

Liberal Totalitarianism in Prison

Contemporary prisons in the United States can be described as *liberal totalitarian* institutions. The apparent paradox in this expression reflects the contradictions that pervade the life of prisons. They are institutions which, at least formally, have adopted the liberal goal of rehabilitation, while maintaining totalitarian control over the lives of prisoners. Moreover, they have adopted a variety of liberal programs (the indeterminate sentence, therapy programs) which in practice often serve to further the totalitarian goal of changing prisoners into strict conformists to authority. Many of the contradictions between the prisoners' and the officials' views of prison life discussed in Chapters 5 and 6 have their roots in the fact that prisons are simultaneously liberal and totalitarian institutions.

TOTALITARIAN MEANS AND LIBERAL ENDS

No one denies that many aspects of prison life are totalitarian. Prisoners have virtually no formal power within the prison system, and what privileges they have are given to them at the

administrative discretion of the officials. The lives of inmates, in all prisons, are subject to detailed regulation and close surveillance.¹

If in "honor blocks" or in certain minimum-security institutions these regulations appear less restrictive and the surveillance looser, it is not because the prison has yielded control over the prisoners' lives. Rather, the prisoners have tacitly agreed to conform to the demands of the prison regime without resistance. Sheldon Messinger makes this point well:

Much was made by the administrators—particularly the custodial staff—of the opportunities extended to inmates as they moved from non-honor to honor status. But it must be seen that this was *not* a move from a subordinated position into one in which initiative might be exercised. Rather it was, at best, a move from a position in which subordination was insured by rigid regimentation and continuous surveillance to one in which these immediate controls were somewhat relaxed, the inmate having "proved" his willingness to maintain a subordinate posture on his own. He could be "trusted"—as far as any inmate could be trusted—not to take advantage of the relative lack of regimentation and supervision to change the structure of the environment in which he was expected to live. Should he breach this "trust" the full weight of officialdom would be brought to bear upon him.²

In spite of the rhetoric of liberal prison administrators, the correctional prison differs little from the punitive-custodial

1. Gresham Sykes, in his study *The Society of Captives* (Princeton, N.J.: Princeton University Press, 1958), described maximum-security institutions in much these terms: "... the maximum security prison represents a social system in which an attempt is made to create and maintain total or almost total social control. The detailed regulations extending into every area of the individual's life, the constant surveillance, the concentration of power into the hands of a ruling few, the wide gulf between the rulers and the ruled—all are elements of what we would usually call a totalitarian regime." (p. xiv.)

2. Sheldon Messinger, "Strategies of Control" (unpublished doctoral dissertation, University of California, 1969), pp. 203–204.

prison with respect to the totalitarianism of the internal power structure.

The way in which prisons have changed is in the goals those power relationships are supposed to serve. In the traditional, custodial prison, the totalitarianism of the prison structure was taken for granted. If any justification was given, it was in terms of the need for harsh punishment. In the "correctional" prison, the totalitarianism of the structure ostensibly serves to create a setting where rehabilitation can occur. The formal goal of the prison is no longer to exact retribution, but to transform the "antisocial criminal" into a "responsible, law-abiding citizen." Prison officials argue that a prerequisite for accomplishing this goal is order and security within the prison. The totalitarianism of the prison regime is seen as a necessary means to that end.

Prisoners have a quite different view of the purpose of the totalitarian structures of the prison. They see them as simply serving the goal of control per se. Most prisoners consider the rehabilitation ideology a hypocritical façade. The more politicized prisoners frequently see it as a political tactic by their captors to mislead the general public about the nature of prison. Very few prisoners feel that the totalitarian aspects of prison life facilitate rehabilitation in any meaningful way.

Attitudes toward disciplinary procedures illustrate well the difference in views between the prisoners and the officials toward prison totalitarianism. The prison officials see the disciplinary procedures as reasonable and necessary means of maintaining order within the prison, of preventing violence, even of protecting inmates. The prisoners see disciplinary procedures as arbitrary and oppressive instruments which maintain prison order by intimidating the imprisoned. The prison administration feels that in the disciplinary hearings the demands of custody and internal order must be given priority over justice, and so they feel that the sacrifice of fairness and due process is legitimate. To the prisoners, whatever legitimacy the disciplinary hearings might have had is destroyed by the arbitrary

nature of the procedures. From the perspective of the prison administrators, the hearings represent a reasonable exercise of duly constituted authority which makes possible the rehabilitative goals of the prison. From the perspective of the prisoners, the hearings represent the display of arbitrary force by the prison establishment in order to oppress and control the prison population.³

Whichever of these views of prison totalitarianism is correct, one thing is very clear: this totalitarianism contributes substantially to the sense of frustration and despair which pervades the prison population. It matters little to prisoners whether they are forced to conform to arbitrary rules in the name of rehabilitation or in the name of custody and retribution. This is not to deny that some prison officials sincerely believe in the rehabilitative goals of the prison; but those goals make precious little difference to the reality of prison life for most prisoners.

