Review Essay

Prison Reform and Prison Life: Four Books on the Process of Court-ordered Change

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Ben M. Crouch & James W. Marquart, *An Appeal to Justice: Litigated Reform of Texas Prisons*. Austin: University of Texas Press, 1989. xiii+280 pp. $27.50.

Bert Useem & Peter Kimball, *States of Siege: U.S. Prison Riots, 1971–1986*. New York: Oxford University Press, 1989. 292 pp. $29.95.

Robert C. Wood, ed., *Remedial Law: When Courts Become Administrators*. Amherst, MA: University of Massachusetts Press, 1990. 208 pp.

Larry Yackle, *Reform and Regret: The Story of Federal Judicial Involvement in the Alabama Prison System*. New York: Oxford University Press, 1989. 336 pp. $35.00.

From a historical perspective, the term "reform" comes close to being redundant when used in reference to changes in the operation of prisons in the United States. These institutions have been subjected to several waves of reformation in the century and a half since they became the country's dominant method of dealing with law violators (McKelvey 1977). As a result, when we examine the changes in prisons during recent decades, we are looking at reforms of reforms.

These recurring calls for change suggest that significant numbers of Americans have often been dissatisfied with then-current modes of criminal punishment. Such dissatisfaction may in part be the result of the dilemmas this government function presents for our society. On the one hand, 17th-century political philosopher Thomas Hobbes (1962) articulated the necessity of allowing the state to use force to ensure compliance with its laws, warning that "covenants without the sword are but words." On the other hand, the coercive power of the

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state has its most direct impact on the citizen through the mechanisms of criminal justice, and these mechanisms pose a potential threat to individual liberty and democratic governance. Historian Samuel Walker (1980) documents the nation's long-standing concern with popular control of peace keeping and law enforcement beginning with the English colonists, who associated centralized administration of these functions with the tyranny of the British monarchy. Walker points out that Americans have traditionally favored the decentralization of order maintenance services and have built popular control into their criminal justice systems through such mechanisms as election of sheriffs, prosecutors, judges, and state legislators, as well as the jury system and local administration of police forces.

Popular control over criminal justice has itself posed problems for our society, however, of a type foreseen by Tocqueville (1969:250–53) when he warned of the danger of "tyranny of the majority," the possibility that in a democratic political system, numerical majorities might choose public policies which would infringe on the liberty of those in the minority. Accused and convicted lawbreakers are a minority group with limited ability to make use of democratic institutions to further their interests, in part because of the curtailed access to the political system that is typically an element of the punishment for criminal activity. Further, racial and ethnic minorities and the poor and uneducated are substantially overrepresented among the law-violating minority, and these groups have fewer resources to use in mobilizing political support than do other social groups. Finally, criminals are the target of public animosity fostered by their antisocial acts, citizens' identification with crime victims, and scapegoating encouraged by media attention to crime and the rhetoric of elected political leaders (Scheingold 1984:84–88).

Prisoners as a Disadvantaged Minority

Because the state must have the power to enforce its laws and the state's use of coercive force is potentially so damaging to individual liberty, the broad consensus of opinion in the United States supports maintaining popular control over criminal justice institutions. However, responsiveness to the will of the majority may, at times, cause the tools of law enforcement to be turned against minorities, and it can result in the brutal and dehumanizing treatment of offenders. Walker (1980) notes that the same cultural values which have made popular control a prominent feature of our criminal justice system have also fostered such extralegal forms of mass participation as vigilantism and lynch mobs. A persistent tendency to maintain prisoners at or below the minimum standards necessary for survival in

terms of housing, nutrition, cleanliness, and safety may also be a result of democratic control over criminal sanctioning.

The tension between self-government and the need for state authority to maintain order lies at the heart of the problem of criminal punishments and seems to have produced a permanent uneasiness in our society. Evidence of this uneasiness is provided by the dramatic changes in prison policy in the past and the recurrent calls for reform of U.S. prison systems. It is also evident in apparent contradictions in current public opinion such as the persistent mass support for criminal rehabilitation as an important goal of imprisonment coupled with the election of political leaders who support punitive prison programs (Gottfredson & Taylor 1984; Cullen, Clark, & Wozniak 1985; Cullen, Skovron, Scott, & Burton 1990).

Books about the Courts and Prison Conditions

During the last two decades, the United States has continued to grope for a way to deal with offenders that would at once minimize public disorder and safeguard individual liberty. It has also sought a strategy that would maximize popular control over the choice of criminal sanctions as well as protecting the civil and human rights of minority-group members. Four recent books about prison reform and its consequences examine different aspects of this struggle. *Remedial Law*, edited by Robert Wood, focuses on the process of the litigated reform of government agencies and shows how prison reform litigation grew out of the broader movement to enforce minority rights through judicial action. *Reform and Regret*, by Larry Yackle, further illustrates the connection between the civil rights movement and prison litigation, chronicling the development and conclusion of two federal district court cases that challenged the constitutionality of Alabama prison conditions. *An Appeal to Justice*, by Ben M. Crouch and James W. Marquart, examines the consequences of litigated reform for prison life and tests the proposition that such reform paradoxically harms prisoners by decreasing the ability of the prison administration to maintain order within the institution, leading to increasing violence among inmates. *States of Siege*, by Bert Useem and Peter Kimball, is a study of prison riots. The authors are interested in what riots tell us about prison administration, prison society, and the expression of political aspirations by prison inmates.

I will describe these books in more detail below and evaluate their usefulness in helping the reader understand the changes in the nation's prisons that have occurred in the 1970s, 1980s, and 1990s. I will then come back to the problem of democratic control over criminal sanctioning, discussing the status of prison policy and prison reform litigation in America today.

Finally, I will assess the contribution the books make to our understanding of this litigation and identify subjects for future study.

Remedial Law

This book clearly places the development of litigated prison reform in the context of judicial enforcement of the civil rights of minorities. The term "remedial law" refers to the body of legal doctrine that is concerned with the operation of public service agencies and the rights of clients in relation to these organizations. The introduction cites the landmark school desegregation case *Brown v. Board of Education* (1954) as the original precedent leading to the creation of this body of law.

Brown was concerned with the quality of the public education provided to children of a racial minority group relative to that provided to those outside the minority class. Later remedial cases expanded the clientele groups whose rights were to be protected to include ethnic minorities and such other disadvantaged groups as the mentally retarded and prison inmates. The sources of the rights the courts sought to enforce also expanded beyond the U.S. Constitution's Fourteenth Amendment to include its Eighth Amendment, which prohibits cruel and unusual punishments, as well as provisions of state constitutions and state and local statutes. As the scope of remedial cases grew, so did the complexity of the problems they presented, as *Remedial Law* makes clear.

Remedial Law reports on the discussions at an April 1987 colloquium in honor of the late Professor Clement Vose at Wesleyan University. The book includes remarks by colloquium participants augmented by a limited amount of additional, related material from their writings and comments and synthesis by the editor. Colloquium participants included judges, court experts, lawyers, academic analysts, and school, prison, housing, and hospital administrators. These participants were charged with evaluating the impact of this field of law 30 years after it was introduced by *Brown*. Two stipulations were placed on the proceedings. First, discussants were asked to accept the constitutional legitimacy of remedial law, to assume that "remedial law in its essence of prescribing new patterns of organizational behavior is here to stay." The corollary premise that the executive and legislative branches had abdicated their responsibility to protect the constitutional rights of the claimants in these cases was also to be taken as given (pp. 3–4).

