

THE CARETAKERS OF PUNISHMENT - PRISON OFFICER PERSONAL AUTHORITY AND THE RULE OF LAW

by **David Scott**

This article examines the exercise of personal authority by prison officers and the implications of such practices for the rule of law in prison. The article starts with a brief outline of the main caretaking roles and functions of the prison officer, highlighting the privileging of their policing tasks and the maintenance of order. It is argued that for officers successfully to maintain order in prison, commitment to the enforcement of rules is fatally undermined. This leads to difficulties in officers relying upon legal authority as a basis for exercising their powers. After considering why most officers reject coercion as the primary means of order maintenance, the discussion moves on to consider how penal power largely operates through a combination of ‘corruptions’ (Sykes, 1958) and personal authority. Those defending its use describe its practice as ‘peacekeeping’ (Liebling and Price, 2001). Advocates maintain that though officers operate above the rule of law, they under-use their powers to create a peaceful and safe prison environment. By contrast, critics have pointed to how personal authority is more likely to be used as a means of securing the acquiescence of prisoners and ensuring that the basic punishment functions of imprisonment operate effectively. From this perspective, the caretakers of punishment create in effect a lawless prison undermining legal accountability and the rule of law.

The role and function of prison officers

There are currently 33,280 prison officers working in 128¹ public sector prisons in England and Wales (HM Prison Service 2006: 66). The ‘typical’ prison officer is a white working class man, aged between 30-40, who has between 5-10 years service (Liebling and Price, 2001: 19). In recent years prison officers have had diverse employment backgrounds, with the literature indicating that most have ‘drifted into’ prison work, motivated largely by the promise of job security or disenchantment with previous civilian employment² (Lombardo, 1989). This can be contrasted to the historical

links between the armed forces and prison work (Hobhouse and Brockway, 1922; Morris and Morris, 1963; Jones and Cornes, 1977). Both historical and contemporary surveys of officers have found 'depressingly little evidence' (Jones and Cornes, 1977: 187) that they joined the service because they were interested in helping offenders (Kauffman, 1988; Liebling and Price, 2001; Crawley, 2004; Scott, 2006).

The role of the modern prison officer has a relatively short history, stretching back only 80 years or so since the dissolution of the separate system, where 'warders' had restricted communication with prisoners and were forbidden to develop any kind of personal relationship³. In 1922 talking was permitted, leading to major reforms of operational practices, including increased prisoner association and a new focus on rehabilitation. Met largely with hostility by prison officers, these changes created role conflict, organisational confusion, and an 'alienated' workforce, compounded by problems arising through diminishing control and increasing task difficulty (Thomas, 1972).

The introduction of accredited programmes in the late 1990s has seen a small, but significant, number of officers directly involved in offender behaviour programmes.⁴ Notwithstanding, most officers continue to work either on residential wings, the reception, visits, segregation units, or security and operations teams in the prison. The daily duties of the residential officer are largely mundane, such as unlocking prisoners, checking locks, bolts and bars, carrying out roll checks, dealing with prisoner requests or disciplinary offences, serving meals, supplying toilet rolls, changing the laundry, delivering the post, playing pool, watching television, reading the newspaper, talking with officers and prisoners, or drinking tea. There are times of frantic activity (mornings, lunch, association), and even times of danger (such as putting out a fire in a cell, dealing with a fight or uprising), but the day of a prison officer is mainly interspersed with monotonous routines and long hours of boredom. Its excitement is often compared to that of 'watching paint dry' (Lombardo, 1989; Fitzgerald and Sim, 1982; Crawley, 2000). This is especially true at weekends, when there is no work or education and few other activities to occupy either prisoners or staff. To pass the time some officers will find assignments to do or create a daily routine as a means of managing their day, others will manipulate their shift to avoid contact with prisoners, whilst others still may tell jokes, stories or reminisce about interesting characters at the jail or past dangerous or exciting incidents to anyone prepared to listen (Lombardo, 1989; Crawley, 2000).

Prisons have similarities with other mass residential homes, and it would not be unfair to equate the performance of many of the prison officers' domestic functions with that of a caretaker. Direct comparisons though, have only limited purchase as the officers' role is conceived within a punitive orientation, looking to enforce order through hierarchies of disciplinary power, observation, and control. For clarity of analysis the custodial tasks of the 'caretakers of punishment' can be broken down into four different functions: *security*, *supervision*, *service*, and *policing*⁵.

