Resisting the Carceral State: Prisoner Resistance from the Bottom Up

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Introduction

TO PROTECT ITS CITIZENS AND MAINTAIN THE STATUS QUO, THE STATE HAS CREATED numerous coercive agencies (Ross, 2005). Some of the most dominant are law enforcement, intelligence/national security, and the military. Although these organizations have been analyzed in the specific context of state crime (e.g., Gill, 1995; Menzies, 1995), few scholars have explicitly reviewed correctional institutions (especially correctional workers, their policies and processes) as perpetrators and facilitators of state crime that can include corruption, civil and human rights violations, and torture (Ross, 2000a; Ross, 2000b; Rothe, 2009). In general, the correctional sanction is established to punish, rehabilitate, and serve as a specific deterrent for lawbreakers. It is also supposed to protect the community and deter others who might engage in similar criminal activity. Aside from punishment, jail and prison sentences rarely achieve the objectives of the correctional sanction.

Although it is generally understood that prisoners give up certain rights such as privacy, it is also acknowledged that the state must achieve its carceral objectives without violating the constitutional guarantees of its incarcerated citizens. Notwithstanding these broad goals, individual correctional systems (i.e., the Federal Bureau of Prisons and individual state Departments of Corrections) and professional organizations (e.g., the American Correctional Association and American Jails Association) have drawn up mission statements, policies, and procedures that clarify their objectives. Most contain clauses regarding the role of correctional officers in relationship to inmates.

To deal with or confront substandard living conditions or an overly punitive environment—known as the deprivations of prison (Sykes and Messinger, 1960) or penal harm (Clear, 1994)—prisoners generally adapt (through prisonization) or innovate so as to lessen or blunt the impact of the deprivation/sanction. Alternatively, inmates may test or protest institutional norms, practices, and policies by resisting. Much of this is expressed in "weapons of the weak" (Scott, 1987). Not all poor prison conditions have easily recognizable prisoner adaptations and it is not always

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possible to identify all prisoner acts of resistance. Some deprivations require the intervention of family members, prison activists, the correctional facility, and/or state or federal government. This, however, is no guarantee that the problems will be fixed. Because of its overwhelming resources, the state typically reasserts its will through the legal system, by implementing new polices or practices, or preventing convicts and their allies from exercising their rights through the mobilization of bias (Bachrach and Baratz, 1962).[1]

However, courts no longer consider prisoners to be slaves of the state. (i.e., *Ruffin* v. *Commonwealth*) and penal facilities are no longer sovereign entities. Moreover, the Supreme Court has explicitly ruled that inmates enjoy constitutional protections guaranteed by the Bill of Rights. They are applicable to the states via the Fourteenth Amendment (federal guarantees to citizens under the protection of states). As Justice Douglas noted, "prisoners are still 'persons' entitled to all constitutional rights unless their liberty has been constitutionally curtailed by procedures that satisfy all of the requirements of due process" (*Procunier* v. *Martinez*, 1974: 428).

A small group of scholars has provided prison, prisoner, or country-specific reviews of prisoner adaptations and resistance (Buntman, 1998; Bosworth, 1999; Bosworth and Carrabine, 2001; Carlton, 2008; Gómez, 2006; Law, 2009), but the field lacks a relatively comprehensive model of the relationship among these processes. Neither is it geared to the American context or situated as a form of resistance to state crime. The following discussion reviews the most salient and problematic prison conditions through a brief examination of prisoner adaptations and prisoner resistance.[2] The article concludes with an analysis of state reactions to prisoner adaptations and resistance.

Prison Deprivations as State Crime

Since the Treaty of Westphalia, the state has increasingly been responsible for the administration of justice. No longer are religious organizations the primary formal institution of social control for ensuring that people adhere to community standards and morals. The criminal justice system (CJS) is responsible for making sure that those who violate the criminal law are arrested, prosecuted, and punished. In most advanced industrialized democracies, however, the CJS, as one of the most dominant branches of the state, is not given carte blanche. They must carry out their work within the confines of procedural and substantive laws. Moreover, jails and prisons are typically mandated by their state correctional departments to operate their facilities in accordance with the standards of accreditation approved by the American Correctional Association. These policies and practices generally duplicate those found in most civil rights and human rights documents, including the state and federal constitutions. Finally, inmates are protected by the United Nations' Universal Declaration of Human Rights, which states, "everyone has the right to a standard of living adequate for the health and well-being of oneself and one's family, including food, clothing, housing, and medical care."

