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Legitimacy and order in prisons¹

ABSTRACT

This paper attempts to theorize some aspects of problems of order in prisons in the light of recent contributions in the theory of legitimacy by Beetham (1991) and Tyler (1990). Previous work in the sociology of imprisonment has generally raised the problem of legitimation only implicitly, and often merely to deny its possibility. Drawing on fieldwork in two English maximum security prisons, we argue that while prisons present chronic problems of legitimacy, it may nevertheless be possible to specify circumstances under which prisoners are more or less likely to confer or withhold degrees of recognition of legitimate authority of prison staff and regimes. Such conditions include not only the regularity and efficiency of service delivery, but also perceived distributive and procedural fairness of treatment, as well as human qualities in the nature of routines. We deploy these considerations in analysing aspects of current British penal politics.

INTRODUCTION

The inquiry by Lord Justice Woolf (1991) into the disorders which rocked the English prison system in April 1990 was notable not simply for its specific reform proposals, substantial as these were, but also for the general conceptual framework within which they were placed. Indeed we suspect that it is the latter that may turn out to be of more lasting significance. For Woolf's account of the 1990 disturbances introduced new terms into the lexicon of English official penology.

Until the mid-1980s, serious collective disorder in English prisons remained largely confined to the long-term adult male 'training' prisons, and in particular the maximum security 'dispersal' system (Woolf 1991: paras 9.8–9.18; Home Office 1984, Annex D). Official responses (commonly unpublished) concentrated in large measure on improvements in the hardware and technique of riot control and on

the identification of ringleaders. The long-term prisons proved amenable to being depicted as congregations of dangerous and violent men with nothing to lose. As Woolf acknowledges, the 1980s saw a marked widening of the incidence and extent of prison disorders. The allegation that participation in active protest was the prerogative of the desperate few could no longer be sustained. Moreover, Woolf concluded that the scale and intensity of the 1990 protests at Manchester, Dartmoor, Bristol, Cardiff and elsewhere could only be attributed to a widely shared sense of injustice

A recurring theme in the evidence from prisoners who may have instigated, and who were involved in, the riots was that their actions were a response to the manner in which they were treated by the prison system. Although they did not always use these terms, they felt a lack of justice. If what they say is true, the failure of the Prison Service to fulfil its responsibilities to act with justice created in April 1990 serious difficulties in maintaining security and control in prisons. (Woolf 1991: para 9.24)

Elsewhere Woolf went on to argue against the historically received view that prisoners' goods and services should be regarded as 'privileges', awarded or removed by discretion (e.g. para 14.32ff). He referred instead to the 'threshold quality of life' of all prisoners and to the 'legitimate expectations' that prisoners have of their treatment (e.g. para 12.129). For him, serious attention to justice in prisons required the Prison Service to make available to prisoners at least (i) a humane regime² (e.g. 'a dry cell, integral sanitation, . . . exercise, activities, association and food': para 10.20) and (ii) a reasoned explanation for all decisions adversely affecting individual prisoners, and fair procedures for dealing with prisoners' grievances and alleged indiscipline (ibid.). Throughout his report, including in the final paragraphs of the main text, Woolf emphasized his belief that such issues are fundamental to the stability of the system

Our suggestions are directed to one of the themes which has run through this report, the theme of justice in prisons secured through the exercise of responsibility and respect. *The achievement of justice will itself enhance security and control . . .*

. . . Were these proposals to be followed, then we believe that they would substantially influence the way prisoners come to view the prison system. While not preventing all disruptions, they would marginalise those who claim they must resort to deeply damaging and costly disturbances on the grounds that there is no other way to have their voices heard (paras 14.437–8, emphasis added).

In our view what Woolf is outlining here (albeit at times only implicitly) is something akin to a theory of legitimacy, of a kind that sociologists and political theorists will recognize. He believes, that is to

say, that there are variable conditions which render it more or less likely that prisoners will accept, however conditionally, the authority of their custodians. What is novel here is not so much the insight itself (which, in a more or less developed form, is frequently affirmed on prison wings and landings by prisoners and prison staff) but rather the insistence that official discourse should articulate and act upon it.

Having thus been placed powerfully on the agenda, the issue of legitimacy in prisons stands in need of further exploration, not least since it has been linked by Woolf (see quotation above) to that other venerable preoccupation of political and social theory, the 'problem of order'. It is to the articulation between these two perennial issues that this paper primarily addresses itself.

LEGITIMACY AND ITS IMPLICATIONS

To what extent is the legitimization of the prison's order possible? On what terms and conditions might it be sought? What are the consequences for penal politics of taking this idea seriously? What is legitimacy, anyway?