The implementation of constitutional rights in remedial cases lands courts in the midst of the problems involved in administering public bureaucracy and puts them in the position of

trying to change large-scale governmental organizations. Conflicts arise as judicial and organizational values clash. The difficulties involved in reconciling courts and bureaucratic agencies were the focus of the Vose colloquium.

Diverse Views of Remedial Law

Among the colloquium's participants were organization theorist Herbert Kaufman and political scientist Donald Horowitz, well known for his writings questioning the courts' capacity to make social policy effectively. U.S. District Judge W. Arthur Garrity (who presided over such major remedial cases as the Boston school desegregation litigation), attorney Alvin Bronstein of the ACLU's National Prison Project, and John J. Moran, Director of the Rhode Island Department of Corrections, were also among the colloquium's 23 participants and 7 commentators. The conference proceedings were edited by Robert Wood, a member of the Wesleyan faculty who has served in many administrative and educational posts, including Secretary of the U.S. Department of Housing and Urban Development and Superintendent of Boston Public Schools.

The colloquium participants were presented with written materials describing four remedial cases, each of which had been active for more than ten years. After describing these four case studies, *Remedial Law* opens with a brief introduction to aspects of organization theory relevant to change in public bureaucracy and then discusses the nature of judicial intervention. It continues with an examination of the responses bureaucratic agencies make to the courts' actions and a discussion of the impact of the larger governmental system and political culture on the remedial process. A final substantive chapter deals with the problem of bringing remedial cases to a resolution or, as the book describes it, achieving "cloture."

Colloquium participants agreed that all parties must be committed to cloture to avoid the dilemma of "moving goalposts," escalating judicial demands on defendants which make a final resolution increasingly difficult to achieve. Although the participants supported cloture as a general goal, they disagreed on how to reach it. Alvin Bronstein of the National Prison Project took a relatively extreme stand consistent with the moral outrage over agency failures he expressed throughout the discussions, claiming that there should be no cloture till a radical restructuring of society is achieved.

A more moderate view of the goals of remedial litigation is summarized in a model describing the relationship between case characteristics and appropriate remedies which closes the book. The model prescribes different levels of judicial intervention based on the breadth of the constitutional violations in-

volved in the case, the competence of the target agency and the supportiveness or hostility of the larger political culture to the court's actions. The judicial actions prescribed range from a consent decree when the constitutional violations are narrow, the target agency is highly competent, and the political community supportive, through such intermediate interventions as bench oversight with or without monitors, to placing the agency in receivership when broad constitutional violations occur, the agency's competence is low, and the community is hostile.

The editor says that the model is not capable of predicting whether any particular remedial case will reach a final resolution, but he argues that it is useful in understanding the outcomes in the four actions discussed at the colloquium. He also suggests that the model explains why so few remedial cases are successfully closed because it reveals that there is often a mismatch between the remedy chosen by the court and the organizational and political variables affecting its outcome (pp. 89–91). The model is an intriguing initial effort to identify the factors shaping the progress of remedial cases, but limited evidence is presented to support it. Future research might examine whether cases in which the judicial intervention conforms to the model's prescriptions are more likely to be resolved than are those where Wood would claim the remedies, the case, and its environment were "mismatched." Because most remedial cases have such a long life span, the model might also be tested by studying the varying impacts of different strategies employed in one case over time.[1]

While the Vose colloquium's subject is an important one, the editor faced a difficult task in trying to make a coherent work of the conference's proceedings. Not surprisingly, no consensus emerged as to the usefulness of remedial law, nor did participants agree on the reasons for the field's successes and failures. Consequently, Wood must report a variety of divergent opinions, and he must fit together seemingly unrelated remarks on various aspects of the questions before the colloquium. The result is a book without a clear message, except perhaps that this type of litigation poses difficult questions for all involved, and that it forces courts to become deeply involved in state politics and public service administration. These general observations are confirmed by the history of the cases dealing with reform of the Alabama state prison system described in Larry Yackle's *Reform and Regret*.

[1] For an alternative view of how the courts can handle remedial cases more effectively, with supporting evidence from four case studies of prison litigation including *Ruiz v. Estelle* 1980, see DiIulio 1990a:295–316.

Reform and Regret

Yackle shows how the impetus for the filing of class action suits on behalf of prisoners in Alabama grew out of the civil rights movement, providing a detailed history of two cases dealing with state prison conditions: *Pugh v. Sullivan* (1976)[2] and *James v. Wallace* (1976). Alabama's prison reform litigation arose from actions initiated in the 1960s, when racial segregation in Alabama's asylums for the mentally ill was ruled unconstitutional by the same judge who would eventually hear the cases dealing with prison conditions. Activists soon recognized that conditions in these facilities were abysmal for the white patients housed there as well as the blacks, and a class action suit was filed on behalf of all asylum residents.

The federal judge hearing this case, Frank Johnson, proved to be sympathetic to the plight of mental hospital patients. An Alabama native appointed to the federal bench by President Eisenhower in 1955, Johnson had vigorously applied the Supreme Court's decisions outlawing segregation in public schools and had extended the antisegregation doctrine to other public services. His 1971 decision in *Wyatt v. Stickney*, the most significant of the cases brought on behalf of Alabama mental hospital residents, went beyond racial issues to hold that those patients committed to the state's custody involuntarily had a right to treatment under the due process clause of the Fourteenth Amendment (pp. 14–29).

The Alabama prison cases began with Judge Johnson's decision holding racial segregation in state penal institutions unconstitutional (*Washington v. Lee* 1966). In 1971, after another Alabama federal judge ruled that confinement in punitive isolation at two of the state's prisons violated the Eighth Amendment ban on cruel and unusual punishments, Judge Johnson received a letter from an inmate complaining about conditions in one of the institutions' hospitals. The judge felt the letter raised serious Eighth Amendment issues, and he took the initiative in turning this informal communication into a class action suit by appointing counsel to represent the prisoner-plaintiffs as well as asking the Department of Justice to participate as a friend of the court. Eventually Judge Johnson ruled that the inadequate medical care in Alabama's prisons did violate the Eighth Amendment, and the era of judicially mandated prison reform in the state had begun in earnest (pp. 39–43).

In the wake of this initial case, additional challenges to Alabama prison policy emerged that were to have far-reaching

[2] Yackle discusses this case under the name *Pugh v. Sullivan*, and I will refer to it in that way below; however, the *Federal Supplement* reports the decision in this action under the name *Pugh v. Locke*. Farina (1990) states that *Pugh v. Locke* is also the name most often used in the legal literature.

consequences. The *Pugh* and *James* cases were both initiated in 1974 when Judge Johnson appointed counsel to represent two inmates who independently sent him documents roughly in the form of complaints alleging violations of their constitutional rights. Again, the jurist took an activist posture, assigning attorneys to represent the prisoners who seemed likely to be aggressive in pursuing their clients' claims, giving the plaintiffs' counsel early indications of the arguments he would favor in the cases, and involving the Justice Department as amicus curiae. The prisoners' counsel marshaled additional resources by contacting correctional experts to evaluate conditions in Alabama's prisons and by enlisting financial help and legal expertise from the National Prison Project, an organization formed in 1972 when the ACLU and the NAACP Legal Defense Fund merged their efforts on behalf of prison inmates (pp. 59–64).

