

Courting Carcerality:  
The Rise of Paraprisons in the Era of Neoliberal Racial Statecraft

By  
Christopher Francis Petrella

A dissertation submitted in partial satisfaction of the  
requirements for the degree of  
Doctor of Philosophy  
in  
African American Studies  
in the  
Graduate Division  
of the  
University of California, Berkeley

Committee in charge:

Professor Janelle Scott, Chair  
Professor Leigh Raiford  
Professor Nikki Jones  
Professor Na'ilah Nasir

Spring 2016

(Page intentionally left blank)

Abstract

Courting Carcerality:

The Rise of Paraprisons in the Era of Neoliberal Racial Statecraft

by

Christopher Francis Petrella

Doctor of Philosophy in African Diaspora Studies

University of California, Berkeley

Professor Janelle Scott, Chair

My project examines the legal, political-economic, and ideological manifestations of the U.S. *neoliberal racial state* through the lens of *parapublic carcerality*. I introduce and elaborate the term *parapublic carcerality* throughout this exploration to describe more accurately the incursionary, politico-regulatory technology of what has heretofore been indexed by the *lingua franca* of “private prison” and/or “for-profit prison.” *Parapublic carcerality* is a significant conceptual contribution to the subfield of carceral studies in that it invites a shift in scholarly analysis from prison as a static, readymade punitive institution to carcerality as a tentacular (re)iterative site of regulatory social practice and meaning-making all while avoiding the analytic snares inherent to public/private dichotomization.

Moreover, my project explores the ways in which the internal logic of the U.S. *neoliberal racial state* is operationalized and crystallized in modern carcerative sites and practices. That is, it considers the techniques by which the *neoliberal racial state* pits law against capital and courts against corporations in order to broker temporary socio-political balances that maintain hierarchies of social difference oriented toward white supremacy and black subjugation.

More specifically, my project challenges the notion that the expansion of the U.S. prison state in the mid-20<sup>th</sup> century, as well as the emergence of profit-generating companies like Corrections Corporation of America (CCA) and the GEO Group (GEO)—firms which embody the praxis of *parapublic carcerality*—represents a unidirectional backlash to victories achieved during the modern civil rights movement. Instead, I argue that the emergence and expansion of such companies and practices, in part, is *also* a consequence of efforts to remedy the “problem” of prison crowding as defined by the federal courts.

I contend that the federal courts throughout the 1970s and 1980s absorbed radical critiques of white supremacy in the form of lawsuits filed by black prisoners and their organizational allies like the NAACP and ACLU in two interrelated ways: 1) by reframing lawsuits explicitly filed to remedy racial injustice as a (neoliberal) colorblind issue of crowding and 2) by generally refusing to rule in favor of prisoners unless crowding allegations were central to their suits.

And finally, my examination assesses the extent to which the praxis of *parapublic carcerality* is tethered to the larger project of *neoliberal racial statecraft*, a project of both “governance and a state of condition”<sup>1</sup> in which whiteness serves as a proxy for social deservedness and blackness approximates criminality and what I term the “anti-citizen.”

---

<sup>1</sup> Please see David Theo Goldberg’s *The Racial State* for a more thorough expatiation of the racial state as a “racial condition.”

Dedication

For Dad

## Table of Contents

Abstract:	1
Dedication:	i
Table of Contents:	ii
Acknowledgments:	iii
Introduction:	1
Chapter 1:	9
Chapter 2:	17
Chapter 3:	29
Chapter 4:	46
Chapter 5:	60
Discussion:	73
References:	77
Appendices:	95

## Acknowledgments

I would like to thank the entire Department of African American Studies at the University of California, Berkeley for its unwavering support from 2009-2016. Words cannot express my gratitude. In particular, I would like to thank my dissertation committee—Drs. Janelle Scott, Leigh Raiford, Nikki Jones, and Na'ilah Suad Nasir—for their unflagging commitment to enhancing my scholarship.

I would especially like to thank Dr. Janelle Scott—Chair of my dissertation committee—for her mentorship, advocacy, and patience. If not for her steadfast encouragement, I never would have completed this project. I cannot overstate my gratitude.

In addition, I would like to thank my family, friends, and mentors who have supported this project from its inception to its completion. In no particular order I give thanks to Mom, Dad, Dave, Aunt Georgann, the Petrella family, the Lamagna Family, Lindsey Herbert, Mike Banach & Family, Jesse Millen-Johnson & Family, Dr. Justin Gomer & Family, Dave Desjardins, Alec Maybarduk, Jenna Vendil, Benjamin and Nicola Chin, Julisa De Los Santos, Dr. Jamil Drake, Dr. Matthew Pettway, Alex Friedmann, Paul Wright, Bob Libal, Kymberlie Quong-Charles, Kihana Ross, Dr. George Gonzalez, Dr. Ronald Williams II, Dr. Connie Wun, Dr. Na'ilah Nasir, Dr. Michael Cohen, Dr. Robert Allen, Dr. Charles Henry, Dr. Ula Taylor, Dr. Hardy Frye, Dr. Kathleen Moran, Dr. Michael Jackson, Dr. Wallace Best, Dr. Thomas Tracy, Dr. Stephanie Kelley, Dr. Michael Rocque, Dr. Leslie Hill, Dr. Marcus Bruce, and the late Rev. Peter J. Gomes.

And finally I would like to thank Dr. Carl Benton Straub. Without you, Carl, none of this would have been possible.

## Introduction

In 2016, 31 state departments of correction contract with at least one publically traded, for-profit, private prison<sup>1</sup> company. Taken together, the only two publically-traded, for-profit prison management firms—Corrections Corporation of America (CCA) and the GEO Group (GEO)—operate nearly 200 secure and confined<sup>2</sup> adult facilities across the country which holds over 130,000 individuals (Selman & Leighton, 2010). Since the industry’s inception in the early 1980s, growth in private prison capacity has outpaced increases in the U.S. population and gains in state and federal public prison facilities.

Whereas the U.S. population has risen by 23 percent since 1990, the number of individuals incarcerated in state and federal prisons has grown by 41 percent over the same period (Carson, 2015, p. 4). Meanwhile, the for-profit prison population has hypertrophied by 1664 percent (Mason, 2011, p. 6) from 1991-2008.<sup>3</sup> At present, nearly 12 percent of all state and federal facilities are operated by CCA and GEO. Together, these two companies account for 74 percent of the private prison market share (Kyle, 2013, p. 3).

Contemporary scholarship on private prisons generally adheres to two analytic paradigms. The comparative efficiency paradigm emblemized by Mukherjee (2015) and Volokh (2015) for instance, casts public and private prisons as disparate entities and then seeks to determine which model is most cost-effective. In contradistinction, the normative jurisprudential paradigm embraced by Gran (2007) and Anderson (2009) poses questions about the legal propriety of private prisons<sup>4</sup>. While traditional economic and legalistic questions are certainly important to assess the propriety of private prisons, they pose some limitations. Both conceptualizations assume an impermeable functionalist distinction between public and private prisons models. Along with Gilmore (2006) and Rodriguez (2006), I argue that not only do such binaries collapse in practice but also that a strict public-private dichotomization problematically circumvents questions about the legitimacy of carcerality itself as a social praxis.

To this end I offer the term *parapublic carcerality* – a coinage that for the remainder of this project will supplant the vernacular of “for-profit prison” and/or “private prison”— as a way to more accurately conceptualize the commingling of state and market as a decidedly political practice that regulates and reinscribes race penologically in both material and immaterial ways. Further, I argue that the concept of “private prison” is a taxonomic misnomer, one that consequentially inflects the ways in which intellectuals and practitioners evaluate the very purpose and operations—the *raison d’etre*—of prison management companies. Employing *parapublic carcerality* or, in some cases, *paraprison(s)* provides a more accurate diagnostic tool for assessing the articulatory relationship between companies like CCA and GEO, the government agencies which support them, and the ways in which such a relationship reinforces the fundamental aims of the *neoliberal racial state* in overseeing, in

---

<sup>1</sup> I begin by using the traditional vernacular of “for-profit” and/or “private” prison, but ultimately reframe the “private prison problem” in and through the language of *parapublic carcerality* and/or *paraprison(s)*.

<sup>2</sup> This designation excludes “community correction” facilities and “transition homes” which provide temporary housing, usually defined as less than 90 days.

<sup>3</sup> Let me provide a point of reference to illustrate what a growth rate of 1664 percent looks like over 17 years. If California’s population had grown by 1664 percent over the last 17 years it would currently sit at 50 trillion.

<sup>4</sup> Please see Mukherjee, Anita (2015) “Do Private Prisons Distort Justice?,” Volokh, Sasha (2014) “Are Private Prisons better or worse than Public Prisons,” Gran, Brian (2007) “Holding Private Prisons Accountable: A socio-legal analysis of contracting out prisons,” and Anderson, Lucas (2009) “Kicking the National Habit: The legal and policy arguments for abolishing private prison contracts.”

David Theo Goldberg's words, "institutional, definitive, and disciplinary practices" (Goldberg, 2002, p. 110).

*Neoliberal racial statecraft* is the term I apply to the state's processual deployment of the interlocking allegedly colorblind praxes of race, market, law, and carcerality in service of creating, ordering, and patrolling the movements and topographies of (social) bodies. As a term, *neoliberal racial statecraft* describes and diagnoses the ascendant socio-political configuration of our time, one in which the panoptic technologies of race, market, law, and carcerality attempt to achieve and/or to restore structural-racial stabilities oriented toward white supremacy and black marginality through the language, policy, and practice of colorblindness. To this end, squarely challenging the often taken-for-granted nomenclature of private prisons is a critical first step to the project of re-threading the operations, aims, and antinomies built into "actually existing" neoliberalism.

"Actually existing" neoliberalism is an unstable process which partakes in the reuse and fortification of the state in order to secure highly regulated markets that distribute wealth and power upward (Wacquant, 2013) and social suffering downward through the indices of racial deservedness and group-differentiated premature death (Gilmore, 2009) among other ideological and material markers of social difference and worth (Peck, 2010).

I argue that the modern prison—both as site and practice—serves the material purpose of social immobilization and the ideological aim of producing and ossifying "race assumptions" (among others) which give birth (and death) to claims of social deservedness. That is, the prison itself constitutes a sociohistorical site and practice "by which racial categories are created, inhabited, transformed, and destroyed" (Omi & Winant, 1986, p. 3).

My work explores conceptually the extent to which *paraprisons*—prisons operated by companies like CCA and GEO—expand and transform the state's capacity to regulate social marginality by exploiting efforts to remedy civil rights violations as defined by the federal courts through the social praxis of *parapublic carcerality*. In conjunction, it examines the extent to which public agencies influence the governance of for-profit firms and the ways in which the state's need to regulate social marginality is tethered to ideological tropes of racial deservedness.

That is, this project considers the "how," "why" and "to what end" *paraprisons*, while originally emerging in the early 1980s as a strategy to redress civil harms experienced by black prisoners (as well as other prisoners of color) through prison conditions cases litigated in the 1960s and 1970s, have ultimately expanded the sanctioning capacity of the state.

The development of *parapublic carceral spaces* is a consequence of the push for the expansion of civil rights for black people in the context of liberal legal redress, that is, reduced vulnerability to cruel and unusual punishment in the form of crowding. This expanded array of marginality is both a cause and consequence of the larger contemporary project of what I call *neoliberal racial statecraft*, a project based the ideology of colorblind anti-blackness.

Simply stated, my project explores the paradoxical ways in which the *neoliberal racial state* absorbs seemingly progressive efforts at racial-civil redress by black prisoners and their organizational allies by repositioning and reframing such overtures through the colorblind language of prison crowding and then uses such discourse to naturalize the development of *parapublic prisons*, a social praxis squarely antithetical to the aims of racial justice.

\*\*\*

I argue that the emergence of modern (and not so modern) practices of *parapublic carcerality* centered in prison sites operated by companies like CCA and GEO is one significant spoke on the wheel of *neoliberal racial statecraft*. My objective here is to complicate the fundamental assumptions of the neoliberal project through a detailed examination of the rise of *parapublic carcerality* as one material-ideological response to civil rights redress.

Efforts at prison expansion as well as the emergence of *parapublic carceral practices*—as it they have traditionally been defined and periodized—not only emerged as white backlash to the gains won as a result of the modern civil rights movement but also as an effort to achieve legal compliance with civil rights litigation and specifically, to federal injunctions and consent decrees forcing states to relieve prison crowding. States chose to relieve prison crowding, however, not by reducing populations but by building and expanding prisons, and especially prisons managed by companies like CCA and GEO.

To be clear, prison crowding did not first emerge during the modern civil rights era—in fact it began in 1803 in Philadelphia’s Walnut Street Jail<sup>5</sup> (predecessor to the Eastern State Penitentiary) —but the 1960s represents a shift in policy in which the federal courts first became willing to entertain prison conditions petitions by virtue of pressure from black middle-class led reformist organizations like the National Association of Colored People (NAACP) who began to represent black prisoner activists. Paradoxically, these very crowding lawsuits set in the context of the reassertion of white dominance helped to set the stage for the emergence of CCA and GEO. The neoliberal combination of state-level fiscal restraint, taxpayer revolt against higher taxes for prison construction, and white-conservative tough-on-crime policies lobbied for by CCA and GEO coupled with the liberal use of injunctive relief from the federal judiciary produced an unsustainable carceral situation. How the *neoliberal racial state* ultimately sought to negotiate these complexities—to bring them into accord through emerging praxis of *parapublic carcerality*—is the subject of this project.

### The Rights Revolution

Prior to the 1960s the federal courts generally adopted a “hands off” posture to prison conditions litigation, particularly with respect to Section 1983 Civil Rights crowding suits.<sup>6</sup> What is distinct about the late 1960s and early 1970s is that the federal courts began to intervene in prisoner rights’ suits, many of which were organized by black prison activists and civil rights lawyers of the era associated with the NAACP’s Prison Program (and Legal Defense Fund) and the American Civil Liberties Union’s (ACLU) National Prison Project. These two organizations—and the figures behind them—played a crucial role in generating concern for the health and safety of people in U.S. prisons between the mid-1950s and the early 1980s.

Incarcerated black activists recognized linkages between the fate of prisoners and the treatment marginalized communities experienced in cities and towns around the country (Berger, 2014, p. 6). At the urging of activists serving time in U.S. prisons, for instance, the NAACP chartered its first Prison Program branch at the Federal Penitentiary in Lewisburg, Pennsylvania in 1972. Between 1970-1979 the NAACP and NAACP affiliate organizations filed over 60 percent of litigated civil rights prisoner cases (Feeley & Rubin, 1998).

The stated role of the NAACP Prison Program was “to fight discrimination in the

---

<sup>5</sup> The Walnut Street Jail was built in Philadelphia in 1776 and was replaced by Eastern State Penitentiary in 1829.

<sup>6</sup> The passage of the Civil Rights Attorney Fee Act of 1976 provided financial awards for prevailing parties in Section 1983 litigation.

nation's prisons, which housed disproportionately large numbers of blacks and other minorities, and reduce the rate of prisoner recidivism...as well as to sponsor educational instruction, job training, incentive awards, fund raising activities, and entertainment” (Mobley, 1980). By the early 1990s there were 42 branches of the NAACP's Prison Program chartered in 16 states with a membership of more than 3,000 individuals (Mobley, 1980).

As a direct result of the NAACP's efforts, close to 90 percent of all jurisdictions were under some type of court order to bring their respective prison populations into constitutional compliance with acceptable capacity designations delineated by the federal courts by 1984 (Schlanger, 1999, p. 2). But court-ordered crowding reductions were not always the primary aim of the lawsuits filed by the NAACP and the prisoners it represented. As we will see in Chapter Three, the federal courts became adept at reframing lawsuits filed over racial discrimination as a problem of prison crowding. In so doing the courts were able to sidestep questions of race and instead seek remediation through the colorblind language of crowding. Please see Table 1 on the following page<sup>7</sup>.

---

<sup>7</sup> This table can be found in Schlanger, Margo (2006) “Civil Rights Injunctions over time: A case study of jail and prison court orders.” *New York Law Review*: Volume 81, Number 2.

TABLE 1: SYSTEMWIDE COURT ORDER COVERAGE

	State Prisons (n = 51)				Local Jails (n = 46)			
	1984	1990	1995	2000	1983	1988	1993	1999
<b>States with any court orders</b>	<b>44</b>	<b>44</b>	<b>41</b>	<b>33</b>	<b>44</b>	<b>46</b>	<b>43</b>	<b>43</b>
Alaska	•	•	•	•				
Arizona				•	•			•
California				•		•	•	•
Connecticut				•				
Delaware			•					
D.C.	•	•	•	•	•	•	•	•
Florida	•					•		
Georgia			•					
Illinois					•			
Kansas		•	•					
Louisiana	•	•	•		•	•	•	
Mississippi	•	•	•					
New Hampshire	•	•	•					
New Jersey					•			
New Mexico	•	•	•					
New York				•	•	•	•	
North Carolina			•					
Ohio				•				
Oregon						•	•	
Rhode Island			•	•				
South Carolina		•	•					
South Dakota		•	•					
Tennessee	•	•		•			•	
Texas	•	•	•	•				
Utah		•	•					
West Virginia		•						
<b>Total states with systemwide orders</b>	<b>9</b>	<b>13</b>	<b>15</b>	<b>10</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>3</b>

Evidence suggests that these ostensibly liberal mandates—edicts which conservatives derided as creeping “New Federalism”—resulted in policy decisions which expanded prison capacity and increased institutional expenditures, both of which taken conjuncturally (Hall, 1987, p. 2) opened the door just wide enough for the emergence of *parapublic prisons*. The ease with which many of these reforms were absorbed into pro-regulatory forms of penal governance itself points to the inherent limitations of formal legal redress (Brown, 1995, p. 44).

Instead of releasing prisoners or reforming sentencing practices—tactics that some deem electorally pernicious—over 30 states built new facilities, expanded previously existing public facilities, or transferred prisoners in state custody to local jails from 1975-1980 (Swisher, 2010). Money for expansion and transfers was obtained either from public debt issuance in the form of voter approved general obligation bonds from “general revenue sharing” (also known as Fiscal Aid to States and Local Governments) programs that transferred money from the federal government to states and municipalities from 1972 to 1986.

Once this approach failed to bring capacities into compliance with federal injunctions (by the mid-1980s) *and* taxpayer support for prison construction began to wane, states turned to newly-minted *parapublic* management companies in an articulated effort to save money and “relieve crowding” without having to request more tax revenue from citizens.

\*\*\*

Tracing and evaluating this genealogy helps to demonstrate that operations of *parapublic carceral* institutions and practices emerged, in part, as a way to respond to the mid-century “prison problem” as the courts defined it, that is, as a colorblind way to deal with state-initiated policy choices which produced crowded conditions, conditions which were already always reactualized. Early cases, which were intended to remedy constitutional violations, were “resolved” by turning to *parapublic* prison companies in order to increase capacity and therefore to reduce crowding. *Paraprison*s are now precisely the types of facilities in which people of color are overrepresented even relative to public facilities (Petrella 2014, 2).

Considering the operations of the *neoliberal racial state* through the lens of *parapublic carcerality* helps to demonstrate that even though prison crowding is presented as an issue disparate from race by entities as ideologically divergent as the American Legislative Exchange Council (ALEC) and the U.S. Department of Justice (DOJ), at its core, it has never been a colorblind, race-neutral issue. As writes Goldberg (2016), “[Colorblind] racelessness is the neoliberal attempt to go beyond—without (fully) coming to terms with—racial histories and their accompanying racist inequalities...by negating and ignoring racially marked social orders into racially erased ones” (p. 221). To this end, the most crowded state systems from the 1960s-1980s were those in the U.S. South and specifically in states with populations of color greater than prevailing national population shares (Austin & Coventry, 2001). And these have been precisely the states most susceptible to incursions from companies like CCA and GEO.

According to the University of Michigan Law School’s Civil Rights Litigation Clearinghouse<sup>8</sup>, U.S. states with high percentages of people of color in prison were prone to both “prison crowding” *and* winning crowding suits. I argue that, in many cases, winning lawsuits often resulted in the emergence of the *paraprison*. The negotiation of expanding limited rights to prisoners (and more robust rights and funding to prison administrators) while reinscribing racial tropes of social deservedness is at the heart of *the neoliberal carceral project*.

Second, examining of the emergence of *parapublic carcerality* reveals that state contracting with companies like CCA and GEO does not represent merely the ascendancy of the free market. In contradistinction to discourses on “the contemporary triumph of the free market,” neoliberalism has never been about a once-and-for-all “evacuation of the state” but rather the “reengineering and redeployment of the state as the core agency that sets the rules and fabricates the subjectivities, social relations and collective representations suited to realizing markets,” (Peck, 2010, p. 22) and, as I add, to producing and sustaining racial hierarchies and assumptions that link blackness and pathology to criminality. Under this rubric “blacks more than symbolize or signify various social pathologies—they become them. In our antiblack world, blacks are pathology” (Gordon, 2000, p. 87).

---

<sup>8</sup> Please see <http://www.clearinghouse.net/> for a searchable database of all past and present prison conditions litigation.

For this reason, among others, it is important to consider to what extent the praxis of *parapublic carcerality* expands and transforms the state's capacity to regulate social marginality and how this array of punishment is distributed across various axes of racial difference. The 20<sup>th</sup> century prison conditions litigation arc helps to tell this story and reveals how the utilization of *paraprisons* transformed the state's capacity to regulate race penologically throughout the rights revolution and beyond.

### Flow of the Dissertation

I use Chapter One to detail my conceptual framework against the backdrop of my literature review. This allows me to describe and evaluate the state of scholarship on neoliberalism, racial formation, and carcerality. Reviewing the canon provides me with an opportunity to orient my conceptual and empirical contributions vis-à-vis extant work in the field.

Chapter Two serves as my methodology and research methods section in which I make transparent the methodological assumptions I use to enter into the scholarly conversation. In addition, I offer a granular, replicable explanation of my data collection methods and the ways in which I have chosen to organize and interpret those data.

Chapter Three constitutes a detailed history of prison crowding and concomitant prison conditions litigation through the lens of the *neoliberal racial state*. In short, I argue that the federal courts absorbed radical black critique of the prison as a site and practice of white supremacy by choosing to litigate cases through the colorblind language of crowding.

Further, I examine how prison conditions litigation beginning in the 1970s, as an outgrowth of the modern civil rights movement and coming at precisely the transition from Fordism to *racial neoliberalism*, contributed to the adoption of *parapublic carceral practices* in the United States. I then detail the ways in which prison conditions litigation aiming to reduce incarceration was translated in the political arena as a court order to build prisons, and particularly prisons managed by companies like CCA and GEO.

My findings suggest how “successful” court challenges for institutional change can have long-term outcomes contrary to racial justice goals. The paradox of prison litigation is especially compelling because prisoners' lawyers—lawyers often hired by the NAACP's Legal Defense Fund—were specifically concerned about racial injustice, yet the hyper-incarceration of black people (and other non-black people of color) is arguably the greatest obstacle to racial equality in the twenty-first century.

Moreover, throughout Chapter Three I ask how prison conditions litigation intending to reduce the state's reliance on incarceration eventually contributed to the emergence of *parapublic carceral practices*. This examination complicates explanations of “culture of control” or “law-and-order” politics that foreground the cultural backlash to the modern civil rights movement by suggesting that the development of companies like CCA and GEO is *also* a result of policies, in theory, that complied with civil rights litigation as defined by the federal courts.

Chapter Four constitutes an overview of the emergence and growth of Corrections Corporation of America (CCA), the nation's oldest, largest, and most influential *parapublic prison* company. Specifically, the chapter addresses the ways in which CCA has historically used various state legislatures, Congress, and the federal judiciary to its advantage through prison conditions litigation, lease revenue bonding, tax abatements, and conversions to Real Estate Investment Trusts (REITs).

I have chosen CCA over other *parapublic prison* firms for this chapter because it is undoubtedly the leading participant in, and arguably the embodiment of, *parapublic carcerality* today. As goes CCA, goes the industry. CCA, for instance, was the first *parapublic* firm to explore a REIT conversation and more or less forced the GEO Group to do the same to stay competitive. I argue that the birth of CCA was not inevitable but rather reflects a marriage of liberal legal interventionism and neoliberal political-economic policy.

Chapter Four provides an opportunity to examine the ways in which the partnership between the California Department of Corrections and Rehabilitation (CDCR) and Corrections Corporation of America (CCA) has for the last 10 years served as a laboratory for the operationalization of *neoliberal racial statecraft*. The linkages—both contractual and informal—between the CDCR and CCA helpfully illustrate the ways in which regulatory bodies literally regulate bodies through the interlocking technologies of race, law, and claims to citizenship.

Mosaics of social regulation sanctioned by the state of California represent an chance to examine the multifarious ways in which the associations among the CDCR, CCA, U.S. district courts, the U.S. Supreme Court, California Correctional Health Care Services, the electorate, prisoners, prisoners' rights organizations, the governor's office, and the State Office of the Inspector General together constitute an assemblage of racialized neoliberal practices at this specific conjuncture.

I have chosen to use California as the focus of my analysis not only because California is currently home to 132,000 prisoners—the second largest prison population in the country—but also because the CDCR singlehandedly accounts for 12 percent of CCAs total operating revenue, more than any agency except the U.S. government. By CCAs own admission, “the CDCR is our only state partner [to] account for 10% or more of our total revenue” (Park, 2014, p. 2). And at present, over 6,000 CDCR prisoners are housed in four out-of-state facilities—in Arizona, Mississippi, and Oklahoma—managed by CCA. This accounts for close to 7 percent of all CDCR prisons.

And according to my earlier research, persons of color are overrepresented in these facilities relative to both public prison populations in the state of California and state population shares (Petrella 2014, 2). Further, CDCR prisoners of color are vastly overrepresented in CCA out-of-state facilities than they are in California's own in-state public facilities. How does this facilitate the reuse and capture of *the neoliberal racial state*? Re-engineering the state and testing *parapublic carcerality* on the most politically disenfranchised groups allows *paraprison* companies to externalize costs and marginalize the most vulnerable bodies without facing white political backlash, the very type of public backlash generally seen as legitimate and generative of social redress.

This project will culminate in a discussion chapter in which I link questions of the supposed fixity of the *neoliberal racial state* and its white supremacist underpinnings with bold non-reformist reform policy steps for challenging the very legitimacy of carcerality itself as sound public policy

## Chapter One

### Conceptual Framework(s)

My project is analytically tripartite, as it attempts to bring into accord multidisciplinary scholarship on neoliberalism, race, and carcerality. As expected, such theoretical production emerges from a cornucopia of disciplines whose normative political assumptions often stand at cross-purposes with one another. To this end, I employ the *neoliberal racial state* and its attendant praxis of *parapublic carcerality* as my conceptual framework, an inherently multidisciplinary assemblage which takes seriously the contributions from fields like African American Studies, legal studies, cultural studies, sociology, anthropology, public health, and economics.

*Neoliberal racial statecraft* serves as the first half of my conceptual framework for indexing the ways in which the state chooses to produce, organize, regulate, and hierarchize bodies and social membership through an unstable lattice of race, class, and gender (among other markers of social difference). Following Hall and Goldberg, I argue that modern states themselves are “structured in racial...dominance” (Hall, 1980, p. 4) and therefore “racial states...are racist states” (Goldberg, 2002, p. 5). To this end, *neoliberal racial statecraft* is the term I apply to the state’s deployment of the interlocking technologies of race, market, law, and carcerality in service of naming, ordering, and patrolling the movements and landscapes of (social) bodies. As a term, *neoliberal racial statecraft* describes and diagnoses the ascendant socio-political configuration of our time, one in which the panoptic technologies of race, market, law, and carcerality seek to achieve and/or to restore structural-racial stabilities oriented toward white supremacy and black subjugation.

For the purposes of this project I define the “state” as the socio-political space which attempts to assemble, consolidate, and unify inherently precarious and heterogeneous constellations of policies, politics, norms, and actors in service of emancipating, constraining, or otherwise regulating speech, action, and movement. I am convinced that the term “constellation” most accurately describes the way the state arranges and rearranges itself both spatially and politically. Constellation, in the words of McLuhan (2006, 41), is a “travelling concept.” In conjunction, Mieke Bal (2002, 13) describes constellation as an elastic “site of debate, awareness of difference and tentative exchange.”

To this end, the *neoliberal racial state* is a constellation of historically contingent practices that represent a racial formation project. In practice, this framework produces what Ruthie Wilson Gilmore terms the “anti-state state” which paradoxically deregulates markets precisely by regulating citizenship (or civic participation, more generally)—most conspicuously, in this case, through the praxis of *parapublic carcerality*—as a means of generating ideological and material norms of acceptable civil and civic epistemologies (Gilmore, 1998) and institutionalizing “state directed racial exclusions...and forms of racial discipline” (Goldberg, 2002, p. 5).

### Parapublic Carcerality & Paraprisons

My project examines the legal, political-economic, and ideological manifestations of the U.S. *neoliberal racial state* through the lens of *parapublic carcerality*. I introduce and elaborate the terms *parapublic carcerality* and *paraprison* throughout this exploration to describe more accurately the crypto-expansionary, politico-regulatory technology of what has heretofore

been indexed by the *lingua franca* of “private prison” and/or “for-profit prison.” The concept of *parapublic carcerality* is a significant contribution to the subfield of carceral studies in that it invites a shift in scholarly analysis from prison as a static, readymade punitive institution to prison as a tentacular (re)iterative site of regulatory practice all while avoiding the analytic snares of public/private dichotomization.

For this reason it is important to consider to what extent the social praxis of *parapublic carcerality* expands and transforms the state’s capacity to regulate social marginality and how this array of punishment is distributed across various cleavages of difference. Using *parapublic carcerality* provides a salutary diagnostic tool for assessing the mutually articulatory relationship between companies like CCA and GEO, the government agencies that support them, and the ways in which such a relationship reinforces the fundamental aims of the *neoliberal racial state*. It is for this very reason I propose the term *parapublic carcerality* as a way to more accurately conceptualize the commingling of state and market as a political practice that produces and regulates race penologically.

The way in which *parapublic carcerality* gets instantiated through the *neoliberal racial state* is itself a racial formation project. Racial formation projects constitute, in the words of Paul Gilroy, a “changing same.” That is, they are both transhistorical *and* historically variable. My work holds these two registers in productive tension with one another and applies the techniques of *neoliberal racial statecraft* to the 1960s, 1970s, and 1980s, that is, to the historical moment in which federal courts first began to consider prisoner suits filed by civil rights organizations. I argue that even though civil rights organizations such as the NAACP and ACLU intended to address and repair civil harm through litigation, the way in which such litigation was decided through the colorblind language of crowding and then translated into carceral policy expanded the sanctioning capacity of the state to re-regulate blackness.

To this end I draw heavily on Omi and Winant’s (1986) helpful construal of a racial formation project, that is, “the processes by which social, economic and political forces determine the content and importance of racial categories and by which they are in turn shaped by racial meanings” (p. 13). Crucial to this formulation is the treatment of race as an irreducibly central axis of social relations defined and contested by the commingling of achieved and ascribed social structures, practices, identities, and language.

According to Omi and Winant (1986) racial formation is “the sociohistorical process by which racial categories are created, inhabited, transformed, and destroyed” (p. 14). Omi and Winant’s insights are central to my work because they demonstrate that race cannot be epiphenomenalized in social analysis but rather is itself an “autonomous field of social conflict, [contestation], political organization and cultural/ideological meaning” (p. 21). In an era of encroaching post-racial, race-neutral, and colorblind perspectives, their assertion of the centrality of race cannot be overstated.

Against the backcloth of Omi and Winant (1994) I argue that the development and implementation of *parapublic carcerality* meets the basic definition of a racial formation project because it constitutes a competing sociopolitical contestation, one that’s historically flexible and politically contested. Race, they argue, encapsulates an unstable and decentered complex of “social meanings constantly being transformed by political struggle” (p. 55). Race is understood as a variable “concept which signifies and symbolizes social conflicts and interests by referring to different types of human bodies,” one “constructed and transformed sociohistorically through competing political projects” (p. 71).

Howard Winant extends this insight in *The World is a Ghetto* (2001) by explaining how contested racial meanings are linked to political projects and social formations. He writes that racial formation is “the intersection/conflict of racial projects that combine

representational/discursive elements with structural/instrumental ones” and that “iterative sequences of articulations of the meaning of race that are open to many types of agency, from the individual to the organizational, from the local to the global” (p. 32). Winant’s analysis forces one to concede that racial formation projects—in this case the *neoliberal racial state*—are always never finished; they are eternally subject to hermeneutic contestation.

I find Winant’s construct compelling because it eschews racial over-determination and epiphenomenalism by recognizing that racial-social meaning reflects and is reflected by a variety of historically embedded social processes as a first order principle. In short, there is no race without “time;” there is no race without context.

Not only is there no race without time but race is also, in a sense, timeless. Therefore, racial formation is *also* transhistorical (though not uniformly applied) in the ways in which shifting assemblages of practices and policies produce and justify structures and ideologies that result in black suffering. I argue that the objective of *neoliberal racial statecraft* and *parapublic carcerality*—broadly construed as both structural and quotidian—is not preponderantly to generate profit or to mete out punishment on marginalized and disgraced populations *a posteriori*, but rather itself to produce, sustain, and regulate such populations.

In short, the commingling of state and civil society—*parapublic carcerality*—generates normative, punishable categories of people through the process of criminalization that results in carceral inclusion and/or exclusion. That is, the state makes normative evaluations on the suitability of various subjects for participation in civil society as well as civic and moral redemption. Stated differently, social forms that regulate black bodies rely less on what Foucault would describe as sovereign state violence—lynching, for example—but rather on institutions that exist in a cultural-symbiotic relationship with the state to regulate social marginality<sup>9</sup>.

In *Black Childsavers*, for instance, Geoffrey Ward (2012) argues that the concept of civil and moral redemption serves as the *sine qua non* racial fulcrum for participation in U.S. democracy. Ward writes that white supremacy perpetuated a perceptual problem as (juvenile) justice institutions were created at the turn of the 20<sup>th</sup> century. He writes that “whereas white youths were viewed as capable of maturing into capable adults, black youths were considered to be innately inferior and fundamentally incapable of reaching comparable expectations...the persistence of democratic exclusion would affect black youths and adults alike, the former in terms of their diminished access to citizen-building ideals and initiatives, and the latter in terms of their lack of authority or influence in the deliberations of the parental state” (p. 43).

Applying Ward’s insights to the operations of the *neoliberal racial state* forces one to confront the ways in which carcerality, writ large, not only results in forms of *de jure* democratic exclusion such as disenfranchisement but also produces ideologies of capability, capacity, and worth which adhere to black bodies, and more generally to bodies of color, whose (often unmarked) political and existential reference point in the social imaginary is whiteness.

One need not look any further than mainstream coverage of the recent high profile debate between Harvard University’s debate club and prisoners from Clinton Correctional Facility in New York State to validate this claim. “Harvard debate champs los[t] to [a] team of prisoners” read the headline from USA Today back in November 2015. Mainstream media incredulity over the fact that the “prison team” won the debate demonstrates the ways in which the prison itself regulates ideas of intelligence, worth, and suitability for democratic

---

<sup>9</sup> Please see Foucault’s meditation on the transition from sovereign state power to biopower in *The History of Sexuality* (1976).

participation. This serves as one example of the ways in which assumptions of social worth and subjectivity get smuggled into syntax. It is not that the "maximum-security prisoners" legitimately beat the "Harvard debate champs" but rather that Harvard lost. Under the umbrella of the *neoliberal racial state* the racial center (whiteness) holds despite defeat while the marginalized (blackness) remains at the periphery despite victory.

