

CHAPTER 11

Violence and Lawlessness at Soledad Prison¹

by Fay Stender

The California prison system was shaken by unprecedented levels of violence in the years 1970–1971. In the course of two years, 9 prison guards and 24 inmates were killed. More than 100 nonfatal assaults against prison officials were reported, and nearly five times that many assaults against prisoners.² Prison officials in the state have looked everywhere for explanations of this violence except to the conditions within prisons themselves.

The president of the California Correctional Officers' Association, in testimony before a Congressional hearing on prisons, explained the causes of violence this way:

Prison violence and murder in California, if not throughout the United States, will continue to increase unless and until we accept the cold, hard fact that a conspiracy exists to destroy our penal system and are willing to deal accordingly with those who are responsible.

And those responsible include not only a small portion of our inmate population, but a segment of our free society

1. The author is indebted for editorial assistance to Elsa Knight Thompson, former public affairs director, station KPFA, Berkeley, and presently consultant to the Prison Law Project.

2. From 1953 to 1970, a total of four prison employees were killed on duty.

that encompasses professional people and lay citizens, as well, apparently, as a few members of our legislature. . . .

We find that the most commonly employed approach of inmate revolutionary recruitment and agitation is provided through inmate contact with members of the legal profession. Radical attorneys appear to provide the ideal pipeline between the outside and the inside revolutionary movement. . . .

Our Association has uncovered a countless number of incidents involving plots of violence that are directly related to outside sources, some of whom we understand are here today to provide testimony to your committee.³

The Board of Corrections, in a special report to the governor, presented a similar view of the scope of outside agitation responsible for the violence within prisons:

It became reasonably clear that some type of inmate organization, probably involving a relatively small number of prisoners, did, in fact, exist. Information from several sources alleged that some outside attorneys had encouraged disruptions in prisons such as hunger strikes and riots, as a means of generating unfavorable publicity.

Information was obtained indicating that some investigators and aides for lawyers were acting as message carriers between prisoners. These same lawyers and legal aides often appeared at outside events and made false and inflammatory statements about prison conditions.⁴

The Department of Corrections itself, in addition to seeing prison violence as the result of outside agitation, felt that much of the problem was rooted in neurological brain damage of prisoners. The director of the Department proposed the development of psychosurgical techniques to "cure" the "violent

3. Testimony of Moe Camacho, reprinted in hearings before Subcommittee No. 3 of the Committee on the Judiciary, House of Representatives, Ninety-Second Congress, First Session, "Corrections, Part II: Prisons, Prison Reform and Prisoners' Rights: California," October 25, 1971 (Serial No. 15), pp. 142–144.

4. *Ibid.*, p. 321.

inmate" of his aggressive tendencies through brain surgery (see p. 330 for the text of his proposal). Nowhere, to my knowledge, has the Department of Corrections ever hinted that the violence of prisoners could in any way be related to the conditions within prison, to the absence of enforceable prisoners' rights, to the total powerlessness of prisoners, or to the treatment of prisoners by guards and officials.

This chapter will examine the relationship of prison violence to prison conditions, particularly to the quality of lawlessness in the administration of American prisons. My understanding of these issues is based on my experience as an attorney for hundreds of prisoners in Soledad and other prisons during the period 1970-1971, and on information from other attorneys who have worked with prisoners throughout the California Department of Corrections.

LAW AND LAWLESSNESS

"The essential element of the rule of law," Phillip Selznick has written, "is the restraint of official power by rational principles of civil order. . . . Legality imposes an environment of constraint, of tests to be met, standards to be observed, ideals to be fulfilled."⁵

The irreducible requirements of any system of law include standards of procedure, some degree of reliability and enforceability, and some real mutuality between the enforcers of the law and those upon whom the law is enforced. The rules and the enforcement of the rules must have some claim to legitimacy beyond the existence of naked and total power. There must be some rational relationship between the severity of the punishment and the behavior being punished, and some reliable procedure for the determination of guilt or innocence. Above

5. Phillip Selznick, *Law, Society and Industrial Justice* (New York: Russell Sage Foundation, 1969), p. 11.

all, there must be some meaningful restraint upon the enforcers of the rules as they act upon the subjects of their enforcement.