Trials in *Pugh* and *James* began in August 1975. After presentation of the plaintiffs' case, the defense conceded that the "totality of the circumstances" described in the evidence before the court showed that Alabama's prisons violated the Eighth Amendment. However, the battle over prison reform in Alabama was far from over when the court's initial orders in the cases were entered. During the next nine years, Judge Johnson and his successor on the federal bench, Robert Varner, worked with attorneys for the plaintiffs and the defendants, state politicians and correctional administrators, outside experts and concerned citizens, as they struggled to restructure prison policy in Alabama. By 1984, overcrowding was the major remaining impediment to resolution of the litigation, and the cases reached a conclusion as the plaintiffs reluctantly acquiesced when Judge Varner entered a dismissal order. Although the plaintiffs' counsel and the correctional experts advising them agreed not to challenge the dismissal, the state's failure to meet its commitment to eliminate crowding and other lingering problems caused them to have reservations about Alabama prison conditions. As a result, they did not stipulate that the state had reached full compliance with the Constitution, holding open the possibility that they might bring further action in the future.

The Impact of Alabama's Prison Litigation

The title Yackle chose for this book gives a clue to his ambivalence about the efficacy of the federal court's intervention in Alabama's prison system. His "regret" about litigated prison reform has to do with what he sees as its limited impact and its failure to make fundamental changes in penal policy; however, Alabama prisons did change quite markedly during the decade

of judicial involvement. The author describes prison conditions before and after *Pugh* and *James* in the book's epilogue (p. 256):

> In 1976, the [Alabama] prisons were "unfit for human habitation" [according to testimony at the trial in the prison cases]. They were filthy, noisy, dimly lit, unventilated, vermin-infested affronts to decency. Pipes and windows were broken, toilets would not flush and electrical wiring was exposed. There was no regular maintenance program. Prisoners were denied the most basic means of personal hygiene. . . . Food was prepared in grossly unsanitary conditions, with neither the supervision of trained professionals nor occasional checks by public health authorities. In 1986 . . . [the prisons] were painted, patched, and generally refurbished, such that they appeared on the whole to be in good repair. Genuine efforts were being made to maintain acceptable public health standards, both in prisoners' living quarters and in the mess halls, laundries, and other common areas. Inmates had access to ordinary hygienic tools and now could keep themselves reasonably clean in fresh, starched uniforms. Regular menus were designed by a dietitian, kitchens were supplied with necessary equipment, and state health officers conducted regular inspections.

Improvement in the system's physical facilities was accompanied by changes in the staffing and management of the institutions, among them recruitment of black correctional officers and administrators, development of a regular staff training program, routine classification of inmates entering the system, and segregation of prisoners according to their custody grade. Nevertheless, the doubling of the state's prison population between 1976 and 1986, the persistent threat that improvements in the physical facilities would not be maintained, and the lack of change in the basic punitive philosophy underlying Alabama's use of imprisonment caused Yackle to view the final legacy of the *Pugh* and *James* cases as disappointing (pp. 258–60).

Whether or not readers agree with the author's final evaluation of litigated prison reform in Alabama, this book will provide them with a great deal of information about the implementation of an important judicial decision. Readers concerned with the impact of remedial cases and those familiar with and interested in Alabama state politics will find the detailed description of these cases useful.

For those with a more general interest in prison reform, the book may be less satisfying. Its argument is difficult to follow, in part because it does not include an overview of its subject. Readers unfamiliar with the book's topic may get bogged down in the lengthy accounts of meetings, conferences, letters, committees, and controversies. An introductory discussion outlining where the narrative is going and concluding remarks about where it has been would help guide the reader through the ma-

terial. Further, *Reform and Regret* fails to place Alabama's prison reform process in a larger context. While events related to the *Pugh* and *James* cases are described thoroughly, the book lacks an analysis of the litigation and its impact that would help us understand its broader significance.

Reform and Regret should also provide more information about what actually happened in the state's prisons during the 1974–84 period. While a detailed analysis of prison life in Alabama is beyond the scope of the book, the brief description of prison conditions included in the epilogue is inadequate. Additional discussion of the impact of the litigation at the level of inmates' lives would enable the reader to see the final outcome of the political and legal controversies the author describes.

An Appeal to Justice

While Yackle concentrates on the *Pugh* and *James* cases and the creation and implementation of court-mandated remedies in those class actions, a third book about litigated prison reform focuses on the prisons themselves and attempts to assess the impact of court rulings on the quality of institutional life. *An Appeal to Justice* by Crouch and Marquart examines the Texas prison system and describes the changes that took place in that system during the late 1970s and early 1980s as a result of the federal court decision in *Ruiz v. Estelle* (1980).

The quantity and quality of the information Crouch and Marquart bring to this study allow them to paint an unusually vivid picture of life inside Texas prisons and of the system's response to judicial intervention. Crouch's research on the state's penal institutions began in 1973, when he conducted a short survey of correctional officers, and continued through several months' employment as a guard in 1976. Both authors surveyed and interviewed recruits and veteran officers in 1979 and 1980, and Marquart worked as a uniformed guard from 1981 through 1983, the period when dramatic changes in Texas prison security were implemented in accord with the *Ruiz* ruling. In addition, he and Crouch visited many Texas Department of Corrections (TDC) units regularly throughout the 1978–85 period and had numerous informal conversations with administrators, guards, and prisoners. The result of this extensive field research is a rare view of the dynamics of prison life before and after the court's ruling.

Prison Administration, Texas Style

Before *Ruiz v. Estelle*, Texas prisons enjoyed a national reputation for effective management and a "firm but fair" security system. The TDC was often cited as an example of a system

that "worked" in the sense of maintaining a high level of discipline among inmates and operating safe, orderly institutions. This image, which the system's administrators took care to promote, was useful in bolstering staff morale, inmate compliance, and political support within the state. In terms of internal stability and control, the image was accurate. Assaults on officers were extremely rare, and inmate homicide rates were much lower than the national average. Escapes and riots were also quite rare; in the words of a prisoner quoted by Crouch and Marquart, everything was "predictable."

The system's order and stability were based on an elaborate control structure developed over several decades which the authors describe as utilizing three major, largely informal mechanisms: a highly organized subculture among correctional officers, a wide array of punishments and rewards used to secure inmate conformity, and a practice of co-opting the inmate elite by employing its members as guards ("building tenders" or BTs).

The *Ruiz* ruling affected all three prongs of the TDC security system by requiring procedural due process in the imposition of inmate sanctions and demanding increased accountability of prison officials. Formalized procedures and greater accountability undermined both the officer subculture and the inmate incentive system because the ability to summarily administer punishments involving physical force was an important element of the mystique of the effective officer, as well as being a key deterrent to prisoner misbehavior. The building tender system was also ruled unconstitutional, further undercutting the inmate reward/punishment structure and creating an immediate demand for a large number of additional correctional officers to replace the inmate guards. The traditional officer subculture was eroded still further by the influx of new personnel that occurred when the TDC eliminated the BTs in 1983: Too many recruits entered the system too quickly to maintain the extensive informal socialization routines that had transmitted its norms to new entrants.

Change Comes to the TDC

The TDC resisted the court-mandated reforms for a significant period of time. The reforms challenged values deeply ingrained in the organization's culture and supported by the larger political community; they also required a substantial increase in the correctional budget at a time when the Texas economy was in a severe downturn. As in the Alabama prison reform litigation and in several of the cases discussed in *Remedial Law*, changes in departmental leadership and in state polit-

ical leaders' stance toward the target agency were needed before resistance to the court order was overcome.

