

12-2013

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Our Dark Places: Questions about Prison Privatization's Benefit to Louisiana

by

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Undergraduate honors thesis under the direction of

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Submitted to the LSU Honors College in partial fulfillment of  
The Upper Division Honors Program.

December, 2013

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Baton Rouge, Louisiana

As part of the 1980s movement for privatization of public services, a growing sentiment emerged that introducing market forces into the correctional systems, at both federal and state levels, would bring much needed efficiency to offset the ballooning costs of incarcerating an ever-growing number of criminals. Like many other states, Louisiana joined in on this trend in two ways – by contracting Corporate Corrections of America and Wackenhut Corrections Corporation (now The GEO Group) to open the state's first privately run state prisons and also through a similar arrangement with sheriffs for new local parish prisons. Several researchers have attempted to empirically compare the potential gains of contracting out correctional services, arguing that its economic efficiency would surpass that of any public facility based off of private-sector performance for other previously public services. However, evidence has been lacking in conclusively demonstrating this efficiency, thus undermining the initial claims that privatization's implementation was predicated on. In terms of long-term prison success metrics i.e. decreasing recidivism and more generally reducing crime, the present model of corrections has not been effective.

While privatization may provide a temporary solution by creating more space to incarcerate those who have been deemed a societal threat, the classical conceptualization of Louisiana's crime problem that this policy represents will only exacerbate a growing list of underlying social issues. Classical criminology is predicated on strong individualism, but this perspective fails to address important extenuating factors and consequently has led to an incorrect perception of seemingly pervasive criminality among those in poverty, especially with respect to African-Americans. By framing the laws, and consequently penal system, to reflect this ideology, Louisiana's discipline apparatus has only served to

incarcerate a substantial number of petty criminals instead of the “hardened criminals” that politicians with “tough on crime” agendas identified as the problem. Therefore, this thesis seeks to demonstrate that a continued commitment to this criminology must be abandoned in order to mitigate the questionable social consequences this policy produces. First, a review of the literature on privatization is required in order to evaluate findings on privatization’s economic efficiency. Then, in light of the inconclusive results from traditional research approaches, I will introduce a critical perspective on how to evaluate prison success. A historical example of Victorian Britain will be used to demonstrate the importance of criminological ideology (vis-à-vis lawmakers and the public) in determining the course of penal reform strategies. From there, a discussion of social consequences related to the current conceptualization of crime in Louisiana will follow. In analyzing both how the penal law and the social attitudes this criminology engenders serve to make social divisions between the offender and the law-abiding permanent, I will arrive at my main conclusion. This thesis seeks to demonstrate the need for a critical approach to criminality within Louisiana in order to reverse the trend towards mass incarceration, especially since the economic burden of incarceration has only grown since the decision to privatize.

### **Using the Free Market among the Captives**

Amidst the push for privatization, proponents of free market superiority in all industries argued that they could provide equivalent or better facilities at a cheaper cost than publicly run counterparts. A crucial player in the fledgling movement was Corporate Corrections of America – founded by Tennessee Republican Party chairman Tom Beasley and his colleague Dr. R. Crants (Hallett, 2006, p.95). Beasley’s relationship with Tennessee’s

governor at the time of CCA's conception provided him with more fertile ground for lobbying his privatization agenda in the state legislature.

Generally speaking, privatization of incarceration had been considered beyond the traditional realm of politically acceptable propositions for those lobbying to contract out government services<sup>1</sup>. Even with Fm. Gov. Beasley's wife's significant financial stake in CCA and his consequent interest in the movement, only a compromise bill was able to find approval within the legislature<sup>2</sup>. Questions regarding the closed-door nature of the policy discussion and whether the proposed bill would introduce fair competition in this new industry prompted revisions to accommodate the demands of the opposition (initial plans were for a 100% CCA takeover; however upon criticism of the consequent monopoly CCA would have, it was revised to split the facilities with multiple vendors like WCC) (Hallett, 2006, p.100). However, the most scrutiny was applied regarding its claimed efficiency in terms of direct economic comparison, but also with respect to prisoner safety and rehabilitation – especially in light of a large prison riot and near-escapes at a CCA facility in Ohio that happened concurrent to these discussions (Hallett, 2006, p. 104). To better evaluate privatization proponents' claims of market efficiency, scholars have consequently sought to empirically test their claimed equivalence to public facilities and also economic efficiency. The early research found that two difficulties are inherent in conducting quantitative prison comparisons – finding commensurable facilities that provide good

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<sup>1</sup> Cf: James et al., 1997, p.42 – Adam Smith Institute members remarked in a white paper published in favor of contracting how if “you could get them to privatize prisons, you could get them to do anything.”

<sup>2</sup> The initial bill proposed called for a complete privatization of Tennessee's facilities, so despite the compromise was still generally a political success for Republicans because it gave CCA a foothold in the State.

cases for comparative study and also choosing the correct metric for meaningful conclusions to be drawn from.

