

The Consequences of Prisoners' Micro-Resistance

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For more than twenty years, scholars have called for greater attention to the consequences of micro-resistance to legality. Using archival data from Philadelphia's Eastern State Penitentiary (1829–1875), I examine the consequences of noncompliant prisoner behavior. I find that prisoners' noncompliance often entailed substantial costs to prisoners, particularly in comparison to the substantial benefits of complying with the prison regime. Despite its cost to prisoners, noncompliance did not have a single set of uniformly negative consequences for the prison regime. In fact, some forms of noncompliance may have actually protected the prison's reputation. Prison administrators, external allies, and critics used episodes of noncompliance for their own goals and to reinforce their preexisting claims about the propriety of competing prison designs, yielding this variable significance of noncompliance. As this study illustrates, connecting prisoner misconduct to power dynamics in the broader field produces a fuller understanding of micro-resistance's consequences.

INTRODUCTION

For more than twenty years, sociolegal scholars have called for greater attention to the consequences of resistance, particularly “informal,” “outsider,” or “everyday” forms of resistance (Handler 1992; McCann 1992; McCann and March 1996; Morrill, Zald, and Rao 2003; Brisbin 2010). These instances of “micro-resistance” are generally covert, unorganized, and individualistic acts performed by subordinated persons seeking to frustrate the interests, expectations, or rules of the powerful.¹ Though not revolutions in themselves, acts of micro-resistance may provide the foundation for subsequent action (see Scott 1985, 1992), just as social

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1. The exact boundaries of this category are difficult to define. Perhaps the most useful definition comes from Morrill, Zald, and Rao (2003, 405–06), who use the term “covert political conflict,” which entails the “contestation of institutionalized power and authority, perceptions of collective injury, social occlusion, and officially forbidden forms of dissent.” However, these scholars also note that the behavior “varies in terms of its forms, social visibility, collective dimensions, and outcomes” (394). As we shall see, however, scholars have included many different behaviors in this category. To engage with this literature, I have adopted a broad definition of micro-resistance, emphasizing its typical features, but not requiring all of these features in any given action examined.

movements may fail in court but activate participants' and others' legal consciousness (McCann 1994). More subtly, this behavior can contest and reconstruct the nature of power relations (Sarat 1990; White 1990; Ewick and Silbey 1992; Merry 1995).

While micro-resistance has been central to our understanding of legal mobilization (Ewick and Silbey 1998), several sociolegal scholars have offered pessimistic assessments about its ultimate significance (e.g., Gilliom 2001). Noting the triviality of some such acts, Handler (1992, 724) has called accounts of micro-resistance "stories of despair." As Merry (1995, 24) has noted, examinations of resistance may have been too "celebratory" in their tone: in her examples of micro-resistance in colonial Hawai'i, the oppressed won minor victories but largely remained oppressed. For Mumby (2005, 39), examples of micro-resistance in the face of greater oppression represent a "hollow victory." Most recently, Regev-Messalem (2014, 744) has concurred with a lengthy literature finding "that struggles must take a collective form in order to generate change." Ultimately, however, "the outcome of resistance strategy and tactics still needs much more attention" (Brisbin 2010, 38; see also Morrill, Zald, and Rao 2003).²

Despite this undercurrent of skepticism, interest in resistive behaviors has continued and spread, becoming particularly popular among prison scholars. Building on a long tradition of examining how prisoners adapt to their surroundings and form their own counterculture (Clemmer 1940; Sykes 1958), prison scholars have enthusiastically applied the micro-resistance framework to challenge Foucault's (1977) description of a disciplinary prison in which prisoners are virtual automatons and agents of their own punishment. Indeed, historians have amply demonstrated that prisoners were not the passive recipients of power that early prison reformers hoped they would be (see, e.g., O'Brien 1982; McLennan 2008; Janofsky 2012; Newman and Smith 2012). Likewise, scholars examining contemporary prisons have explored the new and even more subtle ways in which prisoners challenge the increasingly insidious manifestations of power (see, e.g., Bosworth 1999; Bosworth and Carrabine 2001; Crewe 2007; Ugelvik 2011, 2014).³ What is less clear, however, is what effect prisoners' actions have had on their situations and the prison regimes.

As in the broader law and society literature, the *act* of resisting is seen as a victory (against the prison regime) by representing the limits of discipline, power, and oppression. Consequently, the downstream effects of resistance are considered less important, and thus have been infrequently examined. This lack of attention has

2. Some scholars are thus concerned that authors are too optimistic about micro-resistance that ultimately pales in comparison to the power prisoners fight. Another concern involves the question of whether we should celebrate oppositional acts simply because they are oppositional. Most of the literature on this topic discusses people who have been treated unfairly, under a conventional social justice view, and in this case, progressive scholars cheer for modest victories of the oppressed. As McCann and March (1996, 218) note, however, "the discussion of resistance in most of these studies lacks any clearly developed normative, ethical, or ideological standpoint for assessing the legitimacy of specific actions." This is particularly true of prison studies, where some scholars have referred to prisoners as victims of their confinement to emphasize the social injustices and social norms that led to uneven incarceration trends (e.g., Hayden 2013). I will not address the ethicality of prisoners' micro-resistance, but instead use these acts to gain insight into the limitations of power, whether we are supportive or skeptical of that power.

3. There has been little attention to the more common stance of complying with the prison regime and rules (Dalley 1993).

prohibited a fuller understanding of micro-resistance and its significance. Micro-resistance is primarily theoretically interesting because it may reverse power dynamics and improve the condition of oppressed groups. Unfortunately, as studies of micro-resistance often focus mainly on the event of micro-resistance itself (or prisoners' private satisfaction with their own behavior), we have little basis for empirically evaluating and improving our theoretical understandings of micro-resistance as a destabilizing act.

In this article, I examine the consequences of prisoners' micro-resistance through archival data from Eastern State Penitentiary (1829–1875), a heavily scrutinized prison and one of the most vulnerable to criticism in US history. As such, Eastern represents a useful case study for examining the consequences of prisoner behavior. Specifically, this study seeks to answer two questions: “What were the consequences of compliance and noncompliance with the prison regime for *prisoners*?” and “What were the consequences of compliance and noncompliance with the prison regime for the *prison regime*?” Neither question has been adequately addressed thus far.

I demonstrate that micro-resistance is far from a clearly positive act for Eastern's prisoners or a clearly negative act for the prison regime. Instead, prisoners who complied with the system tended to accrue substantial benefits, while noncompliant prisoners sustained substantial costs that are often overlooked in discussions of prisoners' micro-resistance. Additionally, the consequences for the prison regime are more variegated than expected.⁴ I suggest that the underexplored role of audience is important in shaping the effects of prisoners' behavior. Using the Bourdieusian concept of the “field,” as interpreted and applied to the penal context by Josh Page and colleagues (Page 2011; Goodman, Page, and Phelps 2015), I demonstrate that different audiences used prisoner behavior to support or criticize Eastern. Drawing on the insight that penal fields are composed of competing groups, struggling to influence penal policy, I show that prisoner behavior became a tool in this struggle, often reinforcing preexisting attitudes rather than undermining the prison *per se*. In this context, some forms of micro-resistance may actually help sustain the prison regime over the long run. While more research is necessary to flesh out the theoretical significance of micro-resistance, these findings suggest a useful framework for empirically examining a fuller range of the consequences of micro-resistance.