When jails and prisons violate these safeguards, they are committing state crimes. Some of the most dominant state crimes committed by jail and prison workers are murder, other forms of unnecessary violence, and human rights violations (including torture, inadequate access to food, failure to provide proper living conditions, etc.). State crimes against prisoners are crimes of commission and crimes of omission.

Prison Conditions/Deprivations

When individuals are sentenced to jail or prison they suffer numerous deprivations (e.g., National Commission on Safety and Abuse in Prison, 2006; Ross and Richards, 2002; Ross, 2006; Sykes, 1958). But not all correctional institutions are the same. Conditions inside jail and prison facilities vary among the federal, regional, and state systems of corrections, between male and female prisons, and among different levels of security. Rules and rule violations differ from one facility to another. What follows is a brief review of the more salient deprivations.

Oppressive Living Conditions

Food: The quality and amount of food holds enormous importance for convicts (Ross and Richards, 2002: Chapter 7; Valentine and Longstaff, 1998). Meals served in jails and prisons need to maintain an established nutritional value. These standards are set by state and federal guidelines and are supported by accrediting agencies such as the American Correctional Association. However, occasionally, the fruit and vegetables are or appear to be bruised, overripe, rotten, or canned (Ross and Richards, 2002: Chapter 7) and the meat and chicken typically are of lowest quality. Moreover, convicts routinely complain that correctional officers (COs) place excrement, rodent parts, and insects in their food (Hassine, 2004). Whether this actually happens is difficult to verify. Depending on the prison system, those who are in solitary confinement may receive "prison loafs," in which the food offered for the day is ground up, placed in a baking pan, and then reheated before being served to the inmates. In 2009, prisoners at the North Point Training Center, a correctional facility in Kentucky, rioted over the inadequate quality of food served to them. As part of the governmental response, in January 2010, state lawmakers questioned the DOC's contract with Aramark Correctional Services, which provides food service to Kentucky prisons and to nearly 600 jails and prison in the United States.

Unsanitary Living Conditions: Individuals sent to jail or prison must worry about catching serious and possibly life-threatening diseases. Correctional facilities are typically dirty, lack proper sanitary conditions, are overcrowded, and have poor ventilation (McDonald, 1999; Murphy, 2003; Speed Weed, 2001). In the United States, prisoners are at constant risk of being infected with tuberculosis, hepatitis, and acquired immunity deficiency syndrome (HIV/AIDS). Beyond infectious diseases, a number of health concerns are caused by unsanitary living conditions, including: noise/hearing loss, lung cancer, and asbestos poisoning. In situations

like this, communicable diseases can quickly spread through the entire inmate population. In November 2009, it came to public attention that the New Jersey State Commission on Corrections discovered numerous unsanitary practices at the Nassau County jail, including a lack of appropriate cleaning supplies for floors and kitchen implements, leaky roofs, and moldy ceilings.

Inadequate Health Care: Medical services are typically limited and substandard (Hylton, 2003; Marquart et al., 1997; Vaughn and Carroll, 1998). Inmates will find the medical staff to be small, overburdened, and—even if they care to help—prevented from doing so by a prison health care system that is under funded, bureaucratic, and severely limited in the services and medical procedures authorized (Fleisher, 1997). For example, one of the most important recommendations made by the 2005 Commission on Safety and Abuse of Prisoners was that since county and state jails and prisons had failed to provide necessary health care, the services should be taken over by local public health services and by the United States Public Health Service.