### **Research on Prison Privatization**

In many instances, the facilities chosen for research have patent contextual factors such as population size, classification of security (minimum, medium and maximum), operational policies and management structure. Studies increasingly sought to control for these added variables, and in one particular instance, this desire was even directly reflected in penal policymaking. In the midst of the privatization push nationwide, and no doubt as a result of Louisiana doubling its prison population in just a decade, the State government ordered for two privately run and one publicly run facility to be built (Archambeault & Deis, 1996). Opened in 1989, the three facilities were made identical in their architectural design and inmate classification (to create ideal facilities for comparison), in an attempt to control for these inter-facility differences that confounded prior comparative cost-effectiveness research. The two private facilities, Allen Correctional Center and Winn Correctional Center, implemented traditional and a Theory-Z (a Japanese management style) management structure respectively. This enabled the study to test whether an alternative private-sector strategy could produce greater cost-efficiency than the public facility, Avoyelles Correctional Center.

Archambeault & Deis conducted a thorough cost-effectiveness analysis and compared the operation of the three identically designed facilities across metrics such as safety, educational programing and staff evaluations. Avoyelles had fewer assaults in the total calculation, however the private facilities were superior across some sub-categories of

misconduct. Likewise, Allen had the greatest number of open spots in education programs, however that availability was not translated into enrollment and more importantly, completion of programs. This perhaps indicates that the study's evaluation of Allen as the best facility in terms of education performance was less concerned with actual outcomes of these programs than their existence. Avoyelles had a larger staff (comprised of both dedicated faculty but also peer-tutoring) and had a higher completion rate for the programs offered. The peer-tutoring program especially highlights the much higher participation and engagement within these programs at Avoyelles, something notably absent at top-rated Allen.

Their cost-effectiveness attempted to objectively rate the three facilities through a point system, but no clear advantage was found for privatization upon tabulation of these points. Avoyelles rated about the same as Winn, and Allen was only marginally better. In light of these equivocal findings, their conclusion that no motive could be found for private facilities wishing to keep prisoners longer for profitability is not adequately demonstrated. Especially since part of the evidence for this claim was their own subjective evaluations of the management's character, their research does not provide a satisfying answer to this crucial and ongoing privatization debate.

In making this assertion, Archambeault & Deis depart from the study's intended empirical justification and are not persuasive considering that one of the main skepticisms of privatization is the potential for corruption in favor of profit. This example serves to highlight a premise for another study to be discussed – that all research with respect to correctional reform inherently reflects the writer's ideology because the empirical evidence was an insufficient argument alone (James et al., 1997). In this particular instance,

Archambeault & Deis lean towards a classical criminological understanding of criminality and therefore focus mainly on the adequacy of the punishment, not effectiveness of the rehabilitation. Even after specifically reviewing the stated missions of the three facilities, little consideration is given to the fact that these facilities may be creating a revolving-door effect with their respective incarcerated populations.

### **Shortcomings of Comparative Economic Prison Research**

Post-release success is not at all mentioned in Archambeault & Deis's study, despite its predictive power in future economic cost. Following the marginal performance variance demonstrated in their study, these facilities likely have rehabilitated with similarly marginal success. The state average for state facilities, including the three studied, was last recorded at 44.7% of inmates returning after 5 years, representing the second worst rate across classifications of facilities (only local facilities were worse, reasons for this will be discussed later) (Louisiana Department of Public Safety Corrections, 2013). Given the potential economic benefit that reducing this particular metric might have, its inclusion might have even provided some information regarding long-term cost-effectiveness. More importantly, inclusion of a long-term metric is crucial in gauging the success of the prison in its mission of both correcting but also rehabilitating function. As we will see, modern, scientific criminology recognizes the importance of underlying social problems that may be partly responsible for crime, instead of concluding that criminals just do not have an appreciation for what is wrong; perhaps equally important, it asserts that the rehabilitative function of incarceration is more useful in addressing these underlying social problems than the corrective.



## **Different Approaches to Privatization Research**

Other studies utilize multi-year recidivism rates and other individual-oriented metrics, which might provide better measurement of prison success. Hallett (2006, pp.131-132) argues that early data on operation costs generally do not reflect the long-term expenditures to be expected since maintenance, staffing and litigation can all lead to great variation in cost over time. Additionally, the political and economic climate can have a significant impact on a facility's costs, further hindering meaningful comparisons. With that in mind, a British study sought to compare public and private facilities in terms of quality across 5 areas: management and staff roles within the facility; staff selection and training; regime delivery; value for money; and moral and ethical issues (James et al. 1997). This more holistic approach still includes economic considerations; however, it differs greatly than the aforementioned study in how it approaches equivalence. The authors sought to compare the prisoners' and staffs' lived experience at two new facilities – one private (Wolds) and one public (Woodhill) – and draw conclusions on the equivalence of facilities based upon this information.

