

**THE CONTENTIOUS PRISON: FROM REHABILITATION TO INCAPACITATION IN NEW SOUTH WALES AND PENNSYLVANIA, 1965-1990**

**by**

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Aboriginal and Torres Strait Islander people should be aware that this essay may contain names or other representations of deceased persons.

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*For my son, Max*

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## TABLE OF CONTENTS

<b>ACKNOWLEDGEMENTS</b> .....	<b>iii</b>
<b>LIST OF TABLES</b> .....	<b>x</b>
<b>LIST OF FIGURES</b> .....	<b>xi</b>
<b>ABSTRACT</b> .....	<b>xii</b>
<b>Introduction: The Transformation and Circulation of Penal Discourse and Practice</b> .....	<b>1</b>
<b>Introduction: “They Will Never Keep This Behind Four Walls”</b> .....	<b>1</b>
<b>A Brief for Comparison in a Transnational World</b> .....	<b>4</b>
<b>Locating New South Wales and Pennsylvania in the Contemporary World System</b> .....	<b>12</b>
<b>Visibility, Publicity and Scandal in Recent Penal Change</b> .....	<b>25</b>
<i>Progressive Penal Reform: Rehabilitation, Decarceration, Normalization</i> .....	<b>27</b>
<i>The Prisoners’ Rights Movement: Race, Resistance, Rebellion</i> .....	<b>33</b>
<b>The Structures and Strategies of Penal Transnationalism</b> .....	<b>44</b>
<b>The Production and Flow of Penal Knowledge</b> .....	<b>52</b>
<b>Organization of the Chapters</b> .....	<b>60</b>
<b>Chapter 1: The Circuits of Penal Expertise and the Project of Prison Reform, 1940-1970</b> .....	<b>64</b>
<b>Introduction: The Prospects of Reform</b> .....	<b>64</b>
<b>Postwar Penology, Rehabilitation and Bureaucratic Transformation</b> .....	<b>78</b>
<i>New South Wales</i> .....	<b>87</b>
<i>Pennsylvania</i> .....	<b>97</b>
<b>The Limits of the Postwar Penal Bureaucracy: Decarceration and Normalization</b> .....	<b>109</b>
<i>Pennsylvania: Community Corrections and Prisoners’ Rights</i> .....	<b>117</b>
<i>Pennsylvania: Whose Community?: The Promise and Perils of Community Corrections</i> .....	<b>125</b>
<i>Pennsylvania: A New Normal? The Loosening of Prison Regimes</i> .....	<b>143</b>
<i>New South Wales: The Decomposition of Prison Routines and Growing Unrest</i> .....	<b>149</b>
<i>New South Wales: The Status of the Aggrieved: Prisoner Grievance Committees</i> .....	<b>170</b>
<i>New South Wales: Enemies at the Gates</i> .....	<b>174</b>
<b>Conclusion</b> .....	<b>177</b>

<b><i>Chapter 2: “Open Up the System”: The Publicity of Prisoner Activism, Violence and Security in Pennsylvania</i></b> .....	<b>180</b>
Introduction: Publicity, Postwar Reform and Resistance .....	180
The Urban Crisis and County Prisons in Philadelphia .....	193
The Davis Report: Penal Subjects and Sexual Violence .....	205
The Unresolved Question of Penal Jurisdiction: State or County Prisons...or Both? .....	215
Holmesburg Prison: The Independence Day Uprising .....	222
“Corrections is an Entity within Itself”: Expansion and Contention in State Prison Administration .....	239
A Public of Penalty .....	248
SCI Pittsburgh: “A Monument to Ignorance or Indifference” .....	257
Resistance and Control of the Dangerous .....	289
Conclusion .....	327
<b><i>Chapter 3: “Prisons Belong to the Community”: Prisoner Activism, Inquires and Security and in New South Wales</i></b> .....	<b>331</b>
Prison Unrest and the Questions of a Royal Commission .....	340
Arrival of the Royal Commission into New South Wales Prisons .....	359
The Royal Commission as an Ethnography of Prison Life .....	363
<i>Exhibit 12: Heating and Cooking devices made by Prisoners at Malabar—“Boiling up Appliances”</i> .....	365
<i>Exhibit 136: Notes written on cigarette papers found in possession of T. Haley at Bathurst Gaol on 3<sup>rd</sup> December, 1973.</i> .....	374
Creating an Opening for the Voices of Prisoners .....	382
The Royal Commission and Resistance to Open institutions .....	399
Conclusion .....	412
<b><i>Chapter 4: “Overcrowding is the Future of Corrections”: Prison Population and the Politics of Knowledge, Suffering and Prison Construction in Pennsylvania</i></b> .....	<b>418</b>
Introduction: The Emergence of Persistent Overcrowding .....	419
System Analysis, the Pennsylvania Commission on Crime and Delinquency and the Problem of Overcrowding .....	435
No Bodies to Spare .....	469
The Missing Prison: Localism, Penal Expansion and Institutional Geography .....	483

Conclusion .....	522
<b>Chapter 5: The Transfer of Prisoners in New South Wales.....</b>	<b>527</b>
Introduction: On the Move .....	527
The Economy of Prisoner Movement in the Postwar Penal Apparatus .....	534
Transfers as a Control Mechanism and Resource .....	548
Conclusion .....	594
<b>Chapter 6: Classification: Penological Knowledge and Practice in Transition.....</b>	<b>598</b>
Introduction: Classification, Penal Politics, Circulation.....	598
The Development of Twentieth-Century Inmate Classification and the Therapeutic Model of Rehabilitation .....	612
The Construction of Objective Classification in Pennsylvania .....	639
“It’s a Heavy Thing These Farview Cases”: The Mentally Ill Prisoner in the Late 1970s and 1980s..	683
Penal Classification and the Royal Commission into New South Wales Prisons.....	713
Categorical Adequacy and (In)Flexibility: The Classification Process in Transition .....	718
Who Decides and Why?: The Politics and Dispersal of Classification .....	729
Unit Management, Classification and Carceral Citizenship .....	746
Conclusion .....	757
<b>Postscript: Incapacitation, a New Carceral Narrative?.....</b>	<b>764</b>
From Opening to Closure: Can the Prisoner Speak? .....	773
<b>WORKS CITED.....</b>	<b>783</b>

## LIST OF TABLES

Table 1: Daily average prison population: New South Wales and Pennsylvania, 1970-2000.....	24
Table 2: Incarceration rate per 100,000 people: New South Wales and Pennsylvania, 1970-2000 .....	25
Table 3: Pennsylvania average daily prison population, 1960-2005 .....	431
Table 4: Tracking capacity shortfalls.....	432
Table 5: County jail average daily population and capacity, 1980-1989 .....	433
Table 6: Department of Corrections year-end population and capacity, 1980-1989.....	433

## LIST OF FIGURES

Figure 1: Rehabilitation Chief Goal: New State Prison Reforms Under Way .....	107
Figure 2: Convicts Are Classified: Grouping Vital In Prison Plan .....	108
Figure 3: Allyn Sielaff (Second from left) meeting with public .....	182
Figure 4: Grochot’s portrayal of a cell at SCI Pittsburgh .....	280
Figure 5: The new focus on reintegration programs at SRCF Greensburg .....	286
Figure 6: Community corrections leave at SRCF Greensburg .....	287
Figure 7: Rehabilitated corpse, New South Wales.....	351
Figure 8: Rehabilitated corpse, Pennsylvania .....	352
Figure 9: From the Inside column, Alternative Criminology Journal .....	353
Figure 10: The Brutes of Katingal .....	387
Figure 11: The Real Brutes .....	388
Figure 12: Officers forced prisoners to pose as rioting prison radicals .....	390
Figure 13: Sequences of events in the criminal justice system .....	443
Figure 14: Classification as basic sorting.....	638
Figure 15: BC-45A - Initial Classification Score Sheet .....	665
Figure 16: How to complete the Correctional Classification Profile .....	667
Figure 17: Minister Haigh casts out newspapers.....	781

## ABSTRACT

This dissertation explores the re-emergence of imprisonment as a major social policy and topic of public debate in New South Wales, Australia and Pennsylvania, USA during the late twentieth-century. It focuses on three broad themes: (1) the increasing visibility, publicity and scandals involving prisons; (2) transnational relationships in penal reform and activism; and (3) the acceleration of the production and flow of penal knowledge. I begin by demonstrating how the confluence of several trends in the postwar period contributed to the deterioration of longstanding penal arrangements, which embodied state secrecy and the authority of penological expertise. The introduction of progressive reform practices after World War II in both states sought to reform offenders through education, training, recreation, the encouragement of greater self-reflection and expression and the normalization of prison environments. These policies proved to be very contentious with many prison staff, the judiciary and the broader public, however, and they also encouraged greater criticism from prisoners. These reforms coincided with the formation of a large, transnational, prisoners' rights movement, influenced by the broader radical, political activism of the 1960s, which attempted to fundamentally redefine the status of confined people and in some cases, even abolish prisons entirely. Penal authorities struggled to reassure these multiple audiences of the efficacy of their policies and explain simultaneous increases in crime rates, prison unrest, escapes from custody and guard union militancy. These problems engulfed the penal system in both states in endemic controversy, leading to protracted litigation in Pennsylvania and a major royal commission in New South Wales. The resulting impasse created a vacuum of control and purpose within prisons and a major political problem for governments. The investigations and debates accelerated the transmission of penal knowledge and practices across jurisdictional borders, especially during the 1970s and 1980s. To manage increasingly volatile institutions, staff resorted to more control strategies, like segregation and transfers. Penal bureaucracies canvassed practices in other jurisdictions, reformed classification systems and built new prisons. By the 1990s, prison populations in both states grew rapidly, but there was little agreement on what prisons should do with their wards, other than incapacitate them.

## **Introduction: The Transformation and Circulation of Penal Discourse and Practice**

*I purposely did not enter any cells at that stage. I heard noises coming from cells,—yelling, shouting and screaming. I did not see anybody being beaten. I recall prison officers immediately prior to entering a cell, saying to the inmates thereof to throw all weapons out the window. I saw no prison officer emerge from any such cell with any weapon alleged to have been taken by force from a prisoner. During this time I stood with Mr Chandler at the back of the wing on the top landing. Chandler said to me, “They will never keep this behind four walls”. I agreed with him.<sup>1</sup>*

Maxwell Hanrahan, Corrections Officer, Bathurst Gaol

### **Introduction: “They Will Never Keep This Behind Four Walls”**

This quotation originates from the Royal Commission into New South Wales Prisons, which sat from 1976 to 1978, investigating the causes of several disturbances and the entire operations of the Department of Corrective Services. The event that Officer Hanrahan described – a systematic reprisal beating following an uprising at Bathurst Gaol – became one of the main areas of interest for the Royal Commission and a central focal point for the nascent prison movement in Australia’s most populous state. In most accounts, participants described it as beginning a few days beforehand with a peaceful sit-down strike by some prisoners in one of the recreation yards on Friday over Bathurst’s squalid living conditions and arbitrary, harsh

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<sup>1</sup> John F. Nagle, *Report of the Royal Commission into New South Wales Prisons* (Sydney: Government Printer, 1978), 82; Testimony of Maxwell Hanrahan in *Proceedings of the Royal Commission into New South Wales Prisons*, 1915.

discipline, both of which had earned the institution a notorious reputation among prisoners and warders alike throughout the state.<sup>2</sup> On Monday, October 19, 1970, about sixty youthful prisoners absconded from a mandatory muster at Bathurst Gaol, ran into C Wing and began smashing cell fixtures. Several prisoners exchanged blows with guards before barricading themselves inside C Wing. The young prisoners withdrew from their positions several hours later after receiving assurances that they would not face any reprisals. Bathurst's superintendent, John Winter Pallot, permitted them to share cells that night, which many prisoners hoped would deter potential assaults by staff. According to most accounts given to the Royal Commission into New South Wales Prisons six years later, the retaliatory actions of the prison's staff began the following morning. Superintendent Pallot delivered the first blow, striking an inmate in the face in front of assembled guards after taunting him about the events of the previous day. Guards then extracted people from the cells and forced them to strip naked while also repeatedly kicking, punching and beating them with batons. Some of the inmate's injuries were so severe that they were rendered unconscious and laid bleeding on the cellblock floors before guards dragged them back into their own cells. Many prisoners later recounted the terror of waiting in their cells, listening to the screams and cries in the cellblock grow louder as the guards moved closer to them, cell by cell.

The inquiry's sole Royal Commissioner, Justice John F. Nagle, highlighted Hanrahan's testimony at the beginning of one of the final reports chapters, because it disclosed, not only the violence against prisoners, but the overall petty authoritarianism of the prison's management, the resistance of prisoners, the dissent among some staff members, the routine

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<sup>2</sup> This synopsis of the uprising and reprisal is based on Ibid., 54-79.



conspiracies of silence among penal officials and the likelihood that such concealments would not work this time.<sup>3</sup> It was a telling comment about the deteriorating routines and protocols governing imprisonment in New South Wales as they entered a period of transition, undoing and reconstitution. In many respects, the truths the inquiry established and the politics surrounding the investigation and its products paralleled similar investigations of penal practices in other jurisdictions in many different parts of the contemporary world. The language of crisis abounds in the widely read penal commentary and interpretations of this era, especially by the mid-1970s, whether it was in the reports of inquiries, the products of research, journalism, administrative writings, activist literatures or the personal testimonies of prisoners. These statements bespoke of an awareness that something was wrong, that the previous methods and assumptions about punishment, which had been relatively stable for decades were now shifting and reformulating, losing their some of their unreflective, taken-for-granted assurance and often their legitimacy. Instead, prisons became contentious places, both internally and in wider publics beyond prison walls.

A prisoner from another time and place once remarked, "A crisis consists precisely in the fact that the old is dying and the new cannot be born; in this interregnum, a great variety of morbid symptoms appear."<sup>4</sup> This dissertation is about the emergence of what appeared to many people at the time as the morbid symptoms of a crisis in imprisonment, but it also explores the hopefulness that sustained some people and groups in New South Wales and

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<sup>3</sup> Ibid., 82.

<sup>4</sup> Antonio Gramsci, "'Wave of Materialism' and 'Crisis of Authority,'" in *Selections from the Prison Notebooks of Antonio Gramsci*, Quintin Hoare and Geoffrey Nowell Smith, trans. and ed., (New York: International Publishers, 1971), 276.

Pennsylvania in this moment between the late 1960s and 1980s. The bulk of this narrative spans the decline of practices influenced by the progressive therapeutic penological reforms of the immediate post-World War II years through their dissolution in the 1970s to the official commitment to policies in the 1990s, dedicated to unprecedented levels of exclusionary incarceration and classification. The chapters analyze two separate, yet interconnected, histories of social change and its relationship to penal policy and prison life during this period, focusing on three broad themes: (1) the increasing visibility, publicity and scandals involving prisons; (2) transnational relationships in the history of penal reform and activism; and (3) the acceleration of the production and flow of penal knowledge. I elaborate these themes below, but in the next two sections, I discuss the methods and rationale for this comparative and transnational project and briefly describe the two jurisdictions I choose for this study – New South Wales and Pennsylvania.

### **A Brief for Comparison in a Transnational World**

While I am interested in the widespread transformation of imprisonment in the late twentieth century, I grounded my empirical research in New South Wales and Pennsylvania for several reasons, both intellectual and practical. I am from Pennsylvania and was already familiar with its criminal justice system from past work. However, I also knew, especially after reading David Garland's *Culture of Control*, that the changes I saw in Pennsylvania's prisons were much more widespread throughout the world, albeit in different ways and with different

consequences.<sup>5</sup> I wanted to produce an ethnographically-informed, social history attuned to this larger process while also respectful of the uniqueness of local manifestations. In addition to Pennsylvania, I felt I needed to select another location, outside of the United States, to comparatively explore this larger process, which affected both places. On a trip to Australia, I decided on New South Wales as this other place, largely because of the vast archival resources produced by the Royal Commission into New South Wales in the 1970s and the vibrancy of its prison activist movement. I will discuss each state and their global relationships in more detail in the next section. First, however, I want to discuss how I have approached the issues of comparison and transnationalism in this project.

I situate my research in the current re-evaluation of the role of comparison in ethnographic and historical scholarship on transnationalism, globalization and networks.<sup>6</sup> While

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<sup>5</sup> David Garland, *Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2001).

<sup>6</sup> Some work that has shaped my thinking on transnationalism and globalization includes, Martina Henze, "Transnational Cooperation and Criminal Policy: The Prison Reform Movement, 1820s-1950s" in Davide Rodogno, Bernhard Struck and Jakob Vogel (eds.), *Shaping the Transnational Sphere: Experts, Networks and Issues from the 1840s to the 1930s* (New York: Berghahn Books, 2015), 197-217; Nir Shafir, "The International Congress as Scientific and Diplomatic Technology: Global Intellectual Exchange in the International Prison Congress, 1860-90," *Journal of Global History*, 9 (March 2014), 72-93; Christian G. De Vito and Alex Lichtenstein, "Writing a Global History of Convict Labour," *International Review of Social History*, 58 (August 2013), 285-324; Emily S. Rosenberg, "Transnational Currents in a Shrinking World" in Emily S. Rosenberg (ed.), *A World Connecting, 1870-1945* (Cambridge: Belknap Press, 2012), 919-959; Xiaoying Qi, "A Case Study of Globalized Knowledge Flows: Guanxi in Social Science and Management Theory," *International Sociology*, 27 (November 2012), 707-723; Karen Fox, "Globalising Indigeneity? Writing Indigenous Histories in a Transnational World," *History Compass*, 10 (June 2012), 423-439; Katie Pickles, "Transnational History and Cultural Cringe: Some Issues for Consideration in New Zealand, Australia and Canada," *History Compass*, 9 (September 2011), 657-673; Anna Lowenhaupt Tsing, *Friction: An Ethnography of Global Connection* (Princeton: Princeton University Press, 2011); Anna Lowenhaupt Tsing, "The Global Situation," *Cultural Anthropology*, 15 (August 2000), 327-360; Taylor C. Sherman, "Tensions of Colonial Punishment: Perspectives on Recent Developments in the Study of Coercive Networks in Asia, Africa and the Caribbean," *History Compass*, 7 (May 2009), 659-677; Ulf Hannerz, "Flows, Boundaries and Hybrids: Keywords in Transnational Anthropology" at Transnational Communities Programme, Working Paper Series. Institute of Social and Cultural Anthropology, University of Oxford, available at: [www.transcomm.ox.ac.uk/working%20papers/hannerz.pdf](http://www.transcomm.ox.ac.uk/working%20papers/hannerz.pdf) (last checked October 17, 2010); Ulf Hannerz, *Transnational Connections. Culture, People, Places* (Routledge: London, 1996); Laura Briggs, Gladys McCormick and J.T. Way, "Transnationalism: A Category of Analysis," *American Quarterly*, 60 (September 2008), 625-648; Trevor Jones and Tim Newburn, *Policy Transfer and Criminal Justice: Exploring U.S. Influence Over British Crime Control*

these latter concepts have had a major impact of recent scholarship, comparative methods have been less influential of late. No doubt, this is due to many of the fundamental problems that beset positivistic comparative methods in past research. This was especially the case in research that sought to construct general theories through the comparison of seemingly isolated, bounded social units, be these cultures, societies, states or nations.<sup>7</sup> As anthropologists Andre Gingrich and Richard Fox have noted, this type of comparison became especially vulnerable to critiques in the 1960s and 1970s that highlighted the deeply interconnected and violent imperial world system that brought such presumably isolated units together and made them knowable as objects of research.<sup>8</sup> Much of the work in ethnographic and historical literature since the 1970s has instead focused on topics and concepts antithetical to general theory and has been more sensitive to questions about the role of disparate power relations in the production of knowledge. Nevertheless, nearly all ethnographic and historical research involves some level of comparison, but it often remains implicit and unacknowledged.<sup>9</sup> In fact, “whenever comparison was turned into an explicit, conscious and systematic method,”

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*Policy* (Maidenhead: Open University Press, 2007); Diane Stone, “Introduction: Global Knowledge and Advocacy Networks,” *Global Networks*, 2 (January 2002), 1-12; John Tomlinson, *Globalization and Culture* (Chicago: University of Chicago Press, 1999); Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge: Belknap Press, 1998); Arjun Appadurai, *Modernity At Large: Cultural Dimensions of Globalization* (Minneapolis: University of Minnesota Press, 1996); Michael Kearney, “The Local and the Global: The Anthropology of Globalization and Transnationalism,” *Annual Review of Anthropology*, 24 (October 1995), 547-565.

<sup>7</sup> Prominent examples of these trends in anthropology and history explicitly based on comparison and commensuration would include A.R. Radcliffe-Brown’s quest to build general theory through comparative taxonomies, the construction of the Human Relations Area Files and holocultural studies and influence of cliometric historiography in the 1970s and 1980s.

<sup>8</sup> Richard G. Fox and Andre Gingrich, “Introduction,” in Gingrich and Fox (eds.), *Anthropology, by Comparison* (London: Routledge, 2002), 1-2.

<sup>9</sup> Michael Herzfeld, “Performing Comparisons: Ethnography, Globetrotting, and the Spaces of Social Knowledge,” *Journal of Anthropological Research*, 57 (Autumn 2001), 259-276; Fox and Gingrich, “Introduction,” 1-24; Aram A. Yengoyan, “Introduction: On the Issue of Comparison” in Yengoyan (ed.), *Modes of Comparison: Theory & Practice* (Ann Arbor: University of Michigan Press, 2006), 1-27; Jörg Niewöhner and Thomas Scheffer, “Introduction: Thickening Comparison: On the Multiple Facets of Comparability,” in Niewöhner and Scheffer (eds.), *Thick Comparison: Reviving the Ethnographic Aspiration* (Leiden: Brill, 2010), 1-15.

according to Jörg Niewöhner and Thomas Scheffer, “it was subjected to harsh critique, which often led to paradigmatic debates.”<sup>10</sup> The eschewal of most explicit forms of comparison peaked during the 1980s and 1990s as the influence of post-colonialism, post-structuralism and post-modernism further undercut the remaining presumptions of cross-cultural comparison.

Yet, as scholars began to explore the concepts of globalization, transnationalism and networks after the end of the Cold War, comparison tentatively returned as both a research strategy and a fundamental problem in the research process and production of scholarly knowledge.<sup>11</sup> A number of people working in the disciplines of anthropology, history, sociology and law among others have recently called upon scholars to actively rethink the role of comparison in research and writing, not in an effort to re-establish a standard method, but to develop multiple approaches while exploring what can be retained from previous practices.<sup>12</sup> Micol Seigel has also urged researchers to examine the comparative work of historical subjects because such “comparisons are both a site and a motor of transnational exchange.”<sup>13</sup> These new “modes of comparison” are thus varied in respect to the scales and objects of study and

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<sup>10</sup> Niewöhner and Scheffer, “Introduction: Thickening Comparison,” 7.

<sup>11</sup> Andre Gingrich, “When Ethnic Majorities are ‘Dethroned’: Towards a Methodology of Self-Reflexive, Controlled Macrocomparison” in *Anthropology, by Comparison*, 225-248; Micol Seigel, “Beyond Compare: Comparative Method after the Transnational Turn,” *Radical History Review*, 91 (Winter 2005), 62-90; Frederick Cooper, “Review Essay: Race, Ideology and the Perils of Comparative History,” *American Historical Review*, 101 (October 1996), 1122-1138; George E. Marcus, “Ethnography in/of the World System: The Emergence of Multi-Sited Ethnography,” *Annual Review of Anthropology*, 24 (October 1995), 95-117; Ananta Giri, “Critique of the Comparative Method and the Challenges of a Transnational World,” *Contributions to Indian Sociology*, 27 (July 1993), 267-289; Ian Tyrrell, “American Exceptionalism in an Age of International History,” *American Historical Review*, 96 (October 1991), 1031-55, 1068-72; Ian Tyrrell, “Beyond the View from Euro-America: Environment, Settler Societies and Internationalization of American History,” in Thomas Bender (ed.), *Rethinking American History in a Global Age* (Berkeley: University of California Press, 2002), 168-92; Charles Bright and Michael Geyer, “Where in the World Is America? The History of the United States in the Global Age,” in Bender (ed.), *Rethinking American History in a Global Age*, 63-99. Michael Herzfeld argues that ethnographic research always involves an interplay between reflexivity and comparison and that each concept means “little in isolation from each other.” See Herzfeld, “Performing Comparisons,” 260.

<sup>12</sup> See citations in last note.

<sup>13</sup> Seigel, “Beyond Compare: Comparative Method after the Transnational Turn,” 66.

the role of the analyst in constructing and performing comparative frameworks.<sup>14</sup> Following this, I adopt multiple registers of comparison and also explore how historical actors themselves constructed comparative projects in their efforts to reform prisons that brought them into contact with similarly situated people in different jurisdictions.

Yet, I refrain from thinking of New South Wales and Pennsylvania as “cases.” This term, and its association with positivistic comparative methods, implies far more separateness and isolation between New South Wales and Pennsylvania than actually exists. The danger in comparing penal politics in parallel in this manner lies in the risk of naturalizing the units of analysis — subnational political jurisdictions, i.e. states. This is, of course, a familiar problem in history of anthropological comparison and resembles arguments against comparisons that privilege the nation-state as a given unit of analysis, albeit on a smaller scale.<sup>15</sup> One of the earlier advocates of comparison, the Annales School historian Marc Bloch, was well aware of this problem when he advocated “a parallel study of societies that are at once neighboring and contemporary, exercising a constant mutual influence, exposed through their development to the action of the same broad causes just because they are close and contemporaneous, and owing their existence in part at least to a common origin.”<sup>16</sup> The boundaries of New South

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<sup>14</sup> The quote is the title of a book addressing this topic edited by Aram A. Yengoyan, *Modes of Comparison: Theory & Practice*.

<sup>15</sup> Bright and Geyer, “Where in the World Is America?” 64-65; Tyrrell, “American Exceptionalism in an Age of International History,” 1033-1037; Raymond Grew, “The Comparative Weakness of American History,” *Journal of Interdisciplinary History*, 16 (Summer 1985), 94-96. In 1888, the famous anthropologist Edward Tylor presented data from his comparative study of marriage, claiming that it proved that human societies evolved over time from matrilineal to patrilineal descent patterns as they became more complex. Francis Galton objected to Tylor’s conclusions, arguing that he did not consider the possibility of the diffusion of certain patterns or whether the examples he cited evolved from a common origin. Since then, this problem of interconnection in comparison has been known as Galton’s Problem.

<sup>16</sup> Marc Bloch, “A Contribution towards a Comparative History of European Societies” in Marc Bloch, *Land and Law in Medieval Europe: Selected Papers by Marc Bloch*, trans. J.E. Anderson, (London: Routledge & K. Paul, 1967), 44-

Wales and Pennsylvania were, in fact, always porous, and there are historical connections between each jurisdiction despite considerable local variations between them. Any comparison of them, therefore, must underscore the role of “mutual influence” and “the same broad causes” that affected both places. Comparisons that focus on differences between states, like New South Wales and Pennsylvania, also need to be mindful of how the boundedness of the state, or the perception of such, was created and how it facilitated interconnections between other states and actors. It may be, as Micol Seigel suggests, that the perception and reality of differences between places and other objects of study, like race relations, is as much the product of previous comparative work as anything else.<sup>17</sup>

I have tried to avoid the pitfalls of comparison in four ways. First, while I locate my analysis in two states, I focus more on the flow of carceral practices and discourse as well as the strategies actors employed in their encounters with them. Not only did such things often travel from place to place, traversing jurisdictional borders, they also had amorphous qualities, changing as actors inserted them into new environments, but transforming these new contexts as well. Second, in addition to demonstrating the permeability of such borders, I also highlight their localizing powers. I do not treat them as given, but illustrate how they articulated penal practices, which in turn constituted and sustained such borders.<sup>18</sup> Jurisdictional borders shaped and spatially encompassed practices, which over time differentiated them from corresponding

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81, quoted in Tyrrell, “Beyond the View from Euro-America: Environment, Settler Societies and Internationalization of American History,” 169.

<sup>17</sup> Seigel, “Beyond Compare: Comparative Method after the Transnational Turn,” 67.

<sup>18</sup> Avram S. Bornstein, “Borders and the Utility of Violence State Effects on the ‘Superexploitation’ of West Bank Palestinians,” *Critique of Anthropology*, 22 (June 2002), 201-220; Timothy Mitchel, “Society, Economy and the State Effect” in Aradhana Sharma and Akhil Gupta (eds.), *The Anthropology of the State: A Reader* (Oxford: Blackwell, 2005), 169-186.

policies and practices in other jurisdictions.<sup>19</sup> They provided platforms for experimentation with penal practices, which often attracted the interest of prison officials and researchers elsewhere who evaluated their transferability and reproducibility.

Third, while I located this research in two places, I pursued it in an open-ended fashion, continuously revising the objects of comparison, based on both the similarity and alterity of issues and events. In this regard, my research process involved an active juxtaposition of objects as I encountered them. It became increasingly apparent during the research process that many of the issues and events I examined differed greatly in both places, but I would have not been aware of this had I not already been consciously thinking comparatively. The concept of juxtaposition, currently finding a place in the ethnographer's toolkit, underlines the role of the analyst and their knowledge in forging comparisons and bringing objects (places, events, etc.) together.<sup>20</sup> It also provides a productive way to think about times when such comparisons simply fail to produce the desired results. Thinking this way during the research process highlighted the absence or silence about certain matters, like race or violence against prisoners, and parameters of acceptable or mentionable discourse. Perhaps the most powerful example of this was in the differences in punitive sensibilities and how policies either constrained or augmented them. For instance, it became apparent in the course of research that sentencing

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<sup>19</sup> James Ferguson and Akhil Gupta, "Spatializing States: Toward an Ethnography of Neoliberal Governmentality," *American Ethnologist*, 29 (November 2002), 981-1002.

<sup>20</sup> Nyíri Pál, "Lateral Vision: Juxtaposition as a Method," *Ethnography*, 14 (September 2013), 369-383. Giovanni Picker, "Rethinking Ethnographic Comparison Two Cities, Five Years, One Ethnographer," *Journal of Contemporary Ethnography*, Published online before print August 19, 2014, doi: 10.1177/0891241614548105, 1-22. Although not called juxtaposition, similar points can be found in Sverre Molland, *Tandem Ethnography: On Researching 'Trafficking' and 'Anti-Trafficking,'* *Ethnography*, 14 (September 2013), 300-323; Niewöhner and Scheffer, "Introduction: Thickening Comparison"; Marilyn Strathern, *Partial Connections* (Savage: Rowman & Littlefield, 1991).



practices in Pennsylvania, and the U.S. more generally, departed drastically from past practice and that of New South Wales. The current sentencing regime in Pennsylvania, which has now existed for a generation, has oriented normative understandings of penal severity (mine included) in such a way that corresponding practices in New South Wales often appear mild or even strange. My sense of the harshening of sentencing in Pennsylvania now owes a lot to seeing how differently sentencing severity increased in New South Wales.

Lastly, I explore how historical actors themselves constructed comparative projects in their efforts to make sense of their current situation and discover different penal reform ideas and political strategies. Such projects are not new to prisons and penal reform. As Michel Foucault's analysis of the modern prison indicates, the institution itself has always relied on multiple forms of comparison and evaluation. While Foucault's interest largely focused on internal manifestations of these disciplinary techniques, these practices also facilitated broader comparisons, extending well beyond prison walls. Offender classification – perhaps the preeminent example of Foucault's point – played a crucial role in the constitution of different institutional regimes, the deployment of resources and strategies of prisoner and guard resistance.<sup>21</sup> Yet, it was also one of the most widely circulating practices across the globe and facilitated numerous overseas study tours and knowledge exchanges.

During the immediate post-World War II decade, the comparison of penal practices increased considerably as numerous jurisdictions adopted a series of new practices designed to rehabilitate offenders. When rehabilitation fell into crisis and numerous prison scandals

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<sup>21</sup> Sociologists Michael Adler and Brian Longhurst refer to offender classification as the “the core of the prison system. Adler and Longhurst, *Discourse, Power and Justice: Towards a New Sociology of Imprisonment* (London: Routledge, 1994), the quote is the title of their chapter 3.

erupted in the 1970s, events like public inquiries created urgent calls and new vectors for greater comparison and the transmission of penal knowledge and practices across jurisdictional borders. Sometimes, these comparisons informed decisions to deliberately avoid what some people saw as mistakes by others. At other times, debates raged over the appropriateness of comparison, its ends and unresolvable questions about what was and was not comparable. I have noticed that there is a tendency in both academic and lay understandings of comparison to insist on establishing a baseline of similarity before the subsequent work of distinguishing finer differences and explanation can commence. This means that objects, which some people considered to be too dissimilar, were resistant to comparison and hence simply ruled out of bounds.<sup>22</sup> On more than one occasion, I heard comments by legislators, correctional officers, activists and prisoners that certain statements or proposals were inappropriate because it involved “comparing apples and oranges.” Insisting on difference, whether local, distant or in between, limited or delegitimized comparisons. Nevertheless, it’s clear that, much like arguments for national exceptionalism, claims like these always already involved comparison in establishing such difference.<sup>23</sup>

### **Locating New South Wales and Pennsylvania in the Contemporary World System**

To begin a historical narrative mainly in the post-World War II period, as I do here, of course, runs the risk of obscuring the deep historical relationships between New South Wales

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<sup>22</sup> For a polemic against limiting comparative work in this way, see Marcel Detienne, *Comparing the Incomparable* (Stanford: Stanford University Press, 2008).

<sup>23</sup> Tyrrell, “American Exceptionalism in an Age of International History,” 1034.

and Pennsylvania and the projects of penal reformers. These two subnational states shared many interconnections but were quite different in their historical development, institutional structures and governing capacities as well as their relationships with the national state. Both states originated from British colonial projects between the seventeenth and nineteenth centuries and inherited British common law and many routine criminal justice practices. Over time, each state and their respective national countries diverged from British practice in significant ways. Nevertheless, it was common for government officials and criminal justice researchers to maintain connections with other similarly position people in other countries. Representatives of the penal systems in New South Wales and Pennsylvania continuously interacted with experts, discourses, reform projects from afar and even at times with each other. The shared colonial heritage and language enabled much of this traffic, as many of the discourses, people, and practices circulated throughout the British Empire and later the Commonwealth.

Perhaps the most well-known aspect of this history of punishment was the British practice of transporting convicted offenders to both the American and Australian colonies between the seventeenth and nineteenth centuries. Prior to this practice ending in the American colonies during the War of Independence, Maryland, Virginia, and Pennsylvania received most of these transportees. During and after the war, British convicts remained in the severely overcrowded prison hulks anchored in English and Irish metropolitan harbors. In 1788, the British sent the First Fleet to Botany Bay, commencing roughly seventy years of convict transportation to Australia with most going to New South Wales. Unlike the fledgling republic in North America, the penal colony had a strong central government that has been subsequently

described as a “military dictatorship.”<sup>24</sup> This had dramatic institutional consequences that survived into the era of democratic self-government a century later. Perhaps one of the most glaring differences in the penal politics of New South Wales and Pennsylvania in the late twentieth century involved institutional legacies like this. The intervention of the U.S. federal judiciary into prison matters from the 1960s onward was virtually absent in New South Wales. The latter state’s institutional centralization created fewer opportunities for the courts to intercede on behalf of prisoners. Courts in New South Wales deferred to the state executive (including the prisons department) far more readily than their American counterparts. The flip side of this coin was that government appointed inquiries in New South Wales had far greater investigatory powers than any inquiry in Pennsylvania. This was especially apparent in the breadth of the Royal Commission into New South Wales Prisons, which simply had no counterpart in Pennsylvania.

Penal practices in both New South Wales and Pennsylvania have captured the comparative interest of a number of travelers and writers in the past, which brought these places into connection. During the eighteenth and nineteenth century, several European observers visited or corresponded with people in both places specifically to collect information on their penal systems, which they reported to government officials and the broader public.<sup>25</sup> Jeremy Bentham, for instance, vehemently criticized the foundation of the New South Wales

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<sup>24</sup> Robert Catley, *Globalising Australian Capitalism* (New York: Cambridge University Press, 1998), 43.

<sup>25</sup> Norbert Finzsch, “Comparing Apples and Oranges?: The History of Early Prison in Germany and the United States, 1800-1860” in Norbert Finzsch and Robert Jutte (eds.), *Institutions of Confinement: Hospitals, Asylums, and Prisons in Western Europe and North America, 1500-1950*. New York: Cambridge University Press, 1996), 213-234; Colin Forster, *France and Botany Bay: The Lure of a Penal Colony* (Melbourne: Melbourne University Press, 1996); R.V. Jackson, “Jeremy Bentham and the New South Wales Convicts,” *International Journal of Social Economics*, 25 (2/3/4: 1998), 370-379.

penal colony. In his campaign to convince the British government to build a panopticon prison, he frequently cited the experiences of American prison reformers, especially in Philadelphia, who created a program of reformatory incarceration at the Walnut Street Jail.<sup>26</sup> By the 1830s, Pennsylvania had become well-known as well for the Eastern State Penitentiary, which operated a regime of total, cellular isolation and silence. Among its many visitors were two representatives from France, Alexis de Tocqueville and Gustave de Beaumont, who produced a major comparative study of the various systems of prison discipline in the United States.<sup>27</sup> They advocated adopting the Pennsylvania model of cellular isolation as exemplified by Eastern State Penitentiary, and in a separate appendix implored the French government not to pursue penal colonies like New South Wales.<sup>28</sup> Yet, by the early twentieth century, neither state had what would have been considered innovative or state-of-the-art prison systems by the standards of the growing international correctional community. As study tours to each state tapered off, penal reformers and prison officials from New South Wales and Pennsylvania began participating more in the growing global networks of penal expertise. By the dawn of the twentieth century, such connections facilitated the adoption and parallel development of similar practices in each place.

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<sup>26</sup> Jeremy Bentham, *Panopticon versus New South Wales: or, The Panopticon Penitentiary System, and the Penal Colonization System, Compared. In a Letter addressed to the Right Honourable Lord Pelham*, in Jeremy Bentham, John Bowring (ed.), *The Works of Jeremy Bentham, vol. 4 Panopticon, Constitution, Colonies, Codification* (London: Simpkin, Marshall, 1843), 172-211; Bentham, *Second Letter to Lord Pelham &c. &c. &c. in Continuation of the Comparative View of the System of Penal Colonization in New South Wales and the Home Penitentiary System, Prescribed by Two Acts of Parliament of the years 1794 & 1799* in Bentham, Bowring (ed.), *The Works of Jeremy Bentham, vol. 4*, 211-248. See also Janet Semple, *Bentham's Prison: A Study of the Panopticon Penitentiary* (New York: Oxford University Press, 1993).

<sup>27</sup> Alexis de Tocqueville and Gustave de Beaumont, *On the Penitentiary System in the United States and Its Application in France; With an Appendix on Penal Colonies and also Statistical Notes* (Philadelphia: Carey, Lea & Blanchard, 1833), available online at: <https://archive.org/details/onpenitentiarysy00beauuoft>. Last checked on January 3, 2016.

<sup>28</sup> *Ibid.*, 131-150.

The post-World War II history of New South Wales and Pennsylvania demonstrated a remarkable degree of convergence on many issues, which also occurred at the national level. This facilitated the development of similar penal regimes in each place. Such convergence, in part, reflected the incorporation of both states into a broadly shared regulatory regime of political economy.<sup>29</sup> Over the course of the postwar period, it also would demonstrate the gradual growth of American influence on Australian politics and society, which soon displaced the role of the United Kingdom.<sup>30</sup> Unlike Western European social democracies, both the United States and Australia and their respective subnational states had far less extensive forms of social welfare and nationalized services. Yet, they still practiced a form of Keynesian economic management and provided limited welfare supports to the populace. The New Deal coalition between unionized labor and the Democratic Party, which held enormous influence in postwar Pennsylvania politics, resembled the labor protectionist and welfare policies championed by the Australian Labor Party and the extensively unionized labor force in New South Wales. Each of these systems of economic management, state governance and political mobilization underwrote sustained postwar economic growth and suburbanization. This model of political economy also sustained the development of reformatory penological practices after World War II.

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<sup>29</sup> Bob Jessop, *The Future of the Capitalist State* (London: Polity, 2002).

<sup>30</sup> Philip Bell and Roger J. Bell, *Implicated: the United States in Australia* (New York: Oxford University Press, 1993); Graeme Turner, *Making National: Nationalism and Australian Popular Culture* (St. Leonards: Allen & Unwin, 1994), 93-118; Roger Bell, Tim McDonald and Alan Tidwell, (eds.), *Negotiating the Pacific Century: The 'New' Asia, the United States and Australia*, (Sydney: Allen & Unwin, 1996); Philip Bell and Roger Bell (eds.), *Americanization and Australia*, (Sydney, University of New South Wales Press, 1998); Donald Denoon and Philippa Mein Smith and Marivic Wyndham, *A History of Australia, New Zealand and the Pacific Islands* (Oxford: Blackwell Publishers, 2000), 340-345, 430-432; Erik Paul, *Little America: Australia, the 51<sup>st</sup> State* (London: Pluto Press, 2006).

However, both New South Wales and Pennsylvania showed signs of economic weakness in certain areas that became more pronounced in the 1970s and 1980s. Pennsylvania's economy and New Deal-style politics depended heavily on manufacturing, mining and unionized labor, all of which declined a few decades after World War II. The manufacturing sector suffered enormous shocks in the late 1970s and especially the 1980s, as thousands of jobs disappeared overnight. This was particularly apparent in the steel industry, but it also affected numerous other manufacturing enterprises. These declines, coupled with the rise of non-unionized service sector employment, weakened labor's role in Democratic Party policy, which gradually lessened its focus on class-based appeals. Similarly, the Australian government's abandonment of most tariff protections played a dramatic role in the decimation of manufacturing and extraction industries in New South Wales. While the overall Australian economy was much more reliant on mineral commodity exports, New South Wales had the country's largest concentration of manufacturing jobs with numerous heavy industries stretching from Newcastle north of Sydney to the country's largest steel mills in Wollongong south of Sydney. Between 1968 and 1984, New South Wales lost roughly 27 percent of its manufacturing employment, nearly 138,000 jobs.<sup>31</sup> In 1969, Pennsylvania's manufacturing sector accounted for nearly 1.58 million workers; this fell by 40 percent by 1990.<sup>32</sup>

This decline in manufacturing jobs and a rise in lower-paying, service sector employment eroded the trade union movement in both New South Wales and Pennsylvania

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31 Peter Murphy and Sophie Watson, "Social Polarization and Australian Cities," *International Journal of Urban and Regional Research*, 18 (December 1994), 575; David C. Rich, *The Industrial Geography of Australia* (London: Croom Helm, 1987), 152-155.

32 Philip Jenkins, "The Postindustrial Age: 1950-2000" in Randall Miller and William Pencak (eds.), *Pennsylvania: A History of the Commonwealth* (University Park: Pennsylvania State University Press, 2002), 322.

and undercut much of the longstanding support unions provided to the Democratic Party in Pennsylvania and the Labor Party in New South Wales. As a result, party politics became more competitive in each state since the 1970s as the major parties now vied to build new coalitions and appeal to new constituencies through different issues.<sup>33</sup> This process also brought these parties closer to their conservative opponents on many policies, particularly in regard to free market reforms. In this political climate, certain issues, like crime, rose to prominence in state politics and became a major concern for most voters during this period. Being tough on crime appealed across traditional party lines and provided a way for political candidates and parties to distinguish themselves, denounce their opponents and demonstrate resolve at a time of massive socioeconomic uncertainty.

While post-war trends appeared similar in both settings, there are substantial differences that complicate a comparative and transnational project. These differences directly affected the size and scope of imprisonment in each state and the way the actors deployed similar techniques and strategies of prison reform. To begin with, Pennsylvania is nearly twice as populous as New South Wales even though the latter is geographically much larger. In 1980, the U.S. Census reported Pennsylvania's population at 11,864,720 people; whereas the Australian Bureau of Statistics determined the population of New South Wales in the same year

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<sup>33</sup> Steve Fraser and Gary Gerstle (eds.), *The Rise and Fall of the New Deal Order, 1930-1980* (Princeton: Princeton University Press, 1989); Graeme Duncan, "Australia Politics: Future Patterns" in Brian Hocking (ed.), *Australia Towards 2000* (London: Macmillan, 1990), 276-286; Andrew Scott, *Fading Loyalties: The Australian Labor Party and the Working Class* (Leichhardt: Pluto Press, 1991); Mike Davis, *City of Quartz: Excavating the Future in Los Angeles* (New York: Vintage Books, 1992); Robert Watts, "Laborism and the State: Confronting Modernity" in Paul James (ed.), *The State In Question: Transformations of the Australian State* (Sydney: Allen & Unwin, 1996), 38-73; Bruce Schulman, *The Seventies: The Great Shift in American Culture, Society, and Politics* (Cambridge: Da Capo Press, 2001); Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton: Princeton University Press, 1996); Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton: Princeton University Press, 2006).



to be 5,171,527 people.<sup>34</sup> Just this difference alone meant that the size of prison populations and prisons themselves often varied a great deal. New South Wales and Pennsylvania also have different relationships with their respective national governments and other states in the federal system that are significant for this study. New South Wales was the founding British colony and has always been the most populous state in Australia. Sydney, the capital city of New South Wales is the country's largest city and a major regional and global financial center. Australia's capital, Canberra (in the Australian Capital Territory), lies entirely within the state of New South Wales and the latter's policies and politics play a larger role in national affairs than the other states and territories. Until very recently, most imprisoned criminal offenders from the Australian Capital Territory served their time in the prisons of New South Wales.