Beetham (1991) argues that all systems of power relations seek legitimization. The particular content of legitimating beliefs and principles is, historically and culturally, extremely variable but, Beetham contends, we can identify a common underlying structure which is very general (1991: 22). On Beetham's account that structure has three underlying dimensions or criteria in terms of which the legitimacy of any actually existing distribution of power and resources can be expressed and evaluated. Such criteria are almost never perfectly fulfilled, and each dimension of legitimacy has a corresponding form of non-legitimate power. In outline, Beetham expresses his schema thus

<i>Criteria of legitimacy</i>	<i>Form of non-legitimate power</i>
i) conformity to rules (legal validity)	illegitimacy (breach of rules)
ii) justifiability of rules in terms of shared beliefs	legitimacy deficit (discrepancy between rules and supporting shared beliefs, absence of shared beliefs)
iii) legitimation through expressed consent	delegitimation (withdrawal of consent)

(from Beetham 1991:20)

These three dimensions roughly correspond to the traditional preoccupations of three different academic specialisms which have considered issues of legitimacy: first, lawyers (has power been legally acquired, and is it being exercised within the law?); next, political

philosophers (are the power relations at issue morally justifiable?); and finally, social scientists (what are the actual beliefs of subjects about issues of legitimacy in that particular society?) (Beetham 1991: 4ff). However, a central plank of Beetham's argument is that social scientists have been wrong to follow Max Weber (1968) in defining legitimacy as simply 'belief in legitimacy on the part of the relevant social agents' (Beetham 1991: 6). To promote this view, Beetham argues, is to leave social science with no adequate means of explaining why subjects may acknowledge the legitimacy of the powerful in one social context, but not another (*loc. cit.*: 10). Beetham accordingly argues for an alternative formulation of the social-scientific view of legitimacy – 'a given power relationship is not legitimate because people believe in its legitimacy, but because it can be *justified in terms of their beliefs*' (*ibid.*: 11). This may seem to introduce a rather fine distinction, but the alternative formulation is seen by Beetham as fundamental because it injects a crucial element of moral judgment into the definition. Additionally to this point, Beetham also suggests that the simple 'belief in legitimacy' view takes no account of those aspects of legitimacy that have little to do with beliefs at all, such as conformity to legal rules. Hence, the schema of legitimacy that he eventually proposes for social-scientific analysis (see above) deliberately includes all three of these different elements.

Beetham suggests that some currently influential views of power (especially those flowing from 'rational choice' models) ignore the fact that systems of social power inherently generate normative as well as prudential or self-interested elements (1991: 27). Thus, situations in which legitimacy is *not at all* necessary to the powerful will be very rare (Beetham considers slavery to be one such: whether prisons are too is a large part of the point at issue here). Ironically, of course, the modality of power which stands most in need of legitimation is not democratic discussion, which claims to be inherently self-legitimizing, but force. For

. . . the form of power which is distinctive to [the political domain] – organized physical coercion – is one that both supremely stands in need of legitimation, yet is also uniquely able to breach all legitimacy. The legitimation of the state's power is thus both specially urgent and fateful in its consequences. (Beetham 1991: 40)

Legitimacy and power are, on this view, two faces of the same problem. The content and strength of legitimating beliefs radically affects all parties in a system of power relations³ and only legitimate social arrangements generate normative commitments towards compliance. Meanwhile, the need for legitimation tends to constrain the actions of the powerful since, as Giddens (1977: 92) puts it, 'to speak of legitimacy in the usual sense implies the existence of standards external to he (sic) who claims it'. However, there are clearly differing

problems of legitimation in autocratic and democratic social systems, and autocracies are normally notoriously inflexible in the face of legitimacy deficits (Dahrendorf, 1990: 15–17).

One strength of such arguments is that they stress that legitimacy is not an all-or-nothing, once-and-for-all matter. Rather, Beetham's discussion throws its emphasis on the conditions under which legitimacy is variously claimed, fought over, achieved, eroded and lost. One can easily see that states and institutions might ride a roller-coaster of waxing and waning legitimacy and, crucially, that they might wish to (or feel obliged to) orient their behaviour strategically towards recovering legitimacy when it is threatened. Indeed, most discussions of 'crises' of legitimation turn on views as to which problems are contingent and remediable and which are the visible expression of deeper structural contradictions (see Held 1987: 229–236). Moreover, legitimacy is a key term in the analysis of social disorder generally and of revolutions, riots and other moments of upheaval and rapid social transformation especially.⁴

Clearly, all this might have some bearing on the recent history of British prisons, in which a succession of apparently distinct problems seemed to congeal into something more akin to a durable 'legitimation crisis' (see Cavadino and Dignan 1992), within a framework where – as with all prison systems (Sykes 1958) – the prison management have been assigned by law some features of power that are rather autocratic.

At first sight prison troubles often appear momentary, convulsive, brutal; necessarily to be put down by force or by an attrition of waiting – the product of a situation in which the notion of legitimacy has no application. Indeed, prison disorders seem peculiarly prone to being represented (not least in the press) in terms of mob violence or merely reactive crowd behaviour, perhaps whipped up by a 'hard core' of devious conspirators. Alternatively, the official discourse has sometimes resorted to a chemical reaction metaphor, speaking of 'toxic mixes' of prisoners, catalysts and so forth (Cavadino and Dignan 1992: 10). Prison protests can traditionally call upon scant public sympathy – still less support of a kind likely to register on any 'Richter Scale' of general public opinion or mass action (cf. Ruggiero 1991). All of this might call into question our received ways of understanding the 'prison crisis' – for a problem hardly qualifies as a crisis for as long as (like other forms of 'contingent, fragmented and directionless' protest (Held 1987: 241)) it can safely be disregarded or merely contained.