Through 1982, the TDC had been able to maintain support for its policies among state political leaders; however, during 1983 the long-standing alliance between elected officials and the prison administration deteriorated. The cost of continued reliance on large maximum security prisons in the face of increasing overcrowding and judicial enforcement of rigorous standards for inmate living space became clear when TDC Director W. J. Estelle requested what was seen as an enormous correctional budget increase late in 1982. In 1983 lawmakers began to speak favorably about the use of community corrections, and liberals and conservatives united to defeat the TDC's funding proposal for the first time in decades. Dollars were diverted into such noninstitutional programs as probation (which received a 100% budget increase), and charges of fiscal mismanagement were leveled against the Estelle administration. The highly visible trial of an inmate who killed two prison officials and his eventual acquittal based on his claim that he acted in self-defense also damaged the TDC's credibility, as did a report of continued staff abuse of inmates made public by a court monitor in September 1983. Following the report's publication, Director Estelle announced his resignation.

With the collapse of political support for the old TDC order and Estelle's departure, the Texas prison system began the most painful and dangerous period in its reform process. During 1984 and 1985, the prison administration's control became tenuous; violence among inmates and between inmates and staff reached all-time system highs. Gang activity, sales of drugs, and prostitution increased as the old methods for maintaining discipline were dismantled, but Crouch and Marquart follow the story past this disturbing climax to describe the emergence of new, effective control strategies and the eventual return of order and stability to the TDC's prisons. The authors call this transition a movement from a "Repressive Order" to a "Bureaucratic Order."

Prison Life after *Ruiz*

Crouch and Marquart paint a graphic picture of the violence and chaos which engulfed Texas prisons at least in part as a result of judicial intervention. They also closely examine the Bureaucratic Order in place since 1987, finding that it has its own flaws, including increased racial tension and gang activity. The system is more impersonal; individual prisoners receive much more equal treatment than they did in the past, which means that "good cons" doing their own time are not rewarded with the special favors that they were accustomed to getting in

the old days. Nevertheless, the physical abuse of inmates that was an accepted part of the traditional system has been replaced by administrative segregation and other noncorporal but effective forms of punishment. According to Crouch and Marquart, prison officials have learned how to use legal means to maintain order.

An Appeal to Justice is useful for its in-depth description and analysis of the Texas prison system. In addition, the authors provide a well-documented study of the impact of civil rights litigation and the process of organizational change in response to such litigation. This book will be of interest to a number of different audiences, among them social scientists and practitioners concerned with prison administration, with conditions inside correctional institutions, and with state politics. Advocates involved in prison reform and prisoners' rights litigation will also find it valuable. Although it does not focus on legal strategies or judicial decisions, *An Appeal to Justice* should be required reading for anyone involved in remedial litigation because of the insights it gives into the impact of court-ordered change on guards' and prisoners' daily lives.

A fourth book about prison reform provides yet another perspective on correctional administration and judicial intervention. *States of Siege*, by Bert Useem and Peter Kimball, gives us information about prisoners' views of institutional operations as it examines the causes and effects of major prison riots.

States of Siege

Useem and Kimball set out to understand the causes and consequences of prison riots, as well as their development and progress. They provide case studies of riots in five states during a 15-year period, beginning with the uprising at Attica, New York, in 1971 and closing with a disturbance at West Virginia Penitentiary in 1986. The authors' first goal is to tell what these events were like. They point out that citizens in the free world and prisoners generally view riots in very different ways. For the outsider, the term "prison riot" is usually associated with an image of a violent, spontaneous, unorganized, destructive rampage by inmates; however, prisoners typically see these occurrences as acts of protest, undertaken by the collectivity of captives in an effort to win redress of grievances. In reality, Useem and Kimball find that the degree to which prisoners organize to advance coherent demands varies greatly from one riot to another, as does the level of violence and the amount of property destruction.

The book opens with a discussion of prior theorizing about prison unrest and a brief history of U.S. prisons and prison riots between 1950 and 1971. Detailed descriptions of nine riots

follow, including, in addition to those at Attica and West Virginia, incidents at Joliet Correctional Center in Illinois, the Penitentiary of New Mexico, and three Michigan institutions. The book distinguishes five stages in the state's loss and reestablishment of control over a penal institution: (1) the pre-riot period; (2) the initiation of the riot; (3) its expansion; (4) the state of siege, during which inmates control territory within the prison; and (5) the institution's recapture by lawful authorities. In a well-developed and clearly written summary chapter, the authors identify variables that affect the course of the riot at each stage and describe alternative patterns typifying uprisings' progress. They draw conclusions about the causes of prison riots and the effects of these disturbances on the institutions and the inmates involved, before closing with a discussion of the policy implications of their findings.

Administrative Breakdown and Prisoner Unrest

Useem and Kimball report that they brought different political perspectives to the task of analyzing prison riots, but they reached a similar conclusion about what caused the disturbances they studied. They argue that breakdown of administrative organization and control over the prison is the most important factor causing riots. Other variables, such as the level of privation felt by inmates and the degree of organizational solidarity among prisoners and among guards, can influence the course a disturbance will take, but in the authors' view, serious dysfunction in the prison's administration is a necessary condition for a major riot. If an institution is managed effectively, physical barriers to inmate rebellion will be well maintained and proper security procedures will enable guards to prevent a riot or stop it at an early stage.

Acknowledging that they only studied prisons where riots took place, Useem and Kimball make a convincing case for their conclusion that the prisons which experienced disturbances were characterized by dramatically more serious administrative failures than were other, similar facilities. Elements of the breakdowns in the cases they examined included public scandals involving prison officials, escapes, inconsistent rules for inmates and guards, fragmentation in the chain of command, conflict between correctional administrators and guards, and the disruption of the institution's daily routine.

> The effects of this breakdown [in administrative order] are twofold. First, the deprivations of imprisonment surpass legitimate bounds. Inmates are not propelled to riot merely because they are deprived of the amenities available outside the prison—for punishment is the purpose of prison—but because the prison violates the standards subscribed to concur-

> rently or previously by the state or by significant groups outside of the prison. Well-managed prisons, with adequate staffing and physical resources, perpetuate a feeling among inmates that the system conforms to reasonable standards of imprisonment. When stability and uniformity are not present, inmates look to other standards to judge their conditions. (P. 219)

In several of the cases, courts had ruled that conditions in the prisons involved violated the Constitution. The authors feel that these rulings contributed to the prison administrations' loss of legitimacy and hence helped push the inmate populations toward riots. As the above passage indicates, Useem and Kimball do not conclude that judicial intervention causes prison uprisings. In their opinion, an institutional system must have serious deficiencies before it becomes vulnerable to inmate unrest. When it has significant failings, however, a finding of unconstitutionality may lend credibility to prisoners' perceptions that their conditions of confinement are not legitimate. A court ruling, by itself, is not enough to cause a riot, nor must a finding of unconstitutionality be present before prisoners will challenge correctional authorities, but judicial intervention can be a contributing factor affecting inmates' opinions and thus the likelihood that a riot will occur.

Useem and Kimball argue that in well-managed prisons with adequate resources, inmates generally feel that conditions are within the bounds of what they consider proper punishment. The stability, competence, and unity of those responsible for operating the institution tend to create a belief among prisoners that officials must and even should be obeyed. Failure of this belief in the prison system's legitimacy is a necessary precondition for an inmate revolt.

In addition to the loss of legitimacy, a second important effect of an administrative breakdown is erosion of security: "Poorly organized prisons are prone to appalling lapses in security, both in the indiscipline or inadequacies of the guard force and in the failures of the physical structure" (p. 220).

An inadequate security system was common to all the uprisings Useem and Kimball studied. Failures in prison security allow riots to take place, and they may also be an actual source of dissatisfaction motivating inmates to create a disturbance. Effective security enforces order within the institution and protects inmates from predation by other members of the prison population.