The *neoliberal racial state* uses different practices depending on time and place to extend its ability to regulate bodies and ideas. To this end, the expansion of *parapublic technologies of carcerality*—which take the form of the emergence of companies like CCA and GEO—precisely vis-à-vis federal edicts intended to improve civil rights for black litigants reveal how subjugation can emerge out of efforts to redress civil harm and, specifically, how it does so in an era of colorblindness. Efforts at reform are couched in race-neutral language despite the differentiated racial outcomes at every step of the “criminal” processing system. As writes Goldberg, “the reach (back) for [colorblind] neutrality seeks to keep existing structural privilege and power in place...The [colorblind] postracial is the current extension of experimental nonracialism...or the racial condition in denial of the structural” (Goldberg, 2016, p. 34).

Therefore, the *neoliberal racial state* is a useful lens through which to consider carcerality insofar as it helps to challenge public/private binaries with respect to prison taxonomy and instrumentality and instead places a premium on process, interaction, and relationship between not-entirely-distinct techniques and spaces of regulation. That is, since CCA and GEO would likely cease to exist without the “state”—a gestalt of agencies and practices charged with establishing normative penal categories, constitutional standards, and financial regulations with which civil society must comport—any useful conceptual framework must be able to explode the public/private binary and instead utilize the language of unstable practice inherent to *parapublic carcerality*. In my view, the way in which the *neoliberal racial state* operationalizes the practice of *parapublic carcerality* partakes in the logic of an assemblage (Ong and Collier, 2007). *Parapublic carcerality* meets the basic definition of an assemblage in that it constitutes an experimental and open-ended praxis “responsive to unfolding elements and events, so that solutions to particular challenges are not given in advance” (Ong, 2008, p. 2). I am indebted to Aihwa Ong on this score because she highlights the ways in which “assemblages are attuned to emergent processes, the network of interacting practices and decisions is an unstable constellation always poised to respond to unanticipated problems” (Ong, 2008, p. 3).

And further, conceptualizing *parapublic carcerality* as an assemblage pushes one to identify and assess contingent and interrelated entanglements of situated social practices while, in Ong’s words, eschewing “the increasingly obsolete domains called ‘culture’, ‘economy’ and ‘society’ (Ong, 2005, p. 17). The way in which *parapublic carcerality* gets marshaled in the framework of *neoliberal racial statecraft* is mobile and flexible. One cannot easily dismiss such an insight because “actually existing” neoliberalism, in the words of John Clarke, is “disorderly...characterized by contradictions, antagonisms, and contested political projects. Neoliberalism provides a political and governmental repertoire for trying to intervene in such fields and direct them in particular ways” (Clark, 2009, p. 2).

The *neoliberal racial state*, therefore, is a racial formation project that endeavors to resolve, reconcile, contain, or displace contradictions and antagonisms (more or less successfully) but often only to generate new contradictions, antagonisms, and dysfunctions (Clarke 2009).

To this end, the *neoliberal racial state* can be seen as a set of shifting and unstable relations and modalities involving the reengineering and redeployment of the state as the

core agency that establishes the rules and fabricates the subjectivities, social relations, and collective representations suited to realizing order and markets particularly through racial marginality and class consolidation emerging in the early 1970s.

Placing the growth of *parapublic carcerality* against the backdrop of *neoliberal racial statecraft* helps to exhume the theoretical nexus among state, market, law, race, and citizenship. This context is too often ignored in current scholarly and political debates over prison contracting, especially debates that prioritize comparative efficiency models over genealogical considerations.<sup>10</sup>

Questions of efficiency, in my view, are essential in the policy arena but they only tell half of the neoliberal story. The significant question here is this: how is it that good faith efforts to redress civil harm led to the expansion of the state's capacity to regulate social marginality through the praxis of *parapublic carcerality*? *Neoliberal racial statecraft* is one answer to this question. And the development and expansion of *paraprisons* is one example.

\*\*\*

I am indebted to theorists like Aihwa Ong (2007) and Jamie Peck (2009) who caution against marshaling the term neoliberalism as “a planetary theory of everything” but rather conceptualize neoliberalism(s) as “the interplay of optimizing rationality, political institutions and actors [which] defines a particular configuration, i.e. a milieu of transformation, a space of problematization. Thus, neoliberal logic is best conceptualized not as a standardized universal apparatus, but a migratory technology of governing that interacts with situated sets of elements and circumstances” (Ong, 2007, p. 3).

Is neoliberalism descriptively, analytically, and conceptually stretched too far to be productive as a critical scholarly tool? On the one hand, Jamie Peck writes that, “neoliberalism seems to be everywhere” (Peck, 2005, p. 4). Aihwa Ong, on the other hand, admits, “neoliberalism seems to mean many different things depending on one's vantage point” (Ong, 2007, p. 5).

These two representative perspectives illustrate that neoliberalism is a stretchy, wobbly term. It is promiscuous, applied ubiquitously to manifold disciplines and fields of study, and omnipresent in the sense that it is often treated as a “global theory of everything.” My methodological objective is 1) to narrow and sharpen the theoretical reach of neoliberalism in order to make it an effective analytic tool and 2) apply this analytic tool to the praxis of *parapublic carcerality* emerging in the early 1980s.

Scholars who write on neoliberalism imbue the term with different purposes, descriptions, and analyses. While David Harvey (2005), for instance, argues that neoliberalism is a political-economic project seeking to shift the balance of power in global capitalism in order to consolidate power by creating new means of capital accumulation, Jamie Peck (2009) contends that neoliberalism constitutes a political-ideological project which dismantles pro-equality political arrangements and their forms of institutionalization. Aihwa Ong (2006) augments both of these theories and writes that neoliberalism marks the rise of technologies of governing populations that construct “economic” logics of

---

<sup>10</sup> A large number of think tanks and advocacy organizations—organizations emblemized by the ACLU (on the left) and the Reason Foundation (on the right)—take strong stances either for or against prison privatization without ever offering a robust genealogy of the privatization movement itself. Legal scholar, Sharon Dolovich, shares my frustrations with this type of ahistoricity in her piece entitled “State Punishment and Private Prisons” (2005).

calculation and invite people to become “self-governing.”

Political theorist Wendy Brown (2005) approaches neoliberalism from a decidedly Foucauldian perspective as she locates the discursive and governmental “economization” of social and political life as its key feature. John Clarke (2010) argues that neoliberalism is a political–cultural project that aims at transnational hegemony, in which different places are invited, seduced, and compelled to join. And Lisa Duggan (2007) theorizes neoliberalism as a composite ideological structure based in subject formation. Duggan argues that neoliberalism as a political project is not solely an expression of free market libertarianism, nor is it just an outgrowth of neoconservative moral authoritarianism, but it reflects both and is crystallized in shifting political subjectivities.

My work intervenes in extant scholarship by proposing a middle register between Harvey and Ong (which, in my view, constitute opposite poles of the analytic continuum) by which to construe the project of neoliberalism as a way of reconfiguring relationships between governing and the governed, power and knowledge, the economy and ideological formation, and sovereignty and territoriality (Ong, 2006, p. 6).

I construe neoliberalism as uneven, unstable, as an assemblage of technologies, techniques, and practices that are appropriated selectively, that come into clumsy encounters with local politics and cultures and that are mobile and connective (rather than “global”). That is, neoliberalism is a highly vertiginous technique of governing through regulation that can be decontextualized from its original sources and recontextualized in constellations of mutually constitutive, convergent, and contingent relations.

Secondly, my project insists upon acknowledging the centrality of race in neoliberal penal projects. Part of my objective here is to insist that neoliberalism requires a deeply contextual and conjunctural analysis involving multidisciplinary conceptual and empirical approaches grounded in specific times and places.

Along with Wacquant, I argue that *neoliberal racial state’s* penal apparatus—which involves the citizenry, schools, the courts, the legislature, and law enforcement (as well as the economy and forms of cultural production) is a central parapublic organ of the state, expressive of its sovereignty and “instrumental in imposing categories, upholding material and symbolic divisions, and molding relations and behaviors through the selective penetration of social and physical space” (Wacquant, 2009, p. 304).

The *neoliberal racial state’s* penal apparatus is a stratifying and classifying agency that self-referentially names, orders, and regulates normative categories of punishable bodies. In short, I argue that the praxis of *parapublic carcerality* is not at its core an instrument of capital extraction, but rather primarily a political institution aimed at repurposing the aims, parameters, and ability of the state to produce, reinscribe, and regulate race, class, and gendered modes of marginality. To be clear, the *paraprison* is most centrally a political appendage of the state rather than simply an institution whose primary aim is profit generation.

To this end, understanding the byzantine relationship among government contracting agencies, legislatures securing the legality of contracts, judiciaries, the electorate, public opinion, economic regimes, racial climates, and *paraprison* companies is imperative for theorizing the emergence and endurance of U.S. forms of *parapublic carcerality* beginning in the early 1980s.

## The “Neo” in the Neoliberal Racial State

Against this backdrop my exploration utilizes and then augments two common (and interrelated) explanations for the hypertrophy of the U.S. prison state: 1) an anti-black, conservative reaction to the victories of the modern civil rights movement espoused by scholars like Rodriguez (2006) and Berger (2014) and 2) a venue for surplus capital absorption in the aftermath of WWII’s plummeting corporate profit rates coupled with a perennial crisis of whiteness emblemized by Gilmore (2006). While I concede that race and capital are necessary and powerful explanatory factors for the emergence of practices of *parapublic carcerality* beginning in the 1980s, both theories require nuance.

First, the notion that expansion of the U.S. prison regime in the form of *parapublic carcerality* only represents an anti-black, conservative reaction to the victories achieved during the civil rights movements is a transhistoric overstatement; it elides what Stuart Hall would call a conjunctural analysis. Rodriguez writes, “the epoch of white supremacist chattel slavery and its constitutive transatlantic articulation—the middle passage—elaborates the social and political logic of the current carceral formation that has been named and theorized as the qualitative prison industrial complex” (Rodriguez, 2006, p. 39). He continues: “There is a material and historical kinship between the prison as a contemporary regime of violence and the structures of racialized mass incarceration and disintegration prototyped in chattel punishment...” (Rodriguez, 2006, p. 40). While I certainly agree that elements of chattel slavery appear in modern prison sites and practices, my sense is that Rodriguez’s analysis does not account for larger questions of mobile parastate power (instead of institutionalized nodes of linear state power).

In conjunction, Berger helpfully argues that the pernicious foundation of U.S. incarceration is not simply an outcome of the war on the drugs but “a bludgeon against black radicalism and other social justice initiatives in the decades after World War II” (Berger, 2014, p. 5). While I agree with Berger’s fundamental argument, I bristle at the term “bludgeon” because it seems not to represent accurately the *modus operandi* of *neoliberal racial statecraft*, a regulatory apparatus that takes on absorptive-crypto-disciplinary dimensions. In fact, its ability to accommodate dissent by absorbing it through the language of progress is anything but a bludgeon; it is a strategy that uses the rhetoric of civil rights to modulate the aims of deep racial justice.

Though I am partial to Gilmore’s argument in *Golden Gulag* that the hypertrophy of prisons in neoliberal California emerged as a solution to surplus land, labor, and capital, I worry that marshaling explanatory evidence of falling aggregate U.S. profit margins beginning in the mid-1960s is over-determined. Though aggregate corporate profit as a unit of analysis may apply to “golden gulags” situated in a state that represents the 6<sup>th</sup> largest economy in the world, I have not seen evidence that such an argument is replicable in other states in which U.S. profit margins may not serve as an accurate diagnostic tool. In no way does my critique invalidate Gilmore’s argument but rather should be read as an invitation to future scholars to consider the role of falling U.S. profits in states beyond California in explaining the mid-century prison boom.

To this end, my chief objective throughout this project is to pursue questions of race, neoliberalism, and carcerality from a multidisciplinary perspective that is relevant to scholars and policymakers alike. These questions include: how does *parapublic carcerality* use the mode of race to justify expanding the states’ ability to regulate marginality? What are the political limits of judicial redress? And how can we push back against the expansion of the penal state? Though notable exceptions certainly exist (Camp, 2016, Alexander, 2012, Simon,

2009, Gilmore, 2008, Davis, 2007) cross-pollination between prison scholars and the “left” policy-world is lamentably non-existent. This project helps to bridge what I perceive to be an ever-widening chasm between theoretical and empirical fields by linking conceptual questions to material outcomes.

## Chapter Two

### Research Methodology & Methods

In this chapter I detail my research through the lenses of project construction and methodology (what I did), process and methods (how I did it) and ethics and political implications (what choices I made along the way and why I made them).

My methodological approach is one that brings into coherence Karl Marx's notion of historical materialism with Aihwa Ong's concept of assemblage. For the purposes of this project I employ hybridized methodological underpinnings that bring into accord the centrality of historical materialism's influence on the production of socio-racial ideologies and assemblage's insistence of the radically mobile and asymptotal nature of racial formation projects, including the *neoliberal racial state*.

I begin with Marx. Marx's historical-materialist methodology offers a way of analyzing social institutions and practices by uncovering the dialectical dynamics of productive forces and social relations in the world (Hall, 1987, p. 11). In *Grundrisse* (1857) Marx writes that the purpose of revolutionary criticism is to reveal the historicity of institutions that dominant ideologies pretend are eternal. Therefore, the first step of historical critique must always demonstrate that the tendencies of material-ideological phenomena—such as capitalism, patriarchy, white supremacy, or incarceration—are not timeless and universally necessary, but rather historically specific, contingent, and unstable.

Any examination on the logic and estuaries of the *neoliberal racial state* must take root in the notion that all human history is first premised on the satisfaction of material human needs. I contrast this approach with unsatisfactory explanatory frameworks premised on, as Bourdieu might say, “negative functionalism,”<sup>11</sup> or the assumption that social mechanisms are the product of some ubiquitously malevolently Machiavellian aspiration. I reject the notion that human actors are naturally malevolent but rather make calculated decisions based on available dis/incentives secured by the *neoliberal racial state*. Historical materialism's emphasis on materiality and historicity precludes the allure of such assumptive wormholes.

Marx writes that human beings can be distinguished from animals “as soon as [we] begin to produce [our] means of subsistence, a step which is conditioned by [our] physical organization” (Marx, 1859, p. 3). That is, any historical materialist conception of existence begins from the proposition that the production of the means to support human life is the basis of all social structure. From this purview the final causes of all social changes and political revolutions are to be sought, not in the human mind, or in humanity's “better or worse insights into eternal truth and justice,” but “in changes in the modes of production and exchange” (Marx, 1859, p. 9). Marx writes that we “make [our] own history, but not as we please; we do not make it under self-selected circumstances, but under circumstances existing already, given and transmitted from the past” (Marx, 1859, p. 3).

Therefore, my historical materialist approach to questions of the U.S. *neoliberal racial state* and its attendant praxis of *parapublic carcerality* binds together the inevitable tension between human volition and regulative strictures/structures and the tension between transhistoric ideologies and their context-specific application. Agency is always operationalized within scenes of constraint. Just as capital tributaries are unlocked explicitly by regulating the speech, action, and movement of individuals so too are racial categories

---

<sup>11</sup> Like Bourdieu, I do not assume that human beings are inherently despotic or malevolent.

remade everyday by mortising race with notions of punishment, criminality, and social deservedness through the categories of market, law, and citizenship.

I use a historical materialist methodology (as the first half of my methodology) to support my argument that the emergence of *parapublic carceral* practices in the 1980s constitutes one consequence of the way the federal courts chose to define racialized carcerality as a colorblind problem of prison crowding. To this end, I argue that *parapublic carcerality* is one practice by which the *neoliberal racial state* sought to restabilize and reconstitute itself during the 1980s and 1990s.

Most extant scholarly literature on neoliberalism comes in the form of secondary, largely analytic and theoretical sources. Since the early 1990s a wide array of scholars in various disciplines and sub-disciplines like carceral studies, human geography, African Diaspora Studies, legal studies, political economy, and public health have tried to make sense of the origins, movements, politics, and overall arch of the neoliberal project. And this is part of the problem: what is the value of conceptualizing neoliberalism as a singular project? Ask differently, what is the value of disciplining neoliberalism, that is, of attempting to diagnose its history, purposes, and movements through a single disciplinary lens?

A historical materialist methodology by itself is insufficient for understanding the *neoliberal racial state* and *parapublic carcerality*. Here I argue that historical materialism must also be augmented by Aihwa Ong's capacious notion of assemblage. First articulated in Ong's *Neoliberalism as a Mobile Technology* (2006), an assemblage constitutes an experimental and open-ended praxis "responsive to unfolding elements and events, so that solutions to particular challenges are not given in advance" (p. 2). Assemblage is what allows historical materialism to diagnose diachronic social practices.

I am deeply indebted to Ong here because she highlights the ways in which "assemblages are attuned to emergent processes, the network of interacting practices and decisions is an unstable constellation always poised to respond to unanticipated problems" (Ong, 2008, p. 3).

*Parapublic carcerality*—itself an unstable assemblage—helps us to identify and assess contingent and interrelated entanglements of situated social practices while, in Ong's words, eschewing "the increasingly obsolete domains called 'culture', 'economy' and 'society'" (p. 17). Ong helps to revise historical materialism, in my reading, by suggesting that there is nothing inherently historical or exclusively materialist about historical materialism. The way in which *parapublic carcerality* gets marshaled within the framework of *neoliberal racial statecraft* is mobile and flexible. "Actually existing" neoliberalism, in the words of John Clarke, is "disorderly and... characterized by contradictions, antagonisms, and contested political projects. Neoliberalism provides a political and governmental repertoire for trying to intervene in such fields and direct them in particular ways" (Clark, 2009, p. 4).

I construe neoliberalism as uneven, unstable, as an assemblage of technologies, techniques, and practices that are appropriated selectively, that come into uncomfortable encounters with "local" politics and cultures, and that are mobile and connective (rather than global).

Neoliberalism, therefore, is less a structure but more of a mobile technique of governing that can be decontextualized from its original sources and recontextualized in constellations of mutually constitutive and contingent relations. Interpreting and evaluating the radically uneven, unstable, and historically-contingent processes and practices of the neoliberal racial state requires research methods that are rooted *and* routed (as Paul Gilroy might suggest), that is, methods that are concrete yet flexible. It is for this reason that my project reflects a multi-methods approach to research.

## Research Methods

During my first month as a graduate student in the Department of African American Studies at U.C. Berkeley a more advanced colleague advised me that I should “be prepared for my project to change.” At the time I casually shrugged off his warning. I thought of myself as a staid race-conscious socialist interested in pursuing a project at the intersection of Marxist theory, race, and prison finance. Times have changed and so too has my project.

I have come to appreciate that undertaking a multiyear original research project inevitably precipitates a number of painful births and deaths, that is, refinements in research questions, methodologies, and methods. Throughout the process of clarifying my project, collecting data, interpreting that data, and fashioning an original argument I have come to respect research and writing as highly recursive processes, as processes riddled with fits and starts and rife with trapdoors and stairs that sometimes lead to nowhere.

Richardson (2000) refers to writing as “a method of inquiry, a way of finding out about yourself and your topic” (p. 923). To this end, my methods constitute, in the words of Ellis & Bochner (2000), a “personal tale of what went on in the backstage of doing research” (p. 741). Linking my evolving research questions to my methodologies and methods reflects my appreciation of the complexities of engaging in scholarly research.

\*\*\*

My interest in and commitment to racial and carceral justice began when I was a young man. I grew up in a rural, homogenously white, middle-class town in north-central Connecticut with more prisons than stoplights. Though some of my friends and acquaintances—especially those from single-parent, working class families—regularly interfaced with the carceral archipelago, I did not become sensitized to the relationship of race and imprisonment until I picked up a copy of the 2000 U.S. Census report. I was puzzled by what I discovered.

I learned that Black/African Americans (here I use the Census designation) comprised close to 10 percent of my town’s population. I was perplexed. How could this be the case when my high school had fewer black students than I could count on one hand? With the help of a dedicated high school history teacher I discovered that though Black Americans comprised only 12 percent of Connecticut’s population in the year 2000 they accounted for 48 percent of those incarcerated in the two prisons in my hometown (Beck 2000, 2).

Next, I learned that the U.S. Census Bureau counts incarcerated people as residents of the communities wherein prisons are based, as opposed to their “homes of record.” Even though Connecticut law declares that incarceration does not change a person’s residence the state nonetheless uses Census figures for the purposes of political representation and resource allocation.

I drew a few inchoate conclusions: 1) the U.S. Census prisoner counting policy (what I now know as prison gerrymandering<sup>12</sup>) seemed unfair because it enhanced the weight of

---

<sup>12</sup> The practice of prison gerrymandering began during the first U.S. Census (of 1790). The Prison Policy Institute defines prison gerrymandering as “the process by which the Census Bureau counts incarcerated people as residents of the towns where they are confined, though they are barred from voting in 48 states and return to their homes after being released. The

votes cast in prison districts while diluting every vote cast in a district that did not include a prison (and therefore benefitted me and family and friends who grew up where we did) and 2) black Americans seemed subject to disproportionate rates of incarceration related to white Americans in Connecticut and beyond.

My nascent indignation reflected my sense that an injustice was being perpetrated on my watch and yet no one in my closest circle seemed to know, care, or be interested in redressing these wrongs. My dissertation, therefore, represents the outcome of my accumulated frustrations with how our country makes, regulates, and hierarchizes race through the practice of incarceration *and* distorts the best of what democracy can and should be. Further, my project reflects my attempt to square my commitment to producing a world in which human life can't be reduced to returns on investment, shareholder value, and/or appeals to whiteness.

To this end, the unequivocally anti-capitalist nature of my work speaks to my recognition of my own class status at a decidedly young age. Despite having growing up in a middle-class community we, as a family, were not *of* the middle-class. By all reliable socio-economic status (SES) indicators of the 1980s and 1990s our family oscillated precariously between the working- and lower-middle classes. Though we never went hungry I can't forget the feeling of living in a home paralyzed by constant financial anxiety. Arguments over how to pay for bills were common. Arguments over how to pay for college were equally as common; they were also mystifying because neither of my parents enjoyed the privilege of a college education themselves.

At some point in the early-2000s my mother hung a decorative placard in our kitchen: "Wealth is not what we have but what we are." Though I understood the sentiment, I was embarrassed by the acknowledgement. I felt trapped. And I knew "the economy" as constructed (I didn't yet have the language of capitalism) wasn't working for us.

Together, these experiences, among others, have helped to shape my interest in understanding what work race, capital, incarceration, and democracy do *and for whom they work*. Though my formal academic training has provided me with the framework and vocabulary to systematize my questions, they had for years been bubbling below the surface.

\*\*\*

At the outset of my dissertation I originally proposed to explore the relationship among blackness, capitalism, and U.S. incarceration through the lens of for-profit incarceration. I first asked: 1) Do racial disparities among prisoner populations exist between public facilities and for-profit facilities owned/operated by CCA and GEO? And 2), if racial disparities do exist then what accounts for them in light of colorblind, race-neutral placement and classification policies?

I thought that if I could validate my hypothesis that people of color were overrepresented in for-profit prisons relative to public prisons then I might be able to make a strong claim about the ways in which for-profit prison companies tend to use bodies of

---

practice also defies most state constitutions and statutes, which explicitly state that incarceration does not change a residence." Please see <http://www.prisonersofthecensus.org/impact.html> for more.

color primarily as sources of profit extraction and the ways in which such a practice reinforces ideologies of blackness as a proxy for immutable criminality.

As my project matured, however, I discovered that the relationship among blackness, capitalism, and U.S. incarceration—what I have since conceptualized as the *neoliberal racial state* and *parapublic carcerality*—is much more complex than I previously theorized. I introduced the term *parapublic carcerality* in place of for-profit/private prisons to reflect these complexities.

At the time of this writing I am interested in the origins, parameters, and movements of the *neoliberal racial state* from the late-1960s through the present. I am intrigued by how seemingly liberal appeals to racial justice can and often do get translated into policy outcomes that reinscribe moments of white supremacy and prove detrimental to people of color. More explicitly, I am interested in the ways agents and agencies of the *neoliberal racial state* have framed the problem of racialized carcerality (and calls for racial-civil redress) through the colorblind legal language of “prison crowding” and how this has led to the emergence of what I call *paraprisons* and/or *parapublic carcerality*.

I argue that the *neoliberal racial state’s* chosen technique of racial redress serves to expand and reinforce its own sanctioning capacity as well as to absorb deep critiques of white supremacy by mid-century black prison activists and their adjacent advocacy organizations. I ask: how is it the case that prison conditions litigation—and crowding litigation, especially—which intended to reduce the state’s reliance on incarceration and redress racial harms eventually contributed to the emergence of *parapublic carceral practices* which now rely on disproportionately on bodies of color for its sustenance? This project considers the “how,” “why” and “to what end” *paraprisons*, while constructed as a means to reduce crowding, have ultimately expanded the sanctioning capacity of the state and reinscribed the very civil harms prisoners of color had hoped to redress through the federal judiciary?

Stated differently, this project is about the ways in which prisoner lawsuits—which commonly alleged unequal treatment on the basis of race—were absorbed into a colorblind problem of crowding by the federal courts and then translated in the political arena as a court order to build prisons and offer contracts to *paraprison* firms like CCA and GEO, firms which operate prisons in which people of color are now overrepresented, even relative to state-managed institutions.

I argue that increasing rights of prisoners by strengthening the capacities of prisons themselves is what makes any rights-based redress consistent with the neoliberal project. I ask: how is it possible that prison conditions litigation—litigation pushed forward by black prison activists and organizations like the NAACP and ACLU—contributed to the rise of *parapublic* prison institutions whose mission is squarely antithetical to the aims of its original actors?

Tracing the genealogy of my research questions is critical because “a research project is built on the foundation of research questions” (Blaikie, 2000, p. 58). According to this approach, a research question guides the methods of data collection and interpretation. As Mason (2002) writes: “[One] will start to make strategic choices about which methods and sources are the most appropriate for answering [one’s] research questions” (p. 27).

The unstable natures of the types of research questions that govern a project of this character are balanced by methods that reflect the inevitability of question refinement. I discovered that one wobbly research question – followed by data collection, interpretation, more data collection, and then more interpretation – led me to several new questions.

Adopting a multi-method approach has proven flexible and commodious enough handle the recursive nature of engaging in a multi-year scholarly project.

\*\*\*

My multi-method (Creswell, 2003) approach reflects my commitment to producing rich descriptive and interpretive work through the interlocking techniques of 1) descriptive data collection, 2) participant observation, 3) document analysis, and 4) prolonged engagement in the field. Comingling these four research methods through the technique of “method triangulation” helps to orient my project toward advocacy-centered outcomes and, perhaps more importantly, reduces the likelihood that the prioritization of any single method would open my research to bias and misinterpretation (Altheide and Johnson, 1994, Denzin, 1978). My multi-methods approach further reflects my commitment to “use knowledge for social change” and to develop research “with a political purpose” (Thomas, 1993, p. 4) while honoring the truths and experiences of those persons and communities most impacted by the carceral arm of the *neoliberal racial state*.

Though my project initially began as an effort to gather descriptive data pertaining to the racial demographics of for-profit prisons for advocacy purposes, I quickly realized that marshaling prisoner demographic data by itself was insufficient for tracing the arc of the *neoliberal racial state* and the rise of *parapublic carcerality*. It was problematically one-dimensional.

After my first year of demographic data collection I (and my committee) noticed that my project seemed “voiceless,” that is, my demographic data seemed to displace narratives and moments of human agency. As my project has advanced I have made every attempt toggle between statistics and stories to ensure that those most ensnared by the *neoliberal racial state* (and those working the hardest to end the suffering it causes) have a chance to speak and to be heard.

### Descriptive data collection

My argument that civil rights era prison litigation eventually led to the state’s expanded ability to regulate bodies of color through the practices of *parapublic carcerality* is revealed in demographic data I collected from 31 state departments of corrections.

My data sets, however, have three important limitations. Firstly, I was unable to collect data from all 50 U.S. states because only 31 states currently contract with CCA or GEO. Secondly, of the 31 states which do currently contract with CCA and GEO only 7 (Arizona, California, Georgia, Mississippi, Oklahoma, Tennessee, and Texas) were able to provide data in which the statistical majority (at least 51 percent) of prisoners in their CCA and GEO-operated facilities had not been transferred to or from another facility for at least a year before data were obtained.

This second point is particularly important because including transfer populations in my analysis— itinerant populations that move from facility to facility over a narrow temporal field—would compromise my ability to draw a figure representative of a static facility population over a period of many consecutive months.

And finally, I did not request racial demographic data for the two (2) CCA and GEO women’s prison facilities in operation because the majority of women in these facilities are serving sentences of less than one year which posed a significant challenge to meet the very same sorting criteria I used to obtain racial demographic data of men’s facilities, that is,

“prisoners who had not been transferred to or from another facility for at least a year before data were obtained.”

It is important to note, however, *why* CCA and GEO do not actively pursue the ownership and management of women’s facilities. I discovered that companies like CCA and GEO tend not to manage women-only facilities because of the predictably high health care costs. Recent research in Arizona and Kentucky shows that women are 25-30 percent more expensive to incarcerate than men, mostly related to health care outlays (Henrichson & Delaney, 2012). Why? Studies show that women go to the doctor more often than men. Women also live longer (Wang 2013, Arias 2014).

Bearing in mind the aforementioned limitations, my data reveal that among this collection of 7 states men of color are overrepresented in CCA and GEO facilities vs. public prisons with similar population profiles. I unpack this study in greater detail in chapters four and five.

I collected data for this portion of my project by sending 73 public records act requests to over 30 separate state department of corrections via e-mail from November 2011- March 2013. I embarked on data collection beginning in late-2011 because that represents the time-period around which I was attempting to clarify my dissertation research question(s) in my Qualifying Exam papers.

The total number of public records requests I sent (73) reflects the volume I felt I needed to send until the questions enclosed in my requests were answered to my satisfaction. For instance, there were a number of occasions in which I had to send multiple public records act requests to the same state because public information officers interpreted my request for information on race as a request for information on ethnicity. In another instance I sent 4 separate requests to a particular state before I received an acknowledgment my request was being processed.

I decided which records were needed based on my interest in pursuing questions related to racial demographics in select facilities. At the time of my inquiry, no such data sets existed publically.

I obtained e-mail addresses for FOIA requests from department of corrections websites. Specifically, I requested the racial, age, and health demographics of men housed in every minimum and medium security public and “private” facility and/or unit who had been there for at least one calendar year.

I obtained data for 64 facilities in total. I could not access comparative data on maximum-security facilities simply because there is not a single maximum-security facility operated by CCA or GEO in the U.S. I therefore had to discard all data on counterpart public maximum-security facilities.

For the sake of reliability I then cross-referenced, when possible, all figures I obtained through FOIA requests with demographic data available through the Prison Policy Initiative’s Correctional Facility Locator, official facility “count sheets,” and prisoner population search directories available on state department of correction websites. I followed up on and resolved every statistical discrepancy (for instance, if data I received didn’t accord with population counts accessible on DOC websites or annual reports) I encountered via e-mail with state departments of corrections. I then took the average of all demographic figures, disaggregated them by race, age, gender, health category and facility designation, and compared them to like facilities in other states. My data are published in the appendix.

Perhaps, my largest scholarly contribution by way of research methods is the priority I place on obtaining non-redacted primary sources vis-à-vis FOIA public records requests. Though I am certainly not the first scholar to indulge this method of prisoner racial

demographic data collection, I am confident that my descriptive racial demographic data sets for CCA and GEO facilities and their public counterpart facilities will allow future scholars to extend and improve my project in important ways.

### Participant Observation

My role as participant observer in carceral justice communities has helped to open up a space for my “radical, bodily immersion in a particular field by [while remaining] equipped with the necessary disciplinary tools to be critical and reflexive” (Wacquant, 2011, p. 86). According to Wacquant participant observation as a data collection method offers opportunities for immersion and relationship building grounded in empathy while remaining “equipped with theoretical and methodological tools [and] with the full store of problematics inherited from a chosen discipline, with the capacity for reflexivity and analysis” (Wacquant, 2011, pps. 87-88). I understand engagement and immersion to be epistemologically productive rather than an impediment to knowledge production or analysis.

At the outset of this project I endeavored to conduct structured formal interviews in the form of phone calls, e-mail exchanges, and face-to-face encounters. I realized, however, as I moved through the research process that my project would be better served by conversational-style, or “unstructured” interviews. This proved especially helpful when speaking with former prisoners who, in my experience, are often suspicious of the procedural baggage of structured formal interviews and the way they can (and often do) seem exploitative by one-dimensionalizing respondents as a data source.

I spoke with 14 individuals in total including three (3) former prisoners, two (2) former correctional officers, two (2) former corrections administrators, one (1) former employee of CCA, three (3) current prison policy analysts, two (2) prisoners’ rights advocates, and one (1) state-level auditor. The total number of people with whom I spoke reflects my aspiration to engage at least two people from each constituency group I identified at the outset of my project. Despite my best efforts I was unable to meet this objective I was only able to speak with one former CCA employee and one state-level auditor.

As imagined, there is often little uniformity of approach or opinion between and among the communities I listed above. Such variation serves as an asset because engaging deeply with a mosaic of divergent voices has helped to protect me from overstating my claims in flat, monovocal terms and ensures that many perspectives will find representation in my work.

I would like to add that given the nature of my project I was sensitive to the implied assumptions of “hierarchies of credibility” with persons with whom I spoke. This is important because different constituent groups are rarely afforded the same level of credibility in the scholarly and/or non-scholarly world. Howard Becker is instructive on this score. Becker (1967) writes in *Who’s Side are we On?* that a hierarchy of credibility operates in research with and about traditionally underserved communities (p. 241). He rightly suggests that qualitative researchers interested in working with marginalized groups concentrate on those whose voices are normally unheard, and hence challenge what he terms the “established status order.” Including the voices of members of marginalized communities has helped me to balance dominant narratives about race and prison conditions litigation

without losing sight of the importance of “doing history from below.”<sup>13</sup>

Interviews were conducted in-person, over the phone, and via e-mail. Handwritten notes from each of these interviews are securely held in a hard copy file in my home office. Though complete transcripts of interviews are not replicated herein selected excerpts of are reproduced throughout this dissertation in support my argument(s). Throughout these interviews I was most interested in content and discourse analysis.

After I collected data from my interviews I organized data by constituent-group. I then coded and classified those data by theme. My coding scheme—though recursive—was generally based on end-use strategizing and centered on trying to piece together a narrative that could tease out the fundamental paradox of how seemingly progressive efforts at legal racial redress through the colorblind modality of prison conditions litigation led to forms of race retrenchment and the birth of *parapublic* prisons. Coding categories reflected both concepts and social positions. In no particular order they included: “reform, revolution, social movements, legal redress, barriers to reform, blackness, whiteness, immigration, racism, white supremacy, crime and punishment, liberal, radical, conservative, prisoner, administrator, correctional officer, activist, and ally.” I then used these data to systematize patterns and themes emerging from within my coding categories and linked appropriate generalizations to larger bodies of knowledge gained from public records requests, document analysis, and prolonged engagement in the field in order to describe and explain the emergence of *parapublic carcerality* in the era of *neoliberal racial statecraft*.

## Document Analysis

Sociologist Lindsay Prior (2003) has conducted extensive work on the use of documents in research and claims “in most social scientific work, of course, documents are placed at the margins of consideration” (p. 4). She writes that “documents form a field for research in their own right...and should not be considered as mere props for action” (6). She adds that “documents need to be considered as situated products, rather than as fixed and stable things in the world...they are produced in social settings and are always to be regarded as collective (social) products” (p. 8).

To this end she contends that analyzing documents is not strictly about fact gathering but also an opportunity to consider how documents themselves are constructed, consumed, and used in organized settings. With this in mind I approached the documents I collected with questions of the relationship among production, consumption, and content (Owen, 2014, p. 9).

I began my document analysis back in 2011 at the outset of this project. At the time my reading centered in obtaining a “lay of land” so I could develop a rich research question. In the intervening years, however, I have employed document analysis to understand how texts themselves are produced and received.