Nevertheless, in our view it is a serious mistake to regard the prison as a limiting case of the relevance of legitimacy. Indeed we believe that the tradition of sociological study of 'captive society' can be read very largely in terms of the competing views it throws up of issues of legitimacy and legitimation problems. Furthermore this has a crucial bearing on the interpretation of such central matters as prison

disorders and prisoners' rights campaigns. By the same token, legitimacy is also central to the understanding of official discourses generated in response to prison problems.

LEGITIMACY AND THE SOCIOLOGY OF PRISON LIFE

Rule 2(2) of the 1964 English Prison Rules (see Loucks 1993) states

In the control of prisoners, officers shall seek to influence them through their own example and leadership, and to enlist their willing cooperation.

The expression 'willing cooperation' suggests that, historically at least, the official discourse acknowledges no fundamental difficulty for prison officers in achieving legitimate authority over their charges. More recently, in a more developed and much debated formulation (see Bottoms and Light, 1987) the Home Office's Control Review Committee proposed that

At the end of the day, nothing else that we can say will be as important as the general proposition that relations between staff and prisoners are at the heart of the whole prison system and that control and security flow from getting that relationship right. Prisons cannot be run by coercion: they depend on staff having a firm, confident and humane approach that enables them to maintain close contact with prisoners without abrasive confrontation. Nothing can be allowed to qualify the need for staff to be in control at all times, but we are sure that the very great majority will agree with us that this is best achieved by the unobtrusive use of their professional skill at involvement with prisoners. This is the foundation on which we want to build. (Home Office 1984, para 16)

Again, this position assumes that a fully legitimate exercise of authority in prisons is possible, though by now it is acknowledged that this may not be an easy task, calling as it does for the use of 'professional skill'. Fitzgerald (1987: 147) has acutely noted the tension, in the cited paragraph, between the assumptions that prisons 'cannot be run by coercion' but that within them 'nothing' can qualify the need for one party to the relationship to be 'in control at all times'. Such issues must not have struck the authors of the report as important. Their aspiration remains towards a vision of imprisonment in which the recognition of legitimacy is complete.

An alternative tradition of prison studies assumes more or less the opposite position. In the face of the disorders which the Control Review Committee themselves document (Home Office 1984: Appendix C), not to mention the later problems in Scotland (Scruton *et al.* 1991) or subsequent events in England spreading outside the long-term dispersal system into Category C prisons, local prisons and

remand centres during the 1980s, the aspirational language of 'willing cooperation' and 'getting the relationship right' seems very distant from the realities of prison life. Roy King neatly sums up the radical pessimists' conclusion

It is best to acknowledge at the outset that there is no solution to the control problem in prisons, nor can there be. The control problem – of how to maintain 'good order and discipline' – is inherent and endemic. For as long as we have prisons – and an institution that has become so entrenched in our thinking shows no sign whatever of becoming disestablished – then we will continue to hold prisoners against their will. At bottom that is what it is about. (King 1985: 187)

But what, concretely, would it mean to argue that prisons were entirely non-legitimate? Scraton *et al.* envision just such a state of affairs

All forms of incarceration imply the use of force. Regardless of the outward appearance of compliance few people taken into custody would accept their loss of liberty so willingly if the full potential of state coercion was not handcuffed to their wrists . . . The authority imposed by the prison is not a consensual authority. It is not derived in consultation and agreement, nor is it legitimated by any process of representation and accountability . . . Life in most British prisons is an unrelenting imposition of authority. (Scraton *et al.* 1991: 62–3)

This view merits serious consideration, and Scraton *et al.* surround their contention with ample documentation of some ferocious and often frankly oppressive conduct in Scottish prisons during the 1980s (especially at Peterhead). Certainly, we do not cite it here merely in order to deny its importance. Yet Scraton *et al.*'s position is open to several kinds of objection. The first is that parts of it are in important respects obvious, yet to anyone who knows anything about prisons, it immediately invites the response 'Of course, but . . .'. Of course prisons do not run on consensual authority. Certainly they incorporate conflict, antagonism and sometimes outright rebellion. We know only too well that they sometimes explode into violent upheaval. But they do not do so equally always and everywhere. Scraton *et al.* seem to efface this variation by assuming that if order does appear to exist in a prison it must have been produced by fear, coercion and violence. Yet there may be good reason to suppose that those prisons which generate fewer such major conflicts do so for reasons other than that they are more completely and perfectly coercive⁵. Thus, the view of imprisonment encapsulated in the passage above seems descriptively powerful as a pen picture of life in Peterhead in the 1980s (and, of course, in other prisons in the world before and since) but it seems also to make theoretical claims for which it provides little warrant. By appearing to rule out in advance the possibility of any recognition of

legitimacy on the part of the confined, this formulation discards part of the very critical conceptual armoury which, we are arguing, it most needs.

Secondly, and perhaps more alarmingly, the very denial of legitimacy which Scraton *et al.* advance as a radical argument against current practices of imprisonment risks playing naively into the hands of its political opposites. Thus, for example, Dilulio's book *Governing Prisons* (1987) effectively contends that precisely *because* prisons are inherently non-legitimate and hence unruly, they are ungovernable except by the judicious use of compulsion and sanction. Dilulio therefore argues that the best form of prison management ('the control model') is a benign and efficient authoritarianism, tempered by the scrupulous observance of procedural form and limited individual due-process rights. By these means, Dilulio holds, the general material well-being of prisoners can be enhanced and higher levels of 'amenity and service' provided, thereby reducing the scale of active discontent. What he does not accept is that prisons can be in any meaningful sense legitimated, still less democratized.