Both facilities had a strong focus on self-discipline and gave the prisoners a substantial amount of time out of cell with freedom to do whatever they wished, whether it was going to one of the many classes or just playing cards all day. The prison regime of these facilities was quite different than the conventional American prison and even most British; since the UK privatization movement stressed the importance of private-sector innovation, the management responded by devising new operating procedures. In addition to doing economic research, James and his colleagues also obtained extensive data from

prisoners and staff regarding their perceptions of whether or not Wolds cut corners or in some way demonstrated a profit motive. Since they recognized their own inability to accurately make such a qualitative judgment without inserting their own ideology, surveying the people most affected by the private corporation's decisions provided a partial solution. Their survey indicated that generally those most involved in the Wold's milieu were unfazed by the private ownership, citing that the most evident form of profit motivated behavior was the occasional understaffing of guards. Across the other four categories, Wolds was evaluated as effective as well as concerned with mutual respect and self-discipline. More importantly, however, they concluded that the public facility, Woodhill, was just as effective in terms of economic efficiency, consistency of the prison regime and ability to innovate.

Ultimately, while Wolds had implemented new strategies in order to find ways of innovating to make the prison experience more rehabilitative, Woodhill also was able to adopt similar techniques focused on improving discipline and staff-prisoner relations. Since the purported benefits of privatization (i.e. cheaper operation and efficiency related to regime innovation) were not found to be unique to the private sector, the authors asserted that privatization would likely be unfavorable in most cases – citing higher staff inexperience and turnover, unexpected operating costs (potentially directly related to the staff factor), and lower perceived legitimacy by the inmates.

Following the theory of Beetham (1991) on legitimacy in power relationships, a less legitimate regime is likely to require measures to correct this deficit and maintain order. In the typical prison regime, this entails more coercive authority, however, increased utilization of coercion is more costly and usually implies increasing staffing to cope with

subordination. Consequently, measuring prison success with legitimacy in mind is a worthwhile proposition given its potential predictive capability regarding arguably the most integral relationships of the prison.

### **Legitimacy: An Alternative Metric of Prison Success**

A recent, randomized study sought to test legitimacy's role within prisons, a subject of little academic inquiry heretofore. The study was constructed to test how much inmates' perceptions of legitimacy are affected by experiences and what effects are inherent to prisons as an institution (Franke, Bierie, MacKenzie, 2010). Their findings indicated that while prisons suffered some legitimacy deficits simply as a result of the power arrangement incarceration is predicated on, the overall legitimacy rating upon release was significantly related to the respective prison experience of the inmate. Additionally, the boot camp style prison demonstrated higher marks of legitimacy on average at admission and release, which superficially might be interpreted a superior regime strategy. However, these results do not argue for widespread implementation of this regime.

The authors concluded that the difference in legitimacy was driven by the substantially more collaborative and engaged nature that officers have within a military setting, perhaps highlighting the importance of interpersonal relationships in garnering trust and respect for the correctional program inmates are placed into. Instead of the explicitly stratified nature of the guard-inmate relationship (which in American prisons is typically a violent one as well), those participating in the boot camp group likely identified with their superiors as involved in their personal growth instead of only their misery. The perceived fairness and value of the regime played a key role in the evaluations inmates

make in whether or not they will choose to engage in the rehabilitative process. If prisons as an institution cannot be structured to encourage this acceptance of the regime, then they will have limited success in changing the behavior of the incarcerated in any meaningful way. Given that perceived legitimacy of law is a more important consideration than potential repercussions for criminal decision-making, perceived legitimacy of corrections is a greater determinant of willingness to rehabilitate than the severity of punishment inflicted (Tyler, 1990).

Research, like the aforementioned study, that is focused on critically investigating the problems of correctional policy represents a different approach to the study of criminality compared to the prevailing classical norm. These studies, despite seeking to identify contextual factors of criminality, do not absolve fault or wrongdoing for criminals. Rather, they acknowledge the external factors that serve to shape decision making as well and incorporate relevant findings into an empirically tested, holistic model. In the previous study, using a randomized experiment within the constraints the correctional system necessitates provided scientifically rigorous evidence for their theory in a context equivalent to that of a traditional case study. Constructs like legitimacy and respect, as important predictors of recidivism and regime adoption, can provide insight for comparative research. Perhaps equally important, these metrics challenge the institutional status quo, i.e. they do not accept the current incarnation of the penal system as reified and immune to change. The significance of this critical nature is realized in their potential predictive power in finding solutions to the sources of crime, instead of simply incarcerating cheaply.

This desire to explicate the sources of crime is rooted in modern criminological theory, which eschews the classical, individualistic conception of criminality (i.e. the assumption that one acts completely out of free-will when violating the social-contract) in favor of a composite theory that ascribes environmental factors some responsibility in the overall outcome of criminal behavior. David Garland outlined in *Punishment and Welfare* (1985) what he considered to be the first modern criminological policy movement, which took place at the turn of the 20<sup>th</sup> century in Victorian Britain. This departure from classical criminology transformed Great Britain's penal system from a punitive institution of social reproduction into an efficacious instrument of social rehabilitation and crime reduction. Fundamental to his thesis, an ideological transformation vis-à-vis the public perception of crime was required before the rehabilitation movement could be successful.

