MODELS OF CUSTODY

The management of politically motivated offenders in the Northern Ireland prison system

Some people might believe that the Northern Ireland criminal justice system is so unique that its only interest is for students of the exotic. Increasingly, however, academics and practitioners have examined the situation with a view to understanding how a fairly normal, if 'modified,' system operates in conditions of social division and politically motivated violence. For such conditions are increasingly becoming the norm in many parts of the world. Three staff members of the Northern Ireland Association for the Care and Resettlement of Offenders have recently published a study of the prison system which tries to develop categories of more general application.[1]

They have tried to use a different method of analysis from those usually employed to study the criminal justice system in Northern Ireland. There are three traditional ways: a narrow, technical examination of black letter law, law seen as a simple instrument for the defeat of terrorism, and the civil liberties critique of 'emergency' laws by reference to international human rights norms. They offer a complementary approach which involves an analysis of the fluid set of structures, practices and relationships which make up a functioning system.

The result of this process is a description of three historical phases of the management of the prison system and the basic principles of governance that seem to underly them.

The three models are termed:
(i)   Reactive Containment 1969 - 1976
(ii)   Criminalisation 1976 - 1981
(iii) Normalisation 1981 - onwards

The essential characteristics of reactive containment are the suppression and containment of the insurrectionary enemy; a willingness to use conventional military force; the prorogation of aspects of civil liberties; contemporaneous negotiation with the 'enemy' and with other political forces in the search for a political settlement. The model implies an acceptance that the violence is political in origin, however 'wrong', and therefore confers some kind of legitimacy on its perpetrators. In prison terms, it implies detention with the minimum of formality, yet with prisoners being given a relatively high status; their regime will approximate to that of 'prisoners of war'.

For the Northern Ireland prison system, this model meant internment without trial, 'special category status', for those convicted through specially invented, no-jury courts, military guards on the prison camps and, eventually, a huge, money-led recruitment drive for more prison officers.

Criminalisation is fundamentally a redefinition of political violence as simple criminal activity. It is an attempt to remove any legitimacy from the 'terrorists'. Negotiations are more or less rejected and the total defeat of violence is held out as a real possibility.

This policy puts the prisons in the front line. Every symbol of 'difference' between 'terrorists' and ordinary criminals, any notion of the political character of some inmates, has to be removed from the system. It involved the end of 'special category status', the rigid enforcement of the wearing of prison uniforms and the doing of prison work and a refusal to recognise the existence of paramilitary organisational structures. It was this policy which led to the escalating prison protests which culminated in the hunger strikes of 1980/81 in which ten men fasted to the death and violence in the community increased dramatically.

Normalisation represents a realisation and acceptance that political violence and division are a 'normality' of a given criminal justice system and society - part of a broader range of other 'normalities' which should receive equal emphasis such as ordinary crime, ordinary policing, unemployment etc. and an acceptance of the anomalies that this entails.

The main principles of normalisation derive from a number of political decisions. First, an acceptance that the prison system, at any rate, is not a mechanism that can 'defeat' political violence; rather it is a mechanism for managing some of its consequences. This involves an abandonment of the policy of criminalisation, in so far as that is designed to coerce prisoners into a practical and symbolic acceptance of the status of common criminals. The major demands of the hunger strikers were, in fact, rapidly granted 'under the table', once the protests had ended.

Second, a recognition that political conflict and division are permanent (i.e. will exist for the foreseeable future) and hence must be seen as 'normal'.

Third, an acceptance of the 'permanence' of 'temporary' legislative and administrative structures which have been adapted to contain political violence and yet are seen as forming just one specialised part of the 'normal' criminal justice system.

For the prisons normalisation implies development of a number of strategic directions. Perhaps the most important is the recognition of groups of politically motivated prisoners who are distinct from 'ordinary' prisoners and from each other. The policy includes elements of, first, flexibility and negotiation, second, an attempt to limit, quarantine and marginalise the paramilitary groupings and, third, through a carrot and stick approach, constructively engaging with their adherents.

The element of 'common sense' is demonstrated by a policy of minimising causes and occasions of conflict with prisoners and their families. This involves a culture of realism and a readiness to spend money to avoid trouble.

These strategic directions are complemented by creating a culture of normality around the system by, first, much greater access for media and the public to information and the institutions themselves ('glasnost') and, second, proactive and sophisticated media intervention.

These strategic directions can be perceived in the practice of the Northern Ireland Prison Service over the past few years. The authors argue, however, that they are forms of practice which are translatable to a wide variety of contexts where social division and political violence confront a criminal justice system. It will be for British readers to assess how far your own prison systems need to comprehend social division and violence.

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References
1. B. Gormally, K. McEvoy, D. Wall. Criminal justice in a divided society: a case study of prisons in Northern Ireland. *Crime and Justice 1993.* University of Chicago Press.