Conversely, Pennsylvania's national influence declined over the course of the late twentieth century as outmigration shrank the size of its population and Congressional representation. Its once central importance to the republic has long since passed as many states from the west and south have grown in wealth, population and political clout. During the 1960s and 1970s, a number of Pennsylvanian politicians, notably Gov. Milton Shapp, complained about federal policies, which subsidized growth in the south and west with tax revenues disproportionately drawn from northern states like Pennsylvania. Even though Philadelphia is one of the country's largest cities, Pennsylvania does not contain a major financial center like New York City, its neighbor to the north, or like Sydney in Australia. These

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<sup>34</sup> U.S. Census Bureau, *Resident Population and Apportionment of the U.S. House of Representatives*, available at: <http://www.census.gov/dmd/www/resapport/states/pennsylvania.pdf>; 3105.0.65.001 - Australian Bureau of Statistics, *Australian Historical Population Statistics, 2014*, available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3105.0.65.0012014?OpenDocument>. Last checked on December 29, 2015.

differences are important because unlike Pennsylvania in the late twentieth century, people in other Australian jurisdictions and even nearby countries like Papua New Guinea and New Zealand look to New South Wales as a trend-setter in many matters of social policy like imprisonment.

Racial and ethnic exclusion in both states also has immediate relevance for a comparative study of imprisonment, since non-European peoples were imprisoned at disproportionate rates in each state. Yet, these patterns cannot be easily equated as each was very distinctive with its own historical antecedents and current practices. Just in terms of sheer numbers, the size of the African American and Latino population in Pennsylvania dwarfed the size of the Aboriginal population in New South Wales. This was also apparent in the racialized, postwar geography of both places. In New South Wales, most Aboriginal people still lived in rural areas, especially on or near reservations and stations that gradually became less restrictive after the 1960s.<sup>35</sup> Most urban areas did not have large concentrations of Aboriginal people. Conversely, some of the city neighborhoods and inner suburbs around places like Sydney had greater concentrations of European immigrants in the first few decades after World War II and later immigrants from Asia and the Middle East. Consequently, state officials punished many Aboriginal offenders through the disciplinary apparatus developed since the colonial era to manage the remaining Aboriginal population in rural areas. Many of the rural gaols held a lot of Aboriginal people, but they were less common in the state's main penal institutions near the coastal area.

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<sup>35</sup> On the long history of controlling the residential patterns of Aboriginal people, see John Chesterman and Brian Galligan, *Citizens without Rights: Aborigines and Australian Citizenship* (Melbourne: Cambridge University Press, 1998).

By contrast, pronounced, racially segregated neighborhoods developed in the urban areas of Pennsylvania in the postwar years as millions of African Americans migrated from the rural South to industrial centers in the North, like Philadelphia and Pittsburgh. The intersection of a series of restrictive housing, employment and welfare policies, coupled with capital flight created poor, African American ghettos in Pennsylvania's cities during the mid-twentieth century.<sup>36</sup> As employment opportunities dwindled, urban poverty, crime and inequities in public services increased.<sup>37</sup> So too did local officials' overreliance on police and prisons to manage such areas.

While there certainly are major class, ethnic and racial differences in urban areas in New South Wales, Australia's more unified system of governance and revenue distribution prevented the development of the extreme disparities seen in Philadelphia and Pittsburgh. While Australia's commonwealth federalism resembles that of the United States, Australian states and territories wield much more power than American state governments. Sub-state governance units in Australia are relatively weak and cannot exert the same administrative and exclusionary force that a county or city government can in many places in the U.S. This difference, and the very limited use of local taxation, permitted Australian states and territories

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<sup>36</sup> The interplay of capital movement and federal, state and local policies since the New Deal created racial residential enclaves in urban areas, which formed the basis for racial segregation in many other areas of social policy, politics and late twentieth century American culture. Seminal works on these changes include, Arnold R. Hirsch, *Making the Second Ghetto: Race and Housing in Chicago 1940-1960* (Chicago: University Of Chicago Press, 1983); Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985); Douglas Massey and Nancy Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge: Harvard University Press, 1993); Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s*, 2nd ed., (New York: Routledge, 1994); Thomas J. Sugrue, *Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton: Princeton University Press, 1996).

<sup>37</sup> William Julius Wilson, *The Declining Significance of Race: Blacks and Changing American Institutions*, 2nd ed., (Chicago: University of Chicago Press, 1980); William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass and Public Policy* (Chicago: University of Chicago Press, 1987).

to pursue more equitable distribution of tax revenues than American states.<sup>38</sup> Stephan Mugford has argued that this structural difference was one of the main reasons for the lack of concentrated crime and drug trade networks in Australian cities comparable to the United States.<sup>39</sup> Nevertheless, there has been an increasing trend in Australia toward greater social inequality since the 1960s, much like in the U.S.<sup>40</sup> Likewise, even though both Pennsylvania and New South Wales have had strong labor movements and class-based politics, labor gained much more of an institutional influence in New South Wales, which created a stronger protectionist and social provision regime than Pennsylvania did.<sup>41</sup>

These divergent histories complicate a comparison of imprisonment because the differences in the political framings of social problems in each state molded the range of possible penal policies and anti-crime programs. Difference in punitive attitudes, the scale of permissible punishments and the incidence and acceptability of violence owe a lot to how social policies become deeply enmeshed in social arrangements, institutional structures and normative expectations. Even when states are structurally similar, they may still hold very different meanings for the people they govern. Christopher Lloyd has argued that comparisons between Australia and the United States need to take into account the very different cultural views about the state in both places.<sup>42</sup> Australia has had less of an anti-statist and individualist

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<sup>38</sup> Only the federal government has the power to levy taxes in Australia; the bulk of these funds are then divided among the states and territories.

<sup>39</sup> Stephan K. Mugford, "Crack in Australia: Why Is There No Problem?" in Craig Reinerman and Harry G. Levine (eds.), *Crack in America: Demon Drugs and Social Justice* (Berkeley: University of California Press, 1997), 194-113.

<sup>40</sup> Adam Jamrozik, *Class, Inequality, and the State: Social Change, Social Policy, and the New Middle Class* (Melbourne: MacMillian, 1991); Christopher Lloyd, "Economic Policy and Australian State Building: From Labourist-Protectionism to Globalization" in Alice Teichoya and Herbert Matis (eds.), *Nation, State, and the Economy in History* (Oxford: Cambridge University Press, 2003), 404-424.

<sup>41</sup> Although, not as extensive as most European social democracies.

<sup>42</sup> Christopher Lloyd, "Australian and American Settler Capitalism: The Importance of a Comparison and It's Curious Neglect," *Australian Economic History Review*, 38 (November 1998), 280-305.

aspect to its politics than its American counterpart. Thus, Australian constituencies have more frequently portrayed the state as a guarantor of security in many different forms rather than as a threat or ineffectual behemoth as it often appears in American political discourse. These differences contributed to the variation in prison expansion and law and order politics between the two states since the 1960s. Just in terms of the size of their prison systems, New South Wales and Pennsylvania are markedly different. Moreover, the prison population in New South Wales dipped in the late 1970s and early 1980s, during the aftermath of major riots and a royal commission investigation. Whereas Pennsylvania's prison population showed steady growth after the 1972. By the mid-1980s, the political establishments in both states were committed to the greater use of imprisonment, even if many leaders criticized such policies. However, as Tables A.1 and A.2 illustrate, it was obvious that this process skyrocketed in Pennsylvania. Victor Hassine, who had been serving life imprisonment in Pennsylvania, described this policy as a "runaway train."<sup>43</sup> It may be the case that the more centralized administrative structure in New South Wales and the prerogatives of its representatives created a defensive redoubt around the penal system, preventing this runaway train from getting too far down the track as it did in Pennsylvania.<sup>44</sup>

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<sup>43</sup> Victor Hassine, *Life Without Parole: Living in Prison Today*, 4<sup>th</sup> ed., (New York: Oxford University Press, 2009), 272-275.

<sup>44</sup> Marie Gottschalk has made a similar argument about the penal system in the United Kingdom. See *The Prison and the Gallows*, 184-192.

Table 1: Daily average prison population: New South Wales and Pennsylvania, 1970-2000

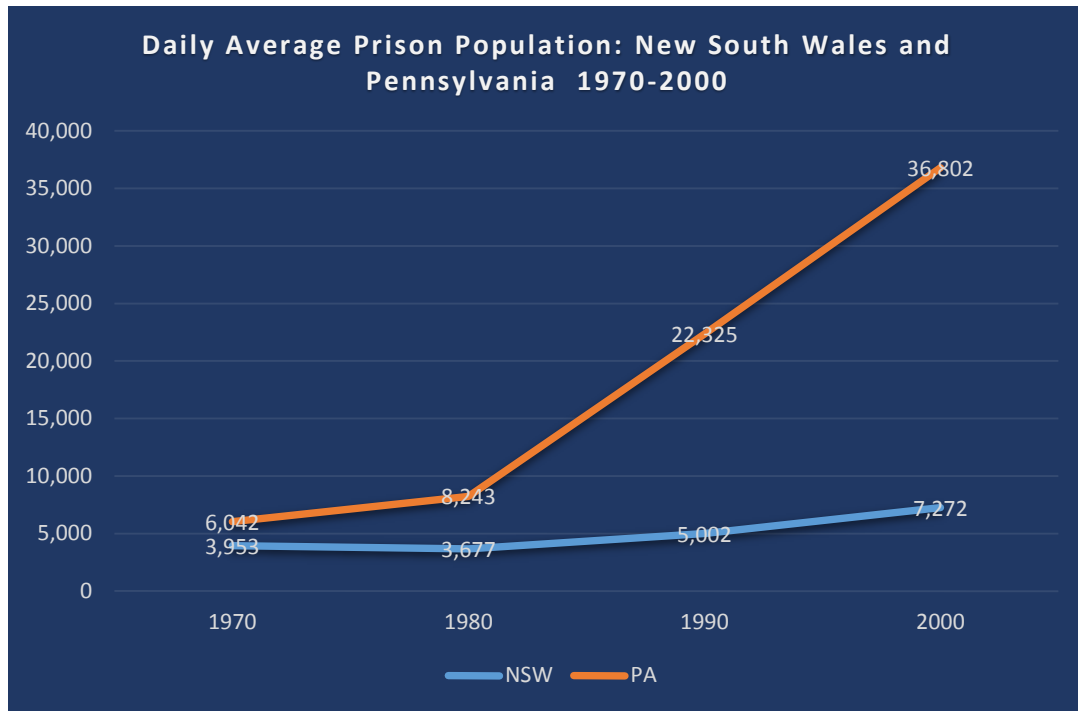


Table 1. Daily Average Prison Population: New South Wales and Pennsylvania, 1970-2000. Source: Pennsylvania Department of Corrections, *Annual Statistical Report, 2000*; Pennsylvania Department of Corrections, , *1990 Annual Statistical Report, State Correctional System*; Pennsylvania Department of Corrections, *Statistical Report for the Years, 1980-1985*; Pennsylvania Bureau of Correction, *Statistical Analysis and Correctional Population Data, 1976*; New South Wales Department of Corrective Services, *1999/2000 Statistical Supplement to the Annual Report*; New South Wales Department of Corrective Services, *Annual Report, 1973*; New South Wales Department of Corrective Services, *Report of the Department of Corrective Services, 1972*.

Table 2: Incarceration rate per 100,000 people: New South Wales and Pennsylvania, 1970-2000

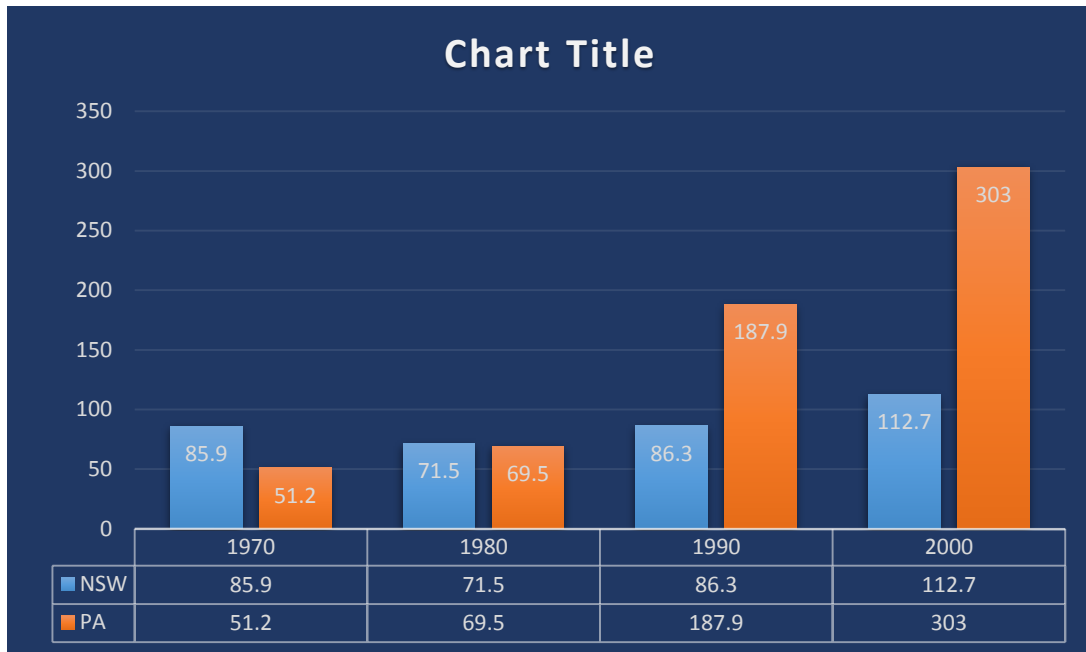


Table 2. Incarceration Rate Per 100,000 People: New South Wales and Pennsylvania, 1970-2000. Source: Pennsylvania Department of Corrections, *Annual Statistical Report, 2000*; Pennsylvania Department of Corrections, , *1990 Annual Statistical Report, State Correctional System*; Pennsylvania Department of Corrections, *Statistical Report for the Years, 1980-1985*; Pennsylvania Bureau of Correction, *Statistical Analysis and Correctional Population Data, 1976*; New South Wales Department of Corrective Services, *1999/2000 Statistical Supplement to the Annual Report*; New South Wales Department of Corrective Services, *Annual Report, 1973*; New South Wales Department of Corrective Services, *Report of the Department of Corrective Services, 1972*.

**Visibility, Publicity and Scandal in Recent Penal Change**

Within New South Wales and Pennsylvania and many other jurisdictions, a large transformation in imprisonment occurred during the second half of the twentieth century. Prisons in many parts of the world became highly visible and unstable places from the 1960s onward. This period saw an upsurge in violence between staff and prisoners and among prisoners as well as the formation of a large prisoners’ rights movements, which shared

affinities with broader civil rights movements, black power activism and even some insurgencies. Yet, this was not the first time that prisons were such controversial and public institutions. Criminologist John Pratt has argued that in the Anglophone jurisdictions he studied, prisons were highly public, politicized institutions when they were first established in the early-to-mid nineteenth-century, but by the end of the century, through strict control, bureaucratization and growing public indifference, state penal authorities “were able [to] proclaim their truth as ‘*the truth*’” on penal matters. In subsequent decades, they were able to either “silence or discredit competing versions.”<sup>45</sup> According to Pratt, state penal authorities rarely faced the same level of intense public scrutiny during much of the twentieth-century. Even after the severe disturbances that swept across prison systems in the 1940s and early 1950s, the fledgling penal bureaucracies weathered the scandals, enhanced their power and reconstituted prison regimes often by adopting aspects of rehabilitative reforms proposals, which had been circulating in professional penological circles since the 1920s.

This is not to say that prisons were completely unknowable or invisible from the late-nineteenth to late-twentieth centuries. Historian Mark Finnane has argued that even during the period most marked by enclosure and the control of penal authorities, prisons and those held inside them routinely appeared in public representations beyond prison walls.<sup>46</sup> At times, this was a deliberate tactic used by authorities, who occasionally exposed aspects of the prisons for

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<sup>45</sup> John Pratt, *Punishment and Civilization: Penal Tolerance and Intolerance in Modern Society* (London: Sage, 2002); 81-144, quote 124. See also his “The Acceptable Prison: Official Discourse, Truth and Legitimacy in the Nineteenth Century” in John Pratt and George Gilligan (eds.), *Crime, Truth and Justice: Official Inquiry, Discourse, Knowledge* (Cullompton: Willan Publishing, 2004), 71-88. Pratt’s research included material from Australia, Canada, New Zealand the United Kingdom and the United States.

<sup>46</sup> Mark Finnane, “After the Convicts: Towards a History of Imprisonment in Australia,” *Australian and New Zealand Journal of Criminology*, 24 (July 1991), 105-117.



political purposes or to remind audiences of the power and legitimacy of the state and its modern methods of crime-control. At other times, however, different sources of knowledge about prisons, especially the prisoner memoir or the writings of prison employees, circulated, which were often more critical of the institution and frequently situated its routines and abuses within a larger social commentary.<sup>47</sup> Since punishment disappeared behind prison walls, its symbolic power has perhaps even grown. When fewer and fewer people came into direct contact with punishment, its representations assumed even greater significance in a broader social imaginary about morality, authority, the law and a host of other matters.<sup>48</sup> I argue that the late-1960s and 1970s marked an important turning point for this arrangement of penal power in places like New South Wales and Pennsylvania. Long removed from direct public view, prisons suddenly appeared in public debate and political dispute in a way that they had not in many decades. Moreover, this transformation in the visibility and publicity of prison issues was concomitant to, and in fact inseparable from, changes in the routines and conditions of imprisonment itself. Two major, interlocking causes of this reemergence of the prison in public discourse stand out – one was the adoption of progressive penal reforms after World War II and the kinds of resistances and critique it generated and the other was the prisoners' rights movement.

### ***Progressive Penal Reform: Rehabilitation, Decarceration, Normalization***

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<sup>47</sup> Ibid., 110-116.

<sup>48</sup> David Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: University of Chicago Press, 1990), 251-254.

The first involved the efforts of penal reformers after World War II to ameliorate some of the harsh conditions of prewar prisons and introduce a series of recuperative practices, designed to transform criminal offenders into productive law-abiding citizens. Much like other contemporary, liberal, strategies of inclusion, the therapeutic discourse animating these reforms portrayed offenders as deficient in many of the basic normative values and habits of white, industrious, middle class citizens.<sup>49</sup> Rather than viewing criminal offenders as irredeemably different, this progressive form of othering marked its subjects instead by their incompleteness, their lack of appropriate values and habits.<sup>50</sup> Most criminal offenders were sick or improperly-socialized people, but otherwise normal, and could be treated, raised to normal standards and returned to society as law-abiding citizens.<sup>51</sup> Various practices supported this project, which penal reformers and professional associations often simply called “rehabilitation.” Indeterminate sentencing, parole and inmate classification, often influenced by the social sciences, formed the backbone of this new regime, but administrators also introduced a series of institutional programs designed to educate and resocialize offenders. Prison administrators supplemented inmate labor, which was increasingly scarce, with basic education, correspondence courses, individual and group counseling and accesses to reading materials and libraries as well as numerous other recreational activities and sports. Advocates

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<sup>49</sup> Daryl Michael Scott, *Contempt and Pity: Social Policy and the Image of the Damaged Black Psyche, 1880-1996* (Chapel Hill: University of North Carolina Press, 1997); Davison M. Douglas, “Justifying Racial Reform,” *Texas Law Review*, (1998), 1163-1184; Alice O’Connor, *Poverty Knowledge: Social Science, Social Policy and the Poor in Twentieth-Century U.S. History* (Princeton: Princeton University Press, 2001), 74-123.

<sup>50</sup> I borrow the concept of progressive or liberal forms of othering from Jock Young. See his *The Vertigo of Late Modernity* (Los Angeles: Sage Publications, 2007), 5-6, 24, 73-75, 141-143, 202-203.

<sup>51</sup> This was the normative thrust of therapeutic penological discourse. However, most of its advocates recognized that some offenders fell beyond these assumptions and were either so mentally ill or willfully evil (“sociopathic”) that they were poor candidates for therapeutic interventions.

of these programs believed that the normalization of institutional life, or blurring some of the exclusionary boundaries of imprisonment, enhanced the possibility of resocializing offenders and reintegrating them upon release. In practice, this narrowed some of the differences in social status and between prisoners and guards as well as the outside world.<sup>52</sup> In some respects many of these interventions were simply current iterations of longstanding prison practices, but rehabilitation's therapeutic framing as well as the presence of its associated college-educated, social science experts, like social workers, rearranged previous lines of authority inside prisons, often displacing the influence of guards.<sup>53</sup>

As a number of scholars have argued, many jurisdictions simply did not accept these reforms, and in places where they were adopted, their resemblance in actual practice to their stated goals and rationales can be easily overstated.<sup>54</sup> Nevertheless, they were far reaching in their effect. Many places that did not adopt these practices whole-heartedly still emulated the modernizing language of penal reform as well as some of the practices, which like classification, were flexible enough to be aligned with a range of different purposes. Professional and international penal reform organizations refined and debated these reforms extensively, extending the vibrant penal knowledge production and circulation that had been disrupted by World War II. Surveys and conferences on prisons and penal reform sponsored by International

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<sup>52</sup> Pratt, *Punishment and Civilization*, 60-80, 97-120, 153-161.

<sup>53</sup> One need only think of a many ways that labor, education and religious instruction have figured prominently in penal reform projects dating to the seventeenth-century. See, for instance, Pieter Spierenburg, *The Prison Experience: Disciplinary Institutions and Their Inmates in Early Modern Europe* (New Brunswick: Rutgers University Press, 1991); Pieter Spierenburg, *The Emergence of Carceral Institutions: Prisons, Galleys and Lunatic Asylums 1550-1900* (Rotterdam, Erasmus Universiteit, 1984); Norbert Finzsch and Robert Jütte (eds.), *Institutions of Confinement Hospitals, Asylums, and Prisons in Western Europe and North America, 1500–1950* (Washington, D.C.: Cambridge University Press, 1996).

<sup>54</sup> James B. Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977); Mona Lynch, *Sunbelt Justice: Arizona and the Transformation of American Punishment* (Stanford University Press, 2010); Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire* (New York: Metropolitan Books, 2010).

Penal and Penitentiary Commission and later the Social Commission of the United Nations helped disseminate many of these ideas and practices and legitimate them as essential features of modern state-building. They also became one of the primary areas of interest for study tours by prison officials seeking out examples of state-of-the-art penology for emulation. The most widespread effect of these practices may, in fact, be the configuration of penal power they enabled. In the wake of the holocaust, “corrections” expressed a modern, non-punitive and responsible method of both addressing crime and building a productive citizenry. These reforms, so often associated with social science and expert knowledge, bolstered the authority of penal officials whose voice on such matters was without rival in the first two decades after the war.

In places where these reforms were more extensive, however, like California and the U.S. federal Bureau of Prisons, they often conveyed contradictory messages to prisoners and guards in practice. For instance, education and recreational activities, like debating societies, created greater openings for prisoner self-expression yet often severely curtailed the substance of such expression. These difficulties underscored the fundamental exclusionary qualities still retained in the liberal form of othering that informed rehabilitation. As Tony Ward and Shadd Maruna have argued, penal authorities never really considered offenders as full participants in most of these programs:

The rehabilitation client, after all, is not the real focus of the intervention, only his or her outward behavior. In fact, offender rehabilitation may be one of the only forms of treatment in existence that is explicitly intended for the benefit of others (the “community”) rather than for the person undergoing the counseling itself. In fact, who cares what offenders want? Prisoners and probationers have

proved themselves to be untrustworthy by virtue of their past actions, and surely the experts know what is needed more than this cast of characters.<sup>55</sup>

Ward and Maruna, citing Michael Ignatieff's discussion of "the needs of strangers," claim that the arrogance of this expertise, its presumption of knowledge about what is best for prisoners, is intrinsically dangerous.<sup>56</sup> Indeed, in many ways, it embodied an ethical distance between penal authorities and prisoners, which elided the fact that it was in fact a form of punishment – a central feature of a cultural framework that sociologist Michele Brown calls "penal spectatorship."<sup>57</sup>

Thus, while the affordances created by the inclusionary therapeutic and later community-based reforms reduced many previous exclusionary practices, they simultaneously reinforced them, highlighting for prisoners the inconsistencies in the reform project, the capriciousness of penal authorities and the intrinsic, authoritarian nature of the prison.<sup>58</sup> In jurisdictions that invested heavily in therapeutic programming, the specific practices themselves often enabled participants to publicize and critique these frustrations. Historians, Eric Cummins and Theodore Hamm, for instance, demonstrate how numerous California prisoners used education and writing programs to raise public awareness of their own particular legal cases, criticize penal authorities and organize a larger community of prison activists.<sup>59</sup> Even in many

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<sup>55</sup> Tony Ward and Shadd Maruna, *Rehabilitation: Beyond the Risk Paradigm* (London: Routledge, 2007), 17.

<sup>56</sup> *Ibid.*; See also Michael Ignatieff, *The Needs of Strangers* (London: Chatto & Windus, 1984); Mark Finnane, *Punishment in Australian Society* (Melbourne: Oxford University Press, 1997), 140-159.

<sup>57</sup> Michelle Brown, *The Culture of Punishment: Prison, Society, and Spectacle* (New York: New York University Press, 2009), 8-12.

<sup>58</sup> Pratt, *Punishment and Civilization*, 145-165.

<sup>59</sup> Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford: Stanford University Press, 1994); Theodore Hamm, *Rebel and a Cause: Caryl Chessman and the Politics of the Death Penalty in Postwar California, 1948-1979* (Berkeley: University of California Press, 2001).

jurisdictions that lacked these kinds of programs, the efforts of prison administrators to ameliorate some aspects of prison life, tended to underscore how spartan and brutal prison conditions actually remained.<sup>60</sup> These changes sowed the seeds of resentment and greater self-awareness among prisoners about their situation and fomented similar displeasure among guards, whose custodial prerogatives diminished with the introduction of these reforms.

By the late 1960s, many of the leading research organizations and penal agencies in the world began advocating less use of institutional settings and the development of alternatives to incarceration. The community corrections, or decarceration, movement among penal administrators, correctional staff, social welfare organizations and researchers also became associated with an often college-educated, generation of correctional officials, who developed new discretionary release programs and low-security facilities that brought the practices of punishment into greater contact with members of the wider public. Some officials, like Allyn Sielaff in Pennsylvania and Walter McGeechan in New South Wales, also tried to garner greater public support for new correctional programs by reaching out to other state institutions, civic organizations, the media and the general public. These efforts were often tightly controlled, and even disingenuous, but along with community corrections programs, they brought the actual practices of punishment closer to many people who had little prior contact with prisons and penal agencies.

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<sup>60</sup> Perkinson, *Texas Tough*, 230-285; In New South Wales, the Royal Commission into New South Wales Prisons noted that there was a wide discrepancy in prison conditions, privileges and amenities between some prisons of the same security classification, which increased tension, confusion and resentment among prisoners and some staff members. See, Nagle, *Report of the Royal Commission into New South Wales Prisons*, 54-57, 189-191, 200-202, 308-331.

## ***The Prisoners' Rights Movement: Race, Resistance, Rebellion***

The prisoners' rights movement, as the second major cause of the increased visibility of the prison in the late twentieth-century, publicized the anger of prisoners, the brutality of penal authorities and the dearth of citizenship rights for confined people. As a number of scholars have argued, the prisoners' rights movement needs to be understood not just as a series of legal challenges, but as a broader social movement, which sought to fundamentally transform normative understandings of the personhood and status of prisoners and criminal offenders as well as question the methods and rationales of punishment.<sup>61</sup> These qualities, and the movement's relationship to other social movements, differentiated it from the much longer history of prisoner resistance and rebellion. However, when viewed broadly, questions abound about the location and periodization of the prisoners' rights movement, resembling in many ways similar historiographic debates about postwar civil rights movements.<sup>62</sup> This is no coincidence since the prisoners' rights movement can easily be seen as part of these broader

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<sup>61</sup> James B. Jacobs, "The Prisoners' Rights Movement and Its Impacts" in James B. Jacobs (ed.), *New Perspectives on Prisons and Imprisonment* (Ithaca: Cornell University Press, 1983), 33-60; Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (New York: Cambridge University Press, 2006), 165-196.

<sup>62</sup> The conventional civil rights narrative largely locates the movement in the American South beginning in the 1950s with the *Brown v. Board of Education* decision although much of the story transpires in the 1960s. This view has received sustained revision since the 1990s. For some representative texts, see Thomas J. Sugrue, *Sweet Land of Liberty: The Forgotten Struggle for Civil Rights in the North* (New York: Random House, 2008); Felicia Kornbluh, *The Battle for Welfare Rights: Politics and Poverty in Modern America* (Philadelphia: University of Pennsylvania Press, 2007); Matthew J. Countryman, *Up South: Civil Rights and Black Power in Philadelphia* (Philadelphia: University of Pennsylvania Press, 2006); Peniel E. Joseph, *Waiting 'til the Midnight Hour: A Narrative History of Black Power in America* (New York: Henry Holt and Co., 2006); Peniel E. Joseph (ed.), *The Black Power Movement: Rethinking the Civil Rights-Black Power Era* (Routledge: New York, 2006); Rhonda Y. Williams, *The Politics of Public Housing: Black Women's Struggles against Urban Inequality* (New York: Oxford University Press, 2004); Jeanne F. Theoharis and Komozi Woodard (eds.), *Freedom North: Black Freedom Struggles Outside the South, 1940-1980* (New York: Palgrave Macmillan, 2003); Robert O. Self, *American Babylon: Race and the Struggle for Postwar Oakland* (Princeton University Press: Princeton, 2003); Yohuru Williams, *Black Politics/White Power: Civil Rights, Black Power, and the Black Panthers in New Haven* (St. James: Brandywine Press 2000); Komozi Woodard, *A Nation Within a Nation: Amiri Baraka (LeRoi Jones) and Black Power Politics* (Chapel Hill: University of North Carolina Press, 1999).

efforts to expand and redefine the civil rights of numerous excluded groups, whether this was women, African Americans, Indigenous Australians or mental health patients.

As such, the increased visibility of prisoners and their views cannot be neatly separated from the issue of race as it coincided with and formed part of the broader civil rights movements of the 1960s. This was especially apparent in the United States where many prisoners deeply identified with civil rights and Black Power activism or drew inspiration from these causes in their actions against prison authorities and the broader criminal justice system. However, the issue of race has deeper roots in the formation of the prisoners' rights movement in the U.S. During World War II, the American government imprisoned numerous members of the relatively new, racial-separatist, religious organization, the Nation of Islam, as conscientious objectors, including their leader Elijah Muhammad. While imprisoned, they began proselytizing to black inmates, recruiting thousands of new members. By the late 1950s, imprisoned African Americans composed a significant portion of the Nation of Islam's overall membership, and they began to challenge certain prison rules, which interfered with their religious practices.<sup>63</sup>

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<sup>63</sup> For works about the Nation of Islam and its role in prisons, see John Pallas and Robert Barber, "From Riot to Revolution" in Erik Ohlin Wright (ed.), *The Politics of Punishment: A Critical Analysis of Prisons in America* (New York: Harper Torchbooks, 1973), 237-261; James B. Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977), 58-69; John Irwin, *Prisons in Turmoil* (Boston: Little, Brown and Company, 1980), 68-70, 102-103; James B. Jacobs, "Race Relations and the Prisoner Subculture" in Jacobs (ed.), *New Perspectives on Prisons and Imprisonment* (Ithaca: Cornell University Press, 1983), 61-79; Kathleen M. Moore, "Muslims in Prison: Claims to Constitutional Protection of Religious Liberty" in Yvonne Y. Haddad, (ed.), *Muslims of America* (New York: Oxford University Press, 1991), 136-156; Christopher E. Smith, "Black Muslims and the Development of Prisoners' Rights," *Journal of Black Studies*, 24 (December 1993), 131-46; Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford: Stanford University Press, 1994), 63-92; Darlene J. Conley and Julius Debro, "Black Muslims in California Prisons: The Beginning of a Social Movement for Black Prisoners in the United States," in Charles E. Reasons, Darlene J. Conley and Julius Debro (eds), *Race, Class, Gender, and Justice in the United States* (Boston: Allyn & Bacon, 2002), 278-291; Sean Patrick Griffin, *Philadelphia's Black Mafia: A Social and Political History* (Boston: Kluwer Academic Publishers, 2003); Liz Samuels, "Improvising on Reality: The Roots of Prison Abolition" in Dan Berger (ed.), *The Hidden 1970s: Histories of Radicalism* (New Brunswick: Rutgers University Press, 2010), 21-38; Donald F. Tibbs, *From Black Power to Prison Power: The Making of Jones V. North Carolina Prisoners' Labor Union* (New York: Palgrave Macmillan, 2012); Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era* (Charlotte: University of North Carolina Press, 2014); Zoe



While American prisoners had attempted rights-based challenges against prison authorities in the past, it was not until the Black Muslims began petitioning federal courts in the late 1950s and early 1960s that the judiciary began to show a greater willingness to intervene in prison matters based.<sup>64</sup> In addition to the court's emerging openness to civil rights cases, it was especially pertinent that the early successes of the Black Muslims involved questions of religious freedom, whether they could worship as a group and read religious texts. As sociologist James Jacobs pointed out, unlike other bases for prisoners' claims, religious freedom rights "are fundamental in American values and constitutional history and difficult to deny."<sup>65</sup> As such, they provided a beachhead for further claims by establishing the precedent that the judiciary would consider petitions by inmates concerning prison rules and conditions.

The Black Muslims' success also underscored the use of constitutional provisions for claims-making, which were not present in many other countries. The Black Muslims demonstrated that prisoners could collectively pursue litigation against prison authorities over constitutional violations of group interests. Soon, other prisoners and organizations learned from these successful examples and began collectively petitioning federal courts over prison practices and the infringement of their rights. However, they were more likely to attack general prison conditions, endemic racism or practices that potentially affected all prisoners than to focus solely on the interests of a self-defined, smaller group, like the Black Muslims. These later cases focused on different constitutional provisions as well usually claiming violations of the

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Colley, "All America Is a Prison": The Nation of Islam and the Politicization of African American Prisoners, 1955–1965," *Journal of American Studies*, 48 (May 2014), 393-415.

<sup>64</sup> For an assessment of these earlier cases, see David P. Flint, "Justice Through Litigation: 1929-1970," *The Prison Journal*, 51 (October 1971), 15-36.

<sup>65</sup> Jacobs, "The Prisoners' Rights Movement and Its Impacts," 36.

prohibition of cruel and unusual punishment (Eighth Amendment) and the due process and equal protection clauses (Fourteenth Amendment).

These latter cases also directly engaged with the broader civil rights movement beyond the prisons. In fact, two of the major organizations involved in prison litigation, the Legal Defense Fund of the NAACP and the ACLU, brought many of the initial lawsuits against southern prisons and penal farms cases, drawing on their experiences fighting segregation and disfranchisement, and filed similar suits in jurisdictions outside the south. Political scientist Marie Gottschalk has argued that this articulation with race and established civil rights movement activists, organizations and political discourse was the major reason why the topic of prisoners' rights and prison conditions became such a highly visible political issue in the 1960s and 1970s.<sup>66</sup> She also argues that this was the reason why the prisoners' rights movement did not become as prominent or challenging in places like the U.K. Yet, civil rights movements occurred elsewhere. In Australia, the 1960s also marked an important decade of change in the status of Indigenous Australians.<sup>67</sup> They had similarly experienced profound criminalization throughout the country's history, but during the 1960s and 1970s, transformations in economic opportunities, migration patterns and government Indigenous policies led to increasing

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<sup>66</sup> Gottschalk, *The Prison and the Gallows*, 176-183.

<sup>67</sup> Andrew Schaap, Gary Foley and Edwina Howell, *The Aboriginal Tent Embassy: sovereignty, Black Power, Land Rights and the State* (Abingdon Routledge, 2013); Bain Attwood and Andrew Markus, *The 1967 Referendum: Race, Power and the Australian Constitution* (Canberra: Aboriginal Studies Press, 2007); Bain Attwood, *Rights for Aborigines* (Crow's Nest: Allen & Unwin, 2004); Elizabeth A. Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism* (Durham: Duke University Press, 2002); Ann Curthoys, *Freedom Ride: A Freedom Rider Remembers* (Sydney: Allen & Unwin, 2000); Faith Bandler, *Turning the Tide: A Personal History of the Federal Council for the Advancement of Aborigines and Torres Strait Islanders* (Canberra: Aboriginal Studies Press, 1989); Lorna Lippmann, *Generations of Resistance: The Aboriginal Struggle for Justice* (Melbourne: Longman Cheshire, 1981); Ronald M Berndt (eds.), *Aborigines and Change Australia in the '70s* (Canberra: Australian Institute of Aboriginal Studies, 1977); Kevin Gilbert, *Because a White Man'll Never Do It* (Sydney, Angus & Robertson, 1973).

Indigenous contact with criminal justice agencies and their increasing presence in custody.<sup>68</sup>

This was especially the case in places like the Northern Territory and Western Australia. In New South Wales, however, Aboriginal offenders were still a minority in the state's prisons even if they were incarcerated at a disproportionate rate. Their presence behind bars did not approach the level of African-American incarceration,<sup>69</sup> but it grew rapidly in the 1980s and they often died in custody at a rate exceeding that of other people.<sup>70</sup> The long history of Australian Aboriginal criminalization and harsh punishment did not become as salient a focal point for the prisoners' rights movement in Australia in the 1970s as it did in the United States.

Nevertheless, penal authorities, the press and academic researchers in both the U.S. and Australia were often slow to incorporate questions about race into their practices and analyses. Until the late 1960s and 1970s, most penal reformers in both places rarely acknowledged the extent of the criminalization of people of color, their overrepresentation in prison and how this connected with each country's history of racial discrimination, slavery and colonization.<sup>71</sup> But, these issues soon became unavoidable. Many investigations, court cases,

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<sup>68</sup> Chris Cunneen, "Punishment: Two Decades of Penal Expansionism and its Effects on Indigenous Imprisonment," *Australian Indigenous Law Review*, 15, 1 (2011), 8-17; Richard Edney, "Indigenous Punishment in Australia: A Jurisprudence of Pain?" *International Journal of the Sociology of Law*, 30 (September 2002), 219-234. Elizabeth Eggleston, *Fear, Favour or Affection: Aborigines and the Criminal Law in Victoria* (Canberra: Australian National University Press, 1976); Neville Green and Susan Moon, *Far From Home: Aboriginal Prisoners of Rottnest Island, 1838-1931* (Perth: University of Western Australia Press, 1997); Howard Sercombe, "The Face of the Criminal is Aboriginal: Representations of Aboriginal Young People in the West Australian Newspaper" in Judith Bessant, Sandy Cook and Kerry Carrington (eds.), *Cultures of Crime and Violence: The Australian Experience* (Bundoora: La Trobe University Press, 1995), 76-92.

<sup>69</sup> This was not the case with other Australian states and territories, like Western Australia and the Northern Territory, both of which had much larger populations of incarcerated Indigenous people. This began to change in New South Wales as well in the next decade and would become more prominent issue as greater numbers of people from Indigenous, Asian and Middle Eastern heritage entered New South Wales prisons.

<sup>70</sup> Royal Commission into Aboriginal Deaths in Custody, *National Report*, vol. 1 (Canberra: Australian Govt. Pub. Service, 1991); Martin Hinton, "Sentencing and Indigenous Australians – Addressing Over-Representation from within the Criminal Justice System" in Elliot Johnston, Martin Hinton and Daryle Rigney (eds.), *Indigenous Australians & The Law* (Sydney: Cavendish Australia, 1997), 111-132.

<sup>71</sup> Jacobs, "Race Relations and the Prisoner Subculture"; Edney, "Indigenous Punishment in Australia."

media accounts and research involving prisons began to address how race related to patterns of prison violence, squalid living conditions, classification, disciplinary infractions and administrative punishments. Authors often framed these observations with reference to the general state of race relations and the racial policies and strategies, like assimilation, integration, segregation and recognition.

Although hardly unprecedented, the interconnections of race, crime and punishment also provided a way to disparage and resist contemporary civil rights projects and neutralize challenges to white privilege in a seemingly, race-neutral manner.<sup>72</sup> The racialization of crime and the criminalization of African-Americans has a long history, but it appeared with renewed vigor during the late 1960s and 1970s as African-Americans' presence in places of confinement, particularly in northern, urban centers grew dramatically after World War II. Media representations often conflated blackness, indigeneity, and immigrant status with criminality. Many newspapers, for instance, ran articles that dwelt on the marked, racial "otherness" of offenders and prisoners even if they did not explicitly attribute causal connections between these categories and criminal conduct. The image of the unrepentant, incorrigible inmate or perpetrator of terrible crimes gradually became less white over this period and less amenable to rehabilitation and societal reinclusion upon release.<sup>73</sup> These latter aspects pointed up how

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<sup>72</sup> This can perhaps be seen most clearly in the race-less categories of actuarial penology and criminology, which are in this respect a corollary to other color-blind state policies that became more common in the wake the civil rights movements of the 1960s and 1970s. See, for instance, Naomi Murakawa and Katherine Beckett, "The Penology of Racial Innocence: The Erasure of Racism in the Study and Practice of Punishment," *Law & Society Review*, 44 (September-December 2010), 695–730.

<sup>73</sup> Phillip Jenkins, *Decade of Nightmares: The End of the Sixties and the Making of the Eighties* (New York: Oxford University Press, 2006), 12-16, 41-46, 134-151, 236-243; Loïc Wacquant, "Deadly Symbiosis: When Ghetto and Prison Meet and Mesh," *Punishment & Society*, 3 (January 2001), 95-133; Dario Melossi, "Changing Representations of the Criminal," *British Journal of Criminology*, 40 (Spring 2000), 296-320; John M. Sloop, *The Cultural Prison: Discourse, Prisoners and Punishment* (Tuscaloosa: University of Alabama, 1996), 62-131.

deeply the postwar therapeutic penal reforms rested on the assumption of the whiteness of offenders as the preferred targets of social reform and recuperation. Moreover, this whiteness, while in many respects the product of local relations and perceptions, was also, in the words of Marilyn Lake and Henry Reynolds, “a transnational form of identification.”<sup>74</sup> The revalorization of incarceration as a major social policy across the globe since the 1970s occurred at precisely the same time that global racial formations underwent massive transformation and must be seen, at least in part, as a response by dominant, white elites and constituencies to these changes.<sup>75</sup> The outpouring of penal knowledge at this time was, in this sense, also part of the discourse on race in the wake of civil rights movements.

Much like the effects of the civil rights movements of the late-twentieth century on many other institutions, the influence of prisoners’ rights and rehabilitation produced long-lasting effects in the arrangement of penal power. While not unraveling entirely, the reforms of the 1940s and 1950s, which had insulated penal bureaucracies and introduced various recuperative penal practices, nevertheless loosened significantly from the late 1960s onward as

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<sup>74</sup> Marilyn Lake and Henry Reynolds, *Drawing the Global Colour Line: White Men's Countries and the International Challenge of Racial Equality* (Cambridge: Cambridge University Press 2008), 3.

<sup>75</sup> Amy E. Lerman and Vesla M. Weaver, *Arresting Citizenship: The Democratic Consequences of American Crime Control* (Chicago: University of Chicago Press, 2014); Becky Pettit, *Invisible Men: Mass Incarceration and the Myth of Black Progress* (New York: Russell Sage Foundation, 2012); Michael Tonry, *Punishing Race: A Continuing American Dilemma* (New York: Oxford University Press, 2011); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010); Heather Ann Thompson, “Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History,” *Journal of American History*, (December 2010), 703-734; Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham: Duke University Press, 2009); Glenn C. Loury with Pamela S. Karlan, Loïc Wacquant and Tommie Shelby, *Race, Incarceration, and American Values* (Cambridge: MIT Press, 2008); Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation Publications, 2007); Vesla Mae Weaver, “Frontlash: Race and the Development of Punitive Crime Policy,” *Studies in American Political Development*, 21 (Fall 2007), 230-265. For an overview of global imprisonment trends, see Penal Reform International, *Global Prison Trends, 2015* (London: Penal Reform International, 2015), available at <http://www.penalreform.org/wp-content/uploads/2015/04/PRI-Prisons-global-trends-report-LR.pdf>; Roy Walmsley, “Global Incarceration and Prison Trends,” *Forum on Crime and Society*, 3 (December 2003), 1-14.

penal authorities in numerous jurisdictions struggled to reassure the general public of the efficacy of their policies and convincingly explain simultaneous increases in crime rates, prison unrest and escapes from custody. These problems engulfed penal systems in endemic controversy that did not fade away as it had done during the wave of unrest in the early 1950s. In John Pratt's words, "it was as if scandal had become systematic, symptomatic of the way in which prisons were no longer performing the functions the public expected of them."<sup>76</sup> This situation had two effects: it eroded the hegemonic voice of leading penal officials, especially those most closely identified with the postwar reforms and created deep fissures in the legitimacy of state penal arrangements.

This crisis had even more profound effects within prisons. As challenges from politicized prisoners and unionized guard forces mounted, the project of rehabilitation also suffered devastating critiques from scholars, activists and politicians on both the political right (who saw it as naïve and lenient) and left (who claimed it was repressive and racist). Many of its previous advocates openly admitted to its flaws, especially its apparent inability to reduce recidivism.<sup>77</sup> This rather sudden shift left prisons without a plausible, organizing discourse, which resonated with actors both inside and outside the prison. Such attacks on rehabilitation disrupted penal authorities' ability to craft "meaningful account of itself, of what is being done in prison, how,

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<sup>76</sup> Pratt, *Punishment and Civilization*, 153.