PRIOR LITERATURE

Prisoners' varied forms of noncompliant behavior, from the countercultural inmate code (Sykes 1958) to hunger strikes (Reiter 2014), from litigation

4. For the purposes of this study, I define the consequences or effects of prisoner behavior on the prison regime broadly. The implicit null hypothesis assumes that micro-resistance is too small and inconsequential to affect the prison regime; a broad definition allows the fullest exploration of this hypothesis, potentially erring on the side of overstating the consequences. Thus, I include internal effects on the prison regime (e.g., financial difficulty, the need to alter rules of the regime) and external effects on the prison regime (e.g., damage to reputation, legislation or court mandates ordering changes to the prison's practice or policy). It is worth observing that internal and external effects are causally related in that negative internal effects can cause reputational damage that could ultimately inspire legislation that permanently alters the prison regime. However, I do not require external effects to find significance in the consequences of prisoners' behavior.

challenging prison conditions and treatment (Milovanovic and Thomas 1989) to riots (Carrabine 2005), have long been a fruitful source for analyzing power. Prisoners' noncompliance illustrates the inherent limits of repressive power within prison settings (Sykes 1958), particularly the way in which power is contested and contingent, dependent on prisoners, guards, and administrators (Bosworth and Carrabine 2001; Janofsky 2004; Brown and Clare 2005; Goodman 2008). Some scholars have examined the role of prisoners' perceptions of the prison regime and guards' legitimacy in shaping prisoners' likelihood of misbehavior, violence, and resistance (Sparks and Bottoms 1995; Sparks, Bottoms, and Hay 1996; Carrabine 2004, 2005). Other scholars have sought to illustrate that prisoners are not passive recipients of the prison regime, but "actively create their own space" and exercise agency (Bosworth and Carrabine 2001, 513). Together, these studies show how power functions and illuminate its sources and limitations.

Two recent trends in prison research have extended our understanding of power. First, scholars have focused particular attention on the importance of identity as an expressive form of resistance, examining the interplay among race, gender, sexuality, and power (Bosworth 1999; Bosworth and Carrabine 2001; Jewkes 2005; Ugelvik 2014). Second, and often relatedly, scholars recognizing the seeming futility of overt or public resistance in contemporary prison settings⁵ have examined increasingly subtle forms of noncompliance. For example, Bosworth and Carrabine (2001) discuss the importance of female prisoners' hairstyles as expressions of identity and prisoner solidarity. Crewe (2007) describes the "hidden transcripts" of prisoners' polite conversations with guards, in which they are outwardly deferential and compliant but inwardly hostile to the system, privately thinking oppositional thoughts. Most recently, for Ugelvik (2014), when foreign prisoners in a Norwegian prison criticize Norwegian parenting norms and issue empty threats to exact violent revenge on prison workers, these are acts of resistance and a means of expressing their own masculinity in a context that restricts gender performances.

These studies have helped broaden our understanding of the way power functions within prison settings by identifying a wider range of activities through which prisoners can challenge power relations. However, the growing focus on micro-resistance instead of open, organized, or collective acts of resistance has also limited our understanding of prisoners' ability to challenge the prison regime effectively. Scholars increasingly view micro-resistance as inherently significant, regardless of its material consequences. When any act of subversion counts as a successful act of resistance, further evaluation seems unnecessary. This is, of course, problematic if we are indeed interested in this behavior's consequences for the power structure.

While turning in an otherwise fruitful direction, prison scholars have moved away from the original project that views micro-resistance as destabilizing. For Scott

5. Most research on contemporary prisons comes from UK and Nordic prisons (most recently Liebling 2011; Crewe et al. 2014; Shammas 2014; Ugelvik 2014; Crewe, Liebling, and Hulley 2015) due to the long-term virtual moratorium on research in US prisons (Simon 2000; Wacquant 2002; Goodman 2008; Calavita and Jenness 2013). In these northern European prisons, power is described as less directly oppressive but more insidious, "lighter," but "tighter" and more "present," more psychological than physical (see especially Crewe 2011; Crewe, Liebling, and Hulley 2014). Prisoners view the possibility of visible, overt resistance in this context as countereffective or misguided (Crewe 2007).

(1985), hidden acts of micro-resistance lay the foundation for subsequent rebellion. The covert nature of micro-resistance allows resisters to avoid detection and further repression while continuing to subvert authority, essentially allowing sustained challenges to authority (Morrill, Zald, and Rao 2003, 394; for a recent and larger-scale version of a similar strategy, see Chua 2012). The basic significance of micro-resistance, then, has been its potential for improving the lot of the oppressed by destabilizing authority. While Carrabine (2005) has argued that small acts of misbehavior test the ground for further action and are often prerequisites to prison riots, most prison scholars have not connected micro-resistance to macro-resistance or other large-scale consequences. We have not identified the results of this behavior when mass, organized, open resistance is not forthcoming. Even where the status quo power dynamics are not shaken, are prisoners better off after engaging in micro-resistance? Does micro-resistance create cracks in the edifice of power or simply make prisoners worse off when they are caught and punished? This study represents a first step toward answering these questions.

DATA, CONTEXT, AND LIMITATIONS

The data for this study come from a broader examination of Eastern State Penitentiary in Philadelphia over the years 1829 to 1875. I examined a variety of archival data sources, including public documents (the prison's annual reports, a legislative investigation into the prison, legislation) as well as private documents (the warden's daily log, meeting minutes of the board of inspectors, meeting minutes of a local penal reform group that visited the prison, the diary of a local penal reformer, the prison's labor records, the moral instructor's records, and a few dozen letters to and from prisoners). In all, these represent several thousand pages of data offering partial, often subjective descriptions of prison life from different perspectives—administrators, suspicious penal reformers, and, sometimes, the prisoners themselves—over several decades.

The data are uneven. The records are disproportionately provided by nonprisoners, making it difficult to reconstruct the prison experience as lived by prisoners (see O'Brien 1982; Spierenburg 1991). Even among nonprisoner authors, however, not all voices are equally represented, as some actors were more likely to record their thoughts than others. Additionally, some episodes were more likely to be recorded than others: misbehavior and exceptional events are more common in the records than the quotidian routine, and basic descriptions are more common than personal reactions or interpretations. The records are also temporally uneven. For some sources, particularly detailed accounts are available for only a few years: the legislative investigation includes testimony on practices from 1829 to 1834, the penal reformer's diary includes sporadic entries from the late 1840s and early 1850s, and the prisoners' letters come from 1845 and 1862. Other data sources, like the warden's log and the inspectors' meeting minutes, provide temporally consistent, but pithy accounts, with occasional exceptions exhibiting (comparatively) great detail. However, even these vary in their thickness, for example, when different administrators take over the records from a predecessor. Finally, the public

documents and even some of the private documents are almost always written with an audience in mind; triangulating across sources reveals that some activities were not recorded in any document that might be read by nonprison personnel. The data thus offer only "snapshots of prison life and prisoner behavior" (Rubin 2015b, 31) that must be read cautiously.

Despite these limitations, the data are incredibly useful. They reveal a variety of prisoners' micro-resistance, noncompliance, misbehavior, subversion, or what might be termed more accurately as "secondary adjustments" (Goffman 1961, 189) or "friction" (Rubin 2015b, 23): "behaviors that violate the prison regime's rules or expectations or, though technically consistent with the rules, frustrate its ultimate goals."⁶ Whether intentionally or not, these behaviors have the potential to undermine the prison regime.

