

From Rehabilitation to Punishment

American Corrections After 1945

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Abstract

The incarceration rate in the United States has increased dramatically in the period since 1945. How did the United States move from having stable incarceration rates in line with global norms to the largest system of incarceration in the world? This study examines the political and intellectual aspects of incarceration and theories of criminal justice by looking at the contributions of journalists, intellectuals and policy makers to the debate on whether the purpose of the justice system is rehabilitation, vengeance, deterrence or incapacitation. This thesis finds that justice and the institution of the prison itself are not immutable facts of modern civilization, but are human institutions vulnerable to the influence of politics, culture and current events.

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Introduction

The history of the prison is a microcosm of the history of America. The development of the institution of the prison is so deeply tied to the changes and evolution of American religion, culture, and politics that it cannot be extricated from them. The American criminal justice and correctional systems have come to represent both the best and worst aspects of its makeup: enlightenment ideals, belief in the possibility of human perfectibility, faith in science; but also regional division, vengefulness, violence, cynical populism, and fundamentalism, both religious and political. The thinkers and ideas that have influenced the development of the prison have ranged from Philadelphia Quakers to psychologists, from criminologists to conservative political pundits. America's culture of direct engagement in government affairs has engendered movements for both prison reform and prison abolition, as well as "tough on crime" and "victim's rights" movements that would result in increased incarceration. From the earliest days of the penitentiary through the 1950s, despite hiccups along the way, the narrative of the prison, and the policies that put people there, was one of progress, enlightenment, and belief in the redemption of and perfectibility of humanity. But, from the 1960s onward it was one of decline, repression, punishment and vengeance.

The earliest experiments in prison reform in the United States were carried out under the direction of Quaker reformers in Pennsylvania in the early 19th Century. These reformers sought to find a more humane and rehabilitative manner of dealing with offenders. While the conditions produced in their model prison were psychologically barbaric, they were in

line with what, at the time, would have been considered the most humane possible treatment. Solitary confinement and sensory deprivation, now known to be psychologically dangerous and destructive, was considered to be beneficial and encourage self-reflection, repentance and religion, while isolating the prisoner from the other criminal elements in the penitentiary to prevent brutality and relapse into crime.¹ The very term penitentiary came from this time and place, casting the role of the prisoner as a remorseful penitent redeeming himself from his crimes, rather than prisoner simply being held captive.² The historical importance, then, is not in the actual conditions produced but the attitude of the society towards the prisoner: The idea that he is capable of being redeemed, that the best possible available science and research should be used to produce the conditions in which he can be rehabilitated, and that rehabilitation is a valid goal. The perspective outside of these experiments in rehabilitation, on the other hand, was far different. In these other prisons, which continued to exist in the North alongside the penitentiary, but were the predominant model in the slave-holding South, the goal of imprisonment was twofold: firstly, a culture of blood-feud, vengeance and violence led to an attitude under which the concept of rehabilitation was not one that was possible and second, a culture of forced labour. In the post-Reconstruction era, racial tensions remained high and the economy still had not shifted away from one which relied on massive amounts of low-wage, low-skill labour.³

Due to the nature of the rehabilitation-oriented penitentiary as a public service enterprise by a religious community, the role of prison reformers throughout the late 19th and early 20th centuries fell to private citizens, prison visitation committees, and other civil

¹ Anne-Marie Cusac, *Cruel and Unusual*, (New Haven, CT: Yale University Press, 2009), 62

² *Ibid*, 63

³ *Ibid*, 97

society groups throughout the North, Midwest, and West.⁴ The establishment of reformatories, particularly for women and children, and segregated women's prisons owe their existence entirely to the involvement of private groups. This kind of large-scale involvement of private citizens in the prison system was largely absent in the South where the tradition of using prisoners as cheap and disposable labour endured. Prison reform was largely neglected throughout the 1930s and 1940s, as more pressing matters of the Depression and War captured the attention of philanthropists and civil society. As civilians dropped out, professional associations, academics and governments took over the formation of correctional policy. The immediate post-war period and the 1950s saw the continuation of the reform-minded, rehabilitation oriented policies that had predominated in the North continued and formalized through state and federal policies. Professional organizations such as the American Correctional Association formulated standards and spread this ideal throughout the United States, including in the South. While progress was slow, conditions remained less than ideal, and corruption on the lower levels of government was rife, the uniformly accepted goal, at least of professionals and higher levels of government, was that of rehabilitation of those sentenced to state and federal prisons.

The radicalism of the 1960s and the rapid, unrelenting growth of the crime rate from 1964-1991 would combine with an increasing culture of populist conservatism beginning with the Goldwater candidacy and result in a return to the older ideal of harsh, brutal punishment as retribution against the criminal to the limelight. This was aided by increasing support for conservative intellectuals such as James Q. Wilson and John DiIulio, but also by media co-optation of the radical message of intellectuals like Robert Martinson. Martinson

⁴ Estelle B. Freedman, *Their Sisters' Keepers*, (Ann Arbor, MI: University of Michigan Press, 1981), 23

had tried to discuss rehabilitation as a failed ideal in an attempt to spur debate about the purpose of incarceration. Instead, his message was manipulated to mean that punishment should be instituted instead of rehabilitation; thus, rehabilitative programming was stripped from prisons. The criminal justice system became increasingly punitive and increasingly overcrowded as more and more criminal statutes, mandatory minimum sentencing rules and repeat offender laws were passed. Governments sought to limit the power of prisoners to litigate against their treatment, and by 1993 the incarceration rate ballooned to 716 per 100,000 adults.⁵ By comparison, that same year Canada's incarceration rate was 114 per 100,000 adults.⁶

While a considerable historiography of the prison and criminal justice policy exists covering the earlier periods of the formation of the prison system and the earlier prison reform movement, these usually end with the great depression. As such, there is a gap in writing covering the period after 1945. What has been written about the post-1945 period is often within the realm of investigative journalism, political science, or criminology. Among the books which form a historical background for the current investigation, Estelle Freedman's *Their Sisters' Keepers*, Elizabeth Dale's *Criminal Justice in the United States 1789-1939*, Rebecca McLennan's *The Crisis of Imprisonment: Protest, Politics and the Making of the American Penal State*, and Mark Kann's *Punishment, Prisons and Patriarchy: Liberty and Power in the Early American Republic*, are all excellent histories that provide a solid foundation for a study of later periods to rest on.

⁵ United States Bureau of Justice Statistics, "Correctional Populations in the United States, 1993" (US Department of Justice Office of Justice Programs, 1993), 5 accessed: <http://bjs.ojp.usdoj.gov/content/pub/pdf/cpop93bk.pdf>

⁶ Roger Boe, "Population Aging and the Federal Inmate Profile of 2010", *Forum on Correctional Research*, 12, 3 (2010). Accessed: <http://www.csc-scc.gc.ca/text/pblct/forum/e123/e123h-eng.shtml>

In a similar vein, a number of works attempt to cover the history of the criminal justice system for the entirety of American history. Nicole Rafter's *Partial Justice: Women, Prisons and Social Control* acts as a response to *Their Sisters' Keepers* and continues into the 1980s, Mary Bosworth's *Explaining U.S. Imprisonment* examines the high rate of US Imprisonment by interrogating its role in national identity, John Hagan's *Who are the Criminals? The Politics of Crime Policy from the Age of Roosevelt to the Age of Reagan* divides the history of corrections into two time periods to examine the inverse relationship between the punishment of street crime and white collar crime, and Anne Marie Cusac's *Cruel and Unusual*, which covers the history of criminal justice in the United States from the earliest colonies to 2005. David Garland's *Culture of Control* also fits into this category, although he focuses more on the post-1945 period than the other authors. His concentration, however, is far more on the history of British corrections than the American.

Some relevant scholarship that covers more contextual arguments, focusing on one specific aspect of criminal justice, a tangentially related field, or a very narrow time frame, include James Gilbert's *A Cycle of Outrage*, which chronicles the reaction to the increase of juvenile delinquency in the 1950s, David Myers' *Boys Among Men: Trying and Sentencing Juveniles as Adults*, Philip Jenkins' *Decade of Nightmares* which explores the politics of the mid-1970s, and David Garland's *Peculiar Institution*, which explores capital punishment. *Black Muslim Religion in the Nation of Islam* by Edward Curtis provides excellent background about the motivations of Black Muslim prisoners who spearheaded the legal fight for prisoners' rights. Michael Flamm's *Law and Order* is an excellent analysis of the conditions that bred the "Silent Majority's" backlash against the counterculture and increasingly punishment-oriented American criminal justice policy. Lastly, perhaps one of

the books that had the most influence on this thesis was not a truly a history but a work of legal scholarship. William Stuntz's *The Collapse of American Criminal Justice*, was the final work of a great legal scholar, dissected the conditions within the legal profession, from the structure of the U.S. Constitution, to modern Supreme Court appointments, to the function of elected public prosecutors, and as such provided excellent expert background in an oft-ignored field. This thesis, then, fills a significant gap in the historiography, both in terms of the post-1945 and in terms of examining the move from a model of rehabilitation to a model of punishment through the lens of the political and intellectual circumstances of the period.

One work that absolutely needs to be addressed when considering the history of prisons and the criminal justice system is, of course, Michel Foucault's *Discipline and Punish*. Foucault's analysis of the history of punishment and the prison offers a framework of a shift in methods of control from physical torture and control of the body to psychological control of the mind; and a shift from power over the bodies of people to a modern control of consciousness. These ideas had have an enormous impact. Indeed, one only needs to look at the titles of the books published on the criminal justice system and the frequency with which the word "control" is used to see his influence. This thesis, however, is not focused on the diffuse ways in which power is transferred and enacted, but rather the more mundane world of the political movements and social upheaval through a focus on public policy and the intellectuals who influenced it.

In four chapters, this thesis will examine the ways in which culture, politics and the raw fact of increased crime interacted to produce a system of justice unique to each era. This thesis argues that, over the course of the postwar period, punishment displaced

rehabilitation as the dominant criminal justice ideology. This shift mirrors a larger shift that combined cynicism about the power of the state, increasing individualism, and an overall increasing conservatism of politics. The transformation of criminal justice and corrections into political and social issues rendered them subject to increasing populism. The decline of rehabilitation and increase in punishment was both a symptom of this increased politicization and a sign of how everyday behaviour could be criminalized.

Chapter 1 examines the immediate post-war period and the 1950s, through the Truman and Eisenhower presidencies. This period contained many of the conditions that would later arise and be singled out as the causes of the increased punitiveness of American society, from increasing violent crime, an aggressive unaccessible youth culture, and even a moral panic that comic books had turned a generation of young people into brutal and remorseless killers. However, despite these conditions, during this period the focus of criminal justice was on rehabilitation and prevention. Even following a series of major prison riots, the response by journalists and public official was to improve conditions, conduct more research into the origins of criminality and home to develop accurate methods of treating criminality.

Chapter 2, covering the John F. Kennedy and Lyndon Johnson presidencies, addresses the beginnings of federal government involvement in the criminal justice system. Through the Johnson presidency, crime rates were undeniably rising, and coloured every policy as Republican critics such as Ronald Reagan, Barry Goldwater, and Richard Nixon attacked the government for its failure to contain the urban riots, race riots, student protests and general increase in crime. The Johnson administration responded by rebranding its “Great Society” and “War on Poverty” initiatives as crime-fighting agendas. Perhaps, given

enough time, these initiatives may have succeeded, increasing crime rates pegged the initiatives as failures to reduce both poverty and crime, poverty fighting as a failure in crime fighting, and the failure of the Democratic Party to address the public's growing concern.

Chapter 3 covers Richard Nixon's rise and fall and the interregnum of Ford and Carter. This period was one of intense debate over the future of the criminal justice and correctional systems, with the rise of prominent public intellectuals such as Robert Martinson and James Q. Wilson. Martinson and Wilson both advocated dramatic changes to the prison system, although Martinson initially argued from an abolitionist perspective on the Left, and Wilson from a punitive perspective on the Right. However, both of their messages merged to form one idea: that when it came to rehabilitation, nothing worked, so the best thing to do was to deter and incapacitate criminals by locking them up and throwing away the key. While the correctional profession would try to refuse these claims, it was not an equal fight. The corrections community argued and debated in a small-circulation trade journal, Martinson and Wilson in the pages of *The New Republic*, *Commentary*, and *Public Interest*.

Chapter 4 concludes by analyzing the period of the Ronald Reagan and George H.W. Bush presidencies. This period would see the revival of Nixon's War on Drugs, an astronomical rise in the prison population, the enactment of mandatory determinate sentencing for federal crimes, the dire overcrowding of US prisons, the explosion of prison gang activity and the inability of underfunded and understaffed prison systems to cope. The rapid growth of incarceration in this period sparked a prison building binge that crippled state budgets and forced governments to find innovative ways of funding their criminal justice systems, including private prison operation, private prison ownership, and private financing for prison construction and operation. These private funding ventures and bonds

raised to build prisons proved both financially ruinous for the State, yet provided much needed jobs and economic development in rural areas.

Study of the institutions of criminal justice and incarceration and the political and social contexts that affect them is essential – both because of the sheer scope of incarceration in the United States, with 2.2% of the population under some form of correctional supervision – and to ensure that it is never forgotten that prisons are *institutions*, created by societies – that they have a history, and a context, and that they are not immutable, unavoidable, necessary evils. Analyzing the contexts that generate leniency or harshness, freedom or incarceration, trust in research and academics, or populist backlash, can help to clear what are often muddied waters. By treating the prison as an institution that belongs to its context, it can be questioned, re-evaluated, and, like other institutions that have served their purpose, be re-envisioned or eliminated.

Chapter 1 – 1945-1960 – Juvenile Delinquency, Progressive Reforms and the Beginning of the End of Rehabilitation

The period following the end of the Second World War is often characterized – at least at the level of popular history and memory of the era – as a return to normalcy after the disruptions of the war years, a time of tranquility and conformity between the war and the chaos of the civil rights movement and the counterculture.⁷ However, this period was also one of progressive ideas, community involvement and reform. While the 1950s, in particular, are frequently discounted in the few extant histories of the criminal justice system, this period is actually essential to any thorough analysis of the dramatic changes that occurred in the correctional system throughout the late 20th century.⁸ The roots of the system of mass incarceration are often thought to lie in the reaction to the counterculture and a logical desire to clamp down on the radical movements and violence of the 1960s and 1970s, born from an appeal to Richard Nixon’s Silent Majority.⁹ While reaction to the counterculture certainly did play a role in the direction that corrections policy would take, a punitive, law and order response was not the necessary outcome, and, in fact, the example of the 1950s demonstrates alternative paths to coping with increasing crime and social change.

Contrary to the common portrayal of the tranquility of the 1950s, this era faced its own crime panics, violence, and fears of youth rebellion that reappeared more intensely in later decades.¹⁰ This period saw the highly publicized hearings of the Senate Special Committee to Investigate Crime in Interstate Commerce, also known as the Kefauver

⁷ Martin Halliwell, *American Culture in the 1950s* (Edinburgh: University of Edinburgh Press, 2007), 12

⁸ Jason Barnosky, “The Violent Years: Responses to Juvenile Crime in the 1950s and 1990s” (PhD Diss., Brown University, 2006), 6

⁹ Christian Parenti, *Lockdown America*, (New York: Verso, 1999),

¹⁰ James Gilbert, *A Cycle of Outrage: America’s Reaction to the Juvenile Delinquent in the 1950s* (Oxford: Oxford University Press, 1986), 4.

Committee, from 1950-1952, the violence of 53 prison riots across the country from 1951-1953, and mass hysteria about the influence of comic books on juvenile delinquency with both the publication of Frederic Wertham's *Seduction of the Innocent* and the establishment of the Senate Subcommittee on Juvenile Delinquency in 1954. Despite the attention paid to rising rates of violence and other criminal justice issues, the official response overwhelmingly focused on prevention and rehabilitation rather than retribution and punishment, and sought to find social and cultural causes of crime rather than blaming individuals.

While rehabilitation may seem a surprising ethos in an era prior to the prisoners' rights movement and the slew of court decisions later altered the criminal justice landscape in the 1960s and 1970s, the emphasis on rehabilitation was in fact part of a tradition that stretched back into the earliest days of the American correctional system.¹¹ In his doctoral thesis analyzing the response to juvenile delinquency and youth crime in the 1950s, political scientist James Barnosky argues that the more punitive response to crime in later periods was a result of decades of exploitation of the criminal justice issue for political gain, mostly by the Right.¹² Including the 1950s in a historical analysis, then, serves as a reminder of how criminal justice was conceived of and handled before crime slowly transitioned from being primarily a local issue to a national issue, and thus became ripe for exploitation for electoral gain. This chapter will focus on the 1950s and how the electorate, academics, politicians, and professional organizations responded to increasing crime rates, fears of youth violence, a rapidly evolving youth culture, and prison riots with calls for prevention, modernization, and rehabilitation as opposed to punishment and retribution later became standard.

¹¹ Francis A. Allen, *The Decline of the Rehabilitative Ideal*, (New Haven: Yale University Press, 1981),

¹² Barnosky, "The Violent Years: Responses to Juvenile Delinquency in the 1950s and 1990s", 3.

When addressing how criminal justice and the prison system were handled in this period, it is important to note that national political climate of the 1950s was not dominated by domestic policy. The Korean War, the threat of communism, and other foreign policy concerns dominated and, on the domestic front, politicians focused on the new found prosperity, harmony and inclusivity. In both the 1952 and 1956 federal elections, on the occasion that domestic concerns were addressed, it was only to highlight stability, prosperity and progress. The central theme of political advertising was trust, particularly on foreign policy issues, especially in the 1952 election as the increasingly unpopular Korean War dragged on. Despite high-profile inquiries into both organized crime and juvenile delinquency in the Senate and a rash of prison riots, crime and disorder did not appear as presidential political issues – crime belonged to the local sphere.

Attempts to use the issue of crime for political gain largely failed. Many within the Democratic Party accused Estes Kefauver, Senator from Tennessee and head of the eponymous Kefauver Committee, of trying to do just that.¹³ The Kefauver Committee, which held hearings from 1950-1952, is an example of how moving crime from being a local to a national issue can affect the way in which it is perceived. In his study of the Kefauver Committee, William Howard Moore asserted that Kefauver and his committee played into a fascination with conspiracy, asserting that the vice crimes they investigated were part of a powerful national organization of criminals such as the Mafia rather than local gang activity.¹⁴ Further, the Committee seemed like a hangover of an earlier era, concerning itself largely with criminal organizations that were well past their prime, such as the old Capone

¹³ William Howard Moore, *The Kefauver Committee and The Politics of Crime 1950-1952* (Columbia, MO: University of Missouri Press, 1974), 45 and Barnosky, “The Violent Years: Responses to Juvenile Crime in the 1950s and 1990s”, 57

¹⁴ Moore, *The Kefauver Committee and the Politics of Crime 1950-1952*, 237

gang and others more closely associated with the pre-war era. Further, the Committee's lack of investigation into the social and economic causes of crime reinforced the idea of crime as a conspiracy in the minds of the public.¹⁵

What is striking, however, was the vast amount of media attention that the Kefauver Committee hearings generated. Televised nationally, the hearings were such popular viewing that traffic and household shopping patterns changed noticeably to coincide with recesses in the televised hearings, and businesses played the broadcasts to attract more customers. The broadcasts even earned an Emmy award.¹⁶ The massive popularity of the issue of organized crime did not, however, translate into political success for either Kefauver or the Democratic Party. Kefauver had seen the potential of crime as a political issue and it made him popular with the general public. However, his investigations into local corruption and the political machines in Democratic strongholds embarrassed key party officials while earning the enmity of Harry Truman's faction within the party.¹⁷ As such, politics trumped popularity and Kefauver did not win the Democratic presidential nomination in 1952 despite his success in the primaries. Not surprisingly, another crusading figure who would soon fall from grace, Joseph McCarthy, had also attempted to use the issue of organized crime to capture the spotlight. It was only after he was rebuffed by Kefauver that McCarthy famously turned to the treat of Communism to make his name.¹⁸ The time was not yet ripe for the use of crime as a path to political power.

Apart from Kefauver's personal setbacks and his unpopularity with the party, outcomes of the Committee's findings would have implications for later policymaking. The

¹⁵ Ibid, 79

¹⁶ Ibid, 184

¹⁷ Ibid, 136

¹⁸ Ibid, 44.

corruption of local law enforcement and its inability to cope with its own internal inconsistencies and complicated jurisdictions would certainly have an impact on later policy, especially the establishment of Johnson's Law Enforcement Assistance Administration, be established in 1968. The Committee further pursued the issue of organized crime's involvement with the drug trade and, ignoring medical advice, took the Narcotics Bureau's position that marijuana posed a grave health risk as a "stepping stone" to harder drugs, such as heroin.¹⁹ This position would have serious implications for the future of drug policy in the United States and eventually provide part of the necessary backing for Nixon's initiation of the War on Drugs and the dramatic increases in incarceration that would accompany it. Lastly, even holding these hearings marked an increase in federal involvement in what had previously been a state and local concern. While Kefauver may not have become the presidential candidate, he did defeat the sitting president, Truman, in the primaries and he maintained massive popular appeal. So, while the Democratic Party may have failed to capitalize on the popularity of criminal justice as a political issue due to their own internal conflicts, precedent had been established for the federal government to have increased influence on their area of policy.

The Kefauver Committee was not the only instance of establishing federal committees to address what were previously locally managed criminal justice issues, however. Estes Kefauver again stepped into the spotlight for his role in the United States Senate Subcommittee on Juvenile Delinquency. As has been noted, juvenile delinquency and youth crime were major concerns in this period. While fears of juvenile delinquency were partly a carry-over of wartime concerns about children left to fend for themselves while

¹⁹ Ibid, 238

their fathers were off at war and their mothers worked, there was a legitimate spike in violent crime during this period.²⁰ Part of this increase was, of course, due to demographic factors – a large, newly independent youth demographic maturing into their most crime-prone years – but demographics were not the only factor and numerous solutions were sought to the problem.²¹ The Committee itself tried not to single out any one cause for delinquency, instead choosing to investigate a variety of cultural, social and media causes. In a curious coincidence, Ronald Reagan, as a representative for Hollywood, was called on to testify before the committee – he testified in defense of film violence.²² The Committee was not the only force investigating juvenile delinquency in its many forms, however. While it spent considerable effort on the causes of delinquency in popular culture, magazines, newsmakers, volunteer organizations, government agencies and especially the correctional profession also sought answers. These ranged from youth musing that a culture of conformity led to gang formation, to the Children’s Bureau targeting poor living conditions, to testimony before the Committee blaming frigid mothers, absent fathers, films, access to vehicles, and, mostly famously, comic books.²³ What these testimonies all had in common, however, was that they sought larger social and cultural origins of juvenile delinquency rather than faults with the youth themselves. The Committee’s 1955 hearings on comic books eventually concluded that, while the nation could “not afford to ignore” the deleterious effects of comic books on children, that comic books should not be censored. They determined that comics mostly had an effect on children already suffering from a psychological disturbance. As such, the

²⁰ Gilbert, *A Cycle of Outrage*, 25

²¹ Gilbert, *A Cycle of Outrage*, 72

²² United States Congress Senate Committee on the Judiciary, *Juvenile Delinquency: Comic Books, Motion Pictures, Obscene and Pornographic Materials, Television Programs* (New York: Greenwood Press, 1955), 92

²³ Gilbert, *A Cycle of Outrage*, 80 and Carol Donley, “Presidential As Youth Sees the Problem”, *Proceedings of the Eighty-Seventh Annual Congress of Corrections of the American Correctional Association* (New York: American Correctional Association, 1957), 194

responsibility for ensuring that comic books stayed out of the hands of such children belonged with parents, communities and publisher self-regulation. One popular expert, the author and psychiatrist Frederic Wertham, disagreed.²⁴

While Wertham and his most famous publication *Seduction of the Innocent* are often remembered, when they are remembered at all, for their bombastic language about phallic women, Batman and Robin's supposed fantasy homosexual relationship, and over the top descriptions of comic book violence, what makes his work of interest here is the deep sympathy for the criminalized youth. From the book's very beginning, Wertham asserted that "If a plant fails to grow properly because attacked by a pest, only a poor gardener would look for the cause in that plant alone. The good gardener will think immediately in terms of general precaution and spray the whole field. But with children we act like the bad gardener. We often fail to carry out elementary preventive measures, and we look for the causes in the individual child".²⁵ While Wertham was horrified by the crimes these youth have committed, he does not blame them and instead focuses on systemic and cultural factors. It is important to note that Wertham was not describing youth who would generally be regarded as mere delinquents – the smokers, the curfew breakers, the promiscuous – but those who had been convicted of rape, murder and assault. He situated the actions of youth within a culture that he alleged had destroyed their ability to act rationally. The examples he gave of children affected by comic books include Willie, a 14 year old boy who shot a man at a baseball game from the roof of his apartment building, an 11 year old boy who strangled a younger child, and a pair of 11 and 13 year old boys who shot and killed a motorist at

²⁴ United States Congress Senate Committee on the Judiciary, "Juvenile Delinquency: Comic Books, Motion Pictures, Obscene and Pornographic Materials, Television Programs" (New York: Greenwood Press, 1955),

²⁵ Frederic Wertham, *Seduction of the Innocent*, (New York: Rinehart & Co, 1954), 2.

random.²⁶ Despite these horrifying crimes, Wertham did not see the value in punishing these children, who had merely acted out the culture that they have been exposed to. Instead, he placed the blame for their behaviour squarely on a media culture that misleads parents and warps children. Indeed, he absolves the guardians of the criminalized youth, calling the aunt of the 14 year old sniper “an intelligent, warm, hard-working woman”, and even ending the book with a plea from a mother of a boy jailed for knife crime that he “tell me again that it isn’t my fault”.²⁷ For Wertham, imprisoning children who commit crimes was not only ineffective, but cruel. “Not only is it cruel to take a child away from his family, but what goes on in many reformatories hurts children and does them lasting harm. Cruelty to children is not only what a drunken father does to his son, but what those in high estate, in courts and welfare agencies, do to straying youth.”²⁸ Instead, to prevent crime, he advocated therapy to help correct children who have already strayed, but, moreover, as his gardening analogy suggests, the restructuring of media culture to be more humane, less violent, and more child-friendly.