Different Prisons, Different Riots

Although administrative breakdowns accompanied all the riots Useem and Kimball studied, the specific conditions preceding uprisings varied widely, as did the immediate events precipitating unrest. At Attica, security structures were antiquated and procedures for operating them lax; inmates were well mobilized for political action and felt the administration had violated their rights and failed to keep its promises. Prisoners at Joliet rebelled when an inexperienced warden launched a poorly planned attempt to eradicate the gangs that previous administrators had condoned. At the Penitentiary of New Mexico, site of an unprecedented bloodbath of inmate-against-inmate violence in 1980, administrative breakdown resulted from frequent reorganization of the corrections department and rapid turnover among prison personnel in the years before the riot. In an effort to restore order, authorities resorted to a policy of encouraging inmates to "snitch," to give information to guards about other prisoners' misconduct. The execution of suspected snitches was rioters' main objective. In Michigan, uprisings at three prisons followed bitter, ongoing conflicts between guards and administrators and a take-over of the largest state institution by the correctional officers' union in 1981. The West Virginia Penitentiary was the site of what Useem and Kimball call a "routine riot" when a new warden with a reputation for unfairness changed the Christmas visiting period and abruptly revoked other inmate privileges in a chronically understaffed and physically decrepit institution.

States of Siege brings a new perspective to the study of prison life, and it shows that prior theorizing about the reasons for riots does not fit the authors' observations.[3] The book also contributes to our knowledge about prison administration and provides valuable comparisons of state prison systems. Useem and Kimball show that there is immense diversity in the way different state prisons operate. States have developed their own styles and patterns of interaction between guards and inmates, between guards and administrators, and among inmates. Each prison system is in some ways a unique society that reflects the

[3] Gresham Sykes (1958) articulated the most important theory previously advanced to explain prison riots. Sykes proposed that penal institutions were typically dominated by inmate cliques and that riots occurred when prison authorities disrupted the prison social system by attempting to control the dominant inmate groups. By depriving the prisoner power elite of its ability to reward and sanction other inmates, the prison administration opened the way for unruly prisoners who were previously outside the inmate leadership to take violent action in order to gain status among their peers. Useem and Kimball (pp. 6, 221–22) found that at a time when events in the West Virginia Penitentiary fit Sykes's profile, no riot took place. They also observed that only one of the riots they studied (Joliet) was preceded by a crackdown on the inmate elite, and in that case it was the established gang leaders who initiated the riot, not young punks taking advantage of a power vacuum as Sykes's theory predicted.

culture of the state where it operates and is shaped by state institutional arrangements.

This book provides readers concerned about litigated prison reform with valuable information on prisoners' views of prison conditions. It also gives this and other audiences a useful comparative perspective on prison administration and the subculture of inmates, guards, and correctional managers.

The Status of Prison Litigation

Prisons have been a major focus for remedial litigation for some 20 years, and as the organizers of the Vose colloquium postulated, such judicial action appears to be "here to stay."[4] Judicial intervention in prison management increased steadily during the 1980s; by January 1990, 38 correctional agencies were under court orders requiring changes in conditions of confinement, up from 32 in 1988 and 30 in 1986 (Camp & Camp 1986:23; 1988:3; 1990:6).

Three sets of circumstances seem to have converged, causing prison conditions to deteriorate during the past decade and spurring the current wave of judicially mandated prison reform. First, prison populations in most states have risen rap-

[4] It still seems likely that prison litigation will continue, even though recent changes in the personnel of the U.S. Supreme Court might make it even less sympathetic to the claims of prisoners than it has been in the past. During the 1991 term, the Court delivered a potentially restrictive decision in *Wilson v. Seiter*, holding that in order to demonstrate an Eighth Amendment violation a prisoner must show not only that prison conditions are bad enough to deny the plaintiff "the minimal civilized measure of life's necessities" as required by *Rhodes v. Chapman* (1981), but also that prison officials possessed a culpable state of mind ("deliberate indifference") when inflicting the deprivations caused by those conditions. Justice White's concurring opinion, in which he was joined by Justices Marshall, Blackmun, and Stevens, chastised the majority for opening up the possibility that prison officials could escape accountability for inhumane institutional conditions on the ground that they were caused by the state legislature's failure to appropriate sufficient funds to ameliorate them.

It is too early to tell if Justice White was right, but from accounts like Yackle's and Crouch and Marquart's, it appears likely that the intent requirement will have an incremental rather than a revolutionary effect on Eighth Amendment litigation because so much of what happens in these cases is the result of informal bargaining between the parties' advocates. As in plea bargaining in criminal cases (see Heumann 1977; Mather 1979), Supreme Court decisions may end up functioning as chips that can be used to gain a more favorable result for the side they favor rather than being fully and formally adjudicated in most cases. Hence we might expect *Wilson* to help prison administrators gain outcomes that are closer to what they prefer in prison cases, but it seems unlikely that the decision will lead to a dramatic decrease in the volume of correctional litigation.

For a discussion of the possibility that the U.S. Congress might intervene to curtail future remedial activity by the federal courts, see DiIulio (1990a:289–90). Bradley (1990:260–65) tested the hypotheses that the identity and/or party affiliation of the president appointing a judge to the federal district bench affected the number of prison cases in which she or he ordered major reforms. Studying cases decided in the 1970s, the author found no significant differences between the reform propensities of judges appointed by different presidents. Although the generalizability of these findings to the 1980s and 1990s remains to be demonstrated, they do suggest that Reagan and Bush appointees to the lower federal courts will not put an end to remedial litigation.

idly, in some cases so quickly that new bed space cannot be built fast enough to keep up with the growth. Between 1980 and 1989, the total number of inmates in state and federal prisons more than doubled, with a number of states far outstripping the national average (Bureau of Justice Statistics 1990a:1). Prison crowding has been an increasingly common reason for judicial intervention, with 24 states facing court-imposed prison population limits in 1986 and 29 under such limits in 1990 (Camp & Camp 1986:23; 1990:6). On average, state and federal prisons were operating with their inmate population at 116% of their rated capacity at the start of 1990 and a number of states, including California, Massachusetts, and Ohio, housed more than one and a half times as many prisoners as their facilities were set up to hold (Camp & Camp 1990:28).

In addition to increasing overcrowding, the age of many of this country's penal institutions has also become a difficult problem. A 1980 study found that 20% of prison inmates held in maximum security facilities were housed in prisons built before 1875 and 56% were living in institutions opened before 1925. Of inmates at all custody levels, 61% were housed in facilities constructed before 1949 (Mullen, Carlson, & Smith 1980:155). While it is reasonable to expect correctional institutions to remain in use for a long time, older prisons are likely to require remodeling and refurbishing to meet current standards for inmate living conditions. A number of states have failed to maintain aging facilities in a manner acceptable to the courts. Some states with generally adequate prison systems have had one specific, usually very old, facility placed under court order. In California, for example, conditions at San Quentin, the state's oldest prison (opened in 1856), were found to violate the Eighth Amendment (California Department of Corrections 1984). During the early 1970s, when incarceration rates fell to post–World War II lows, many states planned to close old, decaying maximum security prisons, but inmate population growth in the ensuing decades has made such closures impossible, even though significant capacity was added during the 1980s.

The state budget crunch of the past decade is a third factor encouraging remedial prison litigation. Slow economic growth during the early 1980s and in recent years, together with cuts in federal revenue sharing, have forced many states to curb spending and have greatly reduced the resources available to deal with growing prison populations and aging prisons.

