

and political activists who understand the limits and pitfalls of legal action have learned to use lawsuits and legal representation as one weapon in the struggle for the social and political revolution which alone can change U.S. prisons.

CHAPTER 15

Prison Reform and Radical Change

By Erik Olin Wright

PERSPECTIVES ON REFORM

The basic premise of most efforts to reform the prison system is that this can be done without any fundamental transformation of the structure of society as a whole. When prisons are viewed as autonomous institutions, separate and isolated from society, the solution to their oppressiveness becomes quite simple: those aspects of prison life that are oppressive simply need to be exposed and laws need to be passed to change them. Such a view does not imply that change will necessarily be easy, but that all that needs to be altered is the defective elements in the institution, not the society as a whole.

This perspective is certainly appealing. It enables the reformer to focus his energies on a narrow problem without having to worry a great deal about larger social and political issues. Many liberal reformers see the fundamental task of prison reform as simply convincing those in power of the soundness of particular changes in the prison system, rather than struggling against that power structure for political control.

In contrast, radicals see prisons as intimately bound up with the class and power structure of the society as a whole. Stated simply, the liberal perspective on reform is that fundamental

changes in the prison system are possible without fundamental changes in the rest of the society, while the radical perspective is that fundamental change in prisons can come about only through radical change in the society itself.

Each of these perspectives has something to offer. In order to see what kinds of reforms are possible in the present society and what kinds are contingent upon radical social change, it will be useful to look at four general issues involved in prison reform: the social ends of punishment; the power relationships within prison; prisoners' rights; and prison conditions. The basic proposition of this chapter is that reforms involving the fundamental social ends of punishment are impossible without radical change in the society itself, but reforms limited to concrete prison conditions are achievable without fundamental social change. Reforms which mainly involve power and prisoners' rights fall into a somewhat ambiguous category: they are not entirely impossible within the present society, but they face very serious obstacles. When a proposed reform of the internal operation of prisons impinges on the social ends of punishment, these obstacles may become virtually insurmountable. We will first examine the question of reforming the ends of punishment and then turn to the question of reforming the internal operation of prisons.

PUNISHMENT, CLASS, AND THE STATE

The warden of San Quentin expressed an important truth about prisons when he said they "exist to protect society." What he failed to say was that they exist to protect a *particular* society, a particular pattern of social institutions. In the United States the society is a liberal-capitalist system; prisons and other forms of punishment are a repressive means of protecting this particular society, including its structure of power and distribution of wealth.

Punishment achieves this end in three interrelated ways: (1)

by being a deterrent to certain kinds of crime; (2) by making the victims of crime politically dependent upon the state; (3) by *not* punishing certain acts and punishing others.

The question of deterrence has been extensively discussed in Chapter 2, so only a brief review of some of the arguments will be presented here. When an individual decides to commit a crime, especially a property crime, one factor that he considers at least cursorily is the possibility of punishment. Although this consideration may not deter him from committing a criminal act *per se*, it certainly influences the target he chooses for his crime and the manner in which he executes it. Punishment protects a particular society by determining what are high-risk and low-risk crimes, and in this way directing criminal activity toward low-risk crimes.

To say that prisons protect a liberal-capitalist social order by deterrence does not mean that prisons punish only crimes committed against the "capitalist class." On the contrary, most crimes that result in imprisonment are committed against the poor by the poor. The protection of the social order is reflected not in the intrinsic characteristics of those acts which are punished, but rather in the social and political consequences of punishment. One of these consequences in American society is that by defining high-risk and low-risk crimes in a particular way, punishment has the effect of channeling crime against poor people. This has two main results. First, it means that the property of the wealthy is protected. Second, it means that crime is robbed of much of its latent political content. The image of a Robin Hood who takes from the rich and gives to the poor is a potent symbol of social protest, adding a certain legitimacy to crime. Because it lacks this element of social justice, crime committed against the poor by the poor is much less threatening to the established social order.

There is a second general consequence of the system of punishment which may be as important as the question of deterrence. Punishment not only directs most crime against the poor

as victims, but at the same time it makes the poor dependent upon the state for protection against crime. However ineffective the police may be in apprehending burglars or robbers, however ineffective they may be in preventing violence, they are the only agency available to most people for dealing with these problems.

This is especially important to the working-class poor, the poor who are not destitute. Because they have something, albeit little, to lose, the rigorous enforcement of the law and an expansion of the power of the police seems in their interests. The system of punishment, then, channels crime against the poor, while at the same time it becomes their only source of protection. The poor, while being the victims of the social order protected by punishment, become fervent supporters of the system of punishment itself.¹

In certain situations this pattern of dependence breaks down. The most notable example in American society is the relationship of poor blacks to the police. Knowing how totally ineffective the police are at apprehending thieves and retrieving stolen property in the ghetto, poor blacks feel it is futile to call on the police when a crime occurs. Even more importantly, poor blacks are so frequently the victims of the police as well as the victims of crime that strong norms have developed against calling them.

1. This may be one source of what is referred to as the "hard hat" mentality of many working-class people in the United States: they are strong supporters of law and order because they are among the primary victims of crime. Some workers thus support very conservative, even quasi-fascist, political orientations which cry for obedience to the law and protection of the social order through coercion.

A study conducted by the University of Michigan Survey Research Center on American attitudes toward violence supports this general interpretation of the relationship of the poor to law and police. It was found that the working class was much more likely than the middle class to take a hard line on the use of the police in riots, on the need to increase police strength, on the acceptability of police violence, etc. Monica D. Blumenthal, Robert L. Kahn, Frank M. Andrews, and Kendra Head, *Justifying Violence* (Ann Arbor: Institute for Social Research, 1972).

Finally, in addition to acting as a deterrent and creating political dependence, punishment sustains the social order as much by what is *not* punished as by what is. In a capitalist society, for example, the law protects the right of a businessman to ruin a competitor economically. This may result in the laying off of many workers and in the economic destitution of the ruined businessman and his family; but as long as it is done according to the rules of the game, it is legal. It would, however, be illegal for the workers in a firm to take over and physically expropriate the enterprise. In both cases economic harm is intended toward the victim, but one of these acts is protected by law, the other proscribed. This pattern of protection and proscription defines the range of action that is possible "within the system." This is especially important in terms of political action. Radical groups are acutely aware that if they go beyond this range they risk confrontation with the police, the courts, and, ultimately, with the prisons. In a pervasive way, it is through this pattern of protection and proscription that the criminal justice system sustains the social order.