Between the three views represented here – the bland officialese, the radical pessimist, the conservative pragmatists – great gulfs are fixed. What makes them all problematic, from the vantage point of this paper, are the inadequately worked out notions of legitimacy on which each variously depends. One important question which arises is: on what conceptual resources is it possible to draw in attempting to pick a path through the penological minefield which the contending positions set before us? Are there in fact available more nuanced and appropriate conceptions of the links between order, power and legitimacy in penal relations?

One avenue of approach would lie in the recovery and contemporary reinterpretation of some central currents in the tradition of sociological writing on captive society. So, for instance, it would be possible to think of Sykes's analysis in *The Society of Captives* (1958) as having at its heart a legitimation problem. For Sykes, for all that prison administrators hold 'a grant of power without equal' (1958: 42) in contemporary western societies, the power of the guards is 'not strongly based in authority'. Prisoners do not have an 'inner moral compulsion to obey'. Moreover, custodians have few resources of either reward or punishment which are meaningful to those who are already imprisoned. Yet the guards must secure the prisoners' day-to-day cooperation in carrying out the routine functions of 'internal order' and the prison's 'self-maintenance'. Social relations thus develop in which there are many pressures towards accommodation and compromise.

In these respects Sykes is an ironist. The real distribution of power

within the prison is and must, he asserts, be different from that which is formally claimed because the very attempt to realize total power is structurally defective. Moreover, it is precisely because the formal powers of the custodians are largely non-legitimate from the prisoners' point of view that the former must strain after a *modus vivendi* acceptable to the captives – just as the most hierarchically organized command-type economic and political systems, such as that of the former Soviet Union, inherently generate forms of patronage, gift-exchange and graft in order to satisfy real wants. In the last resort, Sykes acknowledges, the threat of force is real – tanks and guns can ring the prison. But in daily encounters on the landings, force is self-subverting (prisoners, after all, outnumber staff). Therefore Sykes presents a view of a kind of penological *realpolitik* which accepts the existence of certain *sub rosa* economic activities, inmate hierarchies and so on, rather than succumbing to 'that excess of caution' (ibid.: 133) which tries to dispel them altogether with repressive and counter-productive consequences.

Other observers (especially Mathiesen 1965, 1974; Jacobs 1976; Irwin 1980) differ markedly from Sykes in their identifications of where power lies in penal relations. Yet what these positions have in common is a recognition of complexity and intractability. In each case the prison's deployment of power over prisoners on a day-to-day basis is regarded as fundamentally non-legitimate and hence as straining after forms of compromise, accommodation and negotiated order. In each case, too, captives and custodians are acknowledged as actors locked into very particular predicaments, intimate enmities and alliances, conflicts and collusions.

For abolitionists (e.g. Mathiesen 1974; 1990) it is precisely this character of intractability (as distinct from the more obviously shocking and scandalous features of particular regimes) that defines the crux of the prison question. Thus, in the course of a wide-ranging and thoughtful paper, Joe Sim comments on the 'still fragile nature of the prison's social order and its lack of legitimacy in the eyes of many of the confined' (1991: 8). If this is indeed a primary issue then key questions become sharper, though not necessarily easier to answer. They include: What kinds of penal change would be necessary in order to address the legitimacy deficit as it currently exists? Are there, indeed, any conditions under which prison management could reliably call upon a recognition of legitimacy by prisoners (in the sense of being 'justified in terms of their beliefs': see earlier section) as distinct from mere acquiescence or dull compulsion? Are there then any imaginable circumstances under which prisoners could reasonably be expected to interpret the obligations laid upon them by the custodians as having a legitimate basis?

LEGITIMACY, ORDER AND COMPLIANCE

It would seem that for a host of reasons these questions (which we could perhaps summarize in the one question 'can prisons be legitimate?') are not likely to receive an overwhelmingly positive answer. There would seem to be every reason for taking the inherent legitimacy deficit of the prison very seriously. Yet if Beetham's schema of the criteria for legitimacy, and the forms of non-legitimate power, is correct then the *variety* of existing and possible prison regimes, and prisoners' differential responses to them, remains crucial (on variety in prison regimes see, e.g. Barak-Glantz 1981). If the situation confronted by Lord Justice Woolf could accurately be thought of as a near terminal crisis of legitimation in many English prisons at the end of the 1980s, *how* and *why* did this differ from other occasions and states of affairs when disorder did not and does not imminently threaten?