<sup>77</sup> Francis A. Allen, *The Decline of the Rehabilitative Ideal: Penal Policy and Social Purpose* (New Haven: Yale Univ. Press, 1981); Mark Colvin, *The Penitentiary in Crisis: From Accommodation to Riot in New Mexico* (Albany: SUNY Press 1992); Mark Findlay, *The State of the Prison: A Critique of Reform* (Sydney: Michellsearch, 1982); Finnane, *Punishment in Australian Society*; Gottschalk, *The Prison and the Gallows*; Jacobs, *Stateville*; Irwin, *Prisons In Turmoil*; Lynch, *Sunbelt Justice*; Perkinson, *Texas Tough*; Robert Martinson, "What Works?--Questions and Answers about Prison Reform," *The Public Interest*, 35 (1974), 22-54; Jessica Mitford, *Kind and Usual Punishment: The Prison Business* (New York: Vintage, 1974); Perkinson, *Texas Tough*; Pratt, *Punishment and Civilization*; Joe Sim, *Punishment and Prisons: Power and the Carceral State* (London: Sage 2009); Roman Tomasic and Ian Dobinson, *The Failure of Imprisonment: An Australian Perspective* (Sydney: Allen and Unwin, 1979); George Zdenkowski and David Brown, *The Prison Struggle: Changing Australia's Penal System* (Ringwood: Penguin Books, 1982).

and with what effect.”<sup>78</sup> This problem extended from leadership positions in penal agencies and executive cabinets down to the cellblock. Any review of the sociologies of prisons published during the 1970s and early 1980s reveals the profound pessimism that surrounded the field. Hopeful statements about the potential to reform offenders, so common a few decades before, still existed among some practitioners in the mid-1970s, but rehabilitation advocates were far more defensive and modest about its prospects.<sup>79</sup> More significant, the resources dedicated to rehabilitation and community corrections programs, already insufficient according to many advocates, dwindled as custodial concerns became more prominent.

Writing in 1980, sociologist and former prisoner John Irwin claimed that once the unifying discourse of rehabilitation declined, prison society drastically changed: prisons fragmented internally, with prisoners forming numerous smaller cliques and gangs and even smaller groups of friends and associates who withdrew from public spaces in prisons out of fear.<sup>80</sup> Guards also withdrew. As the system of rewards and punishments associated with rehabilitation receded, guards increasingly lacked ways to control prisoners short of punishing or isolating their bodies. This fragmented prison became more unstable, violent and difficult to control. Prison administrators, especially at the prodding of guards, came rely more on various forms of segregation and isolation to control prisons. As scholar Jonathan Simon has argued, the resulting prison resembled more of a “toxic-waste dump” where prisoners are simply

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<sup>78</sup> Charles Bright, *The Powers that Punish: Prison and Politics in the Era of the "Big House," 1920-1955* (Ann Arbor: Univ. of Michigan Press 1996), 14.

<sup>79</sup> For instance, see Michael S. Serrill, “Is Rehabilitation Dead?” *Corrections Magazine*, 5 (May-June 1975), 3-12, 21-32.

<sup>80</sup> Irwin, *Prisons In Turmoil*, 181-248.

managed according to the dictates of security.<sup>81</sup> Such a “prison lacks an internal regime,” according to Simon.<sup>82</sup>

Another sign of this fragmentation was the increasingly prominent presence of unionized guard forces in each state. Prior to the 1970s, the influence of officer unions was either subdued (New South Wales) or simply non-existent (Pennsylvania). While many guards did not accept the claims of rehabilitation advocates, the postwar reforms were initially flexible enough to accommodate many of their traditional control prerogatives. By the late 1960s, however, the trajectory of rehabilitation and improvements in the status of prisoners directly conflicted with many officers’ sense of proper prison order. In many cases, the recent changes threatened officers’ sense of safety. These concerns, coupled with demands for greater remuneration, became powerful organizing messages for officers. In Pennsylvania, officers were not permitted to form a collective bargaining unit until the early 1970s. Prior to that time they had an unofficial, but influential trade association. Once they gained this right, along with other public employees, they immediately formed a union and began to press their objections to official policy. Throughout the ensuing years, the officers’ union exerted a powerful

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<sup>81</sup> Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2006), 152-153. See also Mark Brown and John Pratt, *Dangerous Offenders: Punishment and Social Order* (London: Routledge, 2000); Theodore Caplow and Jonathan Simon, "Understanding Prison Policy and Population Trends" in Michael H. Tonry and Joan Petersilia (eds.), *Prisons: Crime and Justice*, v. 26. (Chicago: University of Chicago Press, 1999), 63-120; Alessandro De Giorgi, *Re-Thinking the Political Economy of Punishment: Perspectives on Post-Fordism and Penal Politics* (Hampshire: Ashgate, 2006); John Dilulio, Jr. *Governing Prison: A Comparative Study of Prison Management* (New York: Free Press, 1987); Malcolm Feeley and Jonathan Simon, "The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications," *Criminology*, 30 (November 1992), 449-474; Jacobs, *Stateville*; Lorna Rhodes, *Total Confinement: Madness and Reason in the Maximum Security Prison* (Berkeley: University of California Press, 2004); Jonathan Simon, "The 'Society of Captives' in the Era of Hyper-Incarceration," *Theoretical Criminology*, 4 (August 2000), 285-308; Jonathan Simon, *Poor Discipline: Parole and the Social Control of the Underclass, 1890-1990* (Chicago: University of Chicago Press, 1993); Bert Useem and Peter Kimball, *States of Siege: U.S. Prison Riots, 1971-1986* (New York: Oxford University Press, 1991).

<sup>82</sup> *Ibid.*, 153.



counterweight to any reform proposal or policy change emanating from the leadership of the Bureau of Correction.

In New South Wales, the prison officers' union was arguably even stronger. It also had much deeper historical roots.<sup>83</sup> By the late 1960s, the union had become increasingly confrontational with the Department of Corrective Services. During Walter McGeechan's entire tenure as Commissioner of Corrective Services and those of his successors, Tony Vinson and Vern Dalton, the officers' union blocked substantive prison reform. The union staged numerous industrial actions, like labor strikes or mass sick leave calloffs, at both the state and local level. Often times, union locals walked off the job, protesting classification decisions or transfers involving specific prisoners. After 1970, no change in the prison system occurred without the active, vocal involvement of the officers' union. Many of the reforms recommended by a major royal commission in the 1970s were never implemented because of the opposition of militant unionized guards.

As these arrangements deteriorated and, a highly contentious public debate on prisons and punishment emerged, which reflected and informed the social and political struggles of the 1960s and 1970s. This visibility often exacerbated the sense of crisis inside prisons, propelling a debate on penal affairs and a massive burst in the production of penal knowledge. The vacuum of control and purpose within prisons created by the decline of rehabilitation opened the way for numerous new experiments in prison order, both official and informal as well as legal and

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<sup>83</sup> The prison officers in New South Wales were organized through the Public Service Association (PSA), which originated in the early twentieth century. The PSA affiliated with the broader union movement after World War II through the Labor Council of New South Wales. For a history of this broader movement, see Raymond Markey, *In Case of Oppression: The Life and Times of the Labor Council of New South Wales* (Marrikkville: Pluto Press, 1994).

illicit. Most of these experiments were endogenous, or mainly so, developing from existing practices and localized disputes, compromises and agreements. However, this carceral impasse also fostered greater communication between experts, administrators and activists in different jurisdictions in an effort to find new penal techniques and strategies or resistance.

### **The Structures and Strategies of Penal Transnationalism**

The postwar project of penal reform and the prisoners' rights movement each had profound transnational qualities that were also dependent on specific structures of localization.

Jurisdictional borders provided semi-closed spaces for the differentiation of penal policy and practice, but facilitated their circulation because they provided actors with a ready-made category of comparison and research. Such borders helped actors comparatively assess the value of their own practices, mark their relationship to global standards, and search for new methods to emulate or avoid. This global patchwork of borders produced a specific version of penal transnationalism, but also often involved interactions between subnational jurisdictions.

This spatialization of punishment has historically oscillated between periods of intense, even parochial, differentiation and moments of greater openness and exchange. These countervailing forces often occurred in different ways at the same time within a state's prison system. Comparisons across borders raised questions about the flexibility of imported techniques, whether they adequately fit existing legal and administrative regimes and whether local actors would accommodate or reject them. These activities, thus, reaffirmed the significance of jurisdictional borders as much as they transgressed them.

The rehabilitation practices adopted after World War II fostered the growth of networks of exchange, influence and esteem among penal professionals across the globe who amassed a body of comparative penal knowledge. This progressive reform project empowered a new generation of penal reformers and administrators in specific jurisdictions and increased the influence of professional associations, intergovernmental organizations and non-governmental organizations, like the American Correctional Association, the International Penal and Penitentiary Commission and the United Nations Congress on the Prevention of Crime and Treatment of Offenders. These people and organizations spread many ideas and practices of associated with rehabilitation, like classification, individualized treatment, group therapy and prison-based education. The core practices in this reformatory project, especially classification, generated enormous amounts of data, which fed research projects and supported the growth of the publishing capacity of penal bureaucracies and these related organizations.

This flow of this traffic in practices and knowledge, crosscutting jurisdictions, was highly disparate in the directions and channels it followed and clearly reflecting the disproportionate influence of some actors over others. Much like the endpoint of Daniel Rodgers's examination of transnational public of social politics in *Atlantic Crossings*, researchers and state officials in most jurisdictions in the United States were either unaware of developments in penal practices beyond American borders or saw them as being of little significance for addressing problems in the U.S.<sup>84</sup> However, within American borders, certain jurisdictions within the U.S. that had

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<sup>84</sup> Rodgers notes that after World War II, a pervasive sense of American exceptionalism in the area of social policy returned after several decades of greater mutual interest and interaction between American intellectuals and practitioners Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge: Belknap Press, 1998), see especially 485-508.

reputations as penal innovators exerted disproportionate influence on penal systems in most of the other American states and counties. Likewise, some private consultants, like the Kansas City-based, Correctional Service Group, and public research institutes, like the National Institute of Corrections, helped spread many classification and prison management techniques that became commonplace by the 1990s. For a state like New South Wales, however, the practice of looking overseas for examples of political and policy innovation, was longstanding, reflecting a colonial relationship with the U.K. and its attendant asymmetric effects of knowledge production.<sup>85</sup> Over the course of the late-twentieth century, the lure of American penal practices became stronger in New South Wales than they had ever been. Correctional officials began to see penal practices and experiences in American jurisdictions as holding greater value and resonance with local concerns than examples in the United Kingdom. Correctional officials and investigators representing official inquiries undertook numerous study tours of the U.S., the U.K., Canada and a few other European countries in search of new penal techniques. By the 1980s, these trips focused more on American jurisdictions, especially California and the U.S. Bureau of Prisons.

The prisoners' rights movement was also a global phenomenon, appearing in numerous places around the world, but also drawing sustenance and inspiration from similar democratizing and anti-colonial forces. The visibility of the prisoners' rights movement in certain American states, especially California and New York, focused the attention activists and

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<sup>85</sup> The classic Australia text on this phenomenon, often referred to as the "cultural cringe," is A.A. Phillips, *The Australian Tradition: Studies in Colonial Culture* (Melbourne, Cheshire, 1958). For a more recent and penetrating discussion of post-colonial knowledge production, see Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton: Princeton University Press, 2000).

confined people in other American states and countries with the hope that similar strategies could be developed in their jurisdictions. The symbolic significance of some figures and events, like the prison radical George Jackson and the rebellion and massacre at Attica, travelled far beyond American borders.<sup>86</sup> Prison activist publications in New South Wales for instance, regularly reported on prominent American prisoners' rights cases and the efforts of prisoners trying to forge other methods of collective resistance. Prison activists in Pennsylvania often framed their activities as part of a global fight against capitalist and racist oppression. Challenging racist prison practices in Pittsburgh, Pennsylvania was part of the same struggle against the forces of oppression in Vietnam. Opening up a narrative of recent penal change to the role of global connections and influences like these reveals larger, diverse audiences for many familiar texts, inquiries and events that writers have often situated too tightly within narratives shaped by an uncritical methodological nationalism.<sup>87</sup>

The comparative vision that some contemporary actors developed also highlighted the limits of borrowing from the American prisoners' rights movement and underscored the need to pursue more fruitful strategies, attuned to local circumstances. As George Zdenkowski and David Brown argued in 1970s and 1980s, prison activists in New South Wales, and Australia in

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<sup>86</sup> The death of George Jackson at San Quentin in August 1971 in fact played an important role in radicalizing and uniting prisoners at Attica in western New York a few weeks before they rebelled. See New York State Special Commission on Attica, *Attica: The Official Report of the New York State Special Commission on Attica* (New York, Bantam Books, 1972), 106-107, 139-140. As Jackson began his escape attempt at San Quentin, he was reported to have said "Gentlemen, the dragon has come" in reference to Ho Chi Minh. See, Lori B. Andrews, *Black Power, White Blood: The Life and Times of Johnny Spain* (Philadelphia: Temple University Press, 1999), 158.

<sup>87</sup> For an assessment and critique of methodological nationalism, see Daniel Chernilo, "The Critique of Methodological Nationalism: Theory and History," *Thesis Eleven*, 106 (August 2011), 98-117; Daniel Chernilo, "Social Theory's Methodological Nationalism Myth and Reality," *European Journal of Social Theory*, 9 (February 2006), 5-22; Craig Calhoun, "Nationalism, Political Community and the Representation of Society: Or, Why Feeling is Not a Substitute for Public Space," *European Journal of Social Theory*, 2 (May 1999), 217-231.

general, encountered a number of hurdles that were not present in the United States.<sup>88</sup> Chief among them was the lack of any constitutional provisions like Eighth and Fourteenth Amendments to the U.S. Constitution that provided the basis for the type of litigation that had become a central strategy in American prisoner activism. Although prisoners petitioned courts for help in a number of different ways, the conditions underwriting the successes of this strategy in the U.S. were simply incommensurate with the legal environment of New South Wales. Thus, prison activists in New South Wales often campaigned for the establishment of inquiries, especially royal commissions, to investigate abuses in prison. Depending on the breadth of their terms of reference, royal commissions had greater license to investigate matters than courts involved in most prison litigation. They could compel testimony from a potentially limitless range of people, access official records and conduct broader research than one would typically find in a civil suit in the U.S. or Australia. Activists in New South Wales also pushed for lesser official inquiries and investigations, especially through the state's ombudsman's office. These avenues were largely unavailable to activists in the U.S., and it meant that the Australian activists' organizing strategies differed, especially in the types of knowledge they produced for inquiries and the examples they drew upon from inquiries in other countries, particularly the United Kingdom. Yet, it was not the case that these activists uncritically used these established institutional structures. For example, the Prisoners Action Group, the main activist organization of former prisoners in New South Wales, considered creating their own inquiry to operate parallel to the Royal Commission into New South Wales

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<sup>88</sup> George Zdenkowski, "Judicial Intervention in Prisons," *Monash University Law Review*, 6 (June 1980), 294-330; Zdenkowski and Brown, *The Prison Struggle*, 112-132; George Zdenkowski, "New South Wales Prisoner Denied Court Access," *Legal Service Bulletin*, 8 (April 1983), 88.

Prisons because they did not trust an official inquiry established by the same government that controlled the prisons. Even though they eventually participated, they were mindful of the duplicity and depoliticizing qualities of official inquiries from their readings of examples of riot commissions in the U.S. and Northern Ireland. This transnational traffic, lesson-drawing and inspiration, means that the prisoners' rights movement, in its many iterations and interrelationships, should be considered a part of the recent reimaginings of the activism of this era as the "global 1960s."<sup>89</sup>

However, crafting an account of recent penal change attentive to these larger transjurisdictional and transnational qualities is challenging because of the persistence of narrative frameworks organized by national and jurisdictional borders. Even many works that do consider changes across multiple countries have a tendency to rely on frameworks that downplay or simply ignore evidence of past or contemporary interconnections. A recent example of this is in Marie Gottschalk's excellent account of the rise of the American carceral state since the 1970s, *The Prison and the Gallows*.<sup>90</sup> Gottschalk reviews recent changes in penal politics in a number of other countries, especially the U.K., as a way to highlight the unique determinants of mass imprisonment in the U.S. For instance, she argues that the main reason why the prisoners' rights movement in other countries presented less of a challenge for well-

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<sup>89</sup> Jeremi Suri, *Power and Protest: Global Revolution and the Rise of Détente* (Cambridge: Harvard University Press, 2005); Martin Klimke, *The Other Alliance: Student Protest in West Germany and the United States in the Global Sixties* (Princeton: Princeton University Press, 2009); Timothy Scott Brown, *West Germany and the Global Sixties: The Anti-Authoritarian Revolt, 1962–1978* (Cambridge: Cambridge University Press, 2013); Samantha Christiansen and Zachary A. Scarlett (eds.), *The Third World in the Global 1960s* (New York: Berghahn Books, 2013); Bradley R. Simpson, "Self-Determination, Human Rights, and the End of Empire in the 1970s," *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, 4 (Summer 2013), 239-260; Timothy Scott Brown and Andrew Lison (eds.), *The Global Sixties in Sound and Vision: Media, Counterculture, Revolt* (New York: Palgrave Macmillan, 2014).

<sup>90</sup> Gottschalk, *The Prison and the Gallows*.

entrenched penal authorities was because they lacked a large civil rights movement and racial framings in penal politics, which amplified the issue of prisons in the U.S. For the most part, I agree with this assessment.<sup>91</sup> However, Gottschalk relies heavily on a concept of American exceptionalism and a comparative method, which leaves the global aspects of the penal transformations she describes unexplored. There can be no doubt about the sheer size and rapid growth of imprisonment in the U.S. during the period Gottschalk describes, and she correctly points out, as many others have, that the American penal leviathan is unparalleled in Western democracies.<sup>92</sup> Yet, the methodological choices she makes obscure the movement of carceral discourse and practices across international borders and does not account for how actors perceived these relationships.

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<sup>91</sup> Despite considering penal politics in the U.K., Gottschalk does not mention Northern Ireland. From the mid-1970s to the early 1980s, Irish republican paramilitaries pursued numerous high profile campaigns over the issue of whether republican prisoners would be treated as criminals or political prisoners. These protests garnered huge support in Northern Ireland and abroad, culminating the hunger strikes of 1981, which pathed the way for the electoral success of Sinn Fein. Bobby Sands, an imprisoned member of the Provisional Irish Republican Army, was elected to the British House of Commons on the Anti H-Block/Armagh Political Prisoner party line a month before he died on hunger strike at HM Prison Maze. The party ballot line – Anti H-Block – was a direct reference to the H shaped, maximum-security control units the British built to house prisoners like Sands. Much like Gottschalk’s argument about the larger political salience of race in the U.S. at the height of the prisoners’ rights movement, the republican cause, Irish nationalism and Catholicism provided a similar larger political discourse and transformed discussions about crime, criminality and punishment into questions of discrimination, imperialism and repression. Despite this, the province has not had the same massive increase in prison populations seen in the U.S. For an overview of these issues, see Tim Pat Coogan, *On the Blanket: The Inside Story of the IRA Prisoners' "Dirty" Protest* (New York: Palgrave Macmillan, 2002); David Beresford, *Ten Men Dead: The Story of the 1981 Irish Hunger Strike* (New York: Atlantic Monthly Press, 1989); Bobby Sands, *One Day in My Life* (London: Pluto Press, 1983).

<sup>92</sup> Of course, this begs the question of why Western democracies are always the comparative pivots for narratives of American penal exceptionalism. Gottschalk is hardly alone in this regard. When compared to the size and conditions of confinement in Russia, for instance, the United States is not so exceptional. American prisoners certainly retain greater rights while confined than their Russian counterparts. See William Alex Pridemore, *Ruling Russia: Law, Crime, and Justice in a Changing Society* (Lanham: Rowman & Littlefield, 2005); Laura Piacentini, *Surviving Russian Prisons: Punishment, Economy and Politics in Transition* (Cullompton: Willan, 2004). For a now classic comparison of Russian and American penal policy, see Nils Christie, *Crime Control as Industry: Toward Gulags Western Style*, 3<sup>rd</sup> ed. (London: Routledge 2000). For a much older comparison of Russian prisons with those of another Western democracy from the perspective of a prisoner who spent time on both, see Petr Alekseevich Kropotkin, *In French and Russian Prisons* (New York: Schocken Books, 1971, org. 1887).



There are very few works in the interdisciplinary field of contemporary prison studies that empirically trace the politics and processes involved in the circulation of penal practices. Most extant examples of penal history that address this concern much earlier periods, analyzing, for instance, the spread of the prison itself.<sup>93</sup> Since these earlier works are often situated in broader transformational moments (like the late eighteenth century), it is somewhat curious that there are not many similar works for our current moment of profound socioeconomic and cultural change. There are a number of recent studies that explore the reasons for the exceptional scale of imprisonment in the U.S.<sup>94</sup> as well as some that analyze broad transformations across different countries that shaped current penal policy, but they often do so at an abstract level of analysis. Like Gottschalk, they also tend to treat these various places as self-contained units, while noting similarities across them.<sup>95</sup> Works, like David Garland's *Culture of Control* and John Pratt's *Punishment and Civilization*, for instance, emphasize the parallel development of many penal practices, while failing to explore how such practices also traveled from place and how actors interacted concerning these issues.<sup>96</sup> While

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<sup>93</sup> For some recent examples, see Mary Gibson, "Global Perspectives on the Birth of the Prison," *American Historical Review*, 116 (October 2011), 1040-1063; Taylor C. Sherman, "Tensions of Colonial Punishment: Perspectives on Recent Developments in the Study of Coercive Networks in Asia, Africa and the Caribbean," *History Compass*, 7 (May 2009), 659-677; Christian G. De Vito and Alex Lichtenstein, "Writing a Global History of Convict Labour," *International Review of Social History*, 58 (August 2013), 285-324.

<sup>94</sup> For example, James Q. Whitman, *Harsh Justice: Criminal Punishment and the Widening Divide Between America and Europe* (New York: Oxford University Press, 2005).

<sup>95</sup> For two good examples of this, see these collections of essays, which explore recent penal policy decisions in several different countries. Michael Tonry (ed.), *Crime, Punishment and Politics in Comparative Perspective* (Chicago: University Of Chicago Press, 2007); John Pratt, David Brown, Mark Brown, Simon Hallsworth and Wayne Morrison (eds.), *The New Punitiveness: Trends, Theories, Perspectives* (Cullompton: Willan Publishing, 2005).

<sup>96</sup> David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2001); Pratt, *Punishment and Civilization*. See also John Pratt, "The Globalization of Punishment," *Corrections Today*, 64 (February 2002), 64-66. A common critique of these works has been that they do not account for American penal exceptionalism. For Garland's response, see David Garland, "Beyond the Culture of Control," *Critical Review of International Social and Political Philosophy*, 7 (May 2007), 160 - 189.

these authors rightly cite many broadly shared aspects of political economy, social policies, imperial histories and language as crucial determinants of penal similarities, they often make specific claims about penal practices based on their reading of some of the very material that increasingly circulated at this time – the reports of penal bureaucracies and prison inquiries.

Specific institutional structures, legal frameworks and political contexts varied considerably between jurisdictions and shaped the local character of penal reform and prisoner activism, but it did not isolate these actors who consistently looked afar for solutions to vexing problems and situations, which perhaps more than anything, propelled the movement of penal knowledge and practice. Contextual differences, their limits and affordances, were in fact well-known to many actors at the time and subject to considerable debate and comparative analysis in their projects of either challenging penal authorities or reasserting control and authoritative expertise.

### **The Production and Flow of Penal Knowledge**

From the mid-1960s onward, however, the range of people creating, reading and exchanging a growing body of penal knowledge grew considerably and outstripped the control of penal agencies. This diversity of participants (and their differing standpoints) included many individuals, organizations and coalitions that had previously not worked on prison matters. Perhaps the most important of these new voices belonged to imprisoned people themselves. Of course, some incarcerated people had always commented on their plight, but until the late

twentieth-century, their voices were subject to suffocating control by prison administrators.<sup>97</sup> The venerable, common law notion of attainder or civil death, hindered the ability of prisoners to legally challenge prison authorities or simply to be acknowledged in public forums like the press.<sup>98</sup> Ironically, many of the new postwar rehabilitation programs and privileges, which aimed to normalize prisons and encouraged greater self-reflection and expression, also provided incarcerated people with tools to criticize their confinement. The extent of such reforms and the availability of programs can easily be overstated, but they increasingly opened avenues for incarcerated people to voice their concerns through writing and education.<sup>99</sup>

Judicial proceedings and prison inquiries not only became more frequent during this period, but also demonstrated a greater openness toward prisoner testimony. Prisoners frequently testified during litigation or at inquiries in ways that had not occurred for many decades. Yet, being given the chance to testify did not end the efforts of some people to discredit prisoners accounts based on their personal histories of criminal behavior. Certain

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<sup>97</sup> On the control of communication by prisoners, see Yvonne Jewkes and Helen Johnston, "'Cavemen in an Era of Speed-of-Light Technology': Historical and Contemporary Perspectives on Communication within Prisons," *The Howard Journal of Criminal Justice*, 48 (May 2009), 132-143.

<sup>98</sup> Rebecca M. McLennan, "The Convict's Two Lives: Civil and Natural Death in the American Prison," in David Garland, Randall McGowan, and Michael Meranze (eds.), *America's Death Penalty: Between Past and Present* (New York: New York University Press, 2011), 191-219; David Brown and Meredith Wilkie (eds.), *Prisoners as Citizens: Human Rights in Australian Prisons* (Sydney: Federation Press, 2002); Mirjan R. Damaska, "Adverse Legal Consequences of Conviction and Their Removal: A Comparative Study," Part I *Journal of Criminal Law, Criminology and Police Science*, 59 (September 1968), 347-360; Mirjan R. Damaska, "Adverse Legal Consequences of Conviction and Their Removal: A Comparative Study," Part II, *Journal of Criminal Law, Criminology and Police Science*, 59 (December 1968), 542-568. Of course, slavery has long been structured on similar notions of civil or social death. For a classic overview, see Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982).

<sup>99</sup> For an illuminating discussion of how literature and writing programs dovetailed with prisoner activism see, Bernie Matthews, *Intractable: Hell has a Name, Katingal: Life inside Australia's First Super-Max Prison* (Sydney: Pan Macmillan, 2006); Hamm, *Rebel and a Cause*; Cummins, *The Rise and Fall of California's Radical Prison Movement*; Rod Hay, *Catch Me If You Can: The Life and Times of Darcy Dugan* (Sydney: Pan Macmillan, 1992). For an equally good overview on the how rehabilitative language was applied to more authoritarian prison regimes in Illinois, Arizona and Texas, see Jacobs, *Stateville*; Lynch, *Sunbelt Justice*; Perkinson, *Texas Tough*, respectively.

topics covered in such proceedings, especially accounts of violence and official misconduct, also raised difficult epistemological questions about the nature of truth, power and vulnerability in prison and the interests served by such forums.<sup>100</sup> If one believed an inquiry was merely an officious cover-up, a means to depoliticize an incidence of official misconduct or abuse, what did it then mean to testify to such abuse? What were the risks? Violence, like sexual assault, stabbings and beatings, which often came up in prisoner testimony, were often difficult to represent even if they were acknowledged at all. As historian Bain Attwood has argued, “The

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<sup>100</sup> The literature on state inquiries is vast. Some notable examples include, Matthew R. Keller, “Commissioning Legitimacy: The Global Logics of National Violence Commission in the Twentieth Century,” *Politics & Society*, 37 (September 2009), 352-396; Lindsey Lupo, *Flak-Catchers: One Hundred Years of Riot Commission Politics in America* (Lanham: Lexington Books, 2011); Oz Frankel, *States of Inquiry: Social Investigations and Print Culture in Nineteenth-Century Britain and the United States* (Baltimore: Johns Hopkins University Press, 2006); David William Cohen and E. S. Atieno Odhiambo, *The Risks of Knowledge: Investigations into the Death of the Hon. Minister John Robert Ouko in Kenya, 1990* (Oxford, Ohio: Ohio University Press; 2004); Pratt and Gilligan (eds.), *Crime, Truth and Justice: Official Inquiry, Discourse, Knowledge*; George Gilligan, “Royal Commissions of Inquiry,” *Australian and New Zealand Journal of Criminology*, 35 (2002), 289-307; Patrick Weller (ed.), *Royal Commissions and the Making of Public Policy* (Melbourne: Macmillan, 1994); D.H. Borchart, *Commissions of Inquiry in Australia: A Brief Survey* (Melbourne: LaTrobe University Press, 1991); Adam Ashforth, *The Politics of Official Discourse in Twentieth-century South Africa* (Oxford: Oxford University Press, 1990); Adam Ashforth, “Reckoning Schemes of Legitimation: On Commissions of Inquiry as Power/Knowledge Forms,” *Journal of Historical Sociology* 3 (March 1990) 1-22; George Zdenkowski and David Brown, *The Prison Struggle: Changing Australia's Prison System* (Ringwood: Penguin, 1982); Frank Burton and Pat Carlen, *Official Discourse: On Discourse Analysis, Government Publications, Ideology and the State* (London: Routledge and Kegan Paul, 1979); Michael Lipsky and Daniel Olson, *Commission Politics: The Profiling of Racial Crisis in America* (New Brunswick: Transaction, 1977); Anthony M. Platt (ed.), *The Politics of Riot Commissions, 1917-1970: A Collection of Official Reports and Critical Essays* (New York: Macmillan, 1971); Carl Atkins, “The Riot Commission Report and the Notion of ‘Political Truth’,” *Social Science Quarterly*, 49 (1968), 469-473. Likewise, the literature discussing epistemological issues attending testimony witnessing and trauma is also large. Some examples include Susannah Radstone and Bill Schwarz (eds.), *Memory: Histories, Theories, Debates* (New York: Fordham University Press, 2010); Bain Attwood, “In the Age of Testimony: The Stolen Generations Narrative, ‘Distance’ and Public History,” *Public Culture*, 20 (Winter 2008), 75-95; Deborah Posel, “History as Confession: The Case of the South African Truth and Reconciliation Commission,” *Public Culture*, 20 (Winter 2008); Michael Humphrey, “From Victim to Victimhood: Truth Commissions and Trials as Rituals of Political Transition and Individual Healing,” *The Australian Journal of Anthropology*, 14 (2003), 171-187; Katharine Hodgkin and Susannah Radstone (eds.), *Contested Pasts: The Politics of Memory* (London: Routledge, 2003); Susan Sontag, *Regarding the Pain of Others* (New York: Farrar, Straus and Giroux, 2003); Bain Attwood and Fiona Magowan (eds), *Telling Stories: Indigenous History and Memory in Australia and New Zealand* (Sydney: Allen & Unwin, 2001); Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (London: Routledge, 2001); Dominick LaCapra, *Writing History, Writing Trauma* (Johns Hopkins University Press, 2001); Shoshana Felman and Dori Laub, *Testimony: Crises of Witnessing in Literature, Psychoanalysis and History* (New York: Routledge, 1992); Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press, 1985).

very nature of trauma means that such an event or experience cannot be registered properly at the time it occurs but only later, often much later; thus, retrospective rather than contemporary sources are often the truest archive of the past.”<sup>101</sup> It is perhaps not surprising then that many of the tumultuous events of the 1970s became the subject of prisoner memoirs, often written long after the events in question. Despite the inherent limitations of accounts produced by inquiries, just the activity of these inquisitive processes and the testimony they produced was significant for the novelty of its breadth and the interest it generated. Compared with the stifling practices of the previous decades, forums like courts and inquiries provided prisoners with a means to exercise a limited, but novel “discursive citizenship.”<sup>102</sup>

In addition to acknowledging prisoners’ views and experiences, judicial proceedings and inquiries influenced many contemporary understandings of prisons, those who spend time in them and the limits and possibilities for future change. The proceedings of the 1970s were certainly not unprecedented, but they were more conflictual and controversial than the relatively few investigations that had occurred since World War II, and they drew greater sustained attention from print and broadcast media. Moreover, unlike press coverage of the mid-century riot investigations, journalists and media organizations in the 1960s and 1970s were much more thorough and critical in their coverage of prisons. In addition to traditional media sources, numerous alternative press titles and activist publications emerged during this

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<sup>101</sup> Bain Attwood, “In the Age of Testimony: The Stolen Generations Narrative, ‘Distance,’ and Public History,” *Public Culture*, 20 (Winter 2008), 81.

<sup>102</sup> Finnane, *Punishment in Australian Society*, 144-147; David Brown, “Giving Voice: The Prisoner and Discursive Citizenship” in Thalia Anthony and Chris Cunneen (eds.), *The Critical Criminology Companion* (Leichhardt: Hawkins Press, 2008), 228-239; David Brown, “Prisoners as Citizens” in David Brown and Meredith Wilkie (eds.), *Prisoners as Citizens: Human Rights in Australian Prisons* (Sydney: Federation Press, 2002), 308-325.

time, some of which were entirely dedicated to penal issues and far more outspoken and radical. Together, these official proceedings and media placed numerous aspects of the contemporary conditions of confinement up for public debate and inspection. The narratives they generated thrust many of the routine dilemmas, concerns, tasks and fears that confined people dealt with on a daily basis into broader circulation for audiences often ignorant of such matters. The level of detail in such accounts and the incorporation of the perspectives of confined people and prison guards departed significantly from the tightly-controlled public statements and publications of state penal bureaucracies. The threat of rape and sexual exploitation, living with or in the presence of profound mental illness or even the difficulties of satiating hunger and thirst while imprisoned became topics of public knowledge about prisons during these years, disrupting the anodyne veneer of official reports and mission statements.

These critical forums and their products formed highly productive nodes in a rapidly growing public of penal discourse during the 1970s and early 1980s, often summarizing critical trends in professional circles, granting legitimacy to new advocates and their views and providing platforms to directly challenge established penal authorities. These forums were also deeply interconnected and their products imbricated with links to events and practices over multiple jurisdictions and many years. Legal cases and official inquiries arose out of unique local histories and circumstances, but they also formed constitutive parts of a larger transnational governance structure, a network of similar institutional forums, canvassing similar issues in diverse locales.<sup>103</sup> Written documents, reports from inquiries and penal agencies, published

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<sup>103</sup> Matthew R. Keller, "Commissioning Legitimacy: The Global Logics of National Violence Commission in the Twentieth Century," *Politics & Society*, 37 (September 2009), 352-396; Oz Frankel, *States of Inquiry*.

scholarly and journalistic articles and books, the memoirs of prisoners and activist publications, often circulated through these forums. In a formal submission to the Royal Commission into New South Wales Prisons, for instance, prisoner Bernie Matthews, who was housed in a control unit, summarized numerous American and British legal cases he had collected and described the formation of the Imprisoned Citizens Union in Pennsylvania in an effort to persuade the Royal Commissioner of the need to create a greater institutional space for prisoners' voices and concerns. These documents attained a certain level authority, legitimacy and prestige as valued penological items in a way that they would not have had in the recent past, which aided in their movement, propelling them through social and physical space.<sup>104</sup>

Many of the reports written by inquiries, bureaucracies, researchers and other interested parties, resembled documents produced in previous periods of heightened penal reform in that they had reflexive and critical qualities, offering a guide for perceiving and understanding prisons and penal policy as well as their problems and possible remedies. In addition, penal bureaucracies, like many other public agencies at this time, came under increasing pressure to create uniform standards, formally document their activities, disseminate annual reports and budgets and submit to independent audits. Such documents included commentary, analysis and explanations about the state of penal philosophy and practice, the organizational structure and management procedures as well as proscriptive advice and recommendations for new normative standards. Linguistic anthropologist Greg

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<sup>104</sup> Because of an emphasis on content, interpretation, and discourse, scholars have often overlooked the qualities of documents as objects and historical artifacts in their own right and the ways in which they constituted and "acted" within their contexts. See Annelise Riles (ed.), *Documents: Artifacts of Modern Knowledge* (Ann Arbor: University of Michigan Press, 2006); Ben Kafka, "Paperwork: The State of the Discipline," *Book History*, 12, (2009), 340-353; Matthew S. Hull, "Documents and Bureaucracy," *Annual Review of Anthropology*, 41, (2012), 251-267.

Urban refers to discourse like this as “metaculture” or “culture that is about culture.”<sup>105</sup> As Urban argues, “The interpretation of culture that is intrinsic to metaculture...focuses attention on the cultural thing, helps to make it an object of interest, and, hence, facilitates its circulation.”<sup>106</sup> Like previous moments of significant penal reform, critiques, new proposals and evaluations abounded with metacultural aspects, explicitly offering models to emulate or avoid, interpretive schema for thinking about policies and practices and a lexicon of words and phrases that conceptualized the issues at hand. This kind of knowledge attracted larger audiences because it addressed problems in penal arrangements, which had become widespread in many parts of the world in the 1960s and 1970s, and it canvassed numerous, possible interventions and solutions.

This “meshing of archives” over large geographic distances was especially apparent in how litigation, inquiries and commissions created opportunities for surveying practices in other jurisdictions and soliciting advice from other experts.<sup>107</sup> The visibility of certain events, especially disturbances and scandals, attracted the attention of actors in other jurisdictions who faced similar situations and concerns. Correctional officials and inmates in New South Wales and Pennsylvania sought to reconstitute order in volatile prisons by drawing lessons from other places in the wake of disruptions and scandals, which discredited local practices. This entailed extensive comparative work by prison staff and inmates, evident in the enormous quantities of knowledge they produced and transferred. The trajectories and ambit of this

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<sup>105</sup> Greg Urban, *Metaculture: How Culture Moves Through the World* (Mineapolis: Minnesota Press, 2001), 3.

<sup>106</sup> *Ibid.*, 4.

<sup>107</sup> Tony Ballantyne, *Orientalism and Race: Aryanism in the British Empire* (New York: Palgrave, 2001), 13. See also Alex Lester, “Imperial Circuits and Networks: Geographies of the British Empire,” *History Compass*, 4 (January 2006), 124-141; Zoe Laidlaw, *Colonial Connections, 1815–45: Patronage, the Information Revolution and Colonial Government* (Manchester: Manchester University Press, 2005).



circulation of penal knowledge resembled Tony Ballantyne's description of colonial knowledge production in the British empire "as a series of archives, each arising out of local concerns, but braided together, however imperfectly, by institutional exchanges, webs of personal correspondence and shared bodies of knowledge."<sup>108</sup> As this material circulated and accrued in penal archives, it shaped the parameters of future penal discourse and the imaginaries of possible reform. Every new judicial intervention or inquiry reviewed the products of previous interventions, in essence thickening the lines of influence and often increasing the authority of certain proceedings and documents over time. Historian and anthropologist, Ann Stoler, similarly argued that the products of inquiries in Dutch colonial archives "were not dead matter once the moment of their making had passed," but together formed "an arsenal of sorts that were reactivated to suit new governing strategies" whether in the locale of their production or by officials in other jurisdictions who drew upon them.<sup>109</sup>

However, this activity also raised questions about the flexibility of imported techniques, whether they adequately fit local conditions, whether existing regulations and statutes could accommodate certain changes and whether the specific political histories and intersections of race, class and punishment easily aligned over the disparate contexts of their formation. This process also highlighted how the reputation and authority of certain models and jurisdictions influenced and limited this flow of penal knowledge and practice. Reading inquiry reports from New South Wales in the 1970s and 1980s, for instance, one is immediately struck by the prominence of American penological practice at this time, evident in multiple citations and the

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<sup>108</sup> Ballantyne, *Orientalism and Race*, 9.

<sup>109</sup> Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton: Princeton University Press, 2010), 3.

presence of certain widely-circulating texts from the United States. Similarly, a correctional consultant contracted to reform Pennsylvania's classification system, noted that many state penal agencies created unworkable classification procedures by uncritically adopting models used by the U.S. Bureau of Prisons based solely on the reputation of the federal prison agency.

These processes, whether in production or exchange, clearly favored more powerful actors and hegemonic ways of understanding crime, punishment, law and governance. Prisoners and their advocates constantly had to overcome the tendency of investigators and judges to defer to the professional judgment of penal authorities or to simply think like them. Nevertheless, they recognized the authority attending to these critical forums and their products and how it could affect future prospects. Consequently, they competed for vindication, official sanction and the power to establish penal truth in these forums.

### **Organization of the Chapters**

The following chapters consider these themes by analyzing the development of specific contexts of penal reform and disputes as well as some of the problems and solutions actors explored. Some chapters address events and practices in both New South Wales and Pennsylvania, while other focus more on developments in one place. Chapter 1 examines the context and development of the postwar rehabilitation project in both New South Wales and Pennsylvania. I emphasize the flexibility and diversity of the language of rehabilitation and the many practices that it entailed, and also show that this project enhanced the authority of penal experts and social science, but also contained many of the seeds of its own demise. The latter part of the chapter demonstrates how this project changed in the 1960s, with professionals

becoming more critical of institutional confinement and attempting to create alternatives to custody and move punishment out into “the community.” The project of rehabilitation and later decarceration both had some major conflicting assumptions, which became flashpoints for scandals and helped hasten their undoing. Penal experts labeled prisoners as socially deficient and irrational but encouraged their self-expression, which they could ultimately not control. They also wanted to harness reformatory and socializing forces in communities, which often lacked them or refused the task, for decarceration programs that often became adjuncts of the prison rather than alternatives.

In Chapter 2, I analyze the interrelationship of crime, imprisonment, race and radical activism in Pennsylvania. In July 1970, a large riot at an urban Philadelphia prison exposed the poor conditions of prisons, the lack of control by authorities and cemented the image of unrepentant, black offenders into public discourse. While state and county penal authorities tried to implement liberalizing changes in prison regimes they could not quell more radical demands by prisoners and a backlash by increasingly militant, unionized guards. A series of prison staff killings by prisoners in 1973 tipped the balance of this struggle toward greater security and the use of prolonged segregation to contain dangerous prisoners and activists. In the process, prisons became highly visible, controversial institutions and the center of political disputes in the state capital and streets of Philadelphia and Pittsburgh.

I trace the development of contentious penal politics in New South Wales during the same period in Chapter 3. Much like Pennsylvania, a riot and series of reprisals at Bathurst Gaol in 1970 became the focal point for the development of a prisoners’ rights movement and dispute between the state’s major ruling parties. The campaign to establish a royal commission

investigation into the events of 1970 shaped the contours of penal politics, but did little to quell more direct resistance by prisoners. The destruction of Bathurst Gaol by fire in 1974 and the subsequent Royal Commission into New South Wales Prisons exposed the brutality of the state's prisons and created an huge opening for debate and experimentation about how the state should punish, if at all. The Royal Commission was notable for the intense publicity it generated, the forum it provided for prisoners and others and the exploration of overseas penal practices it undertook.

Overcrowding became one of the central problems besetting Pennsylvania's prisons from the late 1970s onwards. Chapter 4 focuses on this issue and how it came to be understood and experienced by state officials, prisoners and many residents living near proposed new prisons, designed to accommodate the increasing number of incarcerated people. I analyze the causes of this phenomenon as actors understood them at the time. I believe this focus helps situate the actions they took to address overcrowding and the ones they refused to consider.

The location of Chapter 5 switches back to New South Wales. It addresses the increased use of prison transfers by guards, senior prison officers, superintendents and the leadership of the Department of Corrective Services. By the late 1970s, the state constantly had a large number of prisoners in transit. In most cases, this reflected the normal operation of the classification system, but as prisons became more volatile during the 1960s and 1970s, guards began using transfers more as discipline and a way to separate prisoner activists. The routine nature of this level of movement meant that many prisoners often experienced transfers and sometimes harsh treatment during them. Yet, they also found ways to subvert this process, using the classification system and transfers as a means of traveling between institutions.

In Chapter 6, I bring both New South Wales and Pennsylvania back into focus and analyze the transformation of classification practices during the 1970s and 1980s. As rehabilitation declined, many of its core practices, like classification, also entered a period of crisis and became subject to the scrutiny of courts and inquiries. Prison officials in both jurisdictions reconstituted classification practices by searching for examples and soliciting the advice of correctional experts from beyond their borders. Classification, once a central part of treatment regimes, now became a tool for enhanced security, prison population management and the rational use of limited resources. As prisons entered into a period of increasing violence, population growth and litigation, penal authorities in both New South Wales and Pennsylvania redirected more resources toward creating robust, “objective” classification systems, but they often had to contend with challenges from groups like prison guards and people living near prisons over the power to make classification decisions. I conclude with a short postscript on the role of circulation and publicity in contemporary penal politics.

## Chapter 1: The Circuits of Penal Expertise and the Project of Prison Reform, 1940-1970

### Introduction: The Prospects of Reform

In April 1947, Leslie Nott, a senior official in the New South Wales Department of Prisons, embarked on a three month tour of penal establishments in the United Kingdom, Scotland and United States. Nott's itinerary included visits to twelve prison facilities in the U.K., four in Scotland and another twelve in the U.S. He met with a wide range of penal officials, researchers and members of professional associations before returning to Australia in July 1947. At the time of Nott's tour, the penal administration in New South Wales was in the midst of major changes, following over a decade of deterioration during the Depression and World War II.<sup>110</sup> Nott, who had been the de facto leader of Department of Prisons during the war, was leading candidate to become the new Comptroller-General of Prisons upon his return.<sup>111</sup> Nott's trip, taken at the behest of the state's Minister of Justice, enhanced his already formable professional standing and was the first study tour taken by someone in his position since 1904. When he returned in

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<sup>110</sup> John Ramsland, *With Just But Relentless Discipline: A Social History of Corrective Services in New South Wales* (Kenthurst: Kangaroo Press, 1996), 296-297.

<sup>111</sup> The state's Comptroller-General of Prisons, George F. Murphy, had been a career military officer prior to taking over the prisons. He was not particularly experienced with prison management and resumed his military commission once the war began. Premier William McKell appointed Nott as Murphy's successor in 1949. Ramsland, *With Just But Relentless Discipline*, 299; John Ramsland, "Nott, Leslie Cecil Joshua (1895–1963)," *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, <http://adb.anu.edu.au/biography/nott-leslie-cecil-joshua-13134/text23769>, accessed 18 November 2013.