### **Tracing the Origins of Modern Criminology**

In this historical example, Victorian Britain was experiencing the financial burden of an ever increasing prison population (which the public had deemed a failure), a by-product of a legal system in which a handful of penal sanctions existed but only imprisonment was utilized. While fines existed as a sanction for some offenses, incarceration was chosen as punishment about two and half times more frequently (Garland, 1985, p. 6). Since capital punishment was often too harsh (and quickly becoming less prevalent), this left judges in a position where incarceration was the only punishment deemed equitable in retribution for many offenses. The prime goal of incarceration, as Chairman of the Prison Commission at the time put it, was the “repression of crime.”<sup>3</sup> Following the social mores and penal logic of

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<sup>3</sup> (Garland, 1985, p. 11)

the time (and its strong emphasis on individualism), the prison regime was structured according to three ideological principles. First, the principle of less eligibility prescribed that criminals be subject to universally worse conditions than those who abide by the law. Also, deterrence through punitive sanctions was the process by which crime would be reduced<sup>4</sup>. Lastly, rehabilitation would be on a voluntary basis, since all criminals were considered self-motivated actors who violated the social contract.

The *raison d'être* of the Victorian prison was to send a message to both those inside and outside of the prisons, i.e. violating the law resulted in deprivation of liberty. Whether rehabilitation occurred during this time or the prisoner left in an even more broken condition, the state was indifferent. Since all criminals were rational actors, Victorian criminologists (i.e. classical) concluded the proper way to prevent criminal behavior was to make its punishment so costly that no one would dare risk the losses. However, the cost of incarcerating was becoming increasingly burdensome as recidivism among the poorest of the working class created a sub-class of the supposed “hardened criminals.” This sub-class of poor repeat offenders became the object of much contempt from the rest of society, who had labeled them unfit for participation in society.

However, certain aspects of the penal system contributed to this incorrect judgment. For example, the enforcement of laws primarily was concerned with the petty crimes for which most poor working-class people were the principal group. With so many of the poor incarcerated, the prevailing ideology concluded that this phenomenon was the result of these peoples’ inability to instill discipline and work ethic within themselves. In

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<sup>4</sup> According to Garland, a Lord within the Prison Commission said the purpose of incarceration was, “Suffering, inflicted as punishment for crime, and the fear of repetition of it” (Garland, 1985, p.16)

this example, Garland posits that the *necessary fictions* of equality under the eyes of the law and moral deficiencies among the poor were requisite for the public to adopt this ideology themselves (Garland, 1985, p.44). Perhaps equally important, these fictions find their way into policy through receptive politicians and can distract lawmakers from attributing causality to other explanations. Consideration of educational and economic disparities between the average citizens and these poor criminals were eschewed in favor of moralistic judgments of inadequacy. For the Victorian system, the state was logically in the best position to remedy these deficiencies, but only under specific instruction by popular consensus not to give support through schooling or therapy. Instead, the vehicle for instilling these social values was the prison.

As classical criminologists prescribed harsher and harsher punishments to provide the deterrence that was evidently still lacking, the public's opinion regarding the poor became a self-fulfilling prophecy. With the dawn of positivism and a desire to empirically study phenomena, data on the prison system slowly became substantive enough for conclusions to be drawn. Recidivism was as high as 78% for given crimes (in this case, larceny) indicating the failure of the system to deter crime; additionally, poor youth were being incarcerated at a significant rate signaling potential institutional social reproduction (Garland, 1985, p. 60). If many juveniles were being incarcerated, the early criminologists argued, then this underclass of social untouchables would continue to be solidified within the Victorian social order. These empirical findings, while limited compared to modern research, gave those wishing for reforms to emphasize rehabilitation a more convincing platform from which to question the legitimacy of the current penal structure. What was

still needed, however, was awareness of the failings of this correctional strategy, as well as the penal system's own partial responsibility.

After a series of articles titled "Our Dark Places" were published in the *Daily Chronicle* by an anonymous author, outlining the extreme deficiencies of the system, its tendency to reproduce social classes and its closed-door, secret administration style with limited accountability, the movement received the wave of support needed for political action (Garland, 1985, p. 64). By emphasizing external causes of criminality, the modern criminology movement incrementally transformed Britain's penal institutions. One of the most significant reforms was a shift from individualism towards individualization, which is to say that each prisoner's case was treated with concern for individual circumstances by the penal regime. Originally, by orders of the Prison Commissioner, all inmates were to be treated according to the same standard of treatment, regardless of the severity of their crime and their personal background as well as their mental and physical condition. The law was created to judge men on their actions alone, and as such could not be expected to not explain or mitigate why it occurs because context was irrelevant (Garland, 1985, p. 103). This disciplinary scheme failed to consider the economic hardship of those offending and the perceived legitimacy of the laws being violated. This strategy assumes that all offenders are strictly rational actors, a condition which does not usually hold up for the average person, much less those with an addiction or mental disorder.