Tyler, in an important work (1990; see also Lind and Tyler 1988) argues suggestively, on the basis of empirical evidence, that legitimacy is usually a powerful factor in citizens' obedience to laws and rules, and that this in turn is intimately connected with the realization of shared expectations and criteria of justice. Like Beetham, Tyler argues against those positions which assume that when people obey rules they do so mainly out of the fear of the consequences of breaking them or because of some other estimation of their own long-term utility. (Tyler regards such views, associated with a 'public choice' perspective, as being dominant amongst psychologists.) Tyler argues that if this view were true, then the regulation of social life would be a much simpler and more easily calculable matter than in fact it is – one would simply need sufficiently powerful and certain forms of sanction (1990: 21). In reality, Tyler argues, 'the effectiveness of legal authorities ultimately depends on voluntary acceptance of their actions' (1990: 24) and hence on the existence of a 'diffuse' and durable disposition to accept their legitimacy (1990: 29). For Tyler, the key to securing compliance via the legitimate exercise of authority lies especially in people's experience of the fairness of procedures (1990: 63). People in Tyler's Chicago panel study who had had recent dealings with the police and courts expressed a strong interest in both distributive fairness and procedural propriety in evaluating how their case or complaint was dealt with. Indeed, Tyler's subjects evinced a greater concern for quality of treatment (1990: 73) and the *manner* of their treatment (1990: 88–9) than for the outcome of their own case *tout court*. People were more likely to accept an adverse outcome whilst retaining intact their prior view of the legitimacy of the system as such if they felt that their case had been dealt with in a procedurally correct way and that they had been accorded respect (1990: 84).

On Tyler's account people review both the procedural correctness and the manner of their treatment in encounters with authority as 'information about the group that the authority represents and to which the parties to the dispute or allocation belong' (1990: 175). Hence, every transaction with authority raises questions that extend 'far beyond those connected with the issue to be decided' (*loc. cit.*). Such issues include 'representation, neutrality, bias, honesty, quality of decision, and consistency' (*loc. cit.*) and more generally of participation and esteem. In short they reflect upon the nature of the power relations in question and the validity of claims to justified authority – that is to legitimacy.

Writing from distinct perspectives Beetham and Tyler separately produce parallel and consonant analyses. If Beetham is right, then no governing authority can afford to disregard the problem of legitimation, no matter what manner of polity is in question. On this view, the received notion that prisons have always been autocratic in character and confront problems which are to some degree *sui generis* distracts attention from the fact that they are routinely beset by legitimation problems and that these are in key respect similar to those encountered in other settings. Tyler would broadly agree, but also draws attention to some ways in which legitimacy claims are placed on the line in routine encounters and interactions, on both procedural and interpersonal levels.

In the light of these analyses, perhaps one can identify a number of facets of legitimacy relevant to the maintenance of order and the incidence of disorder in prisons. Amongst these one would certainly have to include the centrality of fair procedures and (at least within the 'special population' (Tyler 1990: 153) of the prison, where people are perhaps unusually knowledgeable about one another's affairs⁶) consistent outcomes. A third component concerns the quality of behaviour of officials – regarded in some quite strong sense as *representing* the system (*loc. cit.*). Fourthly it seems likely – and Woolf would certainly concur with this view – that the basic regime of the institution, its accommodation, services and activities may itself be regarded as illegitimate in failing to meet commonly expected standards⁷. Given a list such as this, one can certainly envisage circumstances under which institutions may meet some of these criteria but not others. For example, a procedurally 'correct' and bureaucratically efficient regime (such as that run by Warden Brierton in Stateville, Illinois in the 1970s: see Jacobs 1976: 90ff) might nevertheless fail on grounds of impersonality and lack of humaneness, perhaps helping to explain why prison disorders can and do occur in brand new, uncrowded, well resourced facilities.

LEGITIMACY AND ORDER IN TWO PRISON REGIMES

How directly does this discussion of legitimacy bear on the analysis of social order in prisons? In earlier work (Hay *et al.* 1990; Bottoms *et al.* 1990; Hay and Sparks 1991a) we have compared the problems of order and modes of regulation encountered in two adult male English maximum security prisons whose regimes differed markedly.

At the risk of reducing that comparison to unduly simple terms we can summarize briefly:

Albany

At the time of our study (1988/9) Albany operated a regime which was stringently controlled relative to other English long-term prisons. This involved, in particular, restrictions on association and movement within the prison which were more pronounced than in the comparison prison. Prisoners in general were well aware of these differences: indeed prisoners in Albany probably had a slightly exaggerated perception of their relative disadvantage. Accordingly, many felt aggrieved at having been located there, and felt that they had been given no adequate explanation of their differential treatment by comparison with their peers elsewhere. Some went further and interpreted their allocation as deliberately and personally punitive. Throughout the 1980s Albany regularly generated higher recorded levels of minor disciplinary problems (refusals to work, disobedience, fighting) than other 'dispersal' prisons, giving rise at least to the suspicion that attending to the risk of disorder on one level might serve to exacerbate it on another (Hay and Sparks 1991b).

The Albany regime was therefore in the main rather unpopular with prisoners, except among older men who often welcomed its restraining effect on the noisiness and bumptiousness of the younger majority. However, with few exceptions (and somewhat against our initial expectations) prisoners drew a rather sharp distinction between the regime as such and the staff who administered it, whom they considered in the main to be reasonable, fair, 'just doing their job' and so on. Our impression was that, aware that they were administering a disliked system (albeit one which they strongly supported themselves) staff at Albany took some pains to counter their own potential unpopularity by cultivating a rather discreet and amenable interpersonal style. They did this in the hope – realized to some extent – that good relationships would help them retain a degree of legitimate authority. Moreover, the regime at Albany was quite highly procedurally explicit and relatively consistent in its operation, and emphasized good 'service delivery' in matters such as food and pre-release programmes. Assuming Tyler's views to be correct, all

these factors may have helped limit the scale of the prison's legitimacy deficit.