Security, alongside control and containment, is the main priority of prison work. The prison guard is essentially there to prevent escapes, and undertake errands, such as head counts or cell and individual searching. The *supervision* function involves officers ensuring that prisoners are doing the right thing, in the right place, at the right time, and are appropriately escorted through the prison for work, education, religion, visits and so on and so forth. This task also implies the more insidious charge of surveillance and the gleaning of knowledge. *Service* entails both dealing with the mundane realities of prison life, such as serving food, sorting out the laundry or dealing with prisoners' requests, and a more human or relational aspect, such as identifying destructive behaviours or trying to mitigate harm and human suffering through help, support and counselling (Lombardo, 1989).

The *policing* function necessitates the *maintenance of order*, such as preventing fights, bullying, drug dealing, gambling and other actions which threaten the stability and existing status quo, and the *enforcement of rules*, which may involve the detection of rule breaking, the writing of reports and involvement in governor adjudications, or other disciplinary proceedings. Like their police service counterparts, prison officers represent the public face of the service; have greatest contact with its charges; have the 'powers of a constable'; require some form of acquiescence from those they police; and place discretion at the heart of their role. Policing in a *custodial context*, characterised by an unpleasant physical plant and long periods of time spent with the same people, inevitably leads either to increased opportunities for developing more positive relationships with those policed, or for greater conflict, enmity, or estrangement. The brutalising and negative experience of imprisonment lowers morale, with the more modest aim of the *absence of trouble* (Liebling and Price, 2001), often replacing the wider policing principle of a 'sense of mission' (Reiner, 2002).

Maintaining order, enforcing rules?

Undertaking the policing function may seem relatively straight forward, for in appearance the prison is a place of law, rules, standards and procedures, with the cards unevenly staked in favour of the custodians. Officers have three obvious strategies at their disposal to secure a dominant position over prisoners, and effectively police the prison: legal authority, coercion, and personal authority. *Legal authority* is rooted in a commitment to the principle of legality, and the legitimate exercise of certain powers arising as a consequence of holding current office. In its most pure form officers must be obeyed because they represent and uphold the letter of the law. However, a strict and consistent adherence to the rule of law over a long period of time has proved in practice to be very difficult, if not impossible, for prison officers. For Skolnick (1966:6), policing practices in the USA necessarily transcend of the rule of law because of the wider commitment to order maintenance.

The police in democratic society are required to maintain order and to do so under the rule of law. As functionaries charged with maintaining order, they are part of the bureaucracy. The ideology of democratic bureaucracy emphasises initiative rather than disciplined adherence to rules and regulations. By contrast, the rule of law emphasises the rights of individual citizens and constraints upon the initiative of legal officials. This tension between the operational consequences of ideas of order, efficiency, and initiative, on the one hand, and legality, on the other, constitutes the principle problem of the police as a democratic legal organization.

For Poulantzas (1978) the activities of the repressive agents of the capitalist state can and do stretch beyond, against, or without reference to law. Omissions and loopholes are written into legal regulations, allowing for their subversion and if necessary blatant transgression. The comprehensive nature of the Prison Rules allows for the justification of almost any action a prison officer may take, so much so that prisoners often complain that there are 'too many silly rules'. Full application would prove highly oppressive and so, for bureaucratic, practical or control reasons, the rules are only selectively applied, perhaps sometimes merely manipulated, to provide a cloak of legitimacy on the decision making process (Carrabine, 2004). The interesting question now becomes which rules are applied, for whom, and when. Poulantzas (1978: 84) points to the answer when he argues that agents of the state, such as prison officers, privilege the maintenance of the existing order and in the last instance act to protect *the higher interests of the State (raison d'Etat)* – which strictly speaking, entails both that legality is always compensated by illegalities 'on the side', and that state illegality is always inscribed in the legality which it institutes.

In practice prison officers encounter conflicts between how prisoners should be treated under the law, and what they perceive is required to ensure that penal order is upheld (Scruton et al, 1991). Actions that breach at least the spirit if not also letter of the law, or exploit legal oversights, are defended through appeals that they are necessary for the preservation of order and discipline. When such circumstances pertain, the prison becomes a lawless institution where decisions on prisoners' real life experiences and circumstances are not determined by law, but in the micro world of the personal relationship between themselves and officers involved (Sykes, 1958; Fitzgerald and Sim, 1982; Kauffman, 1988).