Indeed, as one of few prisons following the Pennsylvania System, Eastern's prison regime was particularly vulnerable to criticism and reputational challenges. Under the Pennsylvania System, Eastern's prisoners were ostensibly housed in solitary confinement by day and night, receiving work assignments within their cells, education and vocational training, and visits from prison personnel, penal reformers, and other social elites. (In practice, some prisoners were allowed to work in various parts of the prison beyond their own cells, while others were double-celled.) The emphasis on solitary confinement, as well as a general provision against speaking with other prisoners, was intended both to prevent mutual corruption or contamination and to protect prisoners' identities; administrators considered these steps crucial for prisoners to reenter society with ease and abstain from crime.

Most states' penal actors, however, did not consider these provisions necessary, did not believe they would be practicable, thought they were too expensive to implement, or believed they were cruel and dangerous. Eastern's system of solitary confinement was often associated with earlier, disastrous experiments with solitary confinement in New York and other states, which resulted in insanity, physical illnesses, and death. The vast majority of states thus adopted factory-style prisons on the Auburn System, in which prisoners worked in congregate labor by day, and retreated to solitary cells at night.

At its height, the Pennsylvania System was adopted at only four prisons (two in Pennsylvania) and by the close of the Civil War, it existed only at Eastern. Throughout the period examined, Eastern (and its Pennsylvania System) was routinely criticized. It was heavily scrutinized by penal reformers from the Atlantic world, but most especially the Boston Prison Discipline Society (BPDS; f. 1826) and the New York Prison Association (f. 1844). Both groups used their widely circulated annual reports to detail what they considered to be Eastern's apparent failures (Rubin 2015a).

While Eastern represents a useful case study for examining the consequences of prisoners' behaviors for the prison regime, there are two important limitations. First, establishing causality, always a difficult endeavor, is particularly challenging here: I cannot trace the impact of a single behavior on the prison regime's longevity

6. For a full range of the behaviors observed, see Rubin (2015b), Janofsky (2012), and (for an account of all of Pennsylvania's female prisoners) Hayden (2013).

because many factors could simultaneously diminish Eastern's reputation. I limit causal claims to episodes in which contemporaries' statements link prisoners' behaviors to assessments of the prison regime, such as where prisoner behavior is used as evidence to support or attack the prison. Whether the criticism would have existed without such evidence is unclear, but the evidence presumably strengthened the force of critics' claims.

Second, because I rely on archival records, most often records maintained by nonprisoners, I frequently lack prisoners' perspectives on their own behavior. This shapes the analysis in two ways: (1) I cannot properly distinguish between intentionally and unintentionally resistive behavior; without gaining the prisoners' perspectives on the reasons for their behavior, it is difficult to identify misconduct as resistance or as the friction that humans necessarily enact while incarcerated (Rubin 2015b). However, it is not clear that intentionally resistive, covert, and small-scale misbehavior would more successfully undermine the prison or aid prisoners than frictional behavior. To avoid misrepresenting prisoners' intentions, I describe prisoner behavior as compliant and noncompliant. (2) I cannot detail the private exhilarations or joys the prisoners derived from flouting the prison's rules; however, these have been amply conveyed in studies of contemporary prisons (see, e.g., Bosworth 1999; Bosworth and Carrabine 2001; Crewe 2007, 2009; Ugelvik 2011, 2014). The findings are thus skewed, underrepresenting prisoners' consciousness, and overrepresenting the physical or material consequences of prisoner behavior, which have been less often documented in the literature.

Finally, it is important to note that Eastern operated in a very different context from prisons today. Eastern was a prebureaucratic institution with limited oversight. For most of the period examined, a small group of men managed the prison. These officials included five "inspectors" who constituted something like a board of directors; they set internal policy, managed most budget issues, approved employment decisions, and appointed and supervised the warden. The warden oversaw the daily routine of the prison, directly supervised the overseers, punished recalcitrant prisoners, and made contracts and business negotiations to supply the prison and sell inmate-manufactured goods. The prison physician also made recommendations and was allowed to circumvent otherwise sacred rules of solitary confinement if he believed it was medically necessary. There were often disagreements within the board of inspectors, between the board and the warden, and between the warden and physician.

Beyond this cadre, there was virtually no bureaucratic oversight. The inspectors were appointed by Pennsylvania Supreme Court justices to two-year terms; though more than a third (thirteen of twenty-six) served terms over ten years, only five served terms of two years or fewer, and no inspector was removed. A Board of Charities and Corrections emerged in 1869, but it brought no apparent change in prison operations. Extant oversight was much more informal: the prison was frequently visited by penal reformers from across the United States and Europe. Members of the Philadelphia Society for Alleviating the Miseries of Public Prisons were frequent visitors; they occasionally expressed their disapproval of prison management to Eastern's administrators and at other times lobbied the legislature for changes in the laws governing the prison. Additionally, the Philadelphia grand jury

visited the prison on occasion; members of the legislature, the judiciary, and the governor were explicitly invited to visit the prison, but rarely did.

Occasionally, higher authorities did intervene, but these interventions did not amount to much. In 1834, several overseers triggered an investigation into the prison by notifying the legislature that officials had engaged in misconduct (including torture-punishments resulting in death). The officials accused of misconduct were cleared of all charges in 1835 (Pennsylvania 1835a). While nineteenth-century judges largely followed a hands-off policy toward prisons, they did respond to habeas corpus lawsuits. In 1862, two prisoners launched their petitions when administrators refused to release them under a new law that allowed prisoners to earn an earlier release date for good behavior. However, the state supreme court ruled this law unconstitutional and the prisoners remained incarcerated (*Johnson v. Halloway* 1862). For the most part, then, prison administrators managed the prison with a high degree of freedom. While some administrators seemed genuinely to believe in the principles behind their prison, they had substantial discretion in managing their prison, including distributing rewards and punishments.

THE CONSEQUENCES FOR PRISONERS

Prisoners at Eastern engaged in a wide variety of noncompliance. As I have noted elsewhere (Rubin 2015b, 31), these included:

refusing to speak with the prison's "moral instructor" [chaplain] or reformers, rejecting religion or faith, feigning religious devotion; breaking tools and raw materials, refusing to work, working slowly; breaking cell furniture, covering the walls with bodily matter; consuming alcohol or tobacco; many creative techniques for oral, audio, and textual communication between prisoners, including tapping on pipes, passing letters, carving holes in cell walls, climbing on looms to reach the skylight to talk across corridors; reading illicit materials (provided by guards or approved visitors) or using immoral language; manufacturing counterfeit coins; attacking guards or the warden, attempting or achieving escape; masturbation, self-mutilation, suicide.

These were small exercises of agency in which prisoners, often acting alone or in pairs, violated the prison's rules or frustrated its goals, through both covert and overt acts. Similar behaviors have been described as micro-resistance by scholars examining a variety of prison settings (see, e.g., O'Brien 1982; Pisciotta 1994; Janofsky 2004, 2012; Newman and Smith 2012), though the extent to which prisoners considered these resistive activities likely varied tremendously by activity and across prisoners (Rubin 2015b).