Prison Reform in the 1920s and 1990s

While these trends caused prison conditions in many states to worsen, the development of the field of remedial law in the 1960s and 1970s provided a new tool for challenging correctional policies. Although this wave of prison reform is the first to be led by the courts, the goals of recent judicially mandated change are in some respects much like those promoted during the last great era of prison reform, the years of the Progressive movement from 1900 to 1920.[5] In the first decades of the 20th century, Progressives called for an end to corruption, brutality, and mismanagement in prisons and mental asylums, advocating increased professionalism and merit-based recruitment for institutional staff. The lack of adequate food and medical care for prisoners, the use of inmate guards, and graft among prison employees were some of the evils these reformers fought (Rothman 1980:17–28).

As *Reform and Regret* and *An Appeal to Justice* show, many of these same concerns have driven current prison reform litigation. Some of the solutions required by the courts have also been like those advocated by the Progressives 70 years ago. Prisoner classification (a major issue in Alabama's *Pugh* and *James* cases), professional supervision of inmates' diet and health care, an end to corporal punishment, elimination of inmate guards, and improved qualifications for prison security staff were among the measures courts have imposed in recent prison cases which were also supported by earlier reformers.

Other changes in prison operations ordered by courts in recent cases bear similarities to Progressive-style reforms of local governments. In the 1900–1920 period, Progressives opposed big-city political machines, advocating nonpartisan election of city officials and an end to the patronage appointment of public employees. Martin Levin (1988) found that the differences between traditional systems of public administration and reformed or "good government" systems shaped by Progressive values were reflected in the operation of the criminal courts in Pittsburgh and Minneapolis. In Minneapolis, which had a reformed style of city government and a long history of support for Progressive politics, judges were typically trained as lawyers, preferred formal procedures in disposing of cases,

[5] Feeley and Hanson (1990:28–30) point out that "few clear-cut policies have emerged" from the court rulings affecting prison conditions. While they argue that the remedies imposed in these cases lack a coherent theme, I find a number of features of these court orders that are similar to Progressive reforms. My view is consistent with Feeley and Hanson's observation that many of the standards invoked by judges in prison litigation are those promulgated by such professional groups as the American Correctional Association and the American Medical Association; however, neither they nor I claim to have made a comprehensive study of the prison reform measures enforced by the courts.

and reported that protection of the community was their primary concern. On the other hand, in Pittsburgh, which had a traditional city government with strong political parties, criminal court judges usually were not lawyers, preferred informal procedures, and expressed concern for the impact of case outcomes on defendants. Sentences were more severe in Minneapolis than in Pittsburgh. Levin concluded that the Minneapolis system was more consistent with the rule of law because there was less variation in the treatment given to different defendants, but he argued that the Pittsburgh system was appropriate for a diverse community. In Levin's view, the differing values and norms of the big city's numerous subcultures, as well as the range of economic circumstances represented by the defendants coming before the courts, required individualized treatment.

The differences between the old and the new order in Texas prisons parallel the differences between the Minneapolis and Pittsburgh court systems. Like traditional city governments and the Pittsburgh courts, the pre-*Ruiz* Texas security system relied on personal contacts and informal procedures in conducting its business. In contrast, like reformed city governments and the Minneapolis courts, the post-*Ruiz* TDC uses formal, impersonal procedures. Crouch and Marquart found that the impersonality of the reformed system caused less attention to be given to conforming inmates who in the past would have been rewarded for their good behavior with informal perquisites distributed by guards and BTs. Now these prisoners told the authors that they felt that they got lost in the shuffle while troublemakers were the main focus of officials' attention.

Judges are apt to place a high value on the rule of law and consequently to endorse an impersonal, professional style of prison administration, so it is not surprising that judges' orders in prison cases have often prescribed remedies for correctional system failings much like those advocated by reformers in the Progressive era. Yet the impersonal, professional administrative style fostered by Progressive values may not be consistent with the existing political culture in a particular locale and may not meet the needs of agency clientele or the general public. In the case of Texas prison administration, judicial intervention to protect inmates from the brutality associated with what Crouch and Marquart call the Repressive Order was certainly desirable. However, less extensive modifications of the TDC's security system than those required by the *Ruiz* decision might have ensured inmates' physical safety without requiring the correctional organization to adopt a bureaucratic managerial regime.

Progressivism Today

Judges seem to be swimming against a heavy tide in ordering Progressive-style prison reforms at a time when liberal and conservative interests have formed coalitions in many states to change correctional policies in place since the 1920s. The 1970s saw a number of states put an end to indeterminate sentencing and parole board discretion over inmate release dates, two major Progressive innovations (Rhodes 1989). The "medical model" which defines deviance as an illness to be treated and cured, a cornerstone of early 20th-century prison reforms, has been widely criticized as being unjust and inhumane (Fogel 1979). Corrections professionals and state government officials express little support for rehabilitation as a goal of imprisonment, another Progressive-era concept, although citizens in general still rate it as the most important purpose of incarceration (Gottfredson & Taylor 1984; Cullen et al. 1990). Sentences have apparently become more severe in many states. Offenders whose crimes and criminal histories would have earned them probation in the past are now being sentenced to state penitentiaries (Langan 1991).

Ten years ago, two observers of U.S. correctional systems suggested that the country was then about to "choose the future" of imprisonment. Pointing out that new prisons built today could very well still be in use a hundred years from now, Michael Sherman and Gordon Hawkins (1981) argued that decisions to substantially increase correctional capacity would commit state governments to extensive use of imprisonment for many years to come. The authors recommended greater use of some "nonincarcerative" punishments, but their strongest prescription was for more explicit consideration of the options confronting policymakers (ibid., pp. 21–24, 105–18).

Today, it seems that many states have chosen a future for their correctional systems that will be characterized by high incarceration rates and large prison populations, although this choice has seldom resulted from a thorough public debate of alterative policies. While it is unclear how much the general public supports such increased use of imprisonment,[6] politi-

[6] Citizen preferences about the use of imprisonment have been the subject of heated debate in recent years. The proportion of poll respondents reporting that they feel the courts are not dealing severely enough with offenders rose during the 1970s and remained above 80% throughout the 1980s, with support for longer prison terms also reported to be widespread (Flanagan & McLeod 1983:248–49, 255; Jacoby & Dunn 1987; Maguire & Flanagan 1991:192–93); however, studies showing a public preference for imprisonment have been criticized for having methodological flaws and for overstating their results (Immarigeon 1988).

Further, public support for rehabilitation as the goal of incarceration remains high. Presenting public opinion data from Texas, Cullen, Clark, & Wozniak (1985:19) noted that almost 80% of those sampled in the studies they examined said that rehabilitation was a "very important" function of prisons. A more recent poll conducted in Cincinnati and Columbus, Ohio, by Cullen et al. (1990:9–10) found that over half of those ques-

cians in many states have found that promising to "get tough on crime" is likely to be a winning election strategy (Scheingold 1984). State legislators and governors have supported correctional building programs resulting in a the construction of a large amount of new prison bed space in recent years (Cox & Rhodes 1990). The 1990 *Corrections Yearbook* reported that 67 new institutions were opened in 1989, adding over 31,000 new beds to the country's prison capacity (Camp & Camp 1990:29). The Justice Department estimated that state and federal prison capacities increased by 40,000–60,000 beds during 1988 and 1989, bringing the country's total correctional bed space to about 490,000–590,000 (Bureau of Justice Statistics 1990a:7).