Overcrowding: America's jails and prisons are severely overcrowded (McKinnon, 2004). In some facilities, four prisoners are sleeping in cells originally designed for one person. Other correctional institutions have converted their halls, recreational areas, and classrooms into dormitories with double and triple bunking. "By 1980, two-thirds of all inmates in this country lived in cells or dormitories that provide less than sixty square feet of living space per person—the minimum standard deemed acceptable by the American Public Health Association, the Justice Department, and other authorities. Many lived in cells measuring half that" (Hallinan, 2003: 97). California, for example, has one the most severe overcrowding problems in the country. In 2008, the Berkeley-based Prison Law Office filed suit in federal court against the overcrowded prison conditions in California prisons. In January 2010, the court mandated the California DOC to reduce the number of inmates by 137.5% of their design capacity.

Lack of Physical Safety: Correctional facilities are places where many inmates experience and engage in different kinds of physical violence (Bottoms, 1999; Fleisher, 1989; Marquart, 1986). These include assaults (both sexual and nonsexual) (Human Rights Watch, 2001; Lockwood, 1980; Rideau, 1992), disturbances, rebellions, and riots (Fleisher, 1989; May and Pitts, 2000; Ross, 2006: 81–97). Assaults between convicts are typically over debts and annoyances, but disturbances, rebellions, and riots are typically protest actions against the administration.

The main form of state-sponsored violence in jail and prison is that stemming from an inmate's interactions with correctional personnel. Prison staff periodically use physical violence, including less than lethal force against convicts (Pratt, Maahs, and Hemmens, 1999; Martin, 2006). Yet, they also occasionally engage in beatings of convicts that are a direct form of retaliation. Correctional officers (COs) have been accused and convicted of torture (Kerness and Ehehosi, 2001). In 1992, for example, prisoner Vaugh Dortch, a prisoner in California's Pelican Bay received

third-degree burns when COs poured scalding water on his feces-covered body. Between 1984 and 1994, correctional officers at Corcoran Prison in California routinely ran "gladiator fights" that pitted rival inmates and gangs against each other. Seven inmates were killed. Beyond the strict guidelines governing officer use of force, COs are responsible for the physical safety of inmates. Thus, when COs fail to prevent assaults or put known enemies in the same cell or tier, they are engaging in a form of deliberate indifference, which is another form of state crime (Vaughn and del Carmen, 1995).

Restriction of Prisoner's Religious Freedom: Departments of correction have made it increasingly difficult for many inmates to practice their religious beliefs. Followers of the Christian and Jewish faiths have found it easiest to follow their spiritual convictions, while Muslims and those practicing nontraditional faiths have found it much more difficult. For example, Native Americans have found it difficult to use (i.e., burn sweet grass) and practice the sweat lodge ceremony (Archambeault, 2000; 2006). Reasons typically cited by correctional facilities are safety issues and the failure to provide equal services to others. Individuals claiming to be wiccans (witches) have also fallen prey to this problem. Religious books sent in from the outside have run afoul of prison censors and been banned. Many facilities have frustrated, or prevented, practitioners of certain faiths from having physical space for group worship. In January 2010, after a successful lawsuit, the California Department of Corrections and Rehabilitation finally agreed to serve meals following strict Muslim dietary codes to its inmates.

Impaired Access to the Courts: In many jails and prisons, inmates find it increasingly difficult to adequately address their legal needs. For example, many prison libraries are woefully out of date. Moreover, the administration often limits inmate access to these libraries, citing security concerns due to understaffing. Prisoners must also contend with prison mail censors, who often disregard court mandates that require them to open an inmate's legal mail in his or her presence. Thus, confidential communications between a lawyer and client are subject to gross intrusion at the hands of prison officials. Finally, many inmates struggle to appropriately file legal documents. Exorbitant postage, nonexistent mail carriers, and CO retaliation often preclude a prisoner from meeting court-ordered filing deadlines.

Not all oppressive prison conditions have easily recognizable adaptations. They are usually problem specific (Fry and Frese, 1992). Some of the most recognizable adaptations include dependence on the commissary, exercise, practicing proper sanitary methods, following the inmate code, self-defense, joining a gang, and enlisting the aid of jailhouse lawyers.

