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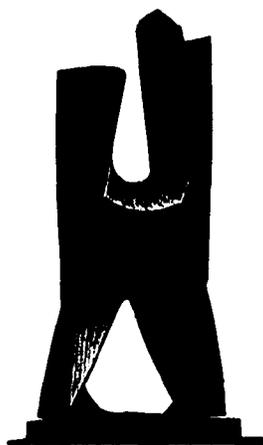
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THE LAW SCHOOL

THE UNIVERSITY OF CHICAGO

The Prosaic Sources of Prison Violence

By HANS W. MATTICK



The Prosaic Sources of Prison Violence

By Hans W. Mattick*

It is, perhaps, gratuitous to assert that those who have been convicted of breaking the law are most in need of having respect for the law demonstrated to them. We are, moreover, a generous people who are fond of the notion that the law includes more than a narrow legalism—" . . . for the letter killeth, but the spirit giveth life." In that view, which we all share in our more virtuous moments, the law approaches the Platonic ideal of the good, the true and the beautiful. It is a wonderful vision where the law embodies all that is moral, all that is humane, all that is decent and all that is civilized. But, in the age of Pendleton, Attica, San Quentin — and all the tragic rest, it may be instructive to inquire how some of those who act on our behalf have sometimes demonstrated respect for the law to those who have been convicted of breaking the law.

It may also be instructive to try to trace some of the correlates of prison violence — what are popularly referred to as "the causes" of violence — and to do it in such a way as to transcend the usual banalities. Neither the simpleminded conspiracy theories, involving inside or outside agitators, that the old-line penal administrators are so quick to espouse, nor the standard complaints that inmates put forward during the course of riots, are in themselves, sufficient explanations. These are important and, perhaps, necessary conditions, but they are secondary because they are constants in the prison situation. They have been present from the beginning of our experience with incarceration, and they are present today, but

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prison violence fluctuates sporadically and independently of these constants. Much more fundamental is a contradictory complex of utilitarian and religious ideas of 18th and 19th Century origin, which have been slowly debased into a melange of 20th Century "high school thought," and now serve as the basis for our penal policy. It is, for the most part, a policy of isolation and punishment, accompanied by the rhetoric of rehabilitation, which results in the chronic underfinancing, inadequate staffing, deflected sexuality, and general lack of resources and poverty of imagination that characterizes our prisons and jails. But, these too have been constants for the past 200 years and cannot, of themselves, explain sporadic fluctuations in prison violence. If such conditions were both necessary and sufficient, the Nazi concentration camps would have been less one-sided in their violence, and in a continuous state of revolt. We know that was not the case. To try to explain prison violence, we must penetrate below the surface and get to more fundamental structures and processes.

The massacre at Attica has captured the public imagination, at least for a little while; but as bloody as it was, it is by no means the most calculated use of deadly force in a prison disturbance in recent years. That dubious distinction belongs to Pendleton. One can understand the fear, anger and disorganization at Attica, with the lives of hostages seemingly at stake and no clear chain of command to control the situation, without condoning the tragic consequences; but there can be no moral justification for what happened at Pendleton. A short account of "the Pendleton incident" was given in the January-February 1970 issue of the *N.C.C.D. News*, an organ of the National Council on Crime and Delinquency:

According to Bruce Nelson, of the *Los Angeles Times*, on September 26, 1969, "12 white men fired repeated volleys of buckshot through a fence [at the Indiana State Reformatory] at young black men who were

lying on their stomachs. They killed one and wounded 46. Very few people around the country seemed to notice." Shortly before the shooting, several hundred inmates had congregated in a fenced-in recreation area. They had several demands, including the right to read black literature and to wear their hair in the "Afro" style. Their most important demand was the release of four black inmates who, for unclear reasons, had been isolated. . . . The guards told inmates in the recreation area to leave the vicinity. Many, including all the white inmates, did so. The black inmates asked to present their grievances to [the Superintendent who] refused to talk to the inmates. On the other side of a chain-link fence were 11 white guards and at least one vocational teacher, dressed in riot helmets and carrying loaded shotguns, according to Nelson. The confrontation continued for about 10 to 15 minutes. No attempt was made to disperse the crowd with tear gas, smoke bombs or nearby fire equipment. The guards fired warning shots and then, at the command of the Captain. . . the guards began firing through the fence. . . . One witness said that some of the men were trying to rise from the ground, raising their hands in a gesture of surrender, but were told by the guards, "You've had your chance," and were shot down. After the shooting, the men were told to leave the blood-spattered court, and did so, carrying the wounded. Two men were left lying on the pavement. One of the two. . . was dead. Of the 46 wounded, estimates of those seriously injured run from eight to twenty."