Long Lartin

The regime at Long Lartin was widely regarded by prisoners as having a number of benefits over those of other 'dispersal' prisons. Prisoners had significantly more time out of cells than at Albany, more association, more freedom of movement within the prison, more frequent access to the gymnasium. They also noted and mostly approved the staff's cultivation of a rather relaxed and friendly way of working and a light and unobtrusive style of supervision. The use of first names between prisoners and staff was fairly general, and staff took pride in being able to manage the prison without formally sanctioning every 'petty' infraction of the rules. Amongst the successes claimed for Long Lartin's liberal approach were the avoidance of riots, and hence an unbroken line of continuity with the founding principles of the 'dispersal' prison system (Sir Leon Radzinowicz's 'liberal regime within a secure perimeter': see Advisory Council on the Penal System 1968). It was widely accepted that a number of prisoners who had rejected regimes at other long-term prisons and been reckoned unmanageable had settled successfully at Long Lartin. It was also clear that Long Lartin used its rather favoured status in the eyes of most inmates as a device for influencing prisoners' behaviour. Thus the prison had enjoyed some success in integrating sex offenders and other vulnerable prisoners into the main body of the prison's population, calling on potential predators' fears of being transferred elsewhere. By the same token vulnerable prisoners were more ready to tolerate the risks involved in mixing with other prisoners for the sake of the perceived benefits of the regime. Yet it was also clear that such people were by no means free from fear. Moreover, the level of *sub rosa* economic activity (especially in the supply of drugs, and gambling) was rather high; there was evidence from hospital records and numbers of alarm bells to suggest that the level of back-stage violence might have been much greater than the official picture of calm would indicate; and when incidents did occur those within our sample were more likely than at Albany to involve numerous people and the use of weapons. The history of stability (assessed in terms of the absence of large scale collective unrest), the favourable regime and the generally approved staff practices lent to Long Lartin an appearance of much greater legitimacy in the eyes of the majority of prisoners than was the case at Albany. Yet it also seems probable that the regime gave rise to opportunities for deviance, and predation on fellow-inmates, not found to the same degree elsewhere, and hence to some risks in day-to-day inmate life. It is certain, from our evidence, that some of the victims of predation felt not only afraid but angry and

unsupported. Meanwhile some of those alleged to have caused trouble, and in consequence transferred from the prison on the Governor's authority,⁸ felt they had been unfairly treated procedurally. Hence there were two kinds of legitimacy question raised by some prisoners against the liberal regime at Long Lartin: one concerning the provision of safe custody, and one concerning its scope for procedural discretion and consequent injustice.

CONCLUSIONS

In our view this discussion clearly confirms that Woolf was correct in his implicit stress on the need for prisons to seek legitimation from prisoners, and on the importance of humane regimes and procedural justice in the process of doing so. He was also correct in his emphasis on the necessity to achieve improved staff–prisoner relationships, with important implications for staff training and conduct. We have sought to extend those concerns and to provide them with a developed theoretical basis. The perspectives on which we have drawn argue strongly both for the extension of procedural justice in prisons and for sensitivity to the relational and specifically social aspects of prisoners' treatment.

In the course of preparing this paper, we were asked informally by a prison governor: 'Does all this mean that legitimacy is just about pleasing the prisoners?' It is an important question, and one can easily see how it arises – not least for those who have explicitly or implicitly imbibed the Weberian view of legitimacy simply as subjects' 'belief in legitimacy'. But if, on the other hand, we adopt Beetham's formulation that power relationships are legitimated (in part) when they can be 'justified in terms of [subjects'] beliefs', then subtly different considerations are introduced within the 'dialectic of control' (Giddens 1984) that continually takes place in all prisons. For, as previously indicated, Beetham's formulation injects a moral judgment into the dialogue, and the moral judgment will inevitably be grounded principally in the shared moral beliefs of the particular society in question. Hence, prisoners making far-fetched demands (for example, for luxury accommodation, or waiter-service at all meals) will be easily rebuffed by prison management, who will know that such demands have no basis of moral support in that society. By contrast, the protesting prisoner may not infrequently (as Thomas and Pooley (1980) pointed out) be asserting standards and expectations of fair and humane treatment now taken for granted in the world beyond the wall (cf. again Tyler (1990) on the importance of fair procedures, and the representational importance of the behaviour of officials). Where this is so – or where the prisoner is able successfully to 'point the finger' at prison officials for not following their own rules or proclaimed

principles (Mathiesen's (1965) 'censoriousness') – then paying attention to prisoners' critiques of prison regimes has to be judged as *not* being simply about 'pleasing the prisoners'; rather, such critiques may be pointing to moral issues which will, sooner or later, carry real social weight both within the prison system and in wider political debates.