Prisoner Resistance to Crimes of the State

Most prisoners direct a considerable amount of resistance toward the institutional conditions of incarceration, COs, and, by extension, the prison management.

Inmates use these methods when attempting to confront those who implement and promulgate the rules that lead to deprivations in prison.

Passive-Aggressive Behavior: Short of refusing to comply with a direct order, prisoners have several creative ways to resist authority. A common one is *slow playing*. In general, this involves complying with the direct orders of a CO, but doing so very slowly or poorly. For example, when an officer tells a group of cons to paint a corridor, what normally would take a day may require a week. In other words, it is done in a manner that angers the officer. Alternatively, cons might ignore the officer and pretend to be hard of hearing (Lerner, 2002).

Monkey Wrenching: Because of boredom, anger, or frustration, inmates break equipment or deface the property. Using corrections equipment in a way it was not intended (including "monkey-wrenching," or purposely breaking equipment) occurs frequently in factories and industry (Abbey, 1975). Many instances are acts of low-scale, unconscious rebellion, reflecting frustration with poorly functioning or maintained equipment, or difficulties with the institution's management. When equipment does not work properly, inmates may damage it further to demonstrate their frustration or to compel the administration to finally replace the tool or equipment.

Insubordination: To resist authority and the seemingly arbitrary orders of COs and the facility, convicts may refuse direct orders from COs, such as getting out of their cells. COs often perform cell extractions in response, in which a number of COs, clad in riot gear, sometimes use less than lethal weapons such as pepper spray. This typically results in a process of re-victimization and additional state repression, further aggravating prison conditions and subsequent prisoner resistance.

Violence by Convicts Against Themselves: Self-injury may be motivated by depression or feelings of hopelessness, but it is a way of gaining attention. It demonstrates that the inmate, not the correctional facility, has ultimate control over a person's life. In a small way, it is a means of getting back at the institution. There are numerous ways for cons to hurt and/or kill themselves beyond the scrutiny of correctional workers and other inmates (Ross, 2006: 81–82). This includes self-suffocation, attempted escape (with being shot almost a certain outcome), or slow death by having sex with an inmate known to suffer from HIV/AIDS.

Enlisting the Help of Outsiders: Prisoners who have serious medical problems, need life-saving surgery, expensive medication, and/or sophisticated medical protocols generally require outside intervention (i.e., family, friends, powerful politicians, etc.) to obtain treatment (Murphy, 2003). Some inmates have resorted to the media by writing Op-Eds and other sorts of communications to press their cases and get their voices heard. Collectively known as prisoner journalism, it has produced people such as Wilber Rideau and Ron Wikberg (1992), and Mumia Abu-Jamal (1996). Prisoner litigation and the efforts of several nonprofit organizations—including the American Civil Liberties Union (through their National Prison Project) and Human Rights Watch—have attempted to reform jails (Feeley and Swearingen,

2004; Welsh, 1992; 1995). In almost each major city in the United States, local justice advocacy organizations work on behalf of jail inmates.

Resorting to the Legal System: Prisoners file writs, motions, lawsuits, and class action suits (Milovanovic and Thomas, 1989; Schlanger, 2003). This is done alone, with the help of outsiders, or, more typically, with the help of jailhouse lawyers who know how to write legal motions and bring them before a court. Even if the legal proceedings deny convicts satisfaction, they succeed in tying up the DOCs resources, intimidating and embarrassing the prison authorities. It is also a form of communicating with the outside about the conditions of confinement (Thomas, 1988).

Over the last five decades beginning in the 1960s, lawsuits initiated by prisoners against prison administrators have increased (Schlanger, 2003; Thomas, 1988). Starting with the Supreme Court's *Cooper* v. *Pate* (1964) decision, inmates and their advocates have used the legal system to achieve important victories regarding the conditions of their confinement. By asserting violations of various constitutional principles, prisoners have persuaded sympathetic judges to initiate landmark legal reforms concerning prison conditions and practices.

