

# A CRIMINOLOGICAL JOURNEY: PRISON, SOCIAL ORDER, COMPLIANCE, DESISTANCE AND LEGITIMACY

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**Anthony Bottoms** <sup>1\*</sup>

<sup>1</sup>Universidad de Cambridge

\*Correspondence should be addressed to: [aeb11@cam.ac.uk](mailto:aeb11@cam.ac.uk)

I have been asked to say something about my research work. In recent years, this has focused particularly on desistance from crime and on the legitimacy of criminal justice systems. So I will try to explain how I came to focus on these two topics. There have been three stages to this journey. First came some studies of social order in prisons; these led, secondly, to a theoretical focus on the topic of compliance with laws and regulations; and that interest in compliance then led, thirdly, to my studies of desistance and legitimacy.

I'll begin, then, with the prison studies. In the mid-1980s, the British government published a report following a series of disturbances in high-security prisons for long-term male prisoners ([Home Office, 1984](#)). That report led indirectly to the commissioning of several research projects, and I was invited to lead a team whose task was: 'To describe accurately and to explain the nature of control problems [in long-term prisons] and the conditions leading to their emergence'.

Our research focused on two contrasting long-term prisons, which I'll call 'Prison A' and 'Prison B'.

Prison A had a troubled recent history, having experienced a full-scale riot in 1983 and a smaller but very frightening incident in 1985, when some staff were trapped by prisoners. As a result, the Governor of the prison imposed what was described as a 'restricted regime', which made several changes intended to reduce opportunities for disorder. The most prominent of these changes was that each evening only two-thirds of prisoners were allowed out for the leisure period; the remainder had to stay in their cells. As you can imagine, this was not a popular policy among prisoners; but it greatly increased self-confidence among staff, who had been badly shaken by the recent major incidents.

Prison B was very different. It was one of only two high-security prisons that had experienced no serious loss of control. Many of its staff described it as offering 'a liberal regime within a secure perimeter', and a former Deputy Governor of the prison had said that this regime was intended to 'help men return to a free society by reproducing the challenges of a free society so far as this is possible'. Within the English prison system, Prison B was widely regarded as the most liberal high-security prison, while Prison A was regarded as the most restrictive.

In the book resulting from our research ([Sparks et al., 1996](#)), we described the regime of Prison A as focusing particularly on 'Situational Control' – that is, on preserving order by restricting oppor-

tunities for disorder. Prison B, however, placed more emphasis on 'Social Control': that is, by offering prisoners more freedom, and building strong staff-prisoner relationships, it was trusting prisoners to respond positively to the liberal regime that they were offered.

For the first time in the mainstream prisons literature, in our book we introduced the concept of legitimacy into our analysis. We found that most prisoners in Prison B regarded their prison experience as more legitimate than did those in Prison A. But there were some interesting complications.

The Governor of Prison A, when he introduced the restricted regime, emphasised to staff the importance of what he called good 'service delivery' relating to things like meals, visits and pre-release courses. The staff responded well to this, and so most prisoners drew a distinction between what they saw as the fairness of the staff and the unfairness (or lack of legitimacy) of the regime, for which they blamed the Governor.

In Prison B, on the other hand, most prisoners greatly valued the more liberal regime and the way that the staff treated them. But the relatively light situational controls that were in place gave prisoners more opportunities to create trouble if they wished to. This created some non-trivial difficulties, the most important of which was that a minority of weaker prisoners felt unsafe and unprotected by the regime – for them, it was definitely not legitimate.

So what this research revealed was that there can be very contrasting ways of running a prison. But each of these prisons had its plus points and its minus points – neither was clearly 'better' than the other. Reflecting on this, we suggested changing the language through which these matters were usually discussed. Instead of talking about 'control problems', we suggested, it would be better to talk about 'the problem of order' in prisons. Because the fact is that every social community, including prisons, has a problem of order; and when we talk about the problem of order, we are talking ultimately about the best way to order that community so that the people in it feel that their interests and their future are being properly attended to. What mix of social and situational factors might achieve the best social order in prisons?

Now fast forward nearly a decade, and I'm involved in another prisons research project, this time supporting my Cambridge colleague Alison Liebling, who led the research. This too was a government-funded study, commissioned to evaluate a new prisons-based policy called the 'Incentives and Earned Privileges' (or IEP) initiative.

This policy was introduced by the government with the aim of promoting social order by improving the behaviour of prisoners. The central maxim of this policy was that 'prison privileges must be earned by good behaviour'. It was decided that every prisoner would be placed in one of three new privilege categories ('basic', 'standard' and 'enhanced'), with each of these categories linked to a set of specific privileges. The privileges on offer in the higher categories were genuine – prisoners really did value them. The theoretical framework underpinning the policy was that of Rational Choice Theory. The expectation was that prisoners would act rationally and in their own best interests, which meant that they would improve their behaviour in order to secure these valued privileges.