While it may seem self-evident that 1950s society, having experienced a baby boom and seeing the beginnings of that generation come of age would be concerned with youth issues, particularly juvenile delinquency, the general response focusing on prevention, treatment, and rehabilitation applied equally to adults who found themselves enmeshed in the criminal justice system. Much like the response to juvenile delinquency, the response to adult crime was a result of both political and cultural factors that allowed the voices of

²⁶ Ibid, 7, 110, 274.

²⁷ Ibid, 7, 397

²⁸ Ibid, 13

experts and professionals to dominate public opinion.²⁹ While the prison system in the United States in the 1950s was far from an ideal – buildings were often decrepit inheritances of the 19th century, salaries were low, training minimal, and patronage appointments rife – the ideal of government, correctional professionals, and journalists was to provide a humane environment in which rehabilitation, or at least returning convicts to society as better citizens, was the goal. Reviewing issues of *Prison World* (later renamed the *Journal of American Correction* to reflect its dedication to rehabilitation), the correctional journal published jointly by the American Prison Association (later the American Correctional Association) and the American Jail Association, as well as the proceedings of the American Prison Association annual conferences, reveals the diverse methods that were thought to result in the rehabilitation of prisoners. Taken along with John Bartlow Martin’s ground-breaking journalistic account of the 1951-1953 prison riots and how to prevent them, as well as the American Prison Association’s report on the riots, they provide an excellent insight into the mainstream of both professional and journalistic opinion as to how to best manage the correctional system and reduce crime.

Several themes relating to prison management and policy repeat themselves throughout the sources mentioned above. All of the sources deal with the theory and practice of correctional operations, especially how best to employ rehabilitative programming; and how best to deal with “the sexual problem” in the prison system. Fears of political influence – whether through local patronage appointments, influence over the treatment of politically-connected prisoners, or populist rabbleroxing by local politicians – how to avoid riots, and ideal physical layout of a prison were other major concerns. Very rarely were issues of

²⁹ James Gilbert, *A Cycle of Outrage: America’s Reaction to the Juvenile Delinquent in the 1950s* (Oxford: Oxford University Press, 1986), 43.

control, lockdown, isolation or restraint mentioned, and even then they are mentioned in terms suggesting that they are best avoided in a well-run institution.

The maintenance of discipline, tied in with ways to prevent prison riots, was a point of concern. However, the maintenance of discipline did not mean solitary confinement, harsh conditions, or heavy restraint. Indeed, the American Prison Association's Committee on Riots stated that "the best discipline is one which maintains order and conformance with the least possible friction, emotionalism and punishment" and that "its final objective should be to teach self-control and, hence, self-discipline".³⁰ It is further noted that "known troublemakers and aggressive psychopaths should be segregated and guarded with unusual care", but that "this will be a small percentage of a prison population."³¹ At this point, 'segregation' was not yet a euphemism for solitary confinement, but simply referred to segregation in a maximum security wing. This is not to say that solitary confinement was not in use. A 1952 survey indicated that 72% of prisons surveyed employed some form of solitary. However, the practice was used as a short term punishment for immediate disciplinary problems, not a long term method of incarceration.³²

The maintenance of discipline is, of course, tied to the prevention of and recovery from riots. Particularly in this period, after the series of riots that occurred from 1951-1953, riot prevention and recovery were primary concerns. The response to the riots by the American Prison Association and other professional sources was, in the vein of responses to criminal justice in this period, to look for systemic causes of rioting. A reading of

³⁰ American Correctional Association Committee on Riots, *A Statement Concerning Causes, Preventative Measures, and Methods of Controlling Prison Riots and Disturbances* (American Prison Association, 1953), 17

³¹ *Ibid*, 20

³² Negley K. Teeters, "A Limited Survey of Some Prison Practices and Policies," *Prison World* May-June (1952): 5

correctional trade journals and professional publications from the era reveals the main concerns of the responses to the riots were the lack of training for correctional officials; outdated and unproductive prison industries; sexual frustration; quality of food in prisons; political patronage appointments and interference with prison management; and unequal sentencing. As the American Prison Association Committee on Riots noted in its official response to the series of riots, the causes – “mandatory boredom, a sense of injustice, frustration, hopelessness for the future, sexual privations, anxiety about family and friends, and similar factors” – were exacerbated by “bad foods, brutality, unfair or capricious treatment, race conflicts, staff disharmony, inept and vacillating management, or similar basic conditions.”³³

The lack of training and poor pay of officers is an issue that repeats itself throughout all the literature on prisons in this period. The Committee on Riots noted that “the salaries of rank and file prison officers vary from as low as \$100 to as high as \$435 per month” and that “the median for the country is estimated to be about \$225.”³⁴ Journalist John Bartlow Martin agreed that poor pay for correctional officers attracting poor staff was a factor in rioting. He provided a table showing the range of pay a correctional officer could expect, from a low of \$2,830 per year in Maryland to maximum of \$4,212 in New York.³⁵ He expressed concern that, with these low wages, prisons attract, among the relatively small number of sadists, employees of low quality with no dedication to the work. “Such guards are none too good when they are hired”, he writes, and “they are bound to get worse. For guards, no less than

³³ American Correctional Association Committee on Riots, *A Statement Concerning Causes, Preventative Measures, and Methods of Controlling Prison Riots and Disturbances* (American Prison Association, 1953), 5

³⁴ *Ibid*, 8

³⁵ John Bartlow Martin, *Break Down the Walls* (London: Victor Gollancz, 1955), 161

convicts, become prisonized.”³⁶ The danger these “prisonized”, untrained, and underpaid guards posed, according to Martin, was not only one of morale; they become subject to corruption and bribery by the inmates.³⁷ At Jackson Prison in Michigan, the site of one of the largest prison riots, the warden, who had difficulty attracting guards due to the pay being lower than at local factories, said “We would hire them if they were warm and alive.”³⁸ In his own response to the prison riots, Austin MacCormick, the former head of the American Correctional Association, Dean of Criminology at Berkeley, and founder of the Correctional Educational Association, said that “riots struck the best and worst, largest and smallest, newest and oldest” of correctional facilities.³⁹ Given the relatively small difference between pay in the worst and best institutions, this is not unexpected – poor staffing could afflict any institution. In his analysis of the riots, McCormick wrote that in the Federal Reformatory at Chillicothe, Ohio – supposedly one of the best institutions in the country – the riot had started over “flies in the food”. The kitchen Steward had failed to maintain the cleanliness of the kitchens and, without approval, had cut the meat ration to 20% below standard and there “flies all over the kitchen, in the food, and everywhere else in the institution . . . every table was covered with flies . . . they had dropped into the jello, into the soup, and into other food.”⁴⁰

An additional factor that affected both the best and worst institutions equally was that of political interference, in funding, management and staff appointments. While the riots are often partially blamed on poorly trained, underpaid staff, and problems with the food, the

³⁶ John Bartlow Martin, *Break Down the Walls*, 162

³⁷ *Ibid*, 163

³⁸ *Ibid*, 40

³⁹ Austin H. MacCormick, “Behind the Prison Riots”, *Annals of the American Academy of Political Science* 293 (1954), 17

⁴⁰ *Ibid*, 21

root of these problems was in funding decisions. For instance, the Committee on the Riots reported that “hand to mouth budget practices and deficit financing, usually stemming from political considerations, will be found to be at the root of nine-tenths of the inadequacies ... which result in prison riots” and that “bad food usually means inadequate budgets reflected in insufficient supplies, poor equipment, poor personnel and, often, inept management.”⁴¹

Inept management, to some degree, stemmed from political patronage appointments.

Whether at the level of guards appointed as a favour to a constituent or higher level appointments, the political nature of prison employment had a corrosive effect on hiring practices and proper management. MacCormick wrote that it was “practically impossible to fill well-paid top positions in the prison system with experienced administrators because the system is known to be dominated by politics and no qualified career penologist is willing to accept appointment where security of tenure and freedom to administer without fear or favour are not assured.”⁴² He stated too that correctional programs were threatened by “the constantly changing political appointees who head them and the mediocre, underpaid guards who man them” and that he once visited a prison “just after a new governor came to power and found that everyone in the prison system from the director and wardens down to the lowest paid clerk had been replaced.”⁴³ At the rank and file level, the president of the American Correctional Association told its annual congress about a warden in Michigan who

⁴¹ American Correctional Association Committee on Riots, *A Statement Concerning Causes, Preventative Measures, and Methods of Controlling Prison Riots and Disturbances* (American Prison Association, 1953), 7-8

⁴² MacCormick, “Behind the Prison Riots”, 26

⁴³ *Ibid*, 22 and 26

stated that “all of our prison guards and other personnel are referred by the local politicians” and that he had been forced to hire a man with an I.Q. of 51.⁴⁴

The sources agree that a significant reason why political patronage was so rife and conditions so poor in many prisons was the lack of constituency for correctional issues. A 1949 article in *Prison World* argued that the greatest “impediment to the forward movement in penal affairs” was “public indifference, misconception and misinformation”.⁴⁵ Martin wrote that “it is a commonplace that prisons are the last in line at budget-making time. When the State must economize, it economizes on prisons, not on roads. (Motorists vote; convicts don't.)” He also stated that the public was complicit in the poor condition of prisons and prison riots because of an attitude of “Keep down taxes and the hell with what happens to the city folks.”⁴⁶ Further, in his recommendations for future improvement of the prison system, Martin argued that for any improvement to be made, good government groups needed to return corrections to the centre of humanitarian policymaking, as they had in the 19th and early 20th centuries.⁴⁷ So important was the issue of involving the public in correctional issues, that the presidential address to the 1958 Congress of Corrections was entitled “Correction – Every Citizen’s Concern”. *Prison World* ran frequent articles beseeching the public to assist with and show interest in the correctional system.⁴⁸ The Committee on Riots also implicated public disinterest in not helping the correctional system keep up with evolving labour standards. It stated that “as we moved from the twelve-hour day to the

⁴⁴ Roberts J. Wright, “Presidential Address: Correction – Every Citizen’s Concern”, *Proceedings of the Eighty-Ninth Annual Congress of Corrections of the American Correctional Association* (New York: American Correctional Association, 1958), 5

⁴⁵ John C. Burke, “Sure You Do!”, *Prison World*, Nov-Dec (1949), 24.

⁴⁶ Martin, *Break Down the Walls*, 153-154

⁴⁷ *Ibid*, 257

⁴⁸ E.g. Gene H. Wise, “Laymen Can Help!”, *Prison World*, March-April (1950) 24 and Robert L. Chase, “The Community’s Responsibility to the Jail”, *Prison World*, July-Aug (1950), 3

eight-hour day, and then from the forty-eight-hour week to the forty-hour week, it was obvious that many more employees would be required in order to provide the same degree of coverage. It has been the experience in most jurisdictions, however, that the legislature has never been quite willing to make up all of the difference in added personnel needed.”⁴⁹

One issue that overwhelmingly consumed the attention of both the professionals and journalists concerned with improving prison conditions and rehabilitating offenders was that of prison homosexuality. Of course, in the era following the Kinsey reports, homosexuality would be a topic of considerable debate. In her study of prison sexuality, Regina Kunzel wrote that midcentury, understanding of sexual orientation shifted from being a matter of the role played in relationships and outward appearance, to a matter of sexual object choice, and that prior to this period, the “prison wolf” – a man who took a dominant role – would not have been considered to be homosexual.⁵⁰ This new concept of what constituted homosexuality rendered the classification and segregation of homosexual prisoners far more difficult than it had been in the past, and being classified as homosexual had an enormous impact on the kind of rehabilitative programming or parole consideration a prisoner could receive. Including the prison wolf in that category invalidated the “M-F test” that had previously been used to segregate prisoners who scored high on the feminine scale, as it failed utterly to detect “active” homosexuals.⁵¹ The sources all show concern with homosexuality and how to manage it within the prisons. A presentation given to the 1958 Congress of Correction suggested that “the actual percentage of men engaging in this practice is 32%”, but that this number consists only of “masculine appearing individuals” as

⁴⁹ American Correctional Association Committee on Riots, *A Statement Concerning Causes, Preventative Measures, and Methods of Controlling Prison Riots and Disturbances* (American Prison Association, 1953), 9

⁵⁰ Regina Kunzel, *Criminal Intimacy* (Chicago, University of Chicago Press: 2008), 80

⁵¹ *Ibid.*, 83

“observable and definite inverts are not permitted freedom of association with the general population.”⁵² Perhaps in an attempt to reassure the reader, however, the author notes that “the ideation during the homosexual act are reported as heterosexual by and large, and the men admitting the practice insist that its purpose is simply to relieve sexual tension in any possible way.”⁵³

The ability to identify prisoners who engaged in homosexual activity was deemed essential by the profession, as several guidelines suggested that homosexuals were difficult to rehabilitate and should not be paroled or placed in minimum security situations. A 1955 guide on transferring to educational centres listed “Sex deviates, particularly homosexuals” under the heading “Definite Bars to Such Transfer.”⁵⁴ Homosexual prisoners were also often thought to be at the centre of prison riots. MacCormick wrote that “the handsome young prisoner who tricked a green guard into opening his cell, put a knife against the guard’s ribs, took his keys, and opened Ward’s and Hyatt’s cells, was classified as an overt homosexual” and that “another of the 15-block hierarchy ... was a nineteen-year-old homosexual”.⁵⁵ Advertisements ran in *Prison World* for guides to having “a more complete understanding of this SEX PROBLEM” entitled *The Homosexual in America*.⁵⁶ One issue of *Prison World*’s Correction Officer’s Training Section focused on preventing “acts of sex perversion”.⁵⁷

⁵² Donald Clemmer, “Some Aspects of Sexual Behaviour in The Prison Community”, *Proceedings of the Eighty-Ninth Annual Congress of Corrections of the American Correctional Association* (New York: American Correctional Association, 1958), 383

⁵³ *Ibid*, 384

⁵⁴ Glenn M. Kendall “Criteria for Selecting Inmates for Transfer to a Small Educational and Training Institution for Young Offenders”, *Proceedings of the Eighty-Fifth Annual Congress of Corrections of the American Correctional Association* (New York: American Correctional Association, 1955), 62

⁵⁵ MacCormick, “Behind the Riots”, 19

⁵⁶ Advertisement “The Homosexual in America”, *Prison World*, Nov-Dec (1951), 25

⁵⁷ Water M. Wallack, “The Correction Officer’s Training Section”, *Prison World*, May-June (1952), 10

Martin wrote extensively about the problems of homosexuality in prisons, both in terms of it being a barrier to rehabilitation and as a threat to stability within prisons. He wrote that “for the “girls”, prison is a rather happy place. There are never enough “girls” to go around; they are in great demand. It is likely than many alcoholic forgers who commit crime after crime ... are really homosexuals trying to get back into prison, where they are happier than in the free world”.⁵⁸ This misunderstanding of homosexuality seems to underlie much of the writing about homosexuality in prisons in this period. About Michigan’s Jackson State Prison, he wrote that a “homosexual miasma overlays the entire prison”.⁵⁹ Unlike many of the other writers, however, Martin seemed to accept that prison homosexuality was often situational, by suggesting furloughs and conjugal visits for those men with wives or girlfriends on the outside as a solution to the sexual tensions within all-male institutions, rather than segregation.⁶⁰ These writers refer to the “prison wolf” and the “overt homosexual” as if these individuals were entering into consensual and mutually beneficial relationships. Oddly, Martin does make reference to a case of sexual exploitation of a young inmate by a prison guard, but does not implicate the guards in “homosexuality”.⁶¹ While the possibility of forming relationships while incarcerated should not be discounted, it is striking that, when referencing “the sexual problem” in prisons and prison homosexuality, there was no concept of a large scale problem of sexual violence in prisons.

“The sexual problem”, despite being discussed largely in terms of homosexuality in male prisons as a result of an insatiable male sex drive, was, however, still present in the context of women’s prisons. Women’s prisons received very little attention in the main stream of

⁵⁸ Martin, *Break Down the Walls*, 168

⁵⁹ *Ibid*, 169

⁶⁰ *Ibid*, 171

⁶¹ *Ibid*, 169

publications in this period, due to their lower status, lower incidence of problems (indeed, there are no women's prisons riots to call attention to the needs of the correctional system), and the fact that very few women were incarcerated relative to men. Martin writes that "virtually every inmate ... engaged in homosexual practices" in women's prisons, he also notes that on December 31, 1952 the Federal Bureau of Prisons reported having 557 sentenced women, but 17,457 men.⁶² Women's prisons, then, were not of as much concern as their larger, more dangerous, and more numerous counterparts. Indeed, even *Prison World*, despite its general progressive slant and perhaps surprising number of women contributors, dismissively refers to women's prison issues as the "distaff side". Martin, however, did call attention to the lessons that could be learned from women's prisons. Noting that women's prisons were patterned on a minimum security reformatory model, based on a cottage system rather than cell blocks, he emphasized that the women "are not bruised and battered by the institution itself."⁶³ However, he wrote that "female prisoners, no less than the male, are the unwanted stepchildren of the state", and that women's prisons fall into the same pitfalls as men's, such as public apathy and a lack of useful industry, made worse by their small size rendering them both invisible and incapable of hosting a variety of programming.⁶⁴

Despite the unflattering language used to describe women's issues and homosexuality in prisons, the sources, in keeping with an overall emphasis on rehabilitation, did attempt to convey to both the public and correctional professionals a sense of the humanity of the prison inmates. MacCormick wrote that he was "always reluctant to discuss the sexual problem in

⁶²John Bartlow Martin, *Break Down the Walls*, 186

⁶³ Ibid, 188

⁶⁴ Ibid, 189

prisons, moreover, because there are already too many people who think of all prisoners as wild beasts, without realizing that they too might become bestial if they were locked long enough in an iron cage.”⁶⁵ *Prison World* sponsored an annual prisoner essay writing contest, publishing the winners. It also highlighted cases where prisoners showed particular dedication to the outside world. After praising prisoner contributions to the war effort in the Second World War, one article stated that “Now we face another international challenge – and a challenge right here on the home front. Are we ready to meet it? Speaking for the professional correctional personnel, and the some 130,000 persons behind prison walls for whom they are responsible, we answer – YES!”⁶⁶ Another article praised prisoners at Attica for donating blood.⁶⁷ Lastly, a touching story was

published about six Ohio prisoners who donated tissue to save the life of a young burn victim named Kathie.⁶⁸

Additionally, *Prison World* contains articles discussing inmate journalism and how to support its growth in prisons. It was this humanizing atmosphere that allowed and forced the correctional profession to criticize its own failings. *Prison World*, while it was dedicated to “The Progressive Administration of Prisons, Jails and Reformatories”, took time to address

the injustices that occur in the prison system. A photograph from a Texas jail of the corpse of an emaciated prisoner who had evidently starved to death appeared in a 1950 edition. The



“- - - is it nothing to you,
all ye that pass by?”

⁶⁵ MacCormick, *Behind the Riots*, 22

⁶⁶ Joseph E. Ragen, “Mobilizing Prisoners for The War Effort – Again”, *Prison World*, Jan-Feb (1951), 3

⁶⁷ “Red Cross Honors Attica Inmates”, *Prison World*, Jan-Feb (1949), 23

⁶⁸ “... the prisoners gave us Kathie”, *Prison World*, Jan-Feb (1952), 3

writer detailed that the inmate was “found stark naked and unconscious on a concrete floor of a county jail in Texas. He had not eaten in many days.”⁶⁹ The article implored the reader to ensure that these conditions could not occur in their local institutions.

Having public opinion involved in the correctional system on the side of the professionals was, of course, essential to expanding rehabilitative programming, which would require construction of new, smaller prisons, the hiring of new medical professional staff, social workers, psychologists, teachers and others to run prison industries. As has been established, rehabilitation of a prison population, recognized as flawed but fully human, was the goal of the professionals, academics, and journalists involved in the correctional system. However, the methods and perspectives on effectiveness varied. The main methods though to lead to rehabilitation which recur throughout the sources were productive, modern and varied prison industry; educational programs; psychiatric care; and addiction recovery programs, in addition to the aforementioned provision of clean, and modern facilities with properly trained staff. Prison industry, in particular, proved a particularly thorny point of contention with those outside the correctional field, however. While generally accepted as necessary to reduce tensions brought on by enforced idleness within prisons, and seen as necessary to provide training for inmates in useful work as well as establishing good work habits, prison labour was often opposed by trade unions as exploitative and harmful to free labour by undercutting prices. *Prison World* provided advice for prison industry supervisors (and contained no small number of advertisements for the John R. Wald Company’s services in planning prison industries), while the Committee on Riots, MacCormick, and Martin all wrote that it was essential to maintaining order in the prison while providing some work

⁶⁹ “... is it nothing to you, all ye that pass by?” *Prison World*, July-Aug (1950), 22

experience to the prisoners.⁷⁰ The particular role of prisons in providing psychiatric care was also questionable. Attracting qualified staff to work in the correctional field proved difficult, with Martin noting that even after the riots, Jackson had only one psychiatrist.⁷¹ The favoured method was to transfer prisoners in need of psychiatric help to mental institutions. However, mental institutions were so overcrowded that many prisons could only send their mentally ill inmates if they agreed to take patients from the mental hospital who were not responding to treatment.⁷²

However, there was some opposition to this rehabilitation-treatment ideal. While some of the opposition, of course, came from the general public who often believed that prisons were becoming a “country club”, there were sources of dissension within the community of those invested in correctional issues.⁷³ MacCormick wrote that “we cannot reform our prisoners until we have reformed our prisons”, Martin stated that “The prison cannot be reformed”.⁷⁴ As a journalist rather than a penologist or criminologist, John Bartlow Martin stood outside of the correctional field, but he was certainly not a marginal figure. Having been a speech writer for Adlai Stevenson in 1952, and destined to work for him again in 1956 and the Kennedy campaign in 1960s, in addition to Hubert Humphrey and Robert Kennedy’s campaigns, in addition to becoming Ambassador to the Dominican Republic, he was highly politically connected, but he was also described as “a devoutly

⁷⁰ Ward J. Estelle, “The Work Supervisor’s Report” *Prison World* July-Aug (1949), 7 and American Correctional Association Committee on Riots, *A Statement Concerning Causes, Preventative Measures, and Methods of Controlling Prison Riots and Disturbances* (American Prison Association, 1953), 10 and MacCormick, *Behind the Riots*, 20 and Martin, *Break Down the Walls*, 154

⁷¹ Martin, *Break Down the Walls*, 223

⁷² MacCormick, *Behind the Riots*, 20

⁷³ Roberts J. Wright, “Presidential Address: Correction – Every Citizen’s Concern”, *Proceedings of the Eighty-Ninth Annual Congress of Corrections of the American Correctional Association* (New York: American Correctional Association, 1958), 4

⁷⁴ MacCormick, *Behind the Riots*, 27 and Martin, *Break Down the Walls*, 249

liberal Democrat” with a true concern for the poor and dispossessed.⁷⁵ His connections to the political mainstream make it perhaps all the more surprising that in his book *Break Down the Walls* he would deviate so far from the mainstream of educated opinion on the future of corrections. As has been demonstrated by how closely parts of *Break Down the Walls* agree with the APA on matters of humane conditions, better training for corrections officers and provision of treatment and opportunities for training and work, Martin agreed with the premise that prisons need to be handled in a more professional and humane manner. However, chapter 25 of *Break Down the Walls*, entitled “Prisons Should Be Abolished” indicates his wider reaching, more radical vision of how the correctional system could evolve.⁷⁶

Martin’s argument for prison abolition was straightforward, logical, and stemmed from the same premises that support the arguments for prison improvement. He wrote out that, regardless of long sentencing or whether or not a prisoner has been rehabilitated, 95% of all prisoners (essentially, those who do not die in custody) will eventually be released from prison: Thus, rehabilitation must necessarily be the goal of all prisons if they are to achieve their stated purpose, the protection of society, without having to lock up every wrongdoer forever, which Martin argued would be far too expensive.⁷⁷ His concern is that so many rehabilitative programs are put into place without proper assessment of their effectiveness or if they are of any tangible benefit to those incarcerated. For instance, he noted that psychiatric treatment within a prison environment was impossible, since there were just 7,500 psychiatrists, of whom 855 were psychoanalysts, in the United States at the

⁷⁵ Robert O. Boorstin, “John Bartlow Martin, 71, Author and Envoy Dies,” *New York Times*, January 5, 1987

⁷⁶ Martin, *Break Down the Walls*, 247

⁷⁷ *Ibid*, 215

time.⁷⁸ With such a small number of professionals available and in such high demand – or in Martin’s phrase “busy getting rich by treating people who can afford neuroses” – it would be impossible to attract enough of them to prison work to establish a system in which every prisoner received psychiatric help.⁷⁹ Due to this shortage of qualified psychiatrists, psychiatry, rather than a tool of rehabilitation, “has become another weapon of custody”, used only to subdue unruly prisoners.⁸⁰ He also argued that measuring the effectiveness of rehabilitative programming by how well it maintains order in prisons makes them into “a weapon of custody.”⁸¹ Martin suggested that, as some prisoners were rehabilitated in prison - although there was no certainty as to how that happened – the best thing that could be done within the prison system is to ensure that, even if it cannot improve a prisoner is ensure that it does not worsen them. As he wanted to ensure that prisons do not worsen prisoners, despite the fact that he did not believe that rehabilitative programming works, and that prisons should be abolished, he therefore still supported the same prison improvement initiatives proposed by the American Correctional Association and others involved in correctional work.⁸²