If this is correct, then a defensible and legitimated prison regime demands a dialogue in which prisoners' voices (as to what is 'justified in terms of their beliefs') are registered and have a chance of being responded to.⁹ Moreover (as Woolf recognized with a clarity unfamiliar in English penal debates), legitimacy, thus understood, demands reference to standards that can be defended externally in moral and political argument. In the first instance this stipulates attention both to procedural and relational dimensions of prison regimes; in other words, to the recognition of prisoners in terms both of their citizenship and their ordinary humanity. (More ultimately it also calls for accounts both of the justice of the laws and procedures which put them in prison, and of the rationales which claim to justify their confinement.) Where any of this can be achieved, prisoners are to that extent more likely to acknowledge the legitimacy of the regime, as the positive dimensions of our Albany/Long Lartin evidence show.

We have argued elsewhere (Bottoms *et al.* 1990: 91–2) that an analogy can be drawn between approaches to the maintenance of order in prisons and approaches to crime prevention in other contexts, be they mainly situational or mainly social in emphasis. Prisons impose higher levels of situational control than are usually present elsewhere. But an exclusive focus on the situational questions of environmental management and surveillance carries both diminishing returns and possible counter-productive consequences. Obtrusive situational controls irritate and grate, and are likely to stimulate resistance, especially when applied to places where people live. The social level of control is therefore also inherent – but any social crime prevention initiative makes assumptions about the legitimate nature of the community which aspires to integrate the offender within it. For these reasons, we believe, it is important that the situationally controlling aspects of the prison environment be as unobtrusive as possible, and impede the normalization of its interior life to the least extent compatible with safe custody. But it is also vital that the prison be made habitable in other ways. For considerations of fairness and respect are not just normatively desirable, they are central to the achievement and reproduction of social order itself. Clearly, neither of the two prisons in our own study had achieved a fully satisfactory synthesis of these priorities. Albany's heavily situational approach was regarded by most prisoners as onerous, even provocative. Long Lartin's strongly social emphasis left open opportunities for victimization which we found unsettling. We hope however that the comparison between them clarifies some of the dilemmas.

Even in a somewhat speculative paper there are points that we feel able to state with some certainty. These include that every instance of brutality in prisons, every casual racist joke and demeaning remark, every ignored petition, every unwarranted bureaucratic delay, every inedible meal, every arbitrary decision to segregate or transfer without giving clear and well founded reasons, every petty miscarriage of justice, every futile and inactive period of time – is delegitimising. The combination of an inherent legitimacy deficit with an unusually great disparity of power places a peculiar onus on prison authorities to attend to the legitimacy of their actions. This underlines the necessity of acting legitimately in terms of formal rules at all times, and attending to those elements of shared moral beliefs existing between staff and prisoners (for example in terms of humane regimes, distributive and procedural fairness and supplying meaningful rationales for the exercise of power) so as to maximize the residual sense in which prison authorities may be entitled to call upon prisoners to confer consent.

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NOTES

1. We would particularly like to express our thanks to Professor David Beetham and to the Journal's anonymous referee for their helpful comments on an earlier draft of this paper, and to Will Hay for continuing collaboration.

2. An important element in the background to the Woolf Report was that there was documented evidence of a decline in the quality of prison regimes in the period from the early 1970s to the late 1980s, despite improved staffing ratios: see King and McDermott (1989).

3. Compare on this point Giddens's (1984: 14–16) remarks on the 'smooth flow' of power and on the concept of the 'dialectic of control' as the means whereby subordinate groups are able to affect the actions of the powerful. Appeals to standards of legitimate rule and direct challenges to the legitimacy of particular

exercises of power both fall under this heading.

4. Most writers on the topic agree in arguing that conditions of social, political and economic marginality and exclusion are those most likely to engender sporadic and generally uncoordinated violent unrest – especially perhaps where states and governments have concluded that such 'lumpenviolence' poses no general threat to their legitimacy or security. This is what Held calls the 'vicious circles of non-participation' (1987: 183; see also Dunn, 1990).

5. This is indeed implicit in Scraton *et al.*'s own concentration on Peterhead as an extreme instance of the tendencies they have in mind, and by their own frequent use of the Barlinnie Special Unit as a term of comparison. See also, amongst many, Fitzgerald (1987), Hay

and Sparks (1991a), Bottoms, Hay and Sparks (1990).

6. Tyler (1990) argues that lack of knowledge of outcomes was one reason why, in his panel study, judgments about procedural fairness weighed more heavily than those of consistency of outcomes; he points out, however, that this might well be different in 'special populations' such as groups of career criminals.

7. Compare here the remarks of the Prior Committee on the Prison Disciplinary System (Home Office 1985: 7–8): 'control in prison derives from three main elements: the quality of relationships between staff and prisoners; the provision of a wide range of purposeful activities for prisoners; and procedures that are demonstrably fair for enforcing rules and responding to complaints'. (We are grateful to Mr. Suhail Ahmad for reminding us of this source.)

8. At that time Home Office Circular Instruction 10/74 empowered the Governor of any maximum-security 'dispersal' prison to remove a prisoner from his prison to another prison (normally to reserved cells in a specified local prison) summarily (and under restraint if necessary) for 28 days. This procedure was officially styled a 'cooling off period', but its sudden and highly discretionary character frequently had rather the reverse of that effect on those subjected to it. This measure has since been replaced by Circular Instruction 37/90 which introduces certain procedural safeguards, but leaves the effective power itself substantially unaltered. Curiously Woolf 'reluctantly concluded that this power should remain in place (paras 12.254, 12.256). For us and for other commentators (King and McDermott, 1990) it is at best uncertain whether the tactical benefits to prison managers of this measure outweigh either the arguments of principle against it from the vantage point of prisoners' rights or its possible delegitimising effect.