LIBERAL MEANS AND TOTALITARIAN ENDS

Prisons not only use totalitarian means in order to further liberal rehabilitative goals, but they also employ "liberal" means for what can only be considered totalitarian goals. Many of the programs which can be considered the most liberal—the honor blocks, the conjugal visiting program, the gradation of prisons from minimum to maximum security—simultaneously serve as potent weapons of control within the prison. In the old custodial prisons, control depended almost entirely on terror and total regimentation. In the most extreme cases, prisoners were prohibited from speaking to other prisoners and spent nearly all their time in solitary confinement. In the new,

3. To say that prisoners regard the disciplinary *procedures* as oppressive and arbitrary does not mean that prisoners are generally against the existence of rules within the prison. Most prisoners feel that control is necessary within the prison, perhaps even quite strict control. But what they feel is totally unjustified is the kangaroo-court proceedings which masquerade as "hearings" for infractions.

liberal prisons, the system of control has become much more sophisticated. The prisoner is confronted with a system of progressively harsher punishments for resistance to the prison regime, and progressively greater privileges for compliance. While these techniques are not always used to their fullest advantage, they do provide prison officials with a wide range of responses to the problems of control. And, by and large, they have been used effectively.⁴

Probably the best example of the use of liberal programs for totalitarian ends is the indeterminate sentence. The essential logic of the indeterminate sentence is that prisoners should be released from prison as soon as they are rehabilitated. If a robber is rehabilitated fully after one year in prison, it is argued, there is no reason to keep him imprisoned. And similarly, if after ten years he is still unregenerate, he should be kept behind bars. However, in practice, the threat of being denied a parole hangs constantly over the heads of all prisoners. They know that a bad disciplinary record will almost certainly mean extra years in prison, and this is one of the most potent pressures on prisoners to conform to the demands of the prison regime.⁵

To the prisoner, then, not only are the liberal goals of the prison seen as a sham, but the liberal programs are seen as largely serving totalitarian ends. The result is that the central

4. For a fuller discussion of the system of internal control, see Chapter 15 below, especially pp. 326 ff.

5. Messinger, in "Strategies of Control," argues that there has frequently been considerable conflict between the prison officials and the Adult Authority which has reduced the effectiveness of the indeterminate sentence as an instrument of control within the prison. The Adult Authority is less preoccupied with the exigencies of internal prison control and more with the probability of the prisoner's committing a new offense. If the members of the AA feel that a prisoner is likely to commit a new offense, they will hesitate to release him even if his in-prison disciplinary record is good. This reduces (but by no means eliminates) the ability of prison officials to use the offer of a parole as an inducement for compliance to their demands. It also contributes to the extreme sense of futility that many prisoners feel. Since the prison officials and the Adult Authority often operate on different criteria, a prisoner can be left with a sense that nothing he does will help him get out of prison.

experience of prison for most prisoners is *control*. Obedience and conformity become, in practice, the core values of the prison system; and the liberal rehabilitation programs become devices for furthering those values. This does not mean that many of these programs are not intrinsically desirable. Parole, conjugal visits, and recreation, at least in principle, are certainly worthwhile and humane. But in the context of the prison regime, they are also instruments of totalitarian control.

THE TOTALITARIANISM OF PRISON LIBERALISM

Beyond the relationship of means to ends there is an even more basic sense in which prisons can be described as "liberal totalitarian" institutions: the very liberalism of the rehabilitative goal in prison is fundamentally totalitarian. The central rehabilitative goal of the liberal prison, simply stated, is to change criminals into law-abiding citizens. The system tries to "cure" an underlying *disrespect for authority* among prisoners. This notion is part of the official ideology of the rehabilitative prison:

Disturbed attitudes towards authority and inability to accept responsibility represent two areas in which prison inmates need the most help. It is believed that their inability to mature in their attitudes towards authority and responsibility are the sources of failure on parole. . . .

Persons with strong hatred toward authority are in many cases influenced thereby to rebel against the laws of society. . . . Some men enter prison with great hatred and suspicion of the staff—yet actually they have never previously had contact with a single employee of the prison. Obviously, these feelings are a handicap to the efforts of institutional officials to achieve a treatment environment in the prison.⁶

6. Norman Fenton, *Treatment in Prison: How the Family Can Help* (Sacramento: California Department of Corrections Publication, 1959), pp. 20, 59.