July 1947, he carried with him bundles of penological literature, lists of new professional and personal contacts in prison circles and first-hand observation of penal practices in each place he visited.

During his overseas tour, Nott compared the current state of prison reform abroad with his intimate knowledge of prisons in New South Wales fully aware that the responsibility for the state's penal reform project largely rested with him when he returned. Based on the advice of professional colleagues, Nott visited jurisdictions with a reputation for innovation and reform, seeking new, modern, penal knowledge and techniques, which could potentially be applied to New South Wales. As he explained:

The Institutions which I saw were those suggested to me as presenting a fair cross-section of the newer and better types of prisons. There seemed to be no justification for visiting those antiquated institutions from which nothing could be learned.<sup>112</sup>

Thus, Nott's study tour followed and re-inscribed an uneven geography of penal practices and knowledge in current and former areas of the British Empire during the years immediately following World War II. Nott's excursion followed well-worn paths of exchange between Australia, the United Kingdom, the United States and several other members of the British Commonwealth, like Canada, New Zealand and South Africa.

As number of scholars of British imperialism have recently demonstrated, study tours and correspondence concerning the management of subject populations was commonplace in

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<sup>112</sup> Leslie C. J. Nott, *Report of Investigation of Prison Systems of United Kingdom and the United States of America, April-July, 1947* (Sydney: Government Printer, 1947), 4.

the empire and among former colonies.<sup>113</sup> They shared an imperial language, history of settler colonialism and familiarity with administrative practices, which enabled numerous exchanges and visits over the nineteenth and early twentieth century. Such connections also frequently crossed the boundaries of other empires as well.<sup>114</sup> The issues of crime and punishment became one of the most fertile areas of government activity and exchange. They helped forge and maintain connections with penal authorities across the globe, and the traffic of influence often flowed in multidirectional way, despite disparities in power between colonies and metropol.<sup>115</sup> Early experiments in solitary confinement in Pennsylvania, for instance, drew

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<sup>113</sup> Tony Ballantyne, *Webs of Empire: Locating New Zealand's Colonial Past* (Wellington: Bridget Williams Books, 2012); Emily S. Rosenberg (ed.), *A World Connecting, 1870-1945* (Cambridge: Belknap, 2012); David Lambert and Alan Lester, *Colonial Lives Across the British Empire: Imperial Careerism in the Long Nineteenth Century* (Cambridge: Cambridge University Press, 2006); Zoë Laidlaw, *Colonial Connections 1815-1845: Patronage, The Information Revolution and Colonial Government* (Manchester: Manchester University Press, 2005); C.A. Bayly, *The Birth of the Modern World, 1780-1914* (Oxford: Wiley-Blackwell, 2004); Tony Ballantyne, *Orientalism and Race: Aryanism in the British Empire* (New York: Palgrave, 2002); Ann Laura Stoler, *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule* (Berkeley: University of California Press, 2002); Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2001); Nicholas B. Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (Princeton: Princeton University Press, 2001); Frederick Cooper and Ann Laura Stoler, *Tensions of Empire: Colonial Cultures in a Bourgeois World* (Berkeley: University of California Press, 1997); Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1996); C.A. Bayly, *Empire and Information: Intelligence Gathering and Social Communication in India, 1780-1870* (Cambridge: Cambridge University Press, 1996); Thongchai Winichakul, *Siam Mapped: A History of the Geo-Body of a Nation* (Honolulu: University of Hawaii Press, 1994); Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1991).

<sup>114</sup> Ann Laura Stoler has recently highlighted the role of comparison and evaluation among various imperial authorities in an international field of colonial knowledge. See her *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton: Princeton University Press, 2010), especially chapter 4.

<sup>115</sup> Taylor C. Sherman, "Tensions of Colonial Punishment: Perspectives on Recent Developments in the Study of Coercive Networks in Asia, Africa and the Caribbean," *History Compass*, 7 (May 2009), 659-677. Frank Dikötter and Ian Brown (eds.), *Cultures of Confinement: A History of the Prison in Africa, Asia and Latin America* (Ithaca: Cornell University Press, 2007); Barry Godfrey and Graeme Dunstall (eds.), *Crime and Empire 1840 – 1940: Criminal Justice in Local and Global Contexts* (Cullompton: Willian, 2005); Barry Godfrey, Clive Emsley and Graeme Dunstall (eds.), *Comparative Histories of Crime* (Cullompton: Willian, 2003); Diane Elizabeth Kirkby and Catharine Coleborne (eds.), *Law, History and Colonialism: The Reach of Empire* (Manchester: Manchester University Press, 2001); Norval Morris and David J. Rothman (eds.), *The Oxford History of the Prison: The Practice of Punishment in Western Society* (New York : Oxford University Press, 1995). While not directly addressing current debates on imperialism, globalization and colonialism, Norman Johnston's study of the spread of the prison and the various itineraries of architectural and managerial styles in prison construction illuminates the thickening webs of penal integration. See his *Forms of Constraint: A History of Prison Architecture* (Chicago: University of Illinois Press, 2006); *The Human Cage: A Brief History of Prison Architecture* (Philadelphia: American Foundation, Institute of Corrections, 1973);



visitors from around the world, including European capitals, as did the British penal colonies in Australia.<sup>116</sup> International debates concerning the best methods for combating crime and punishing or reforming offenders raged over much of the nineteenth century, forming a transjurisdictional public of penal politics, traversing colonies, imperial centers and new sovereign states.<sup>117</sup>

These exchanges, however, often came in bursts of intensity, marking transitional moments of decline and reform in penal discourse and social policy. As Leslie Nott noted in his report, nearly fifty years had elapsed since a senior prison official from New South Wales last embarked on a large study tour similar to Nott's.<sup>118</sup> That last itinerate official—Frederick Neitenstein—oversaw the establishment of penal practices in the first decade of the twentieth

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"The Development of Radial Prisons: A Case Study in Cultural Diffusion" (Ph.D. dissertation, University of Pennsylvania, 1958).

<sup>116</sup> Jeremy Bentham, *Panopticon versus New South Wales: Or, the Panopticon Penitentiary System, and the Penal Colonization System, Compared*, in John Bowring (ed.), *The Works of Jeremy Bentham*, vol. 4 (Edinburgh: William Wait, 1843), 173-248; Gustave Beaumont and Alexis de Tocqueville, *On the Penitentiary System in the United States, and its Application in France: with an Appendix on Penal Colonies, and also, Statistical Notes* (Carbondale: Southern Illinois University Press, 1964 reprint 1833); Colin Forster, *France and Botany Bay: The Lure of a Penal Colony* (Melbourne: Melbourne University Press, 1996); Stephen A. Toth, *Beyond Papillon: The French Overseas Penal Colonies, 1854-1952* (Lincoln: University of Nebraska Press, 2006).

<sup>117</sup> For various secondary treatments of nineteenth-century debates about penal policy and prison reform see, Negley K. Teeters, *They Were in Prison: The History of the Pennsylvania Prison Society, 1787-1937*. (Philadelphia: John C. Winston, 1937); Negley K. Teeters, *The Cradle of the Penitentiary: The Walnut Street Jail at Philadelphia, 1773-1835*. (Philadelphia: Temple University Press, 1955); Negley K. Teeters and John D. Shearer, *The Prison at Philadelphia, Cherry Hill: The Separate System of Penal Discipline: 1829-1913* (New York: Columbia University Press, 1957); Harry Elmer Barnes, *The Evolution of Penology in Pennsylvania: A Study in American Social History* (Montclair: Patterson Smith, 1968); David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little, Brown, 1971); Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (New York: Penguin, 1978); Robin Evans, *The Fabrication of Virtue: English Prison Architecture, 1750-1840* (Cambridge: Cambridge University Press, 1982); Thomas L. Dumm, *Democracy and Punishment: Disciplinary Origins of the United States* (Madison: University of Wisconsin Press, 1987); Forster, *France and Botany Bay*; Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835* (Chapel Hill: University of North Carolina Press, 1996); W. David Lewis, *From Newgate to Dannemora: The Rise of the Penitentiary in New York, 1796-1848* (Ithaca: Cornell University Press, 2009); Paul Kahan, "Seminary of Virtue: The Ideology and Practice of Inmate Reform at Eastern State Penitentiary, 1829-1971" (Ph.D. diss., Temple University, Philadelphia, 2009).

<sup>118</sup> Nott, *Report of Investigation of Prison Systems*, 14.

century, which corresponded with reform efforts in several European and North American countries. The bulk of Neitenstein's reforms remained largely unchanged when Nott took office. By the late 1930s and early 1940s, however, many people in state government felt that state's prisons were deeply troubled and needed substantial change.<sup>119</sup> The reduced availability of work for imprisoned people, caused by the global depression, left many prisoners idle and corresponded with an increase in violent confrontations between warders and inmates. Clamping down on violence was one of Leslie Nott's first major policy decisions. With the minister's permission, he established an austere punishment regime for "intractable" prisoners at Grafton Gaol based on a similar practice recently adopted in Canada. Grafton would forcefully suppress difficult prisoners with brutal beatings.<sup>120</sup> By the end of World War II, the Labor government led by Premier William McKell outlined a series of broad reform principles they wished implement in many of the state's penal and mental health institutions.<sup>121</sup> Nott's tour in 1947 was intended to supply the specific penal models, knowledge and practices based on the experience of penal experts abroad that would infuse and guide their reform agenda.

Upon his return, Nott impressed upon his readers that the most significant difference between penal operations in the United Kingdom and especially the United States, was the massive size of penal populations and prisons in these places.<sup>122</sup> Nott noted that this limited the

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<sup>119</sup> Mark Finnane, *Punishment in Australian Society* (Melbourne: Oxford University Press, 1997), 68-75, 82-83, 89-92; Frederick William Neitenstein (1850-1921) was New South Wales Comptroller-General of Prisons from 1896 to 1909. See Neitenstein, *Report by the Comptroller-General of Prisons on Prisons, Reformatories and Asylums and Other Institutions Recently Visited by Him, in Europe and America* (Sydney: New South Wales Parliamentary Papers, 1904); Marilyn Lee Sernack-Cruise, "Penal Reform in NSW: Frederick William Neitenstein, 1896-1909," Ph.D. dissertation (Sydney: University of Sydney, 1980).

<sup>120</sup> Ramsland, *With Just But Relentless Discipline*, 266-267.

<sup>121</sup> John F. Nagle, *Report of the Royal Commission into New South Wales Prisons* (Sydney: Government Printer, 1978), 566.

<sup>122</sup> Nott, *Report of Investigation of Prison Systems*, 3-4.

ability of prison authorities back home to simply emulate these prison operations and even certain practices. The scale of prison industry in a place like California, for instance, could never be achieved in New South Wales. Nott argued that the state could not reasonably be expected to purchase and operate the types and quality of industrial machinery that he observed in California.

Nevertheless, Nott maintained that many features of the prison operations he inspected were transferrable to New South Wales. Adaptations of certain practices not only seemed appropriate, but as Nott argued, occurred frequently in the various jurisdictions and facilities he toured. He focused especially on how prison authorities abroad viewed the people in their custody, how they categorized them in various offender types, age cohorts, and other more specific groupings. These categories were more than simply a descriptive analysis of people entering prison, but deeply tied to the arrangement of penal spaces and routines. Nott argued that the new procedures for classifying inmates, especially in the United States, might achieve their fullest potential when applied to large prison populations, but that this did not diminish their usefulness for reconstituting penal regimes and training inmates in a much smaller penal system like that in New South Wales. Therefore, Nott recommended that the Department of Prisons establish a centralized Classification Committee to evaluate all incoming prisoners and assign them to prisons according to their security needs and potential for reform.<sup>123</sup>

Nott emphasized the importance of remaining abreast of current penal practices and research. He mentioned that he had discussions with the current and previous presidents of the International Penal and Penitentiary Commission, the American, Sanford Bates, and

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<sup>123</sup> Ibid., 10-15, 33-34.

Englishman, Lionel Fox, respectively.<sup>124</sup> The Commission had been in existence for over seventy years at that time and held regular meetings that drew penal experts from around the world.<sup>125</sup> Nott recommended that New South Wales consider joining the commission. At the time, no government in Australia, whether state or federal, belonged to the organization. Nott believed this was not acceptable, especially since two other Commonwealth countries often considered peers—New Zealand and South Africa—were already members.<sup>126</sup> Historian Frank Dikötter has argued that this type of global awareness about penal practices and standards played a large role in how they circulated throughout the world. The global spread of prison during the nineteenth and earlier twentieth centuries was often not the result of imposition by colonial powers, according to Dikötter, but rather the active adoption of the institution by local elites who desired a claim to modernity and sovereignty.<sup>127</sup> Such elites pursued penal reform “within a global frame of reference in which emulation and competition led to ever shifting standards, innovations and expectations.”<sup>128</sup>

Leslie Nott’s message after his return was clear: if New South Wales, the leading Australian state, wished to maintain its claim on modern government and keep pace with trends in London and Washington, it needed to drastically reform its prison system by adopting

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<sup>124</sup> Ibid., 33-34. Both men were widely acknowledged as very influential penologists in their respective countries and abroad.

<sup>125</sup> For a brief history of the International Penal and Penitentiary Commission, see Thorsten Sellin, “Lionel Fox and the International Penal and Penitentiary Commission” in Manuel Lopez-Rey and Charles Germain (eds.), *Studies in Penology, Dedicated to the Memory of Lionel Fox* (The Hague: Martinus Nijhoff, 1964), 194-207.

<sup>126</sup> Ibid., 34.

<sup>127</sup> Frank Dikötter, “Introduction: The Prison in the World” in Dikötter and Brown (eds.), *Cultures of Confinement*, 1-13.

<sup>128</sup> Ibid., 5.

practices and techniques of modern progressive penology. Establishing and maintaining contacts with global penological authorities and organizations was crucial to this task.

This chapter provides a general history of the period immediately preceding what's often referred to as the crisis in corrections during the 1970s and serves as a background for the chapters that will follow. My hope is to give both a general overview of some of the major themes of penalty during the years between the end of World War II and early 1970s that affected many jurisdictions with special attention their local articulations in both Pennsylvania and New South Wales. I will do so by discussing the broad, national and transnational characteristics of this penal agenda while switching back and forth between practices in Pennsylvania and New South Wales. My narrative is organized in three major sections: the first covering events in the 1940s and 1950s, and the latter two dealing with developments in the 1960s and early 1970s.

The first period concerns the emergence of a relatively stable set of practices, which structured prison life for several decades and arguably continues today in somewhat different forms. These practices comprised central aspects of what many later prison reformers and their critics called the therapeutic or medical model of inmate rehabilitation. Often times, simply the term rehabilitation sufficed to signal a commitment to a shared, but highly variegated, discourse and set of practices, which sought to reform criminal offenders through various forms of classification, education, training and programing informing by the social sciences. These practices and the language of penal reform were highly elastic, encompassing a wide range of actual prison regimes and routines. If some practices, like inmate classification and the categorization of institutions spanned most different manifestations of this new project of

imprisonment, others, like psychological counseling, could be widely divergent, appearing in some places and not in others.

The point needs to be emphasized. All too often, narratives of penal change generalize the specific arrangements of one highly influential jurisdiction, such as California during this period, across different jurisdictions, which may or may not have followed similar practices. It is perhaps better to think of rehabilitation during his period as a discourse, or narrative, of reform directed at inmates, prison employees and the state that was also coupled to a limited set of highly flexible, multi-purpose practices, like classification, to which a larger range of more idiosyncratic or local practices could be sutured, adapted or discarded over time.<sup>129</sup> However, I hope to avoid the pitfalls of reifying this phenomenon by describing it as a “model,” even though such terms (e.g. “therapeutic model”) became more common by the late 1950s. I ask the reader to keep in mind the structured, yet unsettled nature of these bundles or assemblages of practices and language, which appeared in numerous penal systems around the world during and after World War II. Thinking of these approaches as a model retroactively constitutes them and grants them far more coherence and unity than they actually had.<sup>130</sup>

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<sup>129</sup> My thinking about relatively stable iterations of penal reform has been especially influenced by Charles Bright, *The Powers that Punish: Prison and Politics in the Era of the "Big House," 1920-1955* (Ann Arbor: University of Michigan Press, 1996), and Simon, *Poor Discipline: Parole and the Social Control of the Underclass, 1890-1990* (Chicago: University of Chicago Press 1993), 1-14, 230-249. The similarities and differences of some carceral practices across jurisdictions and the multiple ways they inhabited their local contexts, resembles Susan Leigh Star, James R. Griesemer and Geoffrey C. Bowker's description of “boundary objects” as “objects which are both plastic enough to adapt to local needs and constraints of the several parties employing them, yet robust enough to maintain a common identity across sites. They are weakly structured in common use, and become strongly structured in individual-site use. They may be abstract or concrete. They have different meanings in different social worlds but their structure is common enough to more than one world to make them recognizable, a means of translation.” Susan Leigh Star and James R. Griesemer, “Institutional Ecology, ‘Translations’ and Boundary Objects: Amateurs and Professionals in Berkeley's Museum of Vertebrate Zoology, 1907-39,” *Social Studies of Science*, 19 (August 1989), 387-420.

<sup>130</sup> For a similar argument about the how the discourse of the “welfare state,” see Jacob Torfing, *New Theories of Discourse: Laclau, Mouffe and Žižek* (Oxford: Blackwell, 1999), 225-241.

In the pages that follow, I use several terms to denote this set of practices, such as rehabilitation, postwar reforms or postwar penology. This in part reflects how actors spoke of this agenda at the time. During the 1940s, prison reformers were just as likely to refer to this emerging set of practices as “modern penology” as they were to use the term rehabilitation. The invocation of “modern” by advocates of this approach reflected the struggles they faced in the prison service with security-minded rivals as they sought to establish a new basis for penal policy after the Depression and war. Prison reform and rehabilitation constituted one of the many sites and techniques of what state theorists often refer to as the emerging postwar social democratic or Keynesian welfare state.<sup>131</sup> Prison reformers aligned themselves, their practices and language with the growing confidence in policy and administrative circles that the state could effectively regulate economic and social life with the aid of scientific and administrative expertise.

The second period, roughly spanning the mid-1960s to the late-1970s, addresses a broad rethinking of rehabilitation, which shared many of the commitments and assumptions of the immediate postwar reforms, but departed from them in significant ways. Specific iterations of these changes these meant different things in different situations and could incorporate many seemingly unrelated or older practices in a new guise. This movement manifested in two basic ways: one outward, away from the prison; the other directed inward toward life inside prisons.

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<sup>131</sup> In this field see especially the work of Bob Jessop, especially his *The Future of the Capitalist State* (London: Polity, 2002).

The first involved a re-discovery of the “community.” Known by various names, such as community corrections, decarceration and destructuring, this movement became prevalent in the late 1960s and especially during the early-to-mid 1970s. At its core, the various manifestations of the decarceration movement shared the belief that, at best, the massive prisons of the state’s penal apparatus (and even some aspects of the postwar reforms) stifled the possibilities of rehabilitation. At worse, such institutions directly contributed to reoffending by released inmates. Prisons – even those institutions dedicated to rehabilitation – harmed people confined in them and diminished their possibilities for (re)establishing a normal, law-abiding life upon release. Much of the academic penological thinking during the 1960s stressed that establishing secure, normalizing connections outside prison, like stable employment and family support, did far more to lessen recidivism than institutional interventions. The community corrections movement sought to bridge the existing penal apparatus with a nebulously defined “community” through transitional programs designed to normalize the activities and expectations of offenders. Prison officials also tried enlist the active support of employers and civil society organizations interested in social welfare for these community corrections programs.

While this view of the socializing prowess of the community certainly had adherents outside prison administration, including in some radical, anti-authoritarian movements of the time, it also appealed – perhaps in a more muted form – to a surprising number of senior prison bureaucrats who recognized the limits of their capacity to change people held in confinement. In openly acknowledged these limits, penal officials undercut the institutional basis for many of the postwar reforms. This opening also provided room for greater debate and criticism of the



penal practices, and some more liberal prison officials actually invited greater public participation and comment. However, this proved at times to be a double-edged sword. Greater publicity also often brought condemnation, especially when community corrections programs became embroiled in scandals involving escapes and other criminal behavior. Despite the desire to move rehabilitation into the community, decarceration programs, by their very nature as “programs,” began and remained adjuncts to the existing prison system. Work release, furloughs, community treatment centers and periodic detention and many other programs originated within the penal apparatus itself or in conjunction with functionally-related state agencies, like those dealing with mental health, education and vocational services.

Much like they viewed past forms of discretionary release, many incarcerated people supported decarceration programs and wished to participate in them, even if they often saw them as mainly a way out of prison. However, the restrictions placed on program inclusion and screening protocols often confounded inmates who exchanged ideas among themselves about the best way to gain acceptance into these programs. Those denied entry into community correction programs often accused the authorities with of favoritism, racial discrimination or making hollow promises in announcing such innovative programs. Many prisoners, especially those in maximum security prisons who were often not eligible for these programs, derided them as simply another farce of disingenuous prison administrators. As beneficial as these programs were for some inmates, the way the authorities managed them fostered resentment and tension among those denied access to them. In addition, some people claimed these programs drained scarce resources away from prisons, many of which had deteriorated badly.

The second reformulation of rehabilitation addressed precisely these internal prison conditions. Efforts to “normalize” life inside secure facilities, in theory making them resemble life outside in the wider society as much as possible, paralleled the decarceration movement during the late 1960s and early 1970s, but it often lagged behind as a secondary priority for penal agencies. As part of this movement, “prison conditions” became a major topic of dispute, litigation and reform among prison staff, inmates, the judiciary and a host of civil society organizations and activist groups. At the crux of such disputes and agendas rested beliefs about the destructive aspects of confinement, which resembled those emphasized in community corrections discourse. Attempts to normalize of prison life differed from decarceration, however, in the explicit, if at times forlorn, endorsement of the prison as the only possible means to deal with certain people. The normalization of prison life and community corrections should, nevertheless, be seen as flips side of the same coin. They shared a dismal view of the prison, but each targeted different clients in their programs. Much like the decarceration movement echoed earlier innovations, prison normalization had numerous antecedents, including many practices associated with the immediate postwar rehabilitation project like education and increased leisure activities for inmates.

Normalizing changes, like granting inmates greater religious freedom, access to literature and greater freedom of movement within institutions, disrupted longstanding prison routines and the prisoner management strategies of guards. Many staff members disliked these changes, arguing that they redefined their roles without their consent and diminished their traditional authority over inmates. In some cases, these changes also received a great deal of publicity, especially in investigative reporting about the changing penal estate and in the

aftermath of disturbances. Like decarceration programs, this publicity was double-edged, at times generating more criticism than support among the reading public and political leaders. Many readers interpreted normalization initiatives as unwarranted leniency that undermined the deterrent power of harsh confinement.

In detailing decarceration and normalization strategies, I am interested in how they affected penal politics and prison order, as each in different ways contributed to both the increased visibility of punishment and counterstrategies designed to reassert strict conceptions of what sociologist Phillippe Combessie calls the “sensitive perimeter” separating convicts from the agents of punishments, whether this was inside or outside the prisons.<sup>132</sup> These penal projects intersected with the politics of race and rebellion in the 1960s and 1970s, both inside and outside penal institutions in a way that further drew attention to them and facilitated a broad reassertion of custodial authority by the mid-1970s. As will become clear, officials in Pennsylvania deployed these penal strategies across a highly charged racial order, the borders of which were also in contention. This played a large role in the fate of these programs in that state.

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<sup>132</sup> Phillippe Combessie, “The ‘Sensitive Perimeter’ of the Prison: A Key to Understanding the Durability of the Penal Institution” in Vincenzo Ruggiero, Nigel South and Ian Taylor (eds.), *The New European Criminology: Crime and Social Order in Europe* (London: Routledge, 1998), 125-135; Phillippe Combessie, “Marking the Carceral Boundary: Penal Stigma in the Long Shadow of the Prison,” *Ethnography*, 3, trans. Richard Nice and Loïc Wacquant (December 2002), 535–555. As will become clear, my analysis here draws on, but departs from some of the very influential critical texts of the 1970s and 1980s that analyzed these trends, especially decarceration. See, Andrew T. Scull, *Decarceration: Community Treatment and the Deviant—A Radical View* (Englewood Cliffs: Prentice-Hall, Inc., 1977); Scull, “Humanitarianism or Control?: Some Observations on the Historiography of Anglo-American Psychiatry,” in Stanley Cohen and Andrew T. Scull (eds.), *Social Control and the State: Historical and Comparative Essays* (New York: St. Martin's Press, 1983), 118-140; Stanley Cohen, *Visions of Social Control: Crime, Punishment and Classification* (Cambridge: Polity Press, 1985); Cohen, “The Punitive City: Notes on the Dispersal of Social Control,” *Contemporary Crises*, 3 (October 1979), 341-363.

## Postwar Penology, Rehabilitation and Bureaucratic Transformation

During the 1940s and 1950s, a loose set of penological policies and practices developed in a number of Western European and North American countries that focused on reforming criminal offenders through individualized assessment and treatment. This movement de-emphasized previous repressive practices in the hopes of eliciting introspection and change in offenders through a variety of techniques supported by the social sciences as well as education and vocational training. This postwar movement brought together several trends that had been growing in international penology circles since the 1890s, but only became prominent in the immediate aftermath of World War II. Social theorist David Garland has called this longer-term complex of discourse, practices and institutional arrangements the “penal-welfarism,” because of its dual, flexible character that emphasized both treatment and punishment.<sup>133</sup> In Garland’s view, penal-welfarism spanned numerous government institutions, like mental and other state hospitals, juvenile courts, public assistance programs, and of course, the more austere, traditional prisons dating from the nineteenth century. Penal welfarism can also be seen as a constituent part of a larger set of postwar assumptions about the nature and role of the state and social policy, which like many Progressive era reforms, attempted to mitigate some of the destructive aspects of capitalism, industrialization and war.<sup>134</sup> While there were wide

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<sup>133</sup> David Garland, *Punishment and Welfare: A History of Penal Strategies* (Aldershot: Gower, 1985); David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2001).

<sup>134</sup> Robert H. Wiebe, *The Search for Order, 1877-1920* (New York: Hill and Wang, 1966); John M Jordan, *Machine-Age Ideology: Social Engineering and American Liberalism, 1911-1939* (Chapel Hill : University of North Carolina Press, 1994); Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge: Belknap Press of Harvard University Press, 1998); Emily S. Rosenberg, “Transnational Currents in a Shrinking World” in Emily S. Rosenberg (ed.), *A World Connecting, 1870-1945* (Cambridge: Belknap Press, 2012), 919-959.

divergences in the provision of social services and market regulation between places such as the United States, Western Europe, Australasia and Japan, they shared a common commitment to a broadly conceived Keynesian economic policy of counter-cyclical demand management, public support of education and research and the partial decommodification of many aspects of social life through an array of social insurance programs and public services.<sup>135</sup> These attributes formed the broad common core of welfare state governance concerns and techniques, and they relied heavily on social sciences and state-sponsored research, both of which emerged from World War II as respected, authoritative means of establishing truth, protecting the public and fostering affluence.<sup>136</sup> The influence of social science in penology, in the form of classification, planning, treatment programs and evaluations, was therefore part of this new constellation of research, science and government that emerged in many parts of the world after World War II and enabled the circulation of carceral knowledge and techniques.

The strongest group of advocates of these new penological views was located in the United States. More specifically, the language and practices associated with what came to be

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<sup>135</sup> Torfing, *New Theories of Discourse*, 225-241; Jacob Torfing, *Politics, Regulation and the Modern Welfare State* (New York: St. Martin's Press, 1998).

<sup>136</sup> On the authoritativeness of postwar science and expertise, see Alfred K. Mann, *For Better or For Worse: The Marriage of Science and Government in the United States* (New York: Columbia University Press, 2000); Ellen Herman, *The Romance of American Psychology: Political Culture in the Age of Experts, 1940-1970* (Berkeley: University of California Press, 1996); Walter A. Jackson, *Gunnar Myrdal and America's Conscience: Social Engineering and Racial Liberalism, 1938-1987* (Chapel Hill: University of North Carolina Press, 1994); Nicholas Brown, *Governing Prosperity: Social Change and Social Analysis in Australia in the 1950s* (Cambridge: Cambridge University Press, 1995); Stuart Macintyre, *The Poor Relation: A History of the Social Sciences in Australia* (Melbourne: Melbourne University Press, 2010); Mark Solovey and Hamilton Cravens (eds.), *Cold War Social Science: Knowledge Production, Liberal Democracy, and Human Nature* (New York: Palgrave Macmillan, 2012); Jamie Cohen-Cole, *The Open Mind: Cold War Politics and the Sciences of Human Nature* (Chicago: University of Chicago Press, 2014); Joy Rohde, *Armed with Expertise: The Militarization of American Social Research during the Cold War* (Ithaca: Cornell University Press, 2013); George Steinmetz, "Scientific Authority and the Transition to Post-Fordism: The Plausibility of Positivism in U.S. Sociology since 1945" in George Steinmetz (ed.), *The Politics of Method in the Human Sciences*, (Durham: Duke University Press, 2005), 275-323.

known as the “therapeutic model” reflected the influence of several jurisdictions, like California and the U.S. federal prison system, and professional groups, like the American Prison Association. Some of the institutions that prompted greater global conformity on penal matters like the International Penal and Penitentiary Commission and later the Social Commission of the United Nations, also helped spread these innovative penal programs and philosophies throughout the world. In the wake of World War II, powerful, influential countries, like the United States and the United Kingdom, both of which had a century-long reputation for penal innovation, dominated these organizations.<sup>137</sup> Such influence was, of course, much more direct in the colonial policies of these countries and several others. Nevertheless, officials in such colonial states developed their own versions of incarceration and did not simply import metropolitan penal practices wholesale.<sup>138</sup>

Between the mid-1940s and mid-1950s, many of the routine practices within prisons and assumptions in penal policy changed considerably from pre-war patterns in many parts of

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<sup>137</sup> Martina Henze, “Transnational Cooperation and Criminal Policy: The Prison Reform Movement, 1820s-1950s” in Davide Rodogno, Bernhard Struck and Jakob Vogel (eds.), *Shaping the Transnational Sphere: Experts, Networks and Issues from the 1840s to the 1930s* (New York: Berghahn Books, 2015), 197-217; Nir Shafir, “The International Congress as Scientific and Diplomatic Technology: Global Intellectual Exchange in the International Prison Congress, 1860–90,” *Journal of Global History*, 9 (March 2014), 72-93.

<sup>138</sup> Michael Salman, “‘Nothing Without Labor’: Penology, Discipline, and Independence in the Philippines Under United States Rule” in Vicente L. Rafael (ed.), *Discrepant Histories: Translocal Essays on Filipino Cultures* (Philadelphia: Temple University Press, 1995), 113-129; Peter Zinoman, *The Colonial Bastille: A History of Imprisonment in Vietnam, 1862-1940* (Berkeley: University of California Press, 2001); Graeme Harper (ed.), *Colonial and Post-Colonial Incarceration* (New York: Continuum, 2001); Ricardo D. Salvatore, Carlos Aguirre and Gilbert M. Joseph, *Crime and Punishment in Latin America: Law and Society Since Late Colonial Times* (Durham: Duke University Press, 2001); Frank Dikötter, *Crime, Punishment and the Prison in Modern China* (New York: Columbia University Press, 2002); Florence Bernault, *A History of Prison and Confinement in Africa* (Portsmouth: Heinemann, 2003); Clare Anderson, *Legible Bodies: Race, Criminality and Colonialism in South Asia* (Oxford: Berg, 2004); Steven Pierce and Anupama Rao (eds.), *Discipline and the Other Body: Correction, Corporeality, Colonialism* (Durham: Duke University Press, 2006); Frank Dikötter and Ian Brown (eds.), *Cultures of Confinement: A History of the Prison in Africa, Asia, and Latin America* (Ithaca: Cornell University Press, 2007); Christian G. De Vito and Alex Lichtenstein, “Writing a Global History of Convict Labour,” *International Review of Social History*, 58 (August 2013), 285-324; Christian G. De Vito and Alex Lichtenstein (eds.), *Global Convict Labour* (Boston: Brill, 2015).

the world. Like earlier periods of rapid change in penal practices, the similarity of these transformations revealed an often unspoken degree of connection and agreement about the problems of imprisonment and the range of possible reforms.<sup>139</sup> There were also renewed efforts by many reformers to develop international standards for penal practices. In 1946, the International Penal and Penitentiary Commission convened its first session in eleven years in Berne, Switzerland.<sup>140</sup> The attendees of this congress agreed that prisons throughout many parts of the world and criminal justice in general was in deep crisis and needed a drastic reorientation after over fifteen years of depression and war.<sup>141</sup>

Prison labor formed a major area of concern, especially in the wake of the extensive use of slave labor during the war. Whether actually profitable or not, labor formed the mainstay of prison life in many in parts of the world from the mid-nineteenth century until the Great Depression of the 1930s. Such labor took many different forms in various jurisdictions reflecting prevailing the possibilities and limits of specific political-economic circumstances. Agricultural production, contract piece-work and large-scale state-operated industry occupied thousands of prisoners and organized prison regimes in numerous institutions throughout North and South America, Europe, and parts of Africa, Asia and Australasia.<sup>142</sup> The global effects of the Depression drastically reduced the availability of work for prisoners and intensified competition

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<sup>139</sup> The global connections of penal reform in other such periods have attracted scholarly attention, especially in the late eighteenth and early nineteenth centuries. See Henze, "Transnational Cooperation and Criminal Policy,"; Shafir, "The International Congress as Scientific and Diplomatic Technology,"; Forster, *France and Botany Bay*.

<sup>140</sup> International Penal and Penitentiary Commission, *Proceedings of the International Penal and Penitentiary Commission/Procès-verbaux de la session de la Commission Internationale Pénal et Pénitentiaire* (Berne: Stämpfli, 1946); Sellin, "Lionel Fox and the International Penal and Penitentiary Commission." The last meeting was in Berlin in 1935. This meeting was notorious for the penaloligical views expressed by the Nazi. Many members boycotted the meetings because of the Nazi government.

<sup>141</sup> Ibid. The delegates elected Sanford Bates, a prominent advocate of rehabilitation and head of New Jersey's penal agency, as the organization's new president.

<sup>142</sup> For an overview, see De Vito and Alex Lichtenstein, "Writing a Global History of Convict Labour," 303-310.

with workers in the free labor market. Idleness became commonplace in many prisons during the 1930s and early 1940s, much like it was in industrial labor markets in many parts of the world.<sup>143</sup> For many decades, free workers and unions harbored resentments against prisoner labor, but the economic hardship of the 1930s intensified this opposition.<sup>144</sup> Resistance from organized labor and many businesses led to restrictive laws, which limited prisoner-produced goods from private markets, and by the 1940s, much of the industrial machinery in prisons worldwide was in disrepair or simply obsolete.<sup>145</sup>

It was apparent to many people knowledgeable about prisons in the United States that industries would never recover their past importance to prison regimes.<sup>146</sup> A nationwide survey of penal practices conducted in the late 1930s by the U.S. Department of Justice, noted this displacement:

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<sup>143</sup> Comptroller-General Leslie Nott commented on his overseas study of prison in 1947 that production machinery in New South Wales prison was not keeping pace with either market changes in factories in American and British prisons. He felt that workshops in New South Wales prison could be modernized if “machinery becomes available,” which indicated that this was not as critical a need as other areas. Nott, however endorsed vocational education — “employment for instruction and not for production” — as an area needing more practical improvement New South Wales prisons. Nott, *Report of Investigation of Prison Systems of United Kingdom and the United States of America*, 23-26.

<sup>144</sup> For an overview of the history of American prison and convict labor, see Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941* (Cambridge: Cambridge University Press, 2008). Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (London: Verso, 1996); Max Grünhut, *Penal Reform: A Comparative Study* (Montclair: Patterson Smith, 1948), 196-228; Harry Elmer Barnes and Negley K. Teeters, *New Horizons in Criminology: The American Crime Problem* (New York: Prentice-Hall, Inc., 1946), 685-716.

<sup>145</sup> Benedict Taylor, "Prison Without Walls: Prison Camps and Penal Change in Australia, c.1913-c.1975" PhD. diss. (Sydney: University of New South Wales, 2010), 128-135. Taylor argues that opposition to prison labor was more “extreme” in the United States, but this might partly be because the strength of the labor movement in Australia made policy makers less ambitious in their inmate labor proposals. Rinaldi noted that prison labor in both the United States and Australia followed a state-use system, with few goods made for the private market. See Fiori Rinaldi, *Prison Labour in Australia* (Canberra: Australian National University, 1973). See also Daniel Glaser, *The Effectiveness of a Prison and Parole System*, abridged ed. (Indianapolis: Bobbs-Merrill Co., Inc.), 156-172. In the United States the Hawes-Cooper Act, 49 U.S.C. 60 (1929) and the Ashurst-Sumners Act/Sumners-Ashurst Act, 18 U.S.C. 1761 (1935/1940) severely restricted markets for items produced in prison.

<sup>146</sup> For an overview of the debates on prison industry in penological circles in the U.S., see Charles Bright, *The Powers that Punish*, 246-258.



From a place of domination in prison programs, prison industries have gone to the other extreme where idleness due to their absence is the outstanding feature of prison life in sixty-six prisons and a major problem in all but six. The industrial prison as such exists in only a few places. In its stead is developing a prison in which industry will play only one part, although an important one, in the daily program.<sup>147</sup>

American prison administrators worried that the remaining industry would collapse after the end of World War II. So, they began devising new ways to organize prison life, occupy inmates and hopefully reform them. Labor would remain a central aspect of incarceration, but the nature of work changed, becoming more diversified, less profit-motivated and viewed increasingly by reformers as supplemental to other activities and programs for inmates. Historian Charles Bright has argued that while labor continued, “training, rather than production, had become the central rationale for prison industries by 1945, and its principal intent was not to discipline the body to industrial work but, instead, to prepare the inmate, in an ‘integrated total program’ that combined education, training, religious instruction, and counseling, for a successful life as a free citizen.”<sup>148</sup>

In addition to greater vocational training and elementary education, some of the more innovative and well-funded penal agencies began offering courses in humanities and sciences and loosened some restrictions on reading material. Leisurely activities, like reading, art and crafts, and especially sports, became increasingly common in prison life after World War II, mirroring similar social trends in the organization of work and leisure in the consumption-

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<sup>147</sup> United States, Department of Justice, *Attorney General's Survey of Release Procedures*, v. 5 (Washington, D.C.: United States Government Printing Office, 1939-1940), 225.

<sup>148</sup> Bright, *The Powers that Punish*, 252.

driven, Keynesian, national welfare states that emerged from the war in several parts of the world.<sup>149</sup>

Perhaps the most fundamental change after the war was the growing influence of professional social scientists and the creation of centralized, formal classification procedures in several jurisdictions. However, like many other aspects of penal change, this transformation was uneven in both its successes and application from place to place. Subsequent academic literature on postwar inmate rehabilitation has focused perhaps too much on what was considered by many contemporaries to be state-of-the-art programs in jurisdictions like California and the federal Bureau of Prisons. Historian Eric Cummins's claim that "the gates opened up, and the experts poured in," might be a fitting description for his study of California's prisons after World War II and possibly some similar jurisdictions, but it would be an exaggeration for many other state prisons in the United States and abroad.<sup>150</sup> Few state penal bureaucracies, some only fledgling agencies, had the financial resources or personnel to implement such practices and many places lacked the political support from state government and prison employees for instituting such reforms. Attempts to do so often created resentment among some staff members, especially guards. Successes in places like California can be easily overstated too. Nevertheless, such transformations reverberated throughout national and global penological circles. Rather than generalize from cases such as California, it is better to situate them in an uneven geography of penal reform in the postwar period, highlighting how

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<sup>149</sup> Jessop, *The Future of the Capitalist State*.

<sup>150</sup> Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford: Stanford University Press, 1994), 12

such exemplary jurisdictions formed and how they influenced the way numerous prison administrators, reformers and inmates conceptualized problems and solutions in other places.

Reflecting the ascendancy of social science expertise in aftermath of World War II, prison authorities in numerous jurisdictions began hiring or contracting more professional social scientists to evaluate prisoners' behavior, prospects for reform or parole consideration, possible work assignments, education, and transfer to different institutions.<sup>151</sup> Several large professional associations, like the American Prison Association, the Howard League of Penal Reform and the International Penal and Penitentiary Commission, advocated major changes to

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<sup>151</sup> Harry E. Barnes, *Prisons in Wartime: Report on the Progress of the State Prison War Program Under the Government Division of the War Production Board* (Washington, D.C.: War Production Board, 1944); Jessica Mitford, *Kind and Usual Punishment: The Prison Business* (New York: Vintage, 1974), 107-118; John Irwin, *Prisons in Turmoil* (Boston: Little, Brown and Company, 1980); Cummins, *The Rise and Fall of California's Radical Prison Movement*; Bright, *The Powers that Punish 1920-1955*; Theodore Hamm, *Rebel and a Cause: Caryl Chessman and the Politics of the Death Penalty in Postwar California, 1948-1974* (Berkeley: University of California Press, 2001); Edgardo Rotman, "The Failure of Reform: United States, 1865-1965" in Norval Morris and David J. Rothman (eds.), *The Oxford History of the Prison: The Practice of Punishment in Western Society* (New York: Oxford University Press, 1995), 169-197; Ramsland, *With Just But Relentless Discipline*, 268-269, 286-293, 299-309; Sean O'Toole, *The History of Australian Corrections* (Sydney: University of New South Wales, 2006), 158-162; Leo Carroll, *Lawful Order: A Case Study of Correctional Crisis and Reform* (New York: Taylor Francis, 1999). This shift also appeared in parole systems. See, Jonathan Simon, *Poor Discipline: Parole and the Social Control of the Underclass, 1890-1990* (Chicago: University of Chicago Press, 1993). For some accounts of the influence of social science expertise in the aftermath of World War II, see Alice O'Connor, *Poverty Knowledge: Social Science, Social Policy, and the Poor in Twentieth-Century U.S. History* (Princeton: Princeton University Press, 2001); Daryl Michael Scott, *Contempt and Pity: Social Policy and the Image of the Damaged Black Psyche, 1880-1996* (Chapel Hill: University of North Carolina Press, 1997); Herman, *The Romance of American Psychology*; Steven Brint, *In an Age of Experts: The Changing Role of Professionals in Politics and Public Life* (Princeton: Princeton University Press, 1994); Jackson, *Gunnar Myrdal*; Ann Firth, "The Breadwinner, his Wife and their Welfare: Identity, Expertise and Economic Security in Australian Post-War Reconstruction," *Australian Journal of Politics and History*, 50 (December 2004), 491-508; The prominence of social science and expert authority predated World War II, informing capitalist expansion and efforts to curb its excesses from the mid-to-late nineteenth century onwards. For some critical assessments, see Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity* (University of California Press, 2002); James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998); Patrick D. Reagan, *Designing a New America: The Origins of New Deal Planning, 1890-1943* (Amherst: University of Massachusetts Press, 1999); Jordan, *Machine-Age Ideology*; Theodore M. Porter, "Objectivity and Authority: How French Engineers Reduced Public Utility to Numbers," *Poetics Today*, 12 (Summer 1991), 245-265; Michael Adas, *Machines as the Measure of Men: Science, Technology, and Ideologies of Western Dominance* (Ithaca: Cornell University Press, 1990); Roy MacLeod, *Government and Expertise: Specialists, Administrators and Professionals, 1860-1919* (Cambridge: Cambridge University Press, 1988); Michael E. Urban, *The Ideology of Administration: American and Soviet Cases* (Albany: State University of New York Press, 1982).

classification procedures and argued that the entirety of prison operations should be structured around the planning capacities of centralized classification bodies.<sup>152</sup> Penologists, sociologists, psychologists, among others, believed that the longstanding goal of reforming inmates could be best achieved through properly identifying and sorting inmates, matching them to array of envisioned services and programs and monitoring their individual progress through case management techniques. Contrary to some later accounts, these reform advocates recognized that even the best interventions would fall short with some offenders. The common belief among reformers that younger inmates were more amenable to reform efforts than older, habitual offenders informed how they created programs and allocated funds.<sup>153</sup> In his travels, Leslie Nott noted that this view informed nearly all the prison reform agendas he encountered and he recommended directing new training programs more toward younger inmates.<sup>154</sup>

The prison unrest that swept over numerous jurisdictions in North America and Europe during the 1940s and early 1950s, pushed many political leaders and prison bureaucrats to adopt some aspects of the reformers recommendations, like classification and training, but many of the recommendations of professional bodies like the American Prison Association

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<sup>152</sup> For a comprehensive statement about classification at this time, see American Prison Association, *Handbook on Classification in Correctional Institutions* (New York: American Prison Association, Committee on Classification and Case Work, 1947).

<sup>153</sup> The American sociologist, Donald Clemmer advanced a theory of “prisonization” to describe how inmates adapted to life in prison and how inmate social codes, order and expectations frustrated reform efforts based on research he conducted at the Illinois State Penitentiary during the 1930s. His major study based on this research, *The Prison Community* (Boston: Christopher Publishing House, 1940), was widely read in penology circles for decades, but in many ways confirmed longstanding views among penologists that the most likely candidates for reform were young, inexperienced offenders. For an example of the widespread, global currency of this issue, see the range of discussions about juvenile delinquency and young offenders in the *Proceedings of the Twelfth International Penal and Penitentiary Congress* (The Hague, August 14-19, 1950) vol. 2 *Record of the Meetings*, 330-409, 448-450; vol. 6 *General and National Reports of Section IV* (Bern: International Penal and Penitentiary Commission, 1951).