Many of these behaviors likely had short-term benefits to prisoners by improving the conditions of confinement in small ways. Illicit prisoner communication offers a useful illustration: prisoners were forbidden from communicating with each other, but communication offers a variety of benefits for prisoners, from the minor (entertainment, relieving boredom) to the more substantial (personal connections,

solidarity, information exchange). Communication was one of the most commonly recorded instances of prisoners' noncompliance (along with refusal to work), though the frequency of recording is a poor indicator of actual frequency.⁷ Prisoners developed a variety of extremely inventive communication methods. Prisoners passed letters, talked through skylights, and communicated through pipes directly or by tapping, but prisoners used other modes as well. One pair of prisoners was caught having made a hole in the wall separating their two cells. When pressed to explain how they made the hole, they explained they had used "a knife made into a drill and a stick in which it was fastened" to make a hole; then they "pasted over it" with paper "and whitewashed" it; then they blocked the view of it with "a basin . . . on one side and a brush on the other"; at night, this edifice "was removed and conversation enjoyed" (Warden's Daily Journal July 6, 1840). Presumably, prisoners would not have gone to such lengths if communication did not provide some benefit, but it is difficult to document prisoners' motivations.

Passing bobbins offered another communication network. Many prisoners, particularly the unskilled or recent admits to the prison, were involved in winding bobbins (wooden pegs on which thread or yarn could be wound for later weaving on looms). In the 1840s, around a third of the prisoner population was typically involved in bobbin winding; other prisoners received the wound bobbin in order to weave fabric. This sanctioned exchange created an informal communication system. Prisoners wrote their names "and sometimes indecent language. . . . When the bobbins [we]re unwound the writing appear[ed]." The penal reformer William Foulke reported that he had seen one such bobbin in person, though his primary source of information on bobbin passing was a prisoner, No. 1831 (Foulke March 21, 1846). In addition to enabling communication, bobbins provided prisoners a way to advertise their identity, and thereby negate the prison's goal of anonymity.

Beyond temporary benefits, these modes of communication facilitated long-term relationships. One pair of prisoners, Elizabeth Velora Elwell and Albert Green Jackson, sustained a romantic relationship for at least two months during which time they passed more than a dozen letters and met secretly in the "cole seller" on occasion (Elwell April 25, 1862; Rubin 2015b, 32–34). Less dramatically, other prisoners formed lasting friendships in the prison. Eastern's moral instructor related the story of "two men who were in adjoining cells in the East. Penit., and succeeded in communicating with each other." The older of the two was released first and, "[h]aving learned the day in which the younger was to be liberated, he awaited him

7. At least three factors militate against attempts to quantify prisoners' misbehavior: First, any recorded instances of misbehavior are a selective sample, determined by who was caught and what the prisoner did, whether the record keeper cared sufficiently to record the misbehavior, and whether the record survived. Second, this study draws on multifarious types of data—some consistent records, some spontaneous records, some private, some public—and what was recorded varied over time and by person. Presenting an actual number may imply more confidence than is deserved. Records could misleadingly suggest one type of behavior was more common than another if the former was more frequently recorded in the records reviewed. Instead, the high frequency of records tells us that, at a minimum, the behavior was common, but it cannot reveal comparative frequencies across behaviors, time, or prisoner groups. In the present case, the frequency of illicit communication is determined by repeated references within sources over time and across different kinds of sources: for example, illegal letters exchanged between a pair of inmates over the course of two months, repeated references within Foulke's diary over about five years; and repeated references within the warden's log and Prison Society's meeting minutes over several decades.

outside the gate." Prison officials learned that these two men were "now at work at the Globe mill" (Foulke January 18, 1846). In this case, a rule violation in prison may have helped one prisoner find employment after prison (if the older prisoner secured the younger prisoner his job), in addition to providing companionship to combat the prison's solitude.

One of the most striking insights from these data, however, comes not from examples of rule breaking, friction, or micro-resistance, but from prisoners' compliance with the prison regime. As Dalley (1993) described in her examination of female prisoners in late-nineteenth-century New Zealand, compliance was apparently more typical than noncompliance. Importantly, this group of compliant prisoners provides an interesting comparison case (though not perfect counterfactuals) to prisoners who misbehaved, which may illuminate the comparative advantages or disadvantages of noncompliance. This comparison most strikingly illustrates how prisoners could substantially benefit from complying with the system's rules, and thus how much unruly prisoners potentially lost.

The Advantages of Compliance

At Eastern, prisoners who complied with the prison regime's rules and expectations, or at least appeared to do so, often substantially benefited from their choice. Most notably, prisoners received "overwork" or payments for performing more than their assigned labor tasks, an incentive to instill industrious habits that would encourage prisoners to (re-)enter the workforce upon release. In multiple cases, industrious prisoners were released with a large amount of cash. Prisoner No. 1066, William Whitley, received \$51.58 in overwork; the warden noted that "he has never been reprimanded or punished during his four years [sic] confinement" (Warden's Daily Journal February 18, 1843). No. 4127, John Fox, received \$116.99 (Warden's Daily Journal September 30, 1852). No. 2904, John Book, received \$357.76 in overwork after his twelve-year sentence. The warden noted that Book "[g]oes out in excellent health of mind and body, and has been a most useful & well conducted prisoner" (Warden's Daily Journal June 14, 1864). While most overwork payments were smaller sums, at a time when day laborers made less than a dollar per day and skilled workers several dollars per week,⁸ even small stipends could serve prisoners well for their first several weeks or months out of prison.

Similarly, prisoners who did not resist the efforts of penal reformers and prison personnel sometimes learned useful skills. Prisoners were often described as having learned to read and/or write during their sentence (the vast majority were illiterate upon entry). The warden recorded of his exit interview with No. 1512, George Evans: "This man was unable to read when admitted and has learned in prison" (Warden's Daily Journal March 1, 1843). No. 950, Anne Johnson, had "behaved well" during her confinement and also "learned to write in prison" (Warden's Daily Journal August 14, 1839). Another inmate, No. 1675, returned to Eastern the year

8. Unskilled workers in Eastern Pennsylvania earned between \$0.60 and \$1.00 per day in the 1840s and 1850s. Weavers (skilled workers) earned between \$2.50 and \$4.75 per week in the 1840s (Geffen 1982, 335–38).

after his release “to see his old keeper.” The warden noted: “He informs us that he is going to school this winter. . . . This individual could neither read nor write when committed here. His first lessons were learnt here” (Warden’s Daily Journal February 19, 1845). Some prisoners also learned a trade during their confinement. During his two-year sentence, No. 17, Asbury Lee, “had been an industrious well behaved prisoner and had learned to be an excellent Boot & Shoemaker while with us” (Minute Books of the Board of Inspectors and Board of Trustees of the Eastern State Penitentiary, Warden’s Report March 3, 1832).

Prisoners often left Eastern with more than new skills or wages for their work. The warden, high-level officials, and penal reformers provided material help to well-behaved prisoners. In several cases, they arranged employment for the prisoners. Administrators and penal reformers found “places” (jobs) for a number of female prisoners, such as Elizabeth Leron, No. 872, who was “provided with a place, to which she was taken” (Warden’s Daily Journal January 3, 1839). Some prisoners requested, and were allowed, to stay at the prison after their sentence ended until they could find a more permanent position. In 1835, No. 54, James Brown, returned to the prison the day after his release; like others who stayed on at the prison, he continued to live in his cell and eat prison fare (Warden’s Daily Journal December 6, 1835). He continued “on wages” for nearly a month (Warden’s Daily Journal January 2, 1836). In 1835–1836, No. 55, William Davis, was also employed by the prison after his release. While he was still a prisoner, a noxious gas leak forced an evacuation of the prison in March 1835; Davis had “behaved well” and even “acted as guard to see that none of the prisoners got out of their yard” (Warden’s Daily Journal March 12, 1835). Later that year, Davis was pardoned, in response to which “he expressed himself with great thankfulness & evinced a disposition to do well” (Warden’s Daily Journal June 4, 1835). Davis stayed on at the prison for exactly six months (Warden’s Daily Journal January 4, 1836).