The notion of restraint upon the enforcers is at the heart of what is meant by the "rule of law." It is only when institutionalized restraint exists that the individual can be protected from the arbitrary exercise of discretionary power by the enforcers of the law. For such restraint to have any meaning, it cannot be based on the benevolence of the enforcers, on their feelings, whims, or subjective judgment. Restraint must be grounded in the basic structures of the legal system which provide the subjects of enforcement with real opportunities for appeal of actions, channels for redress of grievances, and power to punish the enforcers themselves for violations of the rules.

When no reliable, workable channels exist for redress of grievances or appeal of decisions, when there is no enforceable restraint upon the behavior of the enforcers, then there is no "law." A relationship exists which can be described in terms of power and powerlessness, but there are no attributes of law and legality, in either a philosophical or a commonsense understanding of the term. Such a situation is one of "lawlessness."

In the American legal tradition, the United States Constitution, with its backdrop of English common law, provides the basis for the rule of law. The Constitutional concept of "cruel and unusual punishment" is directed specifically at preventing the enforcers of the law from using certain kinds of sanctions against offenders. The Bill of Rights restrains officials from abridging the freedom of speech, assembly, religion, and petition for redress of grievances. These substantive rights are intertwined, in the Constitution, with procedural rights: the right to assistance of counsel, confrontation of accusers, cross-examination, examination of evidence submitted by the prosecution, opportunity to be heard and to prepare a defense, right to a decision based only on the evidence produced at the hearing or trial, and the right to some form of appeal and review. These

procedural safeguards constitute the “due process” which sustains the rule of law in the courts.⁶

These fundamental elements of the rule of law are almost totally absent from American prisons. Prisoners are denied, either by statute or by prison practices, virtually all substantive Constitutional rights. They are granted very limited freedom of speech and assembly, and only recently, freedom of religion. Within the prison, there are no procedural restraints on the administrators. Not only do they have total power to create the rules the prisoners must obey, but they have total discretion to ignore those rules in the name of expediency. Prisoners have no effective channels for redress of grievances. They are denied even the most rudimentary elements of due process in disciplinary and parole hearings, and they have no legal power whatsoever to obtain sanctions against the enforcers of the rules for arbitrary violations of the law.

For these reasons prisons can be called lawless institutions. While discretionary power pervades the criminal justice system from arrest to plea bargaining, to imprisonment, to probation and parole, only in prisons is it totally unrestrained.⁷ The very essence of American prisons is lawlessness.

6. Even these processes are, of course, open to very serious question. The effective disenfranchisement of a whole class of people, the availability of better legal counsel for the rich than for the poor, raises the question whether conduct can be justly considered “criminal” when it violates rules which protect the economic, political, and social privileges of the owners of property in its various forms. These issues and questions cannot be ignored if we wish to pursue a thorough examination of American justice and American society, but they must fall outside the scope of the present discussion.

7. In many respects the precepts of the rule of law are frequently violated in the courts in America. Nevertheless, in spite of the racial, social, cultural, and economic biases of the courts, criminal law still operates within the procedural *framework* of the rule of law. However unevenly these procedures are enforced, they are potentially enforceable, and they do provide some real safeguards for the subjects of the law. Prisons lack even these formal attributes of a system of law. For a particularly good analysis, see Michael Feit, *Prison Discipline and the Inmate Sense of Injustice* (State University of New York at Albany: School of Criminal Justice, 1972).

LAWLESSNESS AT SOLEDAD PRISON, 1970–1971

The lawlessness which characterizes American prisons in general has been particularly intense in Soledad prison, especially in the period 1970–1971. As an attorney working with the inmates at Soledad, I was struck by the fact that there were almost no consistent rules in the prison. Rules and regulations seemed to change the moment prisoners and their attorneys had adjusted to them. Visiting hours were changed at the time of a proposed visit. Regulations concerning mail, the right of lawyers to discover documents, the use of tape recorders, and the receipt of reading materials were changed frequently, with no warning. There was *nothing* that the inmate or the attorney acting on his behalf could rely on. There was not even the consistency which in a desperate situation can lend at least the security of foreknowledge.