Martin’s solution to the prison problem, then, was, then and now, a radical one. He proposed that, while researching the causes of criminality so as to prevent the need for the criminal justice system to exist, the number of people incarcerated should be drastically reduced by re-allocating the psychiatrists employed within the system to classification duties, releasing on parole all of those deemed acceptable parole risks, and preventing future incarceration through the increased use of probation. This would necessitate the hiring of

⁷⁸ Ibid, 222

⁷⁹ Ibid, 222

⁸⁰ Ibid, 222

⁸¹ John Bartlow Martin, *Break Down the Walls*, 223

⁸² Ibid, 254

more probation officers and the creation of teams of experts to assist judges in determining good parole risks.⁸³ He further argued that no more maximum security institutions should be built as they were expensive and unnecessary for the majority of offenders.⁸⁴

While this argument appears radical on the surface, Martin couched his calls for a new study of criminality and a new era of reform in patriotic language that calls up the long history of prison reform movements in the United States. He noted that women's prisons, relatively speaking, were in much better conditions than men's prisons because of the involvement of women's groups such as the League of Women Voters in the early 20th century, thus invoking American tradition of an active civil society. He further wrote that the first prison system in America resulted from a meeting in the home of no less a personage than Benjamin Franklin, featuring a reading by Dr. Benjamin Rush.⁸⁵ It is perhaps this language situating the hope of reform in a patriotic framework, tying his message to a movement begun by the Founding Fathers, that allowed such a radical message to gain mainstream acceptance – and this work garnered significant coverage and positive reviews in mainstream media sources. *The Rotarian*, for instance, the publication of that bastion of mainstream, middle class culture, the Rotary Club, published a review describing *Break Down the Walls* as “the most important book” in their recommendations, and describes his recommendations as ones that “place real responsibility – in the light of self-interest alone – on every mature citizen of the United States.”⁸⁶

This period, then, demonstrates that a variety of criminal justice issues that afflicted the prison system throughout the latter half of the 20th century – overcrowding, rioting,

⁸³ Ibid, 256

⁸⁴ Ibid, 257

⁸⁵ John Bartlow Martin, *Break Down the Walls*, 108, 187 and 257

⁸⁶ John T. Frederick, “Speaking of Books”, *The Rotarian* Jul (1954), 43

violence, lack of funding, and increasing rates of incarceration – were already in effect in the 1950s. Further, issues that would be deemed uniquely pressing in later periods, and thus would require unique correctional solutions – rising rates of violent youth crime and a distinct and youth culture from which adults felt alienated – were already present. However, the early responses to the rising tide of violent crime and instability was entirely different from that in later periods. The mainstream response, centring on the old progressive era culture of expertise rather than “common sense” public opinion, and sought after cultural and larger structural causes of criminality, rather than looking for and punishing fault in the individual.⁸⁷ Both the culture and politics of the era affected this outcome. Politically speaking, crime was not popular as an issue in national politics. While local politicians and state governors may have interfered with their local prisons and played populist, “tough on crime” politics, there was no national political narrative of that sort to counter the message of correctional professionals seeking to improve upon the system and institute rehabilitation programs. Insofar as a popular journalist counteracted their claims of the possibility of rehabilitation by the middle of the period, he did so only to create a more radical call for re-evaluating the system of incarceration as a whole – a message accepted by a publication as mainstream as *The Rotarian*. In the period to follow, youth violence intensified, as would feelings of unease in the populace, who became frustrated with the system’s seeming inability to cope with these new challenges. Further, the Republican party would re-organize itself away from its roots in the coastal elite and re-orient toward the Sunbelt and the South while re-branding itself as a common sense bulwark against the supposed failures of the elite to deal with disorder. This new narrative about crime and disorder would force issues of poverty and social justice to be reframed as crime-fighting initiatives, and thus create a

⁸⁷ Gilbert, *A Cycle of Outrage*, 43

narrative that allowed crime to become a national, rather than local, issue. This would be the undoing of the old culture of expertise, and the rehabilitative goals that went with it.

Chapter 2 – 1960-1968 – Protest, disorder and the campaign trail: crime becomes big politics

Dividing eras by the passing of decades or the change of presidencies is always a somewhat arbitrary process. The 1960s started much as the 1950s ended. Juvenile Delinquency continued to be a popular issue, although somewhat muted as the 1950s youth culture became absorbed by the mainstream.⁸⁸ Organized crime continued to be a concern but often failed to be politicized. The social and cultural upheavals that are often considered the hallmark of this decade were still years in the future. However, while the previous chapter analyzed how the response to juvenile delinquency, rising crime, and overcrowded and aging prisons was to demand better conditions, preventative measures, and even calls for the eventual abolition of the prison system, this chapter will highlight a very different response to the continued youth rebellion, civil rights movement's civil disobedience, political unrest and crime rates that continued to increase more dramatically each year. The contrast between the responses to relatively similar conditions in the 1950s and those that would become prevalent by the end of Johnson's presidency demonstrates that the development of a system of mass incarceration was not, in fact, an inevitable consequence of instability, youth crime, or fears of youth culture often associated with the social dislocations of the latter part of the decade. Nor, however, was it the grand conspiracy to control the poor, marginalize visible minorities, and repress political dissent as the left-leaning activist wing of the prison abolition movement has so often alleged. Rather, the period of 1960-1968

⁸⁸ James Gilbert, *A Cycle of Outrage*, 213.

was one of transition where the implementation of rehabilitative policies and pro-defendant court decisions reached their zenith while at the same time sowing the seeds of the backlash against those same policies. This popular backlash which would become easy political fodder for a Republican Party looking to re-align itself and attract new voters following the Democratic Party's embrace of civil rights and concomitant loss of "steady south".⁸⁹

Drawing crime into the sphere of federal politics, whether through populist politicking or the expansion of coverage of the Warren Court's criminal justice rulings, by the end of the 1960s and 1970s, would have a dramatic impact on how policy was created and executed across the country and make it far more sensitive to popular sentiment. It is this period where that process of federalizing the crime issue became prominent and thus laid the groundwork for what was to follow.

Conditions within the prison systems as the 1960s began were much the same as those at the end of the 1950s. The correctional profession maintained the same goals – rehabilitation above all – and virtually the same methods – education, training, and individual treatment. The tone established in articles in *The American Journal of Corrections* (formerly *Prison World*) was one of continuing improvement. Nearly every issue detailed the new programmes of prison building (then portrayed as a progressive step toward building modern institutions grounded in a rehabilitative framework) and programming development. In this period, a particular emphasis was placed on the development of the prison library. A series of articles run in 1961 emphasized the important aspects of operating a prison library, highlighting that inmates "should be permitted to visit the library individually with the minimum amount of supervision at all times, including some

⁸⁹ William J. Stuntz, *The Collapse of American Criminal Justice*, (Cambridge, MA: Harvard University Press, 2011), 237.

evenings and weekends” and notes that the library should “provide an atmosphere of warmth” and that it “does far more to control the general behaviour and attitudes of prison life than it is given credit for.”⁹⁰ In another entry in the series, it was acknowledged that “even men and women who were not book-lovers before they came, turn to reading to occupy the long hours” and that some prisoners have well-developed reading habits. A prison library, therefore, must stock a variety of books, periodicals and newspapers covering a wide range of topics.⁹¹ She also writes that “the inmates should be encouraged to seek information in books ... and to enlarge their knowledge of anything and everything that rouses their interest.”⁹² There was no talk of censorship of non-fiction reading material, but novels should be purchased “with unusual care, to be interesting yet give right outlooks.”⁹³

This focus on libraries reveals how education became more of a programming focus in this period. As noted previously, correctional systems were concerned with establishing prison industries for the diverse reasons of reducing operating costs, reducing idleness among inmates and fulfilling rehabilitative goals through vocational training. The latter two tasks were, in this period, at least partially directed toward educational programs. Indeed, writers for the *Journal* stated that “Any institution which embraces the title or concept of “correction” must essentially be an educational institution; for to correct is to educate.”⁹⁴ Senator Robert Byrd wrote for the *Journal* that at a new youth correctional facility under construction in West Virginia, “The school and library facilities will serve as the central

⁹⁰ Marion V. Hedder, “Guide Lines for Planning a Model Library in a Correctional Institution – Physical Aspects”, *The American Journal of Corrections*, May-June (1961), 4-5.

⁹¹ Mary Rudd Cochrane, “The Library in a Correctional Institution – Its Contents”, *The American Journal of Corrections*, July-August (1961), 14.

⁹² Cochrane, “The Library in a Correctional Institution – Its Contents”, 16.

⁹³ *Ibid*, 14

⁹⁴ Henry J. Noble, “Teaching Machines and Programmed Learning in Correctional Institutions”, *The American Journal of Correction*, Nov-Dec (1962), 18

core” and highlighted its proximity to West Virginia University.⁹⁵ Not only was education becoming an increasingly important priority for rehabilitative programming, but it was often extending beyond the three Rs to embrace more academic subjects. By 1968, eleven states - California, Florida, Illinois, Kentucky, Maryland, Michigan, Nebraska, New York, Ohio, Texas, and Washington – had University-level programming in their prison systems, and thirteen that were planning to do so.⁹⁶

Prisoners were not the only group to benefit from improved education. This period continued the 1950s push to better educate the correctional officers who were responsible for the day to day operation of the institution. In 1965, both H.R. 2263 and H.R. 6508 (the Correctional Rehabilitation Study Act of 1965 and The Law Enforcement Assistance Act of 1965, respectively) were passed. The reaction of the *Journal* to both of these bills as they made their way through congress was very positive, stating that “the ramifications of such legislation will bring hope and progress to all that we do.”⁹⁷ The author hoped that both bills would provide more funding and research for the education and hiring of skilled staff to operate prisons. Advocating and anticipating improved training for correctional officers did not stop at just better vocational training for maintaining custody, but academic education as well. Noting that “the change in title from guard to correctional officer, then, symbolized a changing role of the custodial staff”, one writer suggested that “the correctional officer should understand the general rules which apply to human behaviour and be familiar with the unique behaviour of each individual inmate” – skills he could attain through University

⁹⁵ Robert C. Byrd, “Education Will Be the Key to Rehabilitation”, *The American Journal of Corrections*, March-Apr (1967), 4.

⁹⁶ Roger R. Morris, “State Programs in College Education for Inmates of Correctional Institutions”, *The American Journal of Corrections*, Mar-Apr (1968), 20.

⁹⁷ Donald Clemmer, “From the President”, *The American Journal of Corrections*, May-June (1965), 26

education.⁹⁸ In addition to re-training staff already working within the correctional system, correctional systems also sought to attract educated, skilled staff through work-study opportunities with local universities. In 1966 San Quentin Prison, for example, forged an agreement with the University of California Berkeley for students to fulfill their work-study obligations within the prison. This program was deemed a success both in reducing understaffing and attracting educated staff.⁹⁹

One aspect of this increased emphasis on providing uncensored and unmonitored library access and advanced education to inmates was the rise of a class of more educated and activist prisoners. In addition to this greater access to education, inmates were not disconnected from events happening in the world outside the prison. African-Americans composed a disproportionate percentage of the prison population, representing 37% of all those incarcerated while only making up 10% of the American population.¹⁰⁰ This disproportionate share of those incarcerated, combined with the growing civil rights and Black Nationalist movements outside of the prison, bred not only a sense of injustice, but also an awareness of their ability to fight back. Future Black Panther Eldridge Cleaver wrote that, prior to becoming politically aware of these movements, “we lived in an atmosphere of novocain[sic] ... We accepted indignities and the mechanics of the apparatus of oppression without reacting”, but that after he became aware, he “fell in with a group of young blacks who, like [himself], were in vociferous rebellion against what [they] perceived as a continuation of slavery on a higher plane.”¹⁰¹ When released, those who received a radical

⁹⁸ William H. Cape, “In-service University Training for Correctional Officers”, *The American Journal of Corrections*, Sep-Oct (1965), 37

⁹⁹ A. Harris Fairbanks, “The College Work-Study Program at San Quentin: An Evaluation”, *The American Journal of Corrections*, Nov-Dec (1967), 28

¹⁰⁰ NBJ, 80 (66)

¹⁰¹ Eldridge Cleaver, *Soul on Ice*, (New York: Dell Publishing, 1992), 22

training in prison would become the public face of a more aggressive and more revolutionary brand of leftism and black activism.

This period marked an explosion in radical writing from within prison walls. Eldridge Cleaver was perhaps the best known radical prison writer who published during this period. Written in 1965 and published in 1968, *Soul on Ice*, a collection of essays on race, radicalism and sexuality, was highly successful, beloved by critics on the left, and cemented Cleaver's status as a celebrity and activist icon. The book details how he discovered history, Marx, and the Nation of Islam in prison, leading to his ultimate embrace of radical politics and his role in the Black Panthers after his release. Another prison writer active during this period was George Jackson. *Soledad Brother*, a collection of his letters that was published in 1971, shortly before his death, showed his evolution from a young street criminal believing he would return home shortly (although the record of the first three years of his incarceration are not published) to a revolutionary. George Jackson would become involved with the Black Panthers after meeting Huey Lewis in prison, as well as being instrumental in the founding of the Black Guerilla Family, which would become a notorious prison gang.

One radical group that became particularly prominent within the prison system in this period was the Nation of Islam. Although the Nation of Islam, or the Black Muslims, was founded in the United States by W.D. Fard in 1930, it came to prominence in the 1950s and 1960s under the leadership of Elijah Mohammed. Despite having only a small number of followers in larger American society, the Nation of Islam had an outsized impact within the prison system.¹⁰² Their Black Nationalist rhetoric appealed to the disproportionate African-American population within the prison system and their message of “do for self”, or self-help

¹⁰² Edward E. Curtis, *Black Muslim Religion in the Nation of Islam, 1960-1975*, (Chapel Hill, NC: University of North Carolina Press, 2006), 144

and self-uplift, appealed to those forced into a position of dependency. Their best-known speaker, Malcolm X, converted while in prison. The Nation of Islam remained virtually unknown in the mainstream population until a documentary produced by Mike Wallace and Louis Lomax, *The Hate that Hate Produced*, aired on WNTA-TV in New York in 1959. The documentary was utterly disapproving of the practices and beliefs of the Black Muslims, singling out not only their aggressive racial dogma, unorthodox theology and disdain for Christianity, but also the aspects of the sect that were usually deemed praiseworthy.¹⁰³ Wallace commented that their modest, conservative dress was far from the usual American fashions, and described followers' tendency to develop their own businesses as "withdrawing from the community."¹⁰⁴ The documentary also grossly inflated the number of Nation of Islam followers, claiming there were 500,000 adherents, when realistic assessments ranged from 20,000 to 100,000 at highest.¹⁰⁵ Showing a divergence with mainstream opinion, then, the *American Journal of Correction* published a very level-headed article about the presence of the Nation of Islam in prisons in 1961. While the article decried the Nation's racial ideology and apocalyptic vision, it also praised Black Muslims' eschewing of alcohol, tobacco and narcotics, plus their general aversion to crime.¹⁰⁶ He also argued that as a group they were not a threat to society if not provoked, and that trying to suppress them would not lessen their numbers; rather, reducing their influence would come when "the flagrant conditions of inequality which bolster its claims are remedied."¹⁰⁷

The Nation of Islam's influence on the prison system went beyond its conversion of prisoners and emphasis on quitting drugs and living a clean life. Members of the Nation of

¹⁰³ *The Hate that Hate Produced*, Television Documentary, (New York: WTNA-TV, 1959).

¹⁰⁴ *ibid*

¹⁰⁵ Edward E. Curtis, *Black Muslim Religion in the Nation of Islam*, 145

¹⁰⁶ Ralph G. Murdy, "Islam Incarcerated" *American Journal of Correction*, Jan-Feb (1961), 21

¹⁰⁷ Ralph G. Murdy, "Islam Incarcerated" *American Journal of Correction*, Jan-Feb (1961), 21

Islam were highly active in prison litigation that would alter the landscape of corrections in this era, guaranteeing more rights to better conditions, religious freedom and rehabilitative programming. The era of successful, large scale prisoner litigation began with *Jones v. Cunningham*, the decision which determined that state inmates had the standing to file a writ of *habeas corpus*, made the concept of ‘prisoners rights’ possible. Perhaps the second most important decision regarding the rights of prisoners, *Cooper v. Pate*, came directly from the litigation by a member of the Nation of Islam who argued that he was being denied his right to the free expression of his religion by the prison administration.¹⁰⁸ The decision in *Cooper v. Pate* set the precedent that prisoners in state institutions had the right to sue in federal court for rights guaranteed under the Civil Rights Act of 1871. Both of these cases came within the context of a series of decisions by the Warren Court which applied the Bill of Rights to the states and furthered the rights of visible minorities, those accused of crimes, and the convicted. While *Jones* and *Cooper* both set precedents that encouraged later prisoner litigation and the development of a concept of prisoners as a distinct political class whose rights both needed and deserved protection, decisions such as 1961’s *Mapp v. Ohio*, 1963’s *Gideon v. Wainwright* and *Douglas v. California*, and 1966’s *Miranda v. Arizona* also affected the process of criminal justice in the United States. Unlike *Cooper* and *Jones*, which focused on the question of the constitutional rights of prisoners, these addressed the rights of the accused. *Mapp* established the precedent that evidence obtained by an unreasonable search could not be used in court, *Gideon* and *Douglas* that indigent defendants must be provided counsel by the state for their trials and appeals, respectively. Most famously, *Miranda* deemed inadmissible any evidence obtained through interrogation if the

¹⁰⁸ Christopher E. Smith, “Black Muslims and the Development of Prisoners’ Rights,” *Journal of Black Studies* 24, 2(1993), 132.

suspect had not been informed of their right to an attorney and emphasized the right against self-incrimination.

The results of *Jones* and *Cooper* had an immediate effect on the correctional system. In a 1966 article, a writer in the *Journal* stated that “the courts, reflecting concern with the rights of the individual, are beginning to have a tremendous impact on prisoners’ rights”, but also states that “as a prison system employee, I believe this is all to the good.”¹⁰⁹ However, by late 1967, a slightly more negative tone was taken. As one writer phrased it: “Writs are a part of prison life, and since that day in 1963 when the trumpet of Clarence Earl Gideon sounded in the chambers of the United States Supreme Court their number has vastly increased.”¹¹⁰ This article further demonstrated how the decisions that seemed to affect only the arrest and conviction processes could affect prisons. The writer noted that “the ground most frequently relied upon since the decision in *Gideon v. Wainwright* was that the defendant was not represented by counsel at the time of trial.”¹¹¹ Regardless of her seeming frustration with the never-ending writs, many of which she deemed to be exaggerated or outright lies, Hazel Kerper commented that “The “revolution in criminal justice,” together with new pressures to find solutions to the “crime problem” were forcing lawyers and law enforcement and correctional people to work closer together.” As allowing inmates to have the time and space to prepare a writ, no matter how specious, improves his perception of the legal system “the unloved writ-writer can make a contribution to this ‘togetherness’.”¹¹² Thus, even if correctional professionals were frustrated by the flow of litigation from

¹⁰⁹ Eugene N. Barkin, “Interpretation and Implementation of Civil Rights Legislation in Penal Institutions”, *American Journal of Correction*, Sep-Oct (1966), 36

¹¹⁰ Hazel B. Kerper, “On “Writs” and “Resocialization””, *American Journal of Correction*, Nov-Dec (1967), 30.

¹¹¹ *Ibid*, 30

¹¹² Hazel B. Kerper, “On “Writs” and “Resocialization””, *American Journal of Correction*, Nov-Dec (1967), 31

prisoners, it was absorbed into the rehabilitative process as a mean to increase the inmate's respect for the fairness of the law.

Despite some setbacks, conditions steadily improved within the prison system as greater emphasis was placed on developing the most effective rehabilitative models, improving staffing, increasing educational opportunities for inmates, and on the individual rights of the accused and incarcerated. Conditions outside the prison walls were, however, such that the complaints of easy conditions or insufficient punishment that the *Journal* was responding to were growing into a backlash against the insular academic utopia of those generating policy without carefully weighing public opinion. The 1960s began much as the 1950s ended, with concerns with crime largely linked to juvenile delinquency. While juvenile delinquency was not a major issue in the 1960 presidential campaigns, it quickly became a domestic priority for the Kennedy administration, with the establishment of the President's Commission on Juvenile Delinquency and Youth Crime and the passage of the Juvenile Delinquency and Youth Offenses Control Act in 1961.¹¹³ Despite its martial language about a "national emergency" and "domestic war", the Commission's report focused on largely the same systemic issues previously addressed: unemployment, slum housing, racism, poverty, poor education. It also highlighted the need for federal involvement since localities had not been successful in addressing delinquency.¹¹⁴ This is the same approach that the Johnson administration would take to crime, with his focus on Great Society and War on Poverty programs as the best way to fight crime.

¹¹³ Michael W. Flamm, *Law and Order: Street Crime, Civil Unrest and the Crisis of Liberalism in the 1960s*, (New York: Columbia University Press, 2005), 23.

¹¹⁴ *Ibid*, 23

The Johnson administration's approach to crime can be summed up from a collection of statements made in 1965, as Johnson addressed Congress on the issue and signed into force the Correctional Rehabilitation Study Act of 1965 and the Law Enforcement Assistance Act. In his address to Congress, Johnson continued the war-like language of his predecessor's administration. He stated that "crime has become a malignant enemy in America's midst", that "the problems run deep and will not yield to quick and easy answers" and that "we must identify and eliminate the causes of criminal activity ... this is the major purpose of all we are doing in combating poverty and improving education, health, welfare, housing and recreation" and "laws are less likely to command the respect of those forced to live at the margins of society." He argued that, despite the fact that "our system rejects the concept of a national police force," that the best way to fight crime was to "give new recognition to the fact that crime is a national problem." He also commented on the recent Supreme Court decisions and citizen backlash, saying "it has been said, for example, that the fault lies with courts which 'coddle criminals'." But, rejecting that logic, he said that "it is not enough to reflect our concern over the rise in crime by seeking out single answers or simple answers."¹¹⁵ In September of the same year, the President also signed into law Public Law 89-176 which granted the Attorney General significant powers to transfer prisoners to halfway houses, allow them emergency leave from prisons, and allow them to move to nearby communities to obtain employment or training. Johnson called this "one of the most important pieces of legislation affecting the Federal prison system in the past 30 years," especially for preventing recidivism among parolees.¹¹⁶ Twelve days later, he signed into

¹¹⁵ Ibid

¹¹⁶ Lyndon B. Johnson: "Statement by the President Upon Signing Bills Providing Rehabilitative Techniques for Adult Offenders.," September 10, 1965. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=27251>. (Accessed 12 Jul 2012)

force the Law Enforcement Assistance Act, stating that “The control of crime is a major target of this administration” and highlighting the dire situation the country found itself in, that “Our parks are deserted. Our storekeepers weigh the dangers of arming themselves against the dangers of attack. Crime and violence in the suburbs increase even more rapidly than in the central cities.”¹¹⁷ Yet again, however, despite this dire situation, he focused on rehabilitation:

“We believe rehabilitation is indispensable if we are to break the cycle of crime by convicted offenders. Yet, too often, we offer only four walls of a prison containing no opportunity for learning a trade, maintaining family ties, or preparing to return to the community. Too often prisoners do not leave their confinement as law-abiding men. They leave, rather, as released criminals. Rehabilitation is an objective of the Law Enforcement Assistance Act.”¹¹⁸

The Law Enforcement Assistance Act, passed in 1965, would soon be superseded by the Omnibus Crime Control and Safe Streets Act of 1968. While Johnson had unreserved praise for the Law Enforcement Assistance Act, by 1968 legislation being passed by congress to deal with the crime issue was no longer conforming entirely to his wishes to address crime through rehabilitation and prevention. In his signing statement for the Omnibus Crime Control and Safe Streets Act, Johnson said that “The measure before me carries out many of the objectives I sought. But it also contains several other provisions which are unwise and which will not aid effective law enforcement.”¹¹⁹ He seriously considered vetoing the bill due to the questionable inclusions, such as the provisions

¹¹⁷ Lyndon B. Johnson: "Statement by the President Following the Signing of Law Enforcement Assistance Bills.," September 22, 1965. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=27270>. (Accessed 12 Jul 2012)

¹¹⁸ Lyndon B. Johnson: "Statement by the President Following the Signing of Law Enforcement Assistance Bills.," September 22, 1965. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=27270>. (Accessed 12 Jul 2012)

¹¹⁹ Lyndon B. Johnson: "Statement by the President Upon Signing the Omnibus Crime Control and Safe Streets Act of 1968.," June 19, 1968. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=28939>.

allowing for wiretapping, failure to create strict gun control rules, and weakening of the rights granted in the *Miranda* decision. However, he stated that “Crime will never yield to demagogic lament--only to action.”¹²⁰ Crime was too important an issue to be able to veto the bill over its worrisome incursions into privacy rights. Indeed, Johnson’s own Commission on Law Enforcement and Administration of Justice had reported that half of Americans feared crime enough to keep them indoors and that 20% of people would like to move to a different neighbourhood to escape crime.¹²¹ The provisions that Johnson *did* approve of, however, fit into his overall focus on prevention. One element – forgiving college loans for law enforcement officers in order to attract better, more educated staff – could have come straight from the policies of the American Correctional Association. Additionally, the Act created the Law Enforcement Assistance Administration (LEAA), which would administer the \$400 million dollars in federal grants that the Act had approved to be distributed to the States for use in training and equipment upgrades for all levels of enforcement, “police to prisons to parole.”¹²² While much of what was contained in the Omnibus Crime Control and Safe Streets Act was progressive and prevention-and-rehabilitation minded in intent, it further entrenched the federal government in the previously local realm and gave the federal government new powers to intervene in local criminal justice policy.

