

Prisons, the ‘Problem of Order’ and Maintaining Control within the Penal System

Dev R Maitra

Abstract

A number of distinct ideas fall under the rubric of ‘the problem of order’. It is, therefore, difficult to speak of a cohesive conceptual framework. However, one facet which is axiomatic to the problem of order in prison is a concern with maintaining appropriate levels of control. The organizing principle of this paper is to articulate what this problem means in contemporary prisons, and which policies best militate against disorder manifesting itself within prison. I will begin by deconstructing the problem of order as a theoretical concept. I shall argue that it is difficult to present a singular, theoretical perspective: ‘the problem of order’ refers to various aspects of prison governance, ranging from a focus on achieving legitimacy, to a concern with controlling prisoner defiance. I further intend to show how these various perspectives shape prison policies. I will then go on to illustrate the problem of order in relation to a specific manifestation of disorder: the prison riot. I shall argue that collective violence offers the clearest illustration of prison disorder. Moreover, official responses to such riots are indicative of the varying control policies implemented to resolve the problem of order in prison. Finally, I aim to illustrate how order is best accomplished through maintaining an appropriate ‘weight’ of imprisonment. I intend to illustrate the widening chasm between methods used to maintain order in private and public prisons. Further, I will argue that order is best accomplished when prisons deploy control policies within a situational framework.

Keyword: Prisons, Problem of Order’, Maintaining Control, Penal System

1.0 INTRODUCTION

Social order in prison is maintained through precluding both interpersonal violence and collective violence (Bottoms 1999). However, strategies to prevent such violence should be distinguished from ensuring security: the process of preventing escapes from the prison’s secure perimeter (Sparks et al. 1996; Liebling 2002). This paper is solely concerned with prisons’ internal regimes rather than their escape-prevention strategies. A typology of inter-prisoner disorder can be said to encompass verbal aggression, physical violence, social exclusion and sexual violence (O’Donnell and Edgar 1998a). Limiting the occurrence of all such forms of victimisation, whether ‘routine’ or ‘spectacular’, is a central objective of contemporary prison policy (O’Donnell and Edgar 1998a). Therefore, concepts central to the problem of order include ensuring compliance, minimising levels conflict, and modulating intra-prison power relations. This modulation includes both inter-prisoner dynamics as well as prisoner/staff relations (Bottoms 1999). Prisons seek to minimise prisoner resistance, and ought to ensure prisoner relations are monitored to protect the vulnerable. However, such theoretical concepts are often difficult to implement, with conflict and a crisis of legitimacy being endemic in many prisons (Newell 1999; Cavadino and Dignan 2001). Newell further argues that order is best maintained if a prison gains a “sufficient degree of legitimacy in the eyes of its captive population” (1999:79). However, the rights of vulnerable prisoners are often sacrificed in order to cement an ordered regime. As Newell states, “the persecution of sex offenders and others has latent benefits for the authorities. It can arise from stable hierarchies of power amongst prisoners...and it allows ideological affinity to be demonstrated between prisoners and staff” (1999:78). This leads to a degree of commonality between prison officers and most prisoners, leading to less chance of conflict and subsequent disorder.

Although these methods may achieve order, such techniques do not comport with the parameters of legitimacy. This is principally because legitimacy requires a dominant group - whether in political theory or penal politics - to be able to claim *justified* authority (Sparks 1994). Legitimacy is predicated on this “justifiability of rules in terms of shared beliefs” (Beetham, 1991:22), as well as a conformity to legal rules (Beetham 1991; Coicaud 2002). The implementation of prison policies to maintain order, then, must abide by such principles. Central to achieving legitimacy is the requirement of ‘audience legitimation’: expressed consent from those who are being governed (Beetham 1991; Bottoms and Tankebe 2012). Garnering such legitimacy in relation to prisons is especially difficult, as prison authorities have to consider more than one audience: both the prisoners and the general public (Liebling 2002; Bottoms and Tankebe 2012). This is particularly problematic as the public and prisoners often have opposing views on how prisons ought to be managed. Achieving legitimacy in the eyes of prisoners is especially difficult as prisons are inherently coercive institutions, keeping individuals captive against their own volition (King, 1985; von Hirsch 1993; Sparks et al. 1996; Bottoms 1999; Carrabine 2005). The views of prisoners are reflective of this, with even the most liberal penal regimes still embodying force and compulsion to prisoners (Shep 1995; Huckelbury 1997; Gaucher 1998). Audience legitimation does not, however, mean manipulating power so as to ‘play-off’ the strong against the weak. Rather, it requires a deployment of power in an equitable manner, acting within both society’s

normative expectations as well as the law (Archer 2000; Bottoms and Tankebe 2012). Therefore, when attempting to resolve the problem of order, it is prison officers who are central to legitimising prison policies. This is because their implementation of policies has a tangible effect both on how order is maintained, and how prisoners perceive their overall experience of imprisonment (Bottoms and Tankebe 2012).