In some situations the maintenance of order is underscored by a reliance on coercion, cultures of violence or the mechanism of fear (Poulantzas, 1978; Scruton et al, 1991). Coercion is operationalised when obedience is to be secured through the threat or use of sanctions, whether they be legal or formal sanctions, such as the use of segregation of disciplinary punishments; informal non-violent sanctions, such as interpersonal hostility or deliberate neglect; or informal violent sanctions, performed either blatantly or when an opportunity arises such as during a control and restraint (Kaufmann, 1988: 62-68). This discussion must be contextualized within the more generic term 'force'. Force, which can be defined as 'stripping an individual of the choice between compliance and non-compliance' (Kaufmann, 1988: 59) is an inherent part of all kinds of imprisonment as the very act of enforced physical confinement places certain restrictions upon the prisoner's mobility and subsequent capacity for resistance. Through the very nature of the prison, prisoners are vulnerable to having the will of others forced upon them. The strategy of coercion has been perceived as a successful means to check blatant disobedience of a small number of miscalcitrants (Sykes 1958), and may even be considered to be effective in achieving the temporary compliance of many (Morris and Morris, 1963).

Sole reliance on coercion is likely to be rejected by prison officers on a number of pragmatic grounds. Kaufmann (1988: 69-70) argues coercion is inefficient and counterproductive. It can only be directed at individual compliance, and so is largely impotent as a strategy to gain the necessary obedience of the prison population. Further, coercion requires constant escalation and must be sustained over a long period of time. Given that this entails physical and psychological costs on both victim and perpetrator, many staff may be unwilling to use the scale and extent of violence necessary for it to be effective. In the end such action breeds only further resentment,

violence and discontent, and prisoners may try to get their revenge against violent officers. Coercion can provide no resolution to the initial dispute and cannot provide closure. As Sykes (1958:49-50) points out, the ability of the officials to physically coerce their captives into the path of compliance is something of an illusion as far as the day-to-day activities of the prison are concerned and may be of doubtful value in moments of crisis.

It seems likely that the adoption of coercion as a means of maintaining order is dependent upon the effective dehumanisation and necessary psychic distancing of the population confined, and the institutionalisation of an authoritarian culture. Such circumstances may vary between prisons and among occupational cultures (Liebling, 2004; Carrabine, 2004; Scott, 2006). If legal authority and coercion are inoperable, or perceived as undesirable, officers will look to enforce their personal authority. *Personal authority* is predicated on the principle that those commanded accept that the desires being expressed by the prison officers are legitimate and possess the moral compulsion to obey such desires automatically. Liebling and Price (2001; 2003) argue that personal authority is the most significant strategy in the maintenance of penal order. They point to the mutual dependence between prison officers and prisoners, and the need of agreement from both parties if there is to be the creation of balance, consensus and an orderly daily life in the prison. The lack of physical distance between officers and prisoners, some of whom will undertake formal duties such as library staff, hotplate servers, or orderlies, and the structural requirement for reciprocity and good will just to 'get through the day', ensure that officers will privilege personal authority above legality and coercion in their struggle to keep order.

Prison officers under-enforce rules, but many still enforce their authority ... Prison officers reach a solution to the situation in front of them that does not necessarily draw upon rules at all. (Liebling and Price, 2001: 134) In so doing prison officers perform the delicate art of *peacekeeping* (Liebling and Price, 2001: 2). Peace is accomplished and re-accomplished through the diligent and skilled building of relationships with prisoners through talk and the under-use of the officer's powers. Specifically, Liebling and Price (2001: 9) tie the performance of peacekeeping with an officer exercising power through their personal or 'legitimate authority'. The prison is conceived as potentially being a moral environment of peace, consensus, prospering *positive relationships*, where power is exercised through a combination of officer personal authority and prisoner-staff negotiations (Liebling and Price, 2001; Liebling, 2004). It is clear that some officers do

attempt to develop 'rights relationships' with prisoners (Crawley, 2004; Scott, 2006). But given that security, order, and control are the primary goals of the prison service, and that positive relationships are considered by some officers to be 'social work like', when positive relationships do develop, they are often justified through notions such as dynamic security.

In contrast to the appreciative approach, much of the literature points to the rareness of peacekeeping, balanced negotiations, and positive relationships in prison. The exigencies of the officers' broader functions reinforce existing hierarchies of power, status and control and undermine relationships (Fitzgerald and Sim, 1982). Personal authority appears also to be linked to officer self-esteem and the instilling of a deference obligation in prisoners to secure acquiescence. Sykes and Clark (1975: 103) have documented how police officers operate with what they call an 'asymmetrical status norm'. Here officers' relations with civilians are governed by the idea that the general public should demonstrate deference. For a positive interaction to arise, civilians must acknowledge that this asymmetrical status, giving the officer a certain amount of respect for the position held. Prison officers also expect prisoners to recognise their superior status and treat them with a slightly elevated form of respect (Sykes and Clark, 1975; Sykes and Brent, 1983). Indeed, prisoner deference may be an important aspect of prison officer self-esteem (Carter, 1995).