While it is easy to show that prisons in the United States support a capitalist social order, it is more difficult to demonstrate that they are a *necessary* tool in sustaining that social order. Many people argue that the stability of society rests on internalized values and ideology. Some liberal reformers maintain that probation programs can replace prisons entirely if they are combined with constructive job training programs and other forms of social action. They point to the failure of prisons to rehabilitate and argue that such rehabilitation could be accomplished much more effectively, much more humanely, and much less expensively in other settings.

These arguments neglect crucial aspects of the relationship of punishment to other forms of social control, and to the problem of crime itself. While it is true that values and ideology are significant, in many cases their effectiveness rests heavily upon

the extent to which they are backed up by coercive forms of control. The relationship of values and ideology to behavior is not simply "values cause behavior." Values are only one element in action decisions. As discussed in Chapter 1, values and priorities compete in many situations. Which value will be stronger in a particular individual is not simply a question of his socialization or his personality. It also is very much a function of the problems he faces, the options available to him, and the personal consequences of acting on one value or another. Punishment is an essential factor in this action situation.²

The system of punishment is thus necessary for sustaining the effectiveness of values as social control mechanisms. But why are prisons in particular necessary? Why aren't such punishments as probation or fines sufficient? In California, only about 10 percent of all felons convicted in 1971 were sent to state prisons; 65 were put on probation. But the threat of imprisonment hung imminently over the heads of those felons placed on probation. Prisons are necessary because they put teeth into the system of social control, backing up other, milder forms of punishment.

The system of social control can be seen, on the one hand, as a *hierarchy of escalating punishments* and, on the other, as a *hierarchy of inducements*. The effectiveness of any given punishment is dependent upon the harsher punishments in the hierarchy and upon the available inducements for compliance. At the most basic level, conformity to the laws of society depends upon the entire hierarchy of punishment. Conformity to

2. A second sense in which punishments back up values was discussed by Emile Durkheim in his writings on law and morality. He argued that punishment is itself an affirmation of certain values—or what he called the "collective conscience"—and serves a vital educational and socializing role in society. Punishment becomes a public ritual by which these values are affirmed and a declaration that their violation will not be treated lightly. See Durkheim's *Division of Labor in Society* and his essay "Moral Education." For a general discussion by Durkheim of the relationship of prisons to social structure and values, see his essay "Deux Lois de L'Evolution Penal" (*L'Année Sociologique*, 1900), pp. 65–95.

the restrictions of probation or parole depends upon the threat of imprisonment; conformity to the rules of prison depends upon the threat of being held in prison longer or being confined in the adjustment center. Similarly, at each level of the system, there are bribes for compliance: prisoners in the adjustment center are promised privileges and the "freedom" of being in the mainline population if they comply with the demands of prison officials; prisoners in the general population are offered the inducement of special privileges and parole; people on parole are offered the freedom to move about and to conduct their lives as they wish if they conform to the conditions of parole.³ Some threatened punishments are simultaneously inducements: the threat of being denied a parole for resistance is also the inducement of being released for conformity. These escalated threats and inducements provide answers at every level of the system to the questions: What have I got to lose by resisting? What have I got to gain by conforming?⁴

3. These two hierarchies are, in a sense, inversely related. As one moves toward the top levels of the hierarchy of punishments the system has fewer and fewer threats at its disposal. For a prisoner in an adjustment center with a life sentence and no immediate prospect for a parole, the only viable threat the prison authorities have left is the threat of death (either by a guard or by a fellow prisoner). But although the arsenal of threats becomes more limited, in a sense the arsenal of inducements becomes greater. A person in the adjustment center is denied virtually all freedoms, even the freedom to have a conversation. If he yields totally to the demands of the prison for conformity, he is offered the "freedoms" of the mainline population—recreation, education, conversation—and eventually the possibility of a parole. As you move down the hierarchy of punishments, the scope of such inducements necessarily narrows. Finally, at the very bottom of the hierarchy—a "free" individual on the streets—the inducements for conformity can become fairly marginal. A poor black may feel that he has very little to gain from compliance. In such a situation, the basis for control switches to the hierarchy of punishments—what the individual stands to lose by defying the laws—rather than the hierarchy of inducements.

4. This description is in some ways an overrational view of the hierarchy of punishments and inducements. People do not necessarily make entirely rational assessments of the losses and gains in resisting or conforming to authority. Their actions grow out of fears and irrational expectations, as well as personalities which dispose them toward conformity or rebellion. Similarly, state authorities do not administer the hierarchy of punishments and inducements in an entirely dispassionate, rational way. They can respond arbitrarily out of per-

Prisons constitute the essential institution at the top level of this coercive apparatus; without them, the lower levels would lose much of their potency. It is because of this structural importance of prisons in the hierarchy of punishment, and the importance of the hierarchy of punishment for the protection of the social order, that the social ends of imprisonment cannot be changed without radical change in the society at large.

This rules out certain broad categories of prison reform in the present society. It rules out the reform of using prisons in America consistently to punish the crimes of the rich—price fixing, income tax evasion, pollution, false advertising—rather than merely the crimes of the poor. It rules out the reform of abolishing prisons completely. And, of course, it rules out reforms which would define private profit, speculation, and the accumulation of vast wealth as crimes and punish them by imprisonment. Such reforms would themselves constitute a radical change in the basic organization of the society. As long as American society remains unchanged, prisons will be filled with the poor.

LIBERAL REFORM: OBSTACLES AND OPPORTUNITIES

Reforms which focus on prison conditions, prisoners' rights, or the power relationships within prison are not structurally impossible in the same way as reforms that undermine the social ends of punishment. Any discussion of reform within prisons must confront four related issues: *resource allocation*, the *deterrent function* of punishment, the notion of *rehabilitation*, and *internal control* within prisons. We shall discuss each of these in terms of the obstacles and opportunities which they

sonal dislike, paranoia, confusion between different levels of the bureaucracy. Such arbitrariness makes it very difficult for prisoners to know what they should do to avoid punishment or gain privileges, and consequently undermines the effectiveness of the system of social control within prison.

pose for constructive reform of prison conditions, prisoners' rights, and the power structure within prisons in the United States.