In the new regime of individualization, British penal law was structured to consider substance abuse, health concerns and potential education deficiencies to better account for each offender's unique characteristics and history. One of the most straightforward outcomes of this change was an increase in the types of prisoner classifications demarcated



by the penal code, but there was another implication for this movement. A tri-partite regime composed of distinct staffs of experts executed the normalizing, correcting and segregating functions independently. Each sector was assigned distinct goals within the rehabilitative process, such that no one goal took precedence in the penal system. Especially with respect to the normalizing sector, this reform highlighted an admission that some criminals only in the “shallow end” of penalty were in need of personalized attention and support (Garland, 1985, p.238). With the help of the prison to normalize behavior to the accepted norm, these offenders could in fact be reinstated within society successfully. This sector contributed to the function of the prison by including educational programming and refinement with the goal of inculcating a new socially acceptable set of behavior.

By allowing for consideration that some fault in criminality was potentially external to the actor, the social perception of criminals as social antagonists changed as their behavior was judged not solely by dispositional factors but as a result of situational factors as well (Garland, 1985, p. 103). As the burgeoning class of professionals grew aware of the degree to which the British social problems stemming from poverty affected those within this offending class, the attribution error regarding crime became clearer. The movement for rehabilitation gained traction largely because it stood a greater chance of mitigating the sources of criminality while maintaining legitimacy as a vehicle for social reform. The goal of treating crime as an epidemic to be cured just like any other pathology transformed the discourse of penal reform from a moralistic and political question of desert to a scientific investigation of causality.

Consequently, a perspective such as this implies that preventative measures are possible and that the overall pathology can be mitigated. Especially in light of the constant

failings of the status quo, the criminologists' alternative approach proved popular among the public since it claimed to be capable of not just policing crime, but eliminating it too. Despite classical criminology's superficial legitimacy and equality, the middle class had become aware that the underlying social question of how to cope with a seemingly entrenched criminal underclass still was not resolved and that building more prisons likely would not offer new insight. While sentencing would-be "hardened criminals" to many years or even a life of incarceration might satisfy the desire for vengeance from the victim and society, the outcome had been shown to be burdensome and untenable.

With the support of specialists lobbying for the reforms as well as middle-class professionals and some socially minded elite, the public made a volte-face in its perception of crime. This ideological shift among the public had a proportional effect within the political discourse of lawmakers, who consequently had an obligation to depoliticize the debate regarding the poor and make penal institutions congruent with a new ideal of what was deemed socially acceptable and wise. Criminals were not freed immediately and the state did not become "soft" on crime, as is often called in political invective in the U.S., but rather the U.K. decided to try being "smart" on crime instead. Only with the public's support was this possible, as a system intent on retribution and punishment as opposed to normalization simply cannot allow such accommodation for criminals. Once criminality was seen partially as a consequence of external factors (not moral perversity), reform sought to change behavior by mitigating these factors. Until public sentiment reflected this rejection of classical thinking, however, lawmakers remained fixed within their conviction to punish.

Turning back now towards the United States, and Louisiana more specifically, the task remains to evaluate the present criminology found within the increasingly privatized system here as well as its implications for the future of penal reform. Starting with the 1974 publication of “What Works?” by Berkeley sociologist Robert Martinson, the United States and its respective state-level penal policy has been shaped largely by classical theory. This article claimed that “nothing works” for rehabilitating criminals, and that rehabilitative programs ought to be cut since throwing money at a problem would not necessarily provide the right solution (Abramsky, 2007, pp. 46-49). Martinson’s research, despite being criticized for incomplete methodological scope (a limited range of rehabilitative programs were studied) and for writing off prisoners’ ability to reform as a foregone conclusion, had an indelible effect on U.S. penal reforms. For the fiscal and social conservatives who embraced his theory, no more research was needed. Initiated by Barry Goldwater with his platform to rid America of its moral turpitude (and consequently crime), policymaking focused on fighting moral delinquents instead of fighting poverty grew more commonplace (Hallett, 2006, pp. 116-117). Coupled with “tough on crime” rhetoric, most of the states’ penal systems had been changed from Departments of Rehabilitation to Departments of Corrections by the ‘90s (Abramsky, 2007, p.145). Even though Martinson eventually renounced his own argument that rehabilitation did not work in 1980, this about-face was met with no media coverage, no public uproar and no consequent policy reform. What had happened in this short time? A paradigm shift in criminology, such that the inmate was no longer entitled to rehabilitation. Rather, prisons became responsible only for not leaving their populations in a worse condition. As crime only worsened in this new *modus operandi*, the only subsequent revisions to this strategy

were more punishment and even more austere incarceration. If the crime was not being reduced, the only reason could be the punishments' inadequacy. Just as in Victorian Britain, criminal justice reform in America has been driven largely by ideology, not research. Consequently, policies like privatization have found their way into the political arena despite being very insufficiently supported by empirical study.

