

The Rarity of Prisoner Complaints Arising from Guard-Administered Violence: A Tentative Explanation

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INTRODUCTION

Jails and prisons are places of violence. Prisoners assault prisoners. Prisoners assault guards. Guards assault prisoners. The last of these violent relationships is the focus of this analysis. It will be argued that guard-on-prisoner violence is accepted as legitimate by participants in the correctional system, including prisoners, when the use of force is used instrumentally to force compliance with institutionally mandated behavioural expectations. The use of force is seen as illegitimate only when it is deemed “excessive” or administered for personalistic reasons. The article will then use Collins (2008) concept of a “forward panic” to analyse the conditions in which the use of force remains within the boundaries prescribed the rules, and hence becomes legitimized.

Popular culture often portrays prison guards as savage and sadistic. Movies such as *The Shawshank Redemption*, *The Longest Yard*, *Brute Force*, *Brubaker*, and *Sleepers* present a bleak picture of the unrelenting use of force by guards to dominate prisoners. In an experimental study involving the artificial creation of a false prison, Zimbardo (2007) reported about a third of guards quickly develop sadistic behaviour while Mitford (1974) argues that sadistic personalities are attracted to work in order to find opportunities to fulfil their pathological psychic needs. Zimbardo (2007) argues that working in prisons manufactures sadists while Mitford argues prison work attracts them. If either were correct, we could expect that jails and prisons would be places of unrelenting violence by guards against prisoners.

The Canadian experience is somewhat different than the unrelenting horror portrayed in movies and predicted by people such as Zimbardo and Mitford. The use of force and violence by guards is present, but Ricciardelli (2014) and Weinrath (2016) conclude that the use of force by guards has been used as a method of controlling prisoners but that this technique appears to be in the process of being supplanted by bureaucratic administrative penalties. In the end, however, the potential for administering violence underpins the imposition of administrative penalties. Haggerty and Bucerius (2021) extend this analysis by arguing that the enforcement of rules and imposition of administrative penalties operates within a zone of guard discretion as

guards attempt to maintain a relatively tranquil environment. Implicit in the findings of these studies is the understanding that the use of force by guards in a way that was arbitrary or excessive would undermine the smooth running of the jail or prison. Like the prisoners, the guards are constrained by rules governing their behaviour.

But guards routinely inflict violence on prisoners. *Table 1* presents data on use of force incidents by guards in the prisons operated by the Correctional Services of Canada (CSC). Under Canadian law, people sentenced to a term of incarceration of two years or more serve their sentence in the federal system operated by the CSC while those in remand custody and those sentenced to a term of less than two years are held in jails operated by provincial governments. During the five-year period from 2012-13 to 2016-17, there was one use of force incident for every nine prisoners annually (Zinger, 2017). Prisoners in CSC-operated facilities experienced a greater than one in ten chance of being subjected to violent force from guards in a year.

Despite this level of force employed by guards against prisoners, official complaints about it were much rarer. During the five-year period reported on in *Table 1*, only 3.3 percent of use of force incidents by guards resulted in a prisoner complaint to the Office of the Correctional Investigator (Zinger, 2017). During this five-year period, there were more than four use of force incidents per day in Canada's federal prison system. These generated one prisoner complaint per week. The lack of official complaint by prisoners over the use of force by guards does not appear to be the result of a general unwillingness by prisoners to complain about the treatment they receive or the lack of a formalized and accessible complaint mechanism. CSC complaint procedures are formalized and well publicized amongst prisoners. These procedures are used with regularity. During this five-year period, the Office of the Correctional Investigator received over 6,000 complaints per year from prisoners, or two complaints per year for every five prisoners (Zinger, 2017). Prisoners in Canada are more likely to file an official complaint about the food than being the object of violence by guards.

This brief quantitative exposition establishes the research question for interpretive analysis by qualitative means. Given both the level of use of force by guards on prisoners and the propensity of prisoners to utilize official complaint mechanisms, why do so few prisoners officially complain about the use of force (violence) by guards?