The research was conducted over a period of a year in five prisons of varying type, including a women's prison and a young offender institution. The evaluation, unfortunately, demonstrated that none of the five prisons showed any behavioural improvements that could be attributed to the IEP policy (Bottoms, 2003; Liebling, Muir & Rose, 1999). Of course, the governmental sponsors of the research were both surprised and disconcerted by these findings. Fortunately, however, the data collected by the research team were strong enough to explain the result. Prisoners were generally

supportive of the basic principle that privileges should follow good behaviour, but they considered that the way in which the IEP policy had been introduced had in practice resulted in a significant degree of *unfairness*. In detail, the reasons for this differed in different institutions, but one important general issue was that the new policy significantly enhanced the discretionary decision-making powers of prison officers, and prisoners considered that these powers were often being used in arbitrary ways. As a consequence of this perceived unfairness, many prisoners chose not to engage positively with the new incentives system. Thus the expected 'rational choice' effects were displaced by a widespread sense among prisoners that the policy, as they actually experienced it, was unfair and lacked legitimacy.

So how did these two prison studies lead to my theoretical interest in compliance? Well, participating in these two fascinating projects had set me thinking about the variety of ways in which people can be encouraged, or coerced, into complying with rules and regulations. In the high-security prisons study, both situational factors and a degree of normative consensus had generated compliance. In the IEP study, normative unfairness had been crucial, but there was every indication that, without this unfairness, prisoners' instrumental desire for better privileges would have generated greater compliance. So here were three main mechanisms of compliance – normative consensus; situational compliance; and instrumentally rational incentives and disincentives. Reflecting further, I realised that there is also a fourth main mechanism, namely compliance based on habit or routine. So I then published a paper outlining this fourfold classification of types of compliance ([Bottoms, 2002](#))<sup>1</sup>. That paper also pointed out that, of course, in the real world more than one of these types of compliance can be in play in the same situation.

My research activities have included some work on both instrumental and situational compliance, but my main interest has always been in normative compliance. This is probably, at least in part, a reflection of my legal background, and of my acceptance of what I regard as the profound observation of the Scottish jurist Neil MacCormick that a modern legal system is a form of 'institutional normative order' ([MacCormick, 2007](#)). In my 2002 compliance paper, I developed the concept of normative compliance by identifying three sub-types of it, namely: Compliance resulting from acceptance of a norm; Compliance resulting from normative attachment; and Compliance resulting from legitimacy.<sup>2</sup> Each of these subtypes has featured in my later research work, which – as I explained at the beginning – has focused mainly on the topics of desistance from crime and legitimacy. So now it's time to look at this final stage of my research journey.

Criminology is a young science, and naturally enough many of its early endeavours were focused particularly on why people commit crimes. But, from about 2000 onwards, criminologists have increasingly turned to the subject of why people who have been offending stop doing so. This is a particularly interesting topic because, as a recent review of the research evidence put it, stopping committing crime is actually 'the norm, even among those characterized as high-rate, chronic offenders' ([Bersani & Doherty, 2018](#)). With my growing interest in compliance, it was natural that I should want to undertake a research study on how this might happen.

This resulted in a research project called the Sheffield Desistance Study, which I conducted jointly with my Sheffield colleague Joanna Shapland<sup>3</sup>. The fieldwork for this research took place in the years

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<sup>1</sup>A revised version of the classification of the mechanisms of compliance was published later ([Bottoms, 2019](#)).

<sup>2</sup>In my later 2019 paper (see note 4 above) I added a fourth sub-type, namely 'Compliance resulting from a response to normative cues', but this sub-type is not relevant in the present context.

<sup>3</sup>For an overview of the Sheffield study see [Bottoms & Shapland \(2016\)](#).

2003-2007, and the study focused on male young adults who were persistent offenders.

At the start of the research, the 113 men in the Sheffield study were, on average, aged 20 years 9 months. However, on average each of them had already, by that age, been convicted for a non-motoring offence on no fewer than eight separate occasions; and 80 % of them were then reconvicted during the three years that we followed their lives. We expected this high reconviction rate, because of the character of the sample we had chosen to work with. But we also knew from the general criminological literature that, for such samples, offending peaks at around age 20-21, after which there is a gradual aggregate reduction until, for most, offending stops in the late 20s or early 30s (Doherty & Bersani, 2018); and we wanted to study the beginnings of such processes.