Resource Allocation

The issue of resource allocation poses an important obstacle to prison reform. Legislatures have been unwilling to appropriate adequate funds to prisons for a variety of reasons. Prisoners lack real political leverage in legislatures. Not only do they face the usual political problems of the poor and of minorities, but they are disenfranchised, are prevented from communicating with the outside, and have historically lacked the support of any organized political force on the outside. But perhaps even more basically, legislatures have always been reluctant to appropriate adequate money for programs to help the poor, especially when they are nonwhite. The racism that pervades legislative activity in areas such as public housing, welfare, and education also pervades legislative involvement in the prisons. Politicians frequently feel that any money spent on prisons beyond the bare minimum necessary for secure custody is money wasted.

Yet, of the various obstacles to prison reform which we shall discuss, the problem of resource allocation is probably less difficult to overcome than the others. With the growth of political organizations working for prison reform, and with increased pressure from prisoners, it is likely that at least some of the financial obstacles to improving prison conditions will be reduced in the future.

Paradoxically, there is a sense in which the financial obstacles can become an *opportunity* for change, rather than just an impediment. In California, to imprison someone for a year costs around \$3,000 but to supervise him on parole or probation costs only about \$500. This has been one of the important reasons for the dramatic increase in the use of parole and probation in the state. Likewise, fiscal considerations provide at least one pressure on the prison system to reduce the length of terms.

A variety of other possible reforms in the prison system are facilitated by fiscal problems. Prison officials have generally opposed the extensive use of volunteers in prison. They argue, with some cogency, that volunteers will tend to support the prisoners against the "professional" paid staff. In many ways, however, volunteers can offer more constructive help to prisoners than the staff can, precisely because they are less integrated into the prison power structure. The economic squeeze makes it easier to pressure the administration into allowing volunteers to participate in education and job training programs.

One reform which prisoners have been demanding for many years is a minimum wage in prison industries. Prison officials have responded to this demand by saying that they simply cannot afford to pay prisoners more than a few cents an hour. It has been proposed that outside private industry be allowed to open up businesses within prison walls and that they pay prisoners the going wage. Out of this wage a certain proportion would be subtracted to cover part of the costs of imprisonment. Although there are serious drawbacks to this reform, it is one of several ways in which the economic difficulties of the prison system provide an opportunity for reform.⁵

The Deterrent Function of Prisons

For prisons to deter they must, obviously, be a negative alternative to the life situation of the potential criminal. It has often been argued that the essential deterrent effect of imprisonment

5. I have serious reservations about the desirability of introducing private industry into prisons. It could easily develop into a situation where private industry was getting the use of "slave labor" for the purpose of making high profits. Because of the constant interruptions prisoners are subjected to during their work day, the tensions within the prison, and the low commitment to work in the context of imprisonment, prisoners would probably work somewhat less efficiently than "free" labor. Lower efficiency could be used as a pretext for paying prisoners substantially less than the going wage on the outside, and this could easily lead to heavy exploitation of penal labor. Aside from this, the general principle of employment at well-paying jobs within prison is certainly a good one.

stems from the deprivation of liberty rather than from the conditions within prison. It is an open question whether or not this is the case.

Imagine for the moment a prison which offered prisoners a good standard of living and provided rich educational and job training opportunities that held out the promise of interesting, well-paying jobs after release. Imagine a prison which rigorously protected the civil rights of prisoners and which guaranteed them the freedom to read and to study and to organize politically. It is obviously questionable how effective a deterrent such a prison would be to a poor, unemployed worker. (It is not uncommon, after all, for the poor to join the army voluntarily, seeing it as an opportunity for social mobility, job training, and security. The prison fantasy we have just painted is not so different from the army.)⁶

Thus the real question is not whether prisons have to be unpleasant but rather how wretched prison conditions have to be in order for prisons to present a real threat. Whatever is the "correct" answer to that question, the strength of the view that truly decent prison conditions would destroy the deterrent value of prisons is a serious obstacle to reform.

The Notion of Rehabilitation

In many ways, the idea of rehabilitation is a wolf in sheep's clothing, creating serious obstacles to constructive prison reform. These obstacles stem from two problems inherent in the "rehabilitation model": a confusion of the notions of punishment and treatment; and the image of what a "rehabilitated" prisoner is like. It is a small step from "curing" criminals to the

6. It is frequently argued that one of the main sources of deterrence by prisons is *stigma*. To the extent that this is true, our fantasy prison would be worse than the army for most people. However, it is questionable whether much stigma is attached to imprisonment among the poor, especially among blacks in the ghetto where a very high proportion of men have "done time." In certain instances, serving time in a state penitentiary may even be a source of status.

As long as the rehabilitated prisoner is defined as obedient and conforming, it will be difficult to change the authoritarian aspects of prisons which are directed precisely at ensuring those qualities. As long as prisons are seen as places to "cure" criminality, it will be difficult to challenge the enormous discretionary power of parole boards and prison administrations over the length and type of punishment to which a prisoner can be subjected. This is not to deny the opportunities for prison reform which have been created by the rehabilitation ideology; but the new obstacles which have been created should not be underestimated.

The Problem of Internal Control

Of all the obstacles to prison reform, the problem of internal control is probably the most serious. Prisons confine people against their will; this creates serious problems. Sheldon Messinger put it this way:

Whatever the ultimate aims of imprisonment—punishment, deterrence, reformation or simply safekeeping—the proximate aim and daily task of prison administration is to maintain the security of the institutions for which they are responsible. The physical safety of staff and inmates demands security. Further, administrators say, without security nothing is possible; even "treatment" depends upon it. And it is hardly cynicism to add that the tenure of administrators depends upon the maintenance of security as well. . . .¹¹

has not changed significantly for the ex-convict. It still poses most of the same economic and social problems, and he still has the same limited options for dealing with those problems. Furthermore, he has the added liability of a prison record. It might well be expected that under such conditions virtually all ex-prisoners would return to crime. The fact that about half do not could indicate that oppression is a relatively effective technique for breaking resistance to authority.

11. Sheldon L. Messinger, "Strategies of Control" (unpublished doctoral dissertation, University of California, Berkeley), p. 190.

To achieve internal order, three interconnected strategies of control are particularly important: (1) the maintenance of divisions and antagonisms within the prisoner population; (2) the concentration of all formal power in the hands of prison officials; and (3) the use of the hierarchy of punishments and inducements.¹² Any reforms which undermine the effectiveness of these strategies of control would be resisted with the utmost energy by prison officials.