Documents I considered are various and sundry. Those specifically addressing the emergence and endurance of CCA include 16 CCA annual reports (1999-present), 34 investor proxy reports, 21 official Securities and Exchange Commission (SEC) filings, 8 investor presentations, and 27 quarterly earning call transcripts from 1983-2013. Each of these document types helps to shed light not only on the way CCA stylizes itself but allows me insight into the arcane financial operations of this company. Most of these documents

---

<sup>13</sup> I borrow this turn of phrase from E.P. Thompson.

are accessible electronically, though not easily. CCA's IPO report was not available online but I was able to obtain it from Dr. Paul Leighton of Eastern Michigan University.

I also draw on non-industry funded evaluations of the emergence and operations of CCA and GEO produced by the ACLU's National Prison Project, the Urban League, the NAACP, the National Lawyers Guild, Grassroots Leadership, the Sentencing Project, and the Justice Policy Institute. Many of these organizations provide a comprehensive chronology of the emergence of the industry, theories of punishment, and a transparent, empirical appraisal of the industry's performance. Additionally, I examine two industry-funded reports issued by the Reason Foundation and one authored by Temple University economists (openly subsidized by CCA).

Moreover, I utilized department of corrections audits of facilities operated by CCA. At present, close to 40 audits exist for over 20 states. I examined over 25 audit reports, mostly within the state of California. All audits are available on state department of correction websites and/or the California Inspector General website.

I also conducted online archival research in conjunction with the Civil Rights Litigation Clearinghouse (CRLC) curated by the University of Michigan and the Library of Congress. The CRLC is an open-access online database that allows visitors to search prison conditions litigation by year, lawsuit type, and remedy, among other factors.

### Prolonged Engagement in the Field

In recent years I have had the privilege of providing legislative testimony in New Hampshire and Vermont in support of legislation disallowing firms like CCA and GEO from contracting within those jurisdictions. I have also had the honor of crafting a piece of national legislation that challenges the propriety of companies like CCA and GEO, companies whose operations ideologically and materially mortise blackness to criminality in the public imaginary. Such experiences have provided me with opportunities to understand the contradiction between the ways in which reforms are articulated publicly and negotiated privately and the various ways in which the *neoliberal racial state* absorbs and deflects dissent through colorblind legalese.

Since 2012 I have co-chaired (with Alex Friedmann, Editor of *Prison Legal News* and former prisoner in a CCA-owned facility in Tennessee) a national campaign known as the Private Prison Information Act Campaign aimed at encouraging Congresswoman Rep. Sheila Jackson Lee (D-TX) to introduce, and to contribute to the ultimate passage of, the Private Prison Information Act (PPIA), a bill that will bring much needed transparency to the *paraprison* world.

Since our campaign launched in 2012, 44 criminal justice, public interest, and civil rights groups have supported us as institutional signatories. Over the course of two years Alex and I have sent letters to organizations ranging from the California Correctional Peace Officers Association to the Southern Poverty Law Center and followed up with e-mails and, when feasible, met with representatives in person. A copy of our form letter can be found in the Appendix.

In February 2015 Rep. Sheila Jackson Lee introduced our bill—H.B. 2470—in the U.S. House of Representatives. The bill is now being considered in the House Judiciary Committee. If passed, the Private Prison Information Act (PPIA) would require *paraprison*

companies that contract with the federal government to comply with public records requests made under the Freedom of Information Act (FOIA) to the same extent as federal agencies. Currently, FOIA does not apply to *paraprison* companies that contract with the federal government. Whereas the Federal Bureau of Prisons (BOP) and state departments of corrections are subject to disclosure statutes under the Freedom of Information Act and state-level public records laws, *paraprison* firms that contract with public agencies generally are not and this lack of public transparency is difficult to defend in light of the nearly \$8 billion in federal contracts that CCA and GEO have been awarded since 2007 (Motel, 2007, p. 3).

Both CCA and GEO currently claim a proprietary exemption clause and argue that disclosing business information would put them at a competitive disadvantage vis-à-vis one another. Our bill, however, as written, would only require CCA and GEO to produce *operational* information unrelated to financials. What makes these companies different from other government contractors whose records are not subject to FOIA requests is that 97.7 percent of CCA and GEOs income comes from public tax dollars (CCA financials) Lack of information pertaining to the operations of such companies severely limits the scope of possible research and, more importantly, public accountability.

Beyond legislative advocacy I volunteered in San Quentin's TRUST (Teaching Responsibility Utilizing Sociological Training) Program and Richmond Project Program (RPP) as a teacher. From 2009-2012 I spent many Tuesday afternoons inside the facility facilitating conversations with "lifers" about politics, religion and, well, life. During those years these men became my second family. The experience was deeply humanizing and helped to me understand how prison policy gets established, implemented, revised, and resisted. Though San Quentin is not a *paraprison* facility, many of the conversations I had with the men about their "carceral epistemologies" remain valid.

#### Validity, Reflexivity, and Subject-Location

Guba and Lincoln (1994) argue that qualitative research requires four distinct criteria for evaluating the validity of its methods: 1) internal validity: the extent to which results correctly fit the phenomenon; 2) external validity: the extent to which results can be generalized to other settings; 3) reliability: the degree to which findings can be replicated by other researchers; and 4) objectivity: the degree to which results are free from bias.

Kinchloe and McLaren (2000), however, argue that claims of truth "are always discursively situated and implicated in relations of power" (p. 299). To this end I employ triangulation as the validation process for this study (Denzin, 1978). I understand that a participant's observations are always subjected to the researcher's own biases and interpretations (Chambers, 2000; Denzin, 2000). I followed Fontana's (2000) lead on this score as I recast myself from researcher to active subject in the research process. In conjunction, I suspended my own agency. In short, I do not speak *for* my research participants; I do, however, speak *about* their concerns through the lens of my own observations and experiences.

Further, this project poses and assumes some serious political implications—especially as a one that attempts to balance the conventions of interdisciplinary doctoral-level scholarship with advocacy. I define advocacy research as an "effort to assemble and use information and resources to bring about improvements in people's lives" (Gostin, 2007, p. 2). Advocacy research, broadly construed, is a subtype of action-research that maintains allegiance both to scholarly rigor and to the values of social justice and community

empowerment. Advocacy research vectors include lobbying, testifying, pursuing lawsuits, and seeking media coverage to raise public awareness on issues associated with the *neoliberal racial state* and *parapublic carcerality*. Possible advocacy outcomes include reductions in U.S. incarceration rates and the total elimination of companies like CCA and GEO.

As a participant observer engaged in advocacy-centered work I have taken several systematic steps to check for, and to inoculate myself against, bias. The first is reflexivity. Reflexivity is a research orientation that has forced me to contend with the context of knowledge construction, especially to the effect of the researcher, at every step of the research process.

As writes Malterud (2001), “A researcher's background and position will affect what they choose to investigate, the angle of investigation, the methods judged most adequate for this purpose, the findings considered most appropriate, and the framing and communication of conclusions” (p. 483). In conjunction, Denzin (1994) suggests that as social researchers our “representation...is always self-presentation...the Other’s presence is directly connected to the writer’s self-presence in the text” (p. 571). Important to doing such work, then, is to recognize that knowledge and understanding are contextually and historically grounded, as well as linguistically constituted (Grosz, 1995; Lather, 1991; Riley, 1988). Engagement with reflexivity reflects these concerns.

Any interrogation of reflexivity must include a deep engagement with subject-location. I will be the first to acknowledge that my status as a white-cisgendered-middle-class male with three (almost four) post-secondary degrees from elite institutions has allowed to me access to spaces, people, conversations, and contradictions that most people will never experience. I take seriously the ethics and responsibilities that adhere to my variegated forms of privilege and access.

In practice this takes the form of active listening, empathy, and radically bracketing of my own assumptions about how social power is constructed and challenged. Further, it involves cultivating a deep and evolving consciousness of how my body and the privileges that adhere to it can displace others, especially people of color—and most especially women of color—in the communities in which I live and with whom I work. And finally, it means maintaining a radical openness to being radically wrong.

Because my life and work is built and sustained by centering the experiences of people of color (and de-centering whiteness) I find that I am often “the only white person in the room.” This is an experience with which I am intimately familiar and which grounded my entire research process. It is in these spaces in which I understand most viscerally *my* body as a *marked* category. Building community (and sharing space) with people of color—and striving to be a critically informed white scholar in the process—has itself been an exercise in critical reflexivity and one that, I hope, is reflected in this dissertation.

#### Disclosure Statement

I, Christopher Petrella, have not received financial support from any entity other than the University of California, Berkeley for the completion of this dissertation.

## Chapter Three

### A Case Closed, A Market Opened: The Paradox of Prison Conditions Litigation

This chapter situates the history of U.S. prison conditions lawsuits filed in the 1960s and 1970s by black prison activists and their “victories” in the form of federal injunctive relief from prison crowding against the backdrop of the neoliberal racial state. For the purposes of this chapter I argue that the project of neoliberal racial statecraft often managed to absorb radical black critiques of racialized carcerality into the colorblind language of “prison crowding” through the federal courts. I detail the ways in which prison lawsuits aiming to reduce racialized forms of carcerality and explicitly to redress racial harm were translated into the legal arena as a “crowding problem” and then translated into the policy arena as a court order to build prisons and offer contracts to paraprison firms like CCA and GEO, firms which operate prisons in which people of color are now overrepresented, even relative to state-managed institutions. I argue that increasing the rights of prisoners by strengthening the capacities of prisons themselves is what makes any rights-based redress consistent with the neoliberal racial project. This chapter asks and answers the following question: How is it possible that racial and civil redress pushed forward by black prison activists and organizations like the NAACP, ACLU, and Prison Law Offices inadvertently contributed to the rise of parapublic prisons, institutions whose mission is squarely antithetical to the aims of the actors and agencies fighting for racial justice?

In this chapter I argue that the project of *neoliberal racial statecraft* and its attendant praxis of *parapublic carcerality* emerged in the early 1980s not merely as a backlash to the successes of 20<sup>th</sup>-century civil rights movement, but also, contradictorily, in an effort by municipalities, state governments, governors, and prison administrators—that is, a loosely held together skein of political actors engaging the aims of the *neoliberal racial state*—to comply with civil rights litigation, and specifically, to federal injunctions and consent decrees forcing states to relieve prison crowding<sup>14</sup>.

Naming and framing our country’s racialized carceral problem as a “crowding problem,” despite the race-conscious nature of prison conditions lawsuits filed during the rights revolution, represents an attempt on behalf of the *neoliberal racial state*—the federal courts, most explicitly— to pivot from questions of racial justice to questions of capacity. What gets lost in this colorblind shift is the recognition that most crowding suits were filed by black prison activists and their organizational allies and were aimed at addressing civil rights violations like segregation and differential treatment on the basis of race. Tracing this history helps to show exactly how the reconstitution of white supremacy can don the armature of black progress through the praxis of legal proceduralism.

Perhaps this problem-shifting approach taken by the federal courts then explains why crowding litigation ultimately has served as a catalyst for the expansion of prison *capacity*, which, taken in larger context, became precondition for policy makers’ willingness to consider engaging the social technology of *parapublic carcerality*. This chain of events, however, is not inevitable but rather reflects larger questions inherent to the construction and maintenance of the *neoliberal racial state* and the limits of traditional law, the racialization of social deservedness, and the enduring ideological trope of immutable black criminality.

Historical taxpayer reticence to float bonds for (public) prison construction beginning in the mid-1980s coupled with ubiquitous “war on drugs” race rhetoric preemptively criminalizing communities of color opened the door just wide enough for *paraprison* companies like CCA and GEO to take advantage of an emerging market the federal courts all but created.<sup>15</sup> Moreover, there is evidence to suggest that southern states

---

<sup>14</sup> It is important to note that relieving prison crowding is not tantamount to reducing prison populations.

<sup>15</sup> I vigorously reject the notion that markets simply represent a neutral praxis but rather reflect dominant social values.

with particularly high black and brown incarceration rates per capita were the jurisdictions in which prisoners were most likely to “win” crowding suits but then end up in a profit-generating *paraprison*.<sup>16</sup>

This order of operations represents the core paradox of prison conditions litigation in the era of racial neoliberalism: Various political bodies and policy actors including legislators, governors, taxpayers, and correctional administrators indulged the practice of *parapublic carcerality* in order to comply with civil rights victories and protections against crowding, a technique that has expanded the state’s public capacity to punish, contain, and to regulate various forms of social marginality, and race in particular.

My findings demonstrate the ways in which “successful” court challenges to race-conscious carceral conditions can and often do have long-term outcomes that do little to stanch prison population growth and compromise the arc of black social progress.

The ability of the *neoliberal racial state* to reframe the problem of racialized carcerality through the vernacular of colorblind prison capacity represents the very paradox of prison conditions litigation beginning in the 1960s. The paradox of prison conditions litigation is especially compelling because during the 1960s and 1970s prisoners and their lawyers were specifically concerned about racial injustice in arguing their cases, yet the emergence of *parapublic carcerality* itself represents a deep threat to racial equity, sustainable democracy, even—in the twenty-first century. *Neoliberal racial statecraft* attempts to maintain social hierarchy by naming and framing social issues through the veneer of “pre-political” colorblind language in order to absorb progressive efforts at racial equity.

This chapter, drawing from the fields of legal studies, African American Studies, cultural studies, and sociology argues that states *first* responded to court-ordered crowding reduction consent decrees by transferring state-level prisoners to local jails with the help of federal revenue sharing programs introduced in 1972 under the Nixon administration. Nixon’s General Revenue Sharing Program existed from 1972-1986. It transferred money from the federal government to states and municipalities with few strings attached. In total over \$80 billion was spent. Bureau of Justice Statistics data suggest that when this tactic effectively failed to distribute populations in a fashion consistent with court mandates<sup>17</sup>, states *then* elected to expand pre-existing units and construct new facilities through voter-approved debt-financed general obligation bonds, itself a form of privatization.

However, after a decade-long building binge generated through a combination of public debt issuance and funding assistance guaranteed through a series of federal crime bills<sup>18</sup>, voters in a number of highly populated states<sup>19</sup> began to reject public prison construction referenda. Edsall & Edsall (1991) rightly argue that tax revolts of this era were often premised on white voters rejecting opportunities to allocate money to benefit a growing population people of color in the U.S.

Take California’s tax revolt. At the height of Mexican immigration to California in 1979 the electorate passed Proposition 13, an act that dramatically reduced state property taxes and therefore diminished the state’s revenue stream. As a result, the state defunded social services, the very types of services disproportionately utilized by people of color (Lipsitz, 1995, p. 8). This example calls into question which types of bodies deserve access to the public services and who fully constitutes “the commons.”

---

<sup>16</sup> I mined these data from “Prisoners at a Glance 1979, 1980, 1981, 1982, 1983” published by the Bureau of Justice Statistics.

<sup>17</sup> States did not have enough “capacity” in their jails.

<sup>18</sup> Here I refer to the Controlled Substances Act of 1970 and the Anti-Drug Abuse Act of 1986.

<sup>19</sup> I refer to California, New York, and Ohio, for example.

So too the court of white public opinion left states with very few options for solving the crowding crisis as defined by the federal courts. States *began to* partner with newly minted *paraprison* companies to comply with court mandates to ameliorate crowding. Contracting with *paraprison* firms to solve court-defined crowding challenges also allowed states to circumvent the will of the electorate and played on inflamed racial tensions. Unlike the traditional 2/3 voter approval typically required for public facility construction (California General Accounting Office, 2004, p. 2) decisions to pursue financing *or* construction with a *paraprison* company are made in state legislatures without direct voter influence.

Exploring the manifold ways in which black voices involved in prison conditions litigation intending to reduce captive populations and redress racial harm have frequently been translated in the political arena as a mandate to expand and build prisons, and particularly those managed by *paraprisons*, helps to underscore the complex relationship between and among state as court, state as electorate, and state as market—each of which instantiates a new regulatory regime whose fulcrum is racialized.

The story of the ways in which the state absorbs challenges to the fixity of white supremacy, of course, does not originate with the 20<sup>th</sup> century civil rights movement. *Neoliberal racial statecraft* and its attendant praxis of *parapublic carcerality* are simply periodizing terms to describe contemporary practices through which white supremacy attempts to reconstitute itself in the face of opposition.

#### The Long History of White Supremacy, Race Retrenchment, and U.S. Prisons

The birth of U.S. prisons is really a story about the birth of the nation and the birth of the ideology of race. American penal history, that is, constitutes a history of American democracy coming to terms with itself and of engaging questions of liberty, citizenship, human value, assumptions of social deservedness and capacity for rehabilitation, repentance, and self-governance in a fledgling republic. It is a story about figuring out who is fully “American” and why.

Scarcely hidden below the surface of each of these concepts, however, is the unspoken linkage between citizenship and criminality and the social fulcrum upon which it hinges: the ideology of race. The prison as a social institution—and the practices of criminalization upon which its sustenance rests—has contributed to the way the U.S. makes race.

The history of U.S. prisons reflects deep anxieties over our national and regional racial identities. Moreover, I contend that throughout the 18th, 19th, and early 20th centuries the U.S. North and the U.S. South used the project of incarceration and prison construction to define themselves over and against one another for the purposes of nation-building and race-making. The prison, therefore, represents the site where the paradox of black citizenship and black social deservedness finds its most forceful materialization.

Examples of social progress and racial retrenchment are as manifold as they are manifest throughout the past two centuries. Before the Civil War, for instance, confinement in southern prisons --in the era of *de jure* racialized slavery--was reserved almost exclusively for nonblacks. In 1860 95 percent of the Texas’s prison population was white (Perkinson, 2010, p. 88). But conditions quickly changed. After the Union won the war, after the passage of the 13th amendment which proclaimed that “neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States,” and of the Civil Rights Act of 1866 guaranteeing full citizenship to all male persons in the United States “without distinction of race or color, or

previous condition of slavery or involuntary servitude" all manner of questions surrounding race, citizen-building, and carcerality began to get asked through a different racial framework.

First, former slaves got murdered, and murdered in droves. In Texas, more than 550 former slaves were killed between 1865-1868, a homicide rate (if you will) that's nearly twice as high as that of Detroit today (Perkinson, 2010, p. 98). That is to say, in just three years roughly 1 percent of working-age black men in Texas were killed.

Those who survived were subject to what are now known as the Black Codes, an emerging body of civil and criminal laws intended to reconstitute white supremacy and perpetuate an economy based on "commend-labor relations" (Painter, 2010, p. 32). Black individuals were excluded from juries, elected office, public rail transportation, and voting. And they were prohibited from owning guns, which was no small matter in a region dominated by racist violence. African Americans were also barred from public school and homesteading largess (Painter, 2010). The Black Codes also included vagrancy statutes which stipulated that idle black individuals be fined, jailed, or forced to labor on public works, among other outcomes.

While the Black Codes outlined a legal framework for black subjection, the U.S. justice system put muscle behind it. Perhaps this explains why prisoner demographics underwent a complete inversion in the south in the postwar years. Between 1871 and 1880 the rate of black imprisonment in the south hypertrophied by 600 percent, compared to 60 percent for whites (Perkinson, 2010, p. 76). And shortly thereafter many prisoners were sold to private white citizens and companies, most notably in Texas, Louisiana, and North Carolina, and then put to work without remuneration, a practice known as convict leasing.

The moments of disruption of the racial-social order—first in the post-bellum south and then in the post-civil rights north-- was followed by a reorganization of the purpose U.S. prisons. This is also true of the modern civil rights movement. At the very moment when black prisoners and their advocates sought racial redress through the federal courts, the courts litigated in favor of crowding reductions which the public then interpreted as a mandate to build prisons and begin contracting with *paraprison* companies like CCA.

Beginning in the late-1960s prisoners drew inspiration and resources from the civil rights movement in order to challenge prison conditions and disciplinary practices through the federal courts (Schlanger, 2004, p. 30). The civil rights lawyers who represented prisoners not only sought to extend hard-won "rights" to prisoners through §1983 (section 1983) of the U.S. Code but also had lofty hopes that prison conditions litigation would ultimately reduce states' reliance on incarceration.

The origins of §1983 of the U.S. Code is worth noting here as it was originally enacted in 1871 as part of the Civil Rights Act of 1871, and is also known as the "Ku Klux Klan Act" because one of its primary purposes was to provide a civil remedy against the racial abuses that were being committed in the southern states, especially by the Ku Klux Klan.

Whereas extant evidence shows that from 1969-1996 prisoners and their lawyers were largely successful in winning parts of §1983 civil rights lawsuits, this chapter adds to virtually non-existent corpus on prison conditions litigation by suggesting that lawsuits brought on by organizations like the NAACP and argued through §1983 inadvertently contributed to the growth of *paraprisons*, a state-regulated project in which people of color are now overrepresented on a percentage basis relative to even public prisons.

## An overview of prison conditions litigation

I contend that the 114 prison crowding cases adjudicated since 1969, along with changing interpretive frameworks for black citizenship immediately following the modern civil rights movement — has contributed to 1) the expansion of prison *capacity*; 2) growth in state department of corrections budgets (Feeley, 2014, p. 19); 3) reticence among the electorate to debt finance public facility construction; and therefore, 4) opening new markets for *parapublic* prisons and expansion of the marginalizing capacity of the state.

To be clear, I do not argue that prison conditions litigation engendered racialized hyperincarceration during the second half of the 20<sup>th</sup> century. I do not intend to minimize the impact of white supremacy in its various assemblages. Rather, I contend that the ways in which prisoner lawsuits aimed at racial redress were reframed by the federal judicial arm of the *neoliberal racial state* as a crowding problem (and how solutions to the problem as defined were implemented in the policy arena) contributed to the emergence of *paraprisons*.

Historically, the adjudication of prison conditions litigation has extended rights to prisoners while also strengthening the power of correctional administrators and institutions themselves. For instance, as has historically been the case in states like Mississippi, Florida, and Arkansas, when courts find prisons in violation of a state statute or the Constitution, corrective action decrees are often accompanied by greater revenue guarantees from state legislatures (Schlanger, 2012, p. 16). Moreover, compliance with court-ordered crowding reductions has resulted in increased aggregate prison capacity (Feeley, 2004, p. 14).

Florida Governor Bob Martinez said in 1988 “it’s difficult to justify building more and more prisons if you don’t plan on filling them” (Martinez, 1998, p. 2). That is, crowding reductions are not typically synonymous with reductions in the prisoner population. States choose to build or to open new prisons and re-distribute populations to achieve compliance with crowding edicts.

### The ideology of “prison crowding”

If one were to pick up a newspaper in California or Texas—the states with the largest two largest prison populations today—one might quickly assume that prison crowding is a distinctly modern phenomenon (St. John, 2009, 2010, 2011, 2012, 2013, 2014). A closer look at the historical record proves wrong this presentist construction. More importantly, the fact that federal courts intervened when they did—in the 1960s and 1970s—and not a minute before demonstrates that the construction of prison crowding as “the problem” is ideological in nature and fails to reflect the deep racial content of prisoner lawsuits. Frederic Jameson (1982) defines ideology as an “imaginary resolution to a real contradiction.” Litigating race-conscious prison conditions suits through the colorblind framework of crowding meets Jameson’s basic definition of ideology in that the crowding framework designates *a* problem but not *the* problem.

Captive populations exceeding facility design capacity have existed since at least the beginning of the 19<sup>th</sup> century and, as I will argue, never posed a significant judicial problem in the absence of larger well-organized challenges to the racial-social order. For example, in 1806 the inspector of Philadelphia’s Walnut Street Jail resigned in protest over crowded conditions (Takagi, 1975). In 1815 the jail reportedly housed 400 percent of its intended capacity and at one point, “30 to 40 inmates were sleeping on blankets on the floor of rooms which were 18 square feet” (Takagi, 1975, p. 11). Crowding in the Walnut Street jail was particularly problematic because it compromised the segregative and penitential mission of

the facility.

In theory, the segregate system—also known as the Pennsylvania model—was established in the late 18<sup>th</sup> century in the U.S. North to induce penitence through solitude, reflection, and isolation. The mantra was “One man, one cell” (Feeley, 2006, p. 76). As a result of crowded conditions, however, white northern elites found the system to be too costly and shortly thereafter abandoned. The costs broke the budgets of early U.S. municipalities and mayors decided to abandon the system (Feeley, 2014, p. 3).

As a result, a second prison archetype was soon born: the Auburn system. The Auburn model was introduced in New York in 1819 and was characterized by congregate housing and hard labor. In short, the configuration was designed to house more prisoners in less space. The labor component was not intended to turn a profit, but rather to defray the costs associated with incarceration. Ironically, the Auburn System was constructed because New York’s Newgate prison had become so grievously crowded within a single decade of its 1797 opening. Even Philadelphia’s Eastern State Penitentiary—the successor to the Walnut Street Jail—was forced to use multiple-prisoner cells by the mid- 1860s (Takagi, 1975, p. 7).

Most southern states bypassed the penitentiary model entirely. They believed that the penitentiary model would lead to abolition simply because many proponents of the northern penitentiary were also abolitionists (Perkinson, 2010). A third prison system emerged during Reconstruction: the Plantation model. Plantation prisons in the South were agrarian rather than industrial and utilized black convict labor in the same way that earlier plantations were used to expropriate labor from enslaved people (Perkinson, 2010, p. 32).

After the Civil War the Southern justice system managed to maintain many of the worst elements of slavery. In the convict-lease system, Black Americans—including juveniles—could be leased out to labor contractors to engage in labor without pay. W.E.B. Du Bois explained that the convict-lease system—much like the sharecropping system—had its roots in white resistance to the end of slavery (Du Bois, 1904, p. 5).

Du Bois noted that even in regions where Black Americans represented a small minority of the general population they were disproportionately criminalized. In Montgomery, for example, arrest rates were never lower than 150 per 1,000 African Americans between the 1850s and 1904 (Du Bois, 1904, 22). In 1919 the *Chicago Defender* (1919, c7) noted that jails in Montgomery were bursting at the seams. Unfortunately, beyond Montgomery, extant data on crowding in such facilities do not exist. Ironically, lack of reliable data on plantation prison crowding itself suggests a certain level of indifference to the welfare of prisoners and leads one to conclude that, most likely, crowding was rife.

Bypassing the penitentiary model also demonstrates the way black bodies were viewed in the social imaginary: immutably corrupted and incapable of penance or self-reflection or improvement (Perkinson, 2010, p. 76). During the mid-19<sup>th</sup> century less than 3 percent of the prison population was Black (Sellin, 1938, p. 65). It is crucial to note, however, that these figures are misleading, as states like Georgia, South Carolina, and Tennessee did not count convict laborers as prisoners for statistical purposes.

Further, because progressive-era ideals of enlightenment, penance, and rehabilitation overlapped with the final half-century of chattel slavery, the courts and the prison taken together represent a joint site of racial contestation. The courts and the prisons are components of a contested racialized social system in which race, class, and power relations constantly shape the degree of participation in democratic systems. I trace this history—incomplete as it is—because I believe it is illustrative of the contested purpose of American prisons and the ways in which blackness in the social imaginary becomes a proxy for uncorrectable criminality and a proxy for the anti-citizen.

Imbalanced racial power relations and institutional structures dictated the administration of who was worthy of liberal rehabilitative ideals. A twofold denial black humanity and democratic standing meant that black individuals were seen as “unsalvageable and undeserving of citizen-building ambition” (Ward, 2012, p. 38). At its core, penal philosophy and reform was an 18<sup>th</sup> century and 19<sup>th</sup> century experiment in human improvement and progress, but, according to Geoff K. Ward (2012), since “black people were deemed incapable of reconciliation and humanity... slavery [and extralegal practices] essentially removed [them] from the scene of early rehabilitative efforts” (p. 46).

The reformatory developed in the same time period as the black struggle for emancipation. This is important because it points to the intersection of progressive and retrograde social reforms. Even after Emancipation black individuals were considered “inferior and undeserving subjects of white rehabilitation” (Ward, 2012, p. 47). At its core, the early reformatory movement featured contradictory progressive and repressive efforts to advance the ideals of a young liberal democracy *while* deepening elements of racial tyranny. The history of 20<sup>th</sup> century crowding and its forms of legal redress spells out this progressive/regressive intersection, or, retrenchment shrouded in the drag of racial progress.

I argue that the category of “prisoner”—a category which is *always already* racialized—represents the “anti-citizen.” Perhaps black citizenship is perhaps our country’s most salient organizing principle. Citizenship consolidates notions of belonging and social deservedness. And it is impossible to theorize belonging or social deservedness in the United States without a deep examination of blackness. DuBois’s theory of double-consciousness is particularly instructive here: how can one be both Black and American (“two warring ideals in one dark body”) in a country that often pits the two against one another? Black citizenship is about paradox, contradiction. Blackness itself forcefully tests the limits and parameters of Americanness. Racialized incarceration, in my view, is an attempt by white supremacy to resolve this paradox. So too do prison crowding consent decrees represent the *neoliberal racial state’s* attempt to resolve the tension between securing white racial order and the threat of black progress in the mid-century.

### Crowding and the Courts

For most of the history of the United States the federal judiciary embraced a “hands off” approach to adjudicating prison conditions cases—crowding or otherwise—either by simply not hearing them or refusing to develop infrastructures and procedures for prisoners to file lawsuits. In *Pervear v. Massachusetts* (72 U.S. 475 1866) the U.S. Supreme Court first held that prisoners had no federal Constitutional rights—not even Eighth Amendment protections—to safeguard against cruel and unusual punishment (Schlanger, 2006, p. 21). *Pervear v. Massachusetts* inaugurated the “hands off” policy that allowed states to operate their prisons without any federal oversight. The application of the Bill of Rights to state action did not come until after emancipation in 1867 and then only without robust enforcement mechanisms or recourse measures. In the mid-nineteenth century the Bill of Rights—particularly the 10<sup>th</sup> amendment<sup>20</sup>—was seen by litigators as a bar to federal interference with state actions, and therefore a means of guaranteeing federal restraint (Fisher, 2005, p. 986).

---

<sup>20</sup> The 10<sup>th</sup> Amendment to the U.S. Constitution reads: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

I argue that the states took a “hands off” approach to prisoners’ rights through the lens of Ruffin. *Ruffin v. Commonwealth* (62, Va. 790, 1871) and affirmed *Pervear* when it held a prisoner “has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is, for the time being, the *slave of the state*” (Wright, 1999, p. 2).

If one is a slave of the state one doesn’t have any rights the state is bound to respect and therefore doctrine of judicial distastiation persisted for decades. Even by the early-1950s in *Stroud v. Swope* (187 F. 2d. 850, 9th Circuit, 1951) a federal circuit judge conceded: “We think it well settled that it is not the function of the courts to superintend the treatment and discipline of persons in penitentiaries, but only to deliver from imprisonment those who are illegally confined” (in Schlanger, 2007, p. 21).

Though large-scale prison conditions suits were absent until the 1960s, prison litigation has its origins in the early 1940s. Legal scholar Margo Schlanger (2006) argues that “the first serious hole in the ostensibly impermeable barrier of the “hands-off” policy came in 1941, in *Ex parte Hull* (312 U.S. 546 1941), in which the Supreme Court prohibited prison officials from screening [prisoners’] habeas corpus petitions<sup>21</sup> prior to forwarding them to a court” (p. 18). Furthermore, “though *Ex Parte Hull* allowed pleas for relief from abusive conditions and in other kinds of filed complaints, judges declined to answer those pleas for nearly twenty years” (p. 11).

At the time, many obstacles to judicial oversight of prisons were doctrinal. Before courts could plausibly undertake structural reform agenda, numerous questions had to be resolved: whether and which guarantees of the Bill of Rights govern state as well as federal officials; whether an action for damages or injunctive relief (other than release from prison) could be brought against state or local officials under §1983; whether prisoners would be required to exhaust state remedies prior to bringing such an action (Schlanger, 2006, p. 12). Gradually, the courts resolved these questions, each in favor of judicial power, and judges began to intervene.

In *Cochran v. Kansas* (316 U.S. 255 1942) the U.S. Supreme Court ruled that states must allow individuals to file appellate papers from prison. Soon after, *Coffin v Reichard* (148 F 2d 278 1945) held that prisoners did not lose all of their civil rights as a result of their confinement. This decision enabled prisoners to exercise their civil rights to sue the government solely on the basis of their incarceration and the conditions thereof. The court commented in a much-repeated formulation that “[a] prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law” (Camp & Camp, 2002, p. 5)

The mid-1950s marked somewhat of a litigation nadir as judges routinely chose not to hear petitions for relief from prisoners. When, in *Burns v. Ohio* (360 U.S. 262 1959), the Supreme Court found that the state must allow indigent prisoners to file appeal without payment of fees, the courts soon became overwhelmed with suits, and petitions filed grew by 80 percent over the next two years (Mays, 1989). *Jones v. Cunningham* (371 U.S. 236 1963) further eroded the power prison administrators had over captive populations when the U.S. Supreme Court first found that state prisoners had the right to file a writ of *habeas corpus* challenging both the legality *and* the conditions of their imprisonment. And in 1964 in *United States v. Muniz* (375 U.S. 277 1964) the court held that those held in federal facilities could sue under the Federal Tort Claims Act for injuries suffered while in federal custody

---

<sup>21</sup> A *habeas* petition is typically used to challenge a state judgment that imposed a sentence to be served in the future.

(Schlanger, 2006, p. 10).

Prisoners continued to win significant legal victories in their quest for constitutional rights. In *Cooper v. Pate* (378 U.S. 546 1964) the Supreme Court ruled for the first time that those housed in state prison had the standing to sue in federal court to address their grievances under the Civil Rights Act of 1871. This is generally cited by legal scholars like Schlanger, Schoenfeld, and Feeley as the basis for applying §1983 litigation to crowding suits. The floodgates began to open a bit further.

*Bolden v. Pegelow* (298 F.2d 306 1964) required the racial integration of the District of Columbia's Lorton prison's barbershops. Less than two years later in Alabama *Jordan v. Fitzharris* (257 F.Supp. 674 N.D.Cal. 1966) found that conditions in isolation constituted cruel and unusual punishment. Though evidence suggests that racial segregation was a common practice in U.S. prisons long before 1966, the courts refused to take up this issue officially until the mid-20<sup>th</sup> century (Ward, 2012).

In 1968 the decision rendered in *Jackson v. Bishop* (404 F.2d 571 1968) held that the whipping of prisoners (a practice with its historical roots in race-based slavery) was unconstitutional and one year later *Johnson v. Avery* (393 U.S. 483 1969) struck down prison regulation prohibiting prisoners from assisting each other with habeas corpus applications and other legal matters (Boston, 2003, p. 5).

### Johnson's Office of Economic Opportunity

President Lyndon B. Johnson dealt a substantial blow to prison officials—officials in the South, in particular—when in 1967, under the War on Poverty's Office of Economic Opportunity (OEO) legal program, public interest law firms began to receive federal funding. Racial concerns were central to Johnson's War on Poverty program (Quadagno, 1996).

In Johnson's 1964 State of the Union address he declared an "unconditional war on poverty" in which he noted that "many Americans live on the outskirts of hope – some because of their poverty, and some because of their color, and all too many because of both" (in Perkinson, 2010, p. 134). Johnson linked the War on Poverty through the language of civil rights by insisting "increased opportunities...must be open to Americans of every color. As far as the writ of Federal law will run, we must abolish not some, but all racial discrimination" (in Perkinson, 2010, p. 136).

It is also important to note that the Office of Civil Rights was situated within the Office of Economic Opportunity. This structure allowed the Johnson Administration greater leverage to try to eliminate or at least reduce racial discrimination by threatening to withhold funds and federal contracts to businesses, hospitals, and schools that did not integrate.

Johnson was clear that the War on Poverty was "not merely an economic issue, or a social, political, or international issue. It is a moral issue." His call for a War on Poverty is paired with insistence on passage of civil rights legislation then pending in Congress, and the message offers a clear echo of John F. Kennedy's June 11, 1963 categorization of civil rights as a "moral issue...as old as the Scriptures and...as clear as the American Constitution" (Glaude, 2016).