Ambiguities in the definition and measurement of prison capacity,[7] along with lack of national historical data on this variable, make it difficult to compare recent changes with past capacity growth or with variation in other, related factors. However, available evidence indicates that capacity is expanding rapidly now after remaining stable or even declining from the late 1960s through the early 1980s.[8] While prison bed space

tioned said rehabilitation was the most important function of imprisonment, a greater proportion than cited any of the alternative goals presented, including punishment of the offender and protection of society. Jacoby and Dunn (1987) found that more than 70% of respondents reported that rehabilitation was a very important reason for imposing a particular sentence in a fictitious exemplary case.

[7] In their study of prison population change over time, Berk et al. (1980) described prison capacity as a "very slippery concept" because it can only be assessed in relation to some standard for the proper amount and type of living space that should be provided for each prisoner. Consequently, the capacity of a given institution is necessarily somewhat elastic. The Department of Justice's Bureau of Justice Statistics currently collects data on three measures of prison capacity: design capacity, rated capacity, and operational capacity.

Design capacity is defined as the capacity the architects originally intended. The rated capacity is the capacity figure officially sanctioned by state authorities. Operational capacity is the functional institutional capacity, the number of prisoners the corrections department defines as the maximum that can be safely accommodated under the current physical plant, funding, and staffing levels.

These three capacity measures may vary widely in the number of prisoners they indicate an institution should hold. Design capacity is a stable feature of a particular facility; rated capacity and operational capacity tend to be more flexible, subject to adjustments as changing circumstances lead to modifications in the way facilities are used. A system's operational capacity is usually larger than its rated or design capacity because this measure is less reflective of norms for ideal inmate housing conditions and more consistent with the actual use being made of existing space. See Rhodes (1987:162–99) and Cox & Rhodes (1990) for further discussion of factors affecting reported prison capacity.

[8] Few states appear to have kept public records of their prison capacity, however defined, before the 1970s. California is an exception; the rated capacities of all the state's prisons were published from 1948 through 1982 in annual budget documents (California Governor 1948/49–1981/82). These data show that capacity increased rapidly from 1951 through 1967, growing at an average rate of 8% per year. During the late 1960s reported capacity stabilized and actually declined at an average annual rate of 2% through 1980. More recent rated capacity data published in the *Corrections Yearbook* (Camp & Camp 1986:18; 1988:24; 1989:24; 1990:28) show that California expanded its prison bed space at an average rate of 11% per year between 1986 and 1990. It is impossible, given available data, to be sure how much other states' policies were like California's, but the general pattern of capacity expansion after World War II

grew quickly during the past decade, prison populations rose even more rapidly, outpacing increases in the general population as well as expansion of correctional housing space. The national incarceration rate reached an all-time high in 1990, after almost doubling since 1980. In contrast, the crime rate in the nation declined throughout this period.[9] Taken together, these trends show that many states have made a commitment, whether explicitly or implicitly, to the imprisonment of a greatly expanded proportion of convicted offenders.

The Future of Prison Litigation

What role should the courts play in relation to this policy of increased prison use? What impact can prison litigation be expected to have in coming years? The lack of extensive study of the effects of prison litigation makes evaluation of past court actions difficult and analysis of the field's future tentative; however, existing information suggests that since the 1970s judicial intervention has made prison conditions significantly more humane than they would otherwise have been. Even skeptical observers like DiIulio (1990a:290–92), who criticized sweeping court orders as causing increased prison violence, have concluded that the quality of prisoners' lives has been improved by

followed by stable or declining capacity during the 1970s is probably characteristic of many state correctional systems, and in some places (including California) the rate of growth in recent years is probably more rapid than during past periods.

[9] While capacity expansion in the last five to ten years has been rapid, it has not kept up with prison population growth rates. For example, in California, rated capacity increased 62% from 1986 through 1990, while the number of inmates confined grew by 67%. As a result, the population of sentenced prisoners expanded from 169% to 174% of institutional capacity (Camp & Camp 1986, 1990). California is an extreme case with respect to both its prison population growth rate and the degree of overcrowding in its institutions, but other states have had similar problems.

Nationwide, prison populations have increased much more rapidly in the last decade than has the population of free citizens, causing the incarceration rate to reach a record high level of 274 sentenced prisoners per 100,000 U.S. residents in 1989, up 97% since 1980 (Bureau of Justice Statistics 1990a:1). During this same period, the national crime rate declined. The National Crime Survey, which measures both crimes reported to the police and those not reported, showed that the rate at which households were victimized by crime decreased by over 25% between 1980 and 1989, continuing a downward trend that began in the 1970s (Bureau of Justice Statistics 1990b:4).

Information on criminal case dispositions nationwide, which is necessary to measure changes in sentence severity directly, is not available (Austin & Krisberg 1985). However, Langan (1991:1572–73) estimated the proportion of the variance in prison admissions for 1974–86 explained by several factors. He found that about 20% of the variance was attributable to increases in the young, male population (the group most likely to commit crimes), 9% was due to changes in reported crime and arrest rates, and 51% was associated with higher imprisonment rates. The rate at which offenders were imprisoned increased across virtually all the offense types the author examined.

Using a different approach, I developed a causal model of prison admissions and releases and estimated the model's parameters using time series data from California for the 1946–80 period (Rhodes 1990). Demographic trends appeared to be the most important factor affecting prison use, but I also found evidence that admissions and releases varied with public support for capital punishment, which I argued was an indicator of support for more punitive sentences in general.

remedial litigation. Inmates' housing, health care, nutrition, and personal safety have gotten better as a result of judicial decisions, and in some states the change has been dramatic. These benefits are important and have saved the lives and health of many prisoners. Yet, the wisdom of continuing to extend the types of reforms imposed in past cases to more and more locations is questionable. Requiring all states to adopt the equivalent of the Texas Bureaucratic Order would threaten the valuable cultural diversity of prison systems. This diversity is useful because it provides numerous successful solutions to common problems and because it expresses the preferences of citizens from different cultural traditions. In addition, the Progressive-style administrative systems that the courts seem to favor may be insensitive to the needs of the poor and of racial and ethnic minorities, making them less effective in responding to the problems of prisoners and their families and friends than another type of organization might be. Progressive administration may also increase the impersonal, dehumanizing quality of large institutions.

The ability of courts to solve the problems of overcrowding, aging prisons, and shrinking budgets confronting state correctional systems in the 1990s is also uncertain. Case studies indicate that courts' success in dealing with overcrowding and with the growing demand for prison bed space that has kept very old prisons in use has been limited. *Reform and Regret* and *An Appeal to Justice* show that crowding was one of the most intractable issues facing judges in the Alabama and Texas prison cases, and in both instances plaintiffs' representatives were not satisfied with the litigation's final results in this area. The range of policy options available to the courts for reducing crowding is narrow; they cannot revise the state's criminal sentencing laws in order to reduce prison populations. Instead, they typically order limits on prison admissions, causing greater crowding in local jails, or they require release of inmates before their previously designated exit dates, an unpopular measure that may in the long run increase public and elite support for harsher sentences.

Budgetary problems are also difficult for courts to handle. Judicial intervention has led to substantial increases in spending for corrections (Feeley & Hanson 1990:26–27), but requirements that states devote more resources to prisons typically result in protracted battles between the court and elected officials. In West Virginia, for example, the court found that the state's 120-year-old penitentiary violated the Eighth Amendment in 1982, at a time when the state had the highest unemployment rate in the nation and falling coal prices were causing incomes and government revenue to plummet. Useem and Kimball believe that authorities' failure to meet court-imposed

correctional standards was a factor influencing inmates' actions when they rioted in 1986, but neither the riot nor guards' organized pressure for more funds for penitentiary security had caused a significant improvement in prison conditions by the time the authors of *States of Siege* interviewed subjects in West Virginia in 1987. The region's poverty and the press of other urgent social needs, such as education and disaster relief, were the major reasons for policymakers' intransigence (Useem & Kimball, pp. 169–71).