1. Many tactics are used to break down unity among prisoners. The explicit and implicit encouragement of racism within the prison, the use of honor blocks and other privileges to create a group of prisoners supportive of the prison administration, and the constant transfers of prisoners from one institution to another to prevent organizing are all important techniques of keeping the inmate population divided. This "divide and conquer" strategy creates a significant obstacle to reforms which would facilitate the ability of prisoners to organize within the prison.

2. Many totalitarian features of the prison system are justified on the grounds that they are necessary to maintain the internal order of the prison. Since the prison is incapable of creating any sense of *obligation to obey* on the part of prisoners, it tries to maintain internal control by destroying the prisoner's *will to resist*. Total power is crucial in demonstrating the futility of resistance.¹³ Reforms which would infringe on the power of prison officials—such as establishing the right of due process in disciplinary and parole hearings—have to surmount the enormous obstacles created by the totalitarianism of the prison power structure.

3. Both prisons and prisoners are graded from minimum to

12. The term "strategies of control" has been borrowed from Messinger, *ibid.*

13. For a discussion of the problems of authority and legitimacy within prison, see Gresham Sykes, *The Society of Captives* (Princeton, N.J.: Princeton University Press, 1958), Chapter 3, "The Defects of Total Power."

maximum security status. At each level of the system, privileges can be withdrawn, and restrictions can be added. A prisoner knows that any sign of noncooperation, and especially any open resistance to the officials' orders, can jeopardize whatever privileges he might have. The threat of being transferred to a "tougher joint," of being reclassified with a tighter security status, or of being placed in disciplinary cells pervades prison life. What is even more important, because of the indeterminate sentence procedure, prisoners know that any resistance on their part may result in much longer prison sentences.

As one moves up the hierarchy of punishment, it becomes increasingly difficult to control prisoners. At the top levels of the system, the threat of harsher punishment becomes a much less potent force of social control because fewer and fewer punishments are available to the prison. Inducements may also become less effective, for many of the prisoners at the top levels of the hierarchy have rejected the inducements at the lower levels. In this situation, the prison system relies less and less on the deterrent effects of harsher punishments, and more and more on immediate *physical* control of the prisoner. In the most extreme cases, the prisoner is completely controlled by solitary confinement in the adjustment center. The hierarchy of punishment and inducements creates real obstacles to any reform which would blunt the potency of the top levels of the hierarchy or reduce the discretion of the prison officials to grant and withdraw privileges at will.¹⁴

14. There is another important obstacle to reform which is closely bound up with the question of the internal power structure of prisons. Any efforts at modifying the totalitarianism within prison have to contend not only with the importance of absolute power for internal control, but also with the psychological importance of absolute power to the custodians. For a good discussion of these issues, see especially an article by Philip G. Zimbardo, "Pathology of Imprisonment," *Transaction*, April, 1972, pp. 4-8. Also see Erving Goffman, *Asylums*, (New York: Anchor Books, 1961), Chapter 1, and Sykes, *The Society of Captives*, especially Chapter 2.

If prisoners passively accepted the prison regime, if all prisoners felt guilty about their crimes and felt that their imprisonment was just and proper, and if prisoners felt that the prison administration had their best interests at heart, then there would be little problem about guaranteeing prisoners rights and even giving them some measure of power. Prisoners in the "super-honor" block at San Quentin, after all, have keys to their own cells, and since they have been given the "power" to elect a prisoner committee to supervise the tiers, they are largely free from the close surveillance of prison guards. For a hand-picked selection of compliant prisoners, the totalitarianism of the prison power structure can be significantly mitigated.

However, the vast majority of prisoners, at least in the maximum-security prisons, are unwilling or unable to play the game according to these rules. Especially in the case of black prisoners, the fact of imprisonment itself is often seen as unjust and oppressive. Many prisoners *are* disrespectful of authority, because the authorities they have encountered all their lives have not seemed worthy of respect. As a result, they are unwilling to conform passively to the demands placed upon them by the prison regime.

Still, it might be expected that with such an elaborate system of social control, prisons should be relatively tranquil places. As we have seen, quite the opposite is actually the case, especially in maximum-security prisons. Much of the violence within prisons grows out of the contradictions within the prison's system of internal control. As argued in Chapter 11, the lawlessness of the totalitarian prison generates considerable violence. More indirectly, the hierarchy of punishments tends to concentrate in the maximum-security prisons those prisoners who resist the prison regime.

Prisoners who refuse to accept passively the rules and treatment of the minimum-security prisons, whether out of ideological principle, personal pride, or simply an inability to accept any authority, get transferred to tighter institutions. The max-

imum-security facilities—Soledad Central, San Quentin, and Folsom in the California system—thus tend to have a higher concentration of prisoners who are not easily intimidated by threats of harsher punishment and who are willing to resist—at times violently—the control of their lives by the prison administration.

The prison system has for a long time been trying to find effective ways of coping with prisoner violence without modifying its system of controls. A number of solutions have been proposed by the Department of Corrections. One is to create one or two super-maximum-security prisons that would house the most violent and troublesome prisoners in the state. Such a prison would constitute a new final stage in the hierarchy of punishment. Another proposal, which by late 1971 had reached the stage of serious intent, is to try to develop techniques of “neurosurgical treatment of violent inmates.” A letter from the director of the Department of Corrections to the executive officer of the California Council on Criminal Justice discusses this proposal:

Subject: Letter of Intent—Proposal for the Neurosurgical Treatment of Violent Inmates

Dear Mr. Lawson:

The problem of treating the aggressive, destructive inmate has long been a problem in all correctional systems. During recent years this problem has become particularly acute in the California Department of Corrections institutions. To date, no satisfactory method of treatment of these individuals has been developed.

This letter of intent is to alert you to the development of a proposal to seek funding for a program involving a complex neurosurgical evaluation and treatment program for the violent inmate. The program would involve the neurosurgery staff of the University of California at San Francisco Medical Center. Initially, following a screening at the California Medical Facility at Vacaville, a period of acute hospitalization would be involved at the UCSF Hospital for a period of 5 to 7 days. After this, during a period

of two or three weeks, the patient would undergo diagnostic studies, probably on an outpatient basis, being transported as necessary from either California Medical Facility at Vacaville or San Quentin. During this time, surgical and diagnostic procedures would be performed to locate centers in the brain which may have been previously damaged and which could serve as the focus for episodes of violent behavior. If these areas were located and verified that they were indeed the source of aggressive behavior, neurosurgery would be performed, directed at the previously found cerebral foci. Finally, if it were found that surgery was indicated the patient would be rehospitalized at the UCSF Medical Center for its performance.