Over the next five years 60 percent of law firms receiving OEO money specialized in racial discrimination law (Davis, 1994, p. 45). Prior to the OEO program, just a few hundred

full-time lawyers performed legal aid work. By 1972, OEO had added over 2,500 lawyers, who worked in 850 offices in over 200 communities (Schlanger, 2006). OEO was replaced in 1974 by the Legal Services Corporation, an entity which continues to exist today and helps provide legal assistance to the indigent.

In conjunction with the OEO the Ford Foundation offered a grant in 1972 to the American Bar Association to establish the National Resource Center on Correctional Law and Legal Services, a “call center,” which could provide legal services lawyers with advice and model pleadings (Alexander, 2012, p. 191). The combination of robust federal funding coupled with a moderate-liberal judiciary instantiated the possibility of filing, and winning (in the legal sense), prison conditions lawsuits.

Margo Schlanger notes that the first prison and jail orders of the 1960s had some obvious linkages to broader trends in civil rights litigation—in particular to the desegregation litigation project spearheaded by the NAACP Legal Defense Fund. Not only were the lawyers (and the judges) often identical under the characteristic litigation techniques—“complex party structure; relatively loose coupling of right and remedy; and forward looking and negotiated remedies, sometimes requiring an active and continuing role for the presiding judge—were the same” (Urban Institute, 2011, p. 5). There are substantive links as well; the first cases required prisons to implement behind bars legal rights generally applicable on the outside—free exercise of religion, equal protection of the laws, and free speech—the most important of which related to African American prisoners’ subordination (Davis, 2003, p. 54). Beginning in 1969 system-wide litigation emerged as an outcropping of a larger wave of Section 1983 prisoners’ rights litigation embedded in the rights revolution.

For instance, Black Muslim prisoners associated with the Nation of Islam (NOI) agitated against widespread prison policies that denied them access to religious literature, clergy, and services, but granted similar requests by Christians and adherents of other religions (Davis, 2003, p. 57). The NOI won six lawsuits against California, New York, and Washington D.C. prison systems from 1968-1972 that resulted the availability of religious instruction for Muslims and the right to wear traditional Islamic garb (Smith, 1993).

The mid to late 1960s saw federal courts’ newfound willingness to allow prisoners the benefits of other rights, as well. It did not take long before a set of cases established rights to due process protections prior to imposition of prison discipline and to more humane conditions of in-prison punishment for disciplinary infractions. Soon thereafter, sensitized (and sanitized) by the Attica riot of 1971 and to the privations characteristic of prison life, courts began to grant ongoing relief in cases based on sometimes uncontested evidence of brutal conditions not just in isolation cells but throughout facilities. There is evidence that courts used the language of Attica to sway judges into siding with prisoners (Rodriguez, 2006, p. 22).

The emergence of the rights and race consciousness of the 1960s is critical for understanding this story. Prison conditions cases can only be understood when properly situated in a much broader tapestry of civil rights. Indeed, the very term “prisoners’ rights movement” reflects roots in the modern civil rights struggle.

Legal scholar Margo Schlanger argues that Black civil rights lawyers joined in the prisoner rights cases in a variety of ways. A number of the lawyers who represented plaintiffs in the core cases of the movement — school desegregation, voting rights, and criminal defense of civil rights protestors— started engaging prison litigation by “follow[ing] their clients into jail” (Schlanger, 2011, p. 13).

The NAACP’s LDF was the first national organization to become heavily involved in attempts to local reform prisons through litigation. LDF’s initiation of prison litigation

was part of its major effort in the mid-1960s to expand the organization's activism beyond explicitly racial claims to cases relating to poverty and crime (Schlanger, 2011, p. 13).

The interplay between national advocacy and lawsuits initiated in local communities is what helped to make the LDF successful. While LDF originally started as a national organization local chapters began to proliferate from between the 1930—1960s. Thurgood Marshall, for instance, represented an NAACP LDF chapter in Baltimore throughout the 1930s (Berger, 2014). Whereas the NAACP pursued a national-level reformist strategy from its inception in 1909 through the 1950s, the organization (as leadership changed) began prioritizing community-level efforts beginning the early 1960s. Since state and local governments were the chief administrators of prison systems the NAACP won many of its conditions lawsuits by implementing this strategy (Ward, 2012, p. 145).

Starting in the late 1960s, LDF frequently asked its cooperating attorneys to handle prison cases and quickly became a significant force, coordinating the litigation of new legal theories and the development of evidence to support them. By 1975, it had a docket of more than fifty jail and prison cases. Around 1977, however, when the staff lawyers responsible for the cases left LDF when the funding dried up after its split from the NAACP over a dispute over leadership. This essentially ended its prison and jail litigation efforts (Johnston 2011, 8).

Joining LDF in the early days of litigated prison reform was the ACLU. The ACLU was the plaintiffs' counsel for at least two of the major prison desegregation lawsuits in the late 1960s. In the 1960s "Southern prisons were still governed by the same Jim Crow laws that demanded racial segregation in all aspects of life. However, prison racial segregation was a phenomenon that occurred nationwide. California segregated its [prisoners] as late as 1959 and Washington State kept inmates of different races separate until 1965. New York kept Attica Prison, the site of America's deadliest prison uprising, segregated through the 1960s (Spiegel, 2007, p. 3).

By 1971, the ACLU supported two small prison litigation projects. One, in Buffalo, New York, was founded by law professor Herman Schwartz, and funded by the Playboy Foundation; it dealt primarily with widespread violence at the Attica state prison before and after the rebellion of September 1971 (Schlanger, 2007, p. 14). The other was founded by civil rights lawyer Philip Hirschkop, in Virginia, and funded by the Stern Family Fund and the Field Foundation. All of these steps set the stage for the first successful full-fledged lawsuit against an entire state prison system.

The dam finally broke in 1971 when Arkansas became the first state to have its entire prison system ruled as "cruel and unusual punishment" under the Eighth Amendment of the U.S. Constitution. As a result of the Supreme court ruling in *Holt v. Sarver* (442 F.2d 304, 1969, 1971), the Arkansas's penal system—one which included just two facilities, one for "blacks" and one for "whites," housing a total of about 1600 prisoners—was forced to eliminate crowding, improve sanitation levels, and racially desegregate its units (Civil Rights Litigation Clearinghouse, 2013). The language of race here is salient.

The influence of *Holt v. Sarver* extended beyond Arkansas and augured a nationwide flood of system-wide class-action lawsuits leading to major court orders requiring reform in such areas as housing conditions, security, medical care, mental health care, sanitation, nutrition, and exercise. The significant legal precedent set by *Holt v. Sarver* cannot be understated.

The lawsuit focused upon three separate areas: the use of forced prisoner labor, racial segregation and worse sanitary conditions in the black barracks as a result of

administrative neglect, and overall crowded conditions that amounted to cruel and unusual punishment (Smith, 1977). The trial of the case lasted one week.

The district court announced its decision in a memorandum opinion filed on February 18, 1970 and ruled that conditions and practices rendered confinement in the system “cruel and unusual punishment” and that “unconstitutional racial discrimination was being practiced within the system” (Smith, 1977). However, the court rejected the contention that forced, uncompensated labor by convicts violated the constitution. The plaintiffs attempted to draw a clear linkage between chattel slavery, race, and incarceration. The court rejected such an allegation. The court instead clumsily pivoted to the issue of racial segregation.

What is particularly fascinating about the *Holt v. Sarver* case is that though the court did indeed find deep racial segregation throughout the Arkansas prison system it nonetheless opined that “immediate desegregation of the barracks would add substantially to disciplinary problems at the prison and relieved the respondents of responsibility for immediately terminating all segregated housing” (Henley, 1970, p. 13).

It preferred instead that the integration process be made a part of an “overall transition from an unconstitutional to a constitutional institution” by way of crowding reductions. The federal court essentially elevated the unconstitutionality of crowded conditions yet neglected to take a stance on the relationship of segregation to access to adequate sanitation. The court, indeed, did take a strong stance on prison labor. It ruled it perfectly legal.

Though Arkansas was forced to eliminate the conditions that caused the court to condemn the system, racial redress was pushed aside as an ancillary concern “immediate desegregation of the barracks would add substantially to disciplinary problems” and therefore pivoted to crowding remediation. The state was under consent decree until 1982 at which time the court ruled that the Department of Correction had come into compliance with the District Court's consent decree and the requirements of the U.S. Constitution. The case was dismissed.

### The Influence of Attica and Race on the Crowding Framework

At the time *Holt v. Sarver* was being litigated the uprising at New York's Attica prison rocked the nation and helped to enhance a nationwide interest in mainstream legal solutions to prison conditions violations. And this represents the core operations of the *neoliberal racial state*: transmogrify radical dissent into a technical, legal, colorblind problem like crowding.

On September 13, 1971, forty-three Attica prisoners and eleven prison guards and civilians were killed by the National Guard, who had been ordered to retake the prison by New York Governor Nelson Rockefeller after 1,300 prisoners had taken over the prison and held forty guards hostage (Davidson, 1995, p. 65). Whereas 70 percent of the 1,300 prisoners housed at Attica were people of color, 100 percent of correctional officers were white (BJS 1980, 1). Scholars suggest that the vicious murder of Black Panther and political prisoner, George Jackson, two weeks earlier by a white guard at San Quentin, provided the final kindling for the uprising (Davis, 2004, p. 76).

A week prior to the insurrection at Attica prisoners there demanded improvements in dietary options, quality and selection of guards, and postsecondary education programs grounded in a black liberation. Prisoner demands were quickly dismissed. According to Angela Davis, “the prisoners at Attica recognized the fact that they needed to be better educated, that the more education they had, the better they would be able to deal with

themselves and their problems...and the problems of the prisons and the problems of the communities from which most of them came (in Davidson, 1995, p. 32).

Rarely understood in the context of litigation efforts, the courts saw litigation at the time as the path of least resistance for avoiding another Attica (Schlanger, 1999). Translating radical black political activism into prison conditions litigation was a chief strategy used by the *neoliberal racial state's* social actors like judges and governors for muting challenges to white supremacy while offering piecemeal legal concessions.

Attica captured the imagination of the public—Tom Wicker's *A Time to Die: The Attica Prison Revolt* (1975) remained on the New York Times Best Seller List for 40 weeks (in Schlanger, 2006, p. 87) — catalyzed a season of prison disturbances and years of foundation support for prison reform work, and inspired a generation of prison lawyers. It remains the most famous of American prison disturbances. And as a result the public — and, crucially, philanthropic foundations — showed increased interest in prison conditions (Schlanger, 1999).

Shortly after Attica, the ACLU's National Prison Project was founded in 1972 and funded at its start by the Field Foundation, the Stern Family Fund, and the Playboy Foundation. The National Prison Project immediately became a force in the national litigated reform movement, serving as counsel in a statewide prison case in Alabama, and then in cases in Rhode Island, Tennessee, Mississippi, and New Mexico within its first three years (Koehler, 1975). To this day it remains the leading national prison litigator.

As a result of this wave of lawsuits—according to the U.S. Justice Department—Congress established the National Institute of Corrections in 1974 to provide technical assistance and advice to state and local corrections departments (Feeley, 1999, p. 32). Later that year the Supreme Court extended a number of procedural protections to prisoners. Immediately following the Supreme Court's decision in *Wolff v. McDonnell* (418 U.S. 539 1974) the California Department of Corrections adopted an internal appeals process to handle prisoner grievances (Vaughn, 1999, p. 12). Under this procedure, prisoners were able to “appeal any departmental decision, action, condition, or policy which they can demonstrate as having an adverse effect upon their welfare” by filing a grievance petition.

In 1976 Congress passed the Civil Rights Attorney's Fee Award Act (Percival 1984, 3) which provided that a court, in its discretion, could award a reasonable attorney's fee to the prevailing party in the civil rights cases. A year later *Bounds V. Smith* (430 U.S. 817 1977) required that prison authorities, “must assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law” (Percival, 1984, p. 4).

By 1977, the first year for which data are available twenty-eight states and territories, as well as the District of Columbia, were either under court order or involved in litigation likely to result in court orders regarding confinement conditions or prison crowding (U.S. Justice Department, 1978, p. 2).

Though prisoners had won rights so too did wardens and other prison administrators but because prison conditions litigation suits were so often based in crowding discourse. If prisoners won the right not to be crowded, prison administration won the right to fund new prison construction in order to meet crowding statutes. This was particularly prevalent in former Confederate states like Mississippi, Tennessee, and Arkansas. And this sinuous relationship exemplifies the internal logic of the *neoliberal racial state*: litigation filed primarily by prisoners and organizations of color seeking racial redress and civil rights violations ultimately resulted in correctional administrators' securing surplus capital to build or contract *paraprisons* in order to reduce crowding.

## The Age of Reagan

Just two months after Reagan took office in 1981 his administration began halting the initiation of new lawsuits by the Justice Department—at least for several years—and the department even switched sides in a number of its ongoing cases. During the 12 years of the Reagan and Bush administrations, the Department brought, or participated as a party in, fewer than ten new prison cases (Feeley, 1999, p. 67). This point should not be taken lightly, as it demonstrates that law is rarely distinct from public policy. Law, rather, is shaped by prevailing social assumptions about racial rights to citizenship and legitimate (not merely symbolic) access to ostensibly democratic institutions like the federal courts.

By 1981, 29 states and the District of Columbia were still under court orders to reduce crowding and 16 had a backlog of sentenced prisoners waiting in local jails for space in state facilities (Bureau of Justice Statistics, 1982). The 1981 increase in the prisoner population was 7 percent, more than double the increases of the two previous years. In conjunction, from 1976 to 1980, 37 states passed mandatory sentencing statutes and 15 states passed determinate sentencing laws as a way “to effectively deter certain serious offenses such as drug and weapon crimes” (Bureau of Justice Statistics, 1982). While determinate sentencing allowed for the possibility of probation, restitution, or suspended sentences, and mandatory sentencing does not, and sends the offender to prison for a fixed number of years that cannot be shortened by parole. During the first two years of Reagan’s presidency the black prison population grew by 20 percent (Bureau of Justice Statistics, 1983).

Drug laws were part of such mandatory sentencing patterns. Rockefeller drug laws in New York, for instance, disproportionately criminalized communities of color both in terms of policing, conviction percentages, and rates of incarceration. According to the ACLU of New York, even though members of white and black communities sell drugs at similar rates, 74 percent of all those imprisoned for drug-related offenses in New York state from 1980-1989 were black (New York State Department of Correctional Services, 2000).

In 1981, 20 states had prisoners backlogged in local jails, up from 18 in 1980 and twice as many as in 1976, when such data were first collected. At the end of 1981, 8,600 state prisoners were confined in local jails, 1,446 more than a year earlier. During the year, this method of housing state prisoners met increasing resistance from local authorities. During this time President Reagan slashed funding for jailhouse lawyers by defunding the OEO established by President Johnson in the 1960s (Gaes, 2008, p. 7). It was defunded and transferred to the Department of Health and Human Services.

In 1984 the U.S. Department of Justice’s National Institute of Justice (NIJ) published a policy brief showing that “leaders of the criminal justice system agree that the most important issue facing them today is prison and jail overcrowding” (Bureau of Justice Statistics, 1984). By 1984 the narrative had firmly shifted in favor of the *neoliberal racial state*. Crowding relief, not racial justice, became more or less the unitary fulcrum of prison conditions litigation that prisoners could actually win.

By 1986 there were nearly 14,000 individuals in local jails because of state prison crowding and by year-end 17 states reported a total of 13,770 state prisoners held in local jails because of crowding in state facilities (Bureau of Justice Statistics, 1987). Simply transferring prisoners to different facilities failed to comply with court-ordered reductions. At the time, three states—Louisiana, New Jersey and California—accounted for more than

half of the states' sentenced prisoners in local jails.<sup>22</sup>

Five states—Louisiana, Mississippi, Tennessee, Kentucky, and New Jersey—held more than 13 percent of their states' sentenced prisoners in local jails because of state facility crowding.<sup>23</sup> In 1986 Kentucky became the first state-level jurisdiction to contract with a *parapublic* prison company—U.S. Corrections Corporation, which was later purchased by Corrections Corporation of America (CCA)—to provide management and oversight over adult secure populations.

Prisoner advocacy organizations were explicit in their racial claims but those claims were often dismissed by the courts and instead reframed as a problem of crowding and as such limited possible reforms to a set of responses that included building capacity and contracting out for capacity building.

### The Age of Clinton

The Clinton administration's Violent Crime Control and Law Enforcement Act of 1994 sustained this trend, further linking local crime policy to national concerns and federal dollars. As federal funds were soon passed on to support activities of state and local criminal justice agencies, Congress began to attach conditions to these federal funds. The \$30 billion dollar Act established a federal "three strikes law," expanded the scope for capital punishment, eliminated Pell Grants for those pursuing a degree, and ordered the Federal Bureau of Prisons to "provide prisoners the least among of amenities consistent with Constitutional requirements" (Davidson, 1995, p. 42).

Importantly, the Violent Crime Control and Law Enforcement Act of 1994 also provided the Civil Rights Division of the U.S. Department of Justice with the power to sue police departments anywhere in the country if they exhibited a "pattern and practice" of using excessive force and/or violating people's civil rights. The inclusion of this provision was influenced by the 1991 beating of Rodney King, an African American motorist, by four white LAPD officers. Unfortunately, since the law took effect over 20 years ago many police departments remain resistant to fundamental reform and have ignored consent decrees issued by the Justice Department. Since 1994 the Justice Department has had to issue over 25 separate consent decrees in over 20 U.S. cities to compel police departments to implement this law (Stokes, 2013, p. 3). A bill that was intended, in part, to protect the civil rights of black citizens ultimately resulted in the retrenchment of *the neoliberal racial state* by way of an influx of federal funds to local police departments.

Prison conditions lawsuits slowed considerably in 1996 when Congress passed the Prison Litigation Reform Act (PLRA). Growing pressure from prison officials about "frivolous" suits, continuing complaints from federal judges about overcrowded dockets, and mounting get-tough-on-crime pressures coalesced in the early 1990s, and all branches of the national government retrenched. The PLRA erected a constellation of obstacles in the paths of would-be prisoner petitioners, and limited the scope and duration of the role of special masters in ways that precipitated a marked decline in complaints filed by individual prisoners.

Though the PLRA required potential petitioners to exhaust all types of remedies before filing suit, perhaps the most significant provision within the PLRA was the fee shifting policy. The PLRA amended 42 U.S.C. §1997 to impose substantial restrictions on the attorney fees awarded under 42 U.S.C. §1988 to prevailing plaintiffs in prisoner civil

---

<sup>22</sup> Two of these states ended up contracting with paraprison firms.

<sup>23</sup> Four of these states ended up contracting with paraprison firms.

rights cases. The PLRA—still effective in 2016—only authorizes the court to award fees when they are “directly and reasonably incurred in proving an actual violation” of a prisoner’s rights and the fee amount is “proportionately related to the court ordered relief for the violation” or the fee was “directly and reasonably incurred in enforcing the relief ordered” to correct a violation. In conjunction, whenever a monetary judgment is awarded to a plaintiff, a portion of that judgment—one not to exceed 25 percent—must be applied toward the amount of the attorney’s fees awarded against the defendant (Petersilia, 2010, p. 18). Moreover, the passage of PLRA substantially reduced the volume of prisoner lawsuits. From 1972-1996, state prisoner §1983 lawsuits filed in U.S. district courts increased by 1,153%, whereas the state prisoner population increased 517% (Cheesman, Hanson, and Ostrom, 1998, 3).

### Evaluating the Litigation

Perhaps the most distinctive accomplishment of prison conditions litigation is something of a double-edged sword as it expands the capacity of the state by framing questions of white supremacy and black subjugation as a problem of crowding. Even as it has enhanced prisoners' rights it concurrently strengthened officials' governing capacity. The paradox of prison conditions litigation, to be sure, also helps explain why so many prison administrators almost immediately came to welcome judicial intervention. By the 1980s prison officials knew that they generally would win on the grounds of racial redress and “lose” on the grounds of crowding, which, in many ways was actually a win for them (Feeley, 1999). Many prison officials realized immediately that prison conditions would redound to their benefit.

In 2013 I spoke by phone with a former warden of one of Florida’s largest facilities during the early 1980s. Though he asked to remain anonymous he stated in no uncertain terms that he and his fellow administrators “were generally pleased to ‘lose’ crowding suits. Losses were rarely losses, if you know what I mean. I can remember a few time when we went into lawsuits actually hoping to lose” (personal correspondence 2013).

How prison officials coped with injunctive relief from the courts was surprisingly uniform. Prison officials in most states first began to transfer those in state custody to local jails and were able to benefit from the immense influx of cash from the federal revenue sharing program beginning in 1972-1986. The federal (general) revenue sharing (GRS) program helped to transfer federal dollars to communities to increase policing efforts and refurbish jail facilities (Urban Affairs Review, 1973, p. 2). From 1972 to 1980, states received approximately one-third of the grants and local governments received two-thirds. State governments were excluded from GRS beginning in the 1981 fiscal year (Susskind, 1983, p. 13).

When transfers proved ineffective states began to build and expand public facilities through debt issuance. States legislatures all over the country began to float general obligation bonds on public referenda and embarked on a tough-on-crime campaign blitz during the same time. From 1974-1979 voters in ten states—all litigated states,—passed referenda to expand or construct new facilities by assuming public debt. This strategy did not last particularly long.

Beginning in 1980 and lasting well into the 1990s—with the strain of inflation, high unemployment, and rising taxes the electorate in at least four states rejected public debt issuance for more prison construction. Why? Voters simply could not continue to justify ballooning corrections expenditures year after year, particularly in litigated states that

continued to need money to bring their facilities into Eighth Amendment compliance (Shuit, 1990, p. 1). In fact, evidence suggests that court ordered crowding reduction mandates actually increases money spent on corrections. This helps to solidify the fact that crowding remedies are often redistributive, not reductionistic.

Harriman and Sraussman found that “the cost of implementing guaranteed rights (from court orders) ranges from as little as \$5 million for some county governments to as much as \$1 billion or more for some state governments.” They found that state prison administrators were often caught between shrinking budgets, the political unpopularity of prison reform, and judicial pressure to improve prison operations.

This is significant because spending more money to build prisons is never the sole option to reduce crowding. Simply stated, even given the courts’ conservative framing prison crowding is not a preordained truth but rather a result of interagency policy choices. Releasing prisoners or placing prisons in community contexts have all been shown to work by non-partisan organizations like the Sentencing Project, Grassroots Leadership, and the NAACP at reducing crowding and keeping recidivism low. This tactic, however, is considered politically bankrupt.

The findings are straightforward: If state policy makers are unwilling to release prisoners to comply with judicial directives to alleviate unconstitutional crowding, there are few options aside from increasing capacity in one way or another. By the mid-1980s and after many forced transfers from state prisons to local jail facilities, the public became weary over ballooning corrections budgets year after year (Bureau of Justice Statistics, Priorities Document, 1984, p. 2).

\*\*\*

Increasing the rights of prisoners by strengthening the capacities of prison administrators themselves is what makes rights-based redress perfectly consistent with the neoliberal project. The very states that chose to allot the most money for prison expansion—Alabama, Mississippi, and Georgia— and *parapublic* contracting were those in which strongest lawsuits were filed by people and organizations of color like the NAACP. The *neoliberal racial state* pits law against capital in order to broker temporary balances in order to maintain the race and class status quo through the ideology of prison crowding.

The way the federal courts of the 1960s and 1970s chose to reframe lawsuits alleging unequal treatment on the basis of race as a colorblind issue of crowding is insidious in at least two ways. Firstly, it dislodges white supremacy from its central role in the construction and maintenance of the carceral state and, secondly, it prevents policymakers and citizens from asking tough questions like “why prison anyway?” Engaging in discourse over crowding does not foreground questions over the very propriety of the prison itself.

The catalytic consequence of prison conditions litigation is rooted in the way it can shift the balance of political power in states undergoing litigation, giving more power to prison administration officials and their allies. In the words of Al Bronstein, former head and lead litigator of the ACLU’s National Prison Project, “procedural due process ... gets you the fair procedures and then the prison officials make the same old unfair decision” (in Schlanger, 1999, p. 31). This insight suggests that perhaps pursuing legal strategies to remedy black subjugation in an institution and practice whose operations are bound up in race-making in is entirely insufficient to challenge the fixity of the *neoliberal racial state*, its penal arm, and, more generally, the white supremacy upon which it relies.

## Chapter Four

### The Birth of a CCA Nation

The birth of Corrections Corporation of America (CCA) was not inevitable. This chapter denaturalizes CCA's emergence by situating it within the framework of neoliberal racial statecraft and demonstrating how CCA's so-called colorblind policies disproportionately impact communities of color. This chapter explores several questions: 1) What is the relationship among U.S. political economy of the last 40 years, prison conditions litigation, and the rise of CCA? That is, in what ways has the neoliberal racial state's actors, policies, and legal frameworks fundamentally shaped CCA's emergence? 2) In what ways has CCA leveraged state legislatures, Congress, and the federal judiciary to secure its continued operations? And 3) how has the "war on drugs" naturalized the ideology of prison crowding, an ideology which ultimately benefits CCA?

This chapter situates the birth and rise of CCA within the larger context of the *neoliberal racial state*. I define the *neoliberal racial state* as a stratifying and classifying political assemblage that self-referentially names, orders, and regulates normative categories of punishable bodies by way of public opinion, the courts, the legislature, economic policy, and law enforcement. Against the backdrop of U.S. neoliberalism, this chapter considers the emergence and ascendancy of CCA through the lenses of race discourse, social policy, and tax policy. Drawing from my document analysis, descriptive data, and interviews this chapter inserts questions of U.S. political economy into the context of prison conditions litigation in order to evaluate the ways in which the *neoliberal racial state* has fiscally and ideologically subsidized the growth of CCA.

Simply stated, I argue that from the early 1980s to the present CCA has pre-eminently served as the "solution" to the problem of prison crowding as defined by the federal courts in the 1960s and 1970s. That is, CCA has been able to capitalize on the way the courts chose to absorb legal challenges to racialized carcerality through the language of prison crowding. That is, prison conditions lawsuits—many of which alleged unequal treatment on the basis of race and lodged and even larger critiques of white supremacy—were "solved" by the courts by re-presenting racial injustice as a crowding issue.

Though prison activists and their advocacy organizations agitated against the carcerality itself and its relationship to chattel slavery, the court transmogrified such dissent into a framework of crowding. In conjunction with the legal framing of prisoner lawsuits from 1969-1996 the emerging political-economic zeitgeist of the 1970s—neoliberalism—helped to naturalize the turn to *paraprison* firms like CCA. More theoretically, I argue that deep critiques of racialized carcerality and white supremacy were translated into an agenda of procedural legal fairness and churned through the machinery of race-neutrality.

In sum, this chapter explores how putatively liberal injunctions to reduce crowded conditions, along with changes to U.S. political economy and race discourse and policy, helped to usher in an unprecedented expansion of penal power through the modality of *paraprisons*—precisely the types of prisons in which people of color are now overrepresented, even relative to public facilities. How such an inversion/perversion of justice happened is the story this chapter will tell.

## U.S. Political Economy, Prison Hypertrophy, and the Rise of CCA

Prison conditions cases were not heard in a legal vacuum. For this reason it is critical to detail shifts in U.S. political economy during the time prison condition cases were first litigated.

To begin, the U.S. social-economic growth model since 1975 has relied heavily on expanding incarceration. The United States currently represents less than 5 percent of the world's population, but harbors over 25 percent of those incarcerated (Justice Policy Institute, 2015, p. 3). In fact, the U.S. has incarcerated more people in absolute terms than China, whose population is four times larger. In 1980, for example, 1,842,100 persons in the United States were under some form of correctional supervision – this refers to persons on probation/parole or in jail/prison.

By 2014, the year for which the most recent figures are available, this number burgeoned to 7,609,200 and represents a 296 percent increase during a time when the U.S. population only grew by 34 percent (Justice Policy Institute, 2015, p. 3). Such a rate of incarceration is extraordinarily costly and has grown more so in recent years. In 1980, for instance, annual expenditures for the Department of Justice totaled \$33 billion, \$6.9 billion of which was allocated directly to corrections. In 2013, per annum expenditures amounted to \$235 billion, \$73 billion of which was directed to corrections (Economic Policy Institute 2014, p. 8). As a point of comparison, it might be helpful to know that the U.S. Department of Education's 2013 discretionary appropriations budget totaled \$67.7 billion (Economic Policy Institute, 2013).

The astonishing growth of incarceration in the United States since the late 1970's is unsettling. But the increase in the population behind bars, from 380,000 in 1975 to over 2.3 million (exclusively in jails or prisons) by 2013, is only part of the story of the expansion of the prison regime (Wacquant, 2014, p. 21).

First, this increase is noteworthy for having been propelled, “not by the lengthening of the average sentence as in previous eras of carceral inflation, but primarily by the surge in prison admissions which ballooned from 159,000 in 1980 to 681,000 in 2008” (Wacquant, 2009, p. 54). Second, the vertical rise of the prison regime has been exceeded only by its horizontal spread: the ranks of those kept in the long shadow of the prison regime by way of probation and parole have swelled even more than the population behind bars (Wacquant, 2009, p. 54). As a result, the total accumulation under criminal justice supervision recently surpassed 7.3 million. The introduction of penal “big government” was made possible by exponential increases in funding and the infusion of an additional one million staff, making it the third largest employer in the nation, behind only Manpower and Wal-Mart (Wacquant, 2009, p. 54).

I argue that the expansion of the prison regime and the racial inversion of the prison population beginning in mid-1970's served as a political response to the planned collapse of neighborhoods of color and organized opposition to white supremacy. But what exactly caused the collapse of these neighborhoods? In a phrase: the neoliberalization of people, places, and politics through deindustrialization and retrogressive social policies leading to disinvestment in select neighborhoods.

Loic Wacquant is helpful on this score. I echo Wacquant's contention that beginning in the mid 1970s the U.S. entered a postindustrial economic transition that shifted employment from manufacturing to services, from central cities to suburbs, and from the Rustbelt to the Sunbelt and to low-wage foreign countries (Wacquant, 2011, p. 4) Together

with renewed immigration from Mexico, this shift made black workers redundant and undercut the role of low-income black neighborhoods as a reservoir of cheap labor.

Further, political displacement instantiated by “white flight” to the suburbs as a reaction to the influx of black Americans from the rural South weakened cities in the national electoral system and reduced the political influence of black communities. In conjunction, key victories by way of civil rights legislation, the development of Black Power activism, and the eruption of urban protests between 1964 and 1968 destabilized the geography of white supremacy.

Beginning in the late 1960s low-income communities of color—particularly post-industrial black communities—were left to crumble and trapped their denizens in “a vortex of unemployment and poverty” through the “withdrawal of the wage-labor market and the welfare state” (Wacquant, 2011, p. 2) while the growing black middle-class achieved limited social and spatial separation by migrating to districts adjacent to the historic Black Belt. As low-income communities of color lost their economic function as a pool from which to draw labor and as a homogenous ethnoracial enclosure, “the prison was called on to help contain a dishonored population widely viewed as deviant, destitute, and dangerous” (Wacquant, 2011, p. 32).

It is within this context that neoliberalism can best be understood as a political project emerging in fits and starts around the early 1970’s which consolidates, yet masks, the interests of wealthy white men, women, and children (while criminalizing those who do not conform to this narrow taxonomy) by appealing to notions of anti-black racism through the colorblind language of individual freedom, personal responsibility, privatization, and the free market.

The neoliberal dynamic came crashing into regimes of racialization with the onset of the “War on Drugs.” Whereas in 1980, for example, only 25 percent of the federal prison population was composed of prisoners convicted of drug offenses constituted. By 2012 over half of sentenced prisoners were incarcerated for drug offenses (Bureau of Justice Statistics, 2013, p. 4). Twenty-three percent of those incarcerated at the state level have been convicted of drug-related offenses (Bureau of Justice Statistics, 2013, p. 4).

### Neoliberalism and the “War on Drugs”

The “War on Drugs” has its origins in Nixon Administration concerns over narcotic addiction. Beginning in the late 1960’s moderate Supreme Court justices, including Earl Warren, began to retire. Nixon replaced them with “tough on crime” conservatives: Harry Blackmun and Lewis Powell. In collusion with his newly appointed Justices, Nixon established a precedent for federal authority on “drug crimes” under the Constitution’s vaguely defined commerce clause. Justification for the “War on Drugs” was premised on Dr. Robert DuPont’s 1969 study, with a sample size of 40, which linked heroin addiction and violent crime in Washington D.C. (Mallea, 2014, p. 13).

And in July of 1972—at the very same time many prominent prison conditions cases were being litigated—Nixon created the Office of National Narcotics Intelligence by Executive Order, a maneuver that essentially shifted drug classification authority from medical experts to law enforcement. Six months later, the Office of Narcotics Intelligence (ONI) was displaced by the Drug Enforcement Agency (DEA).

In 1973, and in consultation with the Nixon Administration, New York Governor Nelson Rockefeller instituted the first of many stringent state drug laws. Rockefeller enacted legislation that created mandatory minimum sentences of 15 years to life for possession of

four ounces of narcotics — about the same as a sentence for second-degree murder. As a result, the state’s prison population ballooned by 400 percent over the next decade and resulted in bulging prisons. Drug-related convictions increased by 400 percent from 1973-1983 (Fortner, 2015, p. 76).

### The Birth of CCA

This is the context in which Tom Beasley, a West Point graduate and former chairman of the Tennessee Republican Party, launched Corrections Corporation of America (CCA) in 1983. At a Republican presidential fundraiser in 1982 Beasley concocted the idea of “privatized prisons” (his language) during a conversation with an executive of the Magic Stove Company: “He said he thought it would be a heck of a venture for a young man: to solve the prison problem and make a lot of money at the same time” (Los Angeles Times, 1983, p. b3)

Beasley thought the “private prison business” could be lucrative because “entrepreneurship [was] finally being rewarded” (Chicago Tribune, 1984, p. d2). Beasley was referring to extensive tax cuts like the 1981 Accelerated Cost Recovery System (ACRS), which the Reagan administration architected to revolutionize the tax treatment of business capital to prevent depreciation and boost economic growth. Such a policy was consistent with dominant economic ideologies of the day. Beginning in the early 1980s privatization began to be regarded as a catholicon for an allegedly inefficient and incompetent public sector. Prime Minister of the U.K., Margaret Thatcher, and U.S. President, Ronald Reagan, made neoliberalism politically palatable by combining it with social and cultural conservatism as a strong reaction to what they perceived as the racial-social disorder of the 1960s (Hewitt, 2005).

On December 27, 1983 *Los Angeles Times* staff writer John Hurst introduced the world to Corrections Corporation of America (CCA), a Nashville-based company with 8 employees. Hurst framed his feature story around a provocative question: “Can the folks who brought you Kentucky Fried Chicken bring you uncrowded, efficient, safe, economical prisons and turn a profit at the same time?” (Hurst, 1983, p. d1).

Hurst’s question highlights the internally conflicted architecture of the penal arm of the *neoliberal racial state* throughout the 1980s. His provocation captures a country in crisis, one attempting to bring into accord the seemingly contradictory dictates of “small-government” privatization and “big-government” federal remediation for prison crowding with a race politics reflected in and reflective of the “War on Drugs.”

During CCA’s first year of operations, Tom Beasley hired seven full-time employees, including Travis Snellings, former budget director of Virginia’s Department of Corrections, Maurice Sigler, former chair of the Federal Parole Commission, and Don Hutto, former president of the American Correctional Association and former Commissioner of Corrections in Arkansas and Virginia. Hutto’s “correctional” record is worth noting, as it evinces his approach to both prison management and race discourse.

In *Hutto v. Finney* (437 U.S. 678 1978) the U.S. Supreme Court ruled that while Don Hutto was Commissioner of Corrections for the state of Arkansas the state’s entire penal system constituted cruel and unusual punishment and immediately called for a reduction in crowding. The Court also held that Hutto and his assistants “evidently tried to operate their prisons at a profit” (Mattera, 2003, p. 5).