Nonetheless, when assessing the validity of any claim that prison policy violates the Constitution, the Supreme Court weighs several factors. The Court considers "(a) if there is a valid governmental interest behind the prison regulation in question; (b) whether under this regulation the incarcerated person has other means of exercising his rights; (c) how the assertion of this right would impact prison costs and resources; and (d) whether there are alternative means that can be used to satisfy the governmental interest" (Wyne, 2009, citing *Turner* v. *Safley*, 1987). In sum, "restrictive prison regulations are permissible if they are 'reasonably related to legitimate penological interests,' and are not an 'exaggerated response' to such objectives" (*Beard* v. *Banks*, 2006: 528, citing *Turner* v. *Safley*, 1987: 87).

The Supreme Court grants prison officials wide latitude in managing penal institutions, theorizing that "modern prison administration" is an "inordinately difficult undertaking" (*Thornburgh* v. *Abbott*, 1989: 407, citing *Turner* v. *Safley*, 1987: 85). It states clearly that "subjecting the day-to-day judgments of prison officials to an inflexible, strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration" (*Turner* v. *Safley*, 1987: 89).

Cruel and Unusual Punishment Claims

Prisoners who challenge the conditions of their confinement do so most often by alleging violations of the Constitution's Eighth Amendment, which prohibits the infliction of "cruel and unusual punishment" (e.g., *Guthrie* v. *Evans; Ruiz* v. *Estelle*). In *Estelle* v. *Gamble*, the Supreme Court established a two-part test for assessing the validity of claims alleging unconstitutional conditions of confinement (Dolovich, 2009: 889). A prison policy is constitutionally unreasonable if a prisoner establishes each element. First, a prisoner must satisfy an objective standard,

showing "sufficiently serious" deprivation (*Wilson* v. *Seiter*, 1991: 298). Second, a prisoner must meet a more subjective standard, proving that prison officials acted with "deliberate indifference" and a "sufficiently culpable state of mind" (*Wilson* v. *Seiter*, 1991: 297–298), such that their conduct rises to the level of an "unnecessary and wanton infliction of pain" (*Gregg* v. *Georgia*, 1976: 173). Clarifying this subjective component of Eighth Amendment jurisprudence in *Farmer* v. *Brennan*, the Supreme Court established that to violate the constitutional prohibition on cruel and unusual punishment, a prison official must know of and disregard an excessive risk to inmate health or safety (*Farmer* v. *Brennan*, 1994: 837). Moreover, Eighth Amendment claims must also meet the standards enunciated in *Turner* v. *Safley* (1987).

Assuredly, meeting the objective and subjective components of an Eighth Amendment challenge to confinement conditions poses significant challenges for prisoners willing to confront state-inflicted harm. Yet, the Court has recognized certain forms of deprivation as constitutionally impermissible. For instance, in *Estelle* v. *Gamble*, the Court held that "deliberate indifference to serious medical needs" triggers constitutional protections (1976: 104). In *Wilson* v. *Seiter*, the Court noted that withholding basic human needs such as "food, warmth, or exercise" would violate the Eighth Amendment (1991: 304). Moreover, in *Helling* v. *McKinney*, the Court concluded that a "substantial risk of serious harm" provides fodder for a cruel and unusual punishment claim (1993: 35). Thus, by using the constitutional prohibition against cruel and unusual punishment, some inmates have been victorious when challenging state-inflicted harms during a period of incarceration.

Religious Freedom Claims

Though less prevalent than their cruel and unusual counterparts, challenges to penal practices that curtail religious freedoms have also been a successful weapon for prisoners seeking to assuage the harm inflicted by the state. Suits in this area have centered on the constitutional principles of religious freedom and due process. Under the First Amendment, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech." Most often, prisoners allege such claims.

After passage of the Religious Land Use and Institutionalized Persons Act in 2000, religious freedom claims initiated by convicts have demanded a heightened level of constitutional scrutiny (Wyne, 2009: 1136, citing 42 U.S.C. §2000cc, 2000). Yet, courts still weigh factors proclaimed by the Supreme Court in *Turner v. Safley* (1987). Further, the Court has noted that "within prisons, religious activities themselves may be regulated, as long as these regulations are not discriminatory, arbitrary, or unreasonable" (Wyne, 2009: 1137).