It is estimated that the total effort, including the necessary screening by physicians, the hospitalizations, pay and transportation for correctional officers would amount to \$48,000; grant funds required would be \$36,000 with the Department of Corrections providing the 25% in kind match.

Very sincerely,

R. K. PROCUNIER

Milder forms of the same solution are already in effect through the use of psychiatric facilities and drugs to control “violent” prisoners. Such proposals are a natural extension of the totalitarianism of the power relationships within prison and the problems of control in the hierarchy of punishments. Not only does the prison reform movement have to contend with the considerable obstacles presented by the totalitarianism of the prison system, but with the prospect of increasingly sophisticated techniques of control in the future.¹⁵

15. The relationship of the totalitarianism of the prison power structure to the problems of internal order is reflected dramatically in the massacre at Attica prison in August, 1971. A great deal of debate has arisen since then as to the wisdom of the decision to storm the prison with state troopers. *From the standpoint of preserving the existing power relationships within prison*, the decision may well have been a correct one. The internal order of prisons is grounded in the use of force and the exercise of total power by the prison administration. The credibility of that force and power was at stake at Attica. The rebellion was not merely a threat to certain concrete conditions within the prison; it was a basic challenge to the structure of power itself. The attempt was made by officials to buy off the rebellion with strategic concessions. But the prisoners

In spite of the fact that the problem of internal control creates serious obstacles to reform, in a rather perverse sense it has opened up important reform opportunities. The hierarchy of punishment has two basic implications: on the one hand it tends to support the existence of harsh, totalitarian prisons; on the other hand, it facilitates the development of milder, more humane forms of punishment. Probation and parole are both possible, under present social conditions, because of the harsher punishments which back them up. The development of minimum-security prisons is possible because of the existence of maximum-security prisons. The experiments in minimum-security living units—such as the honor blocks at San Quentin—are possible because of the maximum-security housing units and adjustment centers in the same prisons. Awareness of this ironic reality, however, should not be taken in any way as an ethical endorsement of the conditions at the top of the hierarchy.

would not capitulate peacefully on terms acceptable to the state. Of course, given more time, more patience, and more pressure, the prisoners might have yielded. But since they could not be bought off, the resort to violence by the state was probably necessary to protect the status quo within the prison. This does not mean that the massacre was in any sense morally justified, but rather that it was politically necessary. If one regards the system itself as immoral, then the attack on Attica prison becomes a moral outrage. But to say this does not mean that the attack was irrational or ineffective.

It is often argued that political violence never accomplishes anything. This implies a naïve faith that sheer force is ineffective as an instrument of social control. Political violence like the attack on Attica raises the stakes. Prisoners in future rebellions will know that prison authorities and the state will not hesitate to use extreme force to defend the system, even if it means killing the state's own agents. Before prisoners again undertake a sustained rebellion, they will have to have a higher level of commitment than before. Force *does* intimidate people, especially when it is severe and certain, and this is one of the reasons police states survive. The question is: What are the social and human costs of such violent intimidation? Is it worth it? Is a capitalist social order worth defending at this price? Do the ends justify the means, and if not, what are the social and political alternatives which would make this level of repression unnecessary?

LIBERAL REFORM: PITFALLS AND STRATEGIES

Reform can often prove dangerous. What looks like a progressive move may ultimately be coopted by the prison regime and turned into a weapon against prisoners. A good example of this is the indeterminate sentence. Originally conceived as a humanitarian reform which would change prisons from custodial dungeons into hospital-like centers for rehabilitation and training, in practice it has become one of the most potent weapons of control available in prison.

It is important, therefore, that proposed reforms be examined not only in terms of their apparent humanitarian quality, but also in terms of their practical consequences. Several reforms which have frequently been discussed in California appear constructive on the surface, but in reality may turn out to be harmful. In early 1972 it was announced that San Quentin prison would be closed by 1974 and replaced by two 400-man super-maximum-security facilities. It is argued that such smaller centers would allow for more flexible, personal treatment programs, for closer personal relationships between counselors and inmates, for better living conditions, and for prisoners to be placed closer to their families. At least some of these changes are unquestionably positive. But small prisons also pose certain dangers. Four hundred men would be much easier to control than 2,500. Emergent political organizations among prisoners would be even more fragmented, and it would be even easier for the prison officials to break them up by administrative transfers. It would be much easier in such small prisons quickly to identify and isolate prison radicals and send them to special centers for "incurables." The anonymity of a large prison offers the prisoner a certain protection. These new centers could easily become more oppressive than the archaic fortress they are replacing.

Another reform which poses some of the same dilemmas is the proposal to build a modern psychiatric prison. There is no doubt that the psychiatric facilities at Vacaville prison are outdated and inadequate and that some prisoners are certainly in need of psychiatric treatment. However, the new, greatly expanded facility could very easily become a substitute for the adjustment centers in the maximum-security prisons. The adjustment centers have come under considerable criticism in recent years, and one way of dealing with the criticism is to send "troublemakers," especially political troublemakers, to a psychiatric prison-hospital. By defining them as violent psychopaths, the prison regime can deal with inmates who refuse to conform by drugging them in the name of psychiatric therapy or even, as has been proposed, by neurosurgery.

A prison reform movement thus has to deal not only with the serious obstacles to reform, but also with the negative consequences of the reforms themselves. These problems can easily make reform seem a hopeless task. As we saw in Chapters 12-14, various attempts at prison reform have not been very successful in the past. The prison regime has reacted with extreme repression to attempts by prisoners to force changes in the system. Legislatures have balked at any significant reform efforts. And the courts have taken only a few, marginal steps toward correcting some of the abuses within prison. Nevertheless, in spite of the frustrations of reform activity, reform struggles can still be useful and important.

Reform can be approached in two ways. First of all, it can be seen as a specific program which political organizations try to get accepted through legislative lobbying, court cases, and so on. This is the traditional liberal ethic of reform, and it has been the thrust of most efforts in the past.