The Court found that prisoners were required to work on Hutto’s prison farm ten

hours a day, six days a week, often without suitable clothing or shoes, using mule-drawn plows and tending crops by hand (Mattera, 2003, p. 6). Hutto's punitive techniques closely resembled those used on plantations in the antebellum South. Punishment for minor misconduct included lashing with a wooden-handled leather strap five feet long and four inches wide and the of administration electric shocks to "various sensitive parts of the inmate's body" (Bates, 2000, p. 2). The trial court characterized Hutto's prisons as "a dark and evil world completely alien to the free world" (Feeley, 1999, p. 64).

CCA first broke ground on its inaugural facility in November 1983 in Houston under contract with the Immigration and Naturalization Services (INS). Beasley described the opportunity to work with the INS as "productive, profitable, and humanistic... on the cutting edge of a brand new industry" (Hurst, 1983, p. d1). CCA's Houston Project—called the Houston Processing Center—was a minimum security 300-bed institution for short-term confinement of "illegal aliens"<sup>24</sup> and at the time cost \$4.5 million to build and operate (Hurst, 1983, p. d2).

The INS paid a rate of \$23.50 per prisoner, per day compared to \$26.45 a day for each of resident at its own immigration detention centers. Beasley said that he and other "entrepreneurs entering the corrections market" could "build and operate high-quality prisons at a lower cost than the state because government bureaucracy prevents innovation and efficiency." In his words, prison operators would have the advantage of "paying lower salaries to their staff than government agencies pay their employees" (Mattera, 2003, p. 13).

That the now defunct Immigration and Naturalization Service (INS) was the first government agency (state or federal) to contract with CCA in the mid-1980s is significant. The relationship between the INS (now Citizenship and Immigration Services) and CCA is important because it demonstrates the circuitous pathways among race, ethnicity, citizenship, containment, and profitability in the context of *neoliberal racial statecraft*.

In the 1980s anti-immigrant sentiment became a bipartisan issue. Both Republican and Democrat supporters of the Immigration Reform and Control Act of 1986 argued that immigrants were "stealing jobs" and "draining the economy," and that political turmoil in Mexico and Central America would "spill over" into the US (Navarro, 2015, p. 29). The final law, authored by Republican Senator Alan Simpson and Democrat Romano Mazzoli (and vigorously supported by the Reagan White House) intended to deter further "illegal immigration" by strengthening U.S.-Mexico border control and employer sanctions.

I briefly trace this history because I argue that testing *paraprisons* on the most vulnerable and politically disenfranchised groups in a bipartisan court of public opinion allowed CCA to use Mexican immigrants as test subjects in an experiment of privatization without facing "legitimate" public backlash. Today, over 90 percent of those held in immigrant detention facilities—50 percent of which are managed by CCA and GEO—are people of color (Wassem, 2013).

A year after CCA's first contract with the INS President Reagan endorsed the "Truth in Sentencing Act"—a bill whose first and most vocal sponsor was avowed segregationist Senator Strom Thurmond—requiring offenders to serve at least 85 percent of their sentence, thereby making it nearly impossible for parole boards to reduce sentences for "good behavior" or participation in educational programming. The bill, officially called the Comprehensive Crime Control Act of 1984, enjoyed strong bipartisan support (Simon, 2009). Then Democratic Senator Joe Biden was an early supporter of the bill.

In 1986 President Reagan signed the "Anti-Drug Abuse Act" notably establishing a

---

<sup>24</sup> This is CCA's language, not mine.

100:1 ratio for mandatory minimums associated with crack cocaine, a tactic that disproportionately affected the criminalization and incarceration of African Americans. And finally, in 1988 the President signed his second “Anti-Drug Abuse Act” authorizing a federal death penalty for “*drug kingpins*.” As a result, federal drug prosecutions increased by 99 percent between 1982 and 1988, while nondrug prosecutions increased by just 4 percent (Department of Justice, 2000, p. 8).

Around the same time—in mid-1985—brimming with confidence from its first few contracts, the political mood generated by the “war on drugs,” and prison conditions litigation which resulted in federal injunctions to reduce crowding, CCA made a proposal to take over the entire state prison system in Tennessee.

In exchange for a 99-year lease on existing facilities and an annual operating contract of about \$250 million, CCA offered to spend \$150 million of its own money to build two new 500-bed prisons and to offer an additional \$100 million payment to the state, half in cash and half in IOUs to be paid over a twenty year period (Herivel and Wright, 2009). The state legislature—faced with opposition from public employee groups and the ACLU of Tennessee—declined to act on the offer. Managing Editor of *Prison Legal News*, Alex Friedmann, told me that CCA’s initial offer was more symbolic than anything. Over e-mail he wrote: “The first attempt wasn't really serious; CCA was a fledgling company and the offer was more for publicity purposes” (personal correspondence 2016).

Across the country, prisons were bulging as a result of harsher drug laws and stricter sentencing rules, yet taxpayers were resisting paying for more prisons to bring them into compliance with federal injunctions. In 1986 thirty-eight states were under court orders to reduce overcrowding in public prisons (Schlanger, 2010, p. 671). CCA claimed to have the solution to the problem as framed: the company would house some of the prisoners and advertise to do it at a lower cost than government-operated prisons.

CCA’s business model relies on ensuring an unbroken flow of persons into prison. CCA also reduces overheads by hiring non-unionized correctional officers, “cherry-picking” young and healthy prisoners to house by virtue of contract exemption, and eliminating education programs (Freidmann, 2013, p. 3). CCA marketed itself to states under court ordered reductions by offering to build new facilities and to do so at a much faster timetable than government agencies could.

Officials in a number of states, particularly in the U.S. South where crowding was most severe, were drawn to the prospect of cheaper incarceration costs. State legislatures began enacting laws permitting private parties to perform what had previously been considered a fundamental function of the government. Hamilton County, Tennessee became the first county in the country to contract out its jail when in 1984 it hired CCA.

The Director of the Federal Bureau of Prisons (BOP), Norman Carlson, had reservations in 1985 when the idea of “contract prisons” was first broached. In an 1985 Congressional Privatization Commission he went on record saying “I am somewhat skeptical of the private sector’s involvement in corrections. I certainly have not made a firm decision, but I am not one who is going to get on the bandwagon and say that the private sector can solve all of our problems over night” (Carlson 1985, 2). After heavy Congressional lobbying efforts by CCA the BOP agreed to hire the company to manage most new federal facilities under construction. Today, Norman Carlson sits on the board of the GEO Group, the second largest *paraprison* company in the United States.

In 1987 CCA got its first state-level contract for a regional juvenile facility in Tennessee and two minimum-security, pre-release facilities in Texas. Growth over the next few years was uneven, but by the early 1990s CCA was expanding by about 10 percent per

year in terms of total number of beds (Bureau of Justice Statistics, 2000).

Annual revenues at CCA climbed from about \$14 million in 1986 (the year it shifted to a publicly-traded company) to more than \$55 million in 1990. Gross income then soared to \$120 million in 1994 after it began contracting with the federal government, also the year it moved up to the New York Stock Exchange from the NASDAQ (Mattera, 2003, p. 15). Interest in its services was strong enough so that CCA was able to go public in 1986 in an offering underwritten by leading investment banks, including Donaldson, Lufkin & Jenrette and Prudential-Bache Securities” (Mattera, 2003, p. 16).

The initial public offering (IPO) netted CCA about \$18 million. In March 1988, CCA signed a \$24 million credit agreement with three banks: Sovran, First Union and Southeast Banking Corp. The following year this was replaced with a \$30 million credit agreement with First Union, Southeast Bank and AmSouth Bank (Mattera and Khan, 2001, p. 15).

In 1991 CCA sold \$5 million in preferred stock to General Electric Capital Corporation (GE). Thanks to all this borrowing, CCA’s long-term debt load sextupled from \$9.5 million at the end of 1985 to \$57.8 million at the end of 1991. However, despite its successes throughout the 1980s and early 1990’s, the mid-1990s proved a difficult time for CCA, a time during which the U.S. incarceration rate stagnated. In addition to CCA’s sluggish growth rates and sputtering new contract awards, CCA found itself with little cash-on-hand throughout the mid-1990s. The company needed to secure new markets to survive.

All of this changed in 1993-1994 when CCA won a major contract with the Federal Bureau of Prisons (BOP). In the fall of 1993, White House officials found themselves caught between two sensitive political objectives: putting more people in prison and reducing the size of the federal government (Gerth, 1995, p. 1). Both grew out of promises made by Bill Clinton during his Presidential campaign when he adopted Ross Perot's popular theme of “small government” and promised to reduce spending in the Beltway. At the same time, Clinton pledged to continue putting more people in federal prisons for longer sentences and building more facilities to house them.

Early into his first term Clinton passed his \$30 billion dollar “Violent Crime and Law Enforcement Act of 1994” which established a federal “three strikes law,” expanded the scope for capital punishment, eliminated Pell Grants for prisoners pursuing a degree, and ordered the Federal Bureau of Prisons to “provide prisoners the least among of amenities consistent with Constitutional requirements” (The Sentencing Project, 2000, p. 3).

The goals of reducing the size of government and getting “tough on crime” ineluctably clashed. More prisons meant more people would be needed to manage them. In fact, White House budget officials began to realize that “the growing stream of federal prisoners would force the government to hire at least 4,000 new employees at new prisons by the end of the decade” (Gerth, 1995, p. 2). How could the Justice Department hire thousands of new employees *and* cut “wasteful government spending?” The solution: Actuarial legerdemain. And this is key. “Actually existing” neoliberalism has never really been about an evacuation of the state in favor of markets. To the contrary, “actually existing” neoliberalism remakes the state itself and helps to orient it toward the interests of whiteness and capital.

The employees at the new prisons would not appear on the department's official payroll. In pushing the prison privatization plan, President Clinton embraced the concepts behind the National Performance Review of Al Gore's 1993 study to reinvent government so that it “works better and costs less,” especially his commitment to cut 252,000 federal employees from the payroll (Gerth, 1995, p. 3). But Gore’s study did not mention the option the hiring *paraprison* firms to operate facilities.

In addition, Clinton's newly-minted *paraprison* plan ignored many of Gore's general recommendations about improving government. The intellectual grounding for this shift is well documented in Osborne and Gaebler's *Reinventing Government* (1992). The authors suggest that what cripples government is "public sector monopoly" and that it can be remedied by replacing public service provisions with market mechanisms like contracts and vouchers. More pointedly, they argue that governments should attempt to solve social problems by "influencing market forces rather than creating public programs," by "empowering communities to solve their own problems rather than simply deliver services, by "decentralizing authority," and by "meeting the needs of the customer" (p. 12).

Gore's report warned against "the use of arbitrary personnel ceilings to control the work force and called on Clinton to halt the practice" (Gerth, 1995, p. 3). It said such arbitrary ceilings would "cause inefficiencies and distortions" and "rarely account for changing circumstances" (Gore, 1994, p. 12). When it came to prisons, as well as other agencies, such a recommendation was never followed. Instead, the White House took the first step toward contracting out services by capping the future growth of prison employees. This move was a small part of the larger effort to remove over 250,000 federal positions. In the case of prisons, the idea was that after reducing personnel, the government would then turn to *paraprisons* to do their work.

The Justice Department promptly criticized the proposal and noted that it failed to accurately reflect the true costs of contracting with companies like CCA. The Bureau of Prisons was also under no illusion that its personnel caps would save money. "The basis of the decision is not that it's going to be less expensive," said John Clark, assistant director of the Bureau of Prisons, who had been overseeing the new policy (Clark, 1994, p. 2). The Justice Department signed on to the proposal a month later after heavy lobbying from CCA (Mahr, 2010). It proposed the construction of four new federal facilities in New York, California, Mississippi and Arkansas to be managed by non-governmental agencies. The federal Bureau of Prisons (BOP) estimated the plan would eliminate more than 1,600 new positions on its books. CCA quickly netted three new contracts.

By the late 1990s the Justice Department officials admitted that their record of using prison companies had been plagued by costly mistakes. Repeatedly, federal Bureau of Prison officials said that the companies had negotiated lucrative contracts in which the businesses involved "were able to recover their financing costs unusually fast and shift huge medical expenses for inmates to the government" (Gerth, 1995, p. 4). The BJS eliminated three CCA contracts during the late 1990s and the company scrambled for solutions to diminished revenue sources.

But CCA had another problem on its hands. In December 1998 eminent cultural theorist and former Black Panther, Angela Davis, penned an article in *ColorLines* entitled "Masked Racism: Reflections on the Prison Industrial Complex" in which she articulated an explicit linkage between "racism" and CCA's operations. Excerpts from her piece are worth quoting at length. Davis writes,

To deliver up bodies destined for profitable punishment, the political economy of prisons relies on racialized assumptions of criminality -- such as images of black welfare mothers reproducing criminal children -- and on racist practices in arrest, conviction, and sentencing patterns. Colored bodies constitute the main human raw material in this vast experiment to disappear the major social problems of our time. Once the aura of magic is stripped

away from the imprisonment solution, what is revealed is racism, class bias, and the parasitic seduction of capitalist profit...By segregating people labeled as criminals, prison simultaneously fortifies and conceals the structural racism of the U.S. economy...As prisons proliferate in U.S. society, private capital has become enmeshed in the punishment industry. And precisely because of their profit potential, prisons are becoming increasingly important to the U.S. economy. If the notion of punishment as a source of potentially stupendous profits is disturbing by itself, then the strategic dependence on racist structures and ideologies to render mass punishment palatable and profitable is even more troubling...Prison privatization is the most obvious instance of capital's current movement toward the prison industry. While government-run prisons are often in gross violation of international human rights standards, private prisons are even less accountable. In March of this year, the Corrections Corporation of America (CCA), the largest U.S. private prison company, claimed 54,944 beds in 68 facilities under contract or development (pps. 2-4).

I would like to argue that CCA attempted to quash such dissent over racial injustice when in the very early 2000s they tapped Thurgood Marshall, Jr. for their Board of Directors. Thurgood Marshall, Jr. is son of Thurgood Marshall, first African-American Supreme Court justice and lawyer who successfully litigated the *Brown v. Board of Education of Topeka* (347 U.S. 483 1954) school desegregation case.

In a press release announcing his appointment Marshall, Jr. said he believes in CCA's "long and successful track record grounded in the concept of public-private partnership" and that "CCA is perfectly positioned to help meet the fiscal challenges facing governments in today's economy and beyond" (Corrections Corporation of America, 2002, p. 1). Marshall, Jr. remains on CCA's board at the time of this writing.

### ALEC, Neoliberalism, and "Colorblind" Development Subsidies

Since the early-2000s CCA has also worked to bring about changes in state laws that would result in an increase in demand for its services. It has pursued this objective by working with a conservative organization called the American Legislative Exchange Council (ALEC).<sup>25</sup> ALEC, which remained relatively unknown until the past decade, has worked sedulously to influence state legislators to pass tougher sentencing laws (Sloan, 2008, p. 2). By 2002, a third of the nation's state lawmakers were members of ALEC, the vast majority of which—88 percent—are Republicans and 96 percent of which are white.

Members gather at ALEC meetings to exchange ideas and form model legislation, which legislators then bring back to their states and try to enact. CCA has been one of the "private sector" members that pay \$5,000 to \$50,000 a year to help shape ALEC's agenda. In

---

<sup>25</sup> ALEC was established in 1973 by Paul Weyrich. Weyrich also co-founded the Heritage Foundation. ALEC, whose conservative advocacy is largely supported by multinational corporations, provides state legislators with model legislation in support of limited government, free markets, federalism, and individual liberty.

addition to its general membership, CCA has paid \$2,000 a year for a seat on ALEC's Criminal Justice Task Force, which has at times been chaired by CCA executives (Mattera, 2003, p. 34).

In conjunction, CCA has long been a recipient of economic development subsidies provided by local, state, and federal governments. These subsidies have taken a variety of forms that have included tax-advantage financing, property tax abatements, and infrastructure grants. The organization Good Jobs First found that in 2001, the most recent study of its kind on *paraprison* development subsidies, “nearly 75 percent of the large prisons in the United States that were privately built and operated received at least one form of economic development subsidy” (Mattera and Khan, 2001, p. 16). Specifically, “an analysis of all 60 private prisons with a capacity of 500 or more beds (comprising about 66,000 beds or half of the U.S. private prison market) at least 44, or 73 percent, of the 60 facilities received a development subsidy from local, state and/or federal government sources” (Mattera and Khan, 2001, p. 15).

A total of \$628 million in tax-free bonds and other government-issued securities were issued to finance the for-profit prisons studied. Thirty-seven percent of the facilities received low-cost construction financing through tax free bonds or other government-issued debt securities, 38 percent received property tax abatements or other tax reductions, and 23 percent received infrastructure subsidies, such as water, sewer or utility connections, access roads, and/or other publicly financed improvements. Subsidies were found in 17 of the 19 states in which the 60 facilities are located (Mattera and Khan, 2001, p. 3). Among the facilities studied in the Good Job’s First report 78 percent of CCA’s prisons were subsidized. A former Director of a state Department of Corrections, who asked to remain anonymous, told me by phone that companies like CCA and GEO “aggressively seek development subsidies... They bring in big-shot lawyers to wine and dine local politicians and usually don’t come away empty-handed. That’s exactly what happened in my state. They bypassed me entirely. They went straight to the governor” (Personal correspondence, 2016).

Based on cross-referencing the CCA development subsidy figures from the Good Jobs First report with the 2000 U.S. Census Report I discovered that 91 percent of the municipalities that offered development subsidies to CCA from 1995-2000 were majority white. This figure suggests that CCA leverages race-discourse to ingratiate itself to residents of communities in which it proposes prison construction.

That U.S. prisoners are disproportionately people of color and most CCA facilities (as well as public facilities) are located in majority-white communities is of nonpareil importance. When I asked the same former state Director of Corrections to reflect on my findings he said “I’ve never seen a private prison company attempt to build a prison in a community that isn’t majority white. Look across the country and tell me where you can find one?” (Personal correspondence 2016).

Couple this race asymmetry with the fact that the U.S. Census counts individuals in prison as residents of the prison location, even though they remain residents of their pre-incarceration homes. The result gives extra political influence and economic appropriation to the districts that contain prisons, diluting the votes and budgetary influence of everyone else.

Legal scholar John Drake argues that the practice of counting prisoners in the tract of incarceration for Census and apportionment—that is, prison gerrymandering—serves as “a device for creating a new injustice: the dilution of voting strength in the urban communities that most prisoners call home” (Prison Policy Initiative, 2011, p. 3).

In this way, the *neoliberal racial state* subtly utilizes development policy to modulate race policy. Stated differently, it uses economic policy as a cover for racial governance policy.

Consider the following evidence from Department of Housing and Urban Development (HUD). Five CCA prisons contracted from 1990–2000 received infrastructure assistance through grants from the U.S. Department of Commerce (DOC), the Department of Housing & Urban Development (HUD) and the Department of Agriculture (USDA) (Mattera and Khan, 2001, p. 17). In addition, at least six CCA owned-prisons qualified for federal job training grants or tax credits during the same period.

That CCA has received infrastructure assistance from HUD is particularly curious. Congress created the Reconstruction Finance Corporation (RFC)—the precursor to HUD—for the express purpose of “mak[ing] loans to private corporations [that provide] housing for low-income families” (Klein, 2012, p. 41). This is a compelling illustration of the ways in which the *neoliberal racial state’s* can and does use liberal policy—as we saw in the case of prison conditions litigation—to reinscribe its own agenda of white supremacy and black subjugation through, in this instance, the colorblind language of subsidy and development.

### Colorblind Finance and CCA

Although many left-leaning prisoner advocacy organizations like the Sentencing Project, Grassroots Leadership, and the ACLU are quick (and right) to denounce the most egregious race-based expressions of prison privatization, ranging from involuntary prison labor to racially disparate sentencing policies, few, if any, have attended to the deeply racialized, yet somewhat arcane, relationship developing between the practice of *parapublic carcerality* and the Internal Revenue Service (IRS). However, one of the best ways to understand exactly how CCA understands itself and its fundamental purpose is to analyze recent changes to its IRS corporate filing status from a traditional Class-C corporation to a Real Estate Investment Trust (REIT).

The remainder of this chapter will explore the racial valances inherent to CCA’s willingness to stylize itself publicly as a company that deals primarily with real estate, or property. What can we learn about CCA by reading its conversation to a REIT against the backdrop of former U.S. Slave Codes that explicitly marshal the language of “real estate?” The 1705 Virginia Slave Code reads: “All servants imported and brought into the Country...who were not Christians in their native Country...shall be accounted and be slaves. All Negro, mulatto and Indian slaves within this dominion...shall be held to be *real estate*...”<sup>26</sup>

In February 2012 CCA announced its plan to assess the feasibility of a Real Estate Investment Trust (REIT) conversion. At that time the company publicized its potential REIT conversion as a way to “increase long-term shareholder value” by reducing both its federal and state corporate tax liability to zero. And again, in exchange for such an advantageous tax status, CCA must meet REIT guidelines by distributing at least 90 percent of its taxable income to shareholders annually in the form of dividends.

By converting the company to an REIT, CCA insiders would not only slash their company’s effective tax rate from 37.2 percent (equivalent to about \$92 million in 2011) to zero, but would actually pay themselves an additional \$7 million post-conversion, most likely in the form of executive bonuses.

---

<sup>26</sup> Virginia Slave Codes of 1705 are accessible at: <http://www.pbs.org/wgbh/aia/part1/1p268.html> I first called attention to this linkage back in 2012 in my op-ed in Truthout entitled “How Speculating on Prisons Leads to Mass Incarceration.”

Under *neoliberal racial statecraft* the burden of financial risk is often shifted from (white) corporations to communities of color. The housing crisis of 2007-2008 is a provocative example of this system in action. The ACLU reports that as a result of the financial collapse black households lost over 40 percent of their wealth while Wall Street—a decidedly white, neoliberal institution—saw its executive bonuses increase by 19 percent the year after illegal trading and speculating bankrupted the U.S. economy (Bird-Sharps, 2015, p. 1) Again, theoretically speaking, the “white center” holds despite its negligence while the suffering of the marginalized proliferates despite no wrongdoing.

Right before CCA’s petitioned the IRS for a change in status it sent solicitation letters to 48 states offering to buy their state-operated facilities as a solution to the alleged inefficiencies of state departments of corrections. In exchange for "streamlining" publicly owned prisons, CCA asked for a 20-year management contract, plus a guarantee that their prisons would remain at least 90 percent full (ACLU, 2012, p. 1). Oddly, CCA drafted and distributed its plea just three months after the US Department of Justice (DOJ) released a report indicating that the combined U.S. prison population had just decreased for the first time since 1972 (Bureau of Justice Statistics, 2012).

CCA's troubling occupancy rate requirement is itself a form of speculation (as well as declines in corresponding crime rates), and all but guarantees higher rates of incarceration at a time when the DOJ thought it may have just turned the corner on growing incarceration rates. Lobbying for and achieving a REIT corporate filing status with the IRS demonstrates that for the purposes of taxation CCA *primarily* sees itself as a real estate firm whose vehicle is incarceration.

In 2013 the IRS approved CCA’s REIT request. CCAs newly minted REIT status calls attention to the relationship between historical forms of race-based, profit-making and racialized expressions of prison privatization. In early-2013 my work on the *neoliberal racial state* appeared in *Radical Criminology*. Based on descriptive data I procured from state department of corrections, I discovered that men of color are overrepresented in *paraprisons* vs. public prisons. My study endeavored to answer a straightforward question: Are people of color overrepresented in *parapublic* versus public facilities in select states even in the absence of explicit racially discriminatory placement or classification policies? If so, why? Based on my research—the complete methods of which are detailed granularly in chapter two—my study finds that men of color are overrepresented in minimum and/or medium security *paraprison* facilities relative to their public counterparts in each of the nine (9) states examined. Please see facility-by-facility datasets<sup>27</sup> in the appendix.

	Arizona	California	Colorado	Georgia	Mississippi	Ohio	Oklahoma	Tennessee	Texas
Percent men of color in “public” facilities	62%	76%	53%	65%	66%	43%	44%	54%	57%
Percent men of color in “private” facilities	65%	89%	58%	68%	75%	47%	57%	57%	69%

<sup>27</sup> These data were first published in the *Journal of Radical Criminology*. The original study can be accessed at <http://journal.radicalcriminology.org/index.php/rc/article/view/44/html>

## Interpreting the data through the lens of Neoliberal Racial Statecraft

The striking overrepresentation of people of color in *parapublic* facilities (even relative to public facilities with similar prisoner classification profiles) suggests that the containment of black persons—and people of color more generally—functions primarily as a technology of social regulation. Again, the normative ideological assumptions of racial deservedness loom large.

In this scenario, "real estate" serves as a proxy for blackness, and, more generally for people of color. Whereas the primary objective of public prisons agencies, theroretically, is the promotion of public safety through rehabilitation, *parapublic* prison firms - which house around 12 percent of the prison population in the United States—do not attempt to engage in questions of rehabilitation because they are first accountable to their shareholders. Companies like CCA are legally obligated to increase shareholder value, an imperative that inherently compromises any deep commitment to rehabilitation, social re-entry, or recidivism reduction.

My research further posits that the overrepresentation of people of color in *parapublic* versus public prisons across the country is primarily attributable to an unlikely source: finely tailored colorblind contractual provisions that implicitly exempt CCA and GEO from housing certain types of individuals whose health care and staffing costs disproportionately attenuate profit margins. Health—and therefore age—tends to serve as a proxy for race without any explicit reference to it. But, as I argue, race continues to serve as a sorting mechanism which is neither intentional *nor* accidental. CCA represents one vector of neoliberal racial colorblindness is that it can contractually couch its policies and practices in the race-neutral language of age and health (and the completely invisible language of gender). Though “Non-Hispanic, white” men comprise 32 percent of total state department of correction populations, they account for 44 percent of all prisoners over the age of 50 and 52 percent of all prisoners over the age of 60 (ACLU, 2012, p. 4). These figures suggest that the older the prisoner, the more likely that prisoner is to be “Non-Hispanic, white.” Correspondingly, the younger the prisoner, the more likely that prisoner is to be a person of color. Most prisoners over 50 today were convicted and sentenced before the operationalization of the "War on Drugs," a skein of policies that have disproportionately criminalized communities of color.

By implication, the vast majority of those incarcerated prior to 1980—both in real numbers and on a percentage basis— was “Non-Hispanic, white.” For example, an individual convicted in 1970 as a 20 year-old would be 63 today. Research conducted by the U.S. Department of Justice and the ACLU both concludes that prisoners over the age of 50 are most likely to be “non-Hispanic, white.” Contrastingly, black individuals constituted 30 percent of state prisons admits in 1950, 34 percent in 1960, roughly 40 percent in 1970, and 42 percent by 1980 (Department of Justice, 1981, p. 6).

Therefore, age, health, and gender serve as proxies for race when explaining the persistent racial disparities in *paraprison*s versus public facilities with similar population profiles. Elderly and/or geriatric prisoners tend to cost more to incarcerate. This is important and instructive about how the *neoliberal racial state* can operate through the colorblind language and policies.

Such findings provide an incontestable example of the ways in which seemingly “race neutral” or "colorblind" neoliberal carceral policies continue to have a differential impact on communities of color. Just as federal injunctions to reduce prison crowding were

framed as a colorblind issue so too does CCA issue colorblind language to justify its disproportionate composition of men of color.

The overrepresentation of men of color in *parapublic* facilities, even relative to public counterpart facilities, speaks volumes about the fundamental operations of the *neoliberal racial state*. Under this social rubric the future flourishing of people of color is subjugated to short-term profit extraction, externalization of social costs to the commons (an gestalt of agencies, immunities, and rights often inaccessible to people of color), and a reification of the trope of the immutable criminal of color, that is, a body incapable of being rehabilitated, reformed, or forgiven.

In fact, the preponderance of bodies of color in *paraprisons* should constitute a radical critique of both the racial and carceral the status quo: What as a society do we value? Who in society do we value? What types of bodies themselves constitute society? And what in society must be value if we value the idea of the prison? These questions offer an appraisal of the *neoliberal racial state*, an inherently anti-democratic set of regulatory bodies in which the systematic devaluation of people of color at the hands of white supremacy justifies itself through the simultaneous deregulation of property (and commerce) and the regulation of bodies who fall outside the normative scope of white citizenship, white democracy, and white law.

## Chapter Five

### The Curious Case of California

This chapter highlights the 10-year partnership (2006–present) between the California Department of Corrections and Rehabilitation (CDCR) and Corrections Corporation of America (CCA) in order to illustrate the concrete ways in which neoliberal racial statecraft gets operationalized at a particular time and in a particular place. Though this chapter does not constitute a formal case study of California prisons, I argue that California is uniquely illustrative of the ways in which various regulatory bodies like CDCR, CCA, U.S. district courts, the U.S. Supreme Court, California Correctional Health Care Services, the electorate, prisoners, prisoners’ rights organizations, the governor’s office, and the State Office of the Inspector General have put into motion a mosaic of racialized neoliberal practices that has resulted in the racial regulation of bodies through law, economy, and political discourse. This chapter will explore the following questions: What social, legal, economic, and political factors influenced the CDCR’s partnership with CCA? What does such a relationship mean for the contemporary operations and tendencies of neoliberal racial statecraft? And further, to what extent does CCA expand and transform California’s capacity to regulate social marginality, and in particular, bodies of color, penologically?

Throughout this chapter I argue that the partnership between the California Department of Corrections and Rehabilitation (CDCR) and Corrections Corporation of America (CCA) operates within the larger framework of *neoliberal racial statecraft*. I contend that the partnership between the CDCR and CCA illustrates the complex interplay between forms of liberal legal redress—federal injunctions to reduce crowding and improve medical care in California’s prisons—and the ways in which redress outcomes—disproportionately transferring male prisoners of color to out-of-state CCA facilities—reinscribes racially disparate regulatory outcomes for communities of color.

Taken together, associations among the CDCR, CCA, U.S. district courts, the U.S. Supreme Court, California Correctional Health Care Services (the organization appointed by federal courts to oversee health care delivery in California’s prisons), the electorate, prisoners, prisoners’ rights organizations, the governor’s office, and the State Office of the Inspector General (OIG) constitute a pastiche of racialized neoliberal negotiations.

I argue that the way California chose to ameliorate its crowded prisons and reduce its overall prison population as required by *Brown v. Plata* (No. 09–1233 2010) —by transferring prisoners to out-of-state CCA facilities—merely exacerbates unconstitutional health care delivery and monitoring for which a separate lawsuit, *Coleman v. Schwarzenegger* (499 U. S. 225, 233 1991), was originally filed. Racial formation is central to telling the story about how and where these two lawsuits converge ideologically.

I have chosen to use California as the focus of this chapter not only because California is currently home to 134,000 prisoners—the second largest prison population in the country (behind Texas)—but because the CDCR singlehandedly accounts for 12 percent (Corrections Corporation of America, 2012, p. 15) of CCA’s total operating revenue, more than any agency except the U.S. government. By CCA’s own admission, “the CDCR is our only state partner [to] account for 10% or more of our total revenue” (Corrections Corporation of America, 2012, p. 16) And at present, over 6,000 CDCR prisoners are housed in three out-of-state facilities—two in Arizona and one in Mississippi—managed by

CCA. This accounts for over 6 percent of all CDCR prisons. Men of color are overrepresented in these *paraprison* facilities relative to both public prison populations in the state of California and state population shares.

### The Short History

On October 3, 2005 the federal courts wrested control of prison medical care from the CDCR and appointed a federal receiver to raise standards of health care in California prisons to a level of constitutional propriety. The courts, in part, held that substandard medical care in California prisons was a result of crowded conditions. At the time of the decision CDCR prisons were operating at close to 200 percent of intended design capacity (California Correctional Healthcare Services, 2014, p. 1).

Almost a year later, and in accordance with the California Emergency Services Act (Government Code Section 8550-8551) Governor Arnold Schwarzenegger issued a State of Emergency Proclamation contending that the scale and scope of crowding in the CDCR system posed a substantial health and safety risk both to prisoners and correctional officers. At the time his proclamation was published CDCR facilities held over 170,000 prisoners, with about 15,000 individuals contained in “temporary housing” in gymnasiums, day rooms, and other non-residentially designated spaces.

In order to help alleviate this court-defined crowding problem the Governor directed the CDCR to contract with CCA and effectuate transfers immediately to CCA’s out-of-state facilities in Arizona, Mississippi, and Oklahoma<sup>28</sup>. Schwarzenegger’s proclamation also waived various state contract laws, including requirements for competitive bidding. Lack of competitive bidding demonstrates that “actually existing” neoliberalism rarely comports to the theoretical dictates of capital, competition, or “free markets,” but rather sustains itself through preferential monopolistic treatment. Joel Handler writes in *Down from Bureaucracy: The Ambiguity of Privatization and Empowerment* (1997) that experiments in privatization are not about policy, per se, but rather premised on the “politicization of privatization.” Handler argues that the links between government officials, contractors, and political contributions are cemented in and through the bidding process. This, in Handler’s view, also helps to explain the “revolving door” between private firms and government agencies.

In response to the severity of the crowding problem Schwarzenegger declared a state of emergency on October 4, 2006. In his “Prison Overcrowding State of Emergency Proclamation” the Governor declared that “all 33 of CDCR’s prisons are now at or above maximum operational capacity, and 29 of the prisons are so overcrowded that the CDCR is required to house more than 15,000 inmates in conditions that pose substantial safety risks.” He also stated that “the severe overcrowding in 29 CDCR prisons has caused substantial risk to the health and safety of the men and women who work inside these prisons and the inmates housed in them” and that “immediate action is necessary to prevent death and harm caused by California’s severe prison overcrowding” (California Department of Corrections and Rehabilitation, 2006).

The risks enumerated by the Governor in his Proclamation included “increased risk for transmission of infectious illness;” “security risks caused by line-of-sight problems for correctional officers,” particularly in areas where prisoners are triple-bunked and in “tight quarters”; and “thousands of gallons of sewage spills and environmental contamination”

---

<sup>28</sup> CDCR prisoners are no longer housed in CCA’s Oklahoma facility.

from overloading the prisons' sewage and wastewater systems" (California Department of Corrections and Rehabilitation, 2006, p. 2).

Governor Schwarzenegger also declared that the suicide rate in the 29 severely overcrowded prisons "[was] approaching an average of one per week." In addition, the Proclamation described three separate proposals by the Governor to address the overcrowding crisis, including a proposal to build "two new prisons" to address California's current and future incarceration needs" (California Department of Corrections and Rehabilitation, 2006, p. 2).

In January and March of 2006 the Governor had proposed legislation to build new facilities but the Legislature rejected his measures. As a result, the Governor invoked his powers under the California Emergency Services Act to call for immediate efforts to "transfer prisoners to out-of-state, contract correctional facilities," as well as the suspension of state contracting laws so that the CDCR could contract for all goods and services "needed to immediately mitigate the severe overcrowding and the resulting impacts within California" (California Department of Corrections and Rehabilitation, 2006, p. 3). Schwarzenegger's Proclamation invalidated the requirement that prisoners consent to the transfer in order to expedite the process.

In 2007, Assembly Bill 900 (AB 900) provided the authority for the mass transfer of 8,000 prisoners to CCA facilities for a temporary period of five years. The contract was expanded in November 2009 and 2010 to allow for additional transfers, resulting in a total of over 10,000 out-of-state prisoners and contracts with CCA totaling \$1.18 billion by 2012 (Lagos, 2010; CDCR, 2009).