Table 1: Average Daily Census in Canadian Federal Penitentiaries, Use of Force Incidents and Prisoner Complaints

Year	Incarceration Average Daily Census Canadian Federal Penitentiaries	Reported Use of Force Incidents	Prisoner Complaints to Correctional Investigator about Use of Force	Prisoner Complaints per Use of Force Incident	Total Prisoner Complaints to Correctional Investigator	Prisoner Complaints per Prisoner
2016-17	14,425	1,436	76	0.053	6,768	0.469
2015-16	14,742	1,833	76	0.041	6,501	0.441
2014-15	15,168	1,501	45	0.030	6,252	0.412
2013-14	15,141	1,740	32	0.014	5,434	0.359
2012-13	14,471	1,458	31	0.021	5,477	0.378
5-year average	14,789	1,594	52	0.033	6,085	0.412

Source: Compiled from Zinger (2017) and Statistics Canada (2018).

A VIOLENT INCIDENT: A CASE STUDY

In 2008, the author was arrested on a charge of second-degree murder. I was held for a week at the Saskatoon Correctional Centre, which is a provincially operated jail holding both remand and post-conviction prisoners who have been sentenced to a term of incarceration of less than two years. After a week in this facility, I was transferred to a dedicated remand facility in another province. After close to two months in this remand jail, I was released on bail and subsequently acquitted of the charge. The research project was thus both involuntary and simple. It consisted of getting arrested and paying close attention to what was going on.

During my stay in the Saskatoon Correctional Centre, I was assigned to the segregation unit for protective reasons. The unit was in the shape of a V, with each arm consisting of a hallway flanked by twelve cells, six per side. Each cell was about three metres by two metres and contained a bed and a combined metal toilet–sink unit. There was no storage place for belongings because prisoners in segregation were not permitted any. At one end, there was a small, high window overlooking an empty courtyard with a barbed-wire fence. At the other was a massive sliding steel door controlled remotely. The door contained two openings. One was a small window. Guards used this to look into cells, but prisoners could also get a view of most of the hallway. By peering through the small gap between the door and the wall, the range of vision could be extended a bit. The other opening in the door was a slot about knee high primarily used to pass meal trays in and out. The meals were starchy, cold and unappetizing – significantly less appetizing than the meals served in the dedicated remand facility I was later transferred to. One guard observed as he escorted me to the visitor’s room, “we lost all our Michelin stars a long time ago”.

At the base of the V, entrance to each of the arms was controlled with another remote-controlled sliding door. Here was the common room—a fairly large room with a big window overlooking the same unused courtyard and barbed wire seen from the cells. Inside the room was a television that did not work and a small table upon which (sometimes) sat a few book fragments. In one side-room, there was a clothes washer and dryer. In another, there was a shower. Dominating the room, behind unbreakable glass, was the “pod,” where guards observed, issued instructions, controlled the opening and closing of doors, and looked bored.

Prisoners were put in segregation either for punishment, behaviour modification, or personal protection. Some had been convicted of a crime carrying a sentence of under two years incarceration. Others were remand prisoners. They were waiting an adjudication of their criminal charges and were considered, legally, innocent. Despite the differences in legal status and reasons for being in segregation, all were treated uniformly. Protection was undifferentiated from punishment and legally innocent from convicted. They were issued one set of bright orange coveralls (prisoners not in segregation were allowed to wear their own clothes) and a pair of rubber flip-flops. Segregation prisoners were confined to their cells unless they had lawyer or other visitor (two per week, maximum) and for a half-hour-per-day exercise period. If they had a visitor, they put their hands through the meal-serving slot to be handcuffed prior to the door being opened. The door was then opened, and leg shackles were put on. The prisoner was then escorted to a visiting area clanking chains like the ghost of Jacob Marley.

The procedure for the exercise break was less formal. The prisoner's door simply slid open. The prisoner entered the hall. The door at the end of the hallway opened. The prisoner was then free to enter the common area—alone. Options for the half hour were limited. One could pace about ten steps before turning rather than the two allowed by the parameters of the cell. One could have a shower or wash one's jumpsuit. To do either involved a period of nakedness under the gaze of the guards. The half hour allowed meant that the jumpsuit was still wet when the exercise period was over. At the end of the half hour, the prisoner was instructed to return to the cell. Doors closed automatically. The door to another prisoner's cell slid open.

Interaction with the guards was very limited. Meals were shoved through the slot in the door. While in the common area, looking through the glass at the guards on the other side was considered to be threatening behaviour and strongly discouraged. The guards were, however, reasonably friendly when serving as escorts to the visiting area.

