 Cardiff 2010  
 Dovegate 2009  
 East Sutton Park 2009  
 Edmunds Hill 2009  
 Frankland 2010  
 Foston Hall 2009  
 Full Sutton 2009  
 Gartree 2009  
 Heathrow 2010  
 Huntercombe 2010  
 Kirkham 2010  
 Lancaster Farms 2009

Lincoln 2009  
 Lindholme 2009  
 Liverpool 2009  
 Long Lartin 2010  
 Low Newton 2010  
 Morton Hall 2010  
 North and Midlands 2009  
 North and Midlands 2010  
 Reading 2010  
 Stanford Hill 2009  
 Stanford Hill 2010  
 Swaleside 2010  
 Werrington 2009  
 Werrington 2010  
 Wolds 2010  
 Woodhill 2010  
 Wormwood Scrubs 2009  
 Yarl's Wood 2010

## Legislation

Courts Act 1971. c. 23.  
 Equality Act 2010. c. 15.  
 Gaol Act 1823. c. 64.  
 Prison Act 1952. c. 52.  
 Prison Act 1898. c. 41.  
 Prison Rules 1999. SI No. 728.  
 Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015. SI No. 39.

## Author's Note

The author was a member of the Independent Monitoring Board (IMB) at Her Majesty's Prison (HMP) Leicester and a member of the advisory panel on equality and diversity to the National Council of the IMB. All data within this publication are available publicly, and the views contained within it do not reflect those of the IMB.

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## Notes

- Administrative evil (Adams & Balfour, 1998) is an emergence from rational practices of modernity including contemporary practices of accountability which allow people through their delivery of responsibilities to deprive human beings of essential elements of their humanity.
- The National Preventive Mechanism (NPM) comprises 18 bodies that access the detention estate. For further details, see National Preventative Mechanism (2011).
- The number of Independent Monitoring Boards (IMBs) has reduced following a consolidation and rationalization of the number of prisons and immigrations removal centers, with a number of establishments being closed.
- Prison Visiting Committees in Scotland were abolished by the Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015. The order makes provision for two layers of monitors, paid and lay, with prisoners only being able to make complaints and voice concerns to the lay members who are managed by the paid monitors. This change ensures concerns with Scotland's Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT) compliance are alleviated: previously, the budgetary and administrative structures saw the Visiting Committees reporting to the Scottish Prison Service.
- Prison Act 1952 (s.6)—Independent monitoring Boards [*sic*]
  - (2) The Secretary of State shall appoint for every prison group of independent monitors.
  - (2A) The groups so appointed are to be known as independent monitoring Boards.
  - (3) Rules made as aforesaid shall prescribe the functions of independent monitoring Boards and shall among other things require members to pay frequent visits to the prison and hear any complaints which may be made by the prisoners and report to the Secretary of State any matter which they consider it expedient to report; and any member of an independent monitoring Board may at any time enter the prison and shall have free access to every part of it and to every prisoner.
- The Boards are required to provide reports on an annual basis with rolling submission dates; for example, HMP Cardiff reports from September 1, 2009, to August 31, 2010; HMP Frankland reports from December 1, 2009, to November 30, 2010. Reports were coded for analysis according to IMB categorization. It should be remembered that each report does not necessarily cover the same period of time. They are publicly available at [www.imb.org.uk](http://www.imb.org.uk).
- The term Speech Act is used here to refer to a communication in the form of a report, which in this context is considered as an action paying particular attention to its intention, purpose, or effect.
- It should therefore be recognized that the identification in this article of any communication of "constructed knowledge" is an interpretation of a speech act by a reader also engaged in a communicative activity.
- The IMB for HMP Gartree used this term in reference to the Leicester Caribbean Carnival that it incorrectly named the Leicester Afro-Caribbean Carnival.

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