### CCA Arrives

In the eyes of CCA California represented an enormous untapped market. Though there is no evidence to show that CCA contributed to the Governor's office around the time of his October 2006 Proclamation, the company did donate \$45,000 to the state Republican Party in 2008—at the time of CCA's contract extension—and an additional \$15,000 to the Republicans in 2009, along with \$7,500 to the Democratic Party and \$100,000 to Governor Schwarzenegger's Budget Reform Now coalition (Prison Legal News 2010, 15). Within two weeks of the Governor's Proclamation the CDCR signed a contract with CCA for 1,000 beds at \$63 per bed per day (Carter, 2007, p. 2). Transfers began within 30 days. Early transfers were nearly all involuntary in nature. Initial selection criteria for involuntary out-of-state transfers—most of which center on state-based Immigration and Customs Enforcement (ICE) holds or convictions—have a clear racial valence, as I will explain below, and account, in part, for the overrepresentation of men of color in out-of-state, CCA-managed facilities contracted by the CDCR.

For instance, according to stipulations set forth in a 2007 CDCR memorandum, the state of California "prioritizes previously-deported prisoners and/or prisoners with active or *potential ICE holds* for involuntary transfers" (California Department of Corrections and Rehabilitation, 2007, p. 4) to out-of-state *paraprisons*—a policy that disproportionately impacts men of color.

In May 2013 I reached out to a senior-level CDCR administrator over e-mail with asking how the agency defines "active or potential ICE holds for involuntary transfers to out-of-state facilities." I received the following response: "A potential ICE hold is placed on an inmate who is born outside the U.S., and federal immigration officials have not had a

chance to do a complete investigation to see if in fact the inmate is a legal U.S. citizen or not.”

The CDCR’s response meets the basic definition of racial-ethnic profiling because ethnic origin and/or national identity serve as the singular fulcrum for applying a “potential ICE hold.” My contact at the CDCR also added: “We are trying to locate the 2007 memo you referenced, but we cannot find it yet. If you have a copy of it, please send it to me so that we can respond to it appropriately” (personal correspondence, 2013)

In 2007, the ACLU of Northern California sent a letter to the CDCR demonstrating that “the involuntary inmate transfer program implicates the right to equal protection under the federal and state constitutions because the selection criteria for making transfers rely on an alienage classification” (Mass, 2007, p. 2). Julia Mass, author of the letter, went on to write that “classifications based on alienage are ‘inherently suspect’ because aliens as a class are a primary example of a discrete and insular minority” and such a criterion “should therefore be subject to heightened judicial scrutiny” (Mass, 2007, p. 2).

According to Mass, the ACLU “never received a satisfactory response” and so they filed suit under the Administrative Procedure Act—a provision that serves as a check against arbitrary decision-making by state agencies and officials. The case was quickly dismissed because it was established that the CDCR did indeed provide the proper “notice and comment period” pertaining to transfer criteria before the statute was implemented.

Subsequent to the failed ACLU complaint, the Legislature enacted AB 900 in August 2007 which amended state law to extend the involuntary transfer of prisoners out-of-state until July 1, 2011 or until CDCR replaced all temporary beds in the prison system. Involuntary transfers are still commonplace at the time of this writing.

### Race, the CDCR, and Crowding in Context

Though the Governor’s Emergency Proclamation is rightly considered the proximal reason for the state’s involvement with CCA by legal scholars like Simon, Petersilia, and Dolovich, the partnership between these two entities had been years in the making and is based on historical and contemporary racial climates in California, taxpayer intransigence to debt finance public prison construction, and various court-ordered reductions in population crowding contributing to repeated 8<sup>th</sup> Amendment violations (Simon, 2014; Petersilia, 2012; Dolovich, 2009).

The 750 percent increase in the California prison population since the mid-1970s is the result of political decisions made over three decades, including the shift to inflexible determinate sentencing and the passage of harsh mandatory minimum and three-strikes laws coupled with California’s “War on Drugs,” and shifts in the state’s political-economy (Dolovich, 2009, p. 45).

California has gone from housing approximately 20,000 prisoners in 1973 to an “all-time high” in October 2007 of over 180,000 prisoners. At present, men of color constitute 68 percent of the CDCR’s overall population (CDCR Offender Information Services, 2015, p. 1).

The historic rate of growth of California’s prison population is due, in part, to the state’s adoption of determinate sentencing laws in the 1970s and the countless increases in criminal sentences enacted by the legislature. I have suggested earlier in this project that race

is a central factor for considering the shift from flexible, indeterminate sentencing to determinate sentencing during the 1970s.

Between 1965 and 1975 the Latino population doubled in California as a result of Mexican immigration. By the mid-1970s anti-Mexican racism and xenophobia reached a fever pitch as Chicano organizers in California began to consolidate demands for better schools and public services (Munoz, 2007). In the eyes of white Californians Latinos were not fully white or American and therefore ideas of widespread public investment benefitting diverse populations were abandoned. I argue that it is difficult to reconcile support for indeterminate, flexible sentencing with the ideology of the immutable criminal of color, a person unable to be rehabilitated and entirely incapable of full civic and moral participation in the democracy.

Growth in California's prison population is also attributable to a host of political-economic factors with racialized inputs and outcomes. Critical geographer Ruthie Gilmore argues that "crime peaked in California in the 1980 and declined, unevenly but decisively, thereafter" (Gilmore, 2007, p. 32). However, since 1982 when the state embarked on the biggest prison construction program in the history of the world, the number of CDCR prisoners has risen by 440 percent (Gilmore, 2007, p. 32). At a cost of roughly \$350 million dollars each, California has built twenty-two new prisons since 1984 (Gilmore, 2007, p. 33).

Gilmore argues that California's political-economic restructuring since the early 1970s, including various forms of "neoliberal reorganization," has also precipitated prison crowding, lawsuits, and construction. Gilmore contends that the de-militarization of California's industrial economy in the 1970s resulting in large-scale job loss coupled with large-scale immigration, surplus land in the Central Valley ready for development, and the perpetual devaluation of bodies of color created a perfect storm for the state's prison growth (Gilmore, 2007, p. 33).

All kinds of workers experienced profound insecurity, she argues, as millions were displaced from jobs and industries by capital flight, by outsourcing and by mechanization. Racist and nationalist confrontations heightened, driven by the common-sense perception that the state's public and private resources were too scarce to support the growing populations of color (Gilmore, 2007, p. 35). The share of total foreign-born citizens living in California nearly doubled from 8.6 percent in 1970 to 15.2 percent in 1980. Close to half of new arrivals (48 percent) during the same period were from Mexico alone (University of Southern California Price School of Social Policy, 2012, p. 4).

These triple movements of capital, labor, and immigration produced a growing relative surplus population: workers at the extreme edges or completely outside restructured labor markets and capital looking for investment. The reorganization of labor markets expelled people from the workforce. Black men were first among the dispossessed, although many kinds of workers began to experience "something close to permanent redundancy" (Gilmore, 2007, p. 12).

It also produced a profound racial backlash in the form of Proposition 187, a 1994 California ballot measure—also known as the "Save Our State" initiative—which prohibited undocumented individuals from accessing health care, public education, and other social services in the state of California. The language of the "Save Our State" initiative is telling in that it linguistically policies parameters of acceptable citizenship and democratic participation. It casts immigrants of color—and more generally, people of color—as unworthy recipients of social services and represents one wing of the *neoliberal racial state*, one in which social deservedness and fitness for political participation is racialized as white.

The aggregate rate of black and brown (census designation black/African American and Hispanic) incarceration in California grew by close to 50 percent throughout the 1980s and 1990s, mostly as a result of criminalizing minor drug offenses in Los Angeles County, the very county with the largest black population both in real numbers and on a percentage basis at the time (CA Legislative Analyst's Office, 2007, p. 13). Since the early 1980s the application of drug policy law and policing in Los Angeles County accounts for at least 60 percent of the growth in incarceration among people of color. To this day, close to 1/3 of all CDCR prisoners are from Los Angeles County (St. John, 2013, p. b1).

For those already serving time, the consequences of the state's failure to prepare prisoners for re-entry are significant: "The vast numbers of parolees returning to prison also drive the size of the prison population and the cost of the system. In 2001, more than 74,000 (47 percent) of the average daily prison inmate population of 157,000 was made up of parole violators" (Petersilia, 2013, p. 6). Finally, the state Parole Board has been unwilling to release prisoners serving terms of 15 or 25 years to life—particularly prisoners of color<sup>29</sup>—who have served their minimum sentence or more with unblemished records and are determined by prison officials not to constitute a risk to society.

### Lawsuits against the CDCR

The most far-reaching lawsuit levied against the state of California, though certainly not the first, was filed in 2001. The *Plata* class action was filed on April 5, 2001 alleging constitutional violations in the delivery of medical care to prisoners—itsself a form of social service—confined in California state prisons, as well as violations of the Americans with Disabilities Act (*Plata v. Schwarzenegger* 560 F.3d 976-979 2001). Plaintiffs asserted that the "unconstitutional conditions" caused by the CDCR's failure to "properly care for and treat the prisoners in [their] custody...caused widespread harm, including severe and unnecessary pain, injury and death" (Three Judge Court Opinion and Ruling, 2009).

The *Plata* plaintiffs and defendants negotiated a stipulation for injunctive relief, which the *Plata* court approved by court order. However, the CDCR proved incapable of providing the stipulated relief. Three years after approving the stipulation as an order of the court, the *Plata* court conducted an evidentiary hearing that demonstrated the continued existence of egregious conditions arising from defendants' failure to provide adequate medical care to California prisoners. The Court found that defendants had been given "every reasonable opportunity to bring [the] prison medical system up to constitutional standards, and it [was] beyond reasonable dispute that the State ha[d] failed" (Three Judge Court Opinion and Ruling, 2009, p. 3).

The *Plata* Receivership continues in 2016 but severe crowding throughout California's prison system has rendered the Receiver unable to resolve the constitutional violations at issue in *Plata*. According to Petersilia, "the overcrowding and facility life-safety and hygiene conditions create a public health and life-safety risk to [prisoners] who are housed there" (Petersilia, 2013, p. 43).

On October 3, 2005, the court issued findings of fact and conclusions of law articulating the detailed reasoning behind its oral ruling: "By all accounts, the California

---

<sup>29</sup> For a more substantive discussion of racial biases in parole please the ACLU's recent report entitled "A Living Death: Life without Parole for Nonviolent Offenses" and Michelle Alexander's *The New Jim Crow* (2012).

prison medical care system is broken beyond repair...The harm already done in this case to California's prison inmate population could not be more grave, and the threat of future injury and death is virtually guaranteed in the absence of drastic action" (California Correctional Health Care Services, 2012, p. 3).

The Court continued, "the Court has given [CDCR] every reasonable opportunity to bring its prison medical system up to constitutional standards, and it is beyond reasonable dispute that the State has failed. Indeed, it is an uncontested fact that, on average, an inmate in one of California's prisons needlessly dies every six to seven days due to constitutional deficiencies in the CDCR's medical delivery system. This statistic, awful as it is, barely provides a window into the waste of human life occurring behind California's prison walls due to the gross failures of the medical delivery system" (in Warren, 2014, p. 2).

While the *Plata* court has struggled to bring the CDCR's medical system into constitutional compliance for more than seven years, the *Coleman* action has lasted even longer – almost two decades (Three Judge Court Opinion and Order 2009, 4). The first five years of *Coleman V. Schwarzenegger* (499 U. S. 225, 233 1991) litigation culminated in a finding that the CDCR was violating the Eighth Amendment by failing to provide constitutionally adequate mental health care to prisoners with serious mental disorders. The past fifteen years have involved continual efforts to remedy the constitutional violations.

The *Coleman* action was originally filed on April 23, 1990. On July 25, 1991, plaintiffs filed an amended complaint raising claims under the Eighth and Fourteenth Amendments to the United States Constitution and the Rehabilitation Act (Three Judge Court Opinion and Order, 2009). These claims were grounded in assertions of severe inadequacies in the delivery of mental health care to prisoners in the CDCR system. At the time of the *Coleman* trial, the Eighth Amendment violations stemmed in large part from the state's failure to accurately identify the number of individuals with a mental illness in the prison population, despite several reports addressing the issue (Three Judge Court Opinion and Order, 2009).

Historically, there has been a strong linkage between mental health services, medical diagnoses, and race in U.S. prisons. In *The Protest Psychosis: How Schizophrenia Became a Black Disease* (2010) Jonathan Metzl argues that in Michigan prisons of the mid- to late-1960s and early 1970s schizophrenia was a diagnosis disproportionately applied to a growing population of black men from urban Detroit. Metzl shows that prison hospital charts "diagnosed" these men in part because of their symptoms, but also because of their connections to the civil rights movement (p. 64).

Many of the men were sent to prison after convictions for crimes that ranged from armed robbery to participation in civil-rights protests, to property destruction during periods of civil unrest, such as the Detroit riots of 1968. "Charts stressed how hallucinations and delusions rendered these men as threats not only to other patients, but also to clinicians, ward attendants, and to society itself" (Metzl, 2010, p. 81). Metzl recalls in a 2010 interview "You'd see comments like 'Paranoid against his doctors and the police.' Or, 'he would be a danger to society if he were not in an institution'" (Metzel interview in *Psychology Today*, 2010, p. 2). Individuating collective protest through the raced language of disease or disorder has historically been one tactic pursued by the *neoliberal racial state* for reframing dissent through the language of pathology and deviance.

After over a decade of remedial efforts under the supervision of a special master and over seventy orders by the *Coleman* court, the CDCR could not provide thousands of prisoners with documented mental illnesses with constitutionally adequate mental health care. Public officials in California pitted the improvement of medical violations against releasing prisoners. Given the framing, of course, the idea was immediately unpopular in

California's court of public opinion.

The court wrote in 2006 that “critically mentally ill inmates [are] languishing in horrific conditions without access to immediate necessary mental health care” (Reinhardt *et al.*, 2006). The unrelenting growth of the prison population has prevented the state from meeting its obligations under the Eighth Amendment and has led to the proceeding before the court. “The United States Constitution does not require that the state provide its inmates with state-of-the-art medical and mental health care, nor does it require that prison conditions be comfortable.” California must simply provide care consistent with “the minimal civilized measure of life’s necessities,” care sufficient to prevent the unnecessary and wanton infliction of pain or death (*Estelle v. Gamble* 429 U.S. 97 1976).

Between 1990 and 2006, more than a dozen commissions and public interest groups including the ACLU, the NAACP, and the Urban League issued reports with clear, actionable proposals to solve the crowding and health care delivery problem in California’s prison system. As Joan Petersilia, co-chair of the expert panel convened by the CDCR in 2007, noted, “all of the reports recommended essentially the same ten things,” including diverting non-violent, non-serious offenders and technical parole violators from prison; using a risk and needs assessment tool to match prisoners with resources and programming; expanding rehabilitative programs; reforming California’s determinate sentencing system; transferring low-risk prisoners in the later part of their sentences to community-based reintegration facilities; establishing a sentencing commission; reforming parole; creating partnerships between state and local corrections agencies; requiring that all programs be based on solid research evidence; and promoting public awareness regarding California’s prison system.

The Panel also noted that California’s “correctional system [had] grown to become the largest in the nation, rivaling in size and numbers even those of most other countries,” and that “[n]ot surprisingly, this massive system shows the strains of both its age and its decades-long growth” (Petersilia, 2013, p. 23). The Panel found that “[a]dult prisons are severely overcrowded, imperiling the safety of both correctional employees and [prisoners].” Consequently, a number of the Panel’s 237 recommendations, including the enhancement of earned credits, the expansion of rehabilitative programming, the identification of older prisoners for early release, and the diversion of certain parole violators, were aimed at population reduction.

Ultimately, by 2006 it became apparent to compliance monitors that the crowding in California’s prisons rendered the efforts of the courts, the *Coleman* Special Master and the *Plata* Receiver, insufficient. At the request of the *Plata* and *Coleman* courts, the Chief Judge of the United States Court of Appeals for the Ninth Circuit convened this three-judge court to consider the plaintiffs’ request for a court-ordered reduction in the California prison population. It was in this context that Governor Schwarzenegger made his now infamous proclamation in 2006.

### The “Post-Contract” Period

Even with the addition of out-of-state, CCA-managed prisons since late-2006 the outlook for California’s prisons grew dimmer. By 2007, the state was in the throes of a fiscal crisis that rendered it unable to commit the necessary resources to ameliorate the prison crowding or unconstitutional health care. As Matthew Cate, Secretary of the California Department of Corrections and Rehabilitation put it, California “cannot at this time become

further indebted for correctional healthcare or crowding” (California Department of Corrections and Rehabilitation, Internal Memorandum, 2007).

And even after voluntary and involuntary out-of-state transfers had been effectuated the state’s adult prisons were still operating at 200 percent design capacity with 162,792 prisoners (California Department of Corrections and Rehabilitation, 2007). As of August 27, 2008, the population of these institutions was reduced to 195 percent design capacity with 156,352 prisoners, largely as a result of shipping several thousand prisoners to Mississippi, Arizona, and Oklahoma. The prisoners transferred—by virtue of the ICE policy—were disproportionately men of color.

During this time a multiracial coalition of prisoners across the state instituted hunger strikes as a way to demand access to adequate medical care, sanitation, and basic nutrition. A former prisoner in a CCA’s facility in Tutwiler, Mississippi told me that “CDCR responded swiftly by relocating select prison activists to specialty housing units (SHU) with no sunlight and freezing temperatures and by transferring agitators to out-of-state CCA facilities” (personal correspondence, 2015). The CDCR justified its actions by claiming that the protests had been “organized by prison gangs” and that relocation to SHU was a way to “provide individual accountability of offenders” (California Department of Corrections and Rehabilitation, 2007, p. 2).

The CDCR, when pressed by California’s chapter of Solitary Watch—a prisoner advocacy organization—could not define “gang activity” but continued to publicize such inflammatory racial innuendo to curry favor with (white) citizens concerned about public safety. Historically, policies that enhance punishment for “gang activity” are disproportionately applied to people of color, whether or not they, in fact, belong to a prison gang (Guenther, 2013). A term like “prison gang member” functions as an (in)visible marker of a “status crime,” that is, a social violation premised not on conduct but on bodies perceived to be criminal.

The CDCR offhandedly admitted in 2008 that the gang status designation often does indeed serve as a proxy for race. In testimony with a preliminary gang injunction from 2007 the prison staff informed the presiding judge that “it was the policy of the California Department of Corrections and Rehabilitation (“CDCR”) that ‘when there is an incident involving any race, all inmates of that race are locked up.’” One does not have to read too far between the lines to understand that “probable gang affiliation” in the eyes of the CDCR is almost always contextualized through race (*Mitchell v. Cate* No. 2:08-CV-01196 2008).

This is a critical backdrop against which the *Plata* and *Coleman* courts jointly heard oral argument on plaintiffs’ motions to convene a three-judge court around the same time. Persuaded that the state had not adequately addressed its prison-crowding crisis so as remedy the constitutional violations (and that consideration of a population reduction order was necessary in order to achieve that objective in both cases) both courts granted plaintiffs’ motions.

The *Plata* court found that although “the Receiver has made much progress since his appointment ... the unconstitutional conditions that led to [the Receiver’s appointment] continued to exist” (*Plata Syllabus*, 2011, p. 3). The *Plata* court explained: “Had the Receiver reported to the Court that it did not view overcrowding to be a substantial impediment to implementing the reforms required in this case, the Court may well have reached a different conclusion regarding the appropriateness of convening a three-judge court to consider a prisoner release order” (*Plata Syllabus*, 2011, p. 4).

However, quite to the contrary, the Receiver’s reports indicated that crowding is a serious problem that impacts, for example, its ability to develop adequate reception centers

and health facilities because of the large numbers of prisoner transfers and the inadequate amount of available health care beds.

According to the Receiver, crowding also negatively impacts the Receiver's ability to hire and retain competent medical and managerial staff. This liberal form of legal redress is reminiscent of the ways the federal courts handled prison conditions litigation after the Attica uprising of 1971. One can argue that litigation in California helped to absorb more radical critique by voices of color through reformist channels.

For instance, the 2007 the *Coleman* court found that between 1997 and 2005, defendants had made "slow but evident progress toward constitutional compliance," but that, "[i]n spite of the commendable progress..., defendants' mental health care delivery system has not come into compliance with the Eighth Amendment at any point since this action began" (Russo, 2007, p. 1). The Court ruled that insufficient intensive mental health treatment beds and a chronic lack of programming space for mental health treatment contribute further to defendants' inability to meet required mental health services; all three deficiencies were unquestionably exacerbated by crowding.

The CDCR appealed this decision and it went to the Supreme Court. The Supreme Court affirmed the plaintiffs' complaints and in 2011 *Brown v. Plata* (No. 09-1233) ordered the state to reduce its prison population by 25 percent within two years.

It has now been five years since the U.S. Supreme Court affirmed California's prisoner crowding order, engendering an unprecedented renovation of California's sentencing and prison system. In *Brown v. Plata* the Supreme Court affirmed the three-judge district court's 2009 remedial order requiring the state to reduce its prison population to 137.5 percent of design capacity within two years. Justice Kennedy's majority opinion concluded that "[w]ithout a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" prisoners in California's prisons (Plata Syllabus, 2011, p. 3).

The Supreme Court found that California had indeed violated the Eighth Amendment ban against "cruel and unusual punishment" by providing constitutionally inadequate medical and mental health services in its prisons, and that crowding was the "primary" source of the unconstitutional medical care. The Court determined that California had room for just 80,000 prisoners in its thirty-three state prisons, but housed more than twice that number, and as a result of such extreme crowding, medical and mental health care could not be delivered.

The state had appealed to the U.S. Supreme Court on the grounds that the lower court had violated the federal Prison Litigation Reform Act (PLRA) by allegedly intruding on the state's authority to administer its prison system and compromising the state's ability to reduce overcrowding in a manner consistent with public safety. But the high Court comprehensively denied the state's appeal.

Justice Kennedy, writing for the majority in a 5-4 decision, described conditions where prisoners were denied minimal care and high-risk suicidal prisoners were held in "telephone-booth sized cages without toilets" and prisoners with mental illnesses "languished for months, or even years, without access to necessary care" (Kennedy, 2011, p. 14). He wrote: "A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society. If government fails to fulfill this obligation, the courts have a responsibility to remedy the resulting Eighth Amendment violation" (Kennedy 2011, 15).

Justice Scalia dissented and called the order affirmed by the majority "perhaps the most radical injunction issued by a court in our Nation's history: an order requiring

California to release the staggering number of 46,000 convicted criminals,” which would result in “inevitable murders, robberies and rapes to be committed by the released inmates” (Scalia, 2011, p. 3). Justice Alito echoed the same theme in his dissent when he wrote, “[T]he majority is gambling with the safety of the people of California. . . . I fear that today’s decision, like prior prisoner release orders, will lead to a grim roster of victims” (Alito, 2011, p. 11).

The Supreme Court order did not necessarily require the State to release any prisoners. Kennedy writes that “the State may comply by raising the design capacity of its prisons or by transferring prisoners to county facilities or facilities in other States” (Kennedy, 2011, p. 10). Justice Kennedy conceded that there was “no realistic possibility that California would be able to build itself out of this crisis,” in light of the state’s budgetary shortfalls.

In 2011 California faced a \$25 billion deficit and future estimated annual budget gaps of \$20 billion. In many ways California’s recent budgetary woes are the result of speculative mortgage underwriting practices promoting by Wall Street. By virtue of the Lehman Brother collapse of 2007—a crisis for which no Wall Street executive has been held legally accountable—California (among nearly every other U.S. state) cut social services, indeed, the very types of social services on which people of color rely at disproportionately high rates. But, California chose to alleviate a crisis by creating another.

This is the heart of *neoliberal racial statecraft*. The *neoliberal racial state* attempts to solve its inevitable contradictions, contradictions that nearly always center on attempting to square the reality of white supremacy with the ideal of equal protection and representation under the law. We now turn to these contradictions.

### Neoliberal Antinomies

Contracting with CCA has helped the CDCR, in part, temporarily to solve the problem of crowding as framed by the courts. However, at the same time, I argue that the CDCR’s chosen remedy for the crowding problem—shipping primarily male prisoners of color to out-of-state facilities—severely compromises the state’s ability to remedy its other constitutional violation of substandard health care delivery and monitoring.

The state’s decision to enter into a no-bid contract with CCA has presented a two-fold challenge to the Office of the Medical Receiver: 1) the need to work cooperatively with CDCR officials to effectuate out-of-state transfers and, at the same time, 2) the need to ensure that all select prisoners are “health appropriate” for transfer and that adequate medical care will be provided and closely monitored in out-of-state contract facilities.

I argue that racialized solution to meet the demands of *Plata* replicates the racialized conditions that originally lead to *Coleman*. I argue that the proposed remedy for the first lawsuit for stands in direct opposition to remedy the second. In 2014 I contacted California’s Office of the Inspector General via e-mail with my theory. To my surprise a representative from the Office confirmed my hypothesis by stating “at present there is no substantive monitoring process for medical compliance in out-of-state CCA prisons holding CDCR prisoners” (personal correspondence 2014)

The Office of Inspector General—which was once the only state agency with the power to conduct out-of-state prison audits—no longer has the statutory authority to monitor contract facilities. Perhaps even more disturbing is the fact that California Correctional Health Care Services (CCHCS)—the agency appointed by the federal receiver to monitor health care compliance— does not readily collect information on the medical

conditions of prisoners housed in CCA facilities, facilities that, on average, house almost exclusively (89 percent) men of color.

I wanted to learn a bit more about what type of information CCHCS collects (or doesn't) and so I approached the agency again in 2014 via e-mail requesting the percentage of prisoner-patients in out-of-state CCA facilities with Hepatitis C<sup>30</sup>, I received the following response: "The database used by CCHCS for tracking medical information on patient-inmates does not contain records from out-of-state locations. As such, CCHCS does not have records responsive to this request" (personal correspondence). Such a lack of compliance with prescribed legal remedies disproportionately affects black and brown male prisoners, two groups that are over-represented in CCA facilities holding CDCR prisoners.

California's Office of Inspector General (OIG) no longer has the ability to audit CCA's out-of-state facilities. Simply stated, the Office of Investigator General is ineffective in monitoring CCA, one of the very problems the federal courts sought to remedy. Prior to 2011, the OIG had statutory authority to conduct other audits at CCA facilities at its discretion, but that authority was removed by the Legislature in 2011 under SB 92.

At present, the OIG has only nine program areas: (1) Monitoring CDCRs employee investigations and discipline process (2) Warden and Superintendent Vetting (3) Inspecting the medical care at each state prison (4) Monitoring CDCRs progress implementing the 2012 Blueprint reforms (5) Intake and review of complaints from the public (6) Monitoring Use of Force Incidents and Critical Incidents (7) Monitoring CDCRs Contraband Surveillance Watch program (8) Chairing the California Rehabilitation Oversight Board (9) Performing special reviews as requested by the Legislature or Governor (Chase, 2013).

Further, employees at contract facilities are private at-will employees; they are not civil servants and therefore not subject to State Personnel Board review so the OIG cannot monitor that process either. For many of the same reasons, the OIG cannot vet the wardens at CCA facilities; unlike state prisons, the governor does not appoint wardens at *paraprisons*. CCA facilities are also not required to follow CDCR statutory policies – the only requirements are those set out in contracting and bidding process.

We have effectively arrived at a place wherein there are now fewer legal protections and oversights for male CDCR prisoners of color transferred to out-of-state CCA facilities than before both *Plata* and *Coleman* were litigated.

Simply stated, the policies selected to comply with both court orders stand at cross-purposes with one another. And the CDCR admits to it: "The relationship between the state of California's efforts to manage overcrowding and the *Plata* remedial process is difficult. There is a negative impact of the state's program to manage overcrowding on the receiver's efforts to effectuate remedial process. Though the transfers have not presented an insurmountable barrier, no one, however, should be under the false impression that the out of state transfers have not adversely impacted the receivers efforts to improve the conditions within [the CDCR system]" (California Department of Corrections and Rehabilitation, Internal Memorandum, 2009).

What does this process mean for men of color housed in CCA facilities contracted by the state of California? This sub-population has effectively been written out of the dictates of monitoring, accountability, and transparency, indeed, the very intended outcome of remediation in the first place. I argue that legal redress has failed men of color once again.

---

<sup>30</sup> I requested information on Hepatitis C because prisoners are 2000 percent more likely to have HCV than "free world populations." HCV is also extremely expensive to treat.

I received a letter second-hand from a CDCR prisoner held in CCA's Tallahatchie Correctional Facility in Tutwiler, MS indicating that between December 27, 2014 – February 16, 2015 there were 4 prisoner deaths related to medical malfeasance (personal correspondence, 2015) The preventable death rate in CCA's Mississippi facility is higher than the rate of medically-related deaths in every state-managed facility within the state of California during the same time period (CDCR Offender Information Report, February 2015, p. 1).

Such an example demonstrates that medical compliance monitoring—indeed, the purpose of the federal receivership—is severely compromised by the utilization of CCA's out-of-state facilities. Based on the CAP reports dated August 28, 2008 (two years after the contract period began) the federal receiver found that “the current management staff within Correction Corporation of America and Tallahatchie County Correctional facility [in Mississippi] cannot implement the CDCR's remedial plan without [financial] assistance” (California Correctional Healthcare Services, 2008).

The report also states that “staffing requirements are inadequate” and the process for scheduling, tracking, and follow-up medical appointments does not comply with basic *Plata* standards (Moreover, “formal supervision of mid-level clinicians is inadequate to ensure compliance with protocols,” that is, “the process to credential or hire clinicians does not appear to adequately match skills with scope of work.” And finally, the “chronic care processes are out of compliance with the standard of care prescribed by the courts” (California Correctional Healthcare Services, 2008).

After the CAP report was published the Receiver offered the following comment: “The workload associated with screening inmates for the out-of-state pipeline is resource intensive, costly, and time consuming. Given the competing priorities with in-state inmate medical concerns, the lack of space and overcrowded conditions within the CDCR facilities, and the continuous rotation of inmate populations, to expect the Receiver to continue to support the out-of-state program without additional resources is unreasonable” (Hagar 2008, 13).

In January 2016 I discovered through CCHCS audit reports that the nurse-to-prisoner ratio in CCA facilities containing CDCR prisoners is 3 times as slim (1:90) as that of in-state CDCR facilities (1:30) (Rivas, 2016, p.1). This should not be read as a comparative efficiency argument, that is, I am not asserting that public prisons are better than *parapublic* prisons at health care delivery, per se, but rather that in the case of California the use of *paraprison*s actually unravels the aspiration to improve medical care.

The relationship among CCA, the CDCR, and the federal Receiver represents the pith of the *neoliberal racial state*: an experiment in which men of color get left behind in the process of legal redress and, in some ways, are worse off than before injunctive relief was sought. This is the paradox of the parapublic prison state: liberal legal efforts toward reform often reinscribe the very ills they were intended to ameliorate.

Tracing this history helps to show exactly how the reconstitution of white supremacy in the state of California can don the armature of black progress through the praxis of legal proceduralism. This chain of events, however, is not inevitable but rather reflects larger questions inherent to the construction and maintenance of the *neoliberal racial state* and the limits of traditional law, the racialization of social deservedness, and the power of the ideological trope of immutable black criminality.

## Chapter Six

### Discussion

Throughout this project I have examined the legal, political-economic, and ideological manifestations of the U.S. *neoliberal racial state* through the lens of *parapublic carcerality*. In so doing I have challenged the subfield of carceral studies to jettison the terms “private prison” and/or “for-profit prison” and instead to consider the notion of *parapublic carcerality* and/or *paraprisons* to more accurately diagnose the incursionary, politico-regulatory technology of carceral contracting and prison management.

The introduction and elaboration of *parapublic carcerality* is a significant conceptual contribution because it invites a shift in scholarly analysis from prison as a static, readymade punitive institution to carcerality as a tentacular (re)iterative site of regulatory social practice and meaning-making all while avoiding the analytic snares inherent to public/private dichotomization.

I have argued that the highly adaptive nature of the *neoliberal racial state* and its *parapublic* penal arm historically has pitted law against capital and courts against corporations through race discourse in order to broker temporary socio-political balances that maintain race and class hierarchies oriented toward white supremacy and black subjugation. To validate my argument I have traced the history of *paraprisons* to suggest that the emergence of such regulatory bodies and practices do not represent a unidirectional white conservative backlash to victories achieved during the modern civil rights movement. Instead, I have contended that the emergence and expansion of such companies and practices, in part, is *also* a consequence of efforts to remedy the “problem” of prison crowding as defined by liberal federal courts.

I have asserted in no uncertain terms that the federal courts throughout the 1970s and 1980s absorbed radical critiques of white supremacy in the form of lawsuits filed by black prisoners and national civil rights organizations like the NAACP and ACLU by reframing such litigation through the colorblind language of crowding and then forcing remediation through federal injunctions and consent decrees that various electorates were unwilling to address through indices of the public good.

The colorblind language of crowding, however, is still very much racial. “Colorblindness is simply another language through which the racial is lived out” (Goldberg, 2016, p. 22). The *neoliberal racial state* is slippery and vertiginous, it is tentacular and adaptive. In the case of carcerality, the federal courts reinscribed a *neoliberal racial* agenda through the 1970s and 1980s by reframing dissent on the basis of race as a colorblind issue of crowding. And *parapublic* companies emerged to solve the problem of crowding as defined by the courts. Such a chain of events demonstrates that even liberal legal reforms aiming to remedy wrongdoing on the basis of race can and often do result in policy outcomes contrary to the dictates of social justice and radical racial equity.

I am left to conclude that legal-procedural reform—reform in which blackness itself remains an ideological proxy for criminality—will simply not go far enough in decentering whiteness and challenging the fixity of carcerality as an acceptable social praxis.

This project represents an invitation to rethink fundamentally the normative operations of the U.S. *neoliberal racial state* and the ways in which such a state establishes and monitors the parameters of acceptable bodies, behavior, and politics in order to legitimize

the project of racial hierarchy based in white supremacy and in the logic of capital.

I contend that the *neoliberal racial state* is recursively structured in white racial dominance through the logic of inclusion and exclusion in the ever-expanding taxonomy of whiteness qua (full) presumptive citizenship and social deservedness. Further, the *neoliberal racial state* has become adept at marshaling the ideology and rhetoric of colorblindness—prison conditions litigation represents just one of many possible instantiations—in order to reproduce and regulate the structures and hierarchies it has constituted institutionally.

Therefore, in order to move beyond the logic of colorblind legal redress as a strategy in pursuit of racial justice I propose (re)considering what David Theo Goldberg (2002) terms “deracializing” the *neoliberal racial state*. “Deracializing concerns undoing the processes and structures of white dominance and rule through explicit anti-racisms. It entails “the unstitching of white rule...dehomogenizing the state, heterogenizing forms of governance and being, loosening if not splintering the grip, the vice, of the racial imaginary on the state and of the state on racial configuration” (p. 272). Challenging both the legitimacy of *paraprisons* and the larger practice of U.S. carcerality—a praxis that is always already racialized—presupposes a radically new construal of citizenship, one that rests on belonging and inclusion outside and beyond the racialized exclusions and limitations identified above.

To this end, “deracializing” the *neoliberal racial state* must entail the unequivocal goal of prison abolition. Prison abolition, however, does not obviate the pursuit of near-term goals through the framework of Andre Gorz’s non-reformist reform. In his 1964 *Magnum Opus Strategy for Labor* Andre Gorz writes that “non-reformist reform” for social justice entails enacting “approaches short of revolution that both improve people’s conditions and options *in the here and now*, and that also create opportunities for further victories in the future” (p. 44).

Gorz reminds us that the possibility of “revolutionary reforms,” that is to say, reforms which advance toward a radical transformation of society, are fruitful. But his idea of “non-reformist reform” represents an aspiration was to win reforms, organizational gains, and critical consciousness, all in a trajectory leading to sufficient power, clarity, and commitment to secure new social institutions. The linchpin of “non-reformist reformism” for Gorz was not to decry reform itself, but to produce reforms in ways that move continually forward and presupposed system replacement (p. 43).