Other prisoners were given clothing or money for transportation upon their release. Upon discharge, the warden “gave [Richard Dodge] a pair of pantaloons and a vest, his being so bad that he was not fit to be seen” (Minute Books of the Board of Inspectors and Board of Trustees of the Eastern State Penitentiary, Warden’s Report March 12, 1831). When Prisoner No. 542, identified as “H Lane,” had no clothing at the time of his release, the warden ordered a pair of pants and other items made for the prisoner, “having been a useful fellow” (Warden’s Daily Journal January 17, 1837). The warden insisted another prisoner remain a few extra days while new clothes were made “as his cloathes were not fit to wear” (Warden’s Daily Journal January 6, 1838). Upon her release, Prisoner No. 1851, Mary Flick, “[took] with her a present of a gown, pair of shoes, &c.” from a committee of female prison reformers (Warden’s Daily Journal May 11, 1846). Administrators also arranged for well-behaved prisoners to receive transportation to their homes. The warden personally “lent [George Baker] five dollars on my private account, the prisoner having behaved himself well and being a decent man” and “being 200 miles from home and only \$4 [given by law] to take him there” (Warden’s Daily Journal March 4, 1843). Prisoner No. 3, Richard Jones, was put “on board a schooner for Newbern, N.C.” (Warden’s Daily Journal July 6, 1832). These varied forms of assistance were not often bestowed on unruly prisoners.

The Risk of Noncompliance

Many prisoners who overtly challenged the prison's rules or personnel suffered the consequences. Court costs and fines were often assessed as part of prisoners' sentences. When the prisoner was well behaved, the warden, other high-level personnel, and penal reformers worked to pay these fines or simply dismissed them. By contrast, administrators used outstanding fines to detain misbehaving prisoners a few days past their release date. Prisoner No. 4824, David Long, jumped over the wall of his garden during his exercise hour the day before he was scheduled to be released (Warden's Daily Journal October 12–13, 1864). Consequently, he was held for a week after his sentence expired; the warden "detained him for fine, costs and restitution on account of bad conduct" (Warden's Daily Journal October 20, 1864). Similarly, No. 4639, Charles Miller, "[tore] up his blankets, comfortable, shirt & pantaloons and also destroy[ed] a portion of the wood work of his cell" during his sentence. Consequently, the warden detained him for several extra days because "there was a fine of \$200 against him" (Warden's Daily Journal April 29, 1865). Misbehaving prisoners were often released once they relented: the warden decided to hold No. 4567, John Redner, for "the fine and costs" the day his sentence expired "in consequence of his outrageous conduct this morning." By the afternoon, however, Redner "made proper acknowledgements" and the warden released him (Warden's Daily Journal March 19, 1864). Prisoners' behavior thus directly impacted the timing of their release, though in these cases the costs of misbehavior (a few extra days in prison) were not substantial.

In other cases, noncompliance included more severe direct costs. Most commonly, after a first or second warning, prisoners were punished with a stint in the "dark cell," a period of "short allowance" (food restriction), or the loss of work (considered a privilege for alleviating monotony). More rarely (though more common under some wardens than others), prisoners were kept in a "straight jacket," subjected to a "shower bath" (buckets of water repeatedly dropped on the prisoner), the "tranquilizing chair" (prisoners are subjected to sensory deprivation while restrained in a chair), or the "iron gag" (a metal gag placed in the mouth and connected to hands tied behind the back) (for an extended discussion on these devices, see Meranze 1996). For example, Prisoner "No 102, having on several occasions got the men next him talking, and being detected in the act last evening" was punished with the iron gag and his compatriot with the straightjacket (Warden's Daily Journal June 27, 1833). As with prisoners detained after their sentences expired, compliance with the rules instantly returned one's privileges. Prisoner No. 170 "behaved badly" (apparently, he refused to work) on January 13, 1834, and was punished with short allowance. The following day, he was still "very impertinent," and the day following, the warden reported that the prisoner "appears to disregard his punishment." His punishment continued until the next day, when he was "willing to go to work" (Warden's Daily Journal January 13–16, 1834).

The costs of noncompliance were not always imposed by the prison personnel. Physical harm could also unintentionally result. While standing on his loom, trying to communicate through his skylight, No. 629 "fell and broke his leg above the ancle [sic]" (Warden's Daily Journal May 14, 1837). Another prisoner fell from the

thirty-foot-high exterior wall while trying to escape “and injured himself so much as to be unable to get away” (Warden’s Daily Journal November 1, 1832). Other prisoners’ acts of noncompliance consisted of physical violence to themselves. Self-stabbings and genital mutilation occurred several times throughout the forty-plus years examined (e.g., Warden’s Daily Journal August 10, 1835; June 10, 1860).

Prisoners’ noncompliance sometimes placed additional burdens on their colleagues. Some prisoners expressed their dissatisfaction with other prisoners’ behavior, in large part because they perceived negative consequences for themselves. Prisoner No. 1407, a former lawyer serving a seven-year prison sentence for forgery, complained that the “frequent” communication in the prison “annoys him” (Foulke January 24, 1846, 93). Another prisoner resented bobbin passing because it could reveal his identity and the identity of other prisoners at Eastern; “[w]hen speaking of his prospects after discharge he laid great stress on the disadvantages of recognition of convicts” (Foulke March 21, 1846). However, prisoner perceptions were not widely recorded (and were recorded by interested parties); consequently, not much more is known about how prisoners received other prisoners’ behavior.

Regardless of the underlying motivation, compliance could substantially benefit prisoners, while noncompliance both precluded the conferral of material benefits and entailed material and physical costs. Scholars are not blind to the “double edge of resistance” (Merry 1995, 19), but the costs of such micro-resistance are less often discussed, especially in prison studies. By celebrating micro-resistance as an act of prisoner agency, moreover, scholars downplay the very real consequences these actions had for prisoners (but see Crewe 2005, 477; see also Abu-Lughod 1990, 52). Despite these personal costs, were prisoners’ acts of noncompliance worth it? Did they destabilize the prison system, if that was indeed their goal (or a positive side effect, from their perspective)?

CONSEQUENCES FOR THE PRISON REGIME

The Importance of Audience

Eastern’s prisoners never engaged in an organized, collective resistance against their keepers in an effort to change the conditions of their confinement. While Philadelphia’s predecessor prison experienced riots, as did New York’s prisons (Meranze 1996; McLennan 2008), Eastern did not witness any riots or collective protests in this period. In one case, a prisoner “threatened to prosecute for being ‘starved for 6 days,’ as he called it,” but nothing came of it (Warden’s Daily Journal March 16, 1835).⁹ In the absence of dramatic, formal, or organized protests, what was the effect of prisoners’ noncompliance for the prison?

Despite the small scale of prisoners’ noncompliant behavior, it did have important consequences for the prison. Specifically, although prisoner behavior was rarely organized (beyond situations involving a handful of participants), it was repeated.

9. Prisoners did occasionally pursue habeas corpus petitions, but these were not about the conditions of their confinement or their treatment, but the legality of their confinement as such.