It may be added that a second inmate died about five months later and, although this story was covered in the *Los Angeles Times*, some 3,000 miles away, the Chicago newspapers, only 170 miles away, failed to mention it. For sheer coldbloodedness, Pendleton far surpasses the emotion-packed atmosphere of Attica.

Such seemingly one-sided incidents of prison violence, unless they are directed against the authorities, receive very uneven news coverage and slip easily from the memory if, indeed, they ever entered it. But that does not mean they are rare occurrences. Perhaps a more recent "incident," that happened after Pendleton and before Attica, will help reinforce this point. The following account was given in the April 1971 issue of *Civil Liberties*, an organ of the American Civil Liberties Union:

The mass beatings and shootings of inmates at a Florida prison have led to a massive A.C.L.U. lawsuit alleging violations of federal civil rights law and state law. . . . On February 12, about 500 prisoners were peacefully assembled in the prison yard by order of the prison officials. Guards and other officers, according to the complaint, fired on them "at point blank range," with absolutely no warning or provocation. The guards then fired into the windows of occupied cells. Five days of beatings and tear gassing of prisoners followed. At one point, officers opened fire into the windows of the prison hospital.

It might be added that February 12th in 1971 was a Friday, followed by a weekend of Saturday and Sunday, which, combined with an "emergency," is the best of all reasons to close down an institution and keep all outsiders out. A great deal can be done to prepare an institution for public scrutiny in three days.

Again, not a very pretty story and, like the affairs at Pendleton and Attica, not yet finally resolved in the courts. But, if we waited upon court determination before such matters received any comment, some of the most significant events of our time would have years of silence before they came to public notice. The Chicago Panther Party raid, the Kent and Jackson State killings and the My Lai incident, are typical examples. However the blame for violence at Pendleton and Attica may ultimately be fixed, prison violence is clearly not

a simple one-sided affair, with the inmates always aggressing against their keepers. Moreover, although we had serious prison disturbances in both Ohio and Oregon in 1968, and two earlier cycles in the early 1950s and the late 1920s, the massive use of deadly force against groups of prisoners in the last three or four years seems to be a new development.

One would have thought that we could have taken notice sooner that something was seriously amiss in the prison system of the United States when such clear desperation signals as the following were manifest to many public and private observers over the past forty years: (1) In 1968, the celebrated Davis "Report on Sexual Assaults in the Philadelphia Prison System and Sheriffs' Vans" was published. (2) In 1967, the President's Crime Commission, among other things, again revealed the appalling state of American prisons and jails. (3) Earlier in the 1960s, there was some desultory, but subterranean, discussion at the Congresses of the American Correctional Association, of the novel punishment methods being used in Arkansas, Florida and Illinois prisons. In Arkansas, the infamous "Tucker Telephone," a hand-operated electric generator that was attached to the genitals of prisoners for punishment purposes, was in frequent use. In Florida, at Raiford Prison, a new use for salt was discovered. Nude inmates, cuffed hand and foot through their cell bars, were seated in piles of salt for periods of 72 hours without relief. In Illinois' Sheridan Reformatory, the members of the inmate boxing team were being used as an indirect disciplinary method, while "shock-therapy" was being converted into punishment at the Menard Psychiatric Division. (4) In the 1950s, the inmates at Rock Quarry Prison in Georgia were breaking each other's legs with 20 pound sledgehammers to achieve transfers, and at Angola Penitentiary in Louisiana, prisoners were crippling themselves for life by cutting their Achilles' tendons in a vain attempt to call attention to their

conditions of imprisonment. (5) In 1931, the Wickersham Commission revealed the appalling state of American prisons and jails. (6) That was the year after 317 inmates of the Ohio State Penitentiary died, locked into their cells, in the course of a fire, said to have been set by rioting inmates, although there is some debate about whether the riot began before or after the fire. But, enough is, perhaps, too much. It is clear that violence is no stranger to the prison environment.