<sup>154</sup> Nott, *Report of Investigation of Prison Systems*, 11.

often remained more aspirational than actual.<sup>155</sup> It would take years to establish many of the reforms in some jurisdictions affected by rioting. Nevertheless, the discourse of prison reform, rehabilitation or therapy, was an especially elastic discourse that prison administrators, politicians and inmates often easily stretched to accommodate a variety of programs, proposals and activities. While some innovative penal bureaucracies produced programs based on psychological testing and group counseling, other jurisdictions like New South Wales framed the basis of their reformatory project more around education and training with much less emphasis on psychological interventions.<sup>156</sup> Specific programs differed from place to place, but many of the organizing practices, especially centralized inmate classification, intra-system variation in institutional regimes and programs, indeterminate sentencing and parole, formed a common scaffolding, or perhaps *metapractices*, supporting differing accounts of rehabilitation and reform in postwar penology.

### ***New South Wales***

Mid-twentieth-century prison reform in New South Wales began with a custodial crackdown. After years of increasing violence in several maximum security prisons in the early

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<sup>155</sup> For an overview of some of the causes and responses to the riots of the early 1950s, see Reid H. Montgomery, Jr. and Gordon A. Crews, *A History of Correctional Violence: An Examination of the Reported Causes of Riots and Disturbances* (Lanham: American Correctional Association, 1998); Bright, *The Powers That Punish*; Robert Adams and Jo Campling, *Prison Riots in Britain and the USA* (New York: St. Martin's Press, 1992); Vernon Fox, *Violence Behind Bars: An Explosive Report on Prison Riots in the U.S.* (New York: Vantage Press, 1956); Richard A. McGee, *Riots and Disturbances in Correctional Institutions* (Washington, D.C.: American Prison Association, 1953); See also the May 1954 special issue of *The Annals of the American Academy of Political and Social Science* (293: 1) devoted to the topic of prison reform.

<sup>156</sup> Nott, *Report of Investigation of Prison Systems*, 1-34; "The Rehabilitation of Prisoners in New South Wales," *The Medical Journal of Australia*, 7 (August 13, 1955), 249-252,

1940s, particularly at Bathurst Gaol, the Minister for Justice New South Wales, Reginald Downing, followed Leslie Nott's advice and set aside Grafton Gaol as a punitive, segregation institution in 1943.<sup>157</sup> Nott borrowed the concept for this regime, which concentrated and violently repressed "intractable" prisoners in one institution, from a similar plan developed in Canada during the 1930s.<sup>158</sup> Questions and accusations about the official violence at Grafton periodically percolated in the press or Parliament in the ensuing years, only to disappear shortly thereafter, with little or no change to the prison's regime.<sup>159</sup> Often less noted in historical accounts of the establishment of Grafton's intractable regime was how Nott and his colleagues in the Department of Prisons and government viewed Grafton as part of a broader reform agenda for the all of the state's prisons. In their reasoning, Grafton's brutal containment of certain prisoners, coupled with finer security gradations in other prisons, enabled them to relax regimes elsewhere and develop a range of new work, training and education programs for other prisoners in these penal spaces.

The unrest in the prisons and increasing crime during the war convinced a number of leaders in state government that that major changes were needed in the state's prisons.<sup>160</sup> Many of the official routines of prison life and administrative regulations had largely remained unchanged since the first decade of the twentieth century, but the economic woes of the 1930s

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<sup>157</sup> Ramsland, *With Just But Relentless Discipline*, 266-267.

<sup>158</sup> "Two Riots at Bathurst: Prisoners Attack Governor," *Sydney Morning Herald*, (July 2, 1942); Nagle, *Report of the Royal Commission*, 134.

<sup>159</sup> Justice John Nagle noted in his report in 1978 that the nature of Grafton's violent regime was subject to frequent denials and official cover-ups by the prisons department. Nagle, *Report of the Royal Commission*, 144-148.

<sup>160</sup> Ramsland, *With Just But Relentless Discipline*, 248-267, 296-309; Nagle, *Report of the Royal Commission into New South Wales Prisons*, 566-572.

eviscerated work opportunities and other activities for inmates.<sup>161</sup> Prison order deteriorated into numerous confrontations in secure facilities in the early 1940s.<sup>162</sup> The Labor government, under Premier William McKell, himself a former Minister for Justice, initiated a series of studies of the state's institutions of confinement, including juvenile and mental health facilities as well as adult prisons with the aim of building blueprints for reconstituting these institutions after the end of the war.<sup>163</sup> Immediate legislative action on these studies, which recommended adopting some recent British practices, stalled, but the Department of Prisons moved forward with a plan to re-open the old nineteenth-century Berrima Gaol with a modern regime. The department razed the entire structure behind the walls and rebuilt it for use as a new experimental institution for offenders between the ages of 18 to 23 years.<sup>164</sup> Reopened in 1949 as the Berrima Training Centre, the reborn-facility and Grafton's regime both exemplified Nott's reform principles.

Leslie Nott ascended to the post of Comptroller-General of Prisons shortly after he returned from his trip overseas in the July 1947.<sup>165</sup> His trip formed the first part of an extensive plan to refashion the state's prison management by collecting knowledge on the best current penal practices in North America and the United Kingdom. Although it had been decades since

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<sup>161</sup> John Morony, *The More Things Change: A History of Corrections in New South Wales* (Sydney: J. Morony, 1988), 529.

<sup>162</sup> Royal Commission Exhibit 281a "Diary of Disturbances in Penal Institutions prior to the 1970 Bathurst Riot." Royal Commission into New South Wales Prisons, Series 1601: Exhibits 5/9307. State Archives of New South Wales (hereafter SANSW).

<sup>163</sup> For the reviews under Premier McKell see Nagle, *Report of the Royal Commission*, 566-567; Peter Quinn, "The 'Penal Reformatory' that Never Was: Proposals to Establish Borstal Training in New South Wales, 1900-48," *Journal of the Royal Australian Historical Society*, 88 (December 2002), 124-125; Finnane, *Punishment in Australian Society*, 143-144. On McKell's administration see, Christopher Cunneen, *William John McKell: Boilermaker, Premier, Governor-General* (Sydney: University of New South Wales Press, 2000).

<sup>164</sup> Morony, *The More Things Change*, 258-259.

<sup>165</sup> "Prison Head to Retire," *Sydney Morning Herald*, (July 16, 1947).

a high-ranking prison official from New South Wales embarked on such a trip, this kind of governmental study tour was not unusual for an Australian state official. The appeal of overseas administrative models and techniques periodically drew Australian officials abroad on study tours, which reflected colonial and post-colonial disparities in knowledge production and prestige. When the state government finally announced its sweeping reforms, the media coverage highlighted Nott's trip and the authority of these overseas practices. The Labor government's prison modernization program thus drew heavily from the reputation of American and British penology and also recommended ongoing participation the international penology community by joining the International Penal and Penitentiary Commission and cooperating with a new effort by the United Nations to collect extensive national criminological data.<sup>166</sup>

The changes introduced into the state's prisons focused heavily on "treatment" rather than punishment or immediate control of the inmates.<sup>167</sup> This did not necessarily preclude these other penal purposes as Grafton's regime surely indicated. Instead, Nott's plans specifically addressed the youthful or first-time offender and potential other inmates who showed similar possibilities of reform. The favored interventions in this new scheme sought to rescue such people from becoming hardened, habitual offenders as much as possible. The reforms largely bypassed short-term prisoners as well, even though they usually served time in the same institutions as people participating in the new reforms.<sup>168</sup> Officials in the prison

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<sup>166</sup> "Big Reform Plan for Prisons," *Sydney Morning Herald*, (August 21, 1948); "Criminologists to Get Data From 70 Countries - Social Commission Will Receive Projects Early in 1948," *New York Times*, (Jun 21, 1947).

<sup>167</sup> "Big Reform Plan for Prisons," *Sydney Morning Herald*, (August 21, 1948).

<sup>168</sup> O'Toole, *The History of Australian Corrections*, 160.



department argued that their interventions would simply be wasted on those serving short sentences. The editor of *The Medical Journal of Australia*, who toured some of the state's prisons in 1955 with Comptroller-General Nott, informed his readers that "experience has shown that nothing much can be done in the way of training for rehabilitation in less than about nine months."<sup>169</sup> Penological expertise, therefore, was temporarily sensitive.

Interventions required sufficient time in custody if they were to be effective.

Nott, like many other penologists of his era, believed that the most promising technique of the treatment paradigm lay in the new methods of inmate classification. The classification practices he observed abroad focused identifying which offenders were or were not amenable to intervention and facilitated a system of differential assignment, work and training for inmates in the various institutions. According to John Morony, who served as Comptroller-General of Prisons from 1960 to 1968, American penological thinking and practice especially influenced Nott's plans after his overseas trip, particularly the work of Frank Loveland, the Assistant Director of Federal Bureau of Prisons and author of an authoritative manual on classification.<sup>170</sup> The American federal system established a state-of-the-art classification system that influenced numerous jurisdictions in the United States and abroad, producing numerous tracts on how to create classification committees and deal with the

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<sup>169</sup> "The Rehabilitation of Prisoners in New South Wales," 250.

<sup>170</sup> Morony, *The More Things Change*, 292; For work by Frank Loveland, Jr., see his "A Criminological Laboratory in the Massachusetts Correctional System," *Journal of Criminal Law and Criminology*, 23 (November - December, 1932), 620-630 and "The Classification Program in the Federal Prison System: 1934-1960," *Federal Probation*, 24 (June 1960), 7-12; Loveland was the co-chairman of the American Prison Association's Committee on Classification and Case Work that produced the *Handbook on Classification in Correctional Institutions* (New York: American Prison Association, 1947); For a current reapplication of the 1947 Handbook's insight, see Curtis R. Blakely, "Countering the "Contagion" of Inmate Nonamenability: Prison Specialization and Recidivism," *Professional Issues in Criminal Justice* 3 (February 2008), 77-89.

practical problems of implementation and program integration.<sup>171</sup> While Nott felt that the much smaller prisoner population of New South Wales precluded some of the highly specialization and differentiated prisons and units he toured in places like California and the American federal penitentiaries, he nevertheless recommended instituting similar methods of sorting inmates and penal spaces.<sup>172</sup>

The Department of Prisons established a centralized Classification Committee in 1950, which included an education officer, prison chaplain, a psychologist, industries officer and a medical officer in addition to custodial staff and the Deputy Comptroller.<sup>173</sup> This committee evaluated newly committed prisoners upon reception at the Long Bay prison complex, south of Sydney, determining the best placement and program available for any particular inmate. By 1952, the department also hired a consulting psychiatrist for the Long Bay facility to evaluate inmates with suspected mentally illness.<sup>174</sup> Despite its rehabilitative framings, classification retained significant custodial aspects in practice. The repression of Grafton and the new reformatory or training agenda both relied on the cornerstone of inmate classification.

Nott significantly altered other aspects of the overseas models to fit prevailing regimes in New South Wales. Certain therapeutic practices more prominent overseas, like various forms of group or individual counseling and artistic programs, were not as prominent in New South Wales at first, although they started to gain inroads at certain prisons in the Sydney area by the 1960s.<sup>175</sup> It was more common to assign remediable prisoners to certain forms of industrial,

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<sup>171</sup> Loveland, "The Classification Program in the Federal Prison System"; Paul W. Keve, *Prisons and the American Conscience: A History of U.S. Federal Corrections* (Carbondale: Southern Illinois University Press, 1991), 160-162.

<sup>172</sup> Nott, *Report of Investigation of Prison Systems*, 10-11.

<sup>173</sup> Nagle, *Report of the Royal Commission*, 567-568; Ramsland, *With Just But Relentless Discipline*, 306-308.

<sup>174</sup> "Psychiatrist as Long Bay Gaol Consultant," *Sydney Morning Herald*, (January 2, 1952).

<sup>175</sup> Nagle, *Report of the Royal Commission*, 571.

agricultural or domestic training, especially in lower-security, enclosed facilities, like Goulburn and Bathurst, or in the department's series of open, afforestation camps, like Emu Plains.<sup>176</sup> Many of the facilities also began offering a range of academic and remedial evening classes and increased leisure activities for youthful or first time offenders. Education spanned basic literacy and vocational programs in areas such as brick-laying and automotive mechanics to more advanced certificates in topics like accounting and physics from correspondence school courses from the Sydney Technical College.<sup>177</sup> In addition to programing, the department attempted to improve certain aspects of daily life behind bars in some of the prisons making living conditions more closely resemble those beyond the walls. In practical terms, this translated to modest improvements in food and clothing as well as replacing hammocks with beds.<sup>178</sup>

However, the role of social sciences experts in the state's prisons grew throughout the 1950s. Nott hired two professional social workers as Parole Officers to work specifically with people considered to be remediable.<sup>179</sup> These officers conducted initial interviews with prisoners, prepared case histories and worked alongside the Classification Committee at Long Bay, but they also serviced numerous institutions throughout the state and re-interviewed inmates months after their assignment. With hundreds of miles to cover and numerous cases, the effectiveness of two parole officers was open to question. Nevertheless, it would be the beginning of a greater effort to develop services for some lesser or younger offenders. By the late 1950s, seven parole officers worked in the prisons department.<sup>180</sup> With the assistance of

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<sup>176</sup> Ramsland, *With Just But Relentless Discipline*, 308-309.

<sup>177</sup> *Ibid.*; Nagle, *Report of the Royal Commission into New South Wales Prisons*, 570-571.

<sup>178</sup> Nagle, *Report of the Royal Commission into New South Wales Prisons*, 569.

<sup>179</sup> *Ibid.*, 286-287.

<sup>180</sup> *Ibid.*, 289; Nagle, *Report of the Royal Commission into New South Wales Prisons*, 571.

outside penal reform and social welfare organizations, like the Salvation Army, Howard Prison Reform League and the Prisoner's Aid Association, these officers developed a few after-care services for recently-released inmates. Eventually this collaboration resulted in a network of regional Civil Rehabilitation Committees.<sup>181</sup>

Indicative of the articulation of postwar penal discourse in New South Wales was Nott's decision to rename certain prisons for remediable youthful prisoners and adult first-offenders, "Training Centres."<sup>182</sup> If the California prisons visited by Nott focused on "rehabilitation" and "therapy" through education, and psychological interventions, like group counseling, Nott's adaptation involved the framework of classification, with psychological testing and expertise, but he placed a greater emphasis on re-training some prisoners for life as laborers. Thus, the dominant reformatory, penal discourse in New South Wales during the 1950s often highlighted "training" or "retraining" in addition to education while downplaying, if not entirely rejecting, terms like "rehabilitation," "corrections" and "reformation," which were more common in the United States. Yet, the prison department was often cautious about what these terms meant. While there was certainly a growing need for certain types of trades in the postwar economy, especially in the construction sector, prison administrators, like their counterparts in the U.S., knew that teaching inmates a trade that would immediately translated into employment upon release was increasingly unlikely. Instead, they hoped to reorient the wayward toward

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<sup>181</sup> Ibid., 286. F.D. Hayes, *Voluntary Welfare Work in Corrections* (Stanmore: Prisoners' Aid Association of New South Wales, 1991), 21-27.

<sup>182</sup> Ramsland, *With Just But Relentless Discipline*, 300-301.

industrious habits and discipline while also imparting some trade skills that could be further developed with additional training and employment outside the prison system.<sup>183</sup>

In both places, however, advocates of the new penology wished to recast prisons with a new purpose and language. In 1952, the New South Wales Parliament updated its penal legislation to reflect many of the changes that Nott had already instituted through administrative initiative.<sup>184</sup> This was the first time the state's legislature undertook this task since 1899, during the last era of major penal reform.<sup>185</sup> The new Prisons Act granted the Department of Prisons wide latitude in how it operated its affairs, with much of the language in the act being ambiguous or deferential to expertise of penal administrators. Perhaps, the most significant passage in the new legislation reflecting Nott's agenda was the incorporation of nine broad classification categories for inmates, which remained in place for the next thirty years:

- a) Unconvicted.
- (b) Appellants.
- (c) Debtors.
- (d) Maintenance confinees.
- (e) Short-sentenced.
- (f) Remediable.
- (g) Recidivist.
- (h) Intractable.
- (i) Homo-sexual.
- (j) Unclassified.<sup>186</sup>

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<sup>183</sup> "Gaol Reforms Are Debated," *Sydney Morning Herald*, (March 19, 1952).

<sup>184</sup> Nagle, *Report of the Royal Commission into New South Wales Prisons*, 569-570.

<sup>185</sup> *Ibid.*

<sup>186</sup> Regulations under the Prisons Act, 1952 no. 10. Published in the *NSW Government Gazette* No. 32 (13 February 1953). Historian Mark Finnane notes a similar eleven category scheme adopted by Queensland in 1959. Unlike New South Wales's practice, maintenance confinees and debtors formed one class. Queensland's prison regulations also had two additional categories: youthful offenders and psychopaths. *Punishment in Australian Society*, 83-84.

These groupings mapped the managerial visions of Nott and his subordinates, how they conceived the inmate population and its contours, and channeled the flows of reformative intervention, repression and neglect. Categories (a) through (e) and (h) and (i) were not eligible for participation in the new treatment programs and routines. The first five categories simply did not meet the threshold (yet) for intervention. Officials viewed people in these categories more as detainees or temporarily imprisoned, even if in some cases people labeled as such would later become longer-term prisoners. The prospects for reform for these inmates was temporally or legally constrained or negated by other considerations. Debtors and maintenance confines, for instance, were not generally considered to be offenders in the postwar criminological discourse. Nott's prisons may have fulfilled legal obligations to the state's courts to manage people sentenced for failing to pay debts or family support, but they were not the subjects of expert invention.

If they did not meet this threshold, then category (h)—intractable—exceeded it. Those labeled intractable spent their time at Grafton or in slightly less austere prisons, beyond the reach of training and education programs and many of the amenities provided to those in category (f) and even category (g). The latter group—recidivists—abutted the remediable and intractable classes, sharing in some limited access to the new programs, but always exposed to harsher discipline and security arrangements and always under threat of being reclassified as intractable. The bulk of the new penology, its claims, promises and techniques rested largely on those who fell within category (f). The format of the list belied the wide disparities in assignment, treatment and consideration that separated category (f) from the others in the new treatment paradigm.

## ***Pennsylvania***

I

In 1944, Pennsylvania's governor, Edward Martin, empaneled a five-member committee under the chairmanship of Stanley P. Ashe, the warden of the Western State Penitentiary in Pittsburgh, to investigate the best way to reorganize the state's penal apparatus.<sup>187</sup> Gov. Martin, like his counterpart Premier William McKell in New South Wales, feared a possible increase in crime following the end of the war when millions of soldiers would be demobilized and employment might decline.<sup>188</sup> Like other states in the country, Pennsylvania's prison industries, already in serious decline, faced more cutbacks with the eventual end of war production. The Ashe Committee's survey built on a similar report written the year before by criminologist Harry Elmer Barnes for the War Production Board.<sup>189</sup> Both Barnes and Ashe criticized what they believed was an unmanageable fragmented penal system and they emphasized the need for greater centralized oversight. Barnes had recommended that the state government establish a cabinet-level department to administer the prisons. Perhaps due to need for expediency and the possibility of legislative delay, the Ashe Committee settled on investing more authority in the existing Bureau of Correction within the Department of Welfare

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<sup>187</sup> John C. McWilliams, *Two Centuries of Corrections in Pennsylvania: A Commemorative History* (Harrisburg: Pennsylvania Historical and Museum Commission for the Pennsylvania Dept. of Corrections, 2002), 34.

<sup>188</sup> Commonwealth of Pennsylvania, Department of Welfare, *Report of the Committee appointed by Honorable Edward Martin to Survey the Penal and Correctional System of the Commonwealth of Pennsylvania* (July 1944), 1-2.

<sup>189</sup> Harry Elmer Barnes, *Pennsylvania Penology – 1944: A Report on Penal and Correctional Institutions and Correctional Policy in the State of Pennsylvania* (State College: Pennsylvania Municipal Publications Service, 1944). Barnes knew the state's prisons well having produced a previous overview of the Pennsylvania's prison in 1918. Pennsylvania Commission to Investigate Penal Systems, (Fletcher W. Stites), *Report of the Commission to Investigate Penal Systems* (Philadelphia: Allen, Lane and Scott, 1919); Harry Elmer Barnes, *The Evolution of Penology in Pennsylvania: A Study in American Social History* (Montclair: Patterson Smith, 1968, 1927).

under the sole leadership of a professional penologist as Commissioner of Correction.<sup>190</sup>

Despite this disagreement over the bureaucratic structure, both studies concluded that many of the problems caused by fragmentation and poor coordination could be remedied with a comprehensive, centralized classification system to control prison assignments and transfers, categorize all of the state's institutions and better allocate resources. Over time, the classification system itself would do as much to consolidate the penal bureaucracy as the recommendations of experts like Barnes and Ashe or subsequent legislation.

Despite the official studies and recommendations, the Pennsylvania's prisons received little legislative attention for a nearly a decade following the war, even though the expected increase in prisoners occurred.<sup>191</sup> The nationally-known prison expert Austin MacCormick argued that the lack of a centralized prisons department in Pennsylvania (he advocated a cabinet-level position) effectively blocked all of the other progressive reforms recommended by the Ashe Committee, like a state-wide classification system. This lack of leadership, especially by a respected professional penologist, played a large role in the years of official inaction on the Ashe Committee's suggestions.<sup>192</sup> This changed abruptly in January 1953, when disturbances engulfed Pittsburgh's Western State Penitentiary and its satellite institution, Rockview Penitentiary in central Pennsylvania. Several days of rioting and fires in each prison lead to a major inquiry and transformation of the state's penal bureaucracy. Unlike later inquiries, however, the tenor of the investigation, debate in the state legislature and media coverage was

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<sup>190</sup> See the comments of the the well-known penologist, Austin H. MacCormick, who served as a consultant to the Ashe Committee. MacCormick, "Why Pennsylvania Needs a State Department of Correction," *The Prison Journal*, 29 (January 1949), 1-6.

<sup>191</sup> There were occasional reminders of the Ashe Committee's work, but state leaders expended little effort on this topic. See, "Duff Asked to Modernize State's Penal System," *Pittsburgh Post-Gazette*, (January 12, 1950).

<sup>192</sup> MacCormick, "Why Pennsylvania Needs a State Department of Correction," 3-4.



generally supportive of the state's leadership and penal authorities. Following the resolution of the disturbances the *Pittsburgh Post-Gazette* editorialized that violence revealed the longstanding need for changes in the state's prisons, citing the deplorable conditions and administrative deficiencies previously noted by the Ashe Committee nine years before.<sup>193</sup> The daily's editor chided state leaders for their years of inaction on this issue, but emphasized the wisdom and thoroughness of the Ashe Committee's investigation and hoped that a similar "full-scale survey of Pennsylvania' penal system" would result.<sup>194</sup> The newspaper called for "a sweeping long-range study of the State Penal and parole systems by the best available authorities," and specifically argued that it must include "outstanding penologists."<sup>195</sup>

The newspaper's level of deference and respect shown to penal experts underscored the prestige and authority that professional penologists had acquired in recent years. By comparison, the *Post-Gazette* showed much less enthusiasm for calls for prison reform and investigation by prisoners at the Allegheny County Workhouse at Blawnox, which also experienced a large, related disturbance at about the same time.<sup>196</sup> The lawyer representing the prisoners in court, Hymen Schlesinger, was widely known in Pittsburgh as a fellow traveler and member of the leftist National Lawyer's Guide. He recently represented Communists in a high-profile sedition case and was the subject of repeated disbarment campaigns by anti-

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<sup>193</sup> "Abandonment of Old Western Penitentiary Urged Nine Years Ago," *Pittsburgh Post-Gazette*, (January 23, 1953); "Statutes for Sweeping Changes in State Prison System Gathering Dust," *Pittsburgh Post-Gazette*, (January 24, 1953).

<sup>194</sup> "Riots Emphasize the Need of State Prison Reforms," *Pittsburgh Post-Gazette*, (January 24, 1953).

<sup>195</sup> *Ibid.*

<sup>196</sup> "Workhouse Probe Refused: Propaganda Move, Board Counsel Declares," *Pittsburgh Post-Gazette*, (January 24, 1953).

communists.<sup>197</sup> The penal authorities portrayed the disturbance and the request for a hearing as “an overall plot to disrupt the operation of the workhouse,” a conspiracy between Schlesinger and “incorrigible prisoners” to generate radical propaganda.<sup>198</sup> The *Post-Gazette* further discredited the inmates by reminding readers that “in the past Schlesinger has represented many Communist causes.”<sup>199</sup> The newspaper showed little sympathy for the rights of inmates and their radical lawyer. However, the paper published editorials calling for orderly, modern prison regime supported by penal expertise.

Gov. John S. Fine appointed a committee, led by Gen. Jacob L. Devers, to investigate the state of the entire prison system, leaving much of the specific details of the riots to inquiries of the Attorney-General and state police.<sup>200</sup> The Devers Committee, which included prison officials from the states of Illinois and Wisconsin, reiterated many of the findings of the Ashe Committee, especially in regard to fragmented nature of Pennsylvania’s penal apparatus, the pressing need for centralized prison administration and a state-wide classification system to integrate operations.<sup>201</sup> The Devers Committee recommended transferring the Bureau of Correction from the Department of Welfare to the Department of Justice, but they did not

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<sup>197</sup> Ibid. It appears the word of attorney Edward J. Lesko (representing the Workhouse Board of Managers) was more convincing to the judge and reporter: “The request for a hearing is merely a guise to bring incorrigible prisoners into court to conduct a propaganda forum by inmates who displayed nothing but hatred and contempt for legally constituted authority.” For accounts of the Red Scare in Pittsburgh, see Philip Jenkins, *Cold War at Home: The Red Scare in Pennsylvania, 1945-1960* (Chapel Hill: University of North Carolina Press, 1999), 69-97; Steve Nelson, James R. Barrett and Rob Ruck, *Steve Nelson, American Radical* (Pittsburgh: University of Pittsburgh Press, 1981), 298-340; David Cauter, *The Great Fear: The Anti-Communist Purge Under Truman and Eisenhower* (New York: Simon and Schuster, 1978), 216-223.

<sup>198</sup> “Workhouse Probe Refused: Propaganda Move, Board Counsel Declares,” *Pittsburgh Post-Gazette*, (January 24, 1953).

<sup>199</sup> Ibid.

<sup>200</sup> Pennsylvania Committee to Investigate the Peno-Correctional System, *Report of the Committee Appointed by Honorable John S. Fine, Governor to Investigate the Peno-Correctional System of the Commonwealth of Pennsylvania* (Harrisburg: Pennsylvania Committee to Investigate the Peno-Correctional System, 1953), 1-2.

<sup>201</sup> Ibid., 3-19.

endorse creating a separate, cabinet-level department. After the violence of early 1953, the state's governor and General Assembly quickly moved legislation, establishing the statutory authority for the administrative changes.<sup>202</sup> Arthur Prasse, warden of the Pennsylvania Industrial School at Camp Hill (often also called White Hill), assumed the new office of Commissioner of Correction in the consolidated agency, a post he would hold until 1970.

Under Prasse's leadership, the Bureau instituted many of the changes recommended by the Devers Committee and the Ashe Committee. Prasse's selection was a telling sign of the effort to push the penal agency in a new direction. Prasse's past experience departed from the more traditional custodial background of many of his contemporaries. He began his career in corrections as an instructor at the Pennsylvania Training School (commonly referred to as Morganza) in 1925.<sup>203</sup> In 1940, he helped establish a new George Junior Republic in Grove City, Pennsylvania.<sup>204</sup> Both institutions were part of the state's juvenile justice system, holding children under the age of 21. In 1950, Prasse assumed to position of superintendent of the much larger Pennsylvania Industrial School at Camp Hill, which originally held inmates between the ages of 15 and 25.<sup>205</sup> The legislature reduced the age ceiling to 21 years of age in the early 1950s.<sup>206</sup> These institutions, Morganza especially, occasionally attracted negative attention for mistreating their charges, sometimes severely. Despite this, the routines and administrative assumptions of these juvenile facilities resonated far more with the rehabilitative priorities

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<sup>202</sup> Pennsylvania Committee to Investigate the Peno-Correctional System, *Follow-Up Report of the Devers Committee* (Harrisburg: Pennsylvania Committee to Investigate the Peno-Correctional System, 1954).

<sup>203</sup> "A Modern Corrections Pioneer," (Arthur T. Prasse obituary) *Correctional Newsfront*, (January-March 1978), 1-2; "Biography, Arthur T. Prasse," RG-15 Department of Justice, Bureau of Correction Press Office History Files, box 5, folder 4. Pennsylvania State Archives, Harrisburg (hereafter PSA).

<sup>204</sup> "At George Junior Republic—Grove City School Big Contrast to Morganza," *Pittsburgh Press*, (January 22, 1950).

<sup>205</sup> "A Modern Corrections Pioneer," (Arthur T. Prasse obituary) *Correctional Newsfront*, (January-March 1978), 1-2.

<sup>206</sup> Arthur T. Prasse, "Recent Changes At Camp Hill," *The Prison Journal*, 32 (January 1952), 133-139.

informing the work of the Devers Committee and much of professional penology at the time.<sup>207</sup>

The college-educated Prasse developed the habitus of a progressive penologist in these institutions with a thorough knowledge of institutional organization designed around a reformatory total program of work, education, classification, psychological treatment and case work under the guidance of professional penologists and social scientists.

The Camp Hill facility Prasse commanded prior to his promotion was relatively new, having been constructed only in 1941. It held young adults and offered greater reformatory programs and training than many secure facilities for older prisoners and recidivists.<sup>208</sup> During the 1940s, Camp Hill's Director of Classification, E.R. East, conducted research on classification that gained national penological audiences.<sup>209</sup> The Classification Clinic at White Hill did not just sort new arrivals. It became a vehicle for achieving numerous penal goals, including ritually marking hierarchy, prison order and expertise. As Prasse described the institution's operational philosophy, "the procedures set up for the reception of new admissions are of vital importance. The boy's idea of what his new experience of incarceration may mean to him should be formed from his meeting, at his entrance, those qualified to interpret our policy and program."<sup>210</sup> The reception center at the industrial school was thus a critical site for establishing the authority of this new penal expertise. It was the initial performative venue of this expertise, where the "new

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<sup>207</sup> On troubles at Morganza, see "Brutal Treatment At Morganza Breeds Resentment and Hate," *Pittsburgh Post-Gazette*, (October 15, 1948); "Jimmy Smith Case Called Indictment Against Morganza," *Pittsburgh Post-Gazette*, (October 16, 1948); "Boy's Head Bloodied Twice In One Night at Morganza," *Pittsburgh Post-Gazette*, (October 18, 1948); "Morganza Is Miscalled a 'Training School,'" *Pittsburgh Post-Gazette*, (October 20, 1948); "Morganza Ills Stir Protests," *Pittsburgh Post-Gazette*, (October 21, 1948); "Duff to Take Action of Morganza," *Pittsburgh Post-Gazette*, (October 22, 1948); "Morganza Facing Probe After Death, Beating," *Pittsburgh Post-Gazette*, (September 13, 1955); "Morganza Probe Approved By Senate," *Pittsburgh Post-Gazette*, (September 14, 1955).

<sup>208</sup> Judith R. Smith, *30<sup>th</sup> Anniversary Commemorative History: The Bureau of Correction and Its Institutions* (Harrisburg: Commonwealth of Pennsylvania, Bureau of Correction, 1983), 34-36.

<sup>209</sup> E. R. East, "Penal Classification," *Journal of Criminal Law and Criminology*, 35 (July – August 1944), 93-104.

<sup>210</sup> Prasse, "Recent Changes At Camp Hill," 135.

Citizen” (Prasse’s term) entered the penal apparatus and came into being before the authority and control of “those qualified” administrators.<sup>211</sup>

In the wake of the riots of 1953, the Bureau of Correction finally established the state-wide classification program that reformers and investigators had dreamed of for the better part of two decades.<sup>212</sup> The Bureau created two new Diagnostic and Classification Centers at the Eastern State Penitentiary and the Western State Penitentiary in Pittsburgh.<sup>213</sup> In addition to empowering the Commissioner of Correction, the enabling legislation also created a deputy position whose official title was Deputy Commissioner for Treatment.<sup>214</sup> Kenneth E. Taylor, PhD, assumed this position after ten years as the staff psychologist at the Western Penitentiary and four years in the U.S. Army as a Classification and Assignment Officer.<sup>215</sup> The press ran numerous articles on the new penal philosophy and regimes emerging from the riots, investigation and legislation. Elaborate classification and individualized programs addressing the problems that led offenders astray would “cure” criminals (Figures 1:1 and 1:2).<sup>216</sup>

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<sup>211</sup> Ibid.

<sup>212</sup> For two earnest class for instituting a comprehensive classification system in Pennsylvania during the 1930s and 1940s, see Leon Stern, “Case Work Enters the Prison,” *The Prison Journal*, 13 (April 1933), 1-13 and S.M.R. O’Hara, “How Pennsylvania Proposes to Meet Postwar Problems in the Field of Correction,” *The Prison Journal*, 26 (January 1946), 132-141.

<sup>213</sup> *Follow-Up Report of the Devers Committee*, 10.

<sup>214</sup> Ralph W. England, “Pennsylvania’s Answer to Prison Riots,” *The Prison Journal*, 34 (April 1954), 6-8.

<sup>215</sup> Ibid.

<sup>216</sup> “Clinics for Crime: New Penal System to Speed Rehabilitation of Convicts,” *Philadelphia Inquirer*, (December 28, 1953), newsclipping; “Governor Approves Revamp of Prisons,” (December 29, 1953), newsclipping; “Clinics to ‘Cure’ Criminals: Chaplains Offer a Helping Hand to Prisoners In Their Climb to Normal Honest Lives,” *Philadelphia Inquirer*, (December 31, 1953), newsclipping; “Clinics to ‘Cure’ Criminals: Sutton, Tame Inside Prison and Outlaw Outside, Called Personality Immune to Reform Pleas,” *Philadelphia Inquirer*, (December 31, 1953), newsclipping; “Sex Offenders To Be Isolated,” (December 31, 1953), newsclipping; “Rehabilitation Chief Goal: New State Prison Reforms Under Way,” *Sun-Telegraph*, (January 10, 1954), newsclipping; “Convicts Are Classified: Grouping Vital In Prison Plan,” *Sun-Telegraph*, (January 11, 1954), newsclipping in NEWSPAPER CLIPPINGS, 1953-1987, September 1953-September 1954, 14-1555 carton 1, RG-58: Records of the Department of Corrections Press Office. PSA.

As part of this refashioning of the penal apparatus, the Bureau of Correction followed the lead of the American Correctional Association and altered its longstanding penal nomenclature to reflect the official emphasis on treatment. Thus, “penitentiaries” became “state correctional institutions” and the Bureau replaced the titles “warden” and “prison guard” with “superintendent” and “corrections officer.”<sup>217</sup> These nomenclature changes did little to alter the basic job duties of such prison staff, but they heralded an emerging professionalization of the prison service, which was also apparent in a greater commitment to staff training following the bureaucratic reorganization.<sup>218</sup> Such training introduced many of the new concepts of postwar penology to new recruits. While it would be naïve to read training course material as an indication of the attitudes or practices of guards, it nevertheless established the terms and language of much of the postwar penal practice, reflecting the hegemonic place of the new treatment discourse.<sup>219</sup>

The new legislative mandate for the Bureau of Correction also entailed greater administrative centralization, which created a unified prison “system” and insulated it from the disruptions of state politics. The new statutory authority for the Bureau of Correction elevated it above the boards of supervisors for each prison. In the past, these latter bodies had effectively controlled semi-autonomous prisons. Even though the Bureau of Correction had existed since

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<sup>217</sup> Smith, *30<sup>th</sup> Anniversary Commemorative History*, 4; McWilliams, *Two Centuries of Corrections in Pennsylvania*, 40. See also John Pratt’s chapter on the “Sanitization of Penal Language” in *Punishment and Civilization: Penal Tolerance and Intolerance in Modern Society* (London: Sage, 2002), 81-96.

<sup>218</sup> *Ibid.*, 3; “Prison Guard Class Ends; Next Training Set for Jan. 3,” *Reading Eagle*, (December 14, 1954).

<sup>219</sup> See the various officer training documents in the papers of Sgt, Eugene Guerra, who was hired as a prison guard at the Western Penitentiary in Pittsburgh before the establishment of the Bureau of Correction. Officer Training Program folder and the *Manual of Rules, Regulations and Required Duties for Corrections Officers* (Pittsburgh: Western State Penitentiary, 1958) in Eugene John Guerra folder, Eugene J. Guerra Papers and Photographs HHC Archives MSS 0741 box 1 DO71e, Senator John Heinz History Center, Pittsburgh, PA.

1921, its role had largely been advisory until 1953.<sup>220</sup> Real decision-making and policy matters rested with the boards of supervisors, with the rival boards of Eastern State Penitentiary (Philadelphia) and Western State Penitentiary (Pittsburgh) being the most powerful.

To many professional penologists, Pennsylvania's bureaucratic reform appeared long overdue. The state was an outlier among other large states in this fragmentation, something Pennsylvanian prison reformers frequently pointed out. Two of Pennsylvania's neighboring states, New York and New Jersey, had illustrious reputations in national and international penal reform circles for their comprehensive approach to penal administration. Their bureaucratic arrangements were widely seen as enabling experimentation with new progressive penal practices.<sup>221</sup> This was, perhaps, more true of classification than any other practice. As a penal technique, classification hinges upon the creation of some central point of remove, where experts—whoever they may be—can view and access spatially distributed facilities, personnel, capacities, inmates and other resources. Once classification moves beyond internal applications, i.e. within a particular prison, to encompass several different prisons scattered throughout a jurisdiction, it became much harder to coordinate without creating another vantage point that could consolidate the various prisons through its operations. Although Michel Foucault rightly pointed out that classification, in general, has been part of imprisonment since its inception, the iteration of this practice that emboldened the dreams and hopes of mid-twentieth-century penologists was predicated as much on the governing power

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<sup>220</sup> The Bureau of Correction was located within the Department of Welfare. Critics often claimed that the Department devoted more time to the management of hospitals and relief at the expense of the state's prisons. See Maury Maverick, "Pennsylvania Penal Program Viewed by the Prison Industries Division of the War Production Board," *The Prison Journal*, 23 (January 1944), 388-389; Ralph W. England, "Pennsylvania's Answer to Prison Riots," *The Prison Journal*, 34 (April 1954), 6-8.

<sup>221</sup> See, for instance, MacCormick, "Why Pennsylvania Needs a State Department of Correction," 3-6.

that had accrued in centralized bureaucratic formations in addition to the specific penological techniques and sciences animating classification practices.

The existing centralized, bureaucratic structure in New South Wales facilitated the introduction of many new practices during Leslie Nott's tenure. Unlike Pennsylvania and most American states, New South Wales inherited a state system designed originally to manage convicts. Ruled throughout much of the nineteenth century by military governors, the state's political system, while based on Westminster parliamentary practice, nevertheless retained a degree of centralization in executive agencies and a reliance on certain practices, like the use of royal commissions, that would have appeared authoritarian to many American audiences prior to the 1930s.<sup>222</sup> The allure of bureaucratic consolidation, which appeared increasingly throughout many parts of the world in the early-to-mid-twentieth century, also animated the possibilities of treatment and rehabilitation in the penological imaginaries or progressive reformers. If centralized bureaucratic arrangements and institutional treatment provided answers to the failures of imprisonment after World War II, by the late 1960s, these practices appeared to hinder the goal of reforming inmates and reintegrating them back into society.

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<sup>222</sup> David Neal, *The Rule of Law in a Penal Colony: Law and Power in Early New South Wales* (Sydney: Cambridge University Press, 1991); Alastair Davidson, *The Invisible State: The Formation of the Australian State, 1788-1901* (Cambridge: Cambridge University Press, 1991); Lyn Spillman, *Nation and Commemoration: Creating National Identities in the United States and Australia* (New York: Cambridge University Press, 1997), 19-33.



Rehabilitation Chief Goal

1-10-54

## New State Prison Reforms Under Way



Sun-Telegraph Photo by Paul Hunter.

**TESTING . . .** Psychologist Ernest S. Patton, classification center director at Western Penitentiary, gives an intelligence test to a prisoner.

*(A year ago two Pennsylvania prisons, Western Penitentiary and its Centre County branch, Rockview, erupted in riots which attracted nationwide attention. Today the Sun-Telegraph presents the first in a series of three articles assessing reforms growing out of the costly prison rebellion).*

Figure 1: Rehabilitation Chief Goal: New State Prison Reforms Under Way

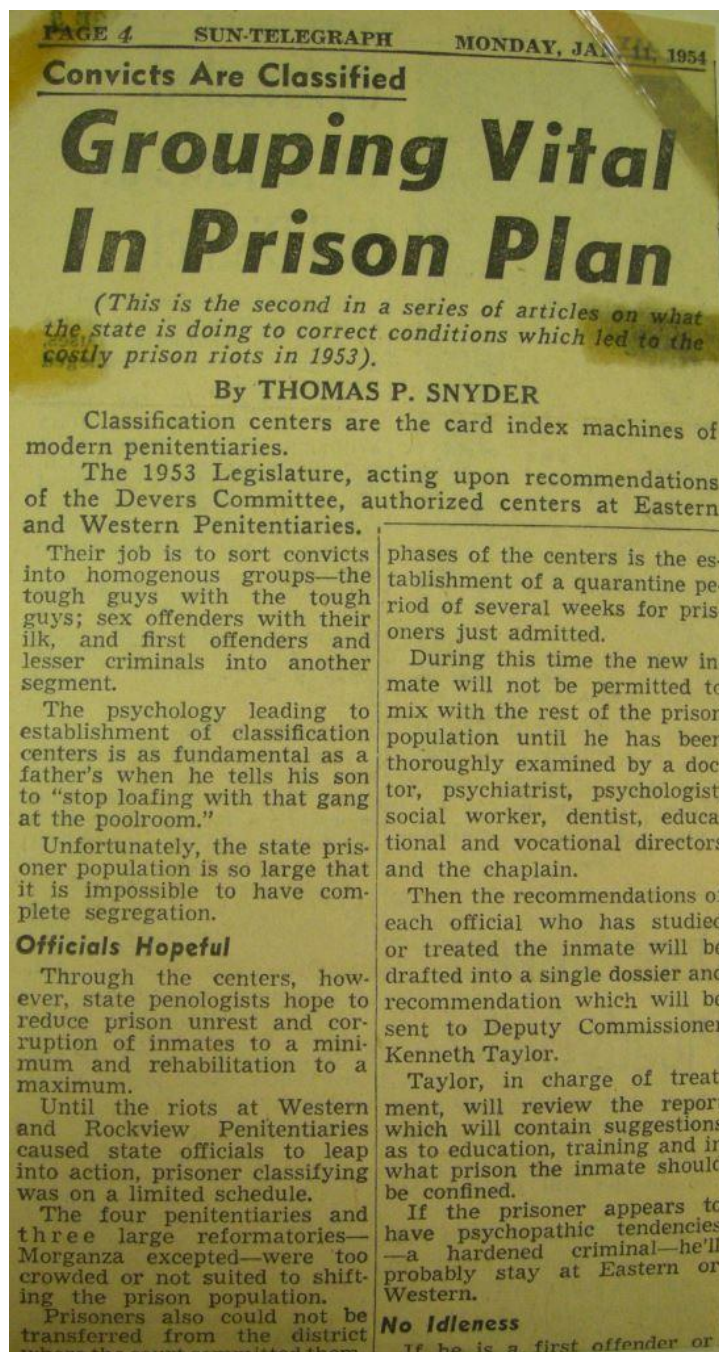


Figure 2: Convicts Are Classified: Grouping Vital In Prison Plan

Examples of press accounts of the new rehabilitation regime emerging in Pennsylvania's prison system in the aftermath of riots. Figure 1: "Rehabilitation Chief Goal: New State Prison Reforms Under Way," *Sun-Telegraph* (January 10, 1954), newsclipping. Figure 2: "Convicts Are Classified: Grouping Vital In Prison Plan," *Sun-Telegraph* (January 11, 1954), newsclipping NEWSPAPER CLIPPINGS, 1953-1987, September 1953-September 1954, 14-1555 carton 1, RG-58: Records of the Department of Corrections Press Office. PSA.

### **The Limits of the Postwar Penal Bureaucracy: Decarceration and Normalization**

By the mid-to-late 1960s, the postwar reforms to the penal apparatus began to lose their appeal and authority. Many inmates and people working in prisons viewed the reforms as false promises or deeply compromised by the custodial realities of prisons and the resistance of many of the prison staff to the goals and techniques of inmate reform. Some segments of the penal establishment, especially guards,<sup>223</sup> never entirely agreed with many of the postwar changes, which undermined their previously exclusive authority over inmates. Yet, by the late 1960s, some senior prison administrators, treatment staff and academic researchers—the very groups of people empowered by the postwar changes—began to shift their views about the appropriateness of many practices in the postwar prison, including even the notion of confinement itself. Numerous plans to de-center the prison as the major site of punishment appeared in multiple jurisdictions and academic publications during the late 1960s and early 1970s. These new ideas did not reject the goal of rehabilitation, but recognized the limits of achieving this goal within prisons. Consequently, the spatial locus of the therapeutic model in these new views moved further away from maximum-security prisons and custodial institutions in general.

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<sup>223</sup> And probably much of the general public.