Interaction with other prisoners was difficult. The area was called segregation for a reason. You could not see your neighbours except for brief glimpses through the window. Prisoners talking to each other was officially forbidden but pragmatically allowed to some small degree. It was, however, like talking on the old party line of Saskatchewan's mid-twentieth century telephone system. Everyone could hear what was being said. Most of the verbal communication was to either ascertain who is in a cell when someone new came in and to issue dire threats to known pedophiles. There

was also an exchange of printed material. Book fragments were taken from the common room and returned a day later. There were not enough to go around, but with this system of exchange each prisoner had about a hundred pages to read or reread a few times a week. Each arm of the V also got a daily newspaper. A prisoner going out for his exercise break collected the newspaper and shoved it through someone's meal slot. The prisoner had half an hour with the paper; it was expected to be shoved out the meal slot for passing along when the next person got his exercise break. Known sex offenders (Ricciardelli and Spencer, 2014) did not get access to the newspaper, but otherwise the prisoners took care to make sure everyone got a turn.

In contrast descriptions of some segregation units in long-term prisons (Piché and Major, 2015) the segregation unit at the Saskatoon Correctional Centre was generally very quiet. The regular daily routine consisted of three meal deliveries, a half hour in the common room, and a half hour with the newspaper. Time was tracked by the half-hour sound of doors opening and closing as people received their time out of the cell.

One day, the clock stopped; the routine was interrupted. The situation emerged slowly. Instead of the half hourly sound of doors opening and closing, we could hear the loudspeaker in the common room saying, "Please return to your cell immediately". This message was repeated every few minutes for about an hour. We could then hear a more distant announcement summoning the response team to segregation. About an hour of silence followed. Suddenly there was banging and clanging. An exuberant cry of victory. More banging and clanging. The sounds of a struggle.

I was peering out the crack between the door and the wall, angling in an attempt to see what was going on. After a few minutes, four big men in riot gear, complete with gas masks and shields, appeared in the hallway. They formed a square with their shields. Inside the square was a fairly scrawny, naked, Indigenous man who was soaking wet. They got to his open cell door and propelled him in. The door clanged shut, and the response team departed. Not a word had been uttered by them. At about this time, I noticed that my eyes were stinging, and breathing had become unpleasant. It dawned on me that tear gas had been used. I threw myself face down on my cot and breathed as little as possible. For some time, the only sound that could be heard was people coughing.

When the tear gas eventually dissipated, the prisoner at the centre of the affair told his story. It was a simple one. He had merely refused to return to

his cell and ignored the repeated instructions to do so. Eventually, a tear gas canister was fired into the room from a small opening in the door from the pod. The prisoner caught the canister in a metal wastebasket and trapped it upside down. This accounted for the exuberant cry of triumph. His victory was fleeting. Several more canisters were fired in, thereby defeating his garbage can strategy. The tear gas was followed by the response team, who grabbed him, pulled off his jumpsuit and threw him in the shower for a few minutes – presumably to wash off the worst of the tear gas. He was then wedged between the shields and deposited in his cell.

The rebellious prisoner was exuberant. He had, he claimed, shown “that they can’t push me around”. I admired his spirit but privately questioned his conclusion. Other prisoners were more vocal. A few grouched that he had got them tear-gassed. (We also missed supper, but nobody complained about that.) Most, however, congratulated him for the protest and agreed that he really had “showed them”.

A few hours later, a guard came by to give him new coveralls. She was maternally sympathetic, saying that “you were doing so well,” but now the segregation clock would be reset. He had already served eighteen days in segregation and had been due to be released back to the general population in three days. With the rebellion, he was now back to twenty-one days. The guy was unconcerned. “It was worth it,” he assured the worker. “I showed them they can’t push me around”.

So it ended. The segregation unit returned to its slow, boring routine. A few days later, I was shipped off as part of the justice system’s processing of me and my case. I was struck by one feature of the incident. The rebellious prisoner had been tear-gassed, stripped naked by brute force, and manhandled. His peaceful protest met with a violent response. As collateral damage, twenty-three other prisoners were tear-gassed. Some of them were in segregation for protection rather than punishment. Probably about a third had not been convicted of the charges they were in jail for—that is, in the eyes of the law they were innocent. At least one was never convicted of any crime, ever. All in all, it seemed a fairly violent response. Despite this, there was no complaint. The use of violent force by these state officials appeared to be considered entirely legitimate by all those directly or indirectly involved.