However, prisoners have successfully challenged prison policies that infringe on their freedom of religion. For instance, in *Cruz* v. *Beto*, the Supreme Court held that the Texas Department of Corrections violated the First and Fourteenth Amend-

ments when it failed to provide a Buddhist inmate "a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts" (*Cruz* v. *Beto*, 1972: 322). Further, in *Turner v. Safley*, the Supreme Court struck down a Missouri regulation that unduly burdened the right of a prisoner to get married (1987). In *Turner*, the Court stated that "the marriage restriction...does not satisfy the reasonable relationship standard, but rather constitutes an exaggerated response to petitioners' rehabilitation and security concerns" (*Turner v. Safley*, 1987: 91). Nevertheless, the Supreme Court has not invalidated a challenged prison policy in the realm of religious freedom since *Turner v. Safley* (Wyne, 2009). Thus, while inmates can challenge discriminatory policies, their chances for success are slim.

Access to Courts Claims

Claims alleging that prison administrators hindered a prisoner's access to legal assistance and the courts are also often successful. The Supreme Court has held that inmates must receive "adequate, effective, and meaningful" access to the courts (*Bounds* v. *Smith*, 1977: 825). As early as 1941, the Court granted the incarcerated court access, concluding, "the state and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus" (*Ex Parte Hull,* 1941: 642). Yet the Court has also held that to be successful, the doctrine of standing requires that prisoners initiating litigation regarding access to court must show "an actual injury stemming from the prison action" (*Lewis* v. *Casey*, 1996: 349). Again, such claims must also meet the standard of *Turner* (1987).

Prisoners' claims alleging insufficient access to courts primarily involve the filing of petitions/complaints (*Bounds* v. *Smith*, 1977), the opening of legal mail (*Wolff* v. *McDonnell*, 1974), and inadequate or inaccessible prison libraries (*Younger* v. *Gilmore*, 1971). In *Bounds*, the Supreme Court held that prison officials must provide a prisoner "a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts" (*Bounds* v. *Smith*, 1977: 825). Further, the Court's decision in *Wolff* indicted that "while a prison mail clerk would certainly violate an inmate's rights by censoring or reading the legal mail, merely opening the envelope potentially chills the communication between attorney and inmate, and infringes on an inmate's right of access to the courts" (Kummer, 2009). Finally, in *Younger*, the Court "affirmed a three-judge court judgment which required state officials to provide indigent inmates with access to a reasonably adequate law library for preparation of legal actions" (*Wolff* v. *McDonnell*, 1974: 578, citing *Younger* v. *Gilmore*, 1971: 15).

The State's Response: Revictimization/Obfuscation

The state is not a passive player in these numerous interactions. Like prisoner resistance, state responses vary on a case-by-case basis, with the most dominant outlined below.

Accommodation: Reasonable requests by inmates are often granted if they have minimal effect on facility budgets or do not compromise the safety of other convicts or COs. These are usually manifested in changes in policies and practices. For example, most facilities can easily adapt to opening an inmate's legal mail in his or her presence. A far greater challenge for prison authorities, however, would be to reduce the number of prisoners in an institution by one-third to prevent gross overcrowding. As a result, certain penal systems fail to address such orders even when given years to comply, leading to continued crimes.

Quelling Prison Disturbances, Rebellions, and Riots: Prison disturbances, rebellions, and riots are doomed to fail. Correctional authorities use various weapons and tactics to retake the facility. If need be, local law enforcement, state police, the National Guard, or other military reinforcements will support correctional officers. No matter how many COs are taken hostage, beaten, or killed, overwhelming force will inevitably crush the uprising. COs and administrators who survive—or their replacements—will have months or years to take revenge on those who have defied them. This includes pressing administrative and criminal charges against the rioters. As much as possible, correctional authorities try to prevent information about disturbances, rebellions, and riots from getting out. Usually, news media only report on a prison riot when convicts take hostages or set an institution on fire (e.g., Atlanta in 1987).