Whatever frustrations attorneys felt when confronting the lawlessness of the prison regime were suffered infinitely more intensely by the inmates. Prisoners at Soledad (as in all California prisons) are expected to accept everything that is told to them about their own unworthiness. They are expected to confess to crimes which they did not commit—including offenses with which they had been charged and acquitted, and even offenses with which they have never been charged but which prison officials or the parole board think they committed. Officials require prisoners to walk between white lines down the corridor and have their hair cut to rigid specifications. In the dining room, prisoners must never take an extra slice of bread (although at Soledad extra bread was thrown away regularly); and they are required to take the next seat at tables (moving out of line to sit next to a friend, or leaving one seat empty and taking the next one, constitutes an in-prison offense which is written up and placed in the prisoner’s central file for the parole board to see). Those few prisoners who can get shop

placements are assigned to an available position regardless of whether it fits the inmate's previous education, experience, aptitude, or his plans for when he will be released. A prisoner is placed in solitary confinement for the most trivial of infractions, or simply because a guard has a grudge against him. Once he is in isolation, the prison authorities can impose a special restricted diet consisting of a food loaf looking somewhat like dog food and almost inedible due to smell, taste, and texture. And of course, each prisoner must contend with the ever-shifting Adult Authority. He never knows when the board will decide that he has the "right attitude" and can be released. He could wait two years, five years, ten years, his life.

Into this atmosphere, already strained almost to the breaking point, came the murder of the three black prisoners in the exercise yard on January 13, 1970. The white guard responsible for the deaths was promptly exonerated without even being taken off duty while his innocence was being "established." Harassment and intimidation of prisoners, especially in the Soledad adjustment center, became increasingly frequent and intense. Inmates have insisted (and staff denied) that some guards spat into the food of the prisoners confined in O wing. Prisoners were tear-gassed and beaten in the cells for causing even the slightest commotion. It became increasingly common for prison officials to try to bribe or threaten inmates to get them to testify against prisoners accused of violent acts within the prison. The prison, supposedly designed to enforce the law, became a complete negation of every principle of legality.

Could an inmate in this situation possibly conceive of himself as a legitimately confined prisoner who had been duly committed to an institution which upholds the law? Could he possibly see the prison as a just institution which has no special interest in his humiliation and degradation? Could an inmate in these circumstances feel that there was any possible reward in continuing the passive acceptance of endless humiliations, harass-

ment, uncertainties? What is surprising in such a situation is not that so much violence occurred in Soledad prison, but so little.

VIOLENCE AND LAWLESSNESS

Violence is not new in American prisons. Although assaults and killings became much more frequent in the early 1970s, they have always been a fact of life in prison. What is distinctive about the violence that occurred at Soledad after the January 13, 1970, shootings is its overtly political character.

Violence in prison can be broken down into four interrelated categories. Each of these is directly or indirectly related to the lawlessness of American prisons:

1. *Violence as an expression of conflict among prisoners.* In the past, this has been the most common form of violence in American prisons, and the kind of violence that is best documented in the literature on prisons. It includes such things as stabbings that are the result of unpaid drug and gambling debts and, more rarely, violence that stems from struggles for power within the inmate society. Much of this kind of violence stems from the extreme deprivations of prison life and the manipulation of those deprivations by prison officials. The number of reports by prisoners of guards who promise early parole or special privileges in exchange for "setting up" a disliked prisoner are too numerous to be discounted as pure fabrications. Involvement by prison officials in racial conflict, in the drug traffic, and other illegal activities also increases violence among prisoners.

2. *Violence as a product of frustration and despair.* This kind of violence is also a traditional part of prison life. The sense that nothing one does makes any difference and that one has no control over his own life can generate rage, personal disorganization, and a constant sense of panic. Under the most trivial of circumstances, such frustrations can lead to aggression. Much of

this tension is directly the result of the total powerlessness of the prisoner and the arbitrary manner in which he is treated.

3. *Violence as an affirmation of autonomy.* Violence on the part of the prisoner, especially when directed against the prison system itself, can be a way of affirming the self, of striking back at the oppression of the prison instead of being destroyed as a person. This form of violence is not merely a product of lawlessness within the prison; it is a psychological defense against that lawlessness. Lawlessness is not only an attack on individual freedom, it is a profound attack on individual dignity; violence can be a highly individualist form of rebellion by the prisoner to defend his dignity from that attack.

4. *Violence as a substitute for law in prison.* Violence by prisoners can be a self-consciously political act. In addition to being a psychological self-defense against the dehumanization of lawlessness, violence can become an attack on that lawlessness itself. Inmates can see themselves as the upholders of "law," and even of "order," within the prison by attempting to use violence, and the threat of violence, as a check on the exercise of arbitrary power by the prison regime.

Until the 1960s, the use of violence as a self-consciously political weapon rarely entered into prison disturbances, and then generally in a limited way. Since then, however, prison violence has become increasingly politicized.