The Johnson administration, then, addressed crime as a social rather than individual problem and supported the causes of research, rehabilitation, and a justice system that respected individual rights. However, as Michael Flamm argued in *Law and Order*, casting

¹²⁰ Ibid

¹²¹ John A. Andrew III, *Lyndon Johnson and the Great Society* (Chicago: Ivan R. Dee, 1998), 180.

¹²² Ibid

the Great Society and War on Poverty as crime-fighting measures left those policies open to attack when crime rates continued to rise despite efforts to reduce poverty and improve social engagement.¹²³ Johnson, however, did not have much choice in his portrayal of the Great Society as a War on Crime as much as a War on Poverty. Both the public and the nascent New Right movement put pressure on the administration to address growing crime; as such, policy had to be justified in light of this suddenly most important of issues. Public concern about rising crime rates was not unfounded: crime rates had risen dramatically throughout the 1960s. In 1960, for example, there were 288,460 violent crimes according to the FBI's Uniform Crime Reports. By 1965, when Johnson's speeches noted above were made, that had jumped to 387,390. By the time Johnson's administration ended in 1969, it had more than doubled to 661,870.¹²⁴ Some on the left attempted to explain away the increasing crime statistics, citing the unreliability of the local reporting that made up the components of the Uniform Crime Reports. But, the public perception of rising crime rates, combined with urban rioting, and the assassinations of John F. Kennedy, Malcolm X, Robert Kennedy and Martin Luther King Jr. were all real factors that contributed to the public's fear of violence and instability, factors that needed to be addressed.¹²⁵

These political actions and violent events in the world outside the prison also had an effect on the kind of advertising that appeared in the *Journal*. While the advertising that appeared throughout the 1950s and early 1960s largely focused on items for use within the prison (rather than outside law-enforcement), especially infrastructure, staff uniforms, equipment for prison industry, and kitchen equipment, the type of product being advertised

¹²³ Flamm, *Law and Order*, 47

¹²⁴ Federal Bureau of Investigation, "Uniform Crime Reports", data accessible at: <http://www.ucrdatatool.gov>

¹²⁵ Flamm, *Law and Order*, 15

reflected the events outside the industry. While the occasional advertisement had appeared for Tear Gas canisters, for example, in earlier editions, they made up a tiny proportion of all advertisements and were the only ‘aggressive’ product advertised. From 1967 to 1968, however, three new types of advertisement appeared: advertisements for pepper spray, riot shields and for disposable plastic handcuffs. The riot shield, the “GenTex Subduer”, was a concave, clear plastic shield that would allow a correctional officer to enclose a prisoner against a wall. It was advertised as help to “handle recalcitrant prisoners”.¹²⁶ Cake Co

advertised a
 novel item – a
 chemical mace
 sprayer
 embedded
 within a night
 stick – “the
 guard weapons
 of

SENSATIONAL ITEM!
DISPOSABLE PLASTIC HANDCUFFS
 (Flex-Cuf Restraining Tie)

Several Departments have already ordered thousands

End threads through a slot and once tightened can never be loosened. Must be snipped apart. Multiple arrests and control can be expedited. Arresting officer can write detail on the plastic with special felt etching pen — permanent; and turn prisoner over to someone else for transportation and booking. No depletion of field force.

Introduced at Louisville National Sheriffs Assoc. Conference — “Stole the show”

Prisoners can be transported and booked without depleting field force. Tie is long enough to bind ankles. Several may be joined for extra length ... restraining belt. May be secured to pole or similar. Self lock buckle can never be loosened. Eventually must be snipped apart.

EXCLUSIVE DISTRIBUTOR
GEORGE F. CAKE CO.
 BERKELEY 94710 • LOS ANGELES 90022 • BALTIMORE 21093 • HONOLULU 96819 • DALLAS 75247
 1200 Fifth St. 4575 E. Washington Blvd. 1900 York Rd. 2825 Koepaka St. 1162 Security Dr.

TOMORROW - - TODAY!”¹²⁷ The most telling advertisement, especially as it was one that is clearly intended for law enforcement rather than inside prisons, however, was the ad for the “Flex-Cuf Restraining Tie.”¹²⁸ The advertisement makes it clear that the purpose of these Ties is to facilitate mass arrests – “Arresting officer can write detail ... and turn prisoner over to someone else ... No depletion of field force.”¹²⁹ Given the advertisement’s

¹²⁶ “GenTex Subduer”, *The American Journal of Correction*, May-June (1967), 12.
¹²⁷ “Chemical Mace”, *The American Journal of Correction*, Jul-Aug (1967), 41
¹²⁸ “Flex-Cuf Restraining Tie,” *The American Journal of Correction*, Jul-Aug (1968), 43
¹²⁹ Ibid

emphasis of maintaining field force – “no depletion of field force” appears twice in a very small ad – and description of how the arrestee “may be secured to pole or similar”, the mass-arrest implication is clear.¹³⁰ The appearance of advertisements for these products – and acceptance of these ads by the publisher – in a publication that had thus far emphasized only the most anti-violent and progressive of trends in penology shows a change in how, at least, the purchasing interests of their readers may have changed in response to growing violence and instability both within and without prison walls.

The failure of the left and the Democratic Party to address popular concern with rising crime and political instability – such as Johnson’s writing off their concerns as seeking “easy answers” – while promoting an anti-poverty agenda that would not produce immediate results left fertile ground for an opposition to develop centered on tough on crime policies and populist responses to crime and punishment. While the Johnson administration found itself under pressure from a new law and order agenda in the Republican Party, it was not only politicians who felt the public’s frustration. *The American Journal of Correction* developed a concern with public relations in this period. Articles with such titles as “Why a Correction Public Relations Program?” suggested that “It is not enough to be sincere in our efforts to effect the rehabilitation of our charges. We must let the world know what is being done in the field and by our agency ... so they may inspect, evaluate, criticize, and, in the final judgment, lend support in the ever-present battle with crime and delinquency.”¹³¹ An article from 1965 had to defend against the popularity of deterrence, stating “If we inflict pain, anguish, and social degradation upon an offender so that others will be deterred from

¹³⁰ Ibid

¹³¹ John W. Ackerson, “Why a Correctional Public Relations Program?,” *The American Journal of Correction*, Jan-Feb (1967), 6.

committing crime, then the concept of justice is both defeated and ignored. Punishment, I held and hold, should be to deter the offender from repeating his criminal acts, not to serve as a warning to others to forsake their nefarious schemes.”¹³² The ACA Presidential address for 1968 remarked that “we hear the answering refrain which was heard so often in the past – growing public demands that courts bear down harder on offenders, that prison keepers eliminate recreation, psychiatry, rehabilitation, and individual treatment.”¹³³ Despite these protestations, however, the desire to see criminals punished more severely for their actions was growing, a desire that would deepen as crime rates spiralled and politicians on the right, whether out of genuine concern for America’s moral decay or cynical pandering to public opinion, made this issue their own.

The backlash against crime and disorder in the streets and perceived judicial coddling was brought to the level of national politics by the 1964 Goldwater campaign. Goldwater, an Arizona Senator known as “Mr. Conservative”, had been drafted to run for the Republican nomination by a committee of conservative activists within the Republican Party. Although his conservatism leaned to the Libertarian, Goldwater had sharp words for agents of criminality and disorder. In his speech accepting the Republican nomination, he called for “freedom under a government limited by laws of nature and of nature’s God; ... balanced so that liberty lacking order will not become the license of the mob and of the jungle.”¹³⁴ He acknowledged concern about the crime problem, saying that “Tonight there is violence in our streets.”¹³⁵ Tying fears of violence on the streets to fears of communism he argued that “Security from domestic violence, no less than from foreign aggression, is the most

¹³² Anon, “The Cockleburrr Speaks!,” *The American Journal of Correction*, March-April (1965), 35

¹³³ Parker L. Hancock, “Presidential Address 98th Congress of Correction”, *The American Journal of Correction*, Sep-Oct (1968), 8.

¹³⁴ Barry Goldwater, “Republican Presidential Candidate Nomination Speech”, 1964

¹³⁵ Ibid

elementary and fundamental purpose of any government, and a government that cannot fulfill that purpose is one that cannot long command the loyalty of its citizens. History shows us - demonstrates that nothing - nothing prepares the way for tyranny more than the failure of public officials to keep the streets from bullies and marauders.”¹³⁶ A 1964 Goldwater campaign advertisement interspersed the words “Juvenile Delinquency!,” “Crime!,” and “Rioting!,” with scenes of injuries and arrests.¹³⁷ Ronald Reagan, in his speech in support of Goldwater, “A Time for Choosing,” also talked about rising crime rates. He described “man’s age-old dream” as “individual freedom consistent with law and order”.¹³⁸ While Goldwater lost the presidency by a landslide, his campaign and victories in the formerly democratic Deep South demonstrated that a restructuring of the political order was underway.

No longer the “Steady South”, the States of Alabama, Georgia, Louisiana, Mississippi, and South Carolina voted for Goldwater. This rejection of the Democratic Party as a response to the passage of the Civil Rights Act was the beginning of the fracturing of the old New Deal coalition of urban areas, unions, workers, the poor and the South. When discussing the curious fact that the United States maintained the use of capital punishment while Europe does not, David Garland noted that there is still support for the death penalty in Europe, but that European politics is more elite and less populist than American politics, and as such can safely ignore the popular impulse toward vengeance.¹³⁹ It is here that a break is marked between a system that relied more on elite expertise and one that relied on popular “common sense.” Reagan later became an important figure in ramping up the language used

¹³⁶ Ibid

¹³⁷ Barry Goldwater, “Morality Advertisement”, Campaign Advertisement, 1964.

¹³⁸ Ronald Reagan “A Time for Choosing”, Speech, 1964.

¹³⁹ David Garland, *Peculiar Institution: America’s Death Penalty in an Age of Abolition*, (New York: Oxford University Press),

to describe the crime issue, emphasising “tough on crime” and “common sense” approaches. Prior to becoming President, Reagan served as Governor of California from 1967-1975. While William Stuntz noted in *The Collapse of American Criminal Justice* that the total incarceration rate in California under Reagan as governor decreased, the language Reagan used in his 1966 gubernatorial campaign was an extension of Goldwater’s 1964 presidential campaign’s language invoking “the jungle” in his description of urban conditions and artfully conflating street crime with student activism.¹⁴⁰

The 1964 election marked the beginning of the introduction of aggressive language surrounding criminal justice into the national political lexicon, which continued in the 1966 California gubernatorial election. The use of heated anti-crime rhetoric and the skillful twining together of urban riots, student protests and street crime into one symbol of disorder only escalated in the intervening time. The 1968 presidential campaign would be an ugly three way contest between Republican Richard Nixon, Southern Democrat turned Independent George Wallace, and the Democratic Party nominee Hubert Humphrey who had been nominated after Johnson decided, after a poor showing in the New Hampshire primary, not to seek another term. While Humphrey tried to address the crime issue in his campaign advertising, he followed Johnson’s line – that the War on Poverty was an anti-crime measure and that it was the best way to combat violence. The campaign advertisement entitled “Law and Order Democrat” depicted Humphrey responding to a question by attacking Nixon for wanting “to double the rate of convictions” without wanting “to double the war on poverty” and says that “you aren’t going to make this a better America just because you build more jails”, before going on to articulate the main points of the War on Poverty as a War on

¹⁴⁰ Flamm, *Law and Order*, 67-68

Crime: “more decent neighbourhoods, more educated people, better homes.”¹⁴¹ The advertisement “Mother and Child” delivered much the same message, that “For every jail that Mr. Nixon would build, Mr. Humphrey would also build a house. For every policeman that Mr. Wallace would hire, Mr. Humphrey would also hire a good teacher.”¹⁴² George Wallace also ran law and order television spots, such as one asking “Why are more and more millions of Americans turning to Governor Wallace? Take a walk in your street or park tonight.” This advertisement displayed what appeared to be a white woman walking after dark, and then panned away to the sound of a gunshot and a streetlight shattering.¹⁴³ None of these advertisements, whether the visually plain, black and white “Law and Order Democrat” or the more eye-catching “Mother and Child” or “Busing/Law and Order” could compare with the chaotic sound and imagery of the Nixon Law and Order ads.

Multiple Nixon campaign advertisements focused on disorder, crime and student protests. One, entitled “The First Civil Right,” played ear piercing, discordant music while showing stills of student protestors, tear gas canisters, bayonets, a handgun being fired, and other scenes of violence and disorder while a voiceover read “It is time for an honest look at the problem of order in the United States. Dissent is a necessary ingredient of change, but in a system of government that provides for peaceful change, there is no cause that justifies resort to violence. Let us recognize that the first civil right of every American is to be free from domestic violence. So I pledge to you, we shall have order in the United States.”¹⁴⁴ Continuing the style of mixing shocking imagery with discordant music, and combining photographs of protests with footage depicting weaponry, violence, blood, crime and arrests,

¹⁴¹ Hubert Humphrey, “Law and Order Democrat”, Campaign Advertisement, 1968.

¹⁴² Hubert Humphrey, “Mother and Child”, Campaign Advertisement, 1968.

¹⁴³ George Wallace, “Busing/Law and Order”, Campaign Advertisement, 1968.

¹⁴⁴ Richard Nixon, “The First Civil Right”, Campaign Advertisement, 1968.

the ad “Crime” contained the threatening voiceover that “In recent years, crime in this country has grown nine times as fast as population. At the current rate, the crimes of violence in America will double by 1972.”¹⁴⁵ The ad “Failure” directly called upon both a perceived failure of the Great Society both as an anti-crime and anti-poverty measure, using the now-familiar technique of showing stills of weapons, of civil unrest – in this case, the riots outside the Democratic Party convention in Chicago – with the addition, this time, of shots of Appalachian poverty, and a voice-over. The voice over read “How can a party that can't unite itself unite the nation? How can a party that can't keep order in its own back yard hope to keep order in our fifty states? How can a party that labels the results of its programs the "Great Society" ever find any real solutions?”¹⁴⁶ Perhaps the best known of the advertisements focusing on crime and disorder from this campaign was the “Convention” ad, which focused on the violence that surrounded the 1968 Democratic National Convention in Chicago. Juxtaposing photos of a smiling Hubert Humphrey with scenes of protests, war, and poverty set to a background of cheerful music interspersed with discordant sound effects, the advertisement has no voiceover or text to break up its unsettling imagery.¹⁴⁷

Nixon, went on to win the election, in no small part because of his ability to appeal to public sentiment on the twin issues of crime and disorder. Despite decades of work to address the problem of crime through rehabilitation, prevention, and the improvement of social conditions, and the granting of new powers to the federal government, crime rates would continue to spiral out of control throughout his administration. Increased federal enforcement efforts, the beginning of the War on Drugs, and highly aggressive enforcement

¹⁴⁵ Richard Nixon, “Crime”, Campaign Advertisement, 1968.

¹⁴⁶ Richard Nixon, “Failure”, Campaign Advertisement, 1968.

¹⁴⁷ Richard Nixon, “Convention”, Campaign Advertisement, 1968.

tactics would have little effect. The period from 1968-1980 saw, among others, the Attica prison riot in 1971, the counterculture devolve into further violence, radical bombings and abductions, and the further development of the concept of Prisoners' Rights. Amidst all of these circumstances, the sociologist Robert Martinson would force the publication of a research study that purported to demonstrate that, when it came to rehabilitating criminals, nothing worked. In the ferment of the period, and among a populace increasingly frustrated by seemingly failed efforts at prevention and rehabilitation, the message caught on – although not quite in the way that Martinson intended. Johnson's warning about the appeal of "quick and easy answers" were not heeded, and, in states across the country, rehabilitative measures would be struck down in favour of "tough on crime" approaches.

Chapter 3 – 1969-1980 – “Nothing Works”: Public intellectuals against rehabilitation

The 1968 election of Richard Nixon on a “Law and Order” platform was the fruition of a period of dramatic changes, violence, unrest, and popular fear of crime and disorder. The Nixon administration, in time, escalated federal involvement in law enforcement to an unprecedented degree, initiating the War on Drugs. This War allowed for mass wire tapping and warrantless raids on private homes which eventually provoked a backlash after innocent homes were targeted. Despite tough tactics and tougher rhetoric, however, crime and disorder only continued to build. 1969-1980 saw the number of violent crimes committed more than double, from an already-high 661,870 in 1969 to 1,344,520 in 1980.¹⁴⁸ In addition to the increase in violent crime, prison activism turned to riots: For example, in the wake of the death of George Jackson, Attica Prison in New York State erupted, leaving 40 people dead. Radical revolutionary groups, ranging from the Weathermen to the Black Liberation Army and other splinters from the Black Panthers, further increased the sense of chaos and lawlessness as they targeted federal institutions, government offices, court rooms and police officers. Prisoners, who once pursued legal rights as individuals or in small religious groups, began to see themselves as a political class, and thus the prisoner-activist began to see himself as a political prisoner. The racial and political consciousness developed through education and association with imprisoned activists influenced those who remained incarcerated. This movement toward recognizing prisoners as a political class with group rights was only reinforced by the larger, rights-consciousness revolution that took place in the United States at large throughout this

¹⁴⁸ Federal Bureau of Investigation, “Uniform Crime Reports”, data accessible at: <http://www.ucrdatatool.gov>

period.¹⁴⁹ Through it all, the corrections profession developed a sense that it was under siege, adrift, and that it had a serious public relations problem. While the correctional profession tried to work out its strategy to maintain legitimacy through publications in a small trade journal, however, a new breed of criminologist and political scientist, including Robert Martinson and James Q Wilson, were offering their interpretations of criminal justice policy on the pages of *The New Republic*, *Public Interest*, and *Commentary*, while also appearing on popular programs such as *60 Minutes* and in *People* magazine. The result was the slow abandonment of the concept of rehabilitation as deterrence and incapacitation becoming the new trends in criminal justice.

The Nixon administration was quick to act upon the “law and order” rhetoric that had been partly responsible for sweeping it into power. While Congress was slow to pass the legislation that would permit the federal government to become truly involved in a “tough on crime” approach – the Comprehensive Drug Abuse Prevention and Control Act of 1970 – it did quickly apportion funds to quadruple the funding of the Law Enforcement Assistance Administration.¹⁵⁰ When eventually passed, the Act authorized a slew of new powers, such as no-knock warrants that would enable the violent drug raids which would become the hallmark of the Nixon’s administration’s drug policy after the creation of the Office of Drug Abuse Law Enforcement (ODALE) in January 1972.¹⁵¹ Drugs had been an integral part of both parties’ approach to crime. Johnson’s moving the Bureau of Narcotics away from Treasury – federal involvement with drug control had been justified by the federal government’s right to tax – and the Bureau of Drug Abuse Control from Health, Education

¹⁴⁹ James T. Patterson, *Grand Expectations: The United States, 1945-1974*. (Oxford: Oxford University Press, 1998),

¹⁵⁰ Christian Parenti, *Lockdown America: Police and Prisons in the Age of Crisis*, (New York: Verso, 1999), 10.

¹⁵¹ *Ibid*, 10.

and Welfare to create the Bureau of Narcotics and Dangerous Drugs in 1968 had been just as political a decision as Nixon's to create ODALE in 1972.¹⁵² Nixon specifically focused on drugs, most particularly heroin, in the signing statements for both the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Omnibus Crime Control Act of 1970.¹⁵³ However, the language had seriously escalated by 1972. In his executive order establishing ODALE in January of 1972, Nixon described how "the menace of drug abuse threatens to sap our Nation's strength and destroy our Nation's character" and, that while drug abuse "must be combated in a variety of ways ... we must now give special emphasis to improving law enforcement activities."¹⁵⁴

Consisting of 300 agents empowered by the recent RICO and Drug Abuse legislation, ODALE would engage in task-force style enforcement of drug laws. However, in the wake of scandal about the abuse of innocent citizens, ODALE would be dissolved and combined with the BNDD to form the new Drug Enforcement Administration (DEA) in 1973.¹⁵⁵ On April 23, 1973 two raids were carried out by ODALE in Collinsville, Illinois, which resulted the law abiding residents of two homes being woken, harassed, and held at gunpoint while their homes were searched. In the wake of these raids, *the New York Times* launched an intensive investigation of federal drug enforcement, the results of which were published June 24, 1973. The investigation showed that these mistaken raids on the homes of innocent

¹⁵² Andrew B. Whitford and Jeff Yates, *Presidential Rhetoric and the Public Agenda: Constructing the War on Drugs*, (Baltimore: Johns Hopkins University Press, 2009), 40.

¹⁵³ Richard Nixon: "Statement on Signing the Omnibus Crime Control Act of 1970. .," January 2, 1971. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=3043>.

¹⁵⁴ Richard Nixon: "Executive Order 11641 - Concentration of Law Enforcement Activities Relating to Drug Abuse," January 28, 1972. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=60498>.

¹⁵⁵ Parenti, *Lockdown America*, 13.

citizens were far from out of the ordinary.¹⁵⁶ The *New York Times* revealed that the night time raids using no-knock warrants had resulted in four deaths, including that of an officer shot by a woman who had mistaken him for an intruder, and that in the Los Angeles area alone mistaken raids occurred once or twice a month. The article is filled with tales of children being held at gunpoint due to officers misreading a warrant. Perhaps most disturbing was the case of Heyward Henry Dwyer, shot through the head while holding his 22-month-old son when narcotics agents mistakenly raided his mother's apartment.¹⁵⁷

It is no wonder, then, that between the massive overreach of federal departments like BNDD and ODALE and the Watergate scandal that the politics of the latter half of the period turned away from a law and order agenda. Indeed, the Ford administration, to judge by Gerald Ford's lukewarm reception of new law enforcement legislation, was far more concerned with financial stability than crime. In signing the Juvenile Justice and Delinquency Protection Act of 1974 he stated "I do not intend to seek appropriations for the new programs authorized in the bill."¹⁵⁸ He similarly refused to seek appropriations to fund the programs and agencies proposed in the Alcohol and Drug Abuse Education Act Amendments of 1974 and the Drug Abuse Office and Treatment Act Amendments of 1976.¹⁵⁹ The Carter administration would back down from the issue of criminal justice almost completely – it was reduced to barely a line item among the other troubles, mostly

¹⁵⁶ Andrew H. Malcolm Special to the *New York Times*, *New York Times* (1923-Current file); Jun 25, 1973; ProQuest Historical Newspapers: *The New York Times* (1851-2008) pg. 1

¹⁵⁷ Ibid

¹⁵⁸ Gerald R. Ford: "Statement on Signing the Juvenile Justice and Delinquency Prevention Act of 1974.," September 8, 1974. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=4697>.

¹⁵⁹ Gerald R. Ford: "Statement on Signing the Alcohol and Drug Abuse Education Act Amendments of 1974.," September 21, 1974. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=4731>, and Gerald R. Ford: "Statement on Signing the Drug Abuse Office and Treatment Act Amendments.," March 20, 1976. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=5725>.

economic, that his campaign saw facing America. In signing the Psychotropic Substances Act of 1978, Jimmy Carter never once mentioned the impact on crime, only that he was “pleased ... to meet the obligations contained in the Convention on Psychotropic Substances.”¹⁶⁰

While the political world backed away from criminal justice owing to scandals and the overwhelming pressure of dire financial and energy crises, the issue did not simply go away. The crime rate continued to spiral out of control, at the same time as the idealistic counterculture gave way to a more violent, revolutionary vision. Radical groups such as the Weathermen, the Symbionese Liberation Army, and the Black Liberation Army, among others, carried out bombings, kidnappings, and targeted attacks on police. Philip Jenkins’ *Decade of Nightmares* describes how the 1970s and early 1980s, or what he terms “the decade after 1974,” was mired in fear thanks to serial killers, child predators, rapists, revolutionaries and satanic cults. Federal governments may have been shying away from dealing with the issues of crime and punishment, but the fear was, for good reason, still strong among members of the public who looked for other answers. While the federal government had largely focused on enforcement – arresting more drug criminals and putting them in prison – the new answers would focus on the other end – what happened after those criminals were sentenced. Those answers were found in the works of sociologist turned criminologist Robert Martinson and political scientist James Q. Wilson.

Robert Martinson was a conflicted figure who represented both the idealism of the 1960s as well as the retreat from it. As an undergraduate in New York, Martinson was

¹⁶⁰ Jimmy Carter: "Psychotropic Substances Act of 1978 Statement on Signing S. 2399 Into Law. ," November 10, 1978. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=30148>.

involved with campus socialist organizations and he became a Freedom Rider in 1961. He was one of the Freedom Riders to be incarcerated in the Mississippi State Penitentiary, where he witnessed brutal conditions and racial injustice, and became interested in prison issues. This is to say that Martinson was thoroughly involved in the early days of the counterculture and civil rights activism. In 1966, he became part of a team that was commissioned by the New York State Governor's Special Committee on Criminal Offenders to review the results of all of the studies on the effectiveness of various methods of rehabilitation since 1945. By the time the report was complete in 1970, the State had used funds made available by the Omnibus Crime Control and Safe Streets Act to set up a separate planning organization, which had no further need of the report.¹⁶¹ Martinson, believing that the results of the study warranted public attention and were essential to the future of criminal justice in the United States, took its results public. It should be noted that despite how Martinson became the public face of the study, eventually published in 1975 as *The Effectiveness of Correctional Treatment*, he was actually only the second author, behind a Douglas Lipton.¹⁶² Despite the study's somewhat ambiguous data, Martinson's conclusions were emphatic: when it came to rehabilitation, nothing worked. According to Martinson's analysis, recidivism rates remained unchanged regardless of whether a prisoner engaged in any kind of rehabilitative programming or not.