Stiffer Sanctions and Legislation: Prison authorities recognize that convicts have 24 hours a day to think of ways to "beat the system." Correctional authorities thus eventually come to believe that certain actions are not appropriate for inmates. Recently, some state departments of corrections have banned the use of tobacco or tobacco-like products (such as nicotine patches). Others have set up places (typically outside the housing units) where inmates are allowed to smoke. Another problem for jails and prisons over the past decade has been the possession, use, and smuggling of cell phones into facilities. Correctional officers have the power to write up prisoners or send them to administrative segregation (i.e., give them a shot or send them to the hole). In most facilities, this is done through an administrative hearing. Repeat offenders typically receive extended time in segregation; others will be sent to more secure facilities, including Supermax prisons.

Reliance on Supermax Prisons: Originally designed to house the most violent, hardened, and escape-prone criminals, today Supermaxes are increasingly used for persistent rule-breakers, convicted leaders of criminal organizations (e.g., the Mafia) and gangs, serial killers, and political criminals (e.g., spies and terrorists) (see National Institute of Corrections, 1997; Riveland, 1998). In some states, the criteria for admission into a Supermax facility and the review of inmates' time inside are very informal or even nonexistent.

Over the past decade, correctional systems at the state and federal levels have introduced or expanded the use of Supermax prisons (Kurki and Morris, 2001; Toch, 2001; Neal, 2002; Ross, 2007). These facilities—also known as Special

(or Security) Handling (or Housing) Units (SHUs) or Control Handling Units (CHUs)—are stand-alone correctional institutions, or wings or annexes inside an already existing prison. They are known for their strict lockdown policies, lack of amenities, and the use of prisoner isolation techniques. Many DOCs lack recognized criteria for admission to Supermaxes or for how inmates are transferred back to a lower-security facility.

Shifting the Burden/Blame to Accreditation: Since the mid-1990s, jails and prisons have engaged in the accreditation process (Levinson, Stinchcomb, and Greene, 2001). This process is used to determine if a criminal justice agency meets a widely agreed-upon standard established by a respected accrediting body. Correctional facilities can also use this method to self-certify the improvement of prison conditions, thereby exonerating them from liability connected to prisoner deprivations. Sponsored by membership organizations such as the American Correctional Association (ACA), these entities send representatives out to correctional facilities to investigate whether they are adhering to strict standards and guidelines. Although about half of the country's prisons are accredited by the ACA, only 120 of the 3,365 jails have passed this standard (National Commission on Safety and Abuse in Prison, 2006: 16, 88).

Consent Decrees/Orders: Inmates have filed numerous class action suits claiming inhumane and unconstitutional conditions and treatment, including overcrowding, delays in medical services, medical neglect, unsanitary food conditions, and a lack of access to religious amenities. In response, the federal government has threatened to issue consent decrees against jails, prisons, and functions provided by correctional facilities (Chilton, 1991). This practice forces state and local correctional facilities to improve conditions of confinement; failure to comply results in a loss of institutional control to the Federal Bureau of Prisons (FBOP). Such decrees or orders place extreme pressure on correctional facilities to reform their practices in accordance with federal guidelines. In 2006, for example, because of court orders, the State of California ceded control of the health care of its prisoners to a federal judge.

Responses to Prisoner Litigation: State responses to prisoner litigation include formal and informal action. The list of prisoner grievances denied by the courts is long, but to legitimize the numerous lawsuits that prisoners and their advocates have brought against correctional facilities, the federal government passed the Civil Rights of Institutionalized Person's Act (1980). This encouraged prisons to deal with the complaints of inmates on an individual basis. It insured that inmates were protected against unconstitutional conditions and minimized external interference in the running of prisons and jails.