### **Treating Symptoms, not Causes**

As has been discussed in the privatization research review, privatization of prisons is not an inherently bad reform. However, operational strategies of the corrections corporations have not ensured the promised parity with public institutions. The corrections corporations (e.g. CCA, Geo Group) pursued privatization of corrections as a new industry with all the normal hallmarks of a market (Abramsky, 2007, p. 95). As such, they utilized a Walmart-esque model of low-wage, low-cost operation. Ignoring evidence that training quality is directly related to safety and rehabilitative programs to recidivism, corporations have opted for insufficient training programs and minimal rehabilitation programs in order to fit this economic strategy (ibid). Coupled with competition from other similarly organized companies, a race to provide the cheapest per diem cost for housing criminals ensued.

This strategy undermined the potential private-sector advantages of administrative flexibility, new regime techniques and more efficient staff because they were discounted as necessary components within these new private prisons. Instead, perhaps as insurance of their long-term viability, privatization in practice has resembled a minimalist, purely punitive practice. Despite already incurring a Supreme Court trial in 2000 for the physical

abuse and unwarranted use of pepper spray on juvenile prisoners at a Wackenhut facility in Jena (Cheung, 2009), Louisiana state legislators and Governor Bobby Jindal have remained unfazed in their confidence in privatization as the answer to the growing problem of incarceration. If anything, the decision to privatize has been the logical outcome for legislators whose constituents, “want to see wrongdoers go to prison, but do not want to pay for it.”<sup>5</sup>

In Louisiana, the effects of this strategy are especially felt given its unparalleled rate of incarceration and the state’s already strained financial position. With approximately a 75% increase in its incarcerated population since the publication of Archambeault and Deis’s study (1996)<sup>6</sup>, the state has increased its prison facilities accordingly. In an arrangement with local parish sheriffs who are allowed to construct their own local prisons to house inmates for \$25 a day (already the most meager per diem allotted anywhere in the U.S.), an overflow system now exists in which excess inmates from a given parish may be transported to any number of parish prisons (Chang, 2012, p.1). Typically, the populations housed in these local prisons are non-violent, soon-to-be released offenders, such that over 70% of the inmates released each year come from parish prisons (ibid). In addition to sheriffs, corrections corporations such as LaSalle Corrections have also been contracted to run these local prisons as well. Given the already meager per diem allotted for each inmate, penny-pinching operational strategies have consequently made these prisons so austere that inmates have no choice but to sit idle all day in order to ensure cost-effectiveness. As mentioned earlier on, these local prisons have the worst recidivism rates among the

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<sup>5</sup> Gregory Segal, one of the directors of pro-privatization think tank Reason and Public Policy Institute (Abramsky, 2007, p. 96)

<sup>6</sup> “Population Trends – Raw Data” (Louisiana Department of Public Safety and Corrections,

Louisiana correctional system, and the dearth of programming offered very likely is contributing to this performance.

Like the purposefully ascetic Victorian prisons, these local prisons are designed according to the principle of less eligibility, specifically in terms of anything intended to prepare inmates for life upon release. For the purpose of comparison, inmates at the public Louisiana State Penitentiary at Angola (of whom approximately 90% are lifers according to the Louisiana Department of Corrections) are eligible to participate in trade certification programs and even college courses (Chang, 2012, p. 23). However, these programs are non-existent outside state-run facilities like LSP at Angola.

Despite research that found economically significant savings (approximately \$7000 per inmate, gained through decreased recidivism) for offering prison jobs, educational programs and vocational training to inmates, typically only GED certification and faith-based rehabilitation are offered if programming exists (Sedgley et al., 2008; Chang, 2012, p. 3). While this might seem like a compromise policy-wise, there is an important characteristic both programs share: generally, they can be offered at practically zero cost through using volunteer work and limiting access. In 2009, Gov. Bobby Jindal responded to criticisms raised against this lack of programming by implementing a re-entry pilot program in one parish, however this represents only about 10% of those being released from local prisons and plans for further implementation are years hence (Office of the Governor, 2009). At best, this reform may demonstrate to policymakers a need for future programming if implemented effectively. At worst, this may be political posturing by Gov. Jindal to avoid further media criticism for this contracting scheme. Despite this small

improvement, the *raison d'être* of the Louisiana corrections system is still unquestionably the punishment of criminals, another hallmark of the Victorian penal system.

Whether considering Angola, the state prisons like Avoyelles or the parish prisons, all are the spiritual successors to a penal system that has maintained somewhat irrational but at least clearly retributive punishment. Beginning with the Convict Lease regime, which was considered “worse than slavery,” corrections in the Old South has been concerned with menial labor and isolation as the primary instruments of discipline within the prison. As discussed, the Victorian system had little regard for whether or not its residents left in a worse physical, mental or social condition. Exclusive to Louisiana, both judges and lawmakers are elected and the “tough on crime” agenda has had an amplified effect in ensuring the adequacy of punishment remains the only prison reform consideration.