Refusing to work and defying prohibitions on communication were not the work of a few individuals, but of many prisoners each year throughout the prison's history. Thus, these forms of micro-resistance became larger problems for administrators than if only performed by a few obstreperous individuals. This scale enabled prisoners' noncompliance to affect the prison regime.

Importantly, however, prisoner behavior did not have a single meaning or set of consequences for the prison regime. Instead, recognizing that prisons exist within a "penal field" with multiple actors, each with their own set of goals and motivations (Page 2011) complicates the questions surrounding the effect of prisoner behavior on their prison. Page (2011, 10) defines the penal field as "the social space in which agents struggle to accumulate and employ penal capital—that is, the legitimate authority to determine penal policies and priorities." Though previously applied to the dueling interest groups and changing influences on California's penal policy in the late twentieth century and early twenty-first century (Page 2011; Goodman, Page, and Phelps 2015), the penal field offers a useful framework for interpreting the wrangling and reputation wars of the nineteenth century. Especially in the antebellum period, different groups—penal reformers from New York, Boston, and Philadelphia, and state prison administrators—competed with each other for penal capital and to influence their own and other states' adoption of distinct styles of incarceration (the Pennsylvania System and the Auburn System). As fields are nested within other fields (see also Fligstein and McAdam 2011), we can observe these competitions at the local and state level, as well as at the national and international level. Throughout this period, supporters of the Auburn System (including both penal reformers and prison administrators) enjoyed greater capital and thus greater influence over the course of US imprisonment trends. At the local level, however, penal reformers and prison administrators, though unified in their support of the Auburn System or Pennsylvania System as a policy, often competed for influence over prison administration in practice.

In this section, I use the penal field as a framework through which to explore the meanings various groups—Eastern's prison administrators, local penal reformers who supported the Pennsylvania System, and other penal reformers who supported the Auburn System—assigned to prisoners' behavior. Importantly, I show that different audiences attached different meanings to prisoners' noncompliance; in this way, noncompliance had different implications for Eastern's prison regime contingent on how different actors deployed prisoners' behavior.

The Uses of Prisoner Noncompliance

Rather than viewing all noncompliance as a challenge to the system, some administrators treated noncompliance as a source of opportunities. In some cases, prisoners' activities provided useful narratives for administrators when speaking with penal reformers, visitors to the prison, and others. High-level administrators often related stories of prisoners' noncompliance that illustrated how well their Pennsylvania System worked. In 1846, Warden Thomas Scattergood told penal reformer and frequent visitor to the prison, William P. Foulke, about two prisoners who

independently refused to work; one inmate refused to work further until he received better rubber (a raw material for his work task), the other refused to work unless he was given a lamp to work with (see also Rubin 2015b). Warden Scattergood informed Foulke that he merely withheld dinner from the first prisoner and, within a few hours, “the convict had resumed his work”; he later “apologized to the keeper for his intemperate language.” In response to the prisoner who refused to work unless he was given a light, the warden merely spoke with him: “The conference was long; and when it ended the man was in tears. The lamp was not given to him; yet he worked well.” The warden concluded the second narrative by explaining that he handled the situation without resorting to punishment, “an advantage peculiar to separation,” the central feature of the Pennsylvania System. A third story was related in which a prisoner also refused to work (the records did not specify a reason) but was simply “left alone for 2 or 3 hours,” after which time, “he was hard at work of his own accord—singing cheerfully. There has been no trouble with him since.” Each case illustrated “the opportunity afforded by separation to indulge human infirmity without detriment to the general discipline.” For Scattergood and Foulke, these episodes offered evidence of the system’s success in controlling prisoners (Foulke November 15, 1846). These narratives offered a further point of pride: they illustrated not only that the system worked well, but that officials did not need to resort to whipping, as did their competitor prisons following the Auburn System (the factory-style prison system). In fact, Eastern’s officials also employed the tranquilizing chair, iron gag, and shower bath, but they did not openly discuss these. Instead, prisoners’ acts of noncompliance, when packaged within administrators’ narratives, were viewed as opportunities to train nonconforming prisoners and as evidence of the prison regime’s success. To the extent that local penal reformers and other influential actors accepted the proffered lesson, these episodes may have even sustained the prison’s legitimacy and longevity.

In other cases, prisoners’ failed acts of noncompliance illustrated concentrated episodes of reformation. During the Pennsylvania legislature’s investigation into prison administration in early 1835, Thomas Bradford, one of the prison’s inspectors, recounted the story of “an obstinate boy of about 19 years of age” who “refused to do some trifling work which the warden had ordered and which he could have done and actually did do at last.” The “boy” was not given food for several days and he was told “that he should have food as soon as he performed the work.” After several days of “starvation,” the prisoner returned to work. Moreover, according to Inspector Bradford: “This act of discipline proved to be beneficial to the individual.” Bradford testified that the inmate told him: “You conquered me. My proud and obstinate spirit submitted and I hope I am an altered man.” At the time of his testimony, Bradford explained, the young man had become “an excellent prisoner and hopes to lead a new and virtuous life” (Pennsylvania 1835b, Bradford testimony, n.p.). Recounting the prisoner’s act of noncompliance followed by submission, complete with a probably apocryphal statement from the prisoner, allowed Inspector Bradford to demonstrate how the Pennsylvania System reformed criminals into the submissive, industrious citizens penal reformers had longed for (see, e.g., Meranze 1996). Locally then, particularly among those already receptive to the Pennsylvania System, prisoners’ behavior could be incorporated into the standard narrative praising the system’s excellence.

The interpretation was different for others in the field. Throughout this period, penal reformers and prison administrators from around the country debated the evils and virtues of competing prison systems. At the national level, the Pennsylvania System was tremendously unpopular; for its opponents, prisoners' acts of noncompliance were often viewed as failures of the Pennsylvania System, helping to damage its reputation further. Indeed, Eastern's opponents strategically publicized stories of prisoners' misbehavior in newspapers, journal articles, pamphlets, and penal reform societies' publications, often explicitly described as evidence of the prison regime's inherent weaknesses.

Illicit communication between prisoners was perhaps the central act described in public fora. Despite some administrators' denials that these occurred (or that they were widespread), members of the BPDS, who opposed the Pennsylvania System on multiple fronts, propagated news of prisoner communication as evidence of the system's inferiority. The BPDS reformers and other opponents argued that it would be impossible to prevent prisoner communication under the Pennsylvania System; if prisoners' physical and social separation was central to their reformation, the Pennsylvania System would be ineffective. News of prisoners' communication confirmed reformers' claims of the system's impracticality. One BPDS Annual Report released early in Eastern's history noted;

It has often been said [by Pennsylvania's supporters], and generally believed, that all communication between the convicts is rendered physically impossible, in this Prison, by construction. If persons investigating this subject for the public benefit, would be a little more thorough in their investigations, they would find that this is not true. (BPDS 1835, 883)

Years later, Philadelphia penal reformers were still working to quash the rumor "that there is communication between them [the prisoners], in various ways—that the occupants of adjoining cells have intelligible signals—that the water passages afford avenues for sound, and that in cells which are furnished with looms, on which the prisoner can climb, communication can be had by the skylight" (*Pennsylvania Journal of Prison Discipline and Philanthropy* 1859, 159). Each of these rumors was founded in fact, though Eastern's administrators and (local) penal reformer supporters fervently denied the veracity of each claim. Indeed, though prisoner communication was likely apolitical, more a natural human response than an intentional act of sabotage (Rubin 2015b), it contributed to (or substantiated) a general public perception of Eastern's flaws, especially the impracticality of its Pennsylvania System.