The lack of complaint about the use of violence to suppress a non-violent protest is consistent with the data from Canada’s federal prison system presented in Table I. As in the federal system, complaint in general was not unusual to prisoners in Saskatchewan correctional facilities. In

2008, the year in which the observed incident occurred, prisoners subject to disciplinary action had a right of appeal (*Saskatchewan Correctional Services Administration, Discipline and Security Regulations*, 2003), which was communicated to prisoners as a matter of policy (Saskatchewan Corrections and Public Safety, 2003). Prisoners also had the right of appeal to Saskatchewan's ombudsman. In 2008, the year of this use of force incident, prisoners in Saskatchewan corrections facilities launched 616 complaints with the ombudsman. Prisoner complaints accounted for 28.12 percent of all complaints generated for the ombudsman (Saskatchewan Ombudsman, 2009). In 2008, Saskatchewan correctional facilities generated 0.41 complaints to the ombudsman for every prisoner being held, based on the average daily census of prisoners (Statistics Canada, 2018), which is very close to the rate of complaint by prisoners in the federal prison system. However, in 2008, none of these complaints to the provincial ombudsman rose from protests about the use of violence by guards. The lack of complaint about the use of violence by guards in Saskatchewan jails results in a lack of discourse about it. When the Saskatchewan Ombudsman published a major report critical of services and conditions in Saskatchewan jails in 2002, the use of force was not mentioned. Among the 145 recommendations, none dealt with violence or the use of force by corrections staff (Saskatchewan Ombudsman, 2002).

The scarcity of official complaint about the use of violence by guards stands in stark contrast to the general willingness of prisoners to use official channels for the expression of grievance. Not every incident of guard on prisoner violence is viewed as legitimate. For example, on 19 November 2019 Jonathan Henoche died following a violent altercation with guards at Her Majesty's Penitentiary in St. John's, Newfoundland. Henoche was in remand detention awaiting trial on a charge of murdering Regula Schule, who was an elderly woman and former missionary who worked with prisoners in Labrador. Following her murder, prisoners at the correctional centre in Happy Valley, Labrador built her a coffin to show their respect and in keeping with her request prior to her death (Barry, 2016; Kelland, 2019). Because of the nature of the charge against him, Henoche was transferred to Her Majesty's Penitentiary in St. John's, Newfoundland because of fear that other prisoners would take violent action against him. Henoche's former cellmate clearly viewed the violence meted out by the guards as illegitimate, telling the media, "I want them held accountable" (Smellie,

2020). Slightly more than a year after Henoche's death, the police weighed in as three guards were charged with manslaughter and seven with criminal negligence causing death (Royal Newfoundland Constabulary, 2020). At the time this article was written, no further details have emerged as testimony at a preliminary hearing is subject to a publication ban. The death of Jonathan Henoche shows that guard on prisoner violence can be deemed illegitimate by both prisoners, police and prosecutors. Most of the time, however, guard use of force does not generate either prisoner protest or official response.

A starting point in looking at the contradiction between the use of force and the lack of complaints about it is the relevant legal regime. Section 25(1) of the *Criminal Code of Canada* provides authorization for those working in the criminal justice system to use force "if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose". The use of force or violence by guards is, under certain conditions, legal and authorized. The prisoners' lack of complaint appears to conform to the legal regime. No complaint arises if the use of force is authorized by the law. On rare occasions, guard use of force transcends legal boundaries and is deemed illegitimate both by other prisoners and the legal system.

The first potential grounds for complaint could arise from the objectives of those guards using force. Violence is both authorized and accepted if the objective is to ensure the safety of staff and other prisoners and to achieve compliance with appropriate orders. In the case described earlier, no immediate safety issues were involved. The protesting prisoner was alone in a locked room. It, however, was not the locked room that he had been ordered to be in. Since he refused to voluntarily return to his cell, he was forcibly returned. One key for legitimizing this use of force is that it was clearly aimed at enforcing compliance rather than imposing penalty. The punitive process was separate from the compliance-enforcement process. Punishment consisted of extending his stay in segregation. This came with an established process in which the prisoner had the right of appeal. Although I do not know if he ultimately exercised this right of appeal, his first response was very clearly to accept the appropriateness of the non-violent discipline.