With the potential for violence being such a characteristic feature of prison life, it may be a vain pursuit to seek for developmental patterns and explanations in what appears to be a constant. If there is a "pattern," it is a subtle and emergent process that must be stated in tentative terms. Nevertheless, looking back over the past 40 years, prison violence, like a huge, malignant amoeba, seems to have both shape and direction.

There is, to begin with, a change in the proportionate distribution of violence among the wounders and the wounded. In the earlier period (1930-1960), most of the violence was more securely contained within the walls and consisted, for the most part, of assaults between inmates. Then, in descending order of frequency, there were assaults between keepers and kept, self-mutilations by inmates and a few suicides. Except for a few mass disturbances that came to public notice, with few casualties but some property damage, little systematic information about intramural violence exists for the early period.

In the later period (since 1960), self-mutilations seem to have diminished and both suicides and ambiguous deaths, and the proportion of altercations between inmates and guards, have increased. Rebellious inmates have also made more strenuous and self-conscious attempts to communicate their grievances beyond the walls and have begun to find a constituency there. This is, in part, a nat-

ural development of the more general civil rights movement and a reflection on the cumulative number of ex-prisoners in the free community who maintain an interest in prison affairs, e.g., every year about 70,000 prisoners leave the prisons and about 3,000,000 persons pass through local jails; to these must be added the increasing numbers of convicted persons being placed on probation, residents of half-way houses and pre-release centers, persons in community treatment programs, and organized groups of ex-prisoners, like the Fortune Society, which are multiplying rapidly. The guards, too, have begun to seek extramural support for their grievances in the form of incipient unionization, associational alliances with police organizations and attempts to influence civil service regulations.

Population shifts and changes in sentencing procedures have also had an impact on prison violence. Geographically, there seems to have been a slow migration of prison violence in a northerly and westerly direction, as white racism has manifested itself in heretofore less tested regions. The southern prisons, in the earlier period, had a much greater tolerance for violence and a more apathetic public audience for what went on among the nether classes in the prisons, while violence that came to public notice in the north tended to generate more public indignation in passing. Thus, while northern prisons got blacker and blacker, incident to Negro migration, and as the increasing use of probation tended to weed out the less violence-prone and more stable prisoners of both races, an exacerbated level of racial conflict was added to the normal level of violence in the northern prisons while southern prisons were still segregated and able to shield their normal level of violence from adverse public scrutiny. The net effect of these population shifts, changes in sentencing practices and differences in public attitudes was to increase the actual and perceived amount of violence in northern and western

prisons, while the amount of violence, actual and perceived, in southern prisons, was largely masked. Moreover, while racial conflict between guards and prisoners has a long contributory history to prison violence, with the inmates getting much the worst of it, as active recruitment of Negro prison staff belatedly gets under way, some interesting and unanticipated cross-alliances become possible. It is too early to try to determine what the relation of these new staffing patterns will be to prison violence; all contingencies are possible, but it will be a period of stress for all concerned.

Thus far, we have taken an external view of prison violence by citing some historical examples, pointing out the changing racial composition of prison inmates, indicating some regional differences and referring to changes in sentencing practices, e.g., non-institutional alternatives, like probation, that also change the character of the residual prison population. Such factors, in themselves, do not "explain" prison violence, but they must be understood as contributory elements. We must now place these factors in context and take an internal view of prisons as unisexual, age-graded, total institutions of social control. They are closed communities where real human beings interact in both formal and informal ways, as keepers and kept go through their daily routines. It is in the real humanity of prisoners and guards, and in their mundane routines, that we will find the sources of prison violence.