Under the rubric of community corrections or decarceration, various new programs and status-levels for inmates swept over correctional practice between 1965 and 1975. Within a span of about five years—from 1968 to 1973—prison and parole authorities in New South Wales and Pennsylvania developed programs like work or education release, temporary furloughs, periodic detention, community correction centers, regional jails for lesser offenders, and community service orders in an effort to move away from the use of the maximum-security, fortress- or factory-like prisons. At the same time, similar criticism of the prison mounted from other quarters. These far more contentious critiques and actions, undertaken by courts, inmates, some staff and prison reformers outside the apparatus, also targeted many aspects of life inside maximum-security institutions. Both of these areas of reform shared a common theme that the very nature of institutional life in a maximum security prison (the predominate type of prison in New South Wales and Pennsylvania) negated reform efforts and damaged the people subjected to it. It was also extremely expensive to operate these massive institutions.

Yet, such criticisms were hardly new. As a number of writers have pointed out, certain critiques of the prison (e.g. that it damages people or further inures them to criminality) developed in tandem with the institution since the eighteenth and nineteenth centuries.<sup>224</sup> Such arguments became more convincing to people in this field during the 1960s because they resonated with other immanent critiques of government programs, especially in the area of social welfare, and in the United States, where the community corrections movement first

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<sup>224</sup> This was a common theme in the revisionist histories of the 1970s concerning the origins of the prison See Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Alan Sheridan, trans. (New York: Vintage, 1977, 1975); David J. Rothman, *The Discovery of the Asylum*; Ignatieff, *A Just Measure of Pain*.

gained widespread traction.<sup>225</sup> Political scientist Sidney Milkis has argued that many reformers of the Great Society era shared an uneasiness about the administrative power of their New Deal predecessors who had fewer qualms about centralized authority. The emphasis on “public participation” in numerous American federal programs in the 1960s and 1970s stemmed from this paradoxical desire among governing liberals to use executive administrative means to achieve social policies goals (and more ambitiously, social change) while simultaneously developing methods to blunt the bureaucratic remoteness and unaccountability they saw in the same executive institutions.<sup>226 227</sup>

The most explicit expression of this liberal governing disposition in the United States was the development the Office of Economic Opportunity and the Community Action Program during the Kennedy and Johnson administrations.<sup>228</sup> The Community Action Program sought to address problems like juvenile delinquency and poverty partly through facilitating active community involvement in the provision of services like education, mentoring and job-training. The designers of the Community Action Program perceived powerful integrating and socializing forces in these localities that they believed could be harnessed to federal funding and expertise to ameliorate social problems in ways beyond the normal capacities of a more socially-distant

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<sup>225</sup> Cohen, “The Punitive City,” 341-343.

<sup>226</sup> Sidney M. Milkis, “Remaking Government Institutions in the 1970s: Participatory Democracy and the Triumph of Administrative Politics” in David Brian Robertson (ed.), *Loss of Confidence: Politics and Policy in the 1970s* (University Park: Pennsylvania State University Press, 1998), 60-61.

<sup>227</sup> *Ibid.*, 51-74; It would, nevertheless, be an overstatement to suggest that the New Deal reformers were either unaware or unconcerned about the possible negative consequences of centralization. Alan Brinkley convincingly makes the case that by the mid-1930s the Roosevelt administration abandoned many more ambitious government programs and centralizing, or nationalizing, proposals that some administration figures advocated. Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York: Vintage Books, 1995), 48-174.

<sup>228</sup> O’Connor, *Poverty Knowledge*, 124-195; Michael B. Katz, *In the Shadow of the Poorhouse: A Social History of Welfare in America* (New York: Basic Books, Inc., 1986), 251-273; Peter Marris and Martin Rein, *Dilemmas of Social Reform: Poverty and Community Action in the United States* (New York, Atherton Press, 1967).

government.<sup>229</sup> Moreover, reformers argued that active participation itself had community-building and empowering qualities which, it was hoped could overcome destructive patterns of economic inequality, racism and crime.

As historian Howard Brick has noted, the concept of “community” held a wide appeal beyond just these areas of social policy during the 1960s. It had utopian qualities and was often deeply ambiguous, at times even contradictory.<sup>230</sup> More than establishing a clear vision of what constituted a community or what counted as participation in the development and operation of government programs, this discourse directed deep criticism at longstanding institutions and the prevailing bureaucratic conceptualization of social problems and solutions.<sup>231</sup> The creation of community treatment centers and related programs in the late 1960s and early 1970s most clearly embodied a penological version of the community-focused governance of 1960s-era American liberalism.

Community corrections programs were hardly confined to the United States. Much like the earlier moment of postwar reform, the decarceration movement was a transnational phenomenon, also occurring in multiple different jurisdictions, especially in Western Europe and Australasia. Yet, the appearance of such programs and discourse flowed in waves across

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<sup>229</sup> The Office of Economic Opportunity administered the Community Action Program through a multitude of local Community Actions Agencies and supporting coalitions across the country. Norman I. Fainstein and Susan S. Fainstein, *Urban Political Movements: The Search for Power by Minority Groups in American Cities* (Englewood Cliffs: Prentice-Hall, 1974); Frances Fox Piven and Richard A Cloward, *Poor People's Movements: Why They Succeed, How They Fail* (New York: Pantheon Books, 1977); Nicholas Lemann, *The Promised Land: The Great Black Migration and How it Changed America* (New York: A.A. Knopf, 1991), 148-153, 164-170, 192-194; Robert O. Self, *American Babylon: Race and the Struggle for Postwar Oakland* (Princeton University Press: Princeton, 2003), 198-210; Alyosha Goldstein, *Poverty in Common: The Politics of Community Action During the American Century* (Durham: Duke University Press, 2012).

<sup>230</sup> Howard Brick, *Age of Contradiction: American Thought and Culture in the 1960s* (New York: Twayne Publishers, 1998), 98-123.

<sup>231</sup> Goldstein, *Poverty in Common*, 111-153.



different jurisdictions, often acquiring and discarding certain aspects, critiques and forms in the process. These different waves of decarceration programs occurred well into the early 1980s, with certain programs appearing in some jurisdictions long after others had abandoned or reduced such efforts.<sup>232</sup> Sociologist Janet Chan has argued that the decarceration movement has always had this patterning of temporal and spatial diversity and that as an object of research, it changes while being studied. This complicates the notion of a unitary definition of the decarceration movement.<sup>233</sup> Whatever the analytical utility of such definitions, these practices were clearly interrelated and informed each other in the ebb and flow of penal discourse, circulating in professional societies, study tours, training programs and international governance organizations devoted to criminal justice matters.<sup>234</sup> The creation of such programs in both Pennsylvania and New South Wales formed part of a major shift in each state's penal system and were often marked by the ascension of new administrators in each state's respective penal bureaucracy. These younger leaders, who were more dedicated to these new programs, replaced older senior penal bureaucrats within these penal bureaucracies and became closely identified with these programs, for better or worse.

Since the mid-1970s, the decarceration movement has attracted a lot of critical scholarship. Sociologist Stanley Cohen has claimed the various programs and interventions in

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<sup>232</sup> Janet Chan notes that many officers in the Department of Corrective Services were well aware of some of the poor results of American and British decarceration programs as well as the critiques of the net-widening aspects of these programs. Such knowledge factored into the design of their programs. See Chan, *Doing Less Time: Penal Reform in Crisis* (Sydney: Institute of Criminology, 1992), 15.

<sup>233</sup> Ibid.

<sup>234</sup> See, for instance, descriptions of non-institutional approaches to punishment and offender reform as well as community involvement in the reports and proceedings of the Third and Fourth United Nations Congress on the Prevention of Crime and Treatment of Offenders, (Stockholm, Sweden 9 - 18 August 1965 and Kyoto, Japan 17 - 26 August 1970, respectively), viewable at: [http://www.asc41.com/UN\\_congress/undocs.htm](http://www.asc41.com/UN_congress/undocs.htm). Last view September 3, 2013.

the community corrections movement should be recognized definitively as state projects regardless of their adulation for the socializing powers of the community.<sup>235</sup> In fact, Cohen argues, “most attempts to recreate community [through such programs] in fact constitute evidence of the end of community.”<sup>236</sup> The very informal social practices, stemming from such things like family and work structures, were often missing or declining in the areas where many inmates had lived. Alternatively, such offenders might have actually been well socialized in communities that tolerated, encouraged or perpetrated criminal behavior.<sup>237</sup> Many critics have also pointed out that instead of replacing imprisonment or reducing its use, the range of lesser, community penalties increased the penal apparatus’s ability to absorb more offenders, often referred to as the “net-widening” phenomenon.<sup>238</sup> Rather than reduce levels of imprisonment, these programs created new penal populations. Low-level offenders, who previously would not have received much more than a fine, were now sentenced to harsher, community penalties. Even with the movement of some previously imprisoned offenders from secure institutions into

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<sup>235</sup> Cohen, *Visions of Social Control*, 123.

<sup>236</sup> *Ibid.*, 122.

<sup>237</sup> *Ibid.*, 122-125; Bernard Beck, “The Limits of Deinstitutionalization” in Michael Lewis (ed.), *Research in Social Problems and Public Policy*, vol. 1 (Greenwich: JAI Press, 1979), 1-14.

<sup>238</sup> Cohen, “The Punitive City”; Beck, “The Limits of Deinstitutionalization”; Malcolm W. Klein, “Deinstitutionalization and Diversion of Juvenile Offenders: A Litany of Impediments” in Norval Morris and Michael Tonry (eds.), *Crime and Justice: An Annual Review of Research*, vol. 1 (Chicago: University of Chicago Press, 1979), 145-201; James Austin and Barry Krisberg, “NCCD Research Review: Wider, Stronger and Different Nets: The Dialectics of Criminal Justice Reform,” *Journal of Research in Crime and Delinquency*, 18 (January 1981), 165-196; John H. Hylton, “Rhetoric and Reality: A Critical Appraisal of Community Correctional Programs,” *Crime and Delinquency*, 28 (July 1982), 341-373. For critical analysis of net-widening, see Kenneth Polk, “When Less Means More: An Analysis of Deconstructing in Criminal Justice,” *Crime and Delinquency*, 33 (July 1987), 358-378; Maeve McMahon, “‘Net-Widening’: Vagaries in the Use of a Concept,” *British Journal of Criminology*, 30 (Spring 1990), 121-149; Antony A. Vass and Alan Weston, “Probation Day Centres as an Alternative to Custody: A ‘Trojan Horse’ Examined,” *British Journal of Criminology*, 30 (Spring 1990), 189-206.



pre-release programs, the level of imprisonment did not drop as drastically as reformers would have hoped.<sup>239</sup>

There are two other important aspects of community corrections programs that are often undeveloped in this critical literature, which I want to highlight. First, implicit (and sometimes explicit) in the community corrections agenda was a critique of the criminal justice system, especially the prison, which emphasized the destructive aspects of confinement. Whatever the truthfulness of such claims, these criticisms usually came directly from state officials—senior prison bureaucrats—and described the failure of their own areas of administration. If in the early 1950s prison authorities presented a confident appraisal of their work and the potential innovations and successes to come from the new focus on treatment, by the late 1960s, these penal authorities painted a bleak picture of the same institutions and programs. While still supporting the use of confinement, their statements indicated, directly or indirectly, that prisons were to be reserved for violent offenders and those beyond the reach of reformative efforts.

Secondly, the community corrections movement expanded the arena of public debate and participation over penal policy and was ironically often the source of friction with people beyond the prison system (i.e. the community). Much of the academic literature on decarceration has focused on how the disciplinary powers of the prison system seeped into areas of social life “outside” the criminal justice system. Penal discipline, in effect, overran

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<sup>239</sup> It is clear that some states’ commitment to these approaches reduced the number of people in secure facilities even if it did not reduced the overall size of populations under correctional control. Kenneth Polk also warns that not all such programs were created by reformers wanting to reduce prison populations. He suggests that at least in some cases the expansion of these programs in tandem with growing prison populations was in fact intended. See Polk, “When Less Means More.”

people and places far beyond the walls, turning half-way houses and various other support institutions in lesser forms of prisons. However, the community correction movement also sought to enroll communities, organization and prominent or even ordinary citizens into this project. Such programs relied on the capabilities and willingness of groups and individuals representing the “community” to assist in their operations. Such community groups often consisted of organizations already well-informed about criminal justice or social welfare matters and those possessing forms of expertise in this area. This increased the penal bureaucracies’ interactions with civil society organizations in the coordination and operation of new community corrections programs. In many such arrangements, the line between state and civil society, which previously may have been clearer, became much more porous. These new groups and individuals now became greater participants in a public of penal policy matters and often disagreed with the official state agencies. This was in marked contrast to how penal bureaucracies controlled such issues for decades. This issue became even more pronounced when other agencies (the police and judiciary) and people not so closely aligned with rehabilitative goals or opposed to them openly criticized such programs and sought to block their implementation.

In addition to these reform projects outside secure prisons, conflicts ensued inside each state’s secure prisons over declining living conditions and what appeared to many inmates (and some staff) as anachronistic and unnecessary practices. While senior officials and some superintendents in New South Wales and Pennsylvania ameliorated a few of the harsh aspects of prison life, these changes were piecemeal and often too slow or partial for the people confined in maximum- and medium-security prisons. Such changes included things like

increased leisure and sporting activities, the creation of debating and writing societies, increased religious freedom the publication of inmate newsletters, less censorship restrictions on mail and literature and less insistence on uniform haircuts and attire. Prison administrators often described these changes as “normalizing” institutional life, in essence making it correspond more with life outside prison. More often than not, however, the changes approved by prison officials fell short of the rising expectations of inmates, who insisted on greater openness and fewer restrictions. In Pennsylvania and the United States in general, judicial intervention, prompted by inmates’ lawsuits, forced many of these changes on prison system. In other cases, state governments and leaders of prison agencies pursued reforms in an effort to ward off inmate lawsuits and pre-empt judicial intervention. The judiciary did not intervene to nearly same extent in New South Wales and Australia in general, but there were a few significant rulings that ensured greater access to due process.

As much as such changes improved life behind bars for inmates, they also formed intense sites of dispute between staff and inmates and often between different groups of inmates. Prison officers in particular resented many of these changes, which they considered direct assaults on their authority to manage inmates, enforce discipline and control the institutions. Between these disputes and resentments over being excluded from community corrections programs, inmates became more openly critical and challenging about their status and rights.

***Pennsylvania: Community Corrections and Prisoners’ Rights***

In October 1970, Pennsylvania's Republican Gov. Raymond Shafer replaced Arthur Prasse, the state's Commissioner of Correction for the last seventeen years, with the 38 year-old Allyn Sielaff. Prasse worked in the state's prisons and juvenile institutions for forty years and directed the introduction of progressive penological reforms in the decades following World War II. Despite these credentials, newspaper editorials in 1970 painted him as a "traditionalist" compared to the "progressive" Sielaff.<sup>240</sup> Many people within state government shared a similar view. As William Carlin, Director of the Bureau of Systems Analysis, put it, Commissioner Prasse had a reputation for "independence and strong ideas concerning the operation of the prison system" and would "resist real innovation and restructuring of the prison program."<sup>241</sup>

In many ways, Prasse resembled one his more well-known contemporaries—Joseph E. Ragen, warden of the Illinois State Penitentiary Joliet-Stateville in and later director of that state's Department of Public Safety. Ragen, like Prasse, had a reputation for reform—both men served as presidents of the American Correctional Association—and authoritarian control over

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<sup>240</sup> "Change in Correctional System," *Pittsburgh Post-Gazette*, (September 16, 1970); "Traditionalist and Progressive," *Observer-Reporter*, (September 23, 1970); "New Leader for Parole Board," *Pittsburgh Post-Gazette*, (November 7, 1970). An official history of the Bureau of Correction also noted the two different aspects of Prasse: "He was considered to be a progressive penologist who believed in modern programs and rehabilitation; he was also very much of the old school which believed in a strong central authority, or one man rule..." Smith, *30<sup>th</sup> Anniversary Commemorative History*, 9.

<sup>241</sup> William J. Carlin to Arthur F. Sampson, March 18, 1969. RG-15 Department of Justice, Attorney General, Conference-Creamer, 1968-69, box 3, folder: Corrections – August to December, 1969. Perhaps signaling the power Prasse came to wield in the Bureau of Correction was the presence of Warden Joseph E. Ragen on the Devers Committee, which investigated the riots of 1953 and made recommendations for the new Bureau, including the expanded authority granted to the position of Commissioner of Correction. See, *Report of the Committee Appointed by Honorable John S. Fine*, 5-6, 9-11. On Joseph Ragen, see James B. Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977), 28-51.

the institutions under their command.<sup>242</sup> The Devers Committee, which investigated Pennsylvania's prison riots of 1953 and led to Prasse's appointment as Commissioner of Correction, actually included Ragen as one of its members. Much like Ragen, Prasse represented many of the postwar changes, but likewise would never have been considered a liberal in penological circles. Both men exemplified the elastic nature of reform discourse during this period; their mixture of believable accounts and principles of reform with authoritarian control sat comfortably within the postwar penological establishment.

However, by the late 1960s, new views of the proper role of prisons were becoming more prominent in national and international penology, which undermined Prasse's status as a prison reformer. A younger cohort of correctional officials, empowered by the postwar reforms, embodied many of these new trends in penological common sense. Allyn Sielaff distinguished himself as Prasse's deputy for two years prior to his promotion by developing new community corrections programs, particularly establishing pre-release centers, which helped inmates transition to less restrictive settings with greater privileges prior to their release to the community.<sup>243</sup> While Prasse had also favored such programs and was instrumental in their development, Sielaff was clearly the greater advocate of non-institutional approaches and alternatives to incarceration. A generation younger than Prasse, he exemplified the training and

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<sup>242</sup> Ragen was president of the American Correctional Association in 1950-1951, Prasse held the same position in 1961-1962. Ragen was also the president of the North American Association Wardens and Superintendents in 1948-1949, and Prasse as well in 1958-1959.

<sup>243</sup> "Correctional System Change Backed," *Reading Eagle*, (April 27, 1969); "State Breaks Bureaucratic Deadlock in Rehabilitation Program for Criminals," *Gettysburg Times*, (February 15, 1972); "Pennsylvania Substituting a Job for a Cage," *Pittsburgh Tribune-Review*, (December 16, 1969) and "Pennsylvania Substituting an Occupation for a Cage," *Pittsburgh Tribune-Review*, (December 17, 1969), newsclippings attached to A. Sielaff to Attorney Gen. Sennett, January 5, 1970. RG-15 Attorney-General, General Correspondence, Corrections, box 4, folder Corrections (1970) Jan. to June. PSA; Bureau of Correction, *Newsletter: Pre-Release Center, 9 S. 10<sup>th</sup> St., Harrisburg, Pa.*, 1 (1) (October 1969). RG-15 Attorney-General, General Correspondence, Corrections, box 4, folder Corrections (1970) Jan. to June. PSA.

views of a new cohort of correctional professionals who came to see prisons as deeply problematic and compromised institutions that were nevertheless necessary.<sup>244</sup> As much as Sielaff and like-minded reformers in the Bureau of Correction, like SCI Graterford's superintendent, Robert Johnson, held such dim views of the penal system, they were also deeply dependent on it. Certain postwar innovations, especially in the area of classification, were simply indispensable to their penological objects and programs.<sup>245</sup> Nevertheless, Sielaff was far more open to considering changes to the prisons and exploring the nature of prisoners' rights in the day-to-day affairs of institutional life. To Prasse, such questions would have meant a loss of control over the institutions.<sup>246</sup>

Prasse's dismissal also happened amidst reports of rising crime and in the aftermath of serious urban disorder in several Pennsylvania cities. Urban rioting<sup>247</sup> occurred in Philadelphia in 1964, Pittsburgh in 1968, and York in 1969, as well as in many other American cities,

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<sup>244</sup> Prasse had also championed the creation of regional jails throughout the state. See, Arthur T. Prasse, "Problems of Prison Administration in Pennsylvania," Minutes of the November 30 [1966] Luncheon Meeting before the Pittsburgh Area Chapter of the American Society for Public Administration. Papers of Chancellor of the University of Pittsburgh, David H. Kurtzman (Acting), Administrative Files, box 4 folder 19 A (General). University of Pittsburgh, Archive Service Center (hereafter UPASC).

<sup>245</sup> Stanley Cohen has noted that the decarceration movement actually intensified the classification powers of the penal apparatus by extending them further out of the prison, developing new categories for the "soft, community end" and a complimentary set of new professionals to managing people assigned to these categories. See his *Visions of Social Control*, 180-196.

<sup>246</sup> The minutes of presentation by Commissioner Prasse in 1966 note: "The biggest problem in prison management today is that of civil rights versus civil responsibility. Mr. Prasse believes that there isn't a guard in a Pennsylvania prison who would not stand up and fight for an individual he considered to be wrongly placed in prison. However, in Mr. Prasse's opinion, the demands of prisoners today for their civil rights have gone beyond all reason and reality." Arthur T. Prasse, "Problems of Prison Administration in Pennsylvania," Minutes of the November 30, 1966 Luncheon Meeting, Pittsburgh Area Chapter, American Society for Public Administration, prepared by Recording Secretary, Wilda Camery, 3.

<sup>247</sup> I use the word "riot" and "rioting" throughout this work despite the negative connotation it often has. The reason for this is that I find it important to engage with the terms many people used at the time. While elites used the term riot pejoratively, many prisoners also adopted the term "riot" as their own, adding to it masculine qualities of valor, honor and strength in their opposition to prison authorities. Other prisoners, of course, were terrified of "riots" and viewed them in much the same way as elites, albeit with the much more immediate concern for their personal safety. For a similar decision, see Alyssa Ribeiro, "'A Period of Turmoil': Pittsburgh's April 1968 Riots and Their Aftermath," *Journal of Urban History*, 39 (March 2013), 147-171.

especially following the assassination of Dr. Martin Luther King in April 1968.<sup>248</sup> Local officials in these cities and their respective counties responded to the disturbances with a mixture of reform efforts and security crackdowns.<sup>249</sup> Police forces in major cities like Philadelphia and Pittsburgh expected the unrest to continue and purchased more heavy, military-style equipment, undertook tactical training for urban unrest, and re-envisioned their presence and duties in urban areas.<sup>250</sup> This increased operational capacity of law enforcement accompanied

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<sup>248</sup> Lenora E. Berson, *Case Study of a Riot: The Philadelphia Story* (New York: Institute of Human Relations Press, American Jewish Committee, 1966); Matthew J. Countryman, *Up South: Civil Rights and Black Power in Philadelphia* (Philadelphia: University of Pennsylvania Press, 2006), 154-163; Matthew J. Countryman, "From Protest to Politics": Community Control and Black Independent Politics in Philadelphia, 1965-1984," *Journal of Urban History*, 32, 6 (September 2006), 813-861; Ribeiro, "A Period of Turmoil,"; "30th Anniversary Special Report, The Riots of '69," *York Dispatch*, (July 25, 1999); "Handcuffed By History," *New York Times*, (September 2, 2001); "A City Begins to Confront Its Racist Past," *New York Times*, (November 1, 2001). Michael W. Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (New York: Columbia University Press, 2005); United States, National Advisory Commission on Civil Disorders (Kerner Commission), *Report of the National Advisory Commission on Civil Disorders* (Washington: U.S. Government Printing Office, 1968).

<sup>249</sup> "Riot Funds Offered to Pa. Cities," *Pittsburgh Post-Gazette*, (August 15, 1968). See also Ribeiro, "A Period of Turmoil."

<sup>250</sup> On the militarization of American domestic police forces since the 1960s, see Center for Research and Criminal Justice, *The Iron Fist and the Velvet Glove: An Analysis of the U.S. Police*, 2<sup>nd</sup> ed. (Berkeley: Center for Research and Criminal Justice, 1975); William J. Chambliss, "Policing the Ghetto Underclass: The Politics of Law and Law Enforcement," *Social Problems*, 41 (May, 1994), 177-194; Peter B. Kraska and Victor E. Kappeler, "Militarizing American Police: The Rise and Normalization of Paramilitary Units," *Social Problems*, 44 (February 1997), 1-18; Peter B. Kraska and Louis J. Cubellis, "Militarizing Mayberry and Beyond: Making Sense of American Paramilitary Policing," *Justice Quarterly*, 14 (December 1997), 607- 629; Peter B. Kraska (ed.), *Militarizing the American Criminal Justice System: The Changing Roles of the Armed Forces and the Police* (Boston: Northeastern University Press, 2001); Christian Parenti, *Lockdown America: Police and Prisons in the Age of Crisis* (London: Verso, 1999), 14-18, 69-160; Stephen Graham, *Cities Under Siege: The New Military Urbanism* (London: Verso, 2011); Katherine Beckett and Steve Herbert, *Banished: The New Social Control In Urban America* (New York: Oxford University Press, 2011); Steve Herbert, *Policing Space: Territoriality and the Los Angeles Police Department* (Minneapolis: University of Minnesota Press, 1996); Steve Herbert, *Citizens, Cops, and Power: Recognizing the Limits of Community* (Chicago: University of Chicago Press, 2006). The federal government aided police militarization through the Law Enforcement Assistance Administration, created through the Omnibus Crime Control and Safe Streets Act of 1968, Pub L. 90-351, 82 Stat. 197, enacted June 19, 1968, codified at 42 U.S.C. § 3711; For more on the crime package, see Flamm, *Law and Order*; Stuart A. Scheingold, *The Politics of Street Crime: Criminal Process and Cultural Obsession* (Philadelphia: Temple University Press, 1993); Ted Gest, *Crime & Politics: Big Government's Erratic Campaign for Law and Order* (Oxford: Oxford University Press, 2001); Heather Ann Thompson, "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History," *Journal of American History*, 97 (December 2010), 703-734; Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2007), especially Chapter 3. For more on LEAA, see Malcolm M. Feeley and Austin D. Sarat, *The Policy Dilemma: Federal Crime Policy and the Law Enforcement Assistance Administration, 1968-1978* (Minneapolis: University of

more aggressive policing strategies, which soon led to greater arrests and overcrowding pressures on local jails.<sup>251</sup> This influx of people into these lower ends of the state's criminal justice system eventually increased the number of commitments to state prisons in the late 1960s as more and more people, especially the poor and young, African-American and Latino men, accumulated arrest and conviction records, making them more vulnerable afterward to being sentenced to time in state prison.<sup>252</sup>

The prevalence of urban disturbances and changes in policing exposed deeper changes in many Northern urban areas that directly impacted criminal justice practices. Racial disparities had been apparent in arrest and institutional population statistics for decades. Until the second half of the twentieth century, this usually meant that while legal authorities disproportionately targeted, convicted, sentenced and incarcerated African-Americans their relatively small numbers in the state meant that the total number of incarcerated African Americans remained small compared to the far more numerous white inmates.<sup>253</sup> By mid-century, however, this

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Minnesota Press, 1980). A more recent assessment of its leadership and political environment is Gest, *Crime & Politics*, especially Chapter 2.

<sup>251</sup> American Foundation, *The County Jails and Prisons of Pennsylvania* (Philadelphia: Institute of Corrections, Studies in Corrections, March, 1965); Pennsylvania Bureau of Correction, *1979 Annual Statistical Report of Pennsylvania County Prisons and Jails* (Camp Hill: Bureau of Correction, June 1980), 6-8.

<sup>252</sup> United States Commission on Civil Rights, Pennsylvania Advisory Committee, *Police-Community Relations in Philadelphia: A Report to the United States Commission on Civil Rights* (Philadelphia: Pennsylvania Advisory Committee, 1972), 5-6, 32-44.

<sup>253</sup> For an overview, see Cheryl D. Hicks, *Talk with You Like a Woman: African American Women, Justice, and Reform in New York, 1890-1935* (Chapel Hill: University of North Carolina Press, 2010); Donna Murch, *Living for the City: Migration, Education, and the Rise of the Black Panther Party in Oakland, California* (Chapel Hill: University of North Carolina Press, 2010); Kali N. Gross, *Colored Amazons: Crime, Violence, and Black Women in the City of Brotherly Love, 1880-1910* (Durham: Duke University Press, 2006); Jeffrey S. Adler, *First in Violence, Deepest in Dirt: Homicide in Chicago, 1875 – 1920* (Cambridge: Harvard University Press, 2006); Eric H. Monkkenon, *Murder in New York City* (Berkeley: University of California Press, 2001); Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993); Roger Lane, *Roots of Violence in Black Philadelphia, 1860-1900* (Cambridge: Harvard University Press, 1986); Samuel Walker, *Popular Justice: A History of American Criminal Justice* (New York: Oxford University Press, 1980); W.E.B. DuBois, *The Philadelphia Negro: A Social Study* (Philadelphia: University of Pennsylvania Press, 1899, 1996 reprint).



disproportionate representation and the ratio of white to black inmates steadily rose as millions of African Americans migrated northward toward industrial urban centers like Philadelphia and Pittsburgh.<sup>254</sup> By the 1950s, migrants from Puerto Rico, many of whom came to the Philadelphia in the 1950s and 1960s, also began to appear disproportionately in city, county and state penal institutions at roughly the same time, although in smaller overall numbers than African Americans and white inmates.<sup>255</sup> Notwithstanding earlier manifestations of racial discrimination in the criminal justice systems of Northern cities like Philadelphia and Pittsburgh, the population changes in these urban centers and the emergence of deeply segregated residential patterns and concentrations of poverty in such cities after 1950<sup>256</sup> fueled a process that historian Heather Thompson has referred to as the “criminalization of urban space.” This

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<sup>254</sup> The literature on the Great Migration and the consequent host of political, social and economic changes it entailed for Northern cities is vast. For an overview, see Joe William Trotter, *The Great Migration in Historical Perspective: New Dimensions of Race, Class, and Gender* (Bloomington : Indiana University Press, 1991)

<sup>255</sup> For the history of Puerto Rican immigration to Pennsylvania and Philadelphia in particular, see Carmen Teresa Whalen, *From Puerto Rico to Philadelphia: Puerto Rican Workers and Postwar Economies* (Philadelphia: Temple University Press, 2001).

Victor Vázquez-Hernández, “From Pan-Latino Enclaves to a Community: Puerto Ricans in Philadelphia, 1910 to 2000” in Carmen Teresa Whalen and Víctor Vázquez-Hernández (eds.), *The Puerto Rican Diaspora: Historical Perspectives* (Philadelphia: Temple University Press, 2005), 88-105; Carmen Teresa Whalen, *From Puerto Rico to Philadelphia: Puerto Rican Workers and Postwar Economies* (Philadelphia: Temple University Press, 2001); Jose Cruz, *Identity and Power: Puerto Ricans Politics and the Challenge of Ethnicity* (Philadelphia: Temple University Press, 1998); Carmen Sylvia Garcia, “Study of the Initial Involvement in the Social Services by the Puerto Rican Migrants in Philadelphia” (Ph.D. diss., University of Pennsylvania, 1968).

<sup>256</sup> Arnold R. Hirsch, *Making of the Second Ghetto: Race and Housing in Chicago, 1940-1960* (New York: Cambridge University press, 1983); William Julius Wilson, *The Declining Significance of Race: Blacks and Changing American Institutions* (Chicago: University of Chicago Press, 1978); William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass and Public Policy* (Chicago: University of Chicago Press, 1987); Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985); Elijah Anderson, *Streetwise: Race, Class, and Change in an Urban Community* (Chicago: University of Chicago Press, 1990); Michael B. Katz (ed.), *The “Underclass” Debate: Views from History* (Princeton: Princeton University Press, 1993); Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton: Princeton University Press, 1996); William Julius Wilson (ed.), *The Ghetto Underclass: Social Science Perspectives* (Newbury Park: Sage, 1993); Michael B. Katz, *The Underclass Debate: Views from History* (Princeton: Princeton University Press, 1993); Philippe Bourgois, *In Search of Respect: Selling Crack in El Barrio* (Cambridge: Cambridge University Press, 1995); Elijah Anderson, *Code of the Street: Decency, Violence, and the Moral Life of the Inner City* (New York : W.W. Norton & Company, 1999).

propelled racial disparities in prisons to the degree that the topic of race and racism permeated and structured discussions of penal reform, policing and sentencing from this point onward in a much more visible manner than previously.<sup>257</sup>

During the 1960s, “non-white” inmates displaced white inmates as the largest demographic racial group in the state’s prisons.<sup>258</sup> Over 54 percent of Pennsylvania’s state prisoners in a June 1970 population report were officially categorized as “Negro,” which was a catch-all racial designation for those not considered “White.”<sup>259</sup> Within a few years, the category “Non-white” actually superseded the category “Negro” in statistical publications of

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<sup>257</sup> Heather Ann Thompson, “Why Mass Incarceration Matters,” 706. Samuel Walker notes that “The administration of criminal justice increasingly became intertwined with the larger issue of racism” because of the impact of the Great Migration. Walker, *Popular Justice*, 194-195. While this narrative is certainly true about the increased presence of African Americans in northern prisons, it reveals a Northern bias in the arc of American criminal justice history. The racism that overwhelmed northern prisons in the 1960s had been a part of Southern penal systems for generations. For good overviews of Southern penal practices, see Ida B. Wells-Barnett, Jacqueline Jones Royster (ed.), *Southern Horrors and Other Writings: The Anti-Lynching Campaign of Ida B. Wells, 1892-1900* (Boston: Bedford Books, 1997); Mark T. Carleton, *Politics and Punishment: The History of the Louisiana State Penal System* (Baton Rouge: Louisiana State University Press, 1984); Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the Nineteenth-Century American South* (Oxford University Press, 1985); David M. Oshinsky, *“Worse Than Slavery”: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1996); Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996); Karin A. Shapiro, *A New South Rebellion: The Battle against Convict Labor in the Tennessee Coalfields, 1871-1896* (Chapel Hill: The University of North Carolina Press, 1998); Christopher Waldrep and Donald G. Nieman, *Local Matters: Race, Crime, and Justice in the Nineteenth-Century South* (Athens: University of Georgia Press, 2001); Philip Dray, *At the Hands of Persons Unknown: The Lynching of Black America*, reprint, (New York: Modern Library, 2003); Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*, reprint, (New York: Anchor, 2009); Chad R. Trulson, James W. Marquart, and Ben M. Crouch, *First Available Cell: Desegregation of the Texas Prison System* (Austin: University of Texas Press, 2010); Robert Perkinson, *Texas Tough: The Rise of America’s Prison Empire* (New York: Metropolitan Books, 2010); Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge: Harvard University Press, 2011); Amy Louise Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940* (Chapel Hill: University of North Carolina Press, 2011); Dennis Childs, *Slaves of the State: Black Incarceration from the Chain Gang to the Penitentiary* (Minneapolis: University of Minnesota Press, 2015); Talitha L. LeFlouria, *Chained in Silence: Black Women and Convict Labor in the New South* (Chapel Hill: University of North Carolina Press, 2015).

<sup>258</sup> Governor’s Justice Commission, Bureau of Criminal Justice Statistics, *Population in the Bureau of Correction 1975*, Pennsylvania Criminal Information System Series C-2, no. 2, vol. 1 (Harrisburg: Bureau of Criminal Justice Statistics, 1975), 7.

<sup>259</sup> Pennsylvania Bureau of Correction, *Monthly Populations in the Bureau of Correction, June 1970* (Camp Hill: Bureau of Correction), 5. Papers of the Prisoners’ Rights Council, PRC-Orgs PA Dept. of Justice Bureau of Correction 1972-73, box 18 folder 38. Temple University Urban Archives (hereafter TUUA).

the Bureau of Correction. This designation by exclusion symbolized an emerging tension in the post war reform agenda. Although addressed to a far different penal and political situation, John Dilulio's remark that "At the core of every penology is some understanding of what the 'typical' prisoner is like" is particularly instructive here.<sup>260</sup> Most of the reforms of the 1940s and 1950s, which sought to reform wayward offenders through training or treatment, were tacitly predicated on the penal authorities' assumption that the subject of reform was a white male. This meant that the governing narrative of how offenders were to be reformed and returned to society in the immediate postwar decades was a far more believable account when the subject was a white man who, almost by default, would be expected to enjoy the full benefits of citizenship and stable employment. This account could not be sustained for "non-white" and female inmates, especially at a time when civil rights movements beyond the walls of the prisons protested racist and sexist barriers to just these very aspects of full citizenship. This whiteness of the penal subject invested many of the reforms, programs and prison routines established in the decades following World War II. If this meant difficulties and exclusions for the fewer numbers of non-whites in the state's penal system early on, by the mid-1960s, the tacit whiteness of the progressive penological reforms produced intense friction in the prisons when the number of non-white inmates surpassed the number of white inmates.

***Pennsylvania: Whose Community?: The Promise and Perils of Community Corrections***

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<sup>260</sup> John J. Dilulio, Jr., "Understanding Prisons: The New Old Penology," *Law and Social Inquiry*, 16 (Winter, 1991), 65-99, quote 69.

While most police forces became more aggressive in their approach to crime and policing urban areas, Gov. Raymond Shafer endorsed plans under development in Bureau of Correction for less punitive approaches reducing offending and in particular, recidivism. This included an expansion of a number of community corrections programs and the establishment of minimum security community service centers. This approach narrowed the intended subjects of reform in the sense that unlike the emphasis on reformative programs in the 1950s, which sought to rehabilitate the offenders while they were in prison, community corrections programs focused more on those inmates nearing the end of their time in custody or those who were diverted away from prison all together. This is not to argue that interventions simply ceased inside prisons. This was certainly not the case. Federal social programs, like the Economic Opportunity Act, actually helped Pennsylvania's Bureau of Correction extend many prison-based programs, particularly in English literacy education.<sup>261</sup> Various other federal initiatives, like the Elementary and Secondary Education Act and the Manpower Development and Training Act, provided additional funds for training and education courses in several Pennsylvanian prisons.<sup>262</sup> The emphasis on community corrections instead marked a recognition among prison officials and members of Gov. Shafer's administration that there were limits to the effectiveness of rehabilitation inside institutions and that some offenders were far less amenable to reform.

This position directed a great deal of attention on the routine failures of the prison system to live up to its postwar reform agenda. Many correctional administrators were quite

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<sup>261</sup> Harry A. Snyder to Arthur T. Prasse, March 10, 1969. RG -15 Department of Justice, Attorney General, General Correspondence, Conference-Creamer, 1968-69, box3, folder-Corrections – August to December, 1969. PSA.

<sup>262</sup> Ibid.

blunt in their admissions of the failures of the prison to reform its charges, but often attempted to absolve themselves by 1). citing numerous resistences in the prison environment, especially from guards and 2). relocating the social space and responsibilities for reform outside the prison walls in the new programs. In a letter to Attorney-General William Sennett concerning an upcoming speech by the governor on corrections, Richard Lindsey, a member of the Board of Probation and Parole, summarized the administration's penal philosophy:

Men and women who are imprisoned return to their communities. It is good common sense to change them into law-abiding citizens. Punishment alone has failed. Most individuals given the right type of help can change. We need, therefore, to emphasize rehabilitating those salvageable. Not to do so is a serious shortcoming of our system, for 80% of those arrested have been arrested before and are responsible for a large share of crime. At the same, time we must not return to the community those who remain dangerous. Because the answer to controlling crimes lies in the local community, and because most offenders return, we must emphasize community programs.<sup>263</sup>

Most of Lindsey's comment would have sounded familiar to penologists of Prasse's generation. Many prison reformers writing in the 1940s echoed most of these sentiments. The notion that punishment alone was an ineffective response to crime was a widely-held belief among prison reformers from well before World War II. The main difference between these earlier reform projects and those of the late 1960s were indicated in Lindsey's last sentence. The locus of effective reform lay outside the prison system in the community; prison authorities needed to harness the potentialities of communities if they hoped to reform as many offenders as possible.

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<sup>263</sup> Ibid.

Upon assuming the leadership of the Bureau of Correction, Sielaff pushed forward with programs like temporary home furloughs, work release and educational release. While legislative approval for such programs had been granted in 1968, it took many more months of planning for these programs to become operational. This involved purchasing or leasing land to establish new community service centers as well as create program inclusion screening procedures. The Democratic Majority Leader, Rep. K. Leroy Irvis (D-Pittsburgh), sponsored several pieces of legislation during the early 1970s in support of Sielaff's agenda. He also advocated several other changes, like a good-time incentive system for prisoners to earn time off their sentences for good behavior in prison, a proposal that ultimately failed to gain legislative approval.<sup>264</sup>

The tenor of prison reform proposals at the time actually emphasized more treatment, education and work opportunities. In some ways this was a recommitment or intensification of the progressive postwar reform project. However, the emphasis on targeting the young and lesser offenders became even more pronounced. It was not just that these offenders were more remediable, as reformers a generation earlier argued. Rather, programs and interventions needed to be directed at preventing such offenders from becoming institutionalized.<sup>265</sup> In other words, interventions were needed to prevent prison environments from inflicting lasting harm on these younger inmates. Sielaff, his political supporters in the General Assembly, Gov. Shafer and later Gov. Milton Shapp argued that programs like these were necessary because of the

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<sup>264</sup> For an example of Irvis's impassioned support of these reforms before the House of Representatives, see Commonwealth of Pennsylvania, House of Representatives, *Legislative Journal* v. 1, n.138 (Monday, September 14, 1970), 2814.

<sup>265</sup> Irvis H.R. 479 press release (marked: For Use Sunday, February 25, and Thereafter) and "Prison Reform Law" KDKA (Pittsburgh) radio and television editorial, broadcast September 26-28, 1970, script in K. Leroy Irvis Papers, 1979 Addition, 1945-1979 Political Subject Files, 1945-1978, box 5, folder 35. UPASC.

state's prisons and the penal bureaucracy, as currently constituted, simply failed to fulfill their mission of reforming their wards and appeared to many observers to simply make them worse. If most offenders who would eventually return to the community, programs needed to not only address criminal behavior that might lead to recidivism, but also neutralize the destructive and criminogenic propensities of the prison. New programs in prison would facilitate the transition to community corrections centers.

However, administration officials often had a very difficult time convincing members of the public and especially other law enforcement officials, like the police, district attorneys and members of the judiciary, of the benefits and wisdom of community corrections programs. Sielaff often sounded on the defensive in his public statements about such programs, which departed significantly from the authoritative pronouncements of prison officials like Commissioner Prasse a decade or two earlier. In an interview with the *Pittsburgh Post-Gazette*, Sielaff tried to explain some of the reasoning underpinning the new furlough program. He acknowledged that the Bureau was receiving a lot of public criticism over the program, but argued that "was not set up to make the administration look like a good guy, but to answer some rehabilitative problems."<sup>266</sup> Beyond the oft-repeated notion that most offenders would eventual return to the community, Sielaff returned to a central problem in correctional treatment, one raised by Donald Clemmer in 1940, namely how the social system of the prison molds the reactions of inmates toward prison authorities. Sielaff claimed that "many inmates seemed to fit in, but they are really manipulating their reactions to please those who keep

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<sup>266</sup> "Controversy Besets Prison Furlough Programs," *Pittsburgh Post-Gazette*, (May 22, 1972), newsclipping in K. Leroy Irvis Papers, 1979 Addition, 1945-1979 Political Subject Files, 1945-1978, box 5, folder 38. UPASC.

watch on them.”<sup>267</sup> This phenomenon was widely known by prison staff and often conditioned how they viewed the statements of individuals involved in treatment programs or when they appeared before classification committees or the parole board. The furlough program addressed this issue, according to Sielaff, by disrupting this interpersonal dynamic between staff and inmates and also removing some inmates from the immediate influence of other prisoners in secure confinement. Community corrections would dispel the corruption of the prison community.

For those eligible to participating in the program, furloughs placed much of the responsibility for change and after-care plans on the particular inmate in question. Furloughed inmates spent only a few days outside the prison before having to return to either pre-release center or a secure prison. The Bureau made no arrangements for supervising inmates on furloughs. Participants did not even have to report to parole agents. In fact, many parole agents, police and sentencing judges had no knowledge that these furloughed inmates were at large, a fact that enraged these other officials as they gradually came to understand the nature of these programs.<sup>268</sup> While this lack of supervision appeared irresponsible to many in the law enforcement community, Sielaff argued that it actually empowered inmates to deal with their own problems and take ownership of their plans for post-prison life. “Tom K.,” an inmate on

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<sup>267</sup> Ibid.

<sup>268</sup> See some of the newsclippings in K. Leroy Irvis Papers, specifically, “Inmates ‘Furloughed’ in New Reform Program: Most State Judge Oppose Prisoner Release Plan,” *The Morning Call*, (January 20, 1972), newsclipping; “Tight Con Release Code Urged,” *Pittsburgh Press*, (March 15, 1972); “Pre-Release: Concept is Carried Too Far,” *Patriot-News*, (May 30, 1972), newsclipping; “Despite Philadelphia Complaints, Prisoner Furlough Program Defended,” *Sunday Patriot-News*, (November 26, 1972), newsclipping; “Prisons Chief Defends Furlough Plan,” *Patriot-News*, (November 11, 1972), newsclipping; “Furlough Plan ‘Absurd,’ Sprague Tells Parley,” *Bulletin*, (January 14, 1972), newsclipping. K. Leroy Irvis Papers, 1979 Addition, 1945-1979 Political Subject Files, 1945-1978, box 5, folder 35. UPASC.



furlough, also interviewed by the *Post-Gazette*, explained that he visited a barber school to discuss the possibilities of a job once he had completed his sentence and also explored community treatment options for his admitted difficulties with alcohol.<sup>269</sup> The reporter quoted Tom's understanding of rehabilitation, "you're the only one who can solve your problems. You know? That's why this furlough program is good for me."<sup>270</sup> Another furloughed inmate described working the garden of his family home and talking to his ill father. Maintaining these family relationships and duties through the furlough gave him hope, "something to continue to look forward to" when he returned to prison.

The use of inmate voices in such new stories lent credence to the wisdom and consensus on such programs; inmates supported such programs in these statements and aligned their reasoning with penal reformers like Sielaff.<sup>271</sup> Yet, these depictions of the furlough program also lent credence to the claims of many inmates that confinement was simply destructive. These accounts also appeared unusual in that they gave the appearance of cooperation between penal reformers and inmates and did not feature prison officers or the police. Such a depiction would not have been well received by all readers of the daily.