Given this kind of criminal record, you will not be surprised to learn that most of these men had come to regard property offending as an obvious way to act when they were short of money. Moreover, when we asked them to look at a list of things that might be, for them, an obstacle to 'going straight', one of the items that scored near the top of the list was that they found committing offences to be exciting. Yet despite all this, the great majority of those in the study were not committed to continuing in crime. For example, in their first interview, more than half said they had 'made a definite decision to try to stop' offending, and a further one-third said they 'would like to stop, but I'm not sure if I can'. Even more encouragingly, when they were asked what sort of person they would like to be in a few years' time, the principal answers that they gave were 'go straight', 'live a normal life', 'be a good person' and 'be a family man'. So, at the outset of the research, they had a complicated mixture of values - some conventional, some less so. A key question for many of them during the three years that we followed them up was, therefore, which values would ultimately take priority?

A large proportion of the men made significant attempts to go straight, but very few of them did so without committing further offences. In other words - as other research has also shown - desistance is usually a gradual, not a sudden process. A main reason for this is that all of us find it difficult to change ways of behaving that have become habitual, and our very recidivistic sample had become very used to offending. Also, if they wanted to desist, there were many obstacles to overcome. Most members of this sample had a history of social disadvantage - for example, fractured family relationships, very poor school records leading to no qualifications, and a poor work record in an economy where unskilled work was less available than it used to be. So even the men who really wanted to desist did not find it straightforward to do so, because their criminal records and their various social disadvantages meant that their attempts to desist faced many challenges.

One matter that became clear in the course of our research was that for men of this age-group, with their kind of criminal and social background, there was very often a set of personal relationships that was of special importance in shaping the men's progress (or lack of it). These key personal relationships were with girlfriends, with male friends and with their families of origin, especially their mothers. The potentially positive impact of girlfriends on male offenders in their twenties is well known in the literature of criminology, but the other two relationships have been little explored. Because most of the Sheffield sample had no stable employment, they had no work colleagues as friends, so their male friends were usually those they had known for some years and with whom they had committed offences. If they were serious about desisting from crime, it was then very often necessary to leave these friendships behind. As for families of origin, persistent offending had in many cases led to splits with parents, but as efforts to desist became apparent, better relationships with parents - especially mothers - frequently developed. So the life stories of the men who were trying to desist were, during the three or so years that we followed them, very often dominated by

complex interactions between the would-be desister and his relationships with a girlfriend, with his mother and with his male 'mates'.

The need that was felt by many members of our sample to distance themselves from male co-offending friends often led to a tactic that the Sheffield Study has uniquely explored, and which we called 'diachronic self-control'. Diachronic self-control is self-control that is exercised *in advance of* an expected event (i.e., it is not synchronic). One important way of exercising it is to plan one's future circumstances in such a way as to 'increase the likelihood that [an unwanted inclination] will not be' acted upon (Kennett, 2001). Unwanted inclinations' can of course be of various kinds, and a standard example in the literature is of someone trying to lose weight who has unwanted inclinations for fatty foods. In the context of desistance, the unwanted inclination is, of course, the inclination to commit an offence. Ways of exercising diachronic self-control so as not to be tempted to commit offences included, in the Sheffield Study, staying at home instead of going out; deliberately avoiding places where violence might happen; and deliberately not meeting particular friends who might suggest committing an offence. Our data showed that three-quarters of the Sheffield men had used such a tactic at some time during the research period (Bottoms, 2013).

If we now turn back to the various types of compliance that I previously outlined, we can see that the exercise of diachronic self-control uses a mixture of rational choice and situational control to achieve greater compliance. The would-be desister realises that, in certain circumstances, he might 'do something stupid', as some of our Sheffield respondents said to us. In more formal language, he thinks that if he goes to a particular place, or meets some particular people, he might be tempted back into committing an offence. So he makes a *resolution* – a rational choice – to avoid this by staying away from those circumstances. If he sticks to this resolution, he has reduced his opportunities to offend by staying away from *particular situations*.

But you'll remember that I also spoke, earlier, about some sub-types of normative compliance. Two of these were 'acceptance of a norm' and 'compliance through a normative attachment'. Some of the results that I've just described very much exemplify these. At the start of the research, the men had a mixed set of values; but by making a specific attempt to desist, they were accepting desistance as a normative priority. Meanwhile, their attachments both to their girlfriends and to their mothers were pulling them, normatively, away from crime.

I did however mention one further sub-type of normative compliance, namely 'compliance based on legitimacy'. This was not something that was of explanatory importance in the Sheffield desistance study, but you will recall that it was a topic that my colleagues and I had focused on in the study of the social order of prisons. In recent years, it is a topic that I have explored much more fully.