The second potential legal grounds to challenge the use of violence by the guards is the claim that the level of violence exceeded the least necessary. In the case described above, as far as I could determine, the protesting prisoner

was not hit, kicked, clubbed, strangled, stabbed, or shot. He was tear-gassed to reduce his capacity for resistance and manhandled to place him in his cell. Stripping his clothes off and throwing him in the shower could be seen, while somewhat humiliating, as a mitigation of the harm caused by the tear-gassing. In short, the level of force appears to have been appropriate to the objective of enforcing compliance without causing injury to the prisoner. The stinging eyes and sore throats of the other prisoners could be viewed simply as collateral damage causing a temporary inconvenience. Indeed, it appears to have been accepted as such by all the prisoners, including me. As an added benefit, the incident broke the tedium of solitary confinement. For that, a little discomfort was a small price to pay.

The two conditions for guards' violence thus appear to be that the violence is for the purpose of securing compliance rather than as a tool of discipline or revenge and that the level of force used only be sufficient to achieve compliance. In short, the use of force must be bureaucratically governed by rules and procedures. These conditions are not necessarily easy conditions to achieve. As Collins (2009, p. 4) puts it:

Violence as it actually becomes visible in real-life situations is about the intertwining of human emotions of fear, anger, and excitement, in ways that run against the conventional morality of normal situations.

The administration and receipt (real or potential) of violence is intrinsically non-bureaucratic as fear and anger build a confrontational tension (Collins, 2009, pp. 19-20) that is the antithesis of orderly, rule-driven processes. Collins argues that people such as police are particularly susceptible to a "forward panic" occurring when one side in a confrontation is subjected to a high level of fear and stress that is relieved when the balance of forces changes or the perceived aggressor attempts to withdraw. The tension is then suddenly relieved in an explosion characterized by a hot rush, piling on, and overkill (Collins, 2009, p. 89). Thus we have the phenomena of savage beatings in the course of arrest and other such non-rule based applications of force by officials of the state. These instances, if they are observed and recorded, generate complaint and condemnation.

There was clearly no forward panic by corrections officials involved in forcing the compliance of the rebellious prisoner described above. To the very limited extent that one can judge emotion of someone obscured by a shield and a gas mask, the members of the response team and other guards

appeared bored. Commands were issued via a speaker system in a normal tone of voice. They were expressed firmly but politely. When the prisoner was being subdued and placed in his cell, there were no oaths or expletives. Indeed, no words were spoken. The body language of the members of the response team appeared purposeful but relatively relaxed. They were neither cringing nor straining forward. No blows appear to have been struck. It was, it seemed, just another day at the office.

The key to this was likely the slow-moving development of the incident, which allowed the guards to accumulate overwhelming force and be the initiators of any escalation. When the prisoner began his protest, no guard was in any conceivable physical danger. There was just one relatively scrawny prisoner in a locked room. All of his movements could be observed and his capacity to harm anyone was non-existent. The guards could gather their forces and prepare a plan at their leisure. When they did act, it was with overwhelming force. The prisoner was incapacitated with tear gas. He was secured, restrained, and forced to comply by four people, each of whom was considerably bigger than he was and who enjoyed the benefits of training and significant amounts of personal protective gear.

Unlike the other guards, the members of the response team were at some personal risk, but it was at a low level. They were also clearly trained, equipped, and accustomed to dealing with this type of situation. As a result, their level of fear was likely very low, with a corresponding minimal level of confrontational tension. It appeared relatively easy for these officers to keep the level of force used to within limits deemed to be acceptable to everyone participating in or witnessing the incident.

The special circumstances of segregation contributed greatly to the ability of the guards to minimize confrontational tension. Unlike in general population ranges in a jail or prison, the guards were not in close physical proximity to prisoners and had control over the timing and nature of any physical interaction. In a segregation unit, the officers cannot be physically assaulted without warning. Fear is reduced, making officer violence easier to keep within boundaries deemed appropriate and hence legitimate.

CONCLUSION

The key conclusion arising from an analysis of the incident described above is that the ability of the guards to create an overwhelming balance of power reduces their level of fear and excitement. This contributes to their ability to

ensure that the violence they inflict is deemed to be legitimate both legally and in the eyes of the recipients of the violent action. This may not make right, but it can help with legitimization.

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