Tight budgets highlight the inadequacies, noted by many analysts (Horowitz 1977; Glazer 1978, 1979; Feeley & Hanson 1990), in the courts' capacity to make effective social policy. Courts decide whether correctional spending should be increased based on their assessment of prison conditions. They cannot weigh the urgency of the goal of prison reform against the many, competing demands on government budgets. Further, courts' ability to secure implementation of orders that lack the backing of other policymakers is very limited. When implementation fails and prison litigation becomes deadlocked as it did in West Virginia, the legitimacy of the correctional administration is damaged. Not only may this loss of legitimacy encourage inmates to riot, but it can also lead to increased conflict between correctional managers and their staff (Feeley & Hanson 1990:21–22).

New Approches to Litigated Reform

Prison overcrowding has proven resistant to a variety of solutions, and state budget austerity seems likely to be a fact of political life for the foreseeable future. If judges want to play a meaningful part in ameliorating the effects of these problems on prisoners, they must reach beyond Progressive-style policy prescriptions and find creative remedies for Eighth Amendment violations. Cultural diversity may provide the key to improving prison conditions under severe fiscal constraints.

In addition to illustrating the courts' limited policymaking capacity, the West Virginia case points to the importance of prison culture in mitigating the impact of physical hardships on inmates. In the early 1980s, only two states spent less per prisoner to operate their correctional facilities than did West Virginia, but in spite of poor living conditions in the state penitentiary (including infestation by vermin, plumbing, heating, and ventilation systems that were barely operational, extremely small cells, and broken windows that allowed birds to roost in the tiers), relations between prison inmates and authorities were relaxed and the institution was described by residents as an easy place to do time. Prisoners interviewed by Useem and Kimball said they would rather be incarcerated in West Virginia

than at other prisons where they had served sentences because the level of violence there was low and aggressive behavior among inmates was rare (pp. 169, 172–74). Poor management, and perhaps prison litigation itself, caused conflict in the penitentiary to increase during the mid-1980s, culminating in the 1986 riot, but the disturbance was brief and resulted in relatively little damage.

Harmful physical facilities and inadequate support services like those at the West Virginia Penitentiary should not be ignored because the prison's culture makes them less oppressive, but this case does show the importance of factors other than the number of square feet of living space and the dollar value of the correctional budget in determining the quality of prison life. Courts need to learn to exploit cultural resources so that they can fashion remedies that make optimal use of available funds and that have the political support necessary for implementation. Seeking greater citizen participation in the process of selecting remedies in prison cases could make court orders more responsive to local cultures. Judges and litigants' advocates should try to establish a dialogue that goes beyond adversary procedures and that involves individuals representing a broad range of community and criminal justice system interests. Such dialogue is needed to avoid policy stalemates like West Virginia's and to help courts move away from the Progressive model toward more varied solutions to prison problems.

Conclusions

In a policy field where public sentiments run high, courts have attempted to define and enforce the constitutional rights of prison inmates, an unpopular and disenfranchised minority group. Prison reform litigation could play an important part in improving the conditions of confinement for the country's rapidly expanding prison population, but the results of current and past cases need to be evaluated carefully to determine the overall impact of judicial intervention on correctional management and to prescribe directions for future court action. The books reviewed here draw attention to the dilemmas raised by prison litigation and begin to provide much-needed information about the impact of these cases. By far the most useful of the volumes discussed above is Crouch and Marquart's *An Appeal to Justice*. Few available accounts of prison life are as well researched and insightful as this one. As a case study of organizational change, this book is unusually informative; it answers important questions about how the Texas prison system responded to judicially mandated change.

States of Siege also provides valuable insights about prison

life and prison administration. The task of explaining riots in a number of different locations leads the authors into a comparative study of state prison systems. This format is unusual and productive. Not only does this book provide useful information about prisoner unrest, but it also illustrates the great diversity of state correctional organizations. While American prisons share many common problems, the response of each institutional system to current challenges is unique. The cultural variety these systems exhibit needs to be recognized, and Useem and Kimball have made a valuable contribution to that goal.

Reform and Regret has more limited utility. In spite of the normative implications of the book's title, Yackle does not adequately explain his perception that prison reform in Alabama was a disappointment. As a detailed chronology of the events involved in a very significant piece of litigation, the study does provide valuable information not available elsewhere about the implementation of a court's orders in a politically hostile setting; however, the book's lack of analysis makes it difficult to assess the implications of the Alabama experience for other prison systems.

Finally, *Remedial Law* accomplishes little beyond calling attention to an important area of judicial activity. An evaluation of the field was supposed to be the aim of the Vose colloquium, but *Remedial Law* does not deliver an assessment of its subject's successes and failures, nor does it give the reader a useful analysis of the current status of this type of litigation. The book's failure to provide a clear message suggests that the colloquium and the report of its results would both have benefited from greater structure and tighter organization.

Directions for Future Research

The strengths and weaknesses of these books point out the need for more research on the effects of litigated prison reform and on prison conditions in general. Prisons have traditionally been closed organizations, and it has been difficult for citizens in the outside world to learn about conditions inside them. Although the long-term effectiveness of court intervention in improving the quality of prison life is still unclear, one valuable result of prison litigation is an increase in the visibility of institutional conditions. Judicial decisions not only draw public attention to prison operations, but they also publicize the problems they identify and require correctional agencies to disclose information about their organizations.

Researchers can and should exploit this openness in order to provide a rigorous evaluation of the progress and impact of prison litigation. Are the apparent improvements in prison conditions noted above real? How extensive are such benefits

and have they occurred at the expense of cultural diversity, as I have argued here? Are most prison cases successful in bringing about changes in institutional conditions, or do they end in stalemates like the one West Virginia faced in 1987? What judicial strategies have been the most effective in avoiding policy deadlocks and improving prison conditions? What strategies have proved most useful for defendants resisting judicial intervention? Does empirical evidence support the prescriptions for reaching closure in remedial cases discussed in *Remedial Law?* These are questions research needs to address, through both in-depth descriptions of particular cases and quantitative analysis of the effects of the large number of closed and pending prison suits.

Systematic studies of prison management are also needed. While few scholars will be able to become as deeply involved in a correctional system as did Crouch and Marquart, additional case studies like theirs, showing the day-to-day details of prison life and the system's response to a changing environment, would be immensely valuable. Correctional administration in different states should be described and compared, as was done in DiIulio's 1987 study examining and evaluating prison organizations in Texas, California, and Michigan.

Although additional scholarly research on prison conditions is needed, academics, policymakers, and the general public should not wait until more studies become available before they begin to pay attention to the dramatic changes in criminal punishments that have taken place during the past 20 years. The courts cannot be counted on to secure prisoners' rights if elected officials perceive no constituency for the reforms the judicial branch orders. Judicial action is much more likely to be successful if concerned citizens actively advocate improvements in dangerous and dehumanizing prison conditions. Prisoners have few ways of expressing their grievances against the governmental system that imprisons them; a major prison riot like the one at Attica or the Penitentiary of New Mexico should not be required before states decide to allocate the resources necessary to provide growing prison populations with an adequate standard of living.

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