Martinson began to bring his interpretation of the study's results to the public eye in a series of four articles published by the liberal-leaning intellectual journal *The New Republic* in 1972. The first of these articles, "The 'Dangerous Myth,'" took its title directly from the

¹⁶¹ Robert Martinson, "What Works? Questions and Answers about Prison Reform", *Public Interest*, 35 (1974), 23

¹⁶² Douglas Lipton et al, *The Effectiveness of Correctional Treatment*, (New York: Praeger, 1975)

text of John Bartlow Martin's *Break Down the Walls*, and referred to the "dangerous myth" that criminals can be rehabilitated. Martinson's conceptual debt to Martin was considerable. On the first page of his article, he quoted from Martin's book at length, particularly that his denunciation of "'the professional people' for having devised a dangerous myth – 'myth because it is not true that prison can rehabilitate [treat] men, dangerous because of their pretense that it can lead them to loose dangerous men upon society.'"¹⁶³ Martinson's central thesis was that rehabilitation was a 'dangerous myth' not only in that it resulted in the release of prisoners who would continue to recidivate, but that it was almost guaranteed to result in *more* recidivism. Quoting the American Friends Service Committee report, *Struggle for Justice*, Martinson wrote "the median time served [in California] has risen from 24 to 36 months, the longest in the country." California had the most fully developed State system of rehabilitation and indeterminate sentencing, which resulted in longer prison stays to ensure that the inmate was receiving the full benefit of programming. In Martinson's view, these longer sentences, a direct result of the rehabilitative ideal, resulted in "interruption of normal occupational progress" or "life cycle damage." In his view, prisons were designed for an age where all that was necessary to support oneself honestly was an ability to perform physical labour, a name that could be changed without question, and there was room for a fresh start on the frontier. However "to 'make it' in the 1970s requires a more exacting sequence of moves – high school or college, marriage, first job, bank account, next job, and so forth."¹⁶⁴ His view, then, was that society had outgrown the prison, that rehabilitation could not be effective within prison walls, and that it was likely to cause *more* recidivism rather than less, due to the greater "life cycle damage" it inflicted.

¹⁶³ Robert Martinson, "The 'Dangerous Myth'", *The New Republic*, 1 April 1972, 23

¹⁶⁴ *Ibid*, 23

In the second article in this series, he continued his argument about “life cycle damage” while emphasizing the ineffectiveness of rehabilitative programming, and drew the distinction between “individual treatment” and “real help”.¹⁶⁵ For Martinson, “individual treatment” meant deprivation of liberty and greater “life cycle damage” as inmates were forced to remain incarcerated despite the expense of incarceration and lack of proof of any benefit. “Real help,” on the other hand, meant assistance to the convict outside of prison walls, such as job placement and assistance finding housing, as well as providing a more equal society in which individuals had a greater chance of success.¹⁶⁶ Additionally, while he argued that programs that were supposed to have a rehabilitative effect, such as early release, showed no improvement, they also showed no *greater* incidence of recidivism either; thus, he advocated more early release as a financially responsible measure. He wrote that “deprivation of liberty is increasingly damaging in a society which fails to provide democratic opportunity, and yet demands skilful and uncoerced effort from its citizens.”¹⁶⁷

In the third and fourth articles in the series, he attempted to interpret the Attica prison riots through the lens of his opposition to the treatment ideology. He described Attica as a reflection of “a growing disgust with what the inmates regard as the hypocritical fakery of treatment.”¹⁶⁸ While the traditional response was that Attica Riot was a response to the news of the death of George Jackson in an escape attempt from a California prison, Martinson’s analysis was that the root cause of George Jackson’s escape attempt was an act of desperation in response to a long sentence imposed by California’s indeterminate sentencing laws. Martinson specifically describes the psychological brutality of “life on the installment

¹⁶⁵ Robert Martinson, “Can Corrections Correct?”, *The New Republic*, 8 April 1972, 15

¹⁶⁶ Martinson, “Can Corrections Correct”, *The New Republic*, 14

¹⁶⁷ *Ibid*, 15

¹⁶⁸ Robert Martinson, “The Meaning of Attica”, *The New Republic*, 15 April 1972, 18

plan” – the fate of those who receive a “one-year-to-life” sentence, where parole is really just an extension of incarceration.¹⁶⁹ He also, however, cautioned the New Left, who, he said, did not understand the true meaning of Attica when they support “more and better Atticas” rather than having “sympathy for the rank and file inmates.”¹⁷⁰ He warned that this imposition of the values of “posh white radicals” onto the actions of the inmates would only allow the “hard-lines” to sweep away any hope of crafting a more humane, more *effective* system because “millions of Americans see crime *not* simply as a ‘code word’ for racism or riots or student hijinks.”¹⁷¹ His solution to addressing Americans’ real concern with crime without falling into the hard-liner trap was to re-structure criminal justice policy away from focusing on the offender and toward focusing on the victim.¹⁷²

Martinson advocated taking what he termed a “social planning” approach, which aimed to sideline both the “bleeding hearts” and “hard-liners” by trying to neither deter nor reform the offender, but to provide “*maximum protection to the public balanced against minimum harm to the offender.*”¹⁷³ He argued that since the victim of crime “is increasingly located in the middle layers of society” rather than just the lower classes, the victim “is not powerless” and thus must be placed at the centre of criminal justice policy to avoid the victim’s fear of crime being “magnified all out of proportion” and prevent overthrowing the “system of justice in his thirst for vengeance.”¹⁷⁴ He contrasted this with a system that was producing “*minimum protection for the public and maximum harm to the offender.*”¹⁷⁵

Martinson ends his series with an echo, again of John Bartlow Martin, “The long history of

¹⁶⁹ Robert Martinson, “The Meaning of Attica”, *The New Republic*, 18

¹⁷⁰ *Ibid*, 19

¹⁷¹ *Ibid*, 19

¹⁷² Robert Martinson, “Planning for Public Safety”, *The New Republic*, 29 April 1972, 21

¹⁷³ *Ibid*, 22

¹⁷⁴ *Ibid*, 22

¹⁷⁵ *Ibid*, 22

‘prison reform’ is over. On the whole, the prisons have played out their allotted role. They cannot be reformed and they must gradually be torn down ... We shall be cleansed of the foreign element of forced treatment with its totalitarian overtones ... Crime arises from social causes and can be controlled and reduced (but not eliminated) through social action.”¹⁷⁶ Approaching the problem of rising crime rates and correctional treatment from a left-libertarian perspective, then, Martinson determined that the prison was no longer suited to late 20th Century life. Thus, it should slowly be abolished through expanding social opportunity, decriminalizing deviant behaviour to reduce harmful contact with the prison system, expanding non-custodial and non-coercive programs for dealing with those convicted of crimes, and providing “real help” instead of “treatment”, while placing victims at the centre of discourse and compensating them for their losses. For the small number who were not amenable to these plans, small, and humane prisons would be maintained but without the ‘dangerous myth’ of rehabilitation.¹⁷⁷

The series in *The New Republic* was only the opening salvo of Martinson’s public relations blitz, however. He only gathered truly significant attention with the publication of a long 1974 article in the conservative-leaning publication *Public Interest* which summarized the contents of *The Effectiveness of Correctional Treatment*. The book, a ponderous tome consisting of 735 pages of dry analysis of hundreds of studies it makes for neither pleasant nor thrilling reading. Martinson’s summary of the results, however, was assertive, concise, and easy to understand. The article, entitled “What Works? Questions and Answers About Prison Reform,” was framed as a series of frequently asked questions about the prison system. The answers the Martinson provided to questions such as “Isn’t it true that a

¹⁷⁶ Robert Martinson, “Planning for Public Safety”, *The New Republic*, 23

¹⁷⁷ *Ibid*, 23

correctional facility running a truly rehabilitative program ... will turn out more successful individuals?”, “Isn’t what’s needed some way of counselling inmates?”, “Isn’t a truly successful rehabilitative institution the one where the inmate’s whole environment is directed towards true correction?” and so on with variations on one answer: “I am bound to say that these data, involving over two hundred studies and hundreds of thousands of individuals as they do, are the best available and give us very little reason to hope that we have found a sure way of reducing recidivism through rehabilitation.”¹⁷⁸ In short, the answer to the question “does nothing work?” was yes.¹⁷⁹ Two years later than the series in *The New Republic* and in a different venue, Martinson’s grandiose visions of demolishing the prison system had been replaced by a more measured stance. While he still advocated for replacing the treatment model with one that focused on providing real help and social opportunity while leaving the remainder of high risk offenders in custodial institutions, he acknowledged that “many low-risk offenders have committed serious crimes (murder, sometimes) and even if one is reasonably sure they will never commit another crime, it violates our sense of justice that they should experience no significant retribution for their actions” and that “one cannot ignore the fact that the punishment of offenders is a major means we have for *detering* incipient offenders.”¹⁸⁰

Martinson quickly rose to a level of fame outside of intellectual circles after his interview for a *60 Minutes* episode was aired on August 24, 1975. The introduction was incendiary, with Mike Wallace stating that “For years we've been told by penologists and sociologists that the way to make solid citizens out of criminals is to rehabilitate them.

¹⁷⁸ Robert Martinson, “What Works? Questions and Answers About Prison Reform,” *Public Interest*, 35 (1974), 30-48

¹⁷⁹ *Ibid*, 48

¹⁸⁰ *Ibid*, 50

Reform them while we have them locked up. Well, it doesn't work.”¹⁸¹ The next year, Martinson also appeared in *People* magazine. In a short interview, he continued to explain how rehabilitation does not work, but, now absent calls for greater inclusion in society, revealed what he called is “cop-a-con” plan.¹⁸² This plan involves “a tough surveillance system aimed mainly at the middle range offender who is now in prison. Upon his release, the offender would not know who his "parole officer" is. All he'd know is that someone in his district has been specially assigned to see to it that he is not going to commit another crime without being caught. This agent's job is not to change the man's behavior; it is simply to catch him in the act of committing another crime.”¹⁸³ However, when asked about “really violent criminals” he responded “The Charlie Mansons? I'd lock 'em up and weld the door shut. Dangerous prisoners such as mass murderers simply cannot be permitted to walk among us.”¹⁸⁴ Despite his anti-incarceration message, Martinson thus became one of the first mainstream, professional voices advocating locking up criminals and throwing away the key – he most certainly would not be the last.

Martinson was, by this point, not the only commentator on the failure of the criminal justice system to attain a degree of fame. One question posed to him by the *People* interviewer – “Wouldn't we be better to simply have more police?” referred to the advocacy of increased street-level police presence that was being proposed by, among others, James Q. Wilson. Martinson, approaching this question from his left-libertarian stance, responded that

¹⁸¹ 60 Minutes segment as quoted by PBS in *Locked Down: Prison Gangs in the Supermax*, Documentary, 2012.

¹⁸² Lee Wohlfer, “Criminologist Bob Martinson Offers a Crime Stopper: Put a Cop on Each Ex-Con”, *People*, February 23, 1976, accessed: <http://www.people.com/people/archive/article/0,,20066184,00.html>

¹⁸³ Ibid

¹⁸⁴ Ibid

“I for one don't want to live in a society where there are four or five times the number of police running around.”¹⁸⁵

Wilson, however, disagreed. While his influential article “Broken Windows” would not be published until 1982, it is easy to see the fingerprints of it in *Thinking About Crime*, published in 1975. *Thinking About Crime* is a collection of re-vamped articles written by Wilson throughout the late 1960s and early 1970s on the topics of policing, fear of crime, and incarceration. While he and Martinson shared several frustrations – with the pro-treatment orthodoxy, with the lack of quality research into deterrence, and criminologists being too personally invested in treatment to conduct impartial research – Wilson found ample ground for disagreement with Martinson. Unlike Martinson, Wilson approached the criminal justice issue from a conservative perspective. Despite having supported Democratic causes in his youth, Wilson turned towards conservatism, even using his book *Thinking About Crime* as an opportunity to take a dig at John F. Kennedy for having stolen the 1960 election.¹⁸⁶ Also unlike Martinson, Wilson was not concerned with the deprivation of the liberty of the incarcerated, nor was he concerned with improving economic and social opportunity. He saw class in the classless society, distinguishing between “lower-income” and “lower-class”, stating that poverty reduction programs could only help the lower-income who were not lower class, as “lower-class persons (by definition, I would argue) attach little importance to the opinions of others” and thus could not be expected to conform to communal mores regardless of financial assistance.¹⁸⁷

¹⁸⁵ Ibid

¹⁸⁶ James Q. Wilson, *Thinking About Crime*, (New York: Basic Books, 1975), 71

¹⁸⁷ Ibid, 37.

While Wilson was quick to praise Martinson's findings in the ineffectiveness of rehabilitation in the prison setting, he was also critical of him in an exchange that occurred in the conservative periodical *Commentary* in October of 1974.¹⁸⁸ Wilson, in a piece published that January, had attacked the basis of criminology as a social science, saying that it was too invested in "root causes" rather than finding effective policy.¹⁸⁹ Martinson fired back that "the focal problem is not that the sociologists he criticizes ... deal with 'ultimate causes' ... there is a mountain of evidence from demographic, ecological, economic, and cross-national research which in no way reduces to the 'subjective' or the 'familial.'" Wilson responded "consider: if, in 1910, criminology had begun in this country as a branch of economics instead of as a branch of sociology, I believe its approach to crime would have been very different from what we have seen ... Had economists been given the crime problem, they would not have asked why some people commit crimes and others do not, but what happens to the crime rate when costs and benefits of a criminal act change."¹⁹⁰ Wilson's emphasis was not on root causes or adapting social conditions but on how to adjust the cost/benefit analysis of crime. While he acknowledged that crime could not be eliminated entirely due to the existence of "wicked people", he wrote that "Wicked people exist. Nothing avails except to set them apart from innocent people. And many people, neither wicked nor innocent, but watchful, dissembling, and calculating of their opportunities, ponder our reaction to wickedness as a cue to what they might profitably do."¹⁹¹ Thus, his argument in *Thinking About Crime* was twofold, that the effective methods of preventing crime were deterrence and incapacitation.

¹⁸⁸ Ibid, 169 and Robert Martinson, "Letter to the Editor", *Commentary* 58:4 (1974:Oct), 4 and James Q. Wilson, "Letter to the Editor", *Commentary* 58:4 (1974:Oct), 4-5.

¹⁸⁹ James Q. Wilson, "Crime and the Criminologists", *Commentary*, 58:1 (1974:July), 47.

¹⁹⁰ Robert Martinson, "Letter to the Editor", *Commentary* 58:4 (1974:Oct), 4 and James Q. Wilson, "Letter to the Editor", *Commentary* 58:4 (1974:Oct), 4-5.

¹⁹¹ Wilson, *Thinking About Crime*, 209.

While Wilson and Martinson battled over rehabilitation's ineffectiveness and the relative merits of improving social conditions, de-carcerating offenders, deterrence, and incapacitation, the voices of the corrections profession in favour of the old order were relegated to the rather limited circulation of *The American Journal of Correction*. The *Journal* was relatively slow to respond to Martinson and Wilson, only beginning to address the challenge to the rehabilitative orthodoxy in 1975 when Martinson was invited to speak at the American Correctional Association's annual Congress of Correction and then was later invited to submit his comments for publication in the November-December 1975 edition of the *Journal*. In his article for the *Journal*, Martinson was clearly concerned about what he viewed as misinterpretation of his remarks. Claiming to never have used the term "nothing works" in print but only once in a talk as a "shocker", he complained of the influence of Orwellian sloganeering.¹⁹² He contended that he had been arguing for the expansion and reorganization of parole and probation, not their abolition. Martinson, however, did conclude by repeating his point that "prisons may deter and they may incapacitate. Their function is humane confinement ... to expect anything more is sheer fantasy."¹⁹³ The *Journal* included an opportunity for one of their own, who had debated Martinson at the Congress, to provide a response. The responder, Milton Luger, wrote that while he considered "Bob Martinson to be a friend," his findings were flawed.¹⁹⁴ He criticized Martinson for using a very narrow definition of what could be considered a successful program – only an absolute lack of recidivism, rather than an inmate recidivating later, or in

¹⁹²¹⁹² Robert Martinson, "Knowledge – An Antidote for Correctional Hysteria," *The American Journal of Correction*, November-December (1975), 18.

¹⁹³ *Ibid*, 18

¹⁹⁴ Milton Luger, "Reaction to Robert Martinson," *The American Journal of Correction*, Nov-Dec (1975), 19.

commission of a less serious offense – when suggesting that nothing works.¹⁹⁵ He suggested that “Everything works for somebody” would be as accurate an interpretation of Martinson’s research as “nothing works.” Worse, he stated that “he [Martinson] is being used, knows it, but is caught up and co-opted by the notoriety given his position. He admits he has used shock tactics to gain attention, such as overgeneralizing his findings. He is now the champion of conservatives who will use him to advocate cutting correction program budgets because ‘Nothing works’ anyway.”¹⁹⁶

The president of the American Correctional Association addressed both Martinson and Wilson in his message in the May-June 1976 edition of the *Journal*. He questioned Martinson’s shifting messages about what the real solution for crime is, while indicting both his and Wilson’s “nothing works” agenda.¹⁹⁷ Asking “will the real Robert Martinson pleased stand up?,” he contrasted Martinson’s anger at “people like myself who lump him with such ‘hard-liners’ as William Buckley, Earnest vandenHaag, and James Q. Wilson” with Martinson’s recent interview with *People* where he continued to use the hyperbolic language and slogans that elicited such as response.¹⁹⁸ He suggests that the real issue is that “the criminal justice system is limited in its crime control capacity ... it cannot grapple at all preventatively with deep seated problems of social inequity.”¹⁹⁹ This, coincidentally, had been Martinson’s original point in his series in *The New Republic* – that changes in the prison system must be accompanied by the improvement of opportunities in a democratic society in order to reduce crime. With this message being lost, it appears that Luger was

¹⁹⁵ Ibid, 19

¹⁹⁶ Ibid, 19

¹⁹⁷ O.J. Keller, “President’s Message: 1984 Here We Come”, *The American Journal of Correction*, May-June (1976), 5

¹⁹⁸ Ibid, 6

¹⁹⁹ Ibid, 6

correct to say that he and his message had been co-opted by the conservatives. Given Martinson's eventual suicide in 1980, it is possible that he realised too late the consequences of his chosen strategy.

These objections to Martinson and to the wider “nothing works” and pro-deterrence and incapacitation forces were largely ineffective, however, taking place in a relatively low-circulation trade journal. Circulation numbers are difficult to come by, but as of 1972, the ACA had only 12,000 members.²⁰⁰ The articles appearing throughout this period in the *Journal* reveal a profession that found itself adrift, buffeted by outside political, intellectual, and social forces over which it had little control. In 1969, the President of the American Correctional Association wrote that “the average American citizen feels that Corrections has flopped.”²⁰¹ Already under pressure from those who believed that the correctional system needed to swing more toward punishment, in the same issue another contributor wrote that “those who argue for the punitive approach maintain that crime is a rationally pursued activity” but that “human behaviour is not so mechanical, not so simple, and not easy to understand and predict.”²⁰² By the March-April issue of the same year, the ACA President wrote that the corrections field was facing “adversity” and that “witnesses have described our institutions as ‘monster breeders’. They call them ‘worthless’ and ‘homosexual dens.’”²⁰³ Milton Luger, who later defended the correctional field against Martinson, even suggested that that the correctional field should adopt the methods of black power and push for

²⁰⁰ William G. Delahan, “Correction in Today’s Crisis is Pittsburgh’s Theme”, *The American Journal of Correction*, Jul-Aug (1972), 7

²⁰¹ Ellis C. MacDougall, “From the President”, *The American Journal of Correction*, Jan-Feb (1969), 5.

²⁰² *Ibid*, 19

²⁰³ Ellis C. MacDougall, “From the President”, *The American Journal of Correction*, March-April (1969), 5.

“correctional power and pride”!²⁰⁴ An article titled “How to Improve our Public Image” suggested that “there has been a general tendency to leave in the public mind a feeling that all prisons are dens of iniquity and schools of recidivism”.²⁰⁵ Another article decried society’s “schizo attitude” toward corrections.²⁰⁶ Patrick Murphy, the Commissioner of the NYPD, complained that “once a prisoner is behind bars the average citizen considers the problem solved” and asserted that it is vengeance that “does not work” and was the reason that “the criminal justice system has become a perpetual motion machine which produces no viable product at all at staggering cost.”²⁰⁷

As the period progressed, the tone of the articles showed that the rehabilitative perspective continued to lose ground, with a 1975 article written by the president of the ACA noting that “judges are increasingly reluctant to use probation ... ‘hard-liners’ see nothing amiss in demanding that a brand new prison, designed for 600 men, double its population simply by double-decking all single cells.”²⁰⁸ By 1976, the same author was declaring that “correctional workers have been through the worst two years in our history.”²⁰⁹ His replacement in 1977 answered the question “Does the average citizen really believe convicted offenders vanish from the face of the earth and will not ‘bother society again soon?’” with a yes.²¹⁰ By 1979, even the ACA President seemed to have given up on the treatment model, writing that “Today, in the field of corrections, the pendulum is beginning

²⁰⁴ Milton Luger, “What we need is Correctional Power and Pride”, *The American Journal of Correction*, March-April (1970), 18.

²⁰⁵ Gary Hill, “How to Improve our Public Image” *The American Journal of Correction*, Nov-Dec (1970), 44.

²⁰⁶ Dr. E. Preston Sharp, “Scope of Corrections Told by Dr. Sharp,” *The American Journal of Correction*, Jan-Feb (1972), 17.

²⁰⁷ Patrick V. Murphy, “America Must Learn Correction Leans”, *The American Journal of Correction*, Jul-Aug (1972), 23.

²⁰⁸ O.J. Keller, “President’s Message,” *The American Journal of Correction*, Nov-Dec (1975), 5

²⁰⁹ O.J. Keller, “President’s Message,” *The American Journal of Correction*, Jul-Aug (1976), 5

²¹⁰ William D. Leeke “President’s Message: ‘Corrections – Concern of everyone’”, *The American Journal of Correction*, Jan-Feb (1977), 5

to move back from an extreme position to a point closer to the middle. Most of us are not willing to admit that the medical model did not produce the anticipated results. We once again recognize that offenders are sentenced by the courts for several reasons – as punishment for their crimes, to incapacitate them from committing further criminal acts, to deter both themselves and others, and to provide them opportunities to change their patterns of behaviour.”²¹¹ It is notable that any type of rehabilitation was last on that list.

It was no wonder that even the American Correctional Association and their publication, long the vanguard of the movement for rehabilitation, were feeling set upon on all sides and adrift in their mission. Apart from the growing movement to eliminate rehabilitative programming in prisons and replace it with custody, the rapidly growing prison population and continuing public fear of crime, the movement for prisoners’ rights, and the recognition of prisoners as a distinct political class – and even accusations that the United States was keeping political prisoners – continued to grow. The lawsuits that had marked the earlier period continued, with Black Muslims leading the way in prisoners’ rights litigation. Decisions such as *Walker v. Blackwell* diminished the ability of prisons to ban literature for being “inflammatory”, and *Sostre v. McGinnis* virtually established a bill of rights for prisoners.²¹² Prison litigation continued to grow and there were several important decisions relating to both the conditions within prisons and the rights of the accused during this period. In 1969, *Johnson v. Avery* legalized the role of the jailhouse lawyer.²¹³ In 1972 *Morrissey v. Brewer* required due process be applied to parole revocation, whereas previously the decision was made without a hearing, a ruling which was reinforced in 1973 by *Gagnon v. Scarpelli*.

²¹¹ Norman A. Carlson, “Timely Theme: Balance in Corrections”, *Corrections Today*, May-June (1979), 6.

²¹² Christopher E. Smith, “Black Muslims and the Development of Prisoners’ Rights,” *Journal of Black Studies*, 24 (1993), 140-141 and Herman Schwartz, “Comment on *Sostre v. McGinnis*,” *Buffalo Law Review*, (1971-1972), 776.

²¹³ James B. Jacobs, “The Prisoners’ Rights Movement and its Impacts”, *Crime and Justice*, 2 (1980), 436

In 1974, *Procunier vs Martinez* curtailed mail censorship and *Wolff v. McDonnell* applied due process to punishments resulting in the loss of good time for prisoners. In 1976, *Estelle v. Gamble* established that prisoners had the right to care by a medical professional. While all of these decisions, particularly *Estelle* with its guarantee of medical treatment, had a major impact on the way that prisons operated, perhaps the most wide-ranging decision of the period was *Ruiz v. Estelle* in 1979. *Ruiz* ruled that the conditions within the entire correctional system of the state of Texas constituted unconstitutional cruel and unusual punishment due to overcrowding, lack of access to healthcare and abuse.²¹⁴ While there were some failures, such as *Jones v. North Carolina Prisoners' Union*, a ruling that said prisoners could not establish labour unions, they only show how vital the movement was and how radical its demands.²¹⁵

So, while crime rates rose and the public called out for harsher punishment, prisoners were steadily gaining more ground as they were able to litigate for better conditions and more rights. Beyond the reform-minded working within the legal system, prison radicals and “political prisoners” were making their voices heard. As we have seen, a collection of George Jackson’s writings, *Soledad Brother* was published in 1970. Eldridge Cleaver’s *Soul on Ice* was published in 1968. Both of these books had an impact on the larger radical movement’s embrace of prisoners as an oppressed class. Indeed, nearly every article in the *Journal* about the “political prisoner” referenced Eldridge Cleaver. Jackson compared his situation as a prisoner and Black man in America to “Leopold II’s Congo, the Indian wars of the last century, the Union of South Africa.”²¹⁶ In his radicalism, Jackson also rejected

²¹⁴ Robert Perkins, *Texas Tough: The Rise of America’s Prison Empire* (New York: Metropolitan Books, 2010), 43.