In 1996, in an attempt to frustrate what were perceived to be frivolous law suits, the Congress responded to prisoner litigation with formal action and enacted the Prisoner Litigation Reform Act of 1995 (PLRA—Pub. L. 104–134, 110 Stat. 1321 [1996]). The PLRA imposes stricter guidelines on inmates' efforts to chal-

lenge potentially unconstitutional conditions of confinement. In part, the PLRA states that "no federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility for mental or emotional injury suffered while in custody without a prior showing of physical injury" (Robertson, 2001: 2, citing 42 U.S.C.A. §1997e(e)). Also, the PLRA stipulates "that inmates must exhaust their administrative remedies before bringing suit in federal courts" (Kummer, 2009: 1202, citing 42 U.S.C.A. §1997e (a)). Thus, though designed to "to prohibit frivolous or non-meritorious civil claims from proceeding," the PLRA places significant formal legal obstacles before inmates seeking to confront the state regarding potentially oppressive conditions of confinement (*Ibid.*). In short, the state is severely inhibiting prisoners' abilities to protect themselves from the crimes it commits against them.

Informal responses to prisoner litigation are also common. "In many instances, inmates [are] subjected to disciplinary action for filing suits, and COs often hassle litigious inmates, stealing documents from their cells and otherwise interfering with their legal activities" (Welch, 2004: 319). As one scholar notes, "retaliation is deeply engrained in the correctional officer subculture" (Robertson, 2009: 611). As such, "correctional officers who retaliate against inmates cannot be regarded as rogue actors" (*Ibid.*: 613). One study found that 70% of inmates in the Ohio prison system reported suffering retaliation as a result of filing a grievance (*Ibid.*). That study also showed that most prison staff acknowledged the use of retaliation by their co-workers (*Ibid.*: 614).

Overcoming formal and informal state responses to prisoner litigation is nearly impossible. As with the PLRA, toppling formal action by lawmakers often requires years of systematic legislative and judicial opposition. Challenging informal state responses to prisoner litigation—retaliation claims—requires a prisoner to show that "(1) he engaged in protected expression; (2) he suffered an adverse action; and (3) the adverse action was causally related to the protected expression" (*Ibid.*: 621). Therefore, formal and informal state responses to prisoner litigation are tremendously resistant to reform, lending to the systemic problem of unconstitutional prison conditions that has swept the U.S. criminal justice system.

Summary of State and Prisoner Responses

Despite some temporary and mild successes for individual inmates and the entire inmate population, prisoner resistance often leads to additional or continued oppression and increased violations of human rights. The state may also respond with creative and bureaucratic ways to protect and codify its actions. A primary example of this was the death penalty. In *Furman* v. *Georgia,* the U.S. Supreme Court banned the death penalty on the grounds that it violated the cruel and unusual punishment protections of the Eighth Amendment. After several years, states found creative ways to circumvent the intent of the Supreme Court by devising ways to kill their inmates on death row in ways they claimed were not cruel and unusual.

Prisoners have at their disposal many means to resist the carceral enterprise, ranging from passive-aggressive behavior to the use of the legal system. Some methods are more active, while others require the expenditure of more resources and energy. Many are met with resistance from correctional officers and further sanctions.

Conclusion

Most people do not willingly go to jail or prison. Separated from loved ones and the freedom that comes with daily existence, they fear having to live for an extended period of time in the terrible conditions inside. Meanwhile, the general public, cheered on by moral entrepreneurs and politicians who often approach crime anecdotally (without the benefit of empirical research or failing to pay heed to it), believes that harsh prison conditions and long sentences are an effective response to most lawbreakers. As the preceding review indicates, however, prisoners are not helpless against the deprivations of incarceration. Rather, most convicts often adapt to or resist conditions they view as illegitimate and unreasonable.

Moreover, the coalescence of harsh conditions of confinement, prisoner resistance, and state response is a dynamic process. The maltreatment of inmates often triggers their varied and interrelated responses, ranging from passive adaptation to active resistance. Accordingly, correctional authorities and courts often craft counter-responses that are disproportionate to the initial act of prisoner resistance. This article examines this cyclical process, illuminating the elasticity of the relationship between the state and the inmate, while highlighting a form of resistance to state criminality that has to date been ignored by criminologists, including scholars of state crime.

NOTES

1. The denial of felon voting rights in many states is an example of mobilization of bias.
2. Most of the conditions, adaptations, resistance, and state response apply equally to male and female correctional facilities.

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