Second, instead of viewing reform efforts as an activity which results in "a reform" and then stops, such efforts can be viewed as part of an *ongoing struggle* against the prison system. In this approach, the effectiveness of the reform movement is less a

question of accomplishing a formal, structural change in the system than of the impact on the prison of the process of struggle itself. In these terms, the reform efforts of the late 1960s and early 1970s may have begun to have a significant effect on the prisons. The administrations of many American prisons (especially those in California and New York) cannot go quietly and efficiently about their business when they face organized opposition to their policies. Prison atrocities are less apt to be automatically swept under the carpet. In much the same way that the state uses punishment to deter crime, reform struggles can use the threat of bad publicity, demonstrations, "public outcry," and so forth to deter the most flagrant oppression.

One of the possible consequences of this new political reality within prison is that the Department of Corrections in California made the decision in 1970 to reduce the number of inmates in the California state prisons. The number decreased from a high of around 29,000 to just over 20,000 in early 1972. Some 8,000 to 9,000 fewer people are locked up in California prisons. This would seem largely the result of the pressure generated by the struggle of prisoners within the prison system. Even though the conditions of the remaining prisoners have not significantly improved, the reduction in the number of human beings imprisoned in the state is a real victory for the prison movement.¹⁶

Reformist groups whose activities center on the courts can have this same kind of impact, but in a slightly different way. In the past, for example, if a prisoner was denied adequate medical care, there was very little he could do about it unless he could afford a lawyer. However, with the emergence of a number of lawyers' groups which are willing to handle cases on behalf of inmates, this situation has slowly begun to change.

16. It is interesting in this regard that the reduction in the total number of inmates was never an explicit demand of the California prison strikes and revolts. It represents a response to the struggle rather than part of a "reform program" accomplished by the struggle.

Now if the prison refuses to give a prisoner adequate medical care, he can write to such a lawyers' group and ask for help. The prison will frequently yield the specific point simply to avoid a court fight. Such lawyers' groups are still very limited in size and resources, and the demand for legal help by prisoners is vastly greater than they can handle. Yet, they are slowly becoming a viable force in the struggle between prisoners and prison officials.

Intervention by lawyers in cases like that of the Soledad Seven (see Chapter 10) is becoming progressively more important. Until the early 1970s, it was extremely rare for prisoners accused of acts of violence within prison to be effectively defended by lawyers in court. The prisons had almost unlimited discretion to charge an inmate with an offense and to have him convicted in court. Legal action on behalf of prisoners has begun to change this. Such intervention has not "reformed" the structures of the prison, but the threat of suits and strong court defenses can act as a constraint on the officials' freedom of action.

Reformist activity focusing on legislatures is necessarily the least "struggle-oriented." Unlike action within prisons and in courts, legislative activity significantly impinges on prisons only when a reform is actually passed into law. This is not to say that the publicity surrounding legislative activity does not create pressure on prison administrators, but it is less focused than that from prisoners' direct action or from court battles.

The notion that reform organizations should see themselves as part of an ongoing struggle is alien to the logic of much liberal reform. Reformist activity as a means to reformist ends has some possibilities of success, especially in terms of the opportunities for reform discussed earlier. But in terms of dealing with the most serious sources of oppression within prisons, reform struggles which are part of a process of challenging the wider social order as a whole will probably have a more profound impact.

HUMANIZING PUNISHMENT AND SOCIALIZING SOCIETY

The basic radical criticism of prisons in a capitalist society is that they protect an exploitative, unjust social order. It is not so much that prisons are intrinsically unjustified, but rather that they are unjustified when they serve the interests of a small portion of the population. From this central criticism comes one basic conclusion: society needs to be radically transformed so that the institutions of the state (including prisons) serve the interests of the people rather than of an elite. Socialism is the context in which this transformation can occur.

Before discussing the nature of punishment in a socialist society, it is important to clarify what I mean by the word "socialism": it will be used to refer to a dynamic process rather than a static structure; a socialist society is one which is in the process of becoming *radically democratic* and *radically egalitarian*. By "radically democratic" I mean that political power is firmly in the hands of the people rather than some power elite, whether that be a bureaucratic elite, a party elite, or an economic-class elite. By "radically egalitarian" I mean that distinctions of class, race, and sex have progressively less relevance for questions of the allocation of resources, the exercise of power, and the patterns of life opportunities. Taking the two concepts together, control over the economy and the state in such a society is exercised by the people, not on the basis of an inherited stratification, but on the basis of cooperative participation toward the realization of collective goals.¹⁷

17. No society at the present time embodies these principles, and it is not clear whether any society is really in the "process of becoming radically democratic and radically egalitarian." At various times socialist experiments in Cuba, China, and the Soviet Union seemed to be moving toward these goals. These countries have certainly made enormous strides toward equality. Their progress toward these goals, however, has not been unflinching, and they should not be taken as consistent models of a socialist society.

This definition of socialism, needless to say, raises many questions. How can power ever be firmly in the hands of the people? Is not a technocratic elite essential for a smooth-running modern industrial society? Won't there always be ambitious people who will try to dominate others? These are all issues which have proved to be extremely problematical during the attempts at building socialism in such countries as the Soviet Union, Cuba, and China. I cannot pretend to have the answers to these questions; the answers will come as more attempts to create socialist societies occur. For the moment, it can only be said that these are problems with which any socialist society will have to struggle. My assumption is that the difficulties can be resolved in the direction of constructing a radically democratic socialist society. On the basis of this understanding of socialism, let us examine some of the implications of a socialist society for punishment.

Socialism will not eliminate the political need for prisons of some form or another. For the foreseeable future, even the most progressive of socialist societies will face serious problems of social conflict and social control; and in all probability, prisons will be part of the political strategy for coping with those conflicts. However, while prisons will continue to exist, the system of punishment will operate under very different general principles from those in a capitalist society.

Principles of Punishment in a Socialist Society

Punishment is an instrument of social justice. In a socialist society punishment, especially imprisonment, would be used to deter acts which undermine social equality and social justice. Acts which are physically dangerous to individuals would fall into this category, but also important are acts which undermine the central institutions of socialism. Crimes which involve the abuse of positions of public trust for personal gain would be especially serious. Punishment—the coercive arm of the state—would be a positive tool in creating and sustaining a socialist society.

There is a danger in this principle. Since priority would be placed on social justice and collective interests, there is a real danger of erosion of the concept of individual rights. The ultimate ideal of socialism is to create the social conditions in which individual needs and interests and collective needs and interests are basically harmonious. Before that harmony emerges, there will be a tension between individuals and collectivities, and there will be pressure to disregard the individual in favor of the community.