In any situation where a relatively small group of men control and direct a much larger group, the controllers depend, in a very real sense, on the passive acquiescence of the controlled. Such passivity is purchased by an effective sharing of power. The maintenance of absolute controls requires such implacable social relations that few men are willing to impose them, and even fewer will abide them, for they convert life into death. Prisons are

characterized by caste relations where every member of the dominant caste, regardless of personal qualifications, formally rules every member of the subordinate caste, regardless of personal qualifications. Since such personal qualities as intelligence, sophistication, experience, age, strength and energy are differentially distributed among men, regardless of legal status, the formal rules designed to preserve caste relations tend to be subverted. And yet, unless the smaller ruling caste is willing to live in a Hobbesian "state of nature," where the hand of every man is potentially raised against every other, and this for every minute of the day, they know they must come to terms, and do so, with some of the conditions set by the more numerous subordinate caste. It is somewhat like the "social contract" that early philosophers said was necessary for men to emerge from the "state of nature."

Thus the prisoners and their keepers strike a complex bargain. It is a tacit, implicit and informal bargain, somewhat ambiguous as to its precise limits and level, and somewhat variable as to time, place, circumstance and personalities, but one that is unmistakably present. Like the exercise of police discretion in the free community, or plea-bargaining in the criminal courts, such informal arrangements tend to be unacknowledged in daily practice, and are denied altogether when their legitimacy is brought into question by the formal requirements of the criminal justice system, but their weight is disproportionate in the normal prison community. If the average penal administrator or guard were asked, "Who's running this prison, anyway?" they would reply with some degree of self-righteous assertiveness, "Why, we are, of course." In the last analysis, they are right; but the last analysis could mean every prisoner is locked in his cell, gagged and straitjacketed; and then some would be perverse enough to breathe at a rhythm of their own choosing. Few penal ad-

ministrators want to run a prison that way, for in that direction lies inhumanity and death. It is a question of where the line is drawn, and the line must not only be drawn but accepted. Most penal administrators know where the line is drawn, some will acknowledge it, but a few entertain the delusion of absolute control.

Different prisons strike this bargain at different levels of tolerance, depending upon such factors as the kinds of work or programs the administration wants the prisoners to participate in; the amount of intramural mobility imposed by prison architecture on the routine tasks of prison life; the intelligence and sophistication of guards and inmates; corruption through sentimentality, stupidity, laziness, or venality; the external political climate, custom, tradition and the like. These are the human factors in prison life that make life minimally tolerable for all concerned. Once the level of this power-sharing bargain has been fairly well established, it is difficult to change its terms and limits because very complex social relations, and mutual expectations and obligations come to depend upon it. To disrupt these informal relations by sudden or extensive social changes, affecting either staff or inmates, is to disrupt prison life; and such disruptions increase the probability of violence.

In the past, when southern prisons were more strictly segregated, and the northern and western prisons still had a racial balance that favored white inmates, prison violence could usually be accounted for in terms of an inadvertent or unavoidable change in the power-sharing bargain. Political elections were followed by key staff changes; groups of prisoners were transferred without notice; the normal turnover of staff and the receipt and discharge of prisoners; the implementation or discontinuance of work assignments or treatment programs; in short, many of the things that had the appearance of the routine could also have very fateful consequences for the informal set of social relations organized around

the existing power-sharing bargain. When such routine changes affected important pressure points in the closed prison community, the expectations and obligations of many persons, most of whom were indirectly related to each other, were suddenly disappointed. This would raise the level of tension in an already tense environment, and a precipitating incident that would ordinarily be more easily contained, would be the occasion for a sudden flaring of violence.

How was anyone to know that among the inmates who were discharged a few days ago was, for example, inmate "X", who worked in the officer's dining room and was stealing food which he sold, traded or gave away to others who, in turn, were trading or paying off gambling debts to still others, and so on, *ad infinitum*? Similarly, when Captain "A", a grizzled veteran who knew how to survive the prison environment, finally retired and was replaced by Lieutenant "B", who tried to run the cell-house "by the book," a subterranean chain reaction took place, affecting both guards and prisoners, that required many adjustments. Suddenly a whole host of guards who had been having their civilian clothes cleaned, repaired and pressed in the tailor shop, had to turn to outside cleaning shops. Moreover, the tailor shop inmates who had been rewarded in a variety of ways for their extra-curricular work, were denied the capital that enabled them to participate in the internal economy.