Against the backdrop of Gorz’s non-reformist reform paradigm, I propose four implementable policy changes to challenge the legitimacy of the *neoliberal racial state* en route to abolition. My hope is that the following policies will help to de-center carcerality as an acceptable catholicon and de-link the ideology of blackness from tropes of criminality and pathology:

**Make full employment a domestic policy goal.** In his 2009 book entitled *Punishing the Poor*, sociologist Loic Wacquant demonstrates that that 60 percent of those currently incarcerated were at the time of their arrest living at or below 50 percent of the poverty line. Wacquant further establishes that nearly 70 of current prisoners were unemployed at the time of their arrest. Data that link unemployment to incarceration are already racialized because communities of color generally experience 20-40 percent higher rates of unemployment than white folks (Wilson, 2015, p. 1).

In 1978 Congress passed the Full Employment and Balanced Growth Act (Humphrey-Hawkins Act) that explicitly affirmed the goals of full employment, growth in production, and a balanced budget. Unfortunately, the plan was abandoned shortly after it was signed into law. Recently, however, a similar legislative opportunity exists to work

toward full employment. Senator John Conyers, Jr. (D- MI) recently drafted a piece of legislation-- H.R. 1000: Humphrey-Hawkins Full Employment and Training Act—aimed at establishing the National Full Employment Trust Fund to create full employment opportunities for the unemployed and the marginally unattached.

**Eliminate the use of companies like CCA and GEO.** Reducing the prison population will require that we eliminate for-profit containment-extortion models. By definition, *paraprison* firms rely on steadily increasing incarceration rates for their continued survival. For instance, CCA admitted in its 2010 Annual Report that its “growth is generally dependent upon [its] ability to obtain new contracts to develop and manage new correctional and detention facilities. This possible growth depends on a number of factors [it] cannot control, including crime rates and sentencing patterns in various jurisdictions and acceptance of privatization. The demand for [its] facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by [extant] criminal laws” (Corrections Corporation of America, 2010, p. 14). To circumvent these challenges, CCA spends over \$1.2 million each year lobbying for more expansive criminalizing laws. In addition, CCA’s performance as a company hinges on contractually guaranteed occupancy rates of up to 90 percent.

**Decriminalize homelessness.** According to the National Law Center on Homelessness and Poverty, in 2009 over 80 percent of U.S. cities with a population of 500,000 or more prohibited camping/sleeping and/or storage of belongings even though these cities indicated that they had insufficient shelter beds, public bathrooms, and/or free-to-low cost storage options for the personal belongings of homeless persons (National Law Center on Homelessness and Poverty, 2010, p. 2). Since “black persons in families make up 12 percent of the U.S. family population, but represent 39 percent of sheltered persons in families” (Nunez, 2012) decriminalizing homelessness is a matter of both carceral and racial justice.

We must immediately revise laws and policies to recognize the problems faced by the homeless—the preponderance are when the demand for shelter, housing and services exceeds the supply. Further, we must immediately repeal laws and policies that punish persons experiencing homelessness or partaking in otherwise quotidian acts in public spaces such as eating, sleeping, sitting, standing, or camping when no alternative spaces are available.

**Support community-policing efforts.** Community policing involves building a collaborative relationship between the community and local law enforcement officials. De-centering one spoke of the carceral state—the police department—ensures that all members of any given community are able to take an active role in promoting community wellbeing and safety. It also increases the likelihood of non-punitive responses to violations of community-established norms. Community policing has proven successful in its implementation. A report recently released by the City of Detroit, for example, indicates that an initiative co-launched by the Detroit Police Department and local residents in 2012 yielded a dramatic drop in home invasions (Hicks, 2012, p. d2). In the first 120 days of the program, home invasions plummeted by 32 percent compared to the same period in 2011.

\*\*\*

In closing, the prison as a social institution—and the mutually reinforcing praxes of racialization and criminalization upon which its sustenance rests—has contributed deeply to the way our country produces, polices, and hierarchizes race. Far from a transhistorical entity, however, the prison is an unstable social assemblage subject to contestation, revision, and elimination. Unstable too is the linkage of crime and punishment that justifies its continued existence. How we choose to make sense of these instabilities, paradoxes, and contradictions is always subject to deliberation.

I conclude with the notion that prison is not “outside history” but rather genealogically linked to the material and ideological production of black subjugation (as well as to the subjugation of other non-black people of color). One need not look any further than the 13<sup>th</sup> Amendment to the U.S. Constitution which states that “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” Therefore, so long as carcerality continues to serve as a spoke on the wheel of *neoliberal racial statecraft* the transition from slavery to freedom will remain incomplete.

To this end, denaturalizing the historico-regulatory linkages between white supremacy and black carcerality is one powerful step in challenging the maintenance of the *neoliberal racial state* and its attendant technologies of social regulation. The prison—both as institution and practice—can and must be undone, discredited, and abolished. “What is the object of abolition?” ask Fred Moten and Stefano Harney. Prison abolition is not so much the abolition of prisons but rather “the abolition of a society that could have prisons, that could have slavery...and therefore abolition [is not] the elimination of anything but abolition [is] the founding of a new society” (Moten and Harney, 2006, p. 114).

## Sources

- Abrams, David S., Marianne Bertrand, and Sendhil Mullainathan. (2012) "Do Judges Vary in Their Treatment of Race?" *The Journal of Legal Studies*, 347-83.
- "ACLU's Letter to the CDCR," December, 2007." Accessed February 6, 2012.
- Adamson, Christopher R. (1983) "Punishment After Slavery: Southern State Penal Systems, 1865-1890." *Social Problems*, 555-69.
- African Americans and the Criminal injustice System," *Prison Policy Initiative*, last modified April 2011, <http://www.prisonpolicy.org/scans/racism.pdf>.
- Alesina, Alberto, and Edward L. Glaeser. (2004) *Fighting Poverty in the US and Europe: A World Of Difference*. New York: Oxford University Press.
- Alexander, Jacqui Alexander and Chandra Mohantey, eds. (1996) *Feminist Methodologies, Colonial Legacies, Democratic Futures*. London: Routledge.
- Alexander, Michelle. *The New Jim Crow*. (2012) New York: The New Press.
- Allen, Robert. (1969). *Black Awakening in Capitalist America*. New York: African World Press.
- Althusser, Louis. (1970). "Ideology and Ideological State Apparatuses," in *Lenin and Philosophy and Other Essays*: pp. 127–186. New York/London: Monthly Review Press.
- American Prisons: Policy Implications of Double-Bunking Single Cells 123-28 (July 1982) (final report to the National Institute of Corrections) *Corrections Digest* 1988
- An Overview of Local Government General Obligation Bond Issuance Trends." GAO Office. <http://www.treasurer.ca.gov/cdiac/publications/trends.pdf>. Accessed: January 21, 2013.
- Anderson, Perry. (1998). *The Origins of Postmodernity*. London: Verso.
- Andolena, Alison. (2012) "Can They Lock You Up and Charge You For It? How Pay-to-Stay Corrections Programs May Provide A Financial Solution for New York and New Jersey." *Seton Hall Legislative Journal* Volume 35 | Issue 1 Article 4.
- Andreas, Peter, and Ethan Nadelmann. (2006). *Policing the Globe: Criminalization and Crime Control in International Relations*. New York: Oxford University Press.
- Angelos, Claudia and James B. Jacobs. (1985). "Prison Overcrowding and the Law." *Annals of the American Academy of Political and Social Science*, 478:100-112.

- Anwar, Shamena and Hanming Fang. (2006) An Alternative Test of Racial Profiling in Motor Vehicle Searches: Theory and Evidence," *American Economic Review*, 96, 127-151.
- Anwar, Shamena and Hanming Fang, (2012). Testing for the Role of Prejudice in Emergency Departments Using Bounceback Rates," *The B.E. Journal of Economic Analysis & Policy*, 2012, Volume 13(3).
- Arizona Department of Corrections: Inmate Ethnic Distribution by Unit." April 12, 2013. [http://www.azcorrections.gov/adc/reports/stats\\_ethnic.aspx](http://www.azcorrections.gov/adc/reports/stats_ethnic.aspx).
- Arizona Department of Corrections. "2009 *Arizona Department of Corrections State Versus Private Prison FY2007 Cost Comparison*." Requested on 12/19/2012.
- Arizona Institutional Capacity Committed Population." Accessed May 1, 2013. [http://www.azcorrections.gov/adc/PDF/count/05012013\\_count\\_sheet.pdf](http://www.azcorrections.gov/adc/PDF/count/05012013_count_sheet.pdf).
- Arthur, John A. (2000) *Invisible Sojourners African Immigrant Diaspora in the United States*. Westport, Conn.: Praeger.
- Barczyk, Amanda N., and King Davis. (2009). "Analysis of the Civil Rights of Institutionalized Persons Act (CRIPA) of 1980: The Current Avenue for Protecting Individuals in Institutions." *Journal of Policy Practice*, 188-203.
- Barlow, Andrew L. (2003). *Between Fear and Hope: Globalization and Race in the United States*. Lanham, Md.: Rowman & Littlefield.
- Batiuk, M. E., K. F. Lahm, M. Mckeever, N. Wilcox, and P. Wilcox. (2001). "Disentangling the Effects of Correctional Education: Are Current Policies Misguided? An Event History Analysis." *Criminology and Criminal Justice*, 55-74.
- Bauman, Zygmunt. (1978). "Strangers: The Social Construction of Universality and Particularity," *Telos* 78: 7-42.
- Bauman, Zygmunt. (1999). *Modernity and Ambivalence*. Cambridge: Polity Press.
- Bauman, Zygmunt. (1992). *Intimations of Postmodernity*. London and New York: Routledge.
- Bauman, Zygmunt. (1995) *Life in Fragments*. Oxford: Blackwell.
- Becker, Gary. (1985). "Incarceration Inc: The Downside of Private Prisons." *The Nation*. June 15, 1985.
- Blakely, Curtis. (2005). *America's Prisons: The Movement Toward Profit and Privatization*. New York: Sage.
- Bleich, Jeff. "The Politics of Prison Crowding." *California Law Review* Volume 77, Issue 5 Article 4 10-31-1989

- Blomberg, T. G., & Lucken, K. (2000). *American penology: A history of control*. New York: Aldine de Gruyter.
- Blumstein, A., J. Cohen, and W. Gooding. (1983). "The Influence of Capacity on Prison Population: A Critical Review of Some Recent Evidence." *Crime & Delinquency*, 1-51.
- Blumstein, Alfred, and Joel Wallman, eds. (2000). *The Crime Drop in America*. New York: Oxford University Press.
- Bourdieu, Pierre. (1991). *Language and Symbolic Power*. Cambridge: Polity Press.
- Bourdieu, Pierre. (1993). "The Abdication of the State," in Pierre Bourdieu et al., *The Weight of the World: Social Suffering in Contemporary Society*. Cambridge: Polity Press.
- Bourdieu, Pierre. (1993). "Rethinking the State: On the Genesis and Structure of the Bureaucratic Field." *Sociological Theory* 12, 1-19.
- Bourgeois, Philippe and Jeff Schoenberg. (2009). *Righteous Dopefiend*. Berkeley: University of California Press.
- Brenner, Neil, and Nik Theodore, eds. (2002). *Spaces of Neoliberalism: Urban Restructuring in North America and Western Europe*. New York: Wiley / Blackwell.
- Brown, D. (2011). "Neoliberalism as a Criminological Subject." *Australian & New Zealand Journal of Criminology*, 129-42.
- Bureau of Justice Statistics. "Prisoners in 1979." Washington D.C. 1980.
- Bureau of Justice Statistics. "Prisoners in 1980." Washington D.C. 1981.
- Bureau of Justice Statistics. "Prisoners in 1981." Washington D.C. 1982.
- Bureau of Justice Statistics. "Prisoners in 1982." Washington D.C. 1983.
- Bureau of Justice Statistics. "Prisoners in 1983." Washington D.C. 1984.
- Bureau of Justice Statistics. "Prisoners in 1984." Washington D.C. 1985.
- Bureau of Justice Statistics. "Prisoners in 1985." Washington D.C. 1986.
- Bureau of Justice Statistics. "Prisoners in 1986." Washington D.C. 1987.
- Bureau of Justice Statistics. "Prisoners in 1987." Washington D.C. 1988.
- Bureau of Justice Statistics. "Prisoners in 1988." Washington D.C. 1989.
- Bureau of Justice Statistics. "Prisoners in 1989." Washington D.C. 1990.
- Bureau of Justice Statistics. "Prisoners in 1990." Washington D.C. 1991.

- Bureau of Justice Statistics. "Prisoners in 1991." Washington D.C. 1992.
- Bureau of Justice Statistics. "Prisoners in 1992." Washington D.C. 1993.
- Bureau of Justice Statistics. "Prisoners in 1993." Washington D.C. 1994.
- Bureau of Justice Statistics. "Prisoners in 1994." Washington D.C. 1995.
- Bureau of Justice Statistics. "Prisoners in 1995." Washington D.C. 1996.
- Bureau of Justice Statistics. "Prisoners in 1996." Washington D.C. 1997.
- Bureau of Justice Statistics. "Prisoners in 1997." Washington D.C. 1998.
- Bureau of Justice Statistics. "Prisoners in 1998." Washington D.C. 1999.
- Bureau of Justice Statistics. "Prisoners in 1999." Washington D.C. 2000.
- Bureau of Justice Statistics. "Prisoners in 2000." Washington D.C. 2001.
- Bureau of Justice Statistics. "Prisoners in 2001." Washington D.C. 2002.
- Bureau of Justice Statistics. "Prisoners in 2002." Washington D.C. 2003.
- Bureau of Justice Statistics. "Prisoners in 2003." Washington D.C. 2004.
- Bureau of Justice Statistics. "Prisoners in 2004." Washington D.C. 2005.
- Bureau of Justice Statistics. "Prisoners in 2005." Washington D.C. 2006.
- Bureau of Justice Statistics. "Prisoners in 2006." Washington D.C. 2007.
- Bureau of Justice Statistics. "Prisoners in 2007." Washington D.C. 2008.
- Bureau of Justice Statistics. "Prisoners in 2008." Washington D.C. 2009.
- Bureau of Justice Statistics. "Prisoners in 2009." Washington D.C. 2010.
- Bureau of Justice Statistics. "Prisoners in 2010." Washington D.C. 2011.
- Bureau of Justice Statistics. "Prisoners in 2011." Washington D.C. 2012.
- Bureau of Justice Statistics. "Prisoners in 2012." Washington D.C. 2013.
- Burgeoning Prison Populations Strain State Budgets." Economic Policy Institute. March 1, 2011. [http://www.epi.org/publication/webfeatures\\_snapshots\\_20080312/](http://www.epi.org/publication/webfeatures_snapshots_20080312/).
- Burke, Kenneth. (1966). *Language as Symbolic Action: Essays on Life, Literature, and Method*. Berkeley: University of California Press.
- Burkhardt, Brett. (2014) "Where Have All the (White and Hispanic) Inmates Gone? Comparing the Racial Composition of Private and Public Adult Correctional Facilities." *Race and Justice Journal*, published online 11 July 2014.

- California Department of Corrections and Rehabilitation. "Racial and Ethnic Statistics: California Out-of-State Correctional Facilities on 8/13/2012." Data obtained through public records request on 8/14/2012.
- Camp, C., and G. Camp. (1985). "Correctional Privatization in Perspective." *The Prison Journal*, 14-31.
- Campbell, John, and Ove Pedersen eds. (2001). *The Rise of Neoliberalism and Institutional Analysis*. Princeton, NJ: Princeton University Press.
- Canterbury, E. Ray. (2000). *Wall Street Capitalism: The Theory of the Bondholding Class*. New York: World Scientific Publishers.
- Caputo, David A. and Richard L. Cole. "City Officials and General Revenue Sharing: Attitudes, Perceptions and Implications for Future Intergovernmental Policy." *Publius*, Vol. 13, No. 1 (Winter, 1983), pp. 41-54 Published by: Oxford University Press.
- Castells, Manuel. (2000). *End of Millennium: The Information Age: Economy, Society, and Culture, Volume 3*. Oxford : Basil Blackwell.
- Cavadino, Michael, and James Dignan. (2006). *Penal Systems: A Comparative Approach*. London: Sage Publications.
- CDCR Memorandum: California Out-of-State Correctional Facility Program, Phase III February 2007." Accessed February 6, 2012.  
[https://www.aclunc.org/cases/closed\\_cases/asset\\_upload\\_file958\\_7840.pdf](https://www.aclunc.org/cases/closed_cases/asset_upload_file958_7840.pdf).
- Chappell, Cathryn A. (2004). "Post-Secondary Correctional Education and Recidivism: A MetaAnalysis of Research Conducted 1990-1999." *Journal of Correctional Education*55(2): 148-69.
- Chih Lin, Ann. (1999). "The Troubled Success of Crime Policy," in Margaret Weir (ed.), *The Social Divide: Political Parties and the Future of Activist Government*. Washington, DC: Brookings Institution / Russell Sage Foundation.
- Christie, Nils. (2000). *Crime control as industry*: London & New York: Routledge.
- Clark, Walter E., and Esther Heffernan. (1972). "Making It in Prison: The Square, the Cool, and the Life." *Contemporary Sociology*, 426.
- Clear, Todd R. (2007). *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse*. New York: Oxford University Press.
- Clifford, James. (1988). *The Predicament of Culture*. Cambridge, MA: Harvard University Press.
- Clifford, James and George E. Marcus (1986) *Writing Culture: The Poetics and Politics of Ethnography*. Berkeley: University of California Press.

- Colfax, J. David, N. Elias, and J. L. Scotson. (1965). "The Established and the Outsiders: A Sociological Enquiry into Community Problems." *American Sociological Review*, 727.
- Colorado Department of Corrections: Statistical Report, Fiscal Year 2011." Accessed May 28, 2012. [http://www.doc.state.co.us/sites/default/files/opa/StatRprt\\_FY2011.pdf](http://www.doc.state.co.us/sites/default/files/opa/StatRprt_FY2011.pdf).
- Conley, Dalton. (1999). *Being Black, Living in the Red: Race, Wealth and Social Policy in America*. Berkeley: University of California Press.
- Correctional Facility Locator, 2010." <http://www.prisonersofthecensus.org/locator2010>.
- Correctional Facility Locator." <http://www.prisonersofthecensus.org/locator2010/>.
- Correctional Population in the United States 2010." Bureau of Justice Statistics. December 1, 2011. <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2237>.
- Correctional Population in the United States 2010." Bureau of Justice Statistics. December 1, 2011. <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2237>.
- Correctional Population in the United States 2010." Bureau of Justice Statistics. December 1, 2011. <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2237>.
- Corrections Corporation of America. "Annual Reports." (1986-2013).
- Corrections Corporation of America. "SEC 10k Form." (2001-2013).
- Crouch, Ben and James Marquart. (1989). *An Appeal to Justice: Litigated Reform of Texas Prisons*. Austin, TX: University of Texas Press.
- Dalaker, Joseph and Mary Naifeh. (1997). *Poverty in the United States: 1997*. Washington, DC: U.S. Census Bureau.
- Davidson, Howard, ed. (1995). *Schooling in a Total Institution: Critical Perspectives on Prison Education*. New York: Bergin and Garvey.
- Davis, Angela. (1989). *Angela Davis: An Autobiography*. Paris: International Publishers.
- Davis, Angela. (2003). *Are Prisons Obsolete?*. New York: Seven Stories Press.
- Davis, Angela. (2001). *The Prison Industrial Complex*. Oakland: AK Press.
- Davis, James F. *Who Is Black? One Nation's Definition*. (1991). University Park, PA: Pennsylvania State University Press.
- Decker, Cathleen. Firm to Close Besieged Alien Holding Center. *Los Angeles Times* (1923-Current File); Nov 27, 1986.

- Deleuze, Gilles, and Felix Guattari. (1980). *A Thousand Plateaus: Capitalism and Schizophrenia*. Minneapolis: UMN Press.
- Denning, Michael. (2004). *Culture in the Age of Three Worlds*. New York: Verso.
- DiIulio, John. (1990). *Courts, Corrections, and the Constitution: The Impact of Judicial Intervention on Prisons and Jails*. New York: Oxford University Press.
- Dodge, Calvert R. (ed.) (1975). *A Nation without Prisons: Alternatives to Incarceration*. Lexington, MA: Lexington Books.
- Dolovich, Sharon. (2005) *State Punishment and Private Prisons*, 55 Duke Law Journal 439-548.
- Downes, David. (1993). *Contrasts in Tolerance: Post-war Penal Policy in the Netherlands and England and Wales*. Oxford: Clarendon Press.
- DuBois, W.E.B. (1903). *The Souls of Black Folk*. London: Dover Publications.
- Edelman, Lauren B., Christopher Uggen, and Howard S. Erlanger. (2007). "The Endogeneity of Legal Regulation: Grievance Procedures as Rational Myth." *American Journal of Sociology*: 406-54.
- English, Beth. (2010). *American Prison Reform in the Progressive Era: Crime, Class and the State*.
- Eribes, Richard A and John S. HallSource. "Revolt of the Affluent: Fiscal Controls in Three States." *Public Administration Review*, Vol. 41, Special Issue: The Impact of Resource Scarcity Urban Public Finance (Jan., 1981), 107-121.
- Ericson, Richard V. and Kevin D. Haggerty. (1997). *Policing the Risk Society*. Toronto: University of Toronto Press.
- Erikson, Kai. (1961). *Wayward Puritans: A Study in the Sociology of Deviance*. New York: Wiley.
- Evans, Sandra S. and Joseph E. Scott. (1984). "The Seriousness of Crime Cross Culturally." *Criminology* 39-59.
- Feeley, Malcolm and Edward Rubin. (1999). *Judicial Policy Making and the Modern State: How the Courts Reformed America's Prisons*. Cambridge University Press.
- Feeley, Malcolm M. and Van Swearingen. (2004). *Prison Reform Revisited: The Unfinished Agenda*. Pace Law Review Volume 24 Issue 2 Spring, Article 4
- Fine, Michelle, et al. (2001). *Changing Minds: The Impact of College in a Maximum Security Prison*. New York: The Graduate Center of the City University of New York and Bedford Hills Correctional Facility.
- Fixler, Philip. (1984). Behind Bars We Find an Enterprise Zone." *Wall Street Journal* (1923 - Current file).

- Fligstein, Neil. (2001). *The Architecture of Markets: An Economic Sociology of Twenty-First-Century Capitalist Societies*. Princeton, NJ: Princeton University Press.
- Florida Department of Corrections: Offender Information Search."  
<http://www.dc.state.fl.us/AppCommon>.
- Foner, Eric. (2002). *Reconstruction: America's Unfinished Revolution*. New York: Harper, 2002.
- Foster, John Bellamy. (2009). "The Penal State in an Age of Crisis." *Monthly Review*, 3.
- Foucault, Michel. (1977). *Discipline and Punish: The Birth of the Prison*. New York: Pantheon Books.
- Freire, Paulo and Ira Shor. (1986). *A Pedagogy for Liberation*. New York: Bergin and Garvey.
- Freire, Paulo. (1971). *Pedagogy of the Oppressed*. New York: Continuum.
- Funke, Gail S. (1985). "The Economics of Prison Crowding." *Annals of the American Academy of Political and Social Science*, 478:86-99.
- Gaes, Gerald G. and William J. McGuire. (1985). "Prison Violence: The Contribution of Crowding Versus other Determinants of Prison Assault Rates." *Journal of Research in Crime and Delinquency* 22(1): 41-65.
- Gallie, Duncan ed. (2007). *Employment Regimes and the Quality of Work*. Oxford: Oxford University Press.
- Garabedian, Peter G. "Social Roles and Processes of Socialization in the Prison Community." *Social Problems* 11 (1963): 139-52. Garland Publishing, 1998.
- Garland, David. (1998). "Beyond the Culture of Control." *Critical Review of International Social and Political Philosophy*: 160-89.
- Garland, David. (1989). *Punishment and Society: A Study in Social Theory*. Chicago: University of Chicago Press.
- Garland, David. (2001). *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago: University of Chicago Press.
- Gehring, Thom. (1997). "Post-Secondary Education for Inmates: An Historical Inquiry." *Journal of Correctional Education*, 46-55.
- Georgia Department of Corrections, Offender Statistics."  
<http://www.dcor.state.ga.us/GDC/OffenderStatistics/jsp/OffStatsSelect.jsp>
- Giallombardo, Rose. (1966). "Social Roles in a Prison for Women." *Social Problems* 13: 268-88.
- Giddens, Anthony. (1999). *The Third Way: The Renewal of Social Democracy*. Cambridge: Polity Press.

- Gieremek, Bronislaw. (1991). *Poverty: A History*. Cambridge: Basil Blackwell.
- Gilmore, R. W. "Globalisation And US Prison Growth: From Military Keynesianism To Post Keynesian Militarism." *Race & Class*: 171-88.
- Gilmore, Ruth Wilson. (2010). "Globalisation and US Prison Growth." Accessed: March 28, 2010. <http://blog.cwillse.net/wp-content/uploads/2010/03/99.pdf>.
- Gilmore, Ruth Wilson. (2006). *Golden Gulag: Prisons, Surplus, Crisis and Opposition in Globalizing California*. Berkeley: University of California Press.
- Gilroy, Paul. (1993). *The Black Atlantic: Modernity and Double Consciousness*. Cambridge: Harvard University Press.
- Glaze, Lauren E. (2010). "Correctional Populations in the United States, 2009." Washington, DC: Bureau of Justice Statistics, Bureau of Justice Programs, Department of Justice.
- Goffman, Erving. (1964). *Stigma: Notes on the Management of Spoiled Identity*. Englewood Cliffs, NJ: Prentice-Hall.
- Goldberg, David Theo. (2002). *The Racial State*. New York: Blackwell.
- Gorz, Andre. (1964). *Strategy for Labor: A Radical Proposal*. Boston: Beacon Press.
- Gowan, Teresa. (2010). *Hustlers, Hobos, and Backsliders: Homeless in San Francisco*. Minneapolis: University of Minnesota Press.
- Gramsci, Antonio. (1971). *Selections from Prison Notebooks*. Paris: International Publishers.
- Grossberg, Lawrence , Cary Nelson and Paula Treichler (eds).(2002). *Cultural Studies*. London and New York: Routledge.
- Grossberg, Lawrence. "Wandering Audiences, Nomadic Critics." *Cultural Studies*. 1998, 377-391.
- Guerino, Paul, Paige Harisson, and William J Sabol. "Prisoners in 2010." Bureau of Justice Statistics. November 1, 2011. <http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf>.
- Hall, Stuart 'Cultural Identity and Diaspora', pp. 222-237 in Jonathan Rutherford (ed.) *Identity: Community, Culture, Difference*. London: Lawrence & Wishart. 1990.
- Hall, Stuart 'The Question of Cultural Identity', pp. 273-316 in Stuart Hall,David Held and Tony McGrew (eds) *Modernity and Its Futures*. Cambridge: Polity Press, 1992.
- Hall, Stuart. "Cultural Identity and Diaspora." (1994). *Colonial Discourse and Post-colonial Theory: A Reader*, Edited by Patrick Williams and Chrisman. London: Harvester Wheatsheaf.
- Hanson, L. S. C. (1991). "The Privatization Of Corrections Movement: A Decade Of Change." *Journal of Contemporary Criminal Justice*, 1-20.

- Hardt, Michael and Antonio Negri. (2001). *Empire*. Cambridge, MA: Harvard University Press.
- Harlow, Caroline Wolf. (2003). *Education and Correction Populations*. Washington DC. Bureau of Justice Statistics.
- Harriman, Linda and Jeffrey D. Straussman. "Do Judges Determine Budget Decisions? Federal Court Decisions in Prison Reform and State Spending for Corrections." *Public Administration Review*, Vol. 43, No. 4 (Jul. - Aug., 1983), pp. 343-351.
- Harris, Joseph, ed. (1994). *Global Dimensions of the African Diaspora*. Washington D.C.: Howard University Press.
- Harvey, David. (2007). *A Brief History of Neoliberalism*. London: Oxford University Press.
- Harvey, David. (1991). *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change*. New York: Blackwell.
- Harvey, David. (2010). *The Enigma of Capital and the Crises of Capitalism*. London: Oxford University Press.
- Harvey, David. (2003). *The New Imperialism*. London: Oxford University Press.
- Hawai'i Department of Public Safety. "Hawai'i Department of Public Safety: Distribution Of Inmate Population by Ethnic Group or Race as of June 30, 2012." Data obtained through public records request on 3/12/2013.
- Hedges, Chris. (2010). *Death of the Liberal Class*. New York: Nation Books.
- Held, David. (1996). *Models of Democracy*. Cambridge: Polity Press.
- Hill Collins, Patricia. (1991). *Black Feminist Thought*. New York and London: Routledge.
- Hintzen, Percy, and Jean Muteba Rahier, and Felipe Smith, eds. (2010). *Global Circuits of Blackness: Interrogating the African Diaspora*. Urbana: University of Illinois Press.
- hooks, bell. (1984). *Feminist Theory: From Margin to Center*. Boston: South End Press.
- hooks, bell. (1992). *Black Looks: Race and Representation*. Boston: South End Press.
- Hurst, John. INS to Try Idea: Prisons for Profit Seen as Next Step. *Los Angeles Times (1923-Current File)*; Dec 27, 1983.
- Idaho Department of Correction Standard Reports for December 2012." Accessed February 24, 2013. <http://www.idoc.idaho.gov/content/document/>
- Idaho Department of Correction: Standard Operating Procedure, Offender Placement Matrix." Accessed March 17, 2013. <http://www.idoc.idaho.gov/content/policy/615>.

- Idaho Department of Corrections. "Sentenced and Unsentenced Offenders by Location and Race/Ethnicity as of 3/11/2013." Data obtained through public records request on 3/16/2013.
- Indiana Department of Corrections. "Indiana Department of Corrections: Offenders Currently Incarcerated in IDOC Facilities by Race and Current Facility, Snapshot Date 3/11/2013" Data obtained through public records request on 3/21/2013.
- Irwin, J. (1980). *Prisons in Turmoil*. Boston: Little Brown.
- Jackson, George. (1996). *Blood in My Eye*. Philadelphia: Black Classic Press.
- James, Nathan. "The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options." Government Accountability Office. January 22, 2013
- Johnson, R. (1996). *Hard time* (2nd ed.). Belmont, CA: Wadsworth.
- Johnston, David. "Trends: Corporate-Run Prisons a 'Growth Industry' Some Businessmen" *Los Angeles Times* Mar 29, 1985; pg. OC\_D1
- Jones, Trevor, and Tim Newburn. (2006). *Policy Transfer and Criminal Justice*. Winchester: Open University Press.
- Karpowitz, Daniel and Max Kenner. (1994). *Education as Crime Prevention: The Case for Reinstating Pell Grant Eligibility*. Bard Prison Initiative.
- Katz, Michael B. (1989). *The Undeserving Poor: From the War on Poverty to the War on Welfare*. New York: Random.
- Kennedy, E. M. (1985). "Prison Overcrowding: The Law's Dilemma." *The Annals of the American Academy of Political and Social Science*, 113-22.
- Kentucky Department of Corrections: 2011 Annual Report." Accessed February 25, 2013. [http://corrections.ky.gov/about/Documents/Research and Statistics/Annual](http://corrections.ky.gov/about/Documents/Research%20and%20Statistics/Annual)
- King, Wayne. Contracts for Detention Raise Legal Questions. Special to The New York Times *New York Times (1923-Current file)*; Mar 6, 1984.
- Klein, Steven, et al. (2004). *Correctional Education: Assessing the Status of Prison Programs and Information Needs*. Washington, DC: U.S. Department of Education.
- Knowles, John, Nicola Persico, and Petra Todd. (2009). "Racial Bias in Motor Vehicle Searches: Theory and Evidence." *Journal of Political Economy*: 203-29.
- Kotz, David. (2009). "The Financial and Economic Crisis of 2008: A Systemic Crisis of Neoliberal Capitalism." *Review of Radical Political Economics*, 1-14.
- Krishnamurti, Jiddu. (1987). *The Awakening of Intelligence*. New York: Harper and Row.

- Kuziemko, I. (2013). "How Should Inmates Be Released from Prison? An Assessment of Parole versus Fixed-sentence Regimes." *The Quarterly Journal of Economics*, 371-424.
- Lacey, Nicola. (2008). *The Prisoners' Dilemma: Political Economy and Punishment in Contemporary Democracies*. Cambridge, UK: Cambridge University Press.
- Langan, Patrick. (2004). "Cross National Studies in Crime and Justice." BJS Special Report. Washington D.C.
- Lears, T. J. Jackson. (1985). "The Concept of Cultural Hegemony: Problems and Possibilities." *The American Historical Review*, 567.
- Leonard, D. (2010). "Young, Black (& Brown) and Don't Give a Fuck: Virtual Gangstas in the Era of State Violence." *Cultural Studies Critical Methodologies*: 248-72.
- Levitt, S. D. "The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation." *The Quarterly Journal of Economics*, 1996, 319-51.
- Levy, Jonah D, ed. (2006). *The State After Statism: New State Activities in the Age of Liberalization*. Cambridge, MA: Harvard University Press.
- Lis, Catharina and Hugo Soly. *Poverty and Capitalism in Pre-industrial Europe*. London: Harvester Press, 1979.
- Littré, Émile. (1877). *Dictionnaire de la langue française*. Paris: Hachette.
- Lødemel, Ivar and Heather Trickey. (1991). "An Offer You Can't Refuse": Workfare in International Perspective. Bristol : Policy Press.
- Lorde, Audre. (1984). *Sister Outsider*. Freedom, CA: The Crossing Press.
- Louisiana Department of Public Safety and Corrections: 2010 Annual Report." Accessed February 25, 2013. <http://www.doc.la.gov/wp-content/uploads/2010/12/Annual-Report-2009-2010pdf.pdf>.
- Luxembourg, Rosa. (1900). *Reform or Revolution*. London: Dover Publications.
- Lyons, William and Julie Drew. (2006). *Punishing Schools: Fear and Citizenship in American Public Education*. Ann Arbor: University of Michigan Press.
- Lytard, Jean Francois. (1979). *The Postmodern Condition: A Report on Knowledge*. Minneapolis: UMN Press.
- Marcuse, Herbert. (1955). *Eros and Civilization: A Philosophical Inquiry Into Freud*. Boston: Beacon Press.
- Martin, Steve and Sheldon Ekland-Olson. (1987). *Texas Prisons: The Walls Came Tumbling Down*. Austin, TX: Texas Monthly Press.

- Marx, Karl. 2000 (1859). *A Contribution to the Critique of Political Economy*. Moscow: Progress Publishers.
- Marx, Karl. 1993 (1867). *Das Capital*. New York: Penguin Classics.
- Marx, Karl. 1994 (1857). *Grundrisse*. New York: Penguin Classics.
- Marx, Karl. 2014 (1848). *The Communist Manifesto*. London: International Publishers.
- Mattera, Philip and Mafruza Khan. (2003) "CORRECTIONS CORPORATION OF AMERICA: A CRITICAL LOOK AT ITS FIRST TWENTY YEARS."
- Mattera, Phillip and Mafruza Khan. (2001) Jail Breaks: Economic Development Subsidies Given to Private Prisons. Good Jobs First Report.
- Mauer, Marc. "Addressing Racial Disparities in Incarceration." The Sentencing Project. December 1, 2011. <http://sentencingproject.org/doc/publications>.
- Mccorkle, L. W., and R. Korn. (1962). "Resocialization Within Walls." *The Annals of the American Academy of Political and Social Science* 293: 88-98.
- McKelvey, Blake. (1977). *America's Prisons: A History of Good Intentions*.
- McLaren, Peter. (1995). *Critical Theory and Educational Research*. London: Routledge.
- Merina, Victor. INS Defends Conversion of Motel Into Detention Site *Los Angeles Times* (1923-Current File); Jan 17, 1986.
- Messemer, Jonathan. (2003). College Programs for Inmates: The Post-Pell Grant Era. *Journal of Correctional Education*, 32-39. Metropolitan Books.
- Mississippi Department of Corrections: Fact Sheet as of March 1, 2013." Accessed April 21, 2013. <http://www.mdoc.state.ms.us/Research and Statistics/MonthlyFactSheets/2013MFS/03-01-13 Fact Sheet.pdf>.
- Montana Department of Corrections. "Montana DOC Race Counts by Facility on 3/14/2013." Data obtained through public records request on 3/18/2013.
- Mullen, J. (1985). "Prison Crowding and the Evolution of Public Policy." *The Annals of the American Academy of Political and Social Science*, 31-46.
- New Mexico Corrections Department. "State of New Mexico Corrections Department: Race by Facility as of 3/12/2013." Data obtained through public records request on 3/17/2013.
- Newcomer, K., and S. Welch. (1982). "The Impact of General Revenue Sharing on Spending in Fifty Cities." *Urban Affairs Review*, 1982, 131-44.
- Novak, William J. (2008). "The Myth of the "Weak" American State." *The American Historical Review* 113, no. 3, 752-72.