Whatever its merits, the Bureau of Correction premised the furlough program on the notion that their own institutions and expertise could not fulfill one of the major the tasks historically assigned to them—adequately reform the reformable in prison. This official

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<sup>269</sup> "Controversy Besets Prison Furlough Programs," *Pittsburgh Post-Gazette*, (May 22, 1972), newsclipping. K. Leroy Irvis Papers, 1979 Addition, 1945-1979 Political Subject Files, 1945-1978, box 5, folder 38. UPASC.

<sup>270</sup> *Ibid.*

<sup>271</sup> In his analysis of representations of prisoners during the latter half of the twentieth century, John M. Sloop has noted that stories about work release programs that featured inmate testimony usually supported such programs as an effective method of rehabilitation. See John M. Sloop, *The Cultural Prison: Discourse, Prisoners and Punishment* (Tuscaloosa: University of Alabama, 1996), 66-68.

admission, embedded in the very nature of the program, spoke volumes about the changes in penal expertise, its reflexive self-assessment and willingness to concede some of the authority and responsibility for inmate reform—to nebulously-defined “community” and in some respects inmates themselves. The goal of individualizing treatment, which animated the classification practices established in the early 1950s, remained a major aspect of how reformers, like Sielaff, understood these programs, but as his explanation to the *Post-Gazette* revealed, part of this process involved removing direct control or facilitating reform and reintegration through encouragement and trust. This strategy sat at the outer edge of penal expertise and control, simultaneously marking its own limits within a program that it ultimately controlled with inmates whose participation in such programs could be revoked at will be the authorities.<sup>272</sup> This humbling position was also very public because of the community corrections programs were visible by their very nature compared with imprisonment and because the Bureau of Correction, the Shafer administration and its Democratic successor under Gov. Milton Shapp, publicly emphasized the importance of such programs. As such, they also became sources of critical media commentary and dispute among other state and county officials.

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<sup>272</sup> The rationale underpinning these programs resembles David Garland’s description of the “responsibilization strategy” pursued by many criminal justice agencies since the 1970s and 1980s, which “involves the central government seeking to act upon crime not in a direct fashion through state agencies (police, courts, prisons, social work, etc.) but instead by acting indirectly, seeking to activate action on the part of non-state agencies and organizations.” I would, nevertheless, argue that programs like furloughs retained a significant degree of direct control while placing a large amount of responsibility for success in the hands of the specific individuals in these programs. David Garland, “The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society,” *British Journal of Criminology*, 36 (Autumn 1996), 445-471, quote 452.

While often supportive of pretrial diversion options, like the new Accelerated Rehabilitation Disposition program,<sup>273</sup> members of the state's judiciary and police forces almost immediately began criticizing the various prison release programs.<sup>274</sup> Judges resented having the sentences they handed down being modified by discretionary release, and police claimed that they were not notified about the release of inmates back into communities. Both judges and police also argued that the programs suffered from extremely poor screening procedures and claimed that the Bureau permitted far too many undeserving or dangerous inmates to participate in such programs.<sup>275</sup> Such disputes often encompassed several days or weeks' worth of new coverage as district attorneys, judges, senior police commanders (like Philadelphia's outspoken Police Commissioner Frank Rizzo), police union officials and mayors sparred with the Bureau of Correction over the benefits and unnecessary risks of furloughs and other forms of

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<sup>273</sup> The Accelerated Rehabilitative Disposition (ARD), began in Philadelphia County in 1968 and led to similar programs in other counties. A screening process and negotiation between the prosecutor, defense attorney and the court selected certain offenders for this program, which removed their cases from court and precluded harsher sentencing. While not equivalent to a formal conviction, people participating in the ARD program were required to admit guilt. As the name suggests, the designers of the ARD program hoped that sidestepping court proceedings as much as possible would speed up the rehabilitative process, which in this context consisted of a negotiated plan of education, training and work under "citizen sponsorship." This citizen sponsor was usually a local social service agency or similar non-governmental organization. Despite the stated desire to individualize the program, the plans put together in the ARD program depended in large part on the capacities of this sponsor. Beyond the partial circumventing of courts, ARD differed from traditional probation in the degree it emphasized this devolution of criminal justice powers to citizen sponsors who maintained reports on offenders for the state or county probation service. People who completed ARD plans also had their records expunged. See Jere Sullivan, "Pretrial Intervention in Pennsylvania," *Pretrial Justice Quarterly*, 4, 2 (1975), 12-14, copied section in K. Leroy Irvis Papers, 1979 Addition, 1945-1979 Political Subject Files, 1945-1978, box 5, folder 35. UPASC.

<sup>274</sup> William C. Sennett to James H.J. Tate, September 16, 1969; Marvin S. Heller to William C. Sennett, September 30, 1969. RG-15 Department of Justice, Attorney General, General Correspondence, box 5 Corrections-Credit, folder: Eastern State Penitentiary, PSA; "State Raked on Penn Furloughs," *Pittsburgh Press*, (May 5, 1972).

<sup>275</sup> "Prison 'Furloughs' Rile State Judges," *Pittsburgh Press*, (January 25, 1972); "State Raked on Penn Furloughs," *Pittsburgh Press*, (May 5, 1972). "Controversy Besets Prison Furlough Program," *Pittsburgh Post-Gazette*, (May 22, 1972); "Furlough Program at Philadelphia's Prison Sparks Controversy," *The Afro-American*, (November 25, 1972); "Most State Judges Oppose Prisoner Release Plan: Inmates 'Furloughed' in New Reform Program," *The Morning Call*, (January 20, 1972), newsclipping. K. Leroy Irvis, box 5 Add 1979, folder 38. Papers UPASC; William G. Ward, Inspector to Judge Sweet, May 1, 1973, attached wanted poster and J. Shane Creamer to Member of the Pennsylvania General Assembly, May 24, 1972. Thomas F. Lamb Papers, box 2, folder 16: Corrections, Bureau of. UPASC.

conditional release.<sup>276</sup> Such criticism placed the Bureau of Corrections continually in the position of defending and justifying its programs in the face of accusations of irresponsible risks to public safety.

When Frank Rizzo became mayor of Philadelphia in 1972, he periodically lambasted Allyn Sielfaff and Gov. Shapp over the furlough program. Rizzo, a conservative Democrat who spent nearly thirty years as a Philadelphia police officer, was well-known for his law and order positions and difficult relationship with Philadelphia's African American community. It was not necessarily surprising that he opposed a liberal penal reform program. However, his intentions to run for governor in the next election also played a role in his public opposition to the furlough program. His criticism allowed him to attack his future opponent for the Democratic primary from a position where his law enforcement credentials weighed heavily. Although, Rizzo was not alone in this campaign against furloughs. Philadelphia's District Attorney Richard Sprague and Common Pleas Court Judge James T. McDermott joined Mayor Rizzo at press conference on Tuesday, November 21, 1972 to announce the finding of a report produced by the mayor detailing lapses in security in the furlough program, including the escape of twelve men from SCI Graterford while they were on furlough.<sup>277</sup>

All three officials argued that the program was irresponsible and a threat to public safety. Several of the escapees had records of violent crime, including participation in the massive July 4, 1970 disturbance at Holmesburg Prison.<sup>278</sup> Judge McDermott and District

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<sup>276</sup> William C. Sennett to James H. J. Tate, September 16, 1969. RG-15 Department of Justice, Attorney General, Conference-Creamer, 1968-69, 13-1082, box 3, folder: Corrections – August to December, 1969. PSA.

<sup>277</sup> "Furlough Program at Philadelphia Prison Sparks Controversy," *The Afro-American*, (November 25, 1972).

<sup>278</sup> Ibid.

Attorney Sprague each called for a special grand jury investigation into the escapes from Graterford and Rizzo threatened to pursue a federal grand jury if this failed.<sup>279</sup> Commissioner Sielaff and Gov. Shapp responded soon afterward, but they avoided discussing the specific escapes or how the furlough program operated at Graterford.<sup>280</sup> Instead, they both claimed that the program was an overwhelming success with 98 percent of furloughed inmates returning. The program's benefits outweighed the few inevitable failures.<sup>281</sup> Gov. Shapp announced that he would ask the State Supreme Court create "a panel of citizens" to evaluate the furlough program.<sup>282</sup> He felt that to convene a grand jury in Montgomery County, where Graterford was located, would simply invite other counties to do the same. Shapp predicted that then, "Our prison officials would be required to spend much time appearing for questioning and would not be able to concentrate their efforts as they should on improving the programs."<sup>283</sup> Nevertheless, Rizzo returned to the topic of the furlough program the following year in a speech considered to be his opening statement for the coming gubernatorial election:

Remember, it was Gov. Shapp who literally threw open the gates of our prisons, freeing hardened, vicious criminals to prey on our citizens. Gov. Shapp accomplished this through a furlough system whereby hardened criminals were sent home on weekend passes.<sup>284</sup>

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<sup>279</sup> Ibid.

<sup>280</sup> "State Prison Reform Program is Supported," *Beaver County Times*, (November 20, 1972); "Shapp Feels Furlough Plan Good Things," *Gettysburg Times*, (November 27, 1972). See also Allyn Sielaff's press release in MG-309 Gov. Milton J. Shapp, First Term, General File, box 24, folder 18, Bureau of Correction Elementary, 1971-1974. PSA.

<sup>281</sup> Ibid.

<sup>282</sup> "Furlough Plan to be Studied," *Reading Eagle*, (November 21, 1972).

<sup>283</sup> Ibid.

<sup>284</sup> "Blasts Governor: Rizzo's Speech Called Opening Campaign Shot," *Observer-Reporter*, (July 3, 1973).

Whatever the furlough programs success, it was politically toxic and its benefits hard to articulate in a convincing manner in the political discourse of the news media.

In some case, the Bureau of Correction's plans community corrections programs drew sharp opposition from the very communities that the penal authorities viewed as ultimately the best place for inmate reform. In 1969, the Bureau moved forward with a plan to create several pre-release in several urban centers across the state. Bureau officials intended these facilities to help inmates nearing the end of their sentences readjust to an unstructured and hopefully law-abiding life upon release.<sup>285</sup> Bureau officials considered the first center in Harrisburg a success and planned more for Erie, Pittsburgh and Philadelphia. Spearheaded by the Task Force for Community Treatment Center Planning, a coalition of numerous professionals and social justice organizations across the state worked with the Bureau and Department of Justice to establish a "Model Community Treatment Center for Southwestern Pennsylvania" for women in Pittsburgh.<sup>286</sup> This joint planning process, involving a coalition of local and interested leaders and state agencies, reflected a common pattern of social policy formation and implementation mid-1960s American liberalism. However, in Philadelphia, the local community actually picketed the proposed site of one of pre-lease centers at the intersection of Island Road and Saybrook Avenue.<sup>287</sup>

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<sup>285</sup> Pre-Release Center Planning Guidelines for Bureau of Correction Personnel. RG-15 Department of Justice, Attorney General, Conference-Creamer, 1968-69, 13-1082, box 3, folder: Corrections – August to December, 1969.

<sup>286</sup> There are numerous documents concerning this project in RG-15 Department of Justice, Attorney General, Conference-Creamer, 1968-69, 13-1082, box 3, folder: Corrections–August to December, 1969.

<sup>287</sup> "Group Plans to Picket: Former Fels Building the Issue," *Southwest Globe Times*, (August 6, 1969), newsclipping. RG-15 Department of Justice, Attorney General, Conference-Creamer, 1968-69, 13-1082, box 3, folder: Corrections–August to December, 1969.

Lead by future Philadelphia Mayor, W. Wilson Goode, the Paschal Betterment League organized the protest and lobbied city and state officials with their concerns about the pre-release center. The building at Island Road and Saybrook Avenue had already been a home for recently-released prisoners, a private philanthropic venture by a local contractor named Joseph Liberati.<sup>288</sup> The Bureau purchased the site, believing that there would be little or no objections because of this prior project.<sup>289</sup> Wilson Goode told the *Southwest Globe Times*, “Of course, we’re concerned with helping people who are coming out of prison, but we have a real question of priorities here.”<sup>290</sup> He explained that Paschal residents had been pleading with the city for years for increased services in their area, which had grown considerably with the opening of several new housing projects. Writing for the Paschal Betterment League, Goode demanded that the preparations for the pre-release center cease immediately and the site be used for a “comprehensive multi-purpose center that would serve the many needs of the community.”<sup>291</sup> The Paschal Betterment League’s activities pushed Philadelphia’s Managing Director, Fred Corleto, to also contact the Bureau of Correction and demand that they halt their plans.<sup>292</sup> The Bureau abandoned its plans for the facility on the condition that Philadelphia officials would help them locate an alternative site.<sup>293</sup>

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<sup>288</sup> Ibid.

<sup>289</sup> Arthur T. Prasse and A.R. Sielaff to Joseph W. Barr, August 14, 1969. RG-15 Department of Justice, Attorney General, Conference-Creamer, 1968-69, 13-1082, box 3, folder: Corrections–August to December, 1969.

<sup>290</sup> “Group Plans to Picket: Former Fels Building the Issue.”

<sup>291</sup> W. Wilson Goode to William C. Sennett, July 28, 1969. RG-15 Department of Justice, Attorney General, Conference-Creamer, 1968-69, 13-1082, box 3, folder: Corrections–August to December, 1969.

<sup>292</sup> Fred T. Corleto to Arthur T. Prasse, August 27, 1969. RG-15 Department of Justice, Attorney General, Conference-Creamer, 1968-69, 13-1082, box 3, folder: Corrections–August to December, 1969.

<sup>293</sup> William C. Sennett to James H. J. Tate, September 16, 1969 and William C. Sennett to Thomas P. McCreesh, October 20, 1969. RG-15 Department of Justice, Attorney General, Conference-Creamer, 1968-69, 13-1082, box 3, folder: Corrections–August to December, 1969.

Perhaps the biggest difference between the fates of the initial pre-release center planning in Pittsburgh, Harrisburg and Philadelphia was degree or lack of local support and the nature of both the opposition and coalitions, which supported the Bureau's plans. The advocates for the Pittsburgh plan clearly represent better educated, white, middle class reformers. One of the most active members of this coalition, Margaret S. Cyert, was active in the League of Women Voters, the spouse of a Carnegie Mellon University professor, and a local child care reformer.<sup>294</sup> By comparison, the Paschal Betterment League represented a largely African-American, neighborhood, poor in comparison to many other areas of the Southeastern Pennsylvania-Philadelphia area. The Bureau's facility would have directly affected their neighborhood, and even though there had already been a transitional living house for ex-prisoners at the site, representatives of the Paschal Betterment League argued that their community had many other unfulfilled needs that simply superseded the desires of the distant Bureau of Correction. Despite the initial success of the planning operation in Pittsburgh, the actual proposed location of the facility (near the campus of Carnegie Mellon University and the wealthy neighborhood of Shadyside) also generated enough resistance from prominent city residents (the Mellon and Scaife families), that the Bureau of Correction abandoned its plans.<sup>295</sup>

The Bureau eventually found alternative sites in both cities for these centers. They spent more

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<sup>294</sup> For examples of Margaret Cyert's involvement in the pre-release planning, see the documents in RG-15 Department of Justice, Attorney General, Conference-Creamer, 1968-69, 13-1082, box 3, folder: Corrections–August to December, 1969. Cyert's interest in female offenders was apparently sparked while she was in England where she joined a voluntary organization assisting women in mental hospitals. See, "Working to Help Us," *Pittsburgh Post-Gazette*, (July 7, 1983).

<sup>295</sup> "Scaife Blocked Center for Women Convicts: CMU Site Near His Shadyside Residence," *Pittsburgh Post-Gazette*, (November 24, 1973).



time planning their operations, including accommodating local officials more in locating politically suitable sites thereafter.<sup>296</sup>

While many prisoners benefited from the furlough program and assignment to pre-release centers, these programs nevertheless created tensions in many of the state's maximum-security prisons. It took very little to excite resentments in such prisons. During the course of the 1960s, the racial composition of the state's prison population shifted dramatically, with white inmates becoming a minority in 1965.<sup>297</sup> Racial discourse and the topic of racial discrimination permeated nearly every interaction and practice in prison during this period and many inmate complaints about the furlough and pre-release programs reflected this. The fact that such programs were fundamentally restrictive and did not include all prisoners meant that questions of race and discrimination adhered to many inmates' views of the selection process. Prolonged, coerced familiarity with so many people generates an unusual degree of comparison and evaluation among and between inmates and staff, which became deeply racialized in this context. Many prisoners who were not included in the furlough program deeply resented it, its screening procedures, those who designed and operated it, seeing in their exclusion unfairness, arbitrary decisions, discrimination and secretive

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<sup>296</sup> For instance, despite some stumbles, the degree of planning and local cooperation for a pre-release center in Allentown in 1974 appears to have been more thorough and based in part on their expectations of encountering resistance from local communities. Allentown Community Treatment Center, Ernst P. Kline to Milton J. Shapp, January 11, 1974, Milton J. Shapp to Joseph Daddona and Members of City Council, January 11, 1974 and Governor's press release, January 15, 1974. MG-309 Papers of Gov. Milton J. Shapp, box 24, folder 18, Bureau of Correction Elementary, 1971-1974. PSA. It also appears the Bureau of Correction, Department of Justice and the Governor's office specifically considered enhancing their public relations capabilities for prison matters as a way to counteract negative media about pre-release centers. Public Information Officer for the Bureau of Correction, Edward Mitchell to Israel Packel, July 16, 1974. MG-309 Papers of Gov. Milton J. Shapp, box 24, folder 18, Bureau of Correction Elementary, 1971-1974. PSA.

<sup>297</sup> Governor's Justice Commission, Bureau of Criminal Justice Statistics, *Population in the Bureau of Correction 1975*, Pennsylvania Criminal Information System Series C-2, no. 2, vol. 1 (Harrisburg: Bureau of Criminal Justice Statistics, 1975), 7. RG-15 Dept. of Justice Bureau of Correction, Annual Statistical Report, 1975-1982, box 1. PSA.

conspiracies designed to frustrate or oppress them. The furlough program, selective as it was, could not accommodate the unusually high importance attached to notions of fairness among inmates.<sup>298</sup> The furlough program soon acerbated jealousies and racial tension.

In a letter to the Prisoners' Right Council, a Philadelphia-based organization of prisoner activists, Joseph Molter, an inmate at SCI Graterford, acknowledged many of the recent improvements under Commissioner Sielaff, but expressed a common complaint about the furlough program:

I have served six years of a life sentence, and although I am truly grateful for the benefits afforded me through the new administration, I get quite depressed every weekend when passing all the empty cells (those inmates on furlough) knowing that I am not included in this wonderful benefit.

True, I am serving a life sentence, but prior to this, I have never spent a day in jail. So I don't consider myself a 'hardened criminal.'

If rehabilitation involves passes and furloughs, are we to be denied this merely because of a 'big bit?'<sup>299</sup>

As Molter indicated, inmates carrying life sentences were excluded from the furlough program even though it was not unusual for such inmates to eventually become eligible for parole after gaining executive commutation of their life sentence.<sup>300</sup> Willie Hargrove agreed that there had been some improvements at Graterford, but also told to the Prisoners' Rights Council that the exclusion of lifers from the community corrections programs was creating tension, especially

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<sup>298</sup> For a relevant discussion of fairness, legitimacy and order in prison, see J.R. Sparks and A. E. Bottoms, "Legitimacy and Order in Prisons," *British Journal of Sociology*, 46 (March 1995), 45-62. On fairness of legal authority in general, see Tom R. Tyler, *Why People Obey the Law* (New Haven: Yale University Press, 1990).

<sup>299</sup> Joseph P. Molter to Prisoners' rights Council, October 26, 1971. Papers of the Prisoners' Rights Council, PRC-PC Corresp. to and From Prisons General 1971 1, box 3, folder 2. TUUA.

<sup>300</sup> See also Billy Joe Loveday to Victor Taylor, November 1, 1971 and James C. Tolbert to Victor E. Taylor, October 15, 1971. Papers of the Prisoners' Rights Council, PRC-PC Corresp. to and From Prisons General 1971 1, box 3, folder 2. TUUA.

when a “short timer” came back from a furlough. Hargrove claimed that the furlough policy “is like the two Law they have one for the white and one for the colored people. It seems the same way.”<sup>301</sup>

Another Graterford inmate, John Myers, explained his frustrating experience applying for placement in a community treatment center in a letter addressed to the Prisoners’ Rights Council and Commissioner Sielaff.<sup>302</sup> Myers claimed that despite the fact that he felt he easily met all the program’s inclusion criteria in the Bureau’s administrative directives, which had been posted on the prison’s inmate bulletin board, Graterford’s classification committee still denied his application for transfer. Myers asked Commissioner Sielaff in his letter if there were separate criteria that he did not know about, perhaps issued locally by Graterford’s administration. He, nevertheless, surmised that if the classification committee was sending other inmates with worse criminal records and fewer family obligations to community treatment centers, he must have angered some of the prison’s staff who were now purposely undermining his case. After voicing this complaint, Myers received a “disciplinary write up,” which he feared only worsened his future chances for inclusion in community corrections programs.<sup>303</sup> Myers claimed that his experience was hardly unique, but reflected “the general feeling of most of the residents of this institution.”<sup>304</sup>

Another person serving time at Graterford, Allan Lawson, questioned the actual effectiveness of community corrections programs, their selection criteria and how well the

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<sup>301</sup> Willie Hargrove to Victor Taylor, October 26, 1971. Papers of the Prisoners’ Rights Council, November 11, 1971. Prisoners’ Rights Council, PRC-PC Corresp. to and From Prisons General 1971 1, box 3, folder 2. TUUA.

<sup>302</sup> John Myers to Victor Taylor, Prisoners’ Rights Council, November 11, 1971. Papers of the Prisoners’ Rights Council, PRC-PC Corresp. to and From Prisons General 1971 1, box 3, folder 2. TUUA.

<sup>303</sup> Ibid.

<sup>304</sup> Ibid.

prison system prepared most inmates for such programs.<sup>305</sup> In a letter to Arthur Clark, a member of the Philadelphia Yearly Meeting of of the Religious Society of Friends, Lawson explained the central flaw in the work-release program: “inmates are motivated to work by the fact that work release means limited freedom...Determining the sincerity of a work release applicant seems nearly impossible to me. The incentive factor here is limited freedom. Most, if not all, inmates would apply.”<sup>306</sup> Lawson argued that “relevant” counseling needed to precede work release and that inmate must choose to work. The requirement to maintain employment, in both community corrections program and parole, was simply coercive and actually counterproductive. “Thus,” claimed Lawson, “the fires which feed recidivism are fueled.”<sup>307</sup> Lawson, who would later become the leader of the Prisoners’ Right Council after his release from Graterford, concluded his letter with a “query,” which haunted the community corrections program and perhaps the project of reformative imprisonment as well:

If one of the aims of a work-release program is to prepare an inmate to work, and to stick to work, is it feasible to provide a means whereby anti-work attitudes may be erased (without the means leaning towards coercion)?<sup>308</sup>

Prison officers also expressed displeasure with the furlough program. Their concerns echoed those by the police, the judiciary and many people in the general public, but they also often revealed more personal animosities, fears and resentments resulting from their working conditions and greater familiarity with prisoners. After meeting with guards at SCI Graterford

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<sup>305</sup> Allan H. Lawson to Arthur Clark, Phila Yearly Meeting, May 25, 1971. Papers of the Prisoners' Rights Council, PRC-PC Corresp. to and From Prisons General 1971 1, box 3, folder 2. TUUA.

<sup>306</sup> Ibid.

<sup>307</sup> Ibid.

<sup>308</sup> Ibid.

on March 16, 1972, Assistant Attorney-General Thomas Jennings reported to Deputy Attorney-General Dante Mattioni that most officers disliked many of the recent changes in inmate management, programs and amenities.<sup>309</sup> His impression was that more than anything their resistance stemmed from the fact that they felt abandoned by officials in Harrisburg who never consulted with them prior to making the recent changes, which greatly affected their daily routines. Jennings stressed that the officers worried about their personal safety: "Inextricably interwoven throughout the entire meeting was this sense of insecurity which permeated every issue that arose."<sup>310</sup> This included their opposition to the furlough program. The officers complained to Jennings that they worried about encountering furloughed inmates in their neighborhoods, near their families. One guard told Jennings that a furloughed inmate personally attacked him while he was off duty.<sup>311</sup> Many officers also told Jennings that spending on furlough seemed frivolous or wasteful considering the disrepair of Graterford and many other areas of need at the institution.<sup>312</sup> Jennings left the meeting concerned that the low morale of the guard force, caused at least partly by their exclusion from decision-making about changes that directly affected them, imperiled the administration's prison reform agenda.

### ***Pennsylvania: A New Normal? The Loosening of Prison Regimes***

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<sup>309</sup> Meeting with Graterford Guards on March 16, 1972, Thomas W. Jennings to Dante Mattioni, March 22, 1972. RG-15 Dept. of Justice Attorney Gen, carton 5, 72-11-17-229, Rap Sessions-Transcripts of Governor's Prison Visits, Correctional Officers Rap. PSA.

<sup>310</sup> Ibid.

<sup>311</sup> Ibid.

<sup>312</sup> Ibid.

In addition to the community corrections programs, the Bureau of Correction changed a number of policies and practices within the institutions, liberalizing some of the routines and rules that affected prisoners' daily lives. While some leaders in the Bureau of Correction, like Sielaff and his deputy Stewart Werner, believed that humanizing prisons would reduce tensions in such institutions, the likelihood that the courts would eventually order the Bureau to implement changes, also motivated their actions. Some recent cases in particular, like *Holt v. Sarver* (1969), focused on "prison conditions," which touched on nearly every aspect of life in confinement, from food quality, discipline, ventilation, inmate safety and violence.<sup>313</sup> Facing a totality of conditions case would force many states to drastically improve their entire prison system. Many correctional officials in the county preferred to make (perhaps lesser) changes on their own than contend with the costs and loss of control entailed in judicial intervention and oversight.

While the courts had not yet intervened in Pennsylvania prisons to this degree, there were signs that such oversight could eventuate. In November 1970, U.S. District Court for the Eastern District of Pennsylvania consolidated numerous smaller cases against the Bureau filed by prisoners into a large, system-wide complaint filed by the Imprisoned Citizens Union, a loose organization of jailhouse lawyers and sympathizers, primarily led Richard O.J. Mayberry who was renowned among prisoners for his legal acumen and success.<sup>314</sup> In addition, prisoners at

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<sup>313</sup> The prison system of Arkansas was the subject of *Holt v. Sarver*, 300 F. Supp. 825 (1969) and *Holt v. Sarver*, 309 F. Supp. 362 (1970), affirmed 442 F.2d 304 9<sup>th</sup> Cir. (1971). See also Phillip J. Cooper, *Hard Judicial Choices: Federal District Court Judges and State and Local Officials* (New York: Oxford University Press, 1988), 212-270. Other totality of conditions cases included *Morris v. Travisono*, 310 F. Supp. 857 (1970); *Pugh v. Locke*, 406 F. Supp. 318 (1976); *Laaman v. Helgemoe*, 437 F. Supp. 269, 275 (1977); *Palmagiano v. Garrahy*, 443 F. Supp. 956 (1977).

<sup>314</sup> *Imprisoned Citizens Union v. Shapp*, (E.D. Pa. 1978); Mumia Abu-Jamal, *Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.* (San Francisco: City Lights Books, 2009), 151-166; "Jailhouse Lawyer Sues Over Solitary,"

several institutions forced concessions from the superintendents with sit-down strikes that loosened some of the restrictions on reading materials, religious practices, attire, communication and visits with people outside prison.<sup>315</sup>

The decision by Pennsylvania senior penal officials to address some of these issues closely followed current thinking in professional penological societies and international organizations. The Bureau sent a delegate to the Forth United Nations Congress on the Prevention of Crime and Treatment of Offenders that was held in Kyoto, Japan in 1970 where the topic of minimum prison standards was debated extensively.<sup>316</sup> Shortly afterward, Pennsylvania's Attorney-General J. Shane Creamer (of the Shapp administration) announced that it was instituting a "Bill of Rights" for prisoners in all of the state's prisons based explicitly on the current Standard Minimum Rules for the Treatment of Prisoners that had been produced over successive meetings of the American Correctional Association, the International Penal and Penitentiary Commission, and the United Nations Congress on the Prevention of Crime and Treatment of Offenders.<sup>317</sup> Creamer noted that no American state or country had yet to enact these standards into law, but that they had been posted to the bulletin boards of state prisons under the orders of Commissioner Sielaff.<sup>318</sup> Creamer explained that these standards

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available at [http://articles.philly.com/1993-05-25/news/25966739\\_1\\_prison-guard-jailhouse-lawyer-philadelphia-jails](http://articles.philly.com/1993-05-25/news/25966739_1_prison-guard-jailhouse-lawyer-philadelphia-jails). Last checked August 16, 2015.

<sup>315</sup> "Black Inmates Demands Granted at Western Pen," *New Pittsburgh Courier*, (December 6, 1969); "After Courier Expose Western Pen Closes Door to Minister," *New Pittsburgh Courier*, (December 20, 1969); "Inmate Sets Record Straight On Black Mood Article About Pen," *New Pittsburgh Courier*, (January 17, 1970).

<sup>316</sup> See the papers of the Forth United Nations Congress on the Prevention of Crime and Treatment of Offenders, (Kyoto, Japan 17 - 26 August 1970, respectively), viewable at [http://www.asc41.com/UN\\_congress/undocs.htm](http://www.asc41.com/UN_congress/undocs.htm). Last view September 3, 2013.

<sup>317</sup> "Pennsylvania Inmates Get New Rights," *New York Times*, (October 5, 1971); "Prisoners' Rights: What Rights for the Slave of State?" *New York Times*, (December 26, 1971).

<sup>318</sup> Ibid.

were intended to be the bedrock of good practice, which would serve as a guide and justification for specific changes in the routine practices in the state's prisons.

Prisoners, of course, saw such standards on the bulletin boards and were well aware of the recent court decisions concerning a variety of prisoners' rights and prison conditions. One of the primary changes that occurred during this period was the decision by the Bureau to lift most of the restrictions of mail and access to publications normally available outside the prison. Under court pressure, the Bureau also permitted the establishment of law libraries to provide access to legal material, like writ forms, to inmates who wished to prepare their own petitions to the courts. Such changes meant that inmates in state and county institutions began to gain greater access to literature on prison reform, prison abolition, and a host of other civil rights, anti-colonial and anti-war movements. Penal authorities still banned some of this literature if they considered it too inflammatory or disruptive to the order of the institutions.<sup>319</sup>

Nevertheless, much of the literature on prison reform that circulated through the institutions informed inmates of their newfound rights and how they could frame disputes or frustrations with prison staff and rules in rights discourse and legal language to challenge such practices. The Prisoners' Rights Council, in particular, produced brochures about the range of rights that inmates still held while confined.<sup>320</sup> Their archives are filled with letters from prisoners in county and state facilities asking for copies of these brochures, especially

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<sup>319</sup> Negotiated issues, Superintendent Leonard J. Mack to All personnel and resident population, July 27, 1972. RG-15 Dept. of Justice Attorney Gen, carton 5, 72-11-17-231, Corrections Personnel. PSA.

<sup>320</sup> For a list of these publications see, "Intent Report to the People," draft 1978. Papers of the Prisoners' Rights Council, box 3, folder 34, PRC--AD Executive Directors Office Reports 1971-1983. TUUA.



“Disciplinary Procedures in State and County Prisons” and “Your Rights to Access the Courts.”<sup>321</sup>

Some inmate newsletters carried verbatim copies of the minimum standards for prisoners, but as the Prisoners’ Rights Council noted many times, since the minimum standards were not incorporated into Pennsylvania’s law, the Bureau and prisoners lacked a way to actually enforce them.<sup>322</sup>

In addition to less restrictions on publications and mail, the Bureau permitted greater variety in clothing, hair length and personal attire as well as increased access to a various personal items, which could be ordered through the institutions commissary or mail-order catalogues and kept in a person’s cell.<sup>323</sup> Prison administrators also extended visiting hours and improved visiting facilities. Executive Deputy Attorney-General Walter Foulke remarked on an inspection of SCI Pittsburgh that “the visiting room is a tremendous improvement over the situation that existed several years ago and it really a step in the right direction.”<sup>324</sup> The superintendent of SCI Dallas, Leonard Mack, permitted visitors to bring in small food items for picnics during these visits with their imprisoned loved ones.<sup>325</sup> Prison administrators also

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<sup>321</sup> The references to the Prisoners’ Rights Council’s publications in inmates’ letter are vast. Any of the correspondence folders to any of the state and county facilities in the Prisoners’ Rights Council’s papers at Temple University’s Urban Archive, which contain inmate letters, will turn up numerous examples.

<sup>322</sup> An example of the minimum standards in an inmate produced papers can be seen in *Prisoner’s Free Press*, 2 (November-December 1971). MG-309 Papers of Gov. Milton J. Shapp, box 149, folder 32, Prison—Prisoners, 1971-1974. PSA; Prisoners’ Rights Council, October 23, 1973. Papers of the Prisoners’ Rights Council, box 1, folder 2, PRC-AD Agency History and Background Materials, 1971-74, 76-79, report. TUUA.

<sup>323</sup> Negotiated issues, Superintendent Leonard J. Mack to All personnel and resident population, July 27, 1972, General information, Superintendent Leonard J. Mack to All personnel and resident population, August 3, 1972 and General information, Superintendent Leonard J. Mack to All personnel and resident population, August 8, 1972. RG-15 Dept. of Justice Attorney Gen, carton 5, 72-11-17-231, Corrections Personnel. PSA.

<sup>324</sup> Walter L. Foulke to Milton J. Shapp, February 9, 1972. RG-15 Dept. of Justice, Att-Gen, Gen. Corresp, 1971 Series 200 71—03-16-230 to 71-03-22-211 box 7, folder: Corrections 71-03-18-234. PSA.

<sup>325</sup> Negotiated issues, Superintendent Leonard J. Mack to All personnel and resident population, July 27, 1972 and General information, Superintendent Leonard J. Mack to All personnel and resident population, August 3, 1972. RG-15 Dept. of Justice Attorney Gen, carton 5, 72-11-17-231, Corrections Personnel. PSA.

granted inmates the rights to have radios and televisions in their possession, provided that they purchased them with their own funds. Superintendent Mack permitted inmates to use these items for extended hours and ordered the television in the dayroom to remain on throughout the day.<sup>326</sup> Inmates enjoyed more time out of their cells and greater ability to move about many institutions. Such changes, which might appear minor, were major departures from past practice. That the superintendent of a prison, like Leonard Mack, would inform prisoners that their cells were to be repainted and that they could choose from a variety of “10 different pastel shades” would probably have struck prison staff and prisoners as ridiculous not that long ago.<sup>327</sup>

Sielaff also tried to enhance prisoners’ rights in a few other ways that were potentially more significant and controversial among prison staff. For instance, he instructed institutions to discontinue the use of some types of segregation, like the use of lightless, underground “dungeons” at the bottom of the old Western Penitentiary in Pittsburgh.<sup>328</sup> Nevertheless, inspections at Pittsburgh prison revealed that these seclusion areas were still in use well after Commissioner Sielaff had issued his directive.<sup>329</sup>

Much like the issue of furloughs, many prison guards disagreed with the new liberalized regimes, especially since the Bureau’s senior leaders did not consult them on the changes. Guards at SCI Graterford impressed this upon Assistant Attorney-General Thomas Jennings

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<sup>326</sup> Ibid.

<sup>327</sup> General information, Superintendent Leonard J. Mack to All personnel and resident population, August 8, 1972. RG-15 Dept. of Justice Attorney Gen, carton 5, 72-11-17-231, Corrections Personnel. PSA.

<sup>328</sup> Use of Seclusion, Allyn R. Sielaff to Superintendent Brierley, SCIPGH, January 19, 1972. RG-15 Dept. of Justice, Att-Gen, Gen. Corresp, 1971 Series 200 71—03-16-230 to 71-03-22-211 box 7, folder: Corrections 71-03-18-234. PSA.

<sup>329</sup> Walter L. Foulke to Milton J. Shapp, February 9, 1972. RG-15 Dept. of Justice, Att-Gen, Gen. Corresp, 1971 Series 200 71—03-16-230 to 71-03-22-211 box 7, folder: Corrections 71-03-18-234. PSA.

during a visit in March 1972. Jennings informed his superiors that guards told him the changes had “increased the difficulty of maintaining order and discipline in the institution.”<sup>330</sup> The officers told Jennings that the greater amount of personal property inmates could keep in their cells and inability of inmates to lock their cells lead to “a rash of thefts which have resulted in violence or near violence.”<sup>331</sup> The officers argued that extending these privileges to inmates being punished in segregation meant that this penalty had lost a lot of its deterrent quality. The guards felt this resulted in greater disciplinary problems throughout the entire population.<sup>332</sup> The officer also told Jennings that recent changes in procedures for escapes had placed them in a difficult position. They had two sets of rules addressing the use of force in such situations, but they contradicted each other.<sup>333</sup> Officers wanted the Bureau to clarify when they could use “killing force,” when they could not, and what the potential ramifications were. As it stood, one set of rules stated that if they used killing force to prevent an escape they would be prosecuted for murder, but other set of rules stated that they would lose their job if they did not use killing force to prevent an escape.<sup>334</sup>

### ***New South Wales: The Decomposition of Prison Routines and Growing Unrest***

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<sup>330</sup> Meeting with Graterford Guards on March 16, 1972, Thomas W. Jennings to Dante Mattioni, March 22, 1972. RG-15 Dept. of Justice Attorney Gen, carton 5, 72-11-17-229, Rap Sessions-Transcripts of Governor's Prison Visits, Correctional Officers Rap. PSA.

<sup>331</sup> Ibid.

<sup>332</sup> Ibid.

<sup>333</sup> Ibid.

<sup>334</sup> Ibid.

Most people who described the transformation of prison routines and order during and after the 1970s cited the appointment of Walter McGeechan as Comptroller-General of Prisons in 1968 as a significant break with past practices. McGeechan became a lightning rod for criticism from penal reformers, prisoners and officers. His ten year tenure as head of the prisons department was marked by major investigations, guard union militancy and violent confrontations between staff and inmates in many prisons. Yet, he oversaw the introduction of a number of alternatives to imprisonment that outlasted his time in office and formed the basis of future programs. Without dismissing the significance of changes during McGeechan's time in office, it is important to keep in mind that they built on trends that were already apparent in the state's prisons prior to 1968. The immediate postwar changes blended elements of progressive penal strategies common in international penological circles, like the greater use of open institutions, and authoritarian containment policies, like the intractable section at Grafton Gaol. After Leslie Nott's retirement in 1955, the next two leaders of the Department of Prisons, Harold Vagg and John Morony, further developed this array of options in the prison system, extending the training, education and recreation activities available to prisoners at lower security institutions, like Berrima and Goulburn,<sup>335</sup> while also maintaining austere regimes at other facilities.

John Morony, who led prisons department from 1960 to 1968, spoke in the idiom of progressive penal reform that was common in many parts of the world during the decades following World War II, but eventually expressed pessimism over its current effectiveness. In

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<sup>335</sup> For instance, see the description of the programs at Berrima and Goulburn in Robert Lehane, "Inside the Walls," *The Canberra Times*, (September 7, 1967).

his study of the Michigan State Prison in Jackson, Charles Bright has argued that the organizing and performative aspects of such penal reform language should be emphasized “as a process of formulating plausible accounts of carceral control in changing circumstances.”<sup>336</sup> This view of penal reform language and practice highlights its intrinsic flexibility and ability to accommodate what might in some cases appear as contradictory positions. Like many contemporary penal administrators, Morony supported rehabilitation in writings and public statements, but often qualified it by warning of the need to further develop the research, training and programming capacities his department and placing the success of any reformatory effort with the attitude of individual inmates and their willingness to change themselves.<sup>337</sup> Morony spoke convincingly about the attributes of offenders that lead them to crime, but like his contemporaries, he often had little to offer as a solution to the litany of problems that led to recidivism.

If inmate reform, as a goal of punishment, was intrinsically prospective, the actual means to achieve it often also appeared to lie in the future. For Morony, this meant that more resources needed to be devoted to research to develop a better scientific and technical basis for reformatory interventions. Like Leslie Nott and Harold Vagg before him, Morony undertook an overseas study tour prior to assuming office. He noted that one of the major differences between practices in New South Wales and those in the United Kingdom and United States was the presence of penological research in the reform projects of the penal systems he observed.<sup>338</sup>

Once he assumed the leadership of the New South Wales Department of Prisons, Morony

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<sup>336</sup> Charles Bright, *The Powers That Punish: Prison and Politics in the Era of the "Big House", 1920-1955* (Ann Arbor: University of Michigan Press, 1996), 14.

<sup>337</sup> D. P. Armstrong (ed.), *Prisoner Rehabilitation: Proceedings of a Seminar, Grafton – August 2<sup>nd</sup>-4<sup>th</sup>, 1963* (Grafton: University of New England, 1963), 26-40.

<sup>338</sup> *Report of the Comptroller-General of Prisons* (Sydney: New South Wales, Department of Prisons, 1960), 12.

began an intensive research program. Morony noted in several annual reports that the department's new research efforts drew from the vast case files produced by the Classification Committee over the ten years of its existence.<sup>339</sup> Early research initiatives focused on the etiology of homosexuality and the distinguishing attributes of recidivists.<sup>340</sup> Despite Morony's belief in the promise such research, he was far from sanguine about the actual effectiveness of the rehabilitative capacities of the department he oversaw. As much as Morony recognized the limits of present practices, his use of the language of progressive prison reform contained the unpleasantness of them, de-emphasizing or euphemizing continued repression in many prisons while promoting the potential of better penological methods on the horizon.

Perhaps the clearest expression of the latter phenomenon and the blending of purposes and practices in reform discourse was the decision to hold a major conference on the state of inmate reform and penology in New South Wales with national and international attendees in the city of Grafton in 1963.<sup>341</sup> The two-day long conference "Prisoner Rehabilitation," sponsored by the University of New England, took place in the immediate vicinity of the state's most repressive, brutal prison where officers routinely flogged prisoners into submission as a matter of official policy. Yet, the published proceedings of the conference addressed questions of classification, adequate programming and training, increasing public knowledge of the penal system and practical support for released inmates to help prevent recidivism. Only the Minister for Justice, Jack Mannix referred to Grafton Gaol's role as "a disciplinary prison – a prison within

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<sup>339</sup> Ibid.; *Report of the Comptroller-General of Prisons* (Sydney: New South Wales, Department of Prisons, 1961), 12.

<sup>340</sup> Ibid., 12-13.

<sup>341</sup> Armstrong, *Prisoner Rehabilitation: Proceedings of a Seminar*.

a prison to which persons are sent for secondary punishment.”<sup>342</sup> He stated that rehabilitation was not possible in old institutions like Grafton, but he immediately qualified this this by noting that Grafton’s regime did not involve prolonged solitary confinement.

Regardless of whether the successive leaders of the department personally supported the violence at Grafton, they did little to stop the physical abuse that was commonplace there. Mainline prison staff widely supported its continued use as a disciplinary prison. They believed it anchored discipline throughout the entire prison system.<sup>343</sup> The silence of Vagg and Morony on the issue of Grafton was one of many ways in which the postwar reform agenda of the Department of Prisons and the Ministers of Justice did not directly challenge the authority of superintendents and guards in the day-to-day management of prisons. This was perhaps one of the reasons why prison staff accepted other changes in the postwar years. Senior officers in the department recognized that there were limits to how far these other reform efforts could go before they provoke reactions from custodial staff. Morony abstractly referred to this dilemma in the annual report of 1960 as the conflict “between the interests of security and the interests of rehabilitation.”<sup>344</sup> Then again in the next report for 1961:

Much is being done in the field of rehabilitation, much remains to be done. But too much emphasis in this area may tend to increase the conflict with the security of the institutions and there is a constant need to balance the two elements in the best interest of the public.<sup>345</sup>

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<sup>342</sup> Ibid., 24-25.

<sup>343</sup> Exhibit 758: Submission by Public Service Association (Prison Officers Vocational Branch) on General Issues. Royal Commission into New South Wales Prisons, Series 1601: Exhibits 5/9313. SANSW.

<sup>344</sup> *Report of the Comptroller-General of Prisons* (Sydney: New South Wales Department of Prisons, 1960), 8.

<sup>345</sup> *Report of the Comptroller-General of Prisons* (Sydney: New South Wales Department of Prisons, 1961), 10.

David Grant, Deputy Chairman of the Corrective Services Commission in the late 1980s, recounted how a prison officer, who later became a superintendent, described Morony's balancing act with prison management prior to 1968.

Morony, or Honest John as he was known, was respected but he was a remote figure; he did formal visits to gaols but he didn't interfere. There was no prison system as such, just a series of independent gaols. In each of these it was the Governor who had total authority—he was an awesome figure.<sup>346</sup>

But, if there was an effort to maintain a balance, the entire field of penological discourse had shifted dramatically since World War II and with it came a series of often small transformations in routine, everyday practices within many of the state's prisons.

By the 1960s, some attempts to “normalize” prison life, especially through the extension of sports and various leisure activities began altering the relationship between inmates and staff, bringing them in closer physical and social proximity.<sup>347</sup> More than anything, department administrators intended these changes to occupy prisoners in the absence of sufficient employment opportunities for all inmates. Morony argued that such activities reduced tension, lessened the effects of institutionalization and probably assisted in more direct reformatory interventions.<sup>348</sup> For guards, however, such activities changed their supervision routines and indirectly increased the level of communication they had with inmates. At first, such changes might appear minor or insignificant, but they departed from a strict form of proximate non-association between staff and inmates that had distinguished the authority and disposition of

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<sup>346</sup> David Grant, *Prisons: The Continuing Crisis in New South Wales* (Sydney: Federation Press, 1992), 146.