2.0 LITERATURE REVIEW

The critical balance which prisons ought to maintain is between acting in this legitimate manner and achieving control. The most detailed analysis in this area of study is conducted by Sparks, Bottoms and Hays in *The Problem of Order* (1996). This research places its findings within a sociological framework, analysing the specific characteristics and practices of its research sites (Sparks et al. 1996). Comparing HMP Albany and HMP Long Lartin, this research shows how the two prisons adopt two contrasting positions on the problem of order, enforcing rules in significantly different ways. In particular, Long Lartin demonstrates a greater fluidity regarding norms and governing codes, whereas there is far greater clarity to the rules at Albany (ibid). However, an excessively liberal regime may present problems of internal order, illustrated by a lack of protection for vulnerable prisoners and a high frequency of control incidents (Liebling et al. 2013). Such control incidents are often caused due to perceived slights, familial insults, and the pursuance of 'respect' as a means of achieving/maintaining status within a hyper-masculine environment (O'Donnell and Edgar 1998a; O'Donnell and Edgar 1998b; Sparks et al. 1996). In the face of such control incidents, different prison regimes implement varying techniques to maintain order. In spite of these variations, perceptions of a 'legitimacy deficit' permeate the views of many prisoners, especially in instances of excessive physical restrictions (Bottoms 1999). It is this central role played by force which precipitates defiance, whether through pro-active prisoner behaviour or more latent forms of passive resistance (Gaucher 1998). Ensuring that order can be maintained, whilst addressing these prisoner concerns, is axiomatic to the problem of order.

A further problem is created by the fact that prison officials attempt to enforce conventional societal norms, such as preventing violence, within a system which is fundamentally opposed to such societal values (Cloward 1956). This culture is illustrated most explicitly by the fact that prisoners often engage in a form of 'private justice', resolving disputes amongst themselves rather than relying upon prison staff (Bottoms 1999; Edgar et al. 2003). Moreover, such methods of dispute resolution are invariably characterised by intimidation and physical violence (Scruton et al. 1991; Carrabine 2004). This notwithstanding, prisons have long attempted to attenuate disorder by deploying both control and incentive based policies; whether the focus is more on one or the other of these two principles is dependant upon the ethos of the particular penal institution (Sparks et al. 1996; Bottoms 1999). Therefore, a distinction can be drawn between prisons where compliance is *sought*, with prisons where order is *enforced* (Cloward 1956). The most severe control mechanism is that of segregation, although this has been shown as having a limited effect in neutralising disorder (Cloward 1956; Bidna 1975). Such studies emphasise the effect of spatiality on prisoner-behaviour, and that confinement leads to an accumulation of tension, eventually released in the form of violence (cf. Bottoms 1999). On the other hand, voluntary conformity is sought through systems of incentives (Cloward 1956). Many prisons are based on systems whereby compliance is sought through the provision of material rewards and inducements (Crewe et al. 2011). This leads to a series of piecemeal accommodations and compromises (Sykes 1958; Colvin 1992; Carrabine 2004). In particular, the introduction of Incentives and Earned Privileges Schemes in English prisons has received substantial academic interest (see, for example, Liebling, Muir, Rose and Bottoms 1999; Liebling 2008).