The election of judges in Louisiana introduces the politically advantageous “tough on crime” platform into a government institution not necessarily beholden to public interest. The significance that the election of the judiciary has on penal outcomes is best highlighted in Max Weber’s *Politics as a Vocation*, in which he analyzes the differences in how political leaders and civil service leaders ought to carry themselves professionally. If judges are to be considered civil servants, then they ought to avoid moral considerations, as they often conflict with the impartial execution of their office. If judges are to be political leaders, as might be inferred from the structure of the Louisiana justice system, then he offers this advice to the political leader grappling with the use of violence as a means of discipline:

“Whosoever contracts with violent means for whatever ends--and every politician does--is exposed to its specific consequences... He who wants to establish absolute justice on earth by force requires a following, a human 'machine.' He must hold out the necessary internal and external premiums, heavenly or worldly reward, to this 'machine' or else the machine

will not function. (Weber, 1919)

In order to achieve whatever the “ultimate end” the leader has decided upon, in this case the elimination of crime through punishment, the support of the public is required.

However, Weber theorizes that this support is contingent on satisfying *hoi polloi*’s needs, regardless of their consequences.

Under the conditions of the modern class struggle, the internal premiums consist of the satisfying of hatred and the craving for revenge; above all, resentment and the need for pseudo-ethical self-righteousness: the opponents must be slandered and accused of heresy.” (Weber, 1919)

Louisiana judges and their legislative counterparts have accordingly kowtowed to their constituents’ desires for retribution towards those violating the system in order to gain support for their crusade against crime. As such, they have not considered the consequences of their stringent sentencing. Weber maintains that only by ascribing to an “ethic of responsibility” and resisting personal passions (in this sense, the desire to accomplish something at any cost) can a politician avoid acting in a well intentioned, but socially detrimental manner (Weber, 1919, p. 23).

Weber provides an example of a politician who leads his country to war in an attempt to end wars for all time. In this scenario, when peacetime fails, the politician blames the peace for its inadequacy, not the means by which it was obtained, in explicating why his strategy failed (Weber, 1919, p. 23). In this example, the end would have justified the means if it were obtainable as such; instead, it only blinded the politician to the consequences directly related to his own actions. Sentencing practices such as the Louisiana-pioneered “natural life” (life without parole) punishment have created a criminal justice system harsher than perhaps anywhere in the world (Abramsky, 2007, p. 110).

While making an example of criminals may temporarily satiate the public’s discontent with



the overall crime problem, the underlying maladies remain unresolved. The alleged security of the resulting crime-control complex feels tenuous at best, and the still widespread crime in the urban areas most heavily policed only reinforces skepticism for the efficacy of the status quo to reduce crime.

Politicians have not considered their own responsibility in the social problem of crime, especially given the electoral advantage that crystallizing the issue as a “tough or soft” dichotomy has had. Consequently, the cultural expression of the “tough on crime” establishment cements the notion that the offender is unequivocally responsible for his decision. In this milieu, the fact that only “faith-based rehabilitation” is available, or perhaps equally important, is open for enrollment follows logically. From a cold, short-term economic standpoint, this strategy has been persuasive since more expensive substance abuse and social work programs can be liquidated in favor of a curriculum of self-motivated penance. However, this strategy serves to transfer any remaining responsibility from the state for ensuring social welfare, because the alleged irresponsibility and immorality inherent to these individuals assumes total culpability for their actions. The idea that poverty and peer influences may contribute to criminality is incongruent with a strictly moral explanation. If they are excluded, then the state cannot be attacked for providing insufficient social protection. By crystallizing the issue into an evaluation of morality, entry into these faith-based programs has been predicated on a tacit admission of moral deficit.

The “necessary fiction” of moral deficiency parallels the attitudes of Victorian bourgeoisie towards the poor, who were considered uncivil and incapable of manners. Cemented by popular support, necessary fictions like this take on an almost self-evident

nature to their adherents. Consequently writers like Marvin Olasky, who published a few influential pieces on “compassionate conservative” approaches to rehabilitation, had receptive audiences for policy proposals seeking to scale back the services of the prison (Ibid). Mr. Olasky had already written in support of mandatory sentencing, adult punishments for juveniles and work requirements for welfare as effective reforms to reduce crime and poverty. In a new article, he asserted that the contracting of rehabilitative programs to faith-based groups was both economically shrewd and even in the best interest of the inmates, despite offering little empirical support for either claim. The moral deficits of prisoners, the real source of criminality after all, could be just as easily solved with God’s help rather than more costly vocational or educational programs.

While the short-term savings may have been self-evident, no conclusive research has demonstrated equivalence of faith-based in relation to traditional rehabilitation programs in their abilities to change outcomes post-release. Like privatization of incarceration, privatization of even ancillary functions like programming has been carried out on a wide scale even with lacking empirical support to support its parity.