Since the social organization of bourgeois society is being rejected, ideological pressure would exist to reject totally all elements of "bourgeois" justice. This means that many of the values of classical liberalism, including those focusing on the question of civil liberties and due process of law, might be rejected along with the values that are more closely connected to the class structure of a capitalist society.

The rejection *in toto* of liberal values reflects an inadequate analysis of the nature of "bourgeois" justice and of social justice in a socialist society. The central fault with bourgeois liberalism is not the principles of civil liberty, but rather the way in which those principles have been institutionalized and the social conditions in which they operate. Due process of law is a sound principle; but in a society in which many people are desperately poor, it loses much of its significance. This is the meaning of Anatole France's remark: "The Law, in its majestic equality, punishes the rich and the poor alike for sleeping under bridges, begging in the streets and stealing bread." The fact that a poor person accused of stealing bread—or of burglarizing a home—is tried under "due process of law" does not reduce the oppressiveness of the system; it merely systematizes that oppression. The fault in the legal system lies not in the concept of due process, but in the social context in which due process operates.

The core values of liberal justice (due process, confrontation of accusers, trial by jury, habeas corpus) and the associated values of civil liberties (freedom of speech, freedom of assem-

bly, and so on) can be fully realized only where there is underlying *social* justice. Or to put it another way, socialism becomes the social context in which classical liberal values can operate. But it is also true that social justice must ultimately rest on a rigorous defense of individual justice. In the trial procedures of a socialist society it would be important that the rights of the defendant be protected and that the trial be just: to serve the ends of social justice, punishment must be applied justly to individuals.

Punishment is explicitly political. In all societies, imprisonment and other forms of punishment by the state are intrinsically political acts. But their political meaning is usually disguised. In American society, prisons are portrayed as institutions for protecting "society," for "rehabilitating" violent individuals, and so on. The class interests which the criminal justice system serves are never made explicit. One of the core principles of a socialist society is that the structures of society are "demystified." People must be educated about the political role of the repressive apparatus of the state in general, and of prisons in particular. The social ends which punishment would serve and the political criteria for the use of prisons must be made explicit.

The individual offender does not bear total responsibility for his offense. Part of the socialist demystification process is the awareness that individuals are part of collectivities, and that the collectivity bears some of the responsibility for individual offenses. Crime would be considered a collective problem, not just a "failure" by the individual, and the community would have the responsibility to deal with that collective problem as well as to punish the misdeeds of its members. What this means in practice is that punishing a member of a community must be accompanied by an examination of the problems within the community that are bound up with the offense. The practice of "criticism/self-criticism" meetings in the People's Republic of China, for instance, represents, among other things, an attempt to establish some level of collective self-examination in response

to individual offenses.¹⁸ A crime is taken as an occasion for education by the whole community as well as by the individual offender. When such collective self-examination is a continual process, rather than merely the response to crisis situations, it can become an important element in the strengthening of socialist consciousness and socialist institutions.

Whenever possible, punishment is not alienated from the community. In the same way that there would be collective responsibility for an offense, there would be collective responsibility for punishment. A hierarchy of punishment would still exist, but the lower levels of the hierarchy would be firmly rooted in community control. For a wide variety of relatively minor offenses, some type of "criticism/self-criticism" in a socialist society would be the basic technique of dealing with the offense. For more serious offenses, the central sanction would be some form of community surveillance. Such surveillance would differ from "probation" or a "suspended sentence" in that members of the community would actively participate in the social control of the offender, rather than having that control handled by a probation-bureaucracy. Similarly, if short-term incarceration facilities were necessary, they would be locally controlled and integrated into the general community.

Such community-based punishment would not necessarily be less severe than the bureaucratically controlled punishment of present American society. It could well be that a criticism/self-criticism meeting or community surveillance would be a harsher punishment—harsher in the sense of causing more personal anguish—than a suspended sentence, a fine, probation, or

18. The notion of "criticism/self-criticism" refers to two interrelated processes. On the one hand, the community criticizes the offender and he is expected to examine his shortcomings. On the other hand, the community is supposed to collectively criticize itself as well as the offender and use the offense as an occasion for examining the problems of the collectivity. At its best, such a process provides a mechanism by which the community can evolve and the members of the community can learn how to live and work together; at its worst, this process can degenerate into ritualistic confession meetings in which people accused of offenses have to publicly proclaim their guilt whether or not they actually committed the offense.

even a short jail term in this society. Many individuals would undoubtedly prefer the relative anonymity of a jail sentence to the public censure of community surveillance. The point is not which forms of punishment are the mildest in some abstract sense, but rather, which forms of punishment are most consistent with the goal of constructing a good society.

Punishment is democratic. If the “radically democratic” side of the definition of socialism is to have any substantive meaning, the repressive apparatus of the state—the police, the courts, and the system of punishment—must be democratically controlled. The People’s Courts in Cuba are a partial example of this principle. Most criminal cases that affect only a particular community are tried before a community assembly or a popularly elected local tribunal rather than before a bureaucratically organized court.

Of equal importance, the police must be firmly controlled by the people rather than by a centralized, autonomous bureaucracy. It would be possible for police duty to become an obligation of all citizens for a certain period so that a professional police force could be largely eliminated.

Finally, the apparatus of punishment itself must be controlled democratically. Since this would obviously be simplest when punishment is community-based, punishment should be kept within the confines of the community whenever possible. In those cases in which more severe measures such as long-term imprisonment were necessary, it would be important that punishment not be controlled by a self-perpetuating, unrestrained bureaucracy. Some form of strong, democratic surveillance of the prisons would be necessary to avoid the situation of “lawlessness” described in Chapter 11.

The five principles outlined above focus mainly on the broad social ends of punishment in a socialist society. The implications of socialism for the internal operation of prisons is a more difficult problem; any discussion of this issue is necessarily more speculative.

Throughout this book, contemporary American prisons have been criticized as dehumanizing and degrading. It is tempting to say that prisons in a socialist society would automatically be different: that they would respect prisoners as human beings; that they would guarantee prisoners’ rights and give them some real measure of power. This will not necessarily be the case. Certainly in the historical attempts at creating socialist societies, prisons and labor camps have often not avoided many of the degrading and dehumanizing features of prisons in a capitalist society.