²¹⁵ James B. Jacobs, “The Prisoners’ Rights Movement and its Impacts”, *Crime and Justice*, 2, (1980), 437

²¹⁶ George Jackson, *Soledad Brother*, 223

rehabilitation, calling rehabilitative programming “bullshit academic make-work programs” and saying that “A tie and white shirt” was “really just another type of uniform.”²¹⁷ One 1971 article asserted that the politicisation of prisoners stemmed from the fact that while traditionally prisoners convicted for crimes such as robbery or murder agreed that the acts that they had committed were wrong, a growing number of prisoners were being sentenced for crimes that they considered to be “morally justifiable”, such as narcotic use or opposition to what they perceived to be unjust laws.²¹⁸ Jackson also argued that since prisons concentrate those who have little other recourse to address their grievances, such as the poor, the visible minority or the young – bearing in mind that the voting age was only reduced to 18 in July of 1971 – radical movements appealed to them, much as they appealed to the disenfranchised peoples of Russia, China and Cuba. Writing for the *Journal* in response to these arguments, Daniel Glaser contended that “when parole is denied and solitary confinement is imposed” because of leadership of radical or racial groups “the idea that he is being punished as a political prisoner rather than as an ordinary criminal may often have some justification.”²¹⁹ Therefore, his recommendations to prevent future problems such as the Attica Riots and the violence associated with George Jackson and his Black Guerilla Family at San Quentin were to disperse troublemakers into different rehabilitative programs rather than concentrate them in maximum security wings, to have the staff and prisoners engage on a more personal level, have elected representatives of the prisoners, and attempt to ensure that the racial composition of the staff more closely resembled the composition of the

²¹⁷ Ibid, 217

²¹⁸ Daniel Glaser, “Politicization of Prisoners: A New Challenge to American Penology,” *The American Journal of Correction*, Nov-Dec (1971), 7

²¹⁹ Ibid, 8

incarcerated.²²⁰ In short, his proposals continued to promote the ACA's traditional model of reform. Another article from 1972 was significantly less sympathetic. While the Glaser acknowledged the appeal of the "political prisoner" label for those from disadvantaged backgrounds, he denied the sincerity of those who adopted the label, decrying both Eldridge Cleaver and the Soledad Brothers as attention seekers.²²¹ He suggested that "political prisoner" was just another in a long line justifications adopted by prisoners to fit the spirit of the age. Such justifications for why one became a criminal ranged from demonic possession, to head shape, to unhappy childhoods.²²² Regardless of his skepticism, however, he promoted largely the same remedies as the previous writer: "fair treatment and a genuine concern for each prisoner as an individual with unique strengths, needs and problems."²²³

Trying to respond to radicalism within prisons through the traditional methods that the American Correctional Association had promoted would not be effective. This failure demonstrated the degree to which the ACA was out of touch with the growing public consensus on how to deal with the crime problem, and how changes to criminal justice policy were about to radically alter the way in which prisons had to be operated. After remaining largely stable for the last decade, incarceration rates began to rise steeply in 1975, jumping from 202 per 100,000 to 220, then 238 the next year, reaching 274 per 100,000 by 1980.²²⁴ The correctional profession quickly noticed the change in atmosphere that resulted from the increased prison population, with a 1976 article noting that the Ohio prison system

²²⁰ Ibid, 8

²²¹ James W. L. Park, "What is a Political Prisoner? The Politics of Predators," *The American Journal of Correction*, Nov-Dec (1972), 23

²²² Ibid, 22

²²³ Ibid, 23

²²⁴ United States Bureau of Justice Statistics, "Prisoners 1925-1981", 3, accessed: <http://bjs.ojp.usdoj.gov/content/pub/pdf/p2581.pdf>

had the highest level of commitments ever in 1975.²²⁵ Another article from the same year quoted the LEAA as acknowledging that the “trend toward longer prison sentences for criminals [was] spurring a prison population explosion that [was] causing ‘major problems’ on the nation’s corrections system.”²²⁶ By 1977, overcrowding in prisons had become a case of “failure and neglect.”²²⁷ The article decried the sheer volume of people being incarcerated in America, saying “no other nation on this earth can claim such a terrible achievement.”²²⁸ This overcrowding, of course, led to a decline in conditions within the prison system. So, despite several court rulings guaranteeing rights to medical care, uncensored correspondence and legal services, basic living conditions eroded. Due to overcrowding, “prisoners [were] being forced to sleeping [sic] double and triple in cells designed for one person, to sleep on floors, in shower rooms and corridors.”²²⁹ It was during this period of overcrowding that the *Journal* began to recognize the problem of sexual assault within prisons. Prior to an article from 1978 “A Federal Study: Sexual Assault in Prisons,” sexuality within prisons had been dealt with largely in terms of discussing “homosexuality” or “aggressive homosexuals”. The article noted that “thousands of rapes may occur in American prisons in a single year” and that many of the people they had considered “consensual homosexuals” were “actually subjugated heterosexuals forced to perform sex as a means to avoid harm – many had been

²²⁵ (no author), “Ohio Prison Commitments Highest Ever,” *The American Journal of Correction*, Jan-Feb (1976), 22.

²²⁶ (no author), “Velde Addresses Population Problem,” *The American Journal of Correction*, Nov-Dec (1976), 6.

²²⁷ Anthony P. Travisono, “Prison Crisis 1977: Over 280,000 Men and Women in our Nation’s Prisons,” *The American Journal of Correction*, May-June (1977), 14.

²²⁸ *Ibid*, 14

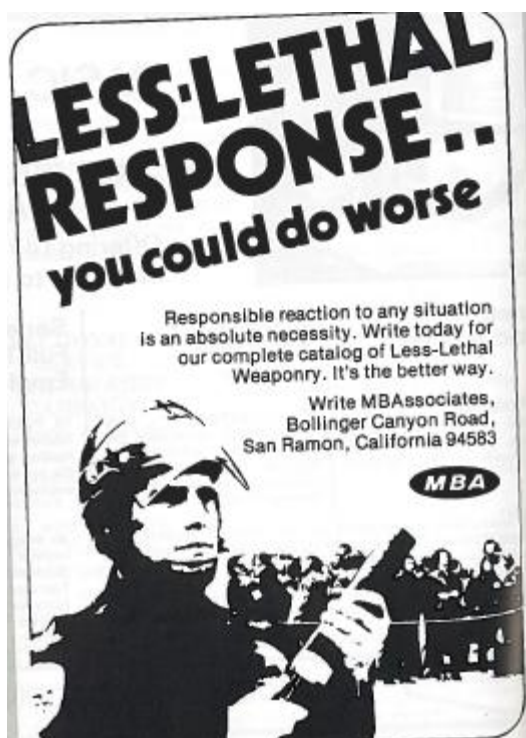
²²⁹ *Ibid*, 15

raped previously, ‘turned out’, and subsequently cast into a new role as prison homosexuals.”

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Possibly as a result of the overcrowding, increased violence of prison riots, and other issues pertaining to maintaining order within the prison, the trend toward advertising for more aggressive products in the *Journal* in the previous period intensified in this period.

Whereas in the late 1960s advertising began to appear for flexible handcuffs and mace, in



this period advertisements for a variety of “less lethal” weaponry emerged. A series of advertisements showing an armed and armoured guard in front of a crowd read “Less-Lethal Response.. you could do worse.”²³¹ Later that year an full page advertisement appeared for a “Barricade buster” tear gas gun that could “Blast[] tear gas through 5/8” plywood at 100 yards.”²³² In the same year that articles began to truly decry prison overpopulation – indeed,

situated opposite an article on prison population modeling – an advertisement appeared for tiny, pre-fabricated isolation cells which were promoted by “One other advantage: You can place 15 Overly detention cells in the same space occupied by 14 concrete block cells.”²³³

The industries associated with corrections had clearly picked up the violence and

²³⁰ Peter L. Nacci, “A Federal Study: Sexual Assault in Prisons,” *The American Journal of Correction*, Jan-Feb (1978), 30.

²³¹ “Less Lethal Response,” *The American Journal of Correction*, Jan-Feb (1973), 42.

²³² “Barricade buster,” *The American Journal of Correction*, Jul-Aug (1973), 35.

²³³ “Neither Stone Walls, Nor Iron Bars...,” *The American Journal of Correction*, Jul-Aug (1976), 18.

overcrowding that were rapidly becoming its hallmarks and provided products to fit the new reality.

Despite the increased violence both within the prisons and without, and crime rates that would not abate, criminal justice was not much of an issue in the 1980 election campaigns. The Reagan campaign focused almost exclusively on Reagan's economic record in California, divisions within the Democratic Party, and Carter's perceived failures dealing with both Iran and the economy. The Carter campaign, on the other hand, focused almost entirely on portraying Reagan as unintelligent and incapable of understanding the complexities of foreign policy. Reagan's record on criminal justice, however, stood for itself, as did the Republican Party's tough on crime reputation. Reagan had been a supporter of Goldwater, using law-and-order language in his endorsement back in 1964. Despite actually decreasing California's prison population by 34% in order to pursue his fiscal policies – maintaining high levels of incarceration was and remains financially ruinous – Reagan pursued the enforcement side of the law-and-order agenda, especially in relation to student activists.²³⁴ In his failed bid to unseat Ford in 1976, he had emphasized his law and order credentials. An Associated Press piece from 1976 noted that in his speeches he “offered several proposals for fighting crime and repeated stands in favour of the death penalty and against lenient judges, prison rehabilitation programs and gun control.” He said that “We must put on a back burner the idea of reforming and rehabilitating criminals and get back on the front burner the idea of prosecuting, punishing and putting them away.”²³⁵ Reagan's attitude toward crime, particularly drug use, seemed to stem not just from prudent

²³⁴ Rosemary Gartner et al, “The Past as Prologue? Decarceration in California Then and Now,” *Criminology & Public Policy*, 10:2 (2011), 292.

²³⁵ “Reagan Speaks out on Law and Order”, Associated Press, 27 May 1976.

politics, but also from a personal revulsion. His diaries reveal a man uncomfortable even with fictional pot smoking in a film.²³⁶ Despite criminal justice taking a back seat to the economy and foreign policy as an election issue in 1980, Reagan was still a law and order candidate and the issue would resurface after his election.

The period of 1968-1980, then, was one of contradiction, where the long history of American criminal justice reform ran headlong into continually rising crime rates, an increasingly radicalized youth culture, political reorientation, race politics and violence. Criminal justice became a major public concern, and the voices of intellectuals who may have once remained obscure came to dominate the debate. The War on Drugs begun during this period but then paused under the weight of draconian enforcement, would be re-instated under the Reagan administration, spurred on by the mass availability of crack-cocaine and a crime rate that spiralled out of control. The 1980s also saw the largest increase in the rate of incarceration in the history of the United States, marking the true beginning of the system of mass incarceration, the creation of the super-max prison, the end of the indeterminate sentence, and the decline of the prisoner as the heroic political radical. The massive increase in incarceration would precipitate further decay in the conditions of life for those who were incarcerated, and those who were incarcerated would increasingly be non-violent drug offenders. This, in turn, destabilized communities and families, increased private involvement in the prison industry, and devastated state budgets.

²³⁶ Ronald Reagan and Douglas Brinkley (ed), *The Reagan Diaries*, (New York: HarperCollins, 2009), 4.

Chapter 4 – 1981-1992 – “Broken Windows”, Deterrence and the War on Drugs

Criminal justice may not have been a major election issue for Ronald Reagan in 1980, but his presidency oversaw the culmination of forces that had been set in motion in previous decades. Beyond the realm of criminal justice, this period saw a revival of the conservatism of the Nixon and Goldwater era combined with growing social concerns of the New Right. These forces that had begun to move in the 1970s, in response to rising crime, radical movements and popular intellectuals would result in escalating “tough on crime” measures, such as a continuously growing incarcerated population and worsening conditions within the correctional system. The increase in the incarceration rate that began in the mid-1970s would spike dramatically in the 1980s, going from 242 per 100,000 in 1981 – a number that was already unprecedented and causing overcrowding problems – to 507 per 100,000 in 1992.²³⁷ This dramatic increase in incarceration brought with it a host of challenges for the correctional field and state budgets: further overcrowding, a need for more prison construction, and privatization of prison services to cope with the increased demand for services. Policies enacted during this period would only drive incarceration rates higher. A series of Anti-Drug Abuse Acts and the Comprehensive Crime Control Act of 1984 would enact mandatory sentences for a wide range of crimes, hampering the ability to control the inflow into already crowded facilities. Probation and Parole would also come under increasing attack, rendering attempts to decrease the incarcerated population through these measures difficult. Beyond the impact of legislation specifically related to the criminal justice field, the economic conservatism of the Reagan administration also had an enormous

²³⁷ United States Bureau of Justice Statistics, “Correctional Populations in the United States, 1993” (US Department of Justice Office of Justice Programs, 1993), 5 accessed: <http://bjs.ojp.usdoj.gov/content/pub/pdf/cpop93bk.pdf>

impact on the prison population and the conditions within prisons. By not apportioning the necessary funding for the Community Mental Health Act in the name of reconciling the budget, the administration doomed the altruistic attempt at deinstitutionalization of the mentally ill to failure, resulting in more people with mental illness being institutionalized within prisons rather than mental hospitals. Deinstitutionalization, then, itself intended as a rehabilitative measure, played a role in the demise of rehabilitation and the transinstitutionalization of the mentally ill from the hospital to the prison.

The overcrowding within the prison system also exacerbated the gang problem that began to develop in the 1970s as more prisoners relied on gangs for the structure, safety, and stability that the overcrowded prisons could no longer provide. This breakdown extended to health services as the prison population, with its high incidence of needle sharing, tattooing, and unsafe sex, whether consensual or prison rape, allowed AIDS to spread quickly. The prison system thus also fell prey to Reagan administration's lack of action on the HIV/AIDS crisis. By the end of this period, despite 'tough' new legislation, George H.W. Bush's "tough on crime" election campaign, mandatory minimum sentencing and massive growth in prison construction, as well as the development of new types of prison such as the Supermax, crime rates would be at an all time high, and the "crack epidemic" continued to sweep through America's cities. The disproportionate effect these new developments would have on the African-American community, would create divergent interests between whites who favoured "tough on crime" approaches, and African-American communities which bore the

brunt of those policies. These diverging interests resulted in drastically different interpretations of American criminal justice policy and who and what purposes it serves.²³⁸

While politicians on the federal level, particularly within the Republican Party, had embraced an anti-drug, anti-crime agenda and had radically altered legislation, sentencing procedures, and jail and prison conditions, intellectuals who had been prominent in previous decades continued to have an effect on the criminal justice system, particularly on the level of local policing. James Q. Wilson, whose book *Thinking about Crime* had played a role in the debate over rehabilitation versus punishment and incapacitation in the 1970s, continued to play a role. In March of 1982 he and a colleague, George L. Kelling, published an article in *The Atlantic Monthly* entitled “Broken Windows”. While Wilson had previously addressed the role of local policing and community standards in *Thinking About Crime*, he further developed these ideas in “Broken Windows”. He wrote about an experiment conducted in New Jersey in the 1970s, in which more officers were assigned to walking beats, rather than patrolling in cars. While the study found that crime rates had not decreased at all – indeed, they may have increased – residents in the neighbourhood perceived the area to be safer.²³⁹ The question, for Wilson and Kelling, then, was why the neighbourhood’s perception of safety differed so greatly from the measurable incidence of crime. They concluded that, while people were afraid of being victimized by violent crime, they judged their level of safety more by whether or not they were “being bothered by disorderly people. Not violent people, nor, necessarily, criminals, but disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers,

²³⁸ Michelle Alexander, *The New Jim Crow*, (New York: The New Press, 2010).

²³⁹ George L. Kelling and James Q. Wilson, “Broken Windows: The Police and Neighborhood Safety” *The Atlantic Monthly*, March 1982. Accessed: http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/4465/?single_page=true

the mentally disturbed.” Particularly in the case of the elderly, they wrote, that while they were “much less likely to be the victims of crime than younger persons,” they were much more vulnerable to a disorderly neighbourhood given their inability to relocate; as such “the prospect of a confrontation with an obstreperous teenager or a drunken panhandler can be as fear-inducing.”²⁴⁰

Drawing on studies that suggested that, if objects appeared to be neglected, they were more at risk of theft or vandalism, Wilson and Kelling theorized that, much like objects, neighbourhoods that appeared to be disorderly and not taken care of would be at much greater risk of crime. While not establishing a direct causal relationship between graffiti and muggings, Wilson and Kelling wrote that it was a progression, that:

A piece of property is abandoned, weeds grow up, a window is smashed. Adults stop scolding rowdy children; the children, emboldened, become more rowdy. Families move out, unattached adults move in. Teenagers gather in front of the corner store. The merchant asks them to move; they refuse. Fights occur. Litter accumulates. People start drinking in front of the grocery; in time, an inebriate slumps to the sidewalk and is allowed to sleep it off. Pedestrians are approached by panhandlers.²⁴¹

At this point, they believed, a neighbourhood was ripe for crime to flourish. The solution, according to the authors, was a deeply conservative call for the police to return to what the authors deemed a more traditional order-maintenance function beholden to the standards of the local community, rather than the modern crime-solving function beholden to a set of rules and procedures determined by outside forces. The authors suggested that something was lost when “vagrancy” and “public drunkenness” were decriminalized as these designations, in their view, were never intended to criminalize vagrancy so much as provide a legal means by which to remove undesirable people from a community. They further

²⁴⁰ Ibid

²⁴¹ Ibid

disputed the idea that there is such a thing as a “victimless” crime – vagrancy, drug use and prostitution are not victimless if they contribute to the degradation of a community, which may invite crime. “Broken Windows” and its predecessor works from the 1970s evoked the seeds of policies that would come later: Stop-and-Frisk, Zero Tolerance, and Quality of Life policing. These ideas also permeate anti-drug legislation that followed.

In addition to the changes in policing methods, significant legislation was introduced in this period which would affect prison population. The first piece of legislation that would have a dramatic impact upon the prison system was the Omnibus Budget Reconciliation Bill of 1981. While this bill was not directly related to the correctional system, it reversed the provisions of the Mental Health Services Act of 1980. The Mental Health Services Act was such a central piece of legislation that, on the day Carter signed it, he remarked that he had “been looking forward to this day for a long time” and that it was “the most important piece of Federal mental health legislation since President John Kennedy signed the Community Mental Health and Mental Retardation Facilities Act.”²⁴²

The Act was meant to be the capstone of decades of work toward deinstitutionalizing the mentally ill and the provision of community mental health services. But when the aspects of the Act that were meant to fund community mental health services were overturned by the Omnibus Budget Reconciliation Act, it resulted in both increased homelessness and rising prison and jail populations as the mental hospitals closed without sufficient community support to pick up the slack. The increase in the number of mentally ill prisoners was quickly noted by the American Correctional Association and the contributors

²⁴² Jimmy Carter: "Mental Health Systems Act Remarks on Signing S. 1177 Into Law," October 7, 1980. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=45228>.

of *Corrections Today* (formerly known as the *American Journal of Correction*). An article from 1984 stated that “Illinois, like other states over the past several years, has experienced an increase in the number of acutely mentally ill inmates” and that the causes were twofold. One was that “the dramatic overall population increase ... has resulted in crowded institutions, particularly in maximum security settings, and many borderline cases decompensate” and the other that due to the “emphasis on deinstitutionalization ... some inmates who years ago would have been confined to a mental health institution are instead processed through the criminal justice system.”²⁴³ An article from 1986 stated that “suicide is the leading cause of death in jails,” although this was the first article regarding suicide to appear in *Corrections Today* or its predecessors. The author notes that the suicide rate in jails varied from 57.7 to 108 per 100,000 in jails, as compared to 10 to 14 per 100,000 in both the general population and prisons.²⁴⁴ Additionally, in creating a profile of those who were at highest risk of suicide in a jail setting, he wrote that “since the deinstitutionalization of the mentally ill in the 1960s, more and more people with chronic mental and emotionally disturbances are being cared for by local and state correctional facilities. These chronically ill inmates – many psychotic and not involved in treatment before their arrest – are at much higher risk than the general population.”²⁴⁵ An article from later that year stated that jail suicide rates were 16 times the rate of the general population.²⁴⁶ A 1988 article stated that “the thousands of former mental patients entering America’s prisons in the 1980s have

²⁴³ Stephen L. Hardy, “Dealing with the Mentally and Emotionally Disturbed,” *Corrections Today*, June (1984), 17.

²⁴⁴ David N. Burks et al, “Jail Suicide Prevention,” *Corrections Today*, February (1986), 52.

²⁴⁵ *Ibid*, 88

²⁴⁶ Bobbie Hopes and Ruth Shaull, “Jail Suicide Prevention: Effective Programs Can Save Lives,” *Corrections Today*, December (1986), 64.

wrought significant changes in corrections.”²⁴⁷ In December of that year, another article stated that “jails unfortunately continue to become the facility of last resort for many of the mentally ill.”²⁴⁸

The Omnibus Budget Reconciliation Act, however outsized its impact may have been on the prison system, was not the most influential piece of legislation from this period. The legislation that had the greatest impact upon the rate and conditions of incarceration was the Comprehensive Crime Control Act of 1984. The Comprehensive Crime Control Act of 1984 contained a number of provisions which would have an enormous impact on the increasing rate of incarceration. The Omnibus Act contained several smaller acts and measures: The Armed Career Criminal Act, which provided sentencing enhancements for habitual offenders who committed crimes with firearms; the Sentencing Reform Act, which established the United States Sentencing Commission and abolished federal parole; the Bail Reform Act, which allowed judges to take risk of re-offending into consideration, rather than simply flight risk, when allowing bail; the extension of the Secret Service’s jurisdiction to cover credit card and computer fraud; increased federal penalties for marijuana possession, sale, and growing; new penalties for hostage taking; and the re-introduction of the federal death penalty. The Comprehensive Crime Control Act of 1984 had been a long time in the making and the result of intense pressure on Congress from the President.

Reagan repeatedly proposed new crime legislation to Congress. In 1982 he detailed that he wanted this legislation to include “bail reform, victim-witness protection, strengthened drug penalties, protection of federal officials, sentencing reform, [and]

²⁴⁷ Richard M. Austin and Albert S. Duncan, “Handle With Care: Special Inmates, Special Needs,” *Corrections Today*, June (1988), 116.

²⁴⁸ William C. Collins, “Medicating the Jailed Mentally Ill, Some Legal Concerns,” *Corrections Today*, December (1988), 46.

expanded criminal forfeiture” among other measures.²⁴⁹ He placed a particular emphasis on limiting the insanity defense, reforming the exclusionary rule, and limiting prisons abilities to enter *habeas corpus* writs.²⁵⁰ When this legislation did not pass, Reagan again proposed very similar legislation focusing on the same areas the next year, which would become the first version of the Comprehensive Crime Control Act.²⁵¹ The language in both proposals is urgent, invoking a sense of immediate danger and conflict. Reagan spoke of the sense that law enforcement was not working for Americans and stated that it was “time to restore balance – and to make the law work to protect decent, law-abiding citizens” and that this new legislation would “restore the balance between the forces of law and the forces of lawlessness.”²⁵²

The American Correctional Association and writers for *Corrections Today*, concerned with the aims of this legislation, were quick to criticise its results. An article from 1981 written by an ex-offender and correctional officer praised the idea of fixed sentencing and eliminating parole on the grounds that the unfairness of indeterminate sentences – “one person gets 50 years, another 20, and another 5, all with the same charge” – and the capriciousness of parole decisions.²⁵³ *Corrections Today*, however, generally took a negative approach to fixed sentencing. Despite the fact that indeterminate sentences were often criticised for the racial inequalities perpetuated by judges and parole boards, an article

²⁴⁹ Ronald Reagan: "Message to the Congress Transmitting Proposed Criminal Justice Reform Legislation ," September 13, 1982. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=42956>.

²⁵⁰ Ibid

²⁵¹ Ronald Reagan: "Message to the Congress Transmitting Proposed Crime Control Legislation ," March 16, 1983. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=41058>.

²⁵² Ronald Reagan: "Message to the Congress Transmitting Proposed Criminal Justice Reform Legislation ," September 13, 1982. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=42956>.

²⁵³ Walter M. Keehn, “‘Flat-time’ Revisited and Other Concerns,” *Corrections Today*, March/April, (1981), 60.

appeared in *Corrections Today* questioning whether determinate sentencing was a “racist reform.” The author pointed out that states which had already experimented with determinate sentencing had seen prison populations rise, and thus, while perhaps being more equitable, were also imposing more punishment. He questioned, then, whether or not, given the association of African-Americans with crime, whether or not determinate sentencing was simply meant to put more black people in prison and keep them there longer.²⁵⁴ A 1985 article questioned whether they were facing a “sentencing disaster.”²⁵⁵ Writers attempted to tout the merits of the parole system, which had been abolished along with the introduction of determinate sentencing, throughout the February 1986 edition of *Corrections Today*, but ultimately to no avail.²⁵⁶

Perhaps the most critical was a July 1986 article which called the Omnibus Crime Control Act a “sentencing machine.”²⁵⁷ Writing that he feared handing control to an appointed administrative body would result in “a sterile, computerized criminal justice system with little concern for individual sentences,” Ted Wisner questioned whether increasing emphasis on punishment, abolishing parole and rendering probation harsher would have any impact on crime.²⁵⁸ He worried that the public had “become weary and tired of thinking of offenders as individuals” and that “we do not want to be told this forger is retarded or that robber responded to an unusual situation.”²⁵⁹ This way of thought, Wisner wrote, “maybe an effective way to run a sentencing machine, but ... we will lose something

²⁵⁴ Oscar D. Shade, “Determinate Sentencing: A Racist Reform?,” *Corrections Today*, October (1982), 62-63.