Relatively little data exists to compare secular programs to new faith-based alternatives, but a few review articles have sought to recapitulate the conclusions from the existing research on this subject. In a meta-analysis by Johnson et al. (2002), half of the case studies reviewed determined that the faith-based programs were indeed successful, despite all of these studies lacking predictive validity due to their uncontrolled research designs (Johnson et al., 2002, p.18). While the report ultimately concludes a positive and encouraging future for faith-based programs, the authors predicate this statement on an admission of these studies own methodological shortcomings. Data furnished from the

Louisiana Department of Public Safety and Corrections indicated that participants in the faith-based program recidivated 3% less than non-participant state inmates for the first year. For the other four years included in this 5-year dataset, faith-based treated inmates returned to prison at about the same rate (Department of Public Safety and Corrections, 2013). To give perspective, educational programs were reported as having 5% lower recidivism after five years. While it would be hasty to jump to the conclusion that these programs simply are not working, the data highlights an important consideration that has been largely ignored so far – religious attachment.

The literature review by Johnson and his colleagues, as well as another review restricted to qualitative studies published in critique, warned that none of their research operationalized religious attachment sufficiently, i.e. one's commitment to the religion, involvement within church activities, and frequency of church attendance (Johnson et al., 2002; Dodson, Cabage & Klenowski, 2001). While its importance in predicting maintained adherence to the religion is relatively patent, religious attachment also has major implications in the degree of social support received through the church peers (Dodson, Cabage & Klenowski, 2001, p.380). If participants easily "lose their way" when beset by the realities of post-release life, then the program yields no net gain. As such, maybe faith-based treatment is not sufficient by itself as a rehabilitative program, since long-term adoption is questionable. While the review of faith-based studies found almost no evidence of efficacy, a longitudinal study found by Stevens & Ward (1997) determined that 85% of the 97 educational programs (i.e. GED certification, literacy training, etc.) studied across various states had an positive and significant effects on recidivism. Superficially at least, it

appears that efforts to equip inmates with a skill rather than a moral compass may promote better long-term outcomes.

Just like the other characteristics of the Victorian penal system, public opinion provides the necessary catalyst for these reforms to find their way through legislatures. “Compassionate conservative” measures help perpetuate a dysfunctional correctional strategy by distracting the public’s attention from the real causes of crime in favor of a simplistic, one-size-fits-all approach. When this approach invariably proves insufficient at changing behavior and solving the crime problem, the “nothing works” proponents then look to their self-fulfilling prophecy as even more reason to marginalize the status of rehabilitation within the correctional system. This strategy has been responsible for the public’s attachment to fighting crime as a crystallized moral issue, rather than a hydra-headed pathology comprised of contextual determinants of behavior like poverty.

### **Conclusions: Why Not?**

The economic consequences of continued adherence to the current criminal justice system grow more and more daunting following years of already high incarceration growth. While the Bureau of Public Safety and Correction’s raw data on the inmate population predicts an optimistic decrease of 1,000 inmates per year for the next two years (without any rationale for this predicted decrease), the data from 1989 until the present indicates a consistently inverse trend (Department of Public Safety and Corrections, 2013). Given the social costs associated with crime and extended incarceration, Louisiana has a vested interest in reassessing what the justice system has accomplished in its current

incarnation. To help understand why this trend has been so fixed, Pierre Bourdieu's writings on capital provides important theoretical framework.

Bourdieu theorizes three forms of capital – economic, social and cultural – and access to different social classes is predicated on possession of some composite quantity of these capitals. Economic capital relates to one's monetary possession, social capital to peer obligations and networks, and cultural capital to "developed dispositions of mind and body," i.e. cultural goods like literature as well as educational qualifications (Bourdieu, 1986, pp. 17-24). These capitals form the necessary conditions for educational success, by which later socio-economic success is largely determined. Consequently, deficiencies in any one of these capitals can have major implications in outcomes. Whether they are unavailable or simply go untapped, possession of these capitals is a necessary but insufficient condition for success.

Research by Irwin and Austin found that over 50% of the crimes for which prison sentences are handed down are petty offenses, or "crimes with no aggravating issues – that is no significant amount of money, no injury, no any other feature that would cause citizens to consider it serious" (Irwin & Austin, 1997, p.32). In Louisiana, 62% of inmates are incarcerated for non-violent crimes (Department of Public Safety and Corrections, 2012). Punishing these individuals with an environment in which only apathy can result does not serve the state's best interests. Since the approximately 1/3 of inmates possess only a fourth-grade education and a majority have not completed high school, perhaps establishing stronger educational programs can set a precedent for approaching criminals on an individual basis instead of just assuming parity.

Opponents point to inconclusive research on educational efficacy while largely disregarding the lack of research in support of their own proposals. Since scientific research of penal institutions must cope with validity limitations, ideological lines still influence policy debate. The past two decades have been indicative of the persuasiveness that classical explanations of criminality have with the public on the issue of crime, and this political advantage has been utilized to accomplish the privatization of prison. However, after years of growing incarceration and little apparent benefit, one of the questions of the Stanford Prison Experiment now feels more relevant than ever – are some people inherently “bad” or does one’s situation affect behavior? Advancing an agenda of educational support for inmates would provide Louisiana with the opportunity to reconsider this important question and maybe positively impact the outcomes of those already part of the correctional system.

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