Goffman (1963) explains why such a 'deference obligation' is important in other ways. To effectively run a complex total institution requires deferential and pliant prisoners, so officers need to obtain initial cooperativeness from them as soon as they arrive. Early interactions may involve obedience tests being set by officers, or if a prisoner is strong and resists, a will-breaking contest may take place to smash the prisoner down. Attempt to grind down prisoners leads to acquiescence through defeating the subjugated in power struggles (Gaventa, 1980; Lukes, 2005). Powerlessness becomes accumulative, and the more you lose the harder it is to find the will to fight back and effectively resist, as you anticipate your opponent will automatically succeed. For Goffman (1963: 83-6), supervisory staff in total institutions develop theories of prisoner 'human nature' in which if the new inmate can be made to show extreme deference to staff immediately upon arrival, he will thereafter be manageable – that in submitting to these initial demands, his resistance or spirit is somehow broken (Ibid: 85). Thus it is likely that prison officers are not peace-keeping (Liebling and Price, 2001), but trying to ensure that prisoners know their place. By operating beyond the rule of law they are, in

short, attempting to secure prisoner acquiescence and establish their control over prisoners. It is much easier to just 'get through the day' with as little incident as possible if you work with compliant and deferential prisoners. Notwithstanding, Gresham Sykes (1958: 47) identifies the widespread lack of personal authority as the key deficit in prison officers' exercise of power.

Power must be based on something other than internalised morality and the custodians find themselves confronting men (sic) who must be forced, bribed, or cajoled into compliance. In many cases order in prison is shored up through what have been described as 'corruptions' (Sykes, 1958) or 'accommodations' (Sparks et al, 1996). Where the prisoner cannot be ordered, officers may try to persuade the prisoner by means of rational argument alone; appeal to the prisoner's self interest through inducements and promises of a reward (prized job, extra privileges); through negotiations and use of an informal reward system; or manipulate compliance by learning to 'con the cons'. In current penal practices then, the relationship between the maintenance of order and the rule of law is far from harmonious.

Law may be transcended when in conflict with order; it may be selectively enforced, utilised as a means of legitimation, or rejected in favour of non-legal practices steeped in either coercion or inducements. All this implies prison officers currently make judgements untied from the rule of law, and highlights the importance of understanding the factors shaping officer decision making. The point is not so much that these discretionary judgements are always inferior or more problematic than those judgements utilising legal reasoning, indeed the opposite may be true, but that in operational practice the choice prison officers have is to pattern outcomes of decisions based on legal rules and procedures, or produce other similarly predictable outcomes based upon alternative social and organisational rules. The nature of these social rules may or may not have an implicit or explicit discriminatory rationale, but it certainly will be one that is not open to public scrutiny or mechanisms of legal or democratic accountability.

Above the rule of law?

The literature appears overwhelmingly to indicate that prison officers do not transcend the rule of law to enforce peace, but to rather maintain the existing penal order and power relations. This has clear implications for penal accountability and the notion of a lawful prison. Deeply structured within the prison officer's normal practices is the mediation of power relations through personal authority. Its exercise places the prison officer

above the rule of law and their actions beyond procedural restraints or mechanisms of accountability (Fitzgerald and Sim, 1982). Consequently, the very places created through law, containing individuals for law-breaking, and where nearly every aspect of life can be regulated by rules, paradoxically are characterised by the negation of law. In such circumstances the fair, equal and impartial application of law in prison becomes more of an aspiration than a reality.

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Footnotes

- 1 There are 139 prisons in total in England and Wales. 128 are public sector prisons and 11 are private sector prisons.
- 2 This perception is widespread in the literature. For example 56.4% of Jones and Cornes (1977: 165) sample gave security of employment as the main reason they joined.
- 3 In 1921 there was the change of name from prison warder to prison officer.
- 4 Some prison officers have more specialist functions, such as drug testing, suicide awareness, public education programmes such as 'Prison Me, No Way', or offender behaviour programmes such as R & R; Calm or the SOTP.
- 5 I have based these four categories on those of (Lombardo, 1989: 61-66).

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