This paper has, thus far, focused on the problem of order in relation to the maintenance of day-to-day order. However, such an analysis cannot be viewed in isolation from less frequent, high-profile disorder (Sparks et al. 1996). Although singular acts of violence are far more common, the prisoner experience is not characterised by an atomistic existence. Rather, prisoners are often unified by their shared sense of grievance, both towards the justice system and their imprisonment (Gaucher 1998; Hassine 1995; Haslam and Reicher 2011). The prison riot is, perhaps, the most explicit display of such collective prisoner grievance. It is important to examine both why such riots originate and the methods through which prison authorities seek to regain control, something which is invariably accomplished (Woolf and Tumim 1991; Sparks et al. 1996). Riots within prison can be viewed as either coherent expressions of prisoner dissatisfaction, or simply as break downs in order (Adams 1992). Although both characterisations are indicative of serious flaws in the prison system, organised prisoner resistance proves to be the greatest threat to prison order. Furthermore, riots offer one of the clearest means of illustrating the problem of order for a number of reasons. First, a riot accentuates many aspects of the daily power-dynamics within prison: for example, riots witness a high incidence of attacks on vulnerable prisoners, such as sex offenders and informants (Carrabine 2004; Useem and Kimball 1989). This is one example of how riots provide the ideal backdrop for emphasising the hyper-masculinity of the prison environment (Bosworth and Carrabine 2001; Carrabine 2004; Scruton 2009). Second, whereas the archetypal prison is classified as a 'total institution' (Goffman 1961), the prison riot leads to a complete breakdown of such a system. Functioning prisons are characterised by a daily set of routines, providing a sanctioned form of structure to prisoners'

activities (Giddens 1984; Bottoms 1999). However, once a prison riot fully manifests itself, there is a temporary breakdown of all such routines. The duration and severity of a riot illustrate the effectiveness of a prison's control mechanisms.

3.0 DISCUSSION

In spite of these underlying features of the prison riot, there is a wide divergence of strategies to control riots. This is particularly apparent when comparing the situation in the United States with England. American prison riots have been classified as endemic, both regarding their frequency and manifestations (Useem et al. 1996). They have often culminated with the use of deadly force (Wicker 1975; Wacquant 2009) or the prison authorities threatening to utilise such force (Useem et al. 1996). However, the situation in England is markedly different, with a far greater focus on negotiation, engaging with the grievances and demands of rioting prisoners (Carrabine 2004). The 1990 Strangeways Prison riots, at HMP Manchester, is the most severe instance of a recent English prison riot. Carrabine (2004) presents a particularly penetrating analysis of the riot, tracing its origins and placing it within a wider sociological context. This presentation shows how prison officials at HMP Manchester resolved the riot through negotiating with prisoners as well as employing pressure tactics at points during the disturbance. The culmination of the riot, and the death of one prisoner, can be contrasted to the far higher death tolls of several American prison riots: the New Mexico State Penitentiary riot of 1980, with 33 deaths (Useem et al. 1996); and the Attica Prison riot of 1971 with 43 deaths, described by Wacquant (2009) as a prison revolt which unleashed an "orgy of state violence" (2009:337).

Such resulting casualties are a direct consequence of how prison authorities utilise power to regain control. The distribution of this power is a fundamental concept upon which prison relations are formed and maintained. Carrabine acknowledges that "prisoners are rarely rendered docile through the disciplinary power of the institution" (2004:184); the persuasive power of legitimacy is far stronger (Woolf and Tumim 1991). Carrabine further posits that the Strangeways riot was engendered due to widespread prisoner grievances, management failures and frequent confrontations between staff and prisoners. This suggests that where prison officials enforce control in an overzealous manner, grievances are accumulated; thereafter, prisoners perceive control as being solely being to subjugate and exclude. Further, an excessively brutal regime precludes prison officers from utilising less confrontational means to seek prisoner compliance (Useem and Kimball 1989; Carrabine 2004). During a prison riot, the conventional power balance is fundamentally altered, with prisoners no longer being subjected to prison regulations. Rather, dominant prisoners use their power against the prison, either directly against officers or through physically dominating weaker prisoners. Through a sense of shared identity, prisoners riot to express their collective resistance, threatening the institutional power of the penal institution (Haslam and Reicher 2011). Further, the manner in which a riot develops - and how it is eventually resolved - clearly illustrates how a particular prison is equipped to dealing with the problem of order in the most extreme of circumstances. The prison riot is the only instance where prisoners can employ their collective bargaining power to command and compel prison officials to meet their needs (Useem et al. 1996). One reason for this is because the prison riot is an act of public rebellion, facilitating national media attention (Midgley 2003; Scraton 2009). However, this is not to say that public defiance is the sole indication of resistance (Crewe 2007). In fact, individual acts of private defiance continue to be a more prominent feature of the late modern prison.