Such individual examples are only indicative, and necessarily limited in their ramifications. When group transfers, staff shifts, prison industry contracts, elections that affect the upper echelons of prison administration, or too rapid attempts are made to either "tighten up" or "loosen up" the *status quo*, the results can be very serious. Gambling debts go unpaid, borrowed goods are out of control, lovers are separated, incompetent people lose competent help, political or friendship alliances are bro-

ken up, mutual service and communication links are disrupted; in short, the social fabric, real and symbolic, is badly torn.

To an outsider, such events have a pedestrian appearance because he is used to the available alternatives and free choices that a free man can make. If a firm's bookkeeper quits his job, another can be hired; if a grocery store closes, there is another in the next block. Some of the routine disruptions of prison life are somewhat akin to the breakdown of utilities or a transportation strike in the free world. Some persons are affected at once, others experience delayed and indirect effects, but only a few have the resources or alternatives to make long-run substitutions. In the closed prison community, life is driven in on itself; there are fewer alternatives and choices, and people are more directly and intensely related, whether they wish it or not. If the routine changes of prison administration, or external politics, press too frequently or too rapidly on the crucial nerve centers, and disrupt the social fabric in such a way that the power-sharing bargain is threatened at too many points for too many people, the potential for violence is escalated. Moreover, the actual eruption of violence is likely to be delayed because the latent effects of routine changes take time to ramify through the prison's social structure. Much of what has been considered random or "irrational" prison violence is traceable to such routine prison processes that are simply allowed to happen instead of being carefully planned for and skillfully managed. Invariably, when the violence was "explained," the administration invoked conspiracies and the inmates voiced the ordinary grievances about food, sentences, parole policies and the like. Both were right to some degree, because both the conspiracies and the grievances were real; but they were just as real six months ago and, more than likely, would be just as real six months hence. Such "explanations" are more in the nature of ration-

alizations than a reflection of actual and proximate "causes."

As we approach the present and consider contemporary prison violence, everything that has been said about the power-sharing bargain still has general applicability, but with some important differences. Perhaps most important is the fact that there is a lesser willingness to bargain, and the bargain that is struck, is struck at a much lower level, with fewer benefits for fewer inmates. As, in process of time, the prison population got blacker and blacker, and more Chicano and Puerto Rican as well, the parties to the traditional bargain became more hostile to each other. Much has been said in recent years about a "new breed" of prisoners, and that they are the source of recent violence. A much better case can be made, however, for the existence of an "old breed" of prison guard and penal administrator who have been sheltered, much more than their prisoners, from social changes taking place in the free community. Prisons are isolated, rural, resistant to change and, for the most part, content to remain so. Prisoners are transients who are always upsetting the *status quo*. Moreover, they are more urban, more influenced by current events, more socially aware and naturally concerned about civil rights and the condition of man; but this too is a part of a much wider social movement concerned with equality and justice. Not even the most secure prison can keep it out. A generation ago, penal administrators were deploring the presence of a "new breed" of spoiled and overindulged youthful offenders who were the offspring of permissive parents, and bemoaning the absence of the old, professional safecrackers and con-men who "knew how to do time."

In this perspective, every generation of prisoners has been a "new breed" of prisoners. In addition, in recent years, as an accompaniment to the civil rights movement and dissent over

the war in Vietnam, we have responded to social dissent by defining a part of it as criminal. The result has been a new mixture of prisoners, and a new kind of exchange of information among them. Radical ideologists have been thrown together with traditional criminal types, and each has taken something from the other at the margin. Thus, the prisons have been "politicalized," and some of the prisoners convicted of traditional crimes have been furnished with a radical critique of imprisonment and all of society, while some of the more radical social dissidents have been furnished with traditional criminal techniques that may be useful in the furtherance of their objectives. It is a stupid arrangement that the older European countries have learned to handle more astutely by wiser separations among these classes of prisoners. And this new mixture of prisoners is regularly delivered into the hands of a predominantly white, rural, conservative, ruling caste in the prisons; a ruling caste which, for the financial, numerical and philosophical reasons mentioned earlier, is wholly inadequate to the task.