²⁵⁵ Edward R Hammock and Anne Marie Santangelo, “Sentencing Disaster”, *Corrections Today*, February (1985), 91.

²⁵⁶ e.g. Anthony P. Trivisono, “Selling the Whole Package”, *Corrections Today*, February (1986), 4, and Rory J. McMahon, “A New Era: Federal Probation and Parole,” *Corrections Today*, February (1986), 18.

²⁵⁷ Ted O. Wisner, “Crime Control Act: A sentencing machine?” *Corrections Today*, July (1986), 30.

²⁵⁸ *Ibid*, 30.

²⁵⁹ *Ibid*, 33.

as human beings.”²⁶⁰ Questioning the theory of incapacitation that underlay the drive toward determinate sentencing, habitual offender laws and abolition of parole, one author wrote that “the idea of selective incapacitation is a sound one in theory, but a nightmare in practice.”²⁶¹

Determinate sentencing was not the only controversial aspect of the Comprehensive Crime Control Act. The new provisions regarding the growing, possession and sale of drugs, including marijuana, added to the growing number of people being arrested and incarcerated, especially women. The number of women incarcerated in the United States – even only accounting for those sentenced for a year or longer in state or federal prisons – more than tripled from 15,537 to 50,407 between 1981 and 1992, largely as a result of drug convictions.²⁶² Writers for *Corrections Today* noted the increasing number of women in the correctional system. A book entitled *When Mother Goes to Jail* was on the recommended reading list from the April 1982 edition of *Corrections Today*, focusing on the “increasing number of young women sentenced to jail and prison terms” and the impact their absence had on the parent-child relationship.²⁶³ Another article from 1983 promoted “Mother/child retreats” where “women incarcerated at the Correctional Institution ... are being given the opportunity to see their children in a noninstitutional setting and to learn skills for handling family problems.”²⁶⁴ A 1986 article noted that while the female incarceration rate had increased 158% (it had increased only 100% for men) over the past decade, the rate of violent crime committed by women had not changed, and the arrest rate in fact had only

²⁶⁰ Ibid, 33.

²⁶¹ David R. Struckhoff, “Selective Incapacitation: Good theory, bad practice,” *Corrections Today*, February (1987), 30.

²⁶² United States Bureau of Justice Statistics, “Correctional Populations in the United States, 1993”. US Department of Justice Office of Justice Programs, 1993.

²⁶³ H.G. Moeller, “The Bookshelf,” *Corrections Today*, April (1982), 59.

²⁶⁴ Brenda A. Beavers-Luteran, “Take Note: Mother/Child Retreats,” *Corrections Today*, June (1983), 93

increased by 20%. This report concluded that the increased rate of incarceration was due to longer sentences being imposed for non-violent crimes.²⁶⁵

The offense that brought most of these women to prisons was most often a drug-related crime. Indeed, the 1980s were the height of “crack epidemic”, a timeframe in which crack cocaine, a relatively pure, cheap and addictive form of cocaine, became widely available – and widely discussed, in the United States. Women crack users faced a significant burden as they were labelled producers of “crack babies.” In response to the supposed epidemic of crack babies, new legislation was introduced and old legislation was interpreted in novel ways. For example, in 1988, at the height of the panic, a new method of dealing with women who gave birth to babies with crack cocaine in their system was introduced – charging them with child neglect for actions which occurred prior to the birth of the child. Jennifer Johnson was the first woman to be criminally tried for exposing her unborn baby to crack cocaine in 1988. Despite the fact that her children were born healthy, Johnson was sentenced to one year of residential drug treatment and to 14 years of probation for child abuse for exposing her foetus to crack cocaine.²⁶⁶ Despite the vogue for using incarceration as a method for coping with addiction, a 1985 article in *Corrections Today* questioned whether prisons even had a role to play in dealing with drug abuse. Henry Musk wrote that “prisons attempt to treat hundreds of thousands of drug abusers every year [and] there is no evidence that our institutions have made any major impact on what has become an American social problem – nor should prisons be expected to make such an impact.”²⁶⁷

²⁶⁵ Charlotte A. Nesbitt, “Female Offenders: A Changing Population,” *Corrections Today*, February (1986), 77.

²⁶⁶ Dorothy Roberts, *Killing the Black Body* (New York: Pantheon Books, 2007), 180.

²⁶⁷ Henry Musk, “Drug Abuse: Can Prisons Cure a Social Problem?,” *Corrections Today*, June (1985), 6.

He concluded that “prisons will continue to discharge their responsibilities, but making America drug-free cannot be one of them.”²⁶⁸

Two further pieces of legislation were passed which further increased pressure on the criminal justice system by imposing longer sentences and further criminalizing drug use. While the Comprehensive Crime Control Act had already increased penalties for drug possession and created the Sentencing Commission, which produced stricter mandatory sentences, further legislation in the form of the Anti-Drug Abuse Acts of 1986 and 1988. The Anti-Drug Abuse Act of 1986, apart from introducing further new mandatory minimum sentences for drug possession and transfer, further amended the system of federally supervised parole, adding federally supervised release as an additional and punitive option rather than as a tool of rehabilitation. It also decreased the transparency of anti-drug policing by placing limitations of the Freedom of Information Act. The flirtation with decriminalization of the Carter years was irrevocably gone. Even outside the realm of legislation, Reagan – as well as his wife Nancy – had made his administration’s view of drug use known at every opportunity. In describing drugs, they both use martial imagery, such as comparing the fight against drug use to the First World War. In relation to the supposed hopelessness of combating drug use, he said “I was not present at the Battle of Verdun in World War I, but from that battle I learned of that horrendous time of an old French soldier who said something we could all heed. He said, ‘There are no impossible situations. There are only people who think they're impossible.’”²⁶⁹ Nancy Reagan spoke in similar martial

²⁶⁸ Ibid, 6.

²⁶⁹ Ronald Reagan: "Remarks on Signing Executive Order 12368, Concerning Federal Drug Abuse Policy Functions ," June 24, 1982. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=42671>.

terms when she described drugs as an “enemy” that “shows no mercy.”²⁷⁰ Upon signing the Anti-Drug Abuse Act of 1986, Reagan remarked that it gave him “great pleasure to sign legislation that reflects the total commitment of the American people and their government to fight the evil of drugs” and that “the vaccine that's going to end the epidemic is a combination of tough laws—like the one we sign today—and a dramatic change in public attitude.”²⁷¹ In his remarks on signing the Anti-Drug Abuse Act of 1988, he referred to the policy as a “crusade.” He further laid out what he considered to be the successes of his policies: that “arrests, convictions, and prison sentences of sellers and abusers are rising to record levels.”²⁷² The 1988 Act further expanded the changes made by the 1986 Act and applied the federal death penalty to “narcotic kingpins and drug-related murderers.” This anti-drug act also included provisions aimed at punishing producers of child pornography. In his remarks on signing the Act, Reagan explicitly linked the drug trade and child pornography production by describing how a victim “was kidnaped, drugged, repeatedly raped, and then brutally murdered.”²⁷³

The stricter bail rules, increased sentencing, longer sentences, and a wider array of offenses that resulted in prison terms for both men and women produced massive overcrowding in both jails and prisons. By the beginning of this period when the effects of the initial phase of the War on Drugs were already being felt, correctional professionals were

²⁷⁰ Ronald Reagan: "Radio Address to the Nation on Drug Abuse ," June 30, 1984. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=40117>.

²⁷¹ Ronald Reagan: "Remarks on Signing the Anti-Drug Abuse Act of 1986 ," October 27, 1986. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=36654>.

²⁷² Ronald Reagan: "Remarks on Signing the Anti-Drug Abuse Act of 1988 ," November 18, 1988. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=35182>.

²⁷³ Ronald Reagan: "Remarks on Signing the Anti-Drug Abuse Act of 1988 ," November 18, 1988. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=35182>.

already voicing their concerns about overcrowding in prisons and jails. A few years later, correctional systems across the country would be in the midst of a prison building spree that would cripple state budgets. The increasing incarceration rate would outpace prison construction, however, and correctional systems had to cope with overcrowded prisons, security risks and overtaxed services. As previously noted, the effects of overcrowding resulted in prisoners suffering from mental illness decompensating under the stress of the crowded conditions. The president of the American Correctional Association wrote in 1982 that “in the minds of most people, overcrowding represents the current issue for which there appears no answer in any reasonable time frame,” and that overcrowding was responsible for many of the problems faced by prisons: law suits, drugs, alcohol, weapons, riots, gangs and racial confrontations.²⁷⁴ Out of synch with the more punitive policies of the time, he called for understanding “root causes of antisocial behaviour and appropriate responses to that behaviour” as a means of addressing overcrowding through prevention.²⁷⁵

Another writer took a more practical approach, looking simply for “how to cope with the burgeoning number of convicted offenders.” Milton Rector, however, noted that the \$6.5 billion prison-building program proposed by Senator Bob Dole was “not morally defensible in light of reduced food stamps for poor families, fewer social services for the elderly, and diminished health and other services for the general public.”²⁷⁶ A report from Texas noted that “a mushrooming prison and jail population continues to impose an overload.”²⁷⁷ An excerpt from the Bureau of Justice Statistics Bulletin published in *Corrections Today* stated that overcrowding had, by 1984, reached such a level that several state correctional systems

²⁷⁴ Amos E. Reed, “Policy Challenges in the ‘80s,” *Corrections Today*, February (1982), 6.

²⁷⁵ *Ibid.*, 8.

²⁷⁶ *Ibid.*, 12.

²⁷⁷ Milton G. Rector, “Imperatives for the ‘80s,” *Corrections Today*, February (1982), 12.

were so overwhelmed that sentenced convicts were remaining in local jails.²⁷⁸ In 1985, a former commission of correction for New York State noted that the population in Attica prison was then approximately 36,000 – or nearly three times what it was during the riot in 1971.²⁷⁹ Year after year, articles proclaimed that particular year’s prison population to be at an “all time high”. This increase in the prison population, the willingness of state and federal governments to raise bonds and funds for prison construction at the expense of social welfare, and the continued public pressure to do something about the still-steadily increasing crime rate all contributed to what would be a massive boom in prison construction. The pages of *Corrections Today* make it readily apparent the degree to which prison building became central to correctional departments. Of course, where there was money to be had in the construction and operation of new prisons, there was private sector involvement. As such, the correctional field and the private sector became deeply entwined in this period.

Once largely concerned with the nuances of rehabilitative programming and responding to conditions within prisons, *Corrections Today* began to dedicate considerable space to architecture, prison building, construction project management, and the role of the private sector in prison building and financing. An article from 1983 noted that “the idea that corrections can correct has taken a back seat,” leading to a “return to large capacity cell houses, the extensive use of interior, windowless cells, the use of bar cell fronts and extensive electromechanical hardware systems.”²⁸⁰ Several entire editions of *Corrections Today* were dedicated to prison building, architecture, and technology throughout this period. A psychologist referred to both the new building style and the new emphasis on punishment

²⁷⁸ Bureau of Justice Statistics Bulletin, *Corrections Today*, August (1985), 152.

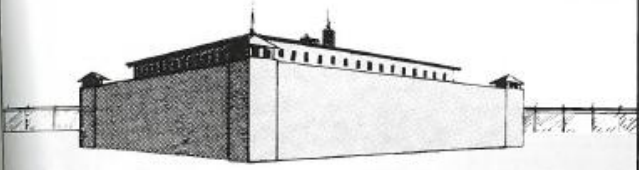
²⁷⁹ Benjamin Ward, “View from the Streets,” *Corrections Today*, October (1985), 74.

²⁸⁰ Paul Silver, “Crossroads in Correctional Architecture,” *Corrections Today*, April (1983), 118.

as “barbed wire justice.”²⁸¹ The executive director of the ACA warned in 1985 that “if we are not careful and deliberate we will be duplicating the architectural failures of the 1920s relating to the size and use and misuse of correctional institutions.”²⁸² By 1987, construction had so failed to keep up with the spiralling incarceration rate that articles in *Corrections Today* proposed using air and frame structures a temporary solution to providing required space while coping with limited budgets.²⁸³

This attention to prison building attracted more attention of the private sector, seeking to earn a share of the funds being funneled into the correctional system. The first hint at private financing for a prison appeared in the April 1984 edition, advertising “Exciting New Ways to Finance Jails.”²⁸⁴ The same edition ran an article – not an advertisement – written by the presidents of Corrections Corporation of America and Vick and Harris, two of the largest private prison management firms. The article touted

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the “streamlined corporate management structures” and “forthright delegation of

²⁸¹ Aris T. Papas, “Barbed Wire Justice,” *Corrections Today*, June (1984), 56.

²⁸² Anthony P. Travisono, “Careful Approach,” *Corrections Today*, April (1985), 4.

²⁸³ Dan Fraioli, “Air Frame Structures Quick Houses on Tight Budgets,” *Corrections Today*, August (1987), 108.

²⁸⁴ “Exciting New Ways to Finance Jails,” *Corrections Today*, April (1984), 43.

responsibility” while dismissing government’s “hierarchy of authority, rigid set of procedures and designated areas of responsibility” as unsuitable to running prisons efficiently.²⁸⁵ Prison building was not the only aspect of the correctional system that was being privatized. While advertisements had appeared for some contract services – particularly medical – following *Estelle v. Gamble*, articles appeared with increasing frequency advocating for a variety of privately-provided services. Much like the article on private prison construction, an article appearing in the August 1984 edition about private medical and food services was co-written by the presidents of Szabo Food Service Company and Szabo Prison Health Services. The authors noted that “ten years ago correctional institutions rarely entered into contracts with the private sector for professional food or medical services. By 1983, according to ACA estimates, food and medical services account for the largest segment of all private contracts.”²⁸⁶ In 1986, an article from an employee at Shearson Lehman Brothers appeared advocating for the use of “lease purchase,” where in a government leases a prison from a private builder, to avoid “voter approval or other legal requirements that can cause costly delays.”²⁸⁷ That same year, a vice president of Modular Correctional Systems Inc. asserted that the private sector was “breaking the shackles of tradition.”²⁸⁸ Private involvement in the correctional system was certainly expanding.

This growth in the involvement of the private sector – and *Corrections Today*’s acceptance of self-promotion from representatives of private companies – led to growing unease. The American Correctional Association responded, asking “is ‘For-Profit’ a wolf at

²⁸⁵ T. Don Hutto and Gary E. Vick, “Designing the Private Correctional Facility,” *Corrections Today*, April (1984), 78.

²⁸⁶ Howard E. Breeden and Poull L. Brien, “Contracting Food and Medical Services: Megatrend or Fad?,” *Corrections Today*, August (1984), 52.

²⁸⁷ John W. Gillespie, “Lease Purchase: Financing Alternative,” *Corrections Today*, April (1986), 32.

²⁸⁸ Joseph R. DiPaolo, “Private Sector: Breaking the Shackles of Tradition,” *Corrections Today*, April (1986), 144.

the door?” He took a conciliatory tone however, writing that “the jobs of correctional officers are not in jeopardy now and never will be” and that “a workable partnership *can* stabilize the system and allow both sectors to work efficiently.”²⁸⁹ The fact that the article needed to be written at all, however, demonstrates that there was considerable nervousness within the profession that needed to be addressed. A 1986 article entitled “Private Sector: Profit Motive vs. Quality” demonstrates that this concern only continued to mount. He warned that while private operators claimed to “hire staff for less pay, less benefits yet better quality,” the reality may be that “the inevitable high turnover of staff may not serve this service business well.”²⁹⁰ By 1988, the ACA was still questioning what the effect of privatization had been.²⁹¹ The October 1988 edition of *Corrections Today* was dedicated to the debate over privatization. While the majority of the articles were either neutral or actually written by employees of private correctional corporations, one article stood out for shunning the use of the private sector in “total for-profit management of adult detention centres.”²⁹² Pointing to examples of private prisons from Kentucky, Pennsylvania and Florida, Michael Mahoney said that “CCA lost \$2.5 million on \$13.9 million in revenues in 1986,” that Florida observed no cost savings, and that Pennsylvania actually went \$50,000 over budget. Mahoney further contended that the private financing of prisons was worrisome since it “would seem to create a private sector incentive for building new prisons,” and they in turn will “exert political pressure in keep their prison beds filled,” discouraging alternatives to incarceration. Lastly, he worried that the supposed benefits of private financing, such as avoiding “cumbersome and usually unsuccessful work of getting

²⁸⁹ Anthony P. Travieso, “Is ‘For-Profit’ A Wolf at the Door?,” *Corrections Today*, July (1985), 4.

²⁹⁰ Allen L. Patrick, “Private Sector: Profit Motive vs. Quality,” *Corrections Today*, April (1986), 68.

²⁹¹ Robert B. Levinson, “Privatization: The Jury is Still Out,” *Corrections Today*, October (1988), 6.

²⁹² Michael J. Mahoney, “Prisons for Profit: Should Corrections Make a Buck?” *Corrections Today*, October (1988), 106.

public approval for a large take increase or bond issue ... effectively robs the public of its ability to vote on a major policy issue.”²⁹³

Regardless of private prison financing, construction, and operation, prisons remained overcrowded which had disastrous consequences for conditions within them. Prison overcrowding reduces security and safety, and prison gangs, once the product of politicized prisoners and racial tensions in California, spread throughout the country both to control the drug trade and to provide protection. The AIDS crisis overwhelmed prisons due to the still insufficient nature of prison medical services, double-celling which provided opportunity for unprotected sexual contact and sexual violence, needle sharing and prison tattoo culture. The *ACA* and *Corrections Today* were slow to respond to AIDS as a major issue. While the first article regarding AIDS appeared in 1983 – relatively early – the subject dealt with in depth until 1988. The article insisted that “incarceration does not itself increase the risk of developing AIDS.”²⁹⁴ While that may have been true, prisons certainly escalated the level of risk. He did agree that “those at high risk for contracting the disease are intravenous drug users ... or homosexual and bisexual males,” without noting that both of those categories were common within prisons, and focused on containing panic rather than preventing transmission.²⁹⁵ AIDS did not resurface in *Corrections Today* until 1986 when a large section focusing on it was published. This edition, too, focused mostly on maintaining calm and order, and the importance of ensuring there were plans in place to deal with prisoners with AIDS, although no specific advice was given on the prevention of transmission.²⁹⁶ It

²⁹³ *Ibid*, 107.

²⁹⁴ John J. Maffucci, “Responding to AIDS in Prisons: The Team Approach,” *Corrections Today*, December (1983), 68.

²⁹⁵ *Ibid*, 68.

²⁹⁶ Richard A. Kiel, “AIDS,” *Corrections Today*, February (1986), 70 and Harold W. Jaffe, “Aids: Education Need,” *Corrections Today*, April (1986), 49.

was not until 1988 that a writer for *Corrections Today* acknowledged the danger of HIV/AIDS spreading through sexual contact between inmates.²⁹⁷ In a 1988 interview, Robert L. Brutsche, the medical director of the federal Bureau of Prisons, actually counselled against widespread testing as “there is no specific treatment for AIDS.” This claim ignored the fact that AZT had been approved the previous year and that AIDS is not synonymous with HIV infection. Further, he discounted the effectiveness of condoms at preventing transmission and said that “essentially all correctional systems in the United States prohibit sexual activity among their inmates, male or female. As a result, passing out condoms seems to condone activity that is forbidden at the institution.”²⁹⁸ An article from the chief medical officer of the Maryland correctional system seemed much more concerned with preventing transmission between inmates. Studies in Maryland had indicated that as many as 70 new cases of HIV per year were caused by transmission between inmates although this paled in comparison to the hundreds of new inmates who came into the system already infected.²⁹⁹ This discussion of the virus and prevention was framed in terms of a need to “protect the public ... even as inmate populations are being struck with a devastating disease.”³⁰⁰ By June of that year, however, *Corrections Today* finally recognized that “issues that affect society are often magnified in corrections, and not surprisingly, the number of inmates with AIDS continues to increase,” and that the rate of infection in the prison system had jumped 61% between 1986 and 1987.³⁰¹

²⁹⁷ Lois P. Christel, “An Ounce of Prevention...,” *Corrections Today*, February (1988), 32.

²⁹⁸ G. Robert Boston, “BOP Medical Director Discusses AIDS: An Interview with Dr. Robert L. Brutsche,” *Corrections Today*, February (1988), 43-44.

²⁹⁹ T. Fordham Brewer, “AIDS: Facts and Fallacies,” *Corrections Today*, February (1988), 62.

³⁰⁰ *Ibid*, 62.

³⁰¹ Madeleine LaMarre, “AIDS Inmates: A Management Dilemma,” *Corrections Today*, June (1988), 98.

The non-zero rate of AIDS transmission clearly points to an inability of correctional staff to prevent illicit activities, whether they be sexual contact or intravenous drug use, from occurring within overcrowded prison populations. Another aspect of the lack of control over overcrowded conditions was the increasing prevalence of gang activity. A series of articles from 1986 covering the spread of prison gangs in Texas and Florida noted that apart from self-protection for inmates, gangs existed to further “business ventures, such as drug traffic, extortion and prostitution.”³⁰² A warden from Arizona wrote that when he first entered the correctional field, local Irish or Italian gangs were common in prisons but not the large and nationally organized gangs such as the Mexican Mafia or Aryan Brotherhood, with their origins in California.³⁰³ He too noted that prison gangs controlled trade in drugs, weapons, and sex within the prisons. He acknowledged the problem of sexual violence in prisons in stating that “institutions cannot fulfill their mission to aid individuals in their rehabilitative process and protect society if inmates are raping, killing, stabbing and intimidating each other.”³⁰⁴ He singled out “extreme overcrowding” as a detriment to dealing with the gang problem, as it prevented separating and transferring gang leaders.³⁰⁵ His colleague from Texas concurred, noting that overcrowding, in addition to the end of the trusty system as a result of *Ruiz v. Estelle* had reduced supervision. Lastly, he pointed the finger at long sentences: once a gang member had been sentenced to a long term, his actions no longer mattered – “If I kill you, they still have to feed me lunch.”³⁰⁶ Prison gangs were not only confined to California and the Sunbelt. The following year a probation and parole agent from Wisconsin wrote that “virtually no system is untouched by some form of organized

³⁰² Lester H. Beard, “Prison Gangs: Texas,” *Corrections Today*, July (1986), 12.

³⁰³ Roger W. Crist, “Prison Gangs: Arizona,” *Corrections Today*, July (1986), 13.

³⁰⁴ *Ibid*, 25.

³⁰⁵ *Ibid*, 27.

³⁰⁶ Lester H. Beard, “Prison Gangs: Texas,” *Corrections Today*, July (1986), 22.

criminal activity in its correctional facilities.”³⁰⁷ All three writers emphasized keeping gang leaders in solitary confinement as the sole means of controlling their activities.

The 1988 election came in the midst of continued increasing crime rates, legislative sabre-rattling, a prison population crisis, and the spread of gangs both through the prison system and then back out onto the streets. The George H.W. Bush campaign wasted no time in associating itself with the tough on crime policies that had dominated during the Reagan era and questioning the commitment of his opponent, Michael Dukakis, to reducing the crime rate and keeping criminals behind bars. The transcript of one campaign advertisement described Dukakis thusly: “One person has released killers sentenced to life without parole on unsupervised weekend passes, pardoned 49 convicted drug dealers and offenders and commuted the sentences of a record 53 murderers.”³⁰⁸ The transcript of another ad read “As Governor Michael Dukakis vetoed mandatory sentences for drug dealers, he vetoed the death penalty. His revolving door prison policy gave weekend furloughs to first degree murderers not eligible for parole. 268 escaped. While out, many committed other crimes like kidnapping and rape, and many are still at large. Now Michael Dukakis says he wants to do for America what he's done for Massachusetts. America can't afford that risk.”³⁰⁹ Perhaps most infamously, an advertisement that ran independently of the Bush campaign, the “Willie Horton Ad”, described the case of “Willie Horton, who murdered a boy in robbery, stabbing him 19 times. Despite a life sentence, Horton received 10 weekend passes from prison.” Horton then “kidnapped a young couple, stabbed the young man, and repeatedly raping his

³⁰⁷ Steve Daniels, “Prison Gangs: Confronting the Threat,” *Corrections Today*, April (1987), 66.

³⁰⁸ George H.W. Bush “Credibility,” Accessed: <http://www.livingroomcandidate.org/commercials/1988/Credibility>

³⁰⁹ George H.W. Busk “Revolving Door,” Accessed: <http://www.livingroomcandidate.org/commercials/1988/revolving-door>

girlfriend.” The ad concludes “Weekend Passes: Dukakis in Crime.”³¹⁰ Dukakis tried to hit back, claiming in an ad that Dukakis had ended the prison furlough program in Massachusetts, a program which had been started by a Republican, while the federal government continued to furlough drug dealers under George H.W. Bush’s watch, one of whom committed rape and murder while on furlough. The ad declared that Bush had “taken a furlough from the truth.”³¹¹

The point that both sides of this argument missed conveying, however, was that furlough programs were a longstanding part of the correctional repertoire, were in place in numerous states, and have been recommended by the American Correctional Association as far back as the 1950s as a way to deal with crowding. Such programs also reintroduce inmates to the outside world prior to release, in the hopes of improving their recidivism rate. Perhaps the most telling moment in the campaign, as far as how deeply crime had worked its way into the fabric of this election and how personal the issues had become, came with the first question addressed to Michael Dukakis in the debates. He was asked: “If Kitty Dukakis were raped and murdered, would you favour an irrevocable death penalty for the killer?” Dukakis botched the answer: he showed no emotion and reiterated his opposition to the death penalty.³¹² This moment would be used against him throughout the campaign. Dukakis later said that he thought the question was a fair one to ask any death penalty opponent, and that it was his own fault that he failed to answer the question in a convincing way.³¹³

³¹⁰ National Security PAC, “Willie Horton”, Campaign Advertisement, 1988.