As another example, the very necessity for punishment when prisoners misbehaved also worked against the prison: punishment was another contentious point in the debate over the Auburn System and the Pennsylvania System. Pennsylvania's supporters argued that the Auburn System was cruel because of its reliance on whipping; they often argued that Eastern's administrators did not need to resort to such violence, but could instead remove work privileges or food for a short period, as described above. After a legislative investigation revealed that one prisoner had

died and another became insensible following a shower bath and the iron gag, respectively, the BPDS exclaimed “that punishments have been resorted to . . . [that] are more objectionable than stripes, to subdue the refractory convict, notwithstanding all that has been said about the mildness of the system” (BPDS 1835, 883). As such punishments often followed noncompliance, prisoners’ actions (presumably unintentionally) invited official actions that rendered the prison even less legitimate in the eyes of its national critics.

Different actors at the local/organizational and national/field levels approached prisoners’ noncompliance from varied perspectives: Eastern’s defenders offered a different perspective of prisoners’ noncompliance than Eastern’s critics within the larger field. The meaning of prisoners’ activities transformed depending on who examined them: prisoner activities like communication, largely a means of alleviating boredom and lonesomeness (but resented by some prisoners), could ultimately support or harm the prison regime, providing evidence of the prison’s (il)legitimacy for those at the organizational and field levels.

Functional Benefits to the Prison

Although noncompliance is often described as *micro-resistance* and is viewed (almost definitionally) as a problem for the prison regime, noncompliance may have positive effects for prisons. Specifically, prisoners’ noncompliance may have helped Eastern endure. These acts may have helped the prison regime beyond administrators’ and other supporters’ creative interpretations of prisoner noncompliance that showcased Pennsylvania’s unique system of discipline. To the extent that noncompliance offered a source of entertainment to the prisoners, a means of avoiding some pains of imprisonment (Sykes 1958; Ugelvik 2014), or a balm against long-term solitary confinement, prisoners’ noncompliance may have prevented more visible and damaging outcomes. I explore this possibility by suggesting that prisoners’ illicit communication may have reduced mental illness at the prison, the prison’s greatest source of vulnerability.

Members of the penal field, particularly the BPDS, believed that Eastern’s regime of “separate” or solitary confinement would drive prisoners mad. BPDS members used Eastern’s annual reports to compare the incidence of insanity under the Pennsylvania System to insanity rates at other prisons. Though resistant to the idea publicly, Eastern’s administrators and local penal reformers also worried in the 1840s that the Pennsylvania System was responsible for some portion of the growing population of mentally ill prisoners. Eastern’s administrators carefully recorded notes about their prisoners’ mental and physical health, and investigated the cause of each case of apparent insanity—insanity representing a large category of aberrant behaviors, including mental illness. Indeed, insanity was a poorly understood concept—contemporaries believed excessive masturbation was one cause, for example (Pennsylvania 1845, 52; Foulke November 14, 1849).

As a wide variety of behaviors were treated as manifestations of insanity, it is difficult to assess the actual frequency of mental illness at Eastern. Nevertheless, contemporaries’ fears may not have been unfounded. The psychological effects of

solitary confinement have been amply demonstrated (Haney and Lynch 1997; Haney 2003). To be sure, solitary confinement at Eastern was far less severe than in modern supermaxes: most importantly, prisoners had fairly regular (social and physical) contact with staff and official visitors, and prisoners were given work tasks and reading materials to occupy their time. Even so, scholars assessing the mental health effects of solitary and modern supermaxes often begin with a discussion of Eastern's experience. While these discussions are typically grounded in contemporaries' (especially lay) assessments, some scholars have also demonstrated high rates of mental illness drawing on more systematic assessments of European prisons modeled on the Pennsylvania System (Grassian 2006, 342). While the exact rate of mental illness is unknowable at Eastern given the paucity of records and the flexible definition of insanity at the time, we can be fairly confident it was a nontrivial figure.

Under these circumstances, contact with another prisoner may have been an emollient against further decompensation. Indeed, social interactions are particularly important in mitigating the effects of solitary confinement.¹⁰ As such, we may speculate that illicit prisoner communication may have reduced the incidence of insanity at Eastern. If this assumption is correct, prisoner communication, while a significant violation of the rules and a constant annoyance to the administration, may have actually helped the prison regime by preventing further incidences of insanity for critics to use to challenge Eastern's legitimacy.

The argument that prisoners' noncompliant behavior can serve a functional purpose within the prison organization is not new. The prisoner code, which invokes an oppositional culture and encourages noncooperation with authorities, has been described as a balm to the pains of imprisonment (Sykes 1958; Sykes and Messinger 1960). More recently, Ugelvik (2014) has described gendered oppositional culture as a way of countering the infantilized, and thus neutered, status of male prisoners. Likewise, the notion that noncompliance can ultimately be useful to authority is not new. Comaroff (1985, 251) has suggested that noncompliance can prevent more significant, overt acts of rebellion by alleviating tension (see also Merry 1995, 15). Additionally, Trammell (2011) suggests that the prisoner counter-culture, including gangs, may reduce violence in prisons. I combine these arguments, however, by suggesting that noncompliant behavior can aid both prisoners and prison. By serving as a potential balm to the various discomforts, indignities, and pains of imprisonment, some prisoner misbehavior can prevent more significant problems that both harm prisoners and may embarrass or delegitimize the prison.

10. Haney and Lynch (1997, 504–05) note the psychological importance of “social support” and “social contact,” while also discussing the correlation between social isolation and “dysfunctional psychological states and outcomes.” Similarly, after reviewing studies evaluating the physical and mental effects of solitary confinement, isolation, and sensory deprivation on prisoners, Haney (2003, 132) concludes that “specific conditions of confinement do matter. Thus, there is every reason to expect that better-run and relatively more benign supermax prisons will produce comparatively fewer . . . negative psychological effects.” Haney identifies several pathologies, outlining how different features can result in mental illness. Specifically, “the absence of regular, normal interpersonal contact and any semblance of a meaningful social context creates a feeling of unreality that pervades one’s existence in these places” (139), while “total social isolation can lead, paradoxically, to social withdrawal for some supermax prisoners” (140). By implication, increasing conversation, which reduces prisoners’ social isolation and provides some meaningful socialization, could reduce these pathways to mental illness.

DISCUSSION

This article has described the apparent consequences of prisoners' noncompliant behavior for the prisoners and prison regime at Eastern State Penitentiary. The account has been fairly pessimistic, echoing sociolegal scholars' tone when examining resistance in other contexts: I have described the negative ramifications of non-compliance for prisoners, while demonstrating the substantial benefits of complying with the prison regime. Additionally, I have suggested that prisoner behavior has complex consequences for the prison regime: different actors within the penal field, with their own motivations, can interpret noncompliance differently. These field-level consequences for the prison regime indicate that to the extent that prisoners' behavior undermined the prison's legitimacy, prisoners' noncompliance was used to confirm observers' already-held views about the prison. This finding, as well as the finding that some kinds of hidden noncompliance may help sustain prisons' legitimacy by forestalling more visible problems, suggests that prisoners' noncompliance does not necessarily entail uniformly negative effects on the prison regime, whether the prisoners intend it to or not.