4.0 CONCLUSION

Late modernity has also witnessed the emergence of private sector prisons. Private prisons' policies to accomplish order have been markedly different from the policies of their public sector counterparts. Specifically, the privatization of English prisons has led to the development of a particular private-prison ethos, typified by 'light' policies to maintain order (Liebling et al. 2013). This has been characterised by younger, less experienced prison officers who are generally less authoritative, and have a limited presence on prison wings (ibid). This can be contrasted to the ethos of public prisons, which have generally maintained an orthodox, 'heavier' form of imprisonment: greater staff presence, more concrete regulations, and staff who more readily utilise their power (ibid). However, this dichotomy between public and private prisons is not the only development in late modern penal power. More generally, there has been a reconstitution of penal authority (Crewe 2009). This is illustrated by, for example, the increasing use of 'soft power' to encourage prisoner compliance: encouraging self-regulation by prisoners and the development of staff-prisoner relationships (Crewe 2011a). It is my argument that order is not best accomplished through implementing unduly 'soft' or 'light' power. Soft power leads to ambiguity, causing a disconnect between the behaviour of prison officers and their actual decisions (Crewe 2011a; Crewe 2011b; Liebling et al. 2013). This lack of clarity engenders its own obstacles for the maintenance of order. For example, there is a frustration and 'tightness' borne out of a penal regime where prisoners are unsure as to how their actions will be interpreted (Crewe 2009, 2011a). The result is a system where prisoners are not only more frustrated due to their precarious situation, but

also one where prisoners view prison officers as being duplicitous and deceitful. Such developments cannot have a beneficial effect on maintaining order within prison. Liebling et al. (2013) argue that advocating for a penal regime which is not *excessively* light is not to condone 'heavy' prison policies. Such practices lead to their own problems: an oppressive atmosphere, where prison officers assert their superiority through confrontation and intimidation (2013:9) Nonetheless, a degree of distance, formality, and a clear demarcation of boundaries are needed in staff-prisoner interactions. These features are central to accomplishing order within prison. 'Good' staff-prisoner relationships are not necessarily 'right' relationships (Liebling 2011). It is the furtherance of these 'right' relationships which leads to the establishment of ordered prison life, and appropriate levels of control.

Staff-prisoner relationships are a particularly important dimension to the social model of violence prevention in prison (Bottoms et al. 1995; Sparks et al. 1996; Bottoms 1999). Homel and Thompson (2005) posit that "in the prison context, social prevention approaches rely heavily on a changed role for prisoner officers and an 'opportunity-enhancing' environment for prisoners" (2005:15). However, even proponents of the social model of prison management acknowledge its limitations¹. It is my contention that the situational model of crime prevention is more effective at accomplishing order. This model incorporates, amongst other factors, increased surveillance of violence 'hotspots' in prison and frequent prisoner supervision (Homel and Thompson 2005). The greatest strength of the situational model has been its development to now monitor both environmental factors and 'situational precipitators' viz. other external factors which precipitate disorder (Wortley 2002; Homel and Thompson 2005). This is a key development which allows for a synthesis of 'heavier' prison management policies with identifying predictors of disorder and prison violence. Moreover, there has been strong empirical support for this control model (see, for example, Jiang and Fisher-Giorlando 2002).

The principal purpose of this paper has been to illustrate 'the problem of order' as a theoretical concept, and to explain the methods which best preclude disorder from manifesting in English prisons. I began by deconstructing the theoretical framework within which the concept of prison order is couched. I have intended to illustrate that it is difficult to refer to a cohesive theoretical perspective as regards the problem of order; these theoretical concerns have been reflected by the varying prison policies which have been deployed to resolve the problem of order. I then went on to illustrate disorder within prison by using specific examples of prison riots. Although not as frequent as instances of interpersonal disorder, the severity of prison riots leads to this area allowing for the most penetrating analysis of order/disorder within prison. Finally, I aimed to illustrate how I believe order can best be accomplished. It is my contention that the methods implemented by several new, private prisons have not adequately been able to resolve the problem of order. I have, therefore, presented alternative methods which I believe are most appropriate to maintain order within English prisons.

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¹ Sparks et al. (1996) compare HMP Long Lartin's social model of imprisonment with HMP Albany's situational model. Sparks et al. concede that, over a twelve month period, Long Lartin witnessed a higher incidence of alarm bell activation (74.2/100 prisoners, compared to 20.3/100 prisoners in Albany). Similarly, in Long Lartin there was a higher incidence of hospitalisation due to head injuries (9.5/100 prisoners, compared to 3.2/100 prisoners in Albany). Later studies have also drawn attention to these comparisons (see, for example, Bottoms 1999).

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