³¹¹ Michael Dukakis, “Furlough from the Truth”, Campaign Advertisement, 1988. Accessed: <http://www.livingroomcandidate.org/commercials/1988>

³¹² Bush-Dukakis Presidential Debate, October 13, 1988.

³¹³ Will Rabbe, “2008 Uncut”, Interview with Michael Dukakis, <http://willrabbe.com/microblog/2011/2/28/1988-presidential-debate-the-kitty-dukkakis-question.html>

Given Bush's electoral strategy of highlighting his role in Reagan's tough on crime administration and his opponent's weakness in that field, it is unsurprising that his policies continued largely in the same vein as his predecessor's. He used his first televised address to the nation to present his national drug control strategy, in which he notably displayed a bag of crack that had supposedly been seized in a sting near the White House.³¹⁴ Bush continued to propose legislation that cracked down on drug use, and signed in a new crime control act – the Crime Control Act of 1990. On signing the act, he noted his disappointment with Congress for their failure to include portions of the bill that he had requested:

a death penalty for the most heinous Federal crimes, including mail bombing and terrorist murder; comprehensive reform of habeas corpus proceedings that continue to nullify State death penalty laws through repetitive hearings and endless delays; reform of the exclusionary rule to allow juries to consider all evidence gathered by law enforcement officers acting in good faith; and enhanced penalties for the criminal use of firearms.”³¹⁵

Despite the failure of the Act to include these items that he had requested, it still contained new measures for dealing with child abuse and child pornography and stronger enforcement for criminal forfeiture laws. In signing the Act, Bush stated that “The American people deserve tough, new laws to help us prevail in the fight against drugs and crime.”³¹⁶

This period ended, then, with a “tough on crime” president in the White House, a crisis in the state and federal correctional systems, and crime rates that, despite two decades of attempting to pursue tough on crime policies, continued to rise inexorably. Even with prison and jail populations more than doubling in just 12 years, crime stubbornly refused to

³¹⁴ Andrew B. Whitford and Jeff Yates, *Presidential Rhetoric and the Public Agenda* (Baltimore: Johns Hopkins University Press, 2009), 64.

³¹⁵ George Bush: "Statement on Signing the Crime Control Act of 1990," November 29, 1990. Online by Gerhard Peters and John T. Woolley, The American Presidency Project.
<http://www.presidency.ucsb.edu/ws/?pid=19114>.

³¹⁶ Ibid

come down. Tough, anti-drug laws seemed to be having little impact on use of crack cocaine in large cities, and, worst of all, the incarceration rate for African-Americans, male and female, had gone from an already high 1156 per 100,000 in 1980 to 2917.2 in 1992, largely as a result of the 100:1 sentencing disparity between crack and powder cocaine introduced during the Reagan administration.³¹⁷ With no will to improve prison conditions other than to build more prisons, and the incarceration rate showing no signs of abating, overcrowding continued to worsen, the gang problem intensified, and solitary confinement would become more and more common. Pelican Bay, the first Supermax prison to be built in the United States – meant for 23 hour a day confinement and isolation, with meals provided to the prisoners in their tiny cells – was built in 1989, but it would quickly become the pattern for both a federal institution, ADX Florence, and smaller Special Housing/Management Units in other prisons. HIV/AIDS continued to plague the prison system even as it abated in the outside population in the United States. Prisoners’ right to sue in court for breeches of their civil rights were curtailed just as conditions were deteriorating all the more. After decades of violence, upheaval, reform, and raids, of public fear and political cynicism, of idealistic intellectuals and media manipulation, the system of mass incarceration came into being.

³¹⁷ Justice Policy Institute, “Too Little, Too Late: President Clinton’s Prison Legacy” <http://www.prisonpolicy.org/scans/clinton.pdf>, 5

Conclusion

The end of the 1980s and the beginning of the 1990s saw the birth of the system of mass incarceration, a system that had developed slowly over time as different politicians, professionals, intellectuals, and the public tried to cope with rates of crime and violence that seemed to be continually rising with no hope of relief. The different methods attempted – rehabilitation, deterrence, incapacitation, indeterminate and determine sentencing, community policing and aggressive raids – all seemed to fail in the face of crime statistics that saw the number of violent crimes in the United States peak at 1,932,274 in 1992.³¹⁸ However, in the early 1990s, crime, especially violent crime, began to drop precipitously. By the mid-1990s it was apparent that there was an on-going and sustained decrease in crime that continues to this day. Between 1991 and 2001, homicide rates fell 43%, violent crime in general by 34% and property crime by 29%.³¹⁹ That the crime rates decreased is unquestionable, but the reasons – especially to what degree “tough on crime” policies played a role – remain uncertain. Despite this incredible decrease in crime, however, considerable crime-fear persisted throughout the 1990s, fuelled by writers such as a still-active James Q. Wilson, John DiIulio and former drug czar William Bennett, all of whom conversely had predicted a massive increase in youth crime. The term “superpredator”, applied to a generation of youth who supposedly felt no remorse for violent crime, was popularized by DiIulio and Bennett both in a 1995 *Weekly Standard* article entitled “The Coming of the Super-Predators” and their 1996 book *Body Count*. Furthermore, again in defiance of statistics indicating that crime was generally decreasing

³¹⁸ FBI, Uniform Crime Reports as prepared by the National Archive of Criminal Justice Data, accessed <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl01.xls>

³¹⁹ Steven D. Levitt, “Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not,” *Journal of Economic Perspectives* 18:1 (2004), 163.

and that by the 2000s America was safer than it had been since the early 1960s, “tough on crime” remained a popular approach, with both Bill Clinton and George W. Bush touting their pro-death penalty credentials as presidential candidates, and figures such as Joe “America’s Toughest Sheriff” Arpaio of Maricopa County, Arizona, becoming popular in local politics.³²⁰

Much has been written attempting to determine whether harsher sentencing, stricter enforcement, quality of life policing or some other factor was the cause of the sudden stop in crime. In 2004, economist Steven D. Levitt searched newspapers to determine the most commonly cited causes of the crime drop and used economic modelling in an attempt to find which of these explanations, in fact, had been the most effective in reducing crime. He found that the explanation most commonly cited in newspapers was “innovative policing”, which mostly referred to increased foot patrols, more community involvement by police, and other quality-of-life policing initiatives that grew out of Wilson’s “Broken Windows” theory. “Innovative policing” was followed by “increased reliance on prisons”, “changes in crack/other drug markets”, “aging of the population”, “tougher gun control laws”, “strong economy”, and “increased number of police”, in order of most frequent mentions.³²¹ The six factors that Levitt’s modelling determined were not significant were the improved economy (responsible for 2%), population aging (5-6% of property crime, insignificant for violent crime), better policing (he considered it to be controversial and difficult to measure), gun control or, conversely, increased access to concealed carry permits (too small scale to evaluate), and increased capital punishment as a deterrent (1.5% of the homicide rate

³²⁰ Michelle Alexander, *The New Jim Crow*, 55

³²¹ *Ibid*, 164.

decline, not significant for other crimes).³²² The factors that he did deem to be significant were increased numbers of police (while only responsible for a 5-6% drop, it is highly cost effective), rising prison population (supposedly effective, but not cost-effective and subject to diminishing returns), stabilization of the crack market (15% reduction in homicide, 10% of other violent crime), and legalized abortion (25-30% of observed crime drop as a result of fewer unwanted children).³²³ Other studies, particularly by Jessica Reyes, implicated the ban on lead in paint and gasoline for reducing blood-lead levels, thus improving child development and cognitive outcomes and reducing crime. Reyes argued both for the importance of banning lead (56% of the crime drop) and the legalization of abortion (29%).³²⁴ Economists Keith Chen and Jesse Shapiro further found that increased harshness of prison conditions may actually serve to *increase* recidivism, or at least they do not decrease crime.³²⁵ If these economists are correct, then, combining the effects of legalized abortion, banning lead, improving economy and demographics were responsible a full 89 to 90% of the drop in crime, meaning that it is possible that only 10-11% of the crime drop had anything to do with the criminal justice policies that were pursued throughout the period of rising crime.

While economists debate the causes of the crime drop and the FBI produced reports recording it, crime remained a hot button political and social issue and the media and conservative thinkers continued to publish material suggesting that crime remained a major problem despite precipitous declines. The United States, of course, sustained far higher

³²² Ibid, 170-176.

³²³ Ibid, 177-183.

³²⁴ Jessica Wolpaw Reyes, "Environmental Policy as Social Policy? The Impact of Childhood Lead Exposure on Crime," National Bureau of Economic Research (Cambridge, MA: 2007), 1 & 2

³²⁵ M. Keith Chen & Jesse M. Shapiro, "Do Harsher Prison Conditions Reduce Recidivism? A Discontinuity Based Approach" *American Law and Economics Review*, 9, 1 (2007) accessed: http://faculty.chicagobooth.edu/jesse.shapiro/research/prison041607_web.pdf

crime rates than similar developed countries; for example, in 2010 a homicide rate of 4.8 per 100,000 compared to Canada's 1.62 per 100,000 even though this number represented a drop of more than 50% relative to the 1991 level of 9.8 per 100,000.³²⁶ Despite steady decline in homicide and violent crime, articles decrying out of control youth crime appeared frequently. One such was John DiIulio's "The Rise of the Super-Predators", published in the conservative *Weekly Standard*. This article described a supposed coming epidemic of youth violence. DiIulio described these youth as emotionless, thoughtless killers who would "make even the leaders of the Bloods and Crips -- known as O.G.s, for 'original gangsters' -- look tame by comparison." Engaging in some creative reimagining of the 1950s youth violence crisis, he dismissed 1950s gangs as being nothing more than "the Sharks and Jets of West Side Story fame." Of course, only fitting for a man who would go on to become George W. Bush's director of the White House Office of Faith-Based and Community Initiatives, his proposed solution to the supposed crisis of youth violent crime was church attendance in combination with more incarceration.³²⁷

Crime rates continue to be high in the United States compared with other countries.³²⁸ This attitude toward youth as being irredeemably criminal, sociopathic, and the source of America's high crime rate, a mythology derived from the reality that crime does tend to disproportionately be engaged in by those aged 14-25, seeped into non-corrections and non-judicial environments, particularly schools. Schools are increasingly becoming part of what the human rights and civil liberties organizations call the "school-to-prison pipeline" due to

³²⁶ Statistics Canada, "Homicide in Canada" accessed: <http://www.statcan.gc.ca/daily-quotidien/111026/dq111026a-eng.htm> & FBI, Uniform Crime Reports as prepared by the National Archive of Criminal Justice Data, accessed <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl01.xls>

³²⁷ John DiIulio, "The Coming of the Super-Predators," *The Weekly Standard*, Vol 1 No 11 (1995), 23.

³²⁸ *Ibid*, 23-24

the sense that students are dangerous and that minor infractions must be dealt with using force and policing methods rather than dealt with within the school environment or by typical school disciplinary methods. One such case is the case of Savana Redding who, in 2003 at the age of thirteen, was strip-searched by school officials on the suspicion that she had brought ibuprofen to school. Although the Supreme Court ruled in April of 2009 that this search was unconstitutional and constituted an unreasonable search under the Fourth Amendment³²⁹, strip searches remain a phenomenon within American schools. On August 21, 2009, five teenage girls were strip searched in their high school on suspicion of theft.³³⁰ Due to zero tolerance policies, the rate at which students are arrested from schools has also exploded, and rather than being for violent crime or theft, things that should be dealt with as criminal matters, in the example of the Dallas school system, 17% of arrests were for disruption and a further 26% for disorderly conduct.³³¹ Childish behaviour has effectively been criminalized.

DiIulio was not the only writer to suggest that increased incarceration was one way to prevent the supposed looming crime crisis, and youth were not the only ones bearing the brunt of the conception of the criminal as demonic. The number of people incarcerated or otherwise under correctional supervision continued to increase. In 1993, the rate of incarceration in jails and prisons per 100,000 adults was 716, not including those on probation and parole. Despite the rate being the result of over a decade of astronomical increases in incarceration, the 2010 rate of incarceration per 100,000 adults was 962 after

³²⁹ Associated press. "School strip-search arguments vex justices". MSNBC. April 21, 2009. <http://www.msnbc.msn.com/id/30295244/>

³³⁰ Jennifer Jacobs. "Lawyers, Families say 5 Girls Strip-searched at School." DesMoines Register, (DesMoines, Iowa) Sep 5, 2009. <http://www.desmoinesregister.com/article/20090905/NEWS/909050337/-1/SPORTS09>

³³¹ The Advancement Project. Education on Lockdown: The Schoolhouse to Jailhouse Track. 24 March 2005. <http://www.advancementproject.org/reports/FINALEOLrep.pdf> ., 15

having peaked at 981 per 100,000 in 2009.³³² So, despite plunging crime rates, the rate of incarceration in prisons and jails increased by 37% by 2009 before declining slightly in 2010. Fear of crime and a “tough on crime” appearance remained a useful political tool. One example that was emblematic of this was the rise of Joe Arpaio in Arizona. Arpaio, who became Sheriff of Maricopa County in 1992, is known as “America’s Toughest Sheriff”. As sheriff, his responsibilities include both policing and the operation of the Maricopa County Jail. Throughout the 1990s and into the 2000s, in his role as jailer, he became notorious for intentionally inflicting brutal and humiliating conditions on his inmates: forcing male inmates to wear pink underwear, feeding inmates only two meals a day on a budget of approximately 30 cents each, implementing chain gangs for male, female, and juvenile inmates, and, perhaps most notably, housing jailed inmates in a “tent city” outside of the main prison.³³³ In Arizona heat, according to Arpaio’s own measurements, the temperature inside the Tent City can reach 63C.³³⁴ In his role as head of policing, he attracted attention for his over-the-top actions such as using tanks and other armoured military vehicles in residential areas and recruiting celebrities such as Steven Seagal and Lou Ferrigno to service in his “citizens’ posses”.³³⁵ While Arpaio has attracted his share of critics in the form of NGOs like Amnesty International and private citizens, his methods have also made him a popular both in his county where he has been re-elected five times and has a 56% approval

³³² United States Bureau of Justice Statistics, “Correctional Populations in the United States, 1993” (US Department of Justice Office of Justice Programs, 1993), 5 accessed: <http://bjs.ojp.usdoj.gov/content/pub/pdf/cpop93bk.pdf>, United States Bureau of Justice Statistics, “Correctional Populations in the United States, 2010” (US Department of Justice Office of Justice Programs, 2010), 7 accessed : <http://bjs.ojp.usdoj.gov/content/pub/pdf/cpus10.pdf>

³³³ Joe Hagan, “The Long, Lawless Ride of Joe Arpaio”, *Rolling Stone*, 16 August 2012 accessed: <http://www.rollingstone.com/culture/news/the-long-lawless-ride-of-sheriff-joe-arpaio-20120802?page=5>

³³⁴ Ibid

³³⁵ Barry Liebowitz, “Lou Ferrigno, Steven Seagal, Join Sheriff Joe Arpaio’s Posse to Crack Down on Illegal Immigrants”, November 22, 2010. Accessed: http://www.cbsnews.com/8301-504083_162-20023434-504083.html

rating. With two published books, a Fox reality television show that aired in 2008 and 2009, and the ability to find constant media attention in the likes of *Rolling Stone*, Arpaio has attracted considerable campaign funding and support.

Arizona jails were and are not the only place in which conditions deteriorated. Overcrowding may have been a major issue in the correctional profession in the 1980s, but prison building eventually tapered off while populations continued to rise. Overcrowding was the predominant reason that California's entire prison system was ruled inhumane by the Supreme Court in 2011. In a 5-4 decision, the Supreme Court ruled in *Brown v. Plata* that overcrowding and poor medical care had resulted in "needless suffering and death" and amounted to cruel and unusual punishment.³³⁶ Indeed, at the time of the decision, a prisoner died in California state prisons every week due to inadequate medical care. The ruling ordered tens of thousands of prisoners to be released or transferred to other facilities to reduce overcrowding to 137.5% of design capacity. However, rulings ordering release provide only short term solutions: as long as sentencing rates remain high and terms of incarceration long, overcrowding cannot be resolved. The conditions of overcrowding in the California system were such that "As many as 200 prisoners may live in a gymnasium, monitored by as few as two or three officers. As many as 54 may share a single toilet."³³⁷

While the prisoners in *Brown v. Plata* were able to put forward their case, many prisoners who were in similar situations had not been able to do so. After a particularly active period of judicial involvement in the correctional system in the 1960s and 1970s, there was a growing hostility to prisoner litigation that culminated in the Prison Litigation Reform

³³⁶ Andrew Cohen, "The Supreme Court Declares California's Prisons Overcrowded", *The Atlantic*, May 23, 2011. Accessed: <http://www.theatlantic.com/national/archive/2011/05/the-supreme-court-declares-californias-prisons-overcrowded/239313/>

³³⁷ Ibid

Act, passed in 1996. The Prison Litigation Reform Act sought to limit the extent to which prisoners used the federal judicial system to remedy shortcomings in the prison system. The specific measures contained within the act were that the court could only grant relief of conditions if the “relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means.” Further, the act mandated that any motion to terminate the relief imposed by the court must be taken as a stay on the court’s decision for 30 days. It also stated that prisoners could not file suit in federal court if they had not exhausted all administrative remedies to the situation by completing all internal grievance procedures. The PLRA thus made it far more difficult for prisoners to bring their grievances to court and forced them to deal with often corrupt or hostile internal grievance procedures. This had a particular toll on prisoners who suffered from sexual abuse within prisons. The American Civil Liberties Union referred to the PLRA as creating “prisons within prisons, except with paperwork instead of locks and administrative hurdles instead of bars”, and stated that its effect on victims of sexual violence was especially severe, since they had difficulty proving a very narrow definition of “physical injury” in grievances.³³⁸

Whatever conditions were present within the prison system, and whatever conditions existed on the outside to make the prison population and the population under correctional supervision grow so quickly, it must be noted that it had an outsized impact on the African-American community. While, in 2010, the incarceration rate per 100,000 male population was 678 for whites, it was 1,775 for Latinos and a staggering 4,347 for African-

³³⁸ American Civil Liberties Union “Prison Litigation Reform Act Must be Fixed, Law Denies Justice to Victims”, April 22, 2008. Accessed: <http://www.aclu.org/prisoners-rights/prison-litigation-reform-act-must-be-fixed-law-denies-justice-victims>

Americans.³³⁹ Fully 4.3% of the total African American male population of the United States was incarcerated, not counting those on parole or probation. Approximately 30% of African-American adult males have a criminal record. The effects of this kind of wide-scale incarceration on the African-American community have been devastating. A criminal record makes finding a job exceedingly difficult, and has thus excluded a significant proportion of African-American men from the legitimate job market. In many states, felony exclusion laws which remove voting rights from convicted felons, even those who have served their time, reduce the electoral power of the black community. In many states prisons are located in remote rural areas and employ mostly local whites while the Black inmates they house come from urban areas. This not only creates racial tensions within the prisons that only further exacerbate the racial gang problem, but punishes the family of the inmate by making visitation difficult, despite the fact that maintaining close ties to family is positively correlated with reduced recidivism. How the prison population became so slanted is another matter. Despite the fact that determinate sentencing was supposed to reduce racial disparities by providing a strict set of guidelines for how specific crimes could be punished, considerable control over who gets to the sentencing stage lies in the far less regulated hands of police on the streets and prosecutors before the court. Despite considerable evidence that black and white populations use illegal drugs at a similar rate, African-Americans are anywhere from 11 to 20 times more likely to be imprisoned for possession of drugs.³⁴⁰ Further, “innovative” policing methods based on the “Broken Windows” model have targeted inner city African-American and Latino communities the hardest, making them far

³³⁹ United States Bureau of Justice Statistics, “Correctional Populations in the United States, 2010” (US Department of Justice Office of Justice Programs, 2010), 8 accessed : <http://bjs.ojp.usdoj.gov/content/pub/pdf/cpus10.pdf>

³⁴⁰ Human Rights Watch, “United States – Punishment and Prejudice: Racial Disparities in the War on Drugs”, May, 2000. Accessed: <http://www.hrw.org/reports/2000/usa/>

more prone to being caught for the kind of commonly-committed infringements, such as open container violations or small-scale possession, that whites can avoid.³⁴¹

Through centuries of reform and idealism, attempts at rehabilitation and despair at its supposed failure, reduction to pure punishment and the horror that followed, the prison system itself and incarceration as the default mode of punishment has endured as though it was eternal, necessary for civilization, and a necessary evil. The prison, however, has a history, and is an institution both created to serve its particular time and one that is particularly sensitive to political and cultural trends. The modern prison as place of both punishment and reform was the brainchild of the American Quakers, meant to fulfill their very particular vision of redeeming the criminal and reforming his way of thought and action from the inside out. However brutal the conditions, their ideal was to reform the person, not merely incarcerate him. This ideal often failed, however, and while the architecture of the prison was often copied, the ideal of the penitentiary – a house of penance – was not.

By the mid 20th century, “corrections” had emerged as a profession and, while brutal conditions persisted, the general optimism and faith in the skill of experts, the progress of humanity, and America’s prominent place in the world that characterized the post-war period influenced how prisons were seen. Rehabilitation and reform were the orders of the day, despite violent setbacks. Indeed, the 1950s dealt with its own crisis of youth violence, civil disobedience and prison riots, but experts, the media and even participants in the decade’s moral panic over comic books would look for the fault in society, not in the individual, and look to create environments in which to create the best possible results. The radicalism of the 1960s and the conservative backlash both took their toll on corrections and criminal

³⁴¹ Michelle Alexander, *The New Jim Crow*, 122.

justice, in terms of the violence of urban riots, the disorder of student protests, and the manipulation of public fears by Nixon's campaign strategy. In addition, the court system began playing an activist role in criminal justice and incarceration, simultaneously guaranteeing improved conditions to prisoners and increased rights to defendants, while making the criminal justice system far more complex, bureaucratic, and increasingly unfair to those who could not afford top defense lawyers – it could be said that there was more due process, but less justice.

By the 1970s through 1980s, as crime rates rose to undeniably unprecedented heights and the culture was swept by a series of moral panics – child pornography, ritual child abuse, repressed memories, cults, and youth violence – intellectuals such as Robert Martinson abandoned the rehabilitative ideal as ineffective. While Martinson called for re-evaluating the entire concept of incarceration as dangerous on its face, others such as James Q. Wilson called for greater use of incarceration as both deterrent to and incapacitation of criminals. The marriage of Martinson's "Nothing Works" message and Wilson's claims produced a consensus that the criminal was irredeemable and prone to recidivism; thus the purpose of prisons should be punishment, the harsher the better. The overcrowding caused by these policies would result in the need to privatize prison construction and operation, and prize those who could reduce costs by any means. This attitude carried on and intensified through the 1990s and early 2000s.

The tragedy of these measures is that, while after the increase in incarceration, crime fell, it is likely that mass incarceration bore little responsibility for it. Researchers as diverse as sociologists such as Bruce Western and economists such as Jessica Reyes, Steven Levitt, Keith Chen, and Jesse Shapiro have all pointed to the ineffectiveness – both in terms of cost

effectiveness and total effectiveness – of incarceration in reducing crime rates. Levitt suggested that the most significant factor in the reduction of the crime rate in the 1990s was legalized abortion. Reyes and Nevin both concurred that the most significant factor was banning lead – a known neurotoxin – in paint and gasoline, resulting in better cognitive outcomes – a figure Reyes pegged at being representative of 56% of the crime drop, while putting legal abortion at approximately 29%.³⁴² These figures align with Western’s analysis to suggest that incarceration and policing were responsible for only 10% of the crime drop.³⁴³ Jesse Shapiro, in his studies of prison conditions and recidivism, suggested that harsher prison conditions not only do not reduce recidivism, they may actually increase it.³⁴⁴ Meanwhile, millions of people remain unnecessarily incarcerated in brutal conditions, communities are torn apart, and incarceration is normalized as an experience in some communities.

The future of mass incarceration is, however, uncertain. Crushed under failing economies and increasing debt loads, municipalities simply cannot afford to maintain the levels of policing necessary to fill the prisons, and states cannot afford to house more prisoners. The total population under correctional supervision began to decline after 2009, for the first time in decades. Texas, which whole heartedly embraced prison privatization like no other, actively warns others not to make the same mistakes it did. California faces a crisis in corrections similar to the one it faced under its last movie star Republican governor, and will perhaps be forced to release thousands of prisoners in order to balance their budget.

³⁴² Jessica Wolpaw Reyes, “Environmental Policy as Social Policy? The Impact of Childhood Lead Exposure on Crime,” National Bureau of Economic Research (Cambridge, MA: 2007), 1 & 2

³⁴³ Bruce Western, *Punishment and Inequality in America*, (New York: Russell Sage Foundation, 2000), 187.

³⁴⁴ M. Keith Chen & Jesse M. Shapiro, “Do Harsher Prison Conditions Reduce Recidivism? A Discontinuity Based Approach” *American Law and Economics Review*, 9, 1 (2007) accessed: http://faculty.chicagobooth.edu/jesse.shapiro/research/prison041607_web.pdf

The pendulum of leniency and harshness may be beginning to swing back in the other direction, but the flaws remain in a justice system that demands procedure without justice and is overly dominated by politics. In a system where legislators, prosecutors, judges, and sheriffs all are elected by the same populace, the question remains of whether or not the pendulum can ever stop swinging and come to rest at something like balance.

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