Much of the violence in Soledad Prison during 1970 and 1971 was of this political variety. The ruling by the Monterey County Grand Jury that the January, 1970, killings of the three black inmates in the adjustment center exercise yard were "justifiable homicide" was the clearest possible statement that the power of the guards is absolute and unrestrained, that prisons are utterly lawless institutions. Shortly after the news of the grand jury decision was announced in the prison, a guard was killed, allegedly by a group of prisoners. That act may have been a declaration by the prisoners involved that they were willing to resort to the use of force to "punish" the prison for the murder

of the three prisoners. The act would appear to be not simply an expression of the rage felt over the murders, but an attempt to establish a new pattern of power relationships within the prison. The prison could no longer freely exercise unlimited power without fear of retaliation from prisoners.

The prisoners who actually committed acts of violence against guards were, of course, a small minority. They knew that the consequences of their actions would be continued imprisonment in the most punitive sections of the prison. They knew they would be subjected to new trials, new convictions, and possible death sentences. They knew they would have almost no hope of getting a parole under the indeterminate sentence. While many prisoners silently supported the courage of these defiant prisoners, relatively few were willing to accept the enormous risks of fighting the prison regime.

Lawlessness has always been a reality at Soledad prison; why did a pattern of political violence emerge in 1970? Two issues are especially important in answering this question. First of all, the steady growth during the 1960s of political sophistication and organization of blacks in America had an important influence on the ways in which prisoners saw their imprisonment. Many prisoners, especially minority prisoners, gradually developed a radical understanding of prison and as a result became less willing to accept passively the lawlessness of the prison regime. Soledad prison was a dumping ground for young men who were considered management problems in other institutions and therefore had a higher concentration of defiant prisoners than most other prisons in California.

The second ingredient in the explosiveness of Soledad was a clear increase in lawlessness on the part of the prison in 1969-1970, particularly in the adjustment center. As Meneweather has recounted, the prison guards were systematically increasing racial tensions among prisoners in O and X wings in the months prior to the shootings in the exercise yard. With the shooting in January, the prisoners were notified, in effect, that their lives

were worth nothing and that they would be shot with impunity at the discretion of the guards. The prisoners responded by telling the prison that such actions would be responded to in kind. The conflict increased steadily in the year and a half following the shooting in the O Wing yard. By the spring of 1971 tear-gassing of prisoners in the adjustment center was an almost daily event, and attacks on prison officials became relatively common occurrences.

It was only with the replacing of the prison superintendent and the drastic reduction of the number of prisoners in the adjustment center that the level of violence in Soledad began to decline. By early 1972, Soledad had become quieter. Yet, the same official lawlessness continued, if perhaps more carefully concealed under the guise of manifold regulations and rules. The basic conditions in the prison remained unchanged.

The prison system of California, and the nation, faces a crucial decision in the years to come. The object lesson of Soledad prison in 1970–1971 can lead in two directions. Prison administrators may decide that prisoners must be even more tightly controlled in order to prevent the recurrence of violence. Plans are already in the offing for two small supermaximum-security prisons to replace San Quentin. These prisons would be equipped with all of the most modern devices of electronic surveillance and would create a setting for almost total physical control of the prisoner's life. Although much of the press, building upon the statements of the Department of Corrections, heralds the closing of San Quentin as a step in the direction of reform, these new facilities will, if built, be far more repressive and dehumanizing than even San Quentin and Soledad. Other proposals are to handle the problem of prisoner violence through brain surgery or by building a maximum-security psychiatric prison where violent prisoners could be confined and drugged. All of these responses to prison violence deal with the

problem by increasing the lawlessness and oppressiveness of the prison.

The other choice is for legislatures, the courts, and the people to realize that prisons must be brought under the rule of law. Prison administrators must be placed under reasoned restraint. Prisoners must be given channels for the *effective* redress of grievances. The civil rights of prisoners as well as defendants must be rigorously protected. And the courts must be willing to intervene systematically in the internal operation of prisons to guarantee that protection. It is the absence of law, not "outside agitators," which is responsible for the violence, death, and suffering in the prisons. Not "law and order," but law and restraint upon administrators and guards, will relieve it.

A political analysis of the possibility of achieving such an objective—the true rule of law—in our society is beyond the scope of this chapter. The outlook is not bright, but the profound human and political crisis in the prisons is compelling.