No wonder, then, that there is more intransigence and less willingness to compromise in the informal bargaining processes that make prison life minimally tolerable for all concerned. For a while, the guards and penal administrators were still able to bargain in the traditional way with the decreasing proportion of white prisoners, but that form of power-sharing has come to an end. In the prison situation, where outside race relations are reversed, the white minority feels the mounting pressure of the darker majorities. The choice is getting narrower and the potential for violence is increasing; soon the choices will be only open hostility, repression or compromise. This is one interpretation of what the prisoners at the Tombs, at Attica, and elsewhere, meant when the cry went up: "We want to be treated like human beings." It is

also one interpretation of what President Nixon meant when he sent his 13 point directive to Attorney General Mitchell on November 13, 1969, and said, "The American system for correcting and rehabilitating criminals presents a convincing case of failure."

There is today, as there was in 1870, some evidence that we are, at long last, ready to face the prison problem. When such an unlikely group as President Nixon, Chief Justice Burger, Attorney General Mitchell and Senator Hruska, on the one hand, and Senators Kennedy and McGovern and Congressman Mikva and former Attorney General Clark, on the other, can agree on the current necessity for penal reform, there might be some hope. Chief Justice Burger, in his State of the Federal Judiciary message last July said, "If any phase of the administration of justice is more neglected than the courts, it is the correctional systems." Attorney General Mitchell, citing the recommendations of the National Congress on Penitentiary and Reformatory Discipline of 1870, citing the Wickersham Commission of 1931, and referring to the findings of the President's Commission on Law Enforcement and Administration of Justice of 1967, at the National Conference on Corrections held at Williamsburg, Virginia on December 6, 1971, was moved to ask: "What was the result of this century of recommendations?" And he answered: "In state after state, most of the prisons have no programs for correcting prisoners."

So there is recognition in high places that a problem exists. Moreover, recent U.S. Court decisions in Arkansas (*Holt v. Sarver*, 2/18/70), Rhode Island (*Morris v. Travisino*, 3/11/70), California (*Clutchette v. Procunier*, 6/21/71) and Virginia (*Landman v. Royster*, 10/30/71), have held long-standing prison practices unconstitutional. Even the Quakers, who had such an enormous influence on the form of American imprisonment, have returned to the drawing board after 200 years. A working

party of the American Friends Service Committee recently published a report on crime and punishment in America, entitled *Struggle for Justice* (Hill & Wang, Inc., 1971), in which they said, in effect, "We were wrong and must begin again with a different set of premises."

Santayana has admonished that "Those who cannot remember the past are condemned to repeat it." We have been through such a repetitious cycle once before. In 1870, the National Congress on Penitentiary and Reformatory Discipline was held at Cincinnati, Ohio. It was clear to the best penal minds in the country that we had already reached a serious impasse in our methods of imprisonment. Accordingly, after a thorough review of what was wrong with American penology, this National Congress published the famous Declaration of Principles which was to give rise to a New Penology. We can ascertain some measure of what the participants of that National Congress felt they had accomplished by adverting to the sentiments of Zebulon Brockway, the foremost penal administrator of his day, who was present and active. In 1876 he was appointed Warden of the Elmira Reformatory, the "wonder prison" of the western world. Some seventeen years after the National Congress of 1870, he reflected on its accomplishments and was still able to describe it as "an experience similar to that of the disciples of Our Blessed Lord on the Mount of Transfiguration." Last December, just one hundred years later, we held the National Conference on Corrections at Williamsburg, Virginia. Seventeen years hence, will we, as Santayana admonished, have remembered the past, or will we reflect with Goethe that "There is nothing so frightful as ignorance in action?"

Editor: Frank L. Ellsworth

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- No. 1. "A Comment on Separation of Power"
Philip B. Kurland, November 1, 1971.
- No. 2. "The Shortage of Natural Gas"
Edmund W. Kitch, February 1, 1972.
- No. 3 "The Prosaic Sources of Prison
Violence"
Hans W. Mattick, March 15, 1972.

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