- Ohio Department of Rehabilitation and Correction: Field Operations." Accessed February 25, 2013. <http://www.drc.ohio.gov/web/prisprog.htm>.
- Oklahoma Department of Corrections, Offender Lookup." Accessed February 25, 2013. <http://www.doc.state.ok.us/offenders/offenders.htm>.
- Oshinsky, David. (1997). *Worse than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice*. New York: Free Press.
- Other Budget Issues." California Out-of-State Correctional Facility (COCF) Program. February 23, 2010. <http://www.lao.ca.gov/Recommendations/Details/126>.
- Owen, B. (1998). *In the mix: Struggle and survival in a women's prison*. Albany: State University of New York Press.
- Peck, J. (2001). "Neoliberalizing States: Thin Policies/hard Outcomes." *Progress in Human Geography*, 445-55.
- Peck, Jamie. (2001). *Workfare States*. New York : The Guilford Press.
- Perkinson, Robert. (2010). *Texas Tough: The Rise of America's Prison Empire*. New York: Picador.
- Persico, Nicola. (2009). "Racial Profiling? Detecting Bias Using Statistical Evidence." *Annual Review of Economics*, 229-54.
- Petersilia, Joan. (2008). "California's Correctional Paradox of Excess and Deprivation." *Crime and Justice*. 207-78.
- Petersilia, Joan. (2014). "California Prison Downsizing and Its Impact on Local Criminal Justice Systems." *Harvard Law Review*.
- Petrella, Christopher. (2014). "The Color of Corporate Corrections, Part II: Contractual Exemptions and the Overrepresentation of People of Color in Private Prisons." *Radical Criminology* (3).
- Pfaff, John P. (2008). "The Empirics of Prison Growth: a Critical Review and Path Forward." *The Journal of Criminal Law and Criminology*. Northwestern University.
- Pratt, J. (2007). "Scandinavian Exceptionalism in an Era of Penal Excess: Part II: Does Scandinavian Exceptionalism Have a Future?" *British Journal of Criminology*, 275-92.
- Rehavi, M. Marit and Sonja Starr. (2012). "Racial Disparity in Federal Criminal Charging and Its Sentencing Consequences," SSRN Working Paper.
- Reich, Robert. (2008). *Supercapitalism: The Transformation of Business, Democracy, and Everyday Life*. New York, Vintage Press.

- Riveland, Chase. (1999). "Prison Management Trends, 1975-2025." *Crime and Justice* 26 163-203.
- Rodney, Walter. (1972). *How Europe Underdeveloped Africa*. New York: Black Classic Press, 2011.
- Rodriguez, Dylan. (2006). *Forced Passages: Imprisoned Radical Intellectuals and the U.S. Prison Regime*. Minneapolis: University of Minnesota Press.
- Rowley, Bob. "Prisons-for-profit trend breaking out: Prisons." *Chicago Tribune (1963-Current file)*; May 19, 1985.
- Rush, George. (2001). *Inside American Prisons and Jails*. New York: Wadsworth.
- Ryan, T.A., and Joseph Clifton Woodard, Jr. (1987). *Correctional Education. A State of the Art Analysis*. Washington, DC: National Institute of Corrections.
- Schlanger, Margo. "Trends in Prisoner Litigation, as the PLRA Enters Adulthood." *UC Irvine L. Rev.* 5, no. 1: (2015): 153-79.
- Schlanger, Margo. "Prisoners' Rights Lawyers' Strategies for Preserving the Role of the Courts." *U. Miami L. Rev.* 69, no. 2 (2015): 519-57.
- Schlanger, Margo. "Intelligence Legalism and the National Security Agency's Civil Liberties Gap." *Harv. Nat'l Sec. J.* 6 (2015): 112-205.
- Schlanger, Margo. "Against Solitary Confinement: Jonah's Redemption and Our Need for Mercy." *Rutgers J. L. & Relig.* 16, no. 2 (2015): 345-51.
- Schlanger, Margo. "*Plata v. Brown* and Realignment: Jails, Prisons, Courts, and Politics." *Harv. C. R. -C. L. L. Rev.* 48, no. 1 (2013): 165-215.
- Schoenfeld, Heather. "Mass Incarceration and the Paradox of Prison Conditions Litigation." *Law & Society Review*, 2010, 731-68.
- Shohat, Ella. (2001). *Talking Visions: Multicultural Feminism in a Transnational Age*. Cambridge, MA: The MIT Press.
- Spangenberg, Gail. (2004). *Current Issues in Correctional Education*. New York, NY: Council for the Advancement of Adult Literacy.
- Spierenburg, Pieter. (1991). *The Prison Experience: Disciplinary Institutions and Their Inmates in Early Modern Europe*. New Brunswick, NJ: Rutgers University Press.
- Steffensmeier, Darrell, and Stephen Demuth. (2007). "Ethnicity And Judges' Sentencing Decisions: Hispanic-Black-White Comparisons." *Criminology*: 145-78.

- Stein, Mark A. "California's First 'Private Prison' Is Open for Business." *Los Angeles Times* May 29, 1986.
- Stephan, James. (2004). "State and Prison Expenditures in 2001." BJS Special Report. Washington D.C.
- Steurer, Stephen J., Linda Smith, and Alice Tracy. (2001). *Education Reduces Crime: Three-State Recidivism Study*. Lanham, MD: Correctional Education Association.
- Susskind, Lawrence. (1974). "Revenue Sharing and the Lessons of the New Federalism." *Urban Law Annual Journal of Urban and Contemporary Law* Volume 8.
- Taggart, William A. (1989). "Redefining the Power of the Federal Judiciary: The Impact of Court-Ordered Prison Reform on State Expenditures for Corrections." *Law & Society Review*, 241.
- Takagi, Paul. (1974). "The Walnut Street Jail: A Penal Reform to Centralize The Powers of the State." [http://www.socialjusticejournal.org/pdf\\_free/Takagi-Walnut\\_Street\\_Jail.pdf](http://www.socialjusticejournal.org/pdf_free/Takagi-Walnut_Street_Jail.pdf).
- Taylor, Jon M. (1992). "Post-Secondary Correctional Education: An Evaluation of Effectiveness and Efficiency." *Journal of Correctional Education* 43, no. 3, 132-41.
- Taylor, Paul. "Should Private Firms Build, Run Prisons?" *The Washington Post (1974-Current file)*; May 7, 1985.
- Tennessee Department of Correction: FY 2012 Statistical Abstract." October 1, 2012. Accessed April 12, 2013. <http://www.tn.gov/correction/pdf/StatisticalAbstract2012.pdf>.
- Texas Department of Criminal Justice. "Texas Department of Criminal Justice: Population by Race as of 2/28/2013." Data obtained through Open Records request on 3/14/2013.
- Thornberry, Terence P. and Jack E. Call. (1983). "Constitutional Challenges to Prison Overcrowding: The Scientific Evidence of Harmful Effects." *Hastings Law Journal* 35(2):313-351.
- Toch, Hans. (1985). "Warehouses for People?" *Annals of the American Academy of Political and Social Science*, 478:58-72.
- Tolchin, Martin. "As Privately Owned Prisons Increase, So Do Their Critics." *New York Times (1923-Current file)*; Feb 11, 1985.
- Tolchin, Martin. Jails Run by Private Company Force It to Face Question of Accountability *New York Times (1923-Current file)*; Feb 19, 1985
- Van Natta, Don. Despite Setbacks, a Boom In Private Prison Business. *New York Times (1923-Current file)*; Aug 12, 1995.

- Vaughn, M. S. (1993). "Listening To The Experts: A National Study Of Correctional Administrators' Responses To Prison Overcrowding." *Criminal Justice Review*, 18:12-25.
- Virginia Department of Corrections: State Responsible Offender Demographic Profile, FY 2012." Accessed May 19, 2013.  
<http://www.vadoc.virginia.gov/about/facts/research/VADOCDemographicReportFY2012.pdf>.
- Vise, David. Private Company Asks for Control Of Tenn. Prisons: 99-Year Contract ." *The Washington Post (1974-Current file)*; Sep 22, 1985.
- Wackenhut Corp.: Unit Is Formed to Operate Prisons and Other Facilities *Wall Street Journal (1923 - Current file)*; May 2, 1988.
- Wacquant, L. (1992). "Inside The Zone: The Social Art Of The Hustler In The Black American Ghetto." *Theory, Culture & Society* 15, no. 2: 1-36.
- Wacquant, L. (2009). "Prisons of Poverty". *The Howard Journal of Criminal Justice*: 549-50. Minneapolis, MN: University of Minnesota Press.
- Wacquant, Loic. (1997). "Three Pernicious Premises In The Study Of The American Ghetto." *International Journal of Urban and Regional Research*, 341-53.
- Wacquant, Loïc. (2007). "Three Steps to a Historical Anthropology of Actually Existing Neoliberalism." *Social Anthropology*: 66-79.
- Wacquant, Loïc. (1997). "For an Analytic of Racial Domination." *Political Power and Social Theory* 11, no. 1 (Symposium on "Rethinking Race"): 221-234.
- Wacquant, Loic. (2009). *Punishing the Poor: The Neoliberal Government of Social Insecurity*. Durham: Duke University Press.
- Wacquant, Loïc. (2010). *The Continuing Fiscal Crisis in Corrections*. New York: Vera Institute.
- Walker, Donald. (1998). *Penology for Profit: A History of the Texas Prison System, 1867–1912*. College Station: Texas A&M University Press..
- Weissman, Marsha et al. (2005). *School Yard or Prison Yard: Improving Outcomes for Marginalized Youth*. Syracuse, NY: Justice Strategies.
- Western, Bruce, and Becky Pettit. (2010). "Incarceration and Society Inequality." *Daedalus*.  
[http://www.amacad.org/publications/daedalus/10\\_summer\\_western.pdf](http://www.amacad.org/publications/daedalus/10_summer_western.pdf).
- Western, Bruce. (2006). *Punishment and Inequality in America*. New York: Russell Sage Foundation.

- Wilderson, Frank, B. (2010). *Red, Black, and White: Cinema and the Structure of U.S. Antagonisms*. Durham: Duke University Press.
- Williams, Eric. (1944). *Capitalism and Slavery*. Chapel Hill: UNC Press.
- Williams, Linda. (1999). *Hard Core: Power, Pleasure, and the "Frenzy of the Visible."* Expanded edition. Berkeley: University of California Press.
- Wilson, William Julius. (1978). *The Declining Significance of Race*. Chicago: University of Chicago Press.
- Wolin, Sheldon. (2008). *Democracy Incorporated: Managed Democracy and the Specter of Inverted Totalitarianism*. New York: Simon and Schuster.
- Yackle, Larry. (1989). *Reform and Regret: The Story of Federal Judicial Intervention in the Alabama Prison System*. New York: Oxford University Press.

Appendices  
Appendix A

Agreement Number C06.298-0

California Department of Corrections and Rehabilitation  
SCOPE OF WORK

Exhibit A

**Section 3.02 Selection and Placement Process.**

The CDCR Offenders to be housed in the Facility shall be selected on the basis of compliance with all applicable state statutes or such other applicable laws or regulations of the state in which the Facility is located relating to the housing of out of state offenders as may apply, and in addition thereto, the following criteria and conditions:

3.02.1 CDCR and CONTRACTOR shall mutually agree on offenders to be housed by CONTRACTOR, and offenders shall be suitable for placement in the facility designated. In the event that CDCR requests that the CONTRACTOR accept Offenders with serious or significant mental health or serious or significant physical problems, included but not limited to physical disability, CDCR and the CONTRACTOR shall mutually agree to an appropriate plan of care for the population and the allocation of costs associated therewith. If the overall percentage of inmates in CONTRACTOR facilities requiring Hepatitis C treatment exceeds the overall percentage of offenders requiring Hepatitis C treatment in the CDCR system, CDCR agrees to pay the treatment costs for those offenders in excess of the percentage of offenders requiring Hepatitis C treatment in the CDCR system.

3.02.2 Offenders assigned to the Facility shall be males eighteen years of age or older.

3.02.3 CONTRACTOR may reject any offender found not to meet the receiving state's criteria or otherwise deemed by the CONTRACTOR, with CDCR's concurrence, to be unsuitable for assignment to a particular Facility. In the event the initially considered Facility is deemed unsuitable for a particular offender, the CONTRACTOR shall make all due effort to assign offenders to an alternate appropriate Facility under this Agreement.

Upon arrival of any CDCR Offender to the Facility, the CDCR shall provide to the Facility's Warden, without charge, copies of pertinent data from institutional files, commitment or other judicial orders, and medical records of each CDCR Offender to be housed at the Facility. The CONTRACTOR shall assume any costs associated with a review of inmate central files to determine the impact to CDCR of the receiving state's statutory requirements. All CDCR Offender information shall be subject to statutory limitations on disclosure, including but not limited to State privacy laws, and provisions of the federal requirements imposed by the Health Insurance Portability and Accountability Act (HIPAA) or other Federal privacy laws. The CONTRACTOR shall release information only in accordance with CDCR direction.

Appendix B

April 11, 2014

Mr. Christopher Petrella  
[REDACTED]

RE: PUBLIC RECORDS ACT (PRA) REQUEST (PRA14-0326-AJ)

Dear Mr. Petrella:

This letter is in response to your PRA request received on March 26, 2014, for information from the California Correctional Health Care Services (CCHCS). Specifically, you requested information regarding the prevalence of Hepatitis C (HCV) positive inmates in out of state facilities.

Although CCHCS does not track the prevalence of HCV among patient-inmates in out-of-state facilities, our internal programs were able to coordinate with the Corrections Corporation of America (CCA) to obtain the following data responsive to your request:

Location	Patients
Tallahatchie County	130
La Palma	197
North Fork	187
Florence	53



If you have any questions or concerns, you may contact us via e-mail at CCHCSHealthPRAS@CDCR.ca.gov, or by regular mail at California Correctional Health Care Services, Attention: PRA Coordinator, Building C, P.O. Box 588500, Elk Grove, CA 95758.

Sincerely,

G. Milliken  
PRA Coordinator

Appendix B, continued

**Chronically Infected HCV Patients By Institution  
December 31, 2013**

<b>Institution</b>	<b>Census</b>	<b>HCV Infected</b>	
ASP	4,088	472	12%
CAC	153	16	10%
GAL	3,874	448	12%
CCC	5,023	330	7%
CCI	4,419	743	17%
CCWF	3,602	250	7%
CEN	2,966	282	10%
CHCF	1,194	223	19%
CIM	4,726	794	17%
CIW	2,154	207	10%
CMC	4,912	565	12%
CMF	2,078	354	17%
COR	4,352	765	18%
CRC	3,282	316	10%
CTF	5,210	588	11%
CVSP	2,394	202	8%
DVI	2,347	164	7%
FSP	3,418	375	11%
HDSP	3,366	404	12%
ISP	3,072	308	10%
KVSP	3,741	648	17%
LAC	3,697	553	15%
MCSP	2,852	539	19%
NKSP	4,620	136	3%
PBSP	2,659	387	15%
PVSP	3,263	378	12%
RJD	3,190	678	21%
SAC	2,202	262	12%
SATF	5,503	852	15%
SCC	4,931	371	8%
SOL	4,125	478	12%
SQ	4,073	448	11%
SVSP	3,377	471	14%
VSP	3,292	407	12%
WSP	4,961	239	5%
STATE	123,116	14,653	12%

Appendix C

May 5, 2014

Mr. Christopher Petrella  
[REDACTED]

RE: PUBLIC RECORDS ACT (PRA) REQUEST (PRA14-0423-3TT)

Dear Mr. Petrella:

This letter is in response to your PRA request received on April 23, 2014, for information from the California Correctional Health Care Services (CCHCS). Specifically, you requested information regarding the percentages of HIV+ prisoners in each CDCR facility, including out-of-state facilities.

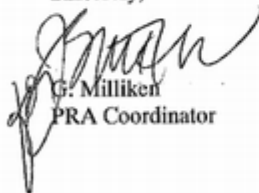
Attached is a .pdf file responsive to your request:

1. CDCR HIV Population as of 3-31-14

In regards to the respective data for out-of-state facilities, there are no responsive records as HIV+ inmate-patients are not transferred outside of California. If an inmate-patient is diagnosed with HIV+ while residing in an out-of-state institution they are returned to California as soon as possible.

If you have any questions or concerns, you may contact us via e-mail at CCHCSHealthPRAS@CDCR.ca.gov, or by regular mail at California Correctional Health Care Services, Attention: PRA Coordinator, Building C, P.O. Box 588500, Elk Grove, CA 95758.

Sincerely,

  
G. Milliken  
PRA Coordinator

Appendix C, continued

Institution	Population	HIV+	%HIV+
ASP	3,928	-	-
CAC	1,429	-	-
CAL	3,860	1	0.03%
CCC	5,021	-	-
CCI	4,356	-	-
CCWF	3,668	21	0.57%
CEN	2,861	-	-
CHCF	1,345	34	2.53%
CIM	4,756	223	4.69%
CIW	2,118	19	0.90%
CMC	4,479	137	3.06%
CMF	2,065	110	5.33%
COR	4,302	-	-
CRC	2,968	25	0.84%
CTE	4,955	2	0.04%
CVSP	2,291	-	-
DVI	2,608	41	1.57%
FSP	3,208	-	-
HDSP	3,389	-	-
ISP	3,018	-	-
KVSP	3,774	-	-
LAC	3,599	63	1.75%
MCSP	2,913	82	2.81%
NKSP	4,693	9	0.19%
PBSP	2,755	1	0.04%
PVSP	3,106	-	-
RJD	3,139	110	3.50%
SAC	2,189	53	2.42%
SATI	5,574	1	0.02%
SCC	4,582	-	-
SOL	4,050	5	0.12%
SQ	3,936	100	2.54%
SVSP	3,352	13	0.39%
VSP	3,186	2	0.06%
WSP	5,132	15	0.29%
<b>STATE</b>	<b>122,615</b>	<b>1,067</b>	<b>0.87%</b>

## Appendix D

<b>High Risk - Priority 1</b>			
Patients who are High Risk Priority 1 trigger at least <b>2 flags</b> from the selection criteria found in the table below			
<b>High Risk - Priority 2</b>			
Patients who are High Risk Priority 2 trigger only <b>1 flag</b> from the selection criteria found in the table below			
Flag	Description	Data Source	Timeframe
<b>Sensitive Medical Condition</b>	Medications associated with important diagnoses which, if not taken, may lead to a serious adverse event (e.g. immunosuppressants, chemotherapy Rx) <b>See Table 1 and 2 below</b>	Guardian	6 months
<b>High hospital, ED, Specialty Care and Pharmacy Costs</b>	Patients whose care in the past 6 months has a cost of more than \$100,000	Guardian, TPA Claims	6 months
<b>Multiple Hospitalizations</b>	2 or more inpatient admissions	CADDIS	12 months
<b>Multiple Emergency Department Visits</b>	3 or more emergency department visits	TPA Claims	12 months
<b>High Risk Specialty Consultations</b>	2 or more appointments to 'high risk' specialist(s) (e.g., oncologist, vascular surgeon) <b>See Table 3 Below</b>	TPA Claims	6 months
<b>Significant Abnormal Labs</b>	1 or more abnormal lab value that suggests poor control of a chronic condition or serious medical condition (most recent) <b>See Table 4 Below</b>	Quest	All - Most Recent or Any
<b>Age</b>	65 years of age or older	SOMS	Current Age
<b>Specific High-Risk Diagnoses/Procedures</b>	1 or more ICD-9 codes from ED visit, hospitalization or specialist visit, suggesting serious condition (e.g., cancer, SLE, dementia) <b>See Table 5 Below</b>	TPA Claims	All

Appendix E

**Appendix II  
CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES  
Institutional Medical Groupings**

<b>Description of Institutional Setting</b>	<b>Medical Classification System Criteria</b>	
<b>Fire Camps:</b> These settings require that the inmates be able to be located in remote areas, capable of vigorous physical activity if in firefighter assignments, and require no daily nursing care. Population as of August 2009: 4312	Functional Capacity:	Vigorous Activity Or Full Duty
	Level Of Care:	OP
	Proximity To Consultation:	No Particular Need Or Infrequent Basic Consultation
	Medical Risk:	Low Risk
	Nursing Care Acuity:	Basic Nursing.
<b>Minimum Support Facilities:</b> These settings require that inmates be located in a facility attached to but separate from an institution. Nursing and primary care provider care is available, but patients must be taken into the secure perimeter in order to access urgent care. Population as of August 2009: 8400	Functional Capacity:	Limited Duty (Or Better).
	Level Of Care:	OP
	Proximity To Consultation:	Frequent Basic Consultation (Or Less)
	Medical Risk:	Low Risk
	Nursing Care Acuity:	Uncomplicated Nursing (Or Less).
<b>Community Correctional Facilities:</b> These settings require that the inmate be able to be located in a small to medium sized contracted facility that may be many miles from a hub institution. These facilities provide limited nursing and primary care provider access. Patients must be taken to local emergency rooms or transported to the hub for urgent care. Population as of August 2009: 4990	Functional Capacity:	Limited Duty (Or Better)
	Level Of Care:	OP
	Proximity To Consultation:	Infrequent Basic Consultation (Or Less)
	Medical Risk:	Low Risk
	Nursing Care Acuity:	Uncomplicated Nursing (Or Less).
<b>Out-of-State Facilities</b> These settings require that patients must be able to be located in a medium-sized contracted facility in another state. These facilities provide nursing and primary care provider services on a continuous basis and can provide urgent care on-site. Short and long term placements into OHU or CTC are available on-site. Patients must be able to be transported to and from California using routine custody transportation. Population as of August 2009: 7713	Functional Capacity:	Limited Duty (Or Better)
	Level Of Care:	OP
	Proximity To Consultation:	Frequent Basic Consultation (Or Less)
	Medical Risk:	Medium Risk (Or Less)
	Nursing Care Acuity:	Low Intensity Nursing (Or Less).

# Appendix F

Company	Facility Name	Location	Address	City	State	Zip
Community Education Centers	Colombia County Jail	East Local Treatment Facility				
	George M Hill Correctional Facility	Glenn Daley Correctional Facility				
	WHS Soccer Adult Detention Facility	Kyle Correctional Center				
	Lincoln County Detention Center	South Local Unit				
	Jack Marshall Detention Center	South Local Intermediate Sanction Facility				
	Perkin County Jail	West Texas Intermediate Sanction Facility				
	Finney County Jail	Wilkey County Regional Detention Facility				
	Kiowa County Detention Center					
	Liberty County Jail					
	McLennan County Detention Center					
Edgar County Correctional Center						
Emotional Compromise	South Local Regional Detention Center					
	Lincoln County Detention Center					
	LaSalle County Regional Detention Center					
	Rolling Plains Regional Jail and Detention Center					
	West Texas Detention Facility					
	Worth County Detention Center					
	Rowland County Detention Center					
	Rowland County Detention Center					
	Rowland County Detention Center					
	Rowland County Detention Center					
LaSalle Correctional	Burnett County Jail					
	Paul Street Jail					
	Johnson County Louisa Enforcement Center					
	Johnson County Detention Jail					
	Oklahoma Parish Detention Center					
	Lincoln Parish Detention Center					
	Richardson Correctional Center					
	Richardson Parish Detention Center					
	Jackson Parish Correctional Center					
	LaSalle Correctional Center					
LOS Correctional Services	Brennan County Detention Center					
	Colquhoun Parish Detention Center					
	East Hill Detention Center					
	Perry County Correctional Center					
	Pine Prairie Correctional Center					
	South Louisiana Correctional Center					
	J.B. Evans Correctional Center					
	Georgetown Detention Center					
	Georgetown Detention Center					
	Georgetown Detention Center					
Management & Training Corp.	Arizona State Prison Complex-Gilman					
	Maricopa Community Correctional Treatment Facility					
	Tulsa Correctional Institution					
	Guidon Correctional Facility					
	Hialeah Correctional Facility					
	East Maricopa Correctional Facility					
	Maricopa County Correctional Facility					
	Vallejo Correctional Facility					
	Orange County Prison Facility					
	Orange County Prison Facility					
Other	Adelanto Detention Facility East					
	Alton Correctional Center					
	Arizona State Prison-Phoenix West					
	Arizona State Prison-Phoenix West					
	Arizona State Prison-Phoenix West					
	Arizona State Prison-Phoenix West					
	Arizona State Prison-Phoenix West					
	Arizona State Prison-Phoenix West					
	Arizona State Prison-Phoenix West					
	Arizona State Prison-Phoenix West					

## Appendix G

December 18, 2012

The Honorable Sheila Jackson Lee

U.S. House of Representatives

2160 Rayburn Building

Washington, DC 20515

### **Re: Private Prison Information Act**

Dear Representative Jackson Lee:

We, the undersigned not-for-profit criminal justice and public interest organizations, respectfully urge you to reintroduce the Private Prison Information Act (PPIA) during the 113<sup>th</sup> Congress. The bill, which would extend Freedom of Information Act (FOIA) reporting obligations to private corrections companies that contract with federal agencies, is a critical first step in bringing transparency and accountability to the private prison industry.

We are deeply troubled by the secrecy with which the private corrections industry presently operates. Whereas the Federal Bureau of Prisons (BOP) and state departments of corrections are subject to disclosure statutes under the Freedom of Information Act and state-level public records laws, some state courts have held that private prison firms that contract with public agencies generally are not. This lack of public transparency is indefensible in light of the nearly \$8 billion in federal contracts that Corrections Corporation of America (CCA) and the GEO Group (GEO)—the nation’s two largest private prisons firms—have been awarded since 2007.

If private prison companies like CCA and GEO would like to continue to enjoy taxpayer-funded federal contracts, then they should be required to adhere to disclosure laws equivalent to those governing their public counterparts—including FOIA.

Though five separate iterations of the Private Prison Information Act have been introduced in Congress since 2005, each bill has died as a result of vigorous lobbying efforts on behalf of the private corrections industry. According to documentation maintained by the U.S. Senate’s Lobbying Disclosure Electronic Filing System, Corrections Corporation of America has spent over \$7 million lobbying against the passage of various Private Prison Information Acts since 2005. They claim that the bill violates their “trade secret” FOIA exemption.

But why should private prison contractors, which are paid exclusively with taxpayer funds, be any less accountable to taxpayers than public corrections agencies such as the Bureau of Prisons? We contend that because the private prison industry relies entirely on taxpayer support, the public has a right to access information pertaining to its operations.

There is little evidence that taxpayers currently have access to the type of information that would allow them to evaluate the performance of private corrections firms in comparison to the public sector. Though the private prison industry routinely cites its record on measures of efficiency and safety relative to public agencies, it nonetheless refuses to disclose the very information required to substantiate its most basic claims of success.

Disclosure statutes providing the public with access to information pertaining to the operations of private prisons is vital if reasonable comparisons are to be made between the private and public sectors.

The time to reintroduce and pass this bill is now. Privately-operated federal facilities have grown 600 percent faster than state-level contract facilities since 2010, and now represent the single most quickly-growing corrections sector. Moreover, business from federal customers like the Bureau of Prisons, U.S. Marshals Service, and Immigration and Customs Enforcement now accounts for a greater percentage of revenue among private prison companies than ever before.

In the past, critics of the Private Prison Information Act have argued that its passage would set a “dangerous precedent” for FOIA overreach. In his 2007 testimony before the House Subcommittee on Crime, Terrorism, and Homeland Security, Mike Flynn, the Director of Government Affairs for the Reason Foundation, testified that applying FOIA to private prison companies could open the “floodgates” to any other federal contractor and, by extension, their contractors and suppliers. “Thousands of individuals, small and large businesses, provide services to the government and products to the government at great efficiency for the taxpayers [and] all of that could be opened up to the FOIA process,” he claimed. He did not mention that Reason Foundation receives funding from private prison companies, including CCA and GEO.

We squarely reject these unfounded assumptions. The Private Prison Information Act should be applied narrowly and judiciously. It is unlikely that the Private Prison Information Act, if enacted, would unwittingly extend FOIA provisions to other private companies because private prison firms hold an exceptional market position relative to other private companies. To our knowledge, no other type of private industry is contracted by the public sector solely to perform an essential governmental function such as incarceration.

That private corrections firms are supported exclusively by public agencies and enjoy the benefits of operating within an artificial government contract-driven market makes them the perfect candidates for FOIA compliance. In most economic sectors there is a free market analogue for many kinds of services that governments typically provide. A field such as education, for example, has a robust market of existing non-profit and for-profit organizations and agencies willing to sell/provide services to a market of potential buyers that includes both individuals and governments.

This is not the case with private corrections firms.

The private prison industry is fundamentally different in that no citizen can freely purchase incarceration services as a private individual. There is no natural market for incarceration

services; the entire market would cease to exist without direct government intervention in the form of taxpayer-funded contracts to operate correctional facilities.

We, the undersigned, argue that because private prison firms are ultimately functionaries of the state, they must come under the same FOIA requirements as their public counterparts. We therefore urge you to reintroduce the Private Prison Information Act this Congressional session and are willing to support your efforts. Should you have questions or require additional information, please feel free to contact either Christopher Petrella at XXX-XXX-XXXX or [cpetrella@post.harvard.edu](mailto:cpetrella@post.harvard.edu), or Human Rights Defense Center associate director Alex Friedmann at XXX-XXX-XXXX or [afriedmann@prisonlegalnews.org](mailto:afriedmann@prisonlegalnews.org).

Respectfully,

ACLU

Center for Constitutional Rights

Center for Media Justice

Center for Prison Education

Enlace

FedCURE

Florida Justice Institute

Florida Reentry Resources & Information (FreeRein)

Grassroots Leadership

Human Rights Defense Center

In the Public Interest

Justice Policy Institute

Justice Strategies

Maine Prisoner Advocacy Coalition

Media Alliance

National CURE

National Immigrant Justice Center

Partnership for Safety and Justice

Prison Policy Initiative

Private Corrections Institute

Private Corrections Working Group

Southern Center for Human Rights

Southern Poverty Law Center

Texas Civil Rights Project

Texas Jail Project

The Center for Church and Prison

The Fortune Society (David Rothenberg Center for Public Policy)

The Real Cost of Prisons Project

The Sentencing Project

The Workplace Project/Centro de Derechos Laborales

Urbana-Champaign Independent Media Center

Vermonters for Criminal Justice Reform

Voters Legislative Transparency Project

YouthBuild USA, Inc.

## Appendix H

### ARIZONA: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Douglas-Gila: 359/601  
Douglas-Mohave: 663/930  
Douglas-Eggers: 127/231  
Florence-East: 397/690  
Florence-North: 604/1085  
Florence-Globe: 164/293  
Lewis-Stiner: 786/1176  
Lewis-Sunrise: 42/99  
Safford-Fort Grant: 331/573  
Safford-Graham: 349/536  
Safford-Tonto: 194/306  
Tucson-Cimarron: 246/371  
Tucson-Santa Rita: 503/777  
Tucson-Winchester: 501/769  
Tucson-Catalina: 144/348  
Tucson-Whetstone: 685/1171  
Winslow-Coronado: 318/498  
Winslow-Kaibab: 614/775  
Winslow-Apache: 212/358  
Yuma-Cheyenne: 734/1188

Yuma-Cocopah: 570/1047

Yuma-Cibola: 152/308

Yuma-La Paz: 661/864

ARIZONA: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS  
(PEOPLE OF COLOR / TOTAL POPULATION)

Kingman-Cerbat: 1193/1965

Kingman-Hualapal: 1069/1512

Marana: 309/496

CALIFORNIA: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS  
(PEOPLE OF COLOR / TOTAL POPULATION)

Avenal: 4447/6217

California Men's Colony: 4719/6240

California Men's Rehabilitation Center: 3156/4263

Chuckawalla / Ironwood: 6221/7634

Folsom: 5360/6676

CALIFORNIA: PRIVATE (OUTSOURCED) MINIMUM/MEDIUM SECURITY  
FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

La Palma (in Arizona): 2454/2949

North Fork (in Oklahoma): 1774/2003

Red Rock (in Arizona): 1382/1504

Tallahatchie (in Mississippi): 2410/2603

COLORADO: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS  
(PEOPLE OF COLOR / TOTAL POPULATION)

Arkansas Valley: 575/1008

Buena Vista: 546/926

Fremont: 798/1662

COLORADO: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS  
(PEOPLE OF COLOR / TOTAL POPULATION)

Bent: 764/1317

Crowley: 938/1590

Kit Carson: 456/800

GEORGIA: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS  
(PEOPLE OF COLOR / TOTAL POPULATION)

Autry: 1155/1644

Calhoun: 1169/1635

Central: 614/1099

Dodge: 796/1198

Dooly: 1093/1652

Johnson State: 855/1544

Lee State: 523/725

Long: 100/224

Montgomery: 236/374

GEORGIA: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS  
(PEOPLE OF COLOR / TOTAL POPULATION)

Coffee: 1811/2540

Jenkins: 665/1107

Riverbend: 1012/1459

Wheeler: 1817/2640

MISSISSIPPI: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS  
(PEOPLE OF COLOR / TOTAL POPULATION)

CMCF: 1451/2188

MISSISSIPPI: PRIVATE MEDIUM SECURITY FACILITIES (PEOPLE OF COLOR /  
TOTAL POPULATION)

Composite Totals: 3256/4314

OHIO: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE  
OF COLOR / TOTAL POPULATION)

Allen Oakwood: 659/1590

Marion: 1343/2617

Dayton: 315/882

Chillicothe: 1038/2747

London: 1119/2263

Belmont: 1220/2762

Noble: 1034/2495

Southeastern: 853/2055

Pickaway: 919/2165

OHIO: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS  
(PEOPLE OF COLOR / TOTAL POPULATION)

Lake Eric: 898/1542

North Central Complex: 1113/2708

OKLAHOMA: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS  
(PEOPLE OF COLOR / TOTAL POPULATION)

Dick Conner: 608/1202

James Crabtree: 387/992

Joseph Harp: 555/1396

Mack Alford: 349/793

OK State Reformatory: 483/1067

OKLAHOMA: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS  
(PEOPLE OF COLOR / TOTAL POPULATION)

Davis: 989/1682

Lawton: 1423/2529

TENNESSEE: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS  
(PEOPLE OF COLOR / TOTAL POPULATION)

CBCX: 315/604

NWCX: 1315/2404

TENNESSEE: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS  
(PEOPLE OF COLOR / TOTAL POPULATION)

Hardeman: 1265/1998

South Central: 765: 1669

Whiteville: 974/1528

TEXAS: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS  
(PEOPLE OF COLOR / TOTAL POPULATION)

Byrd: 723/1088

Goree: 483/975

Huntsville: 874/1520

Jester III: 629/1083

Luther: 795/1261

Pack: 763/1429

Powledge: 504/1105

Terrell: 940/1539

Vance: 192/295

TEXAS: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS  
(PEOPLE OF COLOR / TOTAL POPULATION)

Billy Moore: 344/499

Bridgeport: 360/520

Cleveland: 361/519

Diboll: 354/517

Estes: 722/1039