This further strand of work has all been conducted jointly with my Cambridge colleague Justice Tankebe. Justice is a Ghanaian, who is especially interested in police studies, and we first began working together when I supervised his Ph.D. on police legitimacy. He finished his Ph.D. fifteen years ago, and he is now the Deputy Director of the University of Cambridge Institute of Criminology, but we have continued sometimes to work and think together about legitimacy, and we have now written several joint papers on this topic (see specially Bottoms & Tankebe, 2020; Tankebe & Bottoms, 2012).

Legitimacy has been well defined by a political scientist as 'Power that is *acknowledged as right-ful* by relevant agents'; and those agents include, of course, 'those subject to the power' (Beetham, 2013). There is, not surprisingly, good evidence that people are more likely to comply with laws when they acknowledge that powerholders are exercising their power legitimately

I want to focus on just two of the matters that Justice Tankebe and I have particularly emphasised in our theoretical work on legitimacy in relation to criminal justice. The first of these is that legitimacy is always a dialogue. Every time that a police officer or a prison officer puts on a uniform and goes on duty, he or she is claiming to have some special authority that other citizens do not have. But, it has been wisely said, 'The exercise of power is not a one-way transaction' (Miller, 1978); accordingly, those holding power must expect a variety of responses to their claimed authority. Such responses are sometimes especially influenced by the way that the powerholder is handling a particular incident, but on other occasions a response can be the result of more general perceptions of, say, the work of the police in that locality, or indeed of the exercise of political power in that state or province.

In thinking about such responses, Justice Tankebe and I have found it useful to draw on an essay on legitimacy by the philosopher Bernard Williams (Williams, 2008). In this essay, Williams points out that every sizeable community needs someone to be given some power, because otherwise there will be no effective social organisation, and people's basic safety could be at risk. So power-holders are necessary. However, citizens have expectations about how these holders of power should behave, and if they fail to meet those expectations then their legitimacy will become eroded. To express this point, Williams developed the concept of a 'basic legitimation expectation'; and for him, the difference between legitimate and illegitimate power lies in the ability of powerholders to honour citizens' basic legitimation expectations, to a reasonable extent, in specific situations<sup>4</sup>.

If this analysis is right, it is obviously important for the powerholders in any given community to understand what are the basic legitimation expectations of those over whom they exercise power. Naturally, these expectations are likely to vary in different communities, so this is (at least in part) an empirical matter. But Justice Tankebe and I have developed an argument – based on the available empirical evidence – that there are four things that are likely to count as basic legitimation expectations in most criminal justice contexts. These are:

First, effectiveness: that is, powerholders should fulfil well the tasks for which they have been appointed, especially keeping people safe;

Second, lawfulness: that is, powerholders should always work within the law;

Third, distributive justice: that is, powerholders should exercise their powers without discrimination on the basis of, for example, ethnicity, gender or wealth;

Fourth, procedural justice: that is, when dealing with people and when making decisions, powerholders should treat people with respect. People should also be allowed to have their say, and they should be listened to carefully and dispassionately.

There has been a certain amount of academic debate about this suggested framework, but I am very pleased to say that it has recently been endorsed by a prestigious report on police legitimacy, published in the United States by the U.S. National Academies of Science, Engineering and Medicine. This report identifies what it calls 'four pillars of legitimacy, based on four "basic legitimation expectations" as developed by Bottoms and Tankebe' (National Academies of Sciences, Engineering, and Medicine, 2022).

If we look back at the earlier prison studies in the light of this 'four-pillar' theoretical framework, we can see that the weaker prisoners in Prison B felt that the regime there was failing to protect them, so it was not *effective*, and therefore not legitimate. Meanwhile, the prisoners in Prison A knew

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<sup>4</sup>Williams' original concept was that of a 'Basic Legitimation Demand'; Justice Tankebe and I have amended this to what we regard as the more appropriate 'Basic Legitimation Expectation'.

that no other English high-security prison had imposed a 'restricted regime', so they thought that they were suffering a *distributive injustice*. Turning to the IEP study, here prisoners considered that the IEP policy was in principle legitimate, but that the way in which it was being implemented had led to many *distributive* and *procedural injustices*.

This concludes my brief account of one scholar's recent research. You will have noticed, perhaps, that I have spoken both about empirical research projects and about the development of theory. This reflects my own strong belief that, in social science, good research and careful theorisation always need to be closely related.

I hope that what I have said today will have convinced you that criminology is a subject of great social importance. Therefore, in closing this address, and in thanking you again for the award of this honorary doctorate, I would like to express my hope and my confidence that criminological research and teaching in the Faculty of Law at the Universitat Autònoma de Barcelona will continue to develop and to flourish for many years to come.

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