The ideal liberal rehabilitative prison finds ways of taking the angry, defiant, disrespectful criminal and transforming him, as Dr. Norman Fenton has said, through "quick and easy cures" into the responsible, obedient, respectful worker.⁷

It is in this emphasis on the prisoner's relationship to authority that the liberal goal of rehabilitation becomes in essence totalitarian. Respect for authority is a central value in both liberal and totalitarian political perspectives, although adherents differ in their conception of the sources of legitimacy for that authority. In a liberal system, authority is legitimate if it is accepted democratically by the people subjected to that authority. In classical liberal theory, an implicit contractual relationship exists between the individual and the authority, and it is this contract which gives the authority legitimacy. In a totalitarian system, on the other hand, the legitimacy of authority is not based on any theoretical contract. Rather, it rests on the absolute control of power by the authority and on an ideology which proclaims that this control serves the interests of some category of people. In the case of Nazi Germany, for example, this category was ethnic: the absolute control of power was in the hands of the Nazi party, which proclaimed that it was exercising that power in the interests of the German people. Regardless of the significant differences between liberal and totalitarian political perspectives as to what constitutes legitimate authority, both stress the importance of respecting that authority and rigorously obeying the laws emanating from it.⁸

7. A discussion of why "respect for authority" is the central goal of the rehabilitative prison appears below in Chapter 15, pp. 323 ff.

8. There are other conceptions of the sources of legitimacy for authority. In a theocracy, the legitimacy of authority is based on religion. In certain personal dictatorships, it may be based on the charisma of the leader. In a radical democratic system, legitimacy is based on the active participation of the people in the exercise of power, in their real and immediate control of decision making. This is different from the liberal notion, in which legitimacy is based on the contract between the people and the state, and the people let their representatives make decisions for them. And in an anarchistic perspective, no state authority at all is legitimate.

Prisons are peculiar institutions with regard to this notion of respect for authority. The authority prison administrators wield is to them liberal and democratic. Their powers are delegated to them by elected legislatures, and they see the legitimacy of their own authority in terms of the implicit contract of a liberal political system. To most prisoners, on the other hand, the authority of the prison system has no liberal democratic legitimacy. Few prisoners feel any sense of contractual relationship between themselves and the prison authorities. The fact that a felon is disenfranchised in most of the United States emphasizes that the authority of the prison, *with respect to the prisoner*, is not a liberal, democratic one. Different prisoners view the power base for the totalitarian authority of the prison in different terms. Some prisoners see it as being the "capitalist class." Many black prisoners see it as being "white America." Most inmates simply see the power base for the prison's authority as being the "outside" or "free" society.⁹

Since from the prisoner's point of view the authority embodied in the prison is totalitarian, the rehabilitative goal of changing prisoners into people who unquestioningly obey that authority is also totalitarian. Through a variety of techniques, ranging from psychotherapy to long-term confinement in the adjustment center, the prison tries to transform prisoners from

9. It could be argued that although the prison represents totalitarian authority to the prisoners once they are imprisoned, it was a liberal, democratic authority with respect to them when they were on the outside. This is an argument of classical liberal theory; the prisoner is viewed as a free man who willfully broke his contract with the liberal, democratic authority, and forfeited his freedom—i.e., his liberal contract—as a result. While this argument may have some reality for the business executive convicted of tax fraud or price fixing, it is of dubious validity for the poor black or white laborer. If there is any implicit contract between them and the state, it is an extremely tenuous one. Some blacks in particular, both within prison and on the outside, see their relationship to the state as lacking any contractual base. They describe themselves as a "black colony" within white America, and when they are imprisoned, they describe themselves as "prisoners of war." To them, the authority of the state is essentially totalitarian, rather than liberal. The important point here is that whether or not the authority outside the prison is seen as liberal or totalitarian, *with respect to the prisoners inside*, that authority as embodied in the prison administration is totalitarian.

individuals who defy authority to individuals who passively conform to authority. From the prison officials' perspective, the more rehabilitated the prisoner becomes in these terms, the more freedom he can be given (in the form of privileges) until eventually he demonstrates that he is "fit" to be released. From the prisoner's perspective, the more he accepts the prison's ideals of rehabilitation, the more he must bow down to an arbitrary authority and the less free he becomes. Every movement toward freedom from the official's perspective is a movement toward submission from the prisoner's.¹⁰

Such a situation is necessarily precarious. The system functions smoothly only as long as prisoners more or less go along with the demands of the prison authorities. When prisoners refuse to conform to those demands, and especially when they openly resist them, the system breaks down. In this situation, the prison resorts to the naked use of force by locking prisoners up, depriving them of their "privileges," gassing them, or shooting them. When this happens, the pretenses of the "liberal" totalitarianism of the prison are exposed and it becomes clear that, with respect to the prisoners, authority rests on force and not on any liberal legitimacy.

10. There are some very difficult ethical issues raised by this discussion. Prisons are institutions which try forcibly to change people. It is difficult to justify changing a person against his will, even if the motives for that change are good ones. Yet, it seems obvious that in certain circumstances, a society has a legitimate right to say to an individual: "You are too dangerous to live among us. You must change before we will let you return to the community." The problem, of course, is in determining what those circumstances are, and in creating just procedures for assisting the changes. In the present society the emphasis on changing the individual criminal through "rehabilitation" basically represents a political alternative to changing the society itself in ways which would reduce crime. Rehabilitation can be considered in a fundamental sense a political alternative to eliminating poverty. These issues will be discussed more fully at the end of Chapter 15 in the section "Humanizing Punishment and Socializing Society."

PART III

Troubles at Soledad