The problem of the internal operation of penal institutions in a socialist society is closely bound up with the socialist theory of crime. In his essay “Problems Relating to the Correct Handling of Contradictions Among the People,” Mao Tse-tung makes the distinction between two different classes of offenders: those who are “enemies of the people,” or “class enemies,” and those who merely reflect a lack of socialist consciousness. The system of punishment in China is designed to handle these two types of criminals in very different ways. Offenses that reflect false class consciousness are dealt with by criticism/self-criticism meetings, political education, community surveillance, and various forms of mild detention (short-term exile to a commune, labor camps, etc.). “Enemies of the people,” on the other hand, are dealt with very harshly. They are placed in repressive labor camps or prisons, and whatever “rehabilitation” is given them is of a coercive, manipulative variety.¹⁹

The differential treatment of criminals who pose a serious

19. It is, of course, not always easy to apply this theoretical distinction in practice. Some criminal acts do not clearly fall into one category or another. If the criminal justice system is controlled by a political elite, the designation “enemies of the people” can become no more than a device for attacking the elite’s opposition. This is one reason why radical democracy is so important as a part of the conception of socialism. For a discussion of the criminal justice system in China, see Jerome Cohen, *The Criminal Process in the People’s Republic of China, 1949–1963* (Cambridge: Harvard University Press, 1968). His discussion in Chapter 1, “Ideology of the Criminal Law,” is especially relevant for the distinction between class enemies and criminals who merely reflect false consciousness.

threat to the social order (i.e., class enemies) and criminals whose offenses are essentially "indiscretions" is not peculiar to a socialist society. As was stressed in Chapter 2, crimes committed by the rich in American capitalist society are handled much less repressively than crimes committed by the poor. Instead of imprisonment, a wide variety of informal and administrative sanctions (especially fines) is used to control criminal or semi-criminal behavior at the top levels of the American elite.²⁰

Where a socialist society and a capitalist society differ (aside from the obvious difference in the definition of what constitutes a "class enemy") is that in a socialist society the harsher treatment of class enemies would be an explicit political principle. In liberal-capitalist societies it is often categorically denied that such differential treatment even exists, and it is certainly not part of the formal ideology of punishment. In a socialist society, the criminal justice system would not be mystified by empty notions of "equal treatment for all": there would clearly be one kind of treatment for criminals who pose serious threats to the social order and another for those who simply have not internalized the values of a socialist society. As in other aspects of socialist justice, the political meaning of why certain criminals should be treated differently from others would be made explicit.

As in a capitalist society, imprisonment in a socialist society, especially long-term imprisonment, is likely to be mainly used against people who are seen as class enemies. The internal operations of such prisons could be substantially the same as in the present American society. "Enemies of the people" may well be considered "outlaws"—people outside the law—and

20. There is an interesting similarity between some of the informal and administrative punishments given to the elite in a capitalist society and some of the punishments given to working-class offenders in a socialist society. A court order for a regular audit of the books of a corporation convicted of tax fraud is not unlike "community surveillance" of irresponsible workers in a socialist society. The "transfer" of a corporation executive to an insignificant branch office following some indiscretion is not unlike the "exile" of a worker to a rural commune following some offense in the People's Republic of China.

thus outside the political principles which govern the rest of the society. There is no guarantee that in a socialist society prisoners who are "class enemies" will be considered worthy of respect, humane treatment, civil rights. Improvement of prison conditions and practices in a socialist society will undoubtedly face the obstacles of resource allocation, deterrence, and internal control familiar to prisons in a capitalist order. It is impossible to predict how these issues will be resolved and how prisons in a future socialist society will be run.

The important point in the present discussion is that the issue itself—how repressive prisons ought to be—becomes a much more meaningful question in the context of a socialist society. In a society in which the social ends of punishment are unjustified, even the mildest level of repression is unjustified. This is not to say that simple *detention* is never justified in such a society. Some individuals are so dangerous that it is legitimate to separate them physically from the general population in any society.²¹ But repression—punishment which serves as an instrument of social control—is justifiable only when the social ends of punishment are desirable, when punishment serves to protect a just and equitable society.²² While socialism does not guarantee that prison conditions will necessarily be better than at present, it does create the political and moral context in

21. The obvious necessity to separate from the community the few individuals who are pathologically dangerous—the mad child rapist, the mass murderer—is often used as an argument to justify the entire prison system in the present society. The existence of such individuals may justify involuntary confinement in mental hospitals, but it can hardly justify an elaborate penal apparatus, a court system, and a police system directed at preserving the status quo. And in no way can the existence of such dangerous individuals become a justification for the degradation and oppression of prison life.

22. It is often said that "ends do not justify means." This is a naïve view of the ethical issues involved in the relationship between ends and means. Except in situations in which the means are intrinsically innocuous, it is *only the ends* which can justify them. If the ends are morally intolerable, then no means whatsoever are justified. The imprisonment of a slave because he commits the crime of trying to escape to freedom is unjustified regardless of how decent the conditions of incarceration are, and regardless of how fair the trial of the slave was. The same means become justifiable when they serve the social end of protecting a just and equitable social order.

which the problems of prisons can be constructively resolved.

The United States is far from being transformed into a socialist society. For the moment, the concrete problem that prisoners face is not how prisons can be reconstituted in a future, revolutionary era, but how they can cope with the oppressive reality of their lives today. That oppressiveness is rooted in the internal power relations within American prisons and in the role those prisons play in American society. As the prison movement becomes an element in the internal power struggle within prison, it can begin to mitigate some of the harshness of the prison regime. And by becoming part of a broader radical movement, it can help to create the social conditions in which prisons can eventually be fundamentally transformed.

AUTHOR'S NOTE

In early 1971, a number of lawyers and legal workers came together and formed the Prison Law Project in Oakland, California. The idea of the group was to provide legal services for prisoners and a focus for energies of lawyers and various groups working for change in the prison system. I joined the Project as a writer in order to concentrate my energies on writing *The Politics of Punishment*. It was through the Project that various contacts were made for most of the chapters in the book which I did not personally write.

In November, 1971, there emerged out of the original Project two completely autonomous organizations, the Prison Law Project and the Prison Law Collective. These two groups were characterized by different types of internal organization and differing emphasis on various kinds of activities. The royalties from the book will be divided evenly between these two groups, and used entirely for legal assistance for prisoners.