Situating the Findings in the Literature

To what extent are these findings generalizable? Scholars have demonstrated that the prison experience can vary substantially across prisons, featuring differences in prisoner treatment and perceptions of legitimacy (Sparks and Bottoms 1995; Sparks, Bottoms, and Hay 1996), the "penal identities" or practices and ideology of prisons (Piacentini 2004), guards' orientations and prisoners' approaches to "doing time" (Kruttschnitt and Gartner 2005), and prisons' overall "moral performance" or survivability (Liebling 2004). Clearly, the paternalistic benevolence of Eastern's administrators and local reformers who rewarded prisoners' compliance was (is) somewhat exceptional. While frontline workers are known to go above and beyond for those considered "worthy" (Maynard-Moody and Musheno 2003), compliance may typically be less useful to prisoners (and others in subordinated power relations) than it was to Eastern's prisoners. In some prisons today, compliance may offer, at most, paltry benefits. Moreover, the consequences of prisoners' micro-resistance can be far more costly today: instead of a few days of starvation or solitary confinement in a dark cell (itself daunting enough), or lingering in prison for a few days beyond one's release date, prisoners in most states face the prospect of months or years in the far more extreme conditions of supermax confinement. More research will be necessary to extend the results here to a variety of other contexts. However, while the extent to which compliance was beneficial and noncompliance was costly is rather exceptional, the fact of their respective benefits and costs is not surprising in light of the larger literature.

Though I have adopted a less celebratory tone, the pessimistic findings are not unique within sociolegal studies or prison studies. In their review of several early studies of micro-resistance, McCann and March (1996, 222) explained, "it produces little or no short term benefit, and it fails to generate any long term improvement

in material position or relationship to the dominant group in society or the state." Similarly, it is difficult not to read contemporary examples of micro-resistance in prison as "stories of despair": where illegally spicing one's food passes for resistance (Ugelvik 2011), the label seems misplaced (Rubin 2015b). Indeed, prisoners employ increasingly subtle, individualistic, and cognitive forms of micro-resistance because they are well aware of the negative consequences that follow overt noncompliance: for contemporary British prisoners, "overt opposition" is "considered deeply naive and unproductive" (Crewe 2007, 272). For many prisoners, it is simply too dangerous to perform one's hostility openly and therefore not worth the cost.

Historical studies as well have shown few consequences beyond the psychic benefit of insubordination or the temporary respites from forced labor. After reviewing over a century of archival data on early modern Dutch and German prisons, Spierenburg (1991, 206) concludes "[t]he prisoners never seem to have gained any advantages from their [insubordinate] actions," and suggests their behavior was "irrational and motivated by desperation or general discontent." Additionally, several historical studies have shown that prisoners' micro-resistance did precipitate changes in the prison regime, but these changes may not have been intentional or preferable. Pisciotta (1994, 103) argues that administrators of adult reformatories increased their emphasis on "custody and control" in response to myriad micro-resistance behaviors. Similarly, O'Brien (1982) argues that officials in late-nineteenth-century French prisons chose solitary confinement over congregate confinement to combat prisoners' same-sex relations. Prisoners' behavior could make prison management more difficult, but in most cases, it was not enough to prompt actual regime changes. For example, prisoners' refusal to work caused financial distress for the Philadelphia almshouse and jail in the decades after Independence; however, this was a hardship rather than a death knell for these institutions (Newman and Smith 2012, 78).

Accounts of prisoners' more overt, formal, collective resistance, however, do not provide more room for optimism. Over the last few decades, formal grievance procedures have emerged to address prisoners' concerns, but these have limited utility. Grievance procedures are often merely symbolic, used to illustrate the prison's compliance with legal requirements without serving prisoners' needs (Bordt and Musheno 1988). Moreover, prisoners face retaliation and other repercussions for officially reporting guards' misbehavior (Calavita and Jenness 2013). Large-scale litigation challenging prison conditions has had mixed results: Florida officials' attempts to comply with court orders following overcrowding litigation inadvertently resulted in larger prison populations (Schoenfeld 2010). Moreover, even successful lawsuits challenging extreme conditions (whether outright torture or lack of health care) often continue for decades before initiating any meaningful change (Feeley and Rubin 2000; Lynch 2010; Simon 2014). The limited success of these more public manifestations of prisoners challenging various injustices mirrors the limited returns of free persons' similar challenges to civil injustices (see, e.g., Rosenberg 1991; Edelman, Erlanger, and Lande 1993; Edelman and Suchman 1999). This does not mean that prisoners and free citizens cannot produce meaningful change, but it may illustrate the limits on when such change is possible. Historically, where prisoners have successfully and substantially undermined the prison regime, it was

through open, organized resistance coordinated with nonprisoners (guards, family, labor unions) (McLennan 2008; Haslam and Reicher 2012; see also Ignatieff 1978). By forming coalitions with other groups within society, particularly those that are popular or have political capital, prisoners may be more successful in creating change. By contrast, individual, unorganized acts of covert micro-resistance may be much less successful.

Directions for Future Research

Thus far, scholars have been skeptical that micro-resistance could have broader consequences for legality, with victories frequently described in personal, subjective terms. Many approach the subject with the expectation that micro-resistance is simply too small to have an effect. By contrast, this study suggests that the individual, largely unorganized, often covert, and even temporary nature of prisoners' noncompliance does not preclude field-level consequences. However, these may not be the consequences intended by the prisoners. While prisoners and other micro-resisters are the authors of their own behavior, they have limited control over the interpretation of their behavior once word travels beyond the prison—this is true in schools, welfare offices, corporate settings, and other contexts as well. Thus, as we continue to consider the consequences of micro-resistance to legality, particularly the conditions under which it can produce change, scholars should examine how the dynamics of the field mediate the impact of micro-resistance.

This study suggests that the impact of prisoners' micro-resistance on the prison regime is highly contingent on the dynamics within the penal field and especially on extant attitudes toward the prison regime and the prison as an institution. I hypothesize that micro-resistance that fits well within existing narratives offered by the prison's critics or supporters will likely be more impactful than micro-resistance that fits awkwardly in these narratives. Whether this micro-resistance helps or hurts the prison, then, depends on which groups utilize it, their status within the field, and what their goals are. This framework not only helps connect the micro- and macro-levels of analysis (Goodman, Page, and Phelps 2015), but also helps identify similarities in how individual, covert resistance and organized, overt resistance affect change.

For example, the twentieth-century prisoners' rights movement initially enjoyed strong outside support (especially from lawyers) and accomplished tremendous advances despite a lukewarm political climate. However, following a substantial increase in tough-on-crime rhetoric and policies leading to mass incarceration, other groups emerged (victims' rights groups, women's rights groups) who supported these more punitive policies and were positioned directly against prisoners' rights, creating a "zero-sum game" that helped delegitimize prisoners' demands (Gottschalk 2011; see also Page 2011). In that context, prisoners' resistance, whether covert or overt, individual or organized, could be mobilized by these more powerful oppositional groups to undermine prisoners' goals. A wide swath of prisoners' resistive behaviors, like reading Marxist literature or engaging in riots, fits well into narratives of prisoners' dangerous character, and bolsters support for stricter, more

control-oriented prison policies and lengthier prison sentences (see also Cummins 1994). Future studies of both micro- and macro-resistance—in the prison or other social contexts—should examine how different audience groups can and do use these behaviors to promote their own agendas and how this process mediates the impact of prisoners' resistance.

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