9. Compare also the views of J. R. Lucas (1980) that persons in power who are concerned to avoid injustice need (i) to consider situations from the point of view of those who may be disadvantaged or disappointed by decisions they (the

powerful) are about to make; and (ii) to reach decisions that are adverse to those citizens only for reasons that they (the citizens) ought rationally to acknowledge as cogent.

BIBLIOGRAPHY

- Advisory Council on the Penal System** 1968 *The Regime for Prisoners Under Conditions of Maximum Security* (Radzi-nowicz Report), London: HMSO.
- Barak-Glantz, I.** 1981 'Towards a conceptual schema of prison management styles', *The Prison Journal* 61: 42–60.
- Beetham, D.** 1991 *The Legitimation of Power*, London: Macmillan.
- Bottoms, A.E., Hay, W. and Sparks, R.** 1990 'Situational and social approaches to the prevention of disorder in long-term prisons', *The Prison Journal* 70: 83–95.
- Bottoms, A.E. and Light, R.** (eds) 1987 *Problems of Long-Term Imprisonment*, Aldershot: Gower.
- Cavadino, M. and Dignan, J.** 1992 *The Penal System: An Introduction*, London: Sage.
- Dahrendorf, R.** 1990 *Reflections on the Revolutions in Europe*, London: Chatto.
- Dilulio, J.** 1987 *Governing Prisons*, New York: The Free Press.
- Dunn, J.** 1990 *Interpreting Political Responsibility*, Cambridge: Polity Press.
- Fitzgerald, M.** 1987 'The telephone rings – long-term imprisonment' in A.E. Bottoms and R. Light (eds) *Problems of Long-Term Imprisonment*, Aldershot: Gower.
- Giddens, A.** 1977 *Studies in Social and Political Theory*, London: Hutchinson.
- Giddens, A.** 1984 *The Constitution of Society*, Cambridge: Polity Press.
- Hay, W., Sparks, R. and Bottoms, A.** 1990 *Control Problems and the Long-Term Prisoner*, Unpublished report submitted to the Home Office Research and Planning Unit by the University of Cambridge Institute of Criminology.
- Hay, W. and Sparks, R.** 1991a 'Maintaining order in the English dispersal system' in A.K. Bottomley and W. Hay (eds) *Special Units for Difficult Prisoners*, Hull: University of Hull.

- Hay, W. and Sparks, R.** 1991b 'Vulnerable prisoners: risk in long-term prisons', Paper presented to the British Criminology Conference, University of York, July 1991.
- Held, D.** 1987 *Models of Democracy*, Cambridge: Polity Press.
- Home Office** 1984 *Managing the Long-Term Prison System: the Report of the Control Review Committee*, London: HMSO.
- Home Office** 1985 *Report of the Committee on the Prison Disciplinary System (Prior Report), Volume 1: Report*, Cmnd 9641-1, London: HMSO.
- Irwin, J.** 1980 *Prisons in Turmoil*, Chicago: Little Brown.
- Jacobs, J.** 1976 *Stateville: the Penitentiary in Mass Society*, Chicago: University of Chicago Press.
- King, R.** 1985 'Control in prisons' in M. Maguire *et al.* (eds) *Accountability and Prisons*, London: Tavistock.
- King, R.D. and McDermott, K.** 1989 'British Prisons, 1970–1987: the ever-deepening crisis', *British Journal of Criminology* 29: 107–128.
- King, R.D. and McDermott, K.** 1990 "'My geranium is subversive": some notes on the management of trouble in prisons', *British Journal of Sociology* 41: 445–471.
- Lind, E.A. and Tyler, T.** 1988 *The Social Psychology of Procedural Justice*, New York: Plenum.
- Loucks, N.** (ed.) 1993 *Prison Rules: A Working Guide*, London: Prison Reform Trust.
- Lucas, J.R.** 1980 *On Justice*, Oxford: Clarendon Press.
- Mathiesen, T.** 1965 *The Defences of the Weak*, London: Tavistock.
- Mathiesen, T.** 1974 *The Politics of Abolition*, London: Martin Robertson.
- Mathiesen, T.** 1990 *Prison on Trial: A Critical Assessment*, London: Sage.
- Ruggiero, V.** 1991 'Public opinion and penal reform in Britain', *Crime, Law and Social Change* 15: 37–50.
- Scruton, P., Sim, J. and Skidmore, P.** 1991 *Prisons Under Protest*, Buckingham: Open University Press.
- Sim, J.** 1991 'The Peterhead Rebellion', Paper presented to the British Criminology Conference, University of York, July 1991.
- Sykes, G.** 1958 *The Society of Captives*, Princeton, N.J.: Princeton University Press.
- Thomas, J. and Pooley, R.** 1980 *The Exploding Prison*, London: Junction Books.
- Tyler, T.R.** 1990 *Why People Obey the Law*, New Haven: Yale University Press.
- Weber, M.** 1968 *Economy and Society*, Berkeley, California: University of California Press.
- Woolf, Lord Justice** 1991 *Prison Disturbances, April 1990*, Cm. 1456, London: HMSO.