<sup>347</sup> Ramsland, *With Just but Relentless Discipline*, 312; Grant, *Prisons: The Continuing Crisis*, 146.

<sup>348</sup> *Report of the Comptroller-General of Prisons* (Sydney: New South Wales Department of Prisons, 1960), 9.



prison guards and had existed for decades. In fact, officers also worked under strict rules and could be disciplined for minor infractions. According to the uniform prison rules of 1956, for instance, they were not permitted to communicate unnecessarily with prisoners.<sup>349</sup>

Such strict regulations governing the interactions between inmates and staff highlight the significance of seemingly minor changes, like having staff facilitate rugby league matches for inmates. Within a short period of time, inmates began to view these activities as entitlements rather than privileges as the administration had intended them. This situation gradually reduced the vast social distance between guards and inmates that had been the hallmark of most of the state's prison regimes in the recent past, and it also increased the level of disagreement and friction attending these new activities and interactions between staff and prisoners. Despite this emerging issue, the department did little to officially change the management role, compensation, and training of guards. While some staff accommodated these changes better than others, many guards, especially in the state's maximum security prisons, resented such changes and simply maintained their management style and strict disposition toward inmates. The break with the past that McGeechan represented for many people once he assumed leadership of department consisted of poorly planned and executed policies that accelerated these existing changes or accentuated their tensions.

McGeechan summed up his dissatisfaction with the prisoner management approach common among officers in his initial submission to the Royal Commission into New South

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<sup>349</sup> Statement by Mr. D. Grant, Deputy Chairman, Corrective Services Commission, in Relation to an Inquiry Concerning Prison Officers, Pursuant to Section 35(1)(o) of the Industrial Arbitration Act 1940 vol. 1 (Sydney: New South Wales. Department of Corrective Services, 1987), 10.

Wales Prisons in 1976. Under a section subtitled, “the trauma of change,” McGeechan argued that:

For some years the department has taken the view that the stereotype authoritarian role in the custodial division was no longer appropriate, and could not be sustained or validated in the light of emerging criminal cultures and social attitudes, i.e., the programmes which may have been effective in the 1960’s could not be moved to the 1970’s<sup>350</sup>

Yet, McGeechan's penal philosophy lacked clarity, and this became evident in practice. In his submission, McGeechan argued that the past emphasis on authority and discipline in the prison officer’s role needed to be loosened, if not outright abandoned, and supplemented by other dispositions and techniques. He saw these new roles as being embedded in the different program and custody levels. Thus, guards working in control units had to balance their authoritarian “attitude” with “persuasive and intellectual techniques.” Lower security institutions required either a “supportive guidance role with overtones of parental relationships” (medium security) or “a wholly persuasive man-management role, i.e. one of equality.”<sup>351</sup> Yet, McGeechan and his subordinates failed to describe what these roles and their differences actually meant in practice or provide guidance to the guard force.<sup>352</sup> Justice Nagle would later argue that McGeechan thwarted the potential, if any, of the new initiatives by “the

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<sup>350</sup> Statement of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 37.

<sup>351</sup> *Ibid.*, 38.

<sup>352</sup> The content of the department’s training programs for officers remained largely the same throughout much of McGeechan’s tenure, making it all the more difficult to articulate changes in prison officer roles and attitudes. See Statement by Mr. D. Grant, Deputy Chairman, Corrective Services Commission, in Relation to an Inquiry Concerning Prison Officers 17-18, 36-37; Statement by Dr. Glenice Hancock, Commissioner, Corrective Services Commission, in Relation to an Inquiry Concerning Prison Officers, Pursuant to Section 35(1)(o) of the Industrial Arbitration Act 1940 vol. 1 (Sydney: New South Wales. Department of Corrective Services, 1987), 11-19.

use of abstruse and inexact jargon and meaningless clichés" and failure to formulate, communicate, and implement policies.<sup>353</sup>

McGeechan can surely be faulted for poor writing and communication; it is evident in most of his policy statements. His managerial skills were also found to be seriously lacking by the inquiry. However, focusing too much on this obscures the fact that McGeechan and all of his management staff faced a series of challenges and problems that could not be domesticated within the prevailing discourse and practices of inmate reform, which had been hegemonic since the end of World War II. McGeechan, for all his faults, was not that dissimilar from his predecessors, but he struggled to formulate "plausible accounts of carceral control" that were flexible enough to accommodate the rapidly changing circumstances and the proliferation of challenges from various groups of staff, inmates and their respective allies.<sup>354</sup> One of the greatest strengths of the postwar reforms was that for roughly two-to-three decades, they proved capable of domesticating most disruptions, pulling challenges back within the ambit of containment, classification and correctional treatment. However, like in Pennsylvania, the plausible accounts of these postwar reforms were now under question and many of the routine practices associated with them were becoming controversial and contested.<sup>355</sup> McGeechan certainly did not help matters with confusing policies.

Uncertainty crept into prison operations in numerous different ways. Sometimes, the central office introduced new reforms without making corresponding changes in training, or

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<sup>353</sup> Nagle, *Report of the Royal Commission*, 47.

<sup>354</sup> The phrase is Bright's. See *The Powers That Punish*, 14.

<sup>355</sup> In this sense, such accounts are not simply ideology, but an interplay between penal discourse, practices and the built environment of the prison. These various aspects continuously shift and realign, with some features, like the rhetoric of reform, changing more readily than others. See Bright, *The Powers That Punish*., 14-15.

protocols governing guard behavior or official prison rules for inmates.<sup>356</sup> One of the worse examples of this problem, pointed out many times during hearings of the Royal Commission into new South Wales in the late 1970s, consisted of the use of two different versions of the basic guide manual for officers.<sup>357</sup> The department issued an updated set of prison rules in 1970 titled, the *Manual of General Information, Custodial Division*, which was intended to replace a similar document from 1956 titled, *Manual for Staff Instruction and Guidance*.<sup>358</sup> Yet after the publication of the 1970 volume, often called the “black book,” the central office failed to completely pull the 1956 rule book from circulation even though there were wide discrepancies between the two manuals.<sup>359</sup> As it became clear during the Royal Commission hearings, some prisons operated according to the 1956 rules while other facilities used the updated manual.<sup>360</sup> Moreover, the central office appeared to be aware of this competing set of standards governing the prisons.<sup>361</sup> Unsurprisingly, Bathurst Gaol, with its reputation as being rigid and anachronistic, strictly enforced the “brown book,” the 1956 rules. John Winter Pallot, Bathurst’s superintendent, stated during the Royal Commission hearings that the brown book was “spot on” and that preferred it to the black book, which he found confusing.<sup>362</sup> Conflicts like this indicated deeper problems than simple failures to properly distribute current policy documents.

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<sup>356</sup> The Bauer Commission, which investigated the nature of prison officer employment in the late 1980s, noted lack of relevant training throughout McGeechan’s time in office. See especially its first of two reports, *Custodial Officers Inquiry (Section 35 Industrial Arbitration Act 1940): Report to Minister for Industrial Relations as requested on Thursday, 2 June 1988* (Sydney: Department of Corrective Services, 1988).

<sup>357</sup> For a summary of this problem see, Nagle, *Report of the Royal Commission*, 189-191.

<sup>358</sup> New South Wales, Department of Prisons, *Manual for Staff Instruction and Guidance* (Sydney: Department of Prisons, 1956); New South Wales, Department of Corrective Services, *Manual of General Information, Custodial Division* (Sydney: Department of Corrective Services, 1970).

<sup>359</sup> Nagle, *Report of the Royal Commission*, 189-191.

<sup>360</sup> *Ibid.*, 190.

<sup>361</sup> *Ibid.*

<sup>362</sup> Testimony of John Winter Pallot, *Proceedings of the Royal Commission*, 2383.

They revealed fundamental disagreements between powerful constituencies within department and its institutions the about penal policy, how prisons should be run, the authority of warders and what respect or rights prisoners had, if any.

Such inconsistencies spread across the prison system and created discord among prisoners and officers alike, especially if they moved between prisons: actions that were permitted at one prison could, at another facility, lead to official charges and administrative punishment for inmates or a dressing down by superior officers and demotion for guards.<sup>363</sup> Bathurst Gaol, which experienced several disturbances and organized inmate demonstrations between the mid-1960s and 1974, was notorious for its harsh regime and strict adherence to old rules.<sup>364</sup> Inmates' views of Bathurst, which only received extended publicity during the Royal Commission, painted the picture of petty guards and superintendents who enforced anachronistic rules concerning the visits, access to reading material, cell property and decorations, postal privileges, personal attire, and hair length to name just a few concerns. One of the differences between the two different manuals of prison rules was a stipulation from 1956 that prohibited inmates from sitting down or smoking while in the prison yard. Inmates spent many hours a day locked in Bathurst yard, but they faced misconduct charges for sitting down during weekdays.<sup>365</sup> New inmates and prisoners transferred to Bathurst from other institutions ran afoul of some guards who strictly enforced this rule. Other guards were more

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<sup>363</sup> Nagle, *Report of the Royal Commission*, 190-191; Royal Commission Exhibit 759: Submission by Public Service Association. Separate Submissions Prepared by Officers of the Prison Officers Vocational Branch. Royal Commission into New South Wales Prisons, Series 1601: Exhibits 5/9313. SANSW.

<sup>364</sup> Royal Commission Exhibit 281a "Diary of Disturbances in Penal Institutions prior to the 1970 Bathurst Riot." Royal Commission into New South Wales Prisons, Series 1601: Exhibits 5/9307. SANSW.

<sup>365</sup> For example, see the following in the *Proceedings of the Royal Commission*, Statement of Allan Terry Morrison, 1769, 1782; Statement of Anthony Richard Phillip Green, 1979; Statement and testimony of Kenneth William Clarke, 1827, 1829; Testimony of John Adrian Kelly, 1883; Testimony of John Winter Pallot, 2441.

lax with this rule, but the discrepancy between how guards enforced this rule only added to a sense of frustration among inmates who could lose privileges and parole consideration by sitting down during a hot summer day. Some prison officers who transferred between institutions also noted differences between the various prisons in this regard. Allan Thompson, an officer who worked at Bathurst Gaol and later Parramatta Gaol, noted that:

Petty discipline at Bathurst was the cause of considerable trouble. This built up a resentment in the prisoners. This was particularly noticeable when the prisoners came from prisons such as Parramatta to Bathurst. Rules in Bathurst relating to visits, letter writing, and photo in cells were according to the Book, and were rigidly applied. At Parramatta the rules were interpreted differently and were more up to date...Old-fashioned ideas seemed to prevail at Bathurst. Because a thing was done in a certain way 30 years ago, that was the way it had to be done today.<sup>366</sup>

As much as these accounts indicted practices at Bathurst and explained much of that prison's tension, they also indicated that regimes at otherwise similar maximum-security prisons had diverged significantly enough from each other to create discord among inmates and staff moving between them. Several other prisons had reputations for harsh regimes: Grafton (in the intractable section), Goulburn, and Maitland commonly fell into this category. Prisons nearer to metropolitan Sydney (like Parramatta) had the reputation as being more relaxed by comparison. While the spectrum of carceral spaces constituting the prison system always entailed variability in the regimes of different institutions, these differences were either more formal in the sense that they were an integral aspect of a prison's security classification and programs or the differences were sufficiently communicated to new arrivals. The differences

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<sup>366</sup> Statement of Allan Joseph Thompson, *Proceedings of the Royal Commission*, 2528-2529.

between a maximum security prison and minimum security afforestation camp were longstanding, but the growing heterogeneity among maximum security institutions, often holding the same prisoners at various times, created new tensions and resentments among both staff and inmates who were confused about the expected routines and rule enforcement.

In addition to this, Corrective Services experimented with several new penal options, which also highlight differences between institutions, regimes and the opportunities available some inmates. The first was the new Cessnock Corrective Centre located in the northern part of the state. Originally planned in the late 1950s, the long-delayed, medium-security facility finally opened in 1972 with an alternative regime intended for inmates who otherwise would have been placed in maximum-security facilities. Cessnock's regime, which implicitly competed with existing arrangements in maximum-security prisons, stressed greater cooperation between staff and inmates and provided more opportunities and responsibilities for inmates.<sup>367</sup> In the hierarchy of penal spaces, Cessnock became a step-down institution from maximum security prisons. Its first superintendent, Noel Day, later claimed that department leaders also thought of it as a pilot project to test new inmate management techniques that they hoped would eventually spread to other facilities.<sup>368</sup> Many inmates took a much more cynical view of the claims being made by Corrective Services about Cessnock (its new "showpiece"<sup>369</sup>), but

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<sup>367</sup> Exhibit 28: "Two documents produced by witness Mr. N. S. Day relating to quarter horse stud breeding at Cessnock Corrective Centre." Royal Commission into New South Wales Prisons, Series 1601: Exhibits 5/9305. SANSW; Exhibit 34: "Pamphlet entitled 'Cessnock an Experiment. Its Goals.'" Royal Commission into New South Wales Prisons, Series 1601: Exhibits 5/9306. SANSW.

<sup>368</sup> Interview with former superintendent of Cessnock, Noel S. Day.

<sup>369</sup> "Haigh Cons Media Again," *Jail News*, (September 16, 1978).

recognized that it operated a more relaxed regime than other secure prisons.<sup>370</sup> For instance, Cessnock's timetable permitted inmates much more time out of cells than other secure prisons in the state as well as much greater freedom in movement around the prison.<sup>371</sup>

The enthusiasm of the department's official publications about Cessnock was also evident in its public statements concerning a variety of other alternative penalties and community corrections programs established in the early 1970s.<sup>372</sup> While New South Wales created a parole system after Leslie Nott returned from his overseas study tour, it was very limited in comparison with what he had observed abroad.<sup>373</sup> In 1966, the Parliament expanded the parole system, giving it statutory standing and consolidating it with the probation service into one independent agency.<sup>374</sup> Following McGeechan's appointment as Comptroller-General of Prisons in 1968, the Department of Prisons absorbed the previously independent parole and probation service with the entire department undergoing a rebranding as the new Department of Corrective Services in 1970.<sup>375</sup> The department's annual report for 1969-1970 explained, in tortuous prose, that the new official title "places emphasis on its theme of corrective, re-

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<sup>370</sup> Note the general tone of cynicism as well as a willingness to nevertheless test the openness of the new regime that comes across in Cessnock's first inmate newsletter, *Freeway*. See Cessnock Corrective Centre, *Freeway*, 1975-1981. Mitchell Library, State Library of New South Wales and Main Library, Kensington Campus, University of New South Wales. One can see this engagement with the novelty of the regime fade as it changed as well. The titles of the two successor inmate newspapers to follow *Freeway* were: *Within Limits* (1994-1996) and *Away* (1996), also in the Mitchell Library, State Library of New South Wales.

<sup>371</sup> Exhibit 34: "Cessnock--An Experiment: Its Goals." Royal Commission into New South Wales Prisons, Series 1601: Exhibits 5/9306. SANSW; *Getting to Know Cessnock*, inmate informational booklet, 2.

<sup>372</sup> W. R. McGeechan, "Penal Reform," in Australian Institute of Criminology, *The Conflict of Security and Rehabilitation in the 1970s, Canberra, 14-17 August, 1974*, Seminar Proceedings (Canberra: Australian Institute of Criminology, 1975), 47-52.

<sup>373</sup> Frank Hayes, "Probation and Parole—Part I: The First 25 Years" in Bill Cullen, Michael Dowding and John Griffin (eds.), *Corrective Services in New South Wales* (Sydney: The Law Book Company, Ltd., 1988), 106-118.

<sup>374</sup> Parole of Prisoners Act, Act No. 41, 1966.

<sup>375</sup> New South Wales, Department of Corrective Services, *Report of the Department of Corrective Services for the Year Ended 30th June, 1970* (Sydney: Government Printer, 1970), 7; Ramsland, *With Just but Relentless Discipline*, 310-323.



educational-treatment programmes for offenders rather than the historically adopted concept of a simple punitive detention.”<sup>376</sup> During McGeechan’s first year in office, the new department established a committee to study community corrections and alternative sentencing, which were emerging in international penological practice.<sup>377</sup> Shortly afterward, the department created a work release program (later called Work Release I) based in the Sydney area at the Silverwater Complex of Prisons.<sup>378</sup> Much like similar programs abroad, prisoners accepted into this program worked unsupervised during the day in the community and returned to the Silverwater Work Release Centre in the evening. In addition to this program, the department also developed the Parramatta Linen Service in conjunction with the New South Wales Health Commission, which employed low security inmates from various prisons washing and pressing laundry for use in state hospitals and other institutions. This facility also supported a later work release program (Work Release II) in which participants lived at home and worked second shift at the Parramatta Linen Service from 3:30 to 11:30, receiving the prevailing wage award for free workers.<sup>379</sup>

Work release and the parole system also supported an unusual pre-lease program called Project Survival. Intended for young adults nearing consideration for parole or the Work Release I program, Project Survival was based on a similar program in the Canadian province of British Columbia that the Minister of Justice, John Maddison, had learned of at the Forth United

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<sup>376</sup> Department of Corrective Services, *Report of the Department of Corrective Services for the Year Ended 30th June, 1970* (Sydney: Government Printer, 1971), 7.

<sup>377</sup> Harold Newman and Geoff Lyons, “Work Release Programs” in Cullen, Dowding and Griffin (eds.), *Corrective Services in New South Wales*, 246.

<sup>378</sup> *Ibid.*; Nagle, *Report of the Royal Commission*, 406-407; Department of Corrective Services, *Report of the Department of Corrective Services for the Year Ended 30th June, 1973* (Sydney: Government Printer, 1974), 35.

<sup>379</sup> Nagle, *Report of the Royal Commission*, 284-286.

Nations Congress on the Prevention of Crime and Treatment of Offenders held in Japan in 1970.<sup>380</sup> The program resembled the Outward Bound programs for youth and consisted of outdoors team-building exercises and forestry work for young inmates who met certain inclusion criteria.<sup>381</sup> The department also created periodic detention centres near existing prisons to facilitate a new sentencing option (periodic detention), which was basically weekend incarceration for lesser offenders.<sup>382</sup> By 1974, McGeechan would argue “that between 1969 and 1974 the proportions of those people in custody as compared with those on conditional liberty programmes have been reversed.”<sup>383</sup>

Despite these new programs, the department still greatly overused maximum-security institutions, having far fewer options for secure placement beyond Cessnock and several medium- and minimum-security wings in several prisons.<sup>384</sup> McGeechan’s claim about the reversal of the proportions of people in custody and on conditional liberty elided the fact that more people were being committed to the department’s care in 1974 than was the case in 1969. Largely because of general population growth, the number of people in the state’s

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<sup>380</sup> J.C. Maddison to Robert Nestdale, July 5, 1978. John Clarkson Maddison Papers, box 4(14). Mitchell Library, State Library of New South Wales, Sydney.

<sup>381</sup> For a summary see Grant, *Prisons: The Continuing Crisis*, 147-148. Otherwise Nagle, *Report of the Royal Commission*, Chapters 20, 30, 31, and 35; Statement of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 41-42.

<sup>382</sup> Nagle, *Report of the Royal Commission*, 441-443.

<sup>383</sup> W. R. McGeechan, “Penal Reform,” 47. See also figures for person under the supervision of the Department of Corrective Services in the annual reports: *Report of the Department of Corrective Services for the Year Ended 30th June, 1970* (Sydney: Government Printer, 1970), 9; *Report of the Department of Corrective Services for the Year Ended 30th June, 1972* (Sydney: Government Printer, 1972), 100; *Report of the Department of Corrective Services for the Year Ended 30th June, 1973* (Sydney: Government Printer, 1973), 102; *Report of the Department of Corrective Services for the Year Ended 30th June, 1974* (Sydney: Government Printer, 1974), 107.

<sup>384</sup> Tony Vinson, who would lead the Department of Corrective Services after the Nagle Commission, noted that one of the pitfalls of the new classification system was that it was dependent on the availability of appropriate accommodation and there was very limited space to place prisoners classified in the medium range of the security spectrum. Tony Vinson, *Wilful Obstruction: The Frustration of Prison Reform* (North Ryde: Methuen Australia, 1982), 228-229.

prisons increased during this time even if the overall incarceration rate had declined.<sup>385</sup> The final report of Royal Commission into New Wales Prisons criticized the department for underutilizing many of these decarceration programs, and it was evident during the commission's proceedings that some of the department's staff felt that these programs were supplementary at best, nuisances at worst.<sup>386</sup> For instance, the superintendent of the Goulburn Training Centre, John Barry, objected to instituting work release under his command, including even in the minimum-security X-wing.<sup>387</sup> Barry's main concern was security; he feared that prisoners on work release would interact with the public and smuggle contraband back inside prison. Although Barry said he would support work release if it was operated from an entirely separate unit, which had no connection to Goulburn existing facilities, he nevertheless argued that the program was still unrealistic given the poor state of the economy in the area near the prison. There were simply too few employment opportunities for work release to function properly.

Most of the work release programs were in fact based in urban areas, especially in or near Sydney. The department's work release programs also only catered to male offenders, which caused resentment among female inmates. Assistant Commissioner Barry Barrier, who had previously overseen the management of the work release programs, claimed that location of the new, high-security Mulawa Training and Detention Centre next to the Silverwater Work Release Center created unrest among the women who knew the nature of the programs that

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<sup>385</sup> L. H. Evers, "Correctional Reform: Checkmate in Three Moves," unpublished conference paper, Alternatives to Prisons, Sydney 1975, in unprocessed records of the New South Wales Council for Civil Liberties, box 107. NSWCCCL office, Suite 203, 105 Pitt Street Sydney NSW 2000; Satyanshu K. Mukherjee, *Crime Trends in Twentieth-Century Australia* (Sydney: Australian Institute of Criminology, George Allen & Unwin, 1981), 94-99.

<sup>386</sup> Nagle, *Report of the Royal Commission*, 410-419.

<sup>387</sup> Testimony of John Francis Barry, *Proceedings of the Royal Commission*, 801, 805, 857.

they were excluded from that lied just beyond the walls.<sup>388</sup> Harsher critics of the department and the sitting government saw many of these limited programs as “simply public relations exercises” especially when compared with the magnitude of serious problems elsewhere in the state’s prison system.<sup>389</sup>

While the Royal Commission was not so blunt in its criticism, it nevertheless faulted the department, and McGeechan in particular, for expending time and resources on plans that were of limited use or never fully implemented.<sup>390</sup> McGeechan also attempted to ensure that the department had uniform policies that were followed by staff, but as the example of the conflicting rule books demonstrated, his administration was inconsistent and often simply incompetent in this regard. This was especially the case with his efforts to reign in the independence of superintendents and local sub-branches of prison officers’ union. Despite repeated, but half-hearted, attempts by McGeechan to get Superintendent Pallot to relax the rules at Bathurst Gaol, petty enforcement of the 1956 rules continued until the prison was rendered inoperable by a massive uprising in February 1974.<sup>391</sup>

Pallot’s resistance to the central administration was perhaps only the most flagrant example to come to light in the mid-1970s. Superintendents and local branches of the prison officers’ union resisted McGeechan’s push for greater centralization and adherence to new department policy as it eroded their longstanding authority and local control. This led to what was at the time the greatest incidence of industrial actions by the prison officers union.

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<sup>388</sup> Testimony of Barry Barrier, *Proceedings of the Royal Commission*, 3128.

<sup>389</sup> George Petersen, “Bathurst Prison Bashings Expose N.S.W. Prison System,” unpublished conference paper, *Alternatives to Prisons*, Sydney 1975, in unprocessed records of the New South Wales Council for Civil Liberties, box 107. NSWCCCL office, Suite 203, 105 Pitt Street Sydney NSW 2000.

<sup>390</sup> Nagle, *Report of the Royal Commission*, 460.

<sup>391</sup> Testimony of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 2201-2281.

Walkouts occurred throughout McGeechan's tenure over work conditions, security, wage awards, and general resistance to departmental policy.<sup>392</sup> As the Royal Commission revealed, many of the accomplishments or even basic descriptions of the department's policies listed in official publications belied this routine resistance by superintendents and guards, which was so pervasive that it simply negated many of McGeechan's policies and plans.<sup>393</sup>

Ambivalent and inconsistent policies stoked resentments among inmates in many prisons who felt that they were being unjustly denied certain amenities and rights enjoyed by inmates in different prisons. Some vocal inmates criticized the department's tendency to describe the mild loosening and minor changes as "privileges" rather than "rights." Many inmates actually considered the new changes as merely cosmetic, intended more to placate and divide them than to actually recognize them as being deserving of such considerations.<sup>394</sup> Inmate activist Brett Collins argued in the late 1970s that there was actually a deeply manipulative aspect to be granted certain amenities, especially if the authorities considered them privileges. This practice actually augmented the power of penal authorities, according to Collins, who could then use such favors as a means of coercing compliance, collecting information, or fomenting discord among inmates. "It [was] the incentive scheme by which

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<sup>392</sup> Interview with former superintendent of Cessnock and Deputy Commissioner of Corrective Services, Noel S. Day, 2009. For an overview of guard union activity during this time, see Michael Bersten, "Notes on Industrial Disputes in NSW Prisons Since 1970," (Sydney: unpublished working paper, 1987).

<sup>393</sup> Nagle, *Report of the Royal Commission*, Chapter 11, 184-202.

<sup>394</sup> Ian Frazer, "How Are You Being Screwed," *Alternative Criminology Journal*, (September 1976), 51-52; Gess Tuftran, "Labor's Lost Love," *INprint*, (March 1979), 12; Zdenkowski and Brown, *Prison Struggle*, 62.

traitors [were] nurtured.”<sup>395</sup> “Aware crims” understood this tactic, Collins said, and lived by the motto: “Give me nothing you needn’t.”<sup>396</sup>

Sometimes certain amenities conflicted with established prison rules. Prison guards often destroyed or confiscated items that were actually permitted during the cell searches (called “ramps” by inmates).<sup>397</sup> These frustrations often stemmed from the fact that prison staff varied in their adherence to the official prison rules between institutions, shifts and at times between specific officers. Inmates at Bathurst, for instance, complained especially about the destruction of family photographs during cell searches.<sup>398</sup> Although they were permitted to have six photographs and picture frames, guards routinely destroyed the frames inmates had in their cells, looking for contraband hidden therein, and ripped up photographs. While the long-term trend since World War II had been to ameliorate certain aspects of institutional life, like granting access to small items of property, local prison staff often constituted a bulkward against this trend. The Royal Commission into New South Wales Prisons found inmate complaints over cell searches widespread and noted: “In some gaols, notably Bathurst, searches were used as a means of punishing prisoners and settling scores.”<sup>399</sup>

Many inmates viewed such inconsistency as simply hypocrisy on the part of the prison administration, but many others realized that such discrepancies in policies about inmates’

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<sup>395</sup> Brett Collins, “Litigating Prisoners’ Rights,” unpublished paper, Litigating Prisoners’ Rights seminar, Faculty of Law, University of New South Wales, November 1979, quoted in Zdenkowski and Brown, *Prison Struggle*, 62.

<sup>396</sup> *Ibid.*

<sup>397</sup> Nagle, *Report of the Royal Commission*, 109-110; Mark Findlay, *The State of the Prison: A Critique of Reform* (Bathurst: Mitchellsearch, 1982), 8, 70; for a later example of this practice, see New South Wales Office of the Ombudsman, *Report of the Assistant Ombudsman of New South Wales under section 27 of the Ombudsman Act, 1974, concerning cell searches at Parramatta Gaol, January 1982* (Sydney: Government Printer, 1983).

<sup>398</sup> *Ibid.*, 274.

<sup>399</sup> *Ibid.*, 56, 109-110, 274.

personal property and cell searches often reflected disputes between the guard force and senior administrators in the department. Inmates were often caught in the middle of these conflicts over prison management and nature of penal authority in the state. Some superintendents and their senior officers also stood between the central administration and the mainline guard force in these disputes. For many inmates, this state of affairs became intolerable, a constant source of friction between themselves and the officers that they interacted with on a daily basis. Reflecting on this time years later, David Grant, once a senior official in the Department of Corrective Services, summed up these discrepancies:

Prisoners were receiving greater entitlements but there was no relaxation of Prison Rules. Prison officers continued to enforce control in accordance with these Rules but prisoners saw this as interference, “bastardry”, and they reacted accordingly.<sup>400</sup>

These discrepancies between practice and rhetoric, and between some otherwise similar prisons, worsened during the early 1970s and played a prominent part in the unrest that afflicted the penal apparatus in the 1970s and early 1980s.<sup>401</sup>

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<sup>400</sup> Statement by Mr. D. Grant, Deputy Chairman, Corrective Services Commission, in Relation to an Inquiry Concerning Prison Officers, Pursuant to Section 35(1)(o) of the Industrial Arbitration Act 1940 vol. 1 (Sydney: New South Wales. Department of Corrective Services, 1987), 17.

<sup>401</sup> For an interesting debate between inmates over amenities, rights, privileges, and political tactics, see Mark Regan, Wal Missingham, and Lyle Radan, “Crim vs Crim: Democracy and Prisoner Strikes,” *INprint*, (August 1979): 1, 3; “Democracy and the Goulburn Strike, Rick Norton Here Offers the Dissetners...A Rebuttal,” *INprint*, (November 1979), 1,4, 24; Mark Regan and Wal Missingham, “Missingham Replies on Goulburn Strike Issue,” *INprint*, (November 1979), 6. Mark Regan and Wal Missingham suggested that Norton’s piece was also anonymously co-authored by Brett Collins, John Cowell and Tony Green. The newspaper *INprint* and its first incarnation *Time and Life*, began publication toward the end of the Royal Commission inquiry. It was the most prominent inmate newspaper at the time and contained frequent articles addressing these issues. For an example of how this publication pushed the boundaries of permissible activity and critique Department policy, see J. Edwin Cowell, “So You Call This Communication?” *INprint*, (August 1979), 15-16.

## ***New South Wales: The Status of the Aggrieved: Prisoner Grievance Committees***

In 1975, the Industrial Commission of New South Wales took evidence from prison officers about the changes they experienced in their work roles over the preceding decade in an effort to establish a new compensation award.<sup>402</sup> The officers argued that more than any other cause, the introduction of rehabilitative programs, education opportunities and numerous privileges for inmates had fundamentally altered the nature of their work. While the gradual amelioration of prison conditions began before World War II, the pace of change accelerated after the war and became especially by the 1960s. Comptroller-General John Morony encouraged the greater use of leisure and recreational activities to occupy prisoners, which often placed prison staff and inmates in more relaxed, informal situations than had been previous been the case. Yet, most of the guards' criticism centered on changes introduced by Walter McGeechan, which they argued, dangerously reduced the social distance between inmates and staff. Prison officers and their union deeply resented the leveling-effect entailed in many of the new reforms. The struggle over the introduction of prisoner grievance committees in the early 1970s condensed many of the officers' resentments.

In 1972, McGeechan informed all the state's prison superintendents about a pilot program at Parramatta Gaol, involving the use of an elected committee representing prisoners

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<sup>402</sup> "Changes in the Prison Environment, 1971-75," drawn from the Transcript of Proceedings before the Industrial Commission of New South Wales, Nos. 236 and 237 of 1975. Annexure 3 in Statement by Mr. D. Grant, Deputy Chairman, Corrective Services Commission, in Relation to an Inquiry Concerning Prison Officers, Pursuant to Section 35(1)(o) of the Industrial Arbitration Act 1940 vol. 2 (Sydney: New South Wales. Department of Corrective Services, 1987); 1-14.



as a grievance mechanism.<sup>403</sup> Such organizations provided a legitimate outlet for airing and resolving complaints, according to the commissioner, which would reduce institutional tension and might even prevent disturbances.<sup>404</sup> McGeechan ordered all superintendents to establish such committees by permitting inmates to elect committee members representing three broad classes of the prison population: long-term recidivists, intermediate-sentenced prisoners, and remandees.<sup>405</sup> A number of prisons, especially those with poor reputations for conflict between staff and inmates, failed to comply with McGeechan's order, most notably Bathurst Gaol.

McGeechan later told the Royal Commission that Bathurst's failure to establish such a committee stemmed from deliberate resistance by prison staff who viewed it "as a break-down in their authority."<sup>406</sup> Bathurst's guard force and the superintendent, John Winter Pallot, had a reputation for resisting McGeechan's orders, but most officers and some superintendents at other establishments shared their views. These personnel believed that such bodies would empower certain inmate leaders ("heavies") who were already difficult to control and would create more dissension and conflict rather than prevent it.<sup>407</sup> Moreover, McGeechan issued this order without much consultation with staff and it struck the latter as an indictment of their abilities to manage inmates as they always had—with strict discipline. In prisons where the committees were established, prison officers negated their original purpose by selecting the

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<sup>403</sup> W.R. McGeechan to Superintendent, Bathurst (J.W. Pallot), January 22, 1973 and W.R. McGeechan to J.W. Pallot, September 6, 1973. Both part of Exhibit 296: "A selection of documents during Superintendent Pallot's term at Bathurst Gaol--submitted on his behalf. Stapled set of papers titled, 'Prisoners' Discussion Group.'" Royal Commission into New South Wales Prisons Exhibits 5/9308. SANSW.

<sup>404</sup> Proposals for such committees, often also called discussion groups, became a common feature of prison reform efforts in the early 1970s in many different countries. See, for instance, David Fogel, *We Are the Living Proof: The Justice Model for Corrections* (Cincinnati: W.H. Anderson, 1975).

<sup>405</sup> Ibid.

<sup>406</sup> Testimony of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 205.

<sup>407</sup> See for instance Exhibit 722: Submission by Burzan, Karol (Prison Officer) Prison Administration. Royal Commission into New South Wales Prisons Exhibits 5/9310. SANSW.

inmate members rather having them elected by inmates. This practice reduced or eliminated the legitimacy of the committees in the eyes of most inmates. While McGeechan did little to actually enforce the new policy, prison officers, and to a lesser extent superintendents, still resented that it was ever attempted.<sup>408</sup>

In some instances, it appears that inmates used these committees as a vehicle to whittle away some of the routine restrictions placed on them.<sup>409</sup> Inmates improved their mailing privileges and visiting hours in some prisons this way.<sup>410</sup> When compared with some of the reforms in the late 1970s following the Royal Commission, these changes appear as meager victories, but because many officers felt that even the suggestion of loosened censorship of mail, for instance, weakened their authority and their ability to control inmates, such minor changes were actually quite significant. More common was the decision on the part of most inmates to simply ignore the committees. Most of them saw the committees as a completely ineffective attempt to placate them, little more than window-dressing.<sup>411</sup> The fact that prison officers insisted on selecting members of these committees certainly contributed to widespread distrust among inmates about them.<sup>412</sup>

Most prison officers, especially those with a lot of experience in the custodial division rather than industrial or education divisions, drew a sharp line between themselves and

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<sup>408</sup> Justice Nagle criticized McGeechan for failing to follow through on the proposed grievance committees and ensure that they were established and functioning as intended. See Nagle, *Report of the Royal Commission*, 364-366.

<sup>409</sup> See, for instance, Exhibit 29: "Minutes of the Inmate Advisory Committee held at Cessnock on Thursday, 5<sup>th</sup> August, 1976." Royal Commission into New South Wales Prisons, Series 1601: Exhibits, 5/9305. SANSW.

<sup>410</sup> New South Wales Department of Corrective Services, *Report of the Department of Corrective Services for the year ended 30 June, 1974* (Sydney: Government Printer, 1975), 39.

<sup>411</sup> Nagle, *Report of the Royal Commission*, 365.

<sup>412</sup> *Ibid.*

inmates, which they vigorously maintained. The statement of Neville Griffiths, a senior prison officer at Maitland Gaol, before the Royal Commission, succinctly encapsulated this stance and how it related to inmates:

Any leniency or relaxation of discipline is regarded immediately as a sign of weakness. If a Prison Officer loses his authority over the prisoners, then the prisoners will walk all over him. At all times you have to try to be firm but fair. But this is not always easy. Some prisoners simply will not obey rules and, of course, every gaol has its stirrers and agitators.<sup>413</sup>

Griffiths's statement exemplified a work disposition shared by many guards in secure institutions, which conflicted with McGeechan's desire to lessen the social distance between officers and inmates through reforms like grievances committees.<sup>414</sup>

Ironically, Griffiths advocated the use of such committees, although only after some initial resistance.<sup>415</sup> As he told the Royal Commission he viewed them mainly as a management tool, a source of information and advanced warning for potential problems. This actually seemed to be close to McGeechan's own views.<sup>416</sup> It is telling, however, that Griffith balked at the idea that the organizations should be called "grievance" committees. He felt that it was not appropriate to concede that inmates could or should have "grievances." In his eyes, this simply granted too much legitimacy to their complaints and how they voiced them. Prison inmates should not be aggrieved because whatever their suffering, it was the rightful result of their own

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<sup>413</sup> See the statement of Neville William Griffiths, *Proceedings of the Royal Commission*, 3726.

<sup>414</sup> See also Vinson, *Wilful Obstruction*, 32; Exhibit 722: Submission by Burzan, Karol (Prison Officer) Prison Administration. Royal Commission into New South Wales Prisons Exhibits 5/9310. SANSW, 8.

<sup>415</sup> See the statement and testimony of Neville William Griffiths, *Proceedings of the Royal Commission*, 3727, 3732-3733.

<sup>416</sup> W.R. McGeechan to J.W. Pallot, September 6, 1973. Both part of Exhibit 2965: A selection of documents during Superintendent Pallot's term at Bathurst Gaol--submitted on his behalf. Stapled set of papers titled, "Prisoners' Discussion Group." Royal Commission into New South Wales Prisons, Series 1601: Exhibits 5/9308. SANSW.

criminal conduct. Griffith preferred the name "Problems and Needs Committees," which is what it was officially called at Maitland.<sup>417</sup>

### ***New South Wales: Enemies at the Gates***

Until the late 1960s and early 1970s, prison officers strictly managed a very limited range of inmate movement within the state's secure institutions.<sup>418</sup> During the late 1960s, the acceptable parameters for inmate movement within the prisons became more controversial both in its own right and in the ways it registered other areas of disagreement between staff and inmates. A series of locked internal gates with posted guards prevent movement inside wings (cellblocks) and the main buildings of all the state's secure prisons. Inmates were not permitted to be in their cells or the wings during certain parts of the day, spending most of their days locked into workshops or outside yards. Groups of officers roamed the cellblocks during the day, searching cells for contraband and signs of escape plans and preparations. The penal authorities combined other restrictions on movements with the internal gates as well.<sup>419</sup> Inmates who needed to move about the prison for various reasons needed to obtain a written pass to proceed through the array of internal gates and guard posts. Inmates often complained

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<sup>417</sup> Testimony of Neville William Griffiths, *Proceedings of the Royal Commission*, 3732.

<sup>418</sup> Statement by Mr. D. Grant, Deputy Chairman, Corrective Services Commission, in Relation to an Inquiry Concerning Prison Officers, Pursuant to Section 35(1)(o) of the Industrial Arbitration Act 1940 vol. 1 (Sydney: New South Wales. Department of Corrective Services, 1987); 8; Statement by Dr. Glenice Hancock, Commissioner, Corrective Services Commission, in Relation to an Inquiry Concerning Prison Officers, 7.

<sup>419</sup> The penal authorities informed new inmates that were to remain wherever they were placed by staff and not to move about on their own without permission at any time. See, for instance, some of the various editions of the information booklet given to all inmates, New South Wales Department of Prisons, *Instructions and Information for Prisoners and the Rules of the Prisons* (Sydney: Government Printer, 1961); 12.

about unnecessary delays in passing through these internal checkpoints, which they described as simply punitive.<sup>420</sup> A common predicament detailed by inmates during the Royal Commission involved approaching a locked gate with pass in hand, making numerous attempts to hail a guard to unlock the gate, but being forced to wait without explanation even though the guard could see and hear the inmate. Guards who testified at the Royal Commission's public hearings disputed this characterization, but given the sharp social line separating guards and inmates, it is unlikely that guards would have, at the very least, hurried to let an inmate pass a gate. In fact, one of the submissions the Prison Officers Vocational Branch made to the Royal Commission agreed that the dull prison routine often contributed to purposeful petty rule enforcement on the part of guards.<sup>421</sup>

Passing through the internal gates formed a daily ritual reinforcing the social hierarchy of the prison, which became even more significant as this authority was challenged in other ways by the early 1970s. Deliberate delays in opening the gates profoundly enacted and reminded prisoners of the social inequality structuring the prison at a time when most guards realized that their "authority was rapidly diminishing."<sup>422</sup> The close proximity of all participants, the obvious control aspects of the gates, and the opportunities this provided for guards to make inmates wait for seemingly minor or petty reasons all contributed a heightened sense of tension at these points inside the secure prisons. It is indicative of the problems adhering to the

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<sup>420</sup> In the *Proceedings of the Royal Commission*, see statements and testimony of John Edward Khan, 1402; Michael Lester Baldwin, 1791; Thomas William Roy Higgins, 2045; Robert Fry, 3236, Ross Phillip Gardner, 3395, John Rowley, 3634-3635; Neville William Griffiths, 3727, 3731.

<sup>421</sup> Exhibit 759: Submission by Public Service Association. Separate Submissions Prepared by Officers of the Prison Officers Vocational Branch, 7. Royal Commission into New South Wales Prisons, Series 1601: Exhibits 5/9313. SANSW.

<sup>422</sup> *Ibid.*, 15.

internal gates that Cessnock's architecture relied less on them for supervising inmate movements as part of its effort to create a less hostile prison regime.

Some of these movement rules eased in certain sections of some prisons in the early 1970s.<sup>423</sup> A guard testifying at the Industrial Commission of New South Wales in 1975 said that they relaxed and even abandoned the practice of searching prisoners passing through some, if not all, gate posts.<sup>424</sup> Maitland Gaol apparently abandoned the practice of issuing written passes in the early 1970s, as it seemed ineffective and unnecessary in the relatively smaller secure prison.<sup>425</sup> Raymond Kirkman, an officer at Cessnock, also agreed that there was too many restrictions placed on the movements of inmates within the prisons, but this was still necessary at older prisons because, unlike Cessnock, they had very poor sightlines for monitoring inmates.<sup>426</sup> At other prisons, like Goulburn and Bathurst, conflicts frequently arose from extensive waiting times, searches, and other tense interactions at these internal gates. These latter institutions, especially Bathurst, were also well-known for their anachronistic and petty enforcement of prison rules.

It must be stressed that where staff relaxed certain rules or did not enforced them as strictly, these were still mild alterations of an otherwise rigid system of discipline. The lifting of many of the restrictions on inmate movements after the Royal Commission released its report in 1978 indicated that despite some prior moderation, staff still enforced movement restrictions in many prisons, often quite rigidly.

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<sup>423</sup> "Changes in the Prison Environment, 1971-75," Annexure 3, Grant Statement, Vol. 2: 8-9.

<sup>424</sup> *Ibid.*, 6-7.

<sup>425</sup> See the statement and testimony of Neville William Griffiths, *Proceedings of the Royal Commission*, 3727, 3731.

<sup>426</sup> See the testimony of Raymond George Kirkman, *Proceedings of the Royal Commission*, 3705.

## **Conclusion**

Between the end of World War II and the mid-1950s, the governments of both Pennsylvania and New South Wales reorganized their penal bureaucracies in accordance with penological reform proposals that had been developing for several decades in professional organizations and academic research. The timing of these changes coincided with similar administrative undertakings in other areas of government, reflecting an increased confidence about the benefits and capabilities of state regulation. In the prison systems of each state, this meant that centralized leadership and most local prison regimes became infused with a new technocratic language of reform that was both deeply indebted to social science and flexible enough to incorporate many longstanding security practices.

Significantly, this reform language and its associated practices also spoke to prisoners. The narrative of how one could reform oneself in prison, through the acknowledgement of wrongdoing and active participation in the various programs, mapped out a way for prisoners to earn their release on parole. Whether prisoners genuinely attempted to reform themselves or simply performed as if they were, the language and rituals of rehabilitation structured their lives behind bars, orienting their daily routines in the quest for obtaining parole. These new regimes also provided far greater activities and amenities than most pre-war prisons.

These same features, which made rehabilitation “work” as a coherent carceral narrative, simultaneously made it inherently unstable. Advocates’ confidence in rehabilitation’s potential fostered expectations that, ultimately, could not be fulfilled. By claiming that treatment

programs and training would reduce recidivism, penal reformers set themselves up for failure before many audiences, both internal and external, when this claim failed to eventuate and crime indicators actually increased in the 1960s and 1970s. Likewise, in showing inmates how they could earn their way out of prison by participating in programs, penal reformers eventually faced indignant prisoners after parole boards rejected their applications. Parole consideration was always mysterious and frustrating to prisoners and the indeterminate sentencing system left them constantly uncertain about their fates.

When it became abundantly clear that the postwar reforms had failed to achieve many of their goals, a new generation of correctional officials attempted to save rehabilitation by shifting it away from prisons to the community in the form of various decarceration programs. While some participants successfully completed these programs, community corrections was extremely unpopular with the public, the judiciary and the police. These programs were highly visible and generated continual scandals for prison officials. By the time community corrections became a major focus of the Pennsylvania Bureau of Correction and to a lesser extent, the New South Wales Department of Corrective Services, the prisons themselves were becoming increasingly turbulent. Longstanding routines deteriorated with the introduction of new privileges, which often created new resentments among prisoners and staff alike. In Pennsylvania this process was also compounded by larger shifts in the racial composition of prison populations and increased racial conflict between inmates and staff and among prisoners.

The rehabilitation regimes set the stage for major transformations in prisons during the 1970s and 1980s, and even though rehabilitation declined, many of its associated practices



survived in altered forms. Struggles over classification and work release, for instance, remain to this day. However, the language of reform, so central to the success of rehabilitation fell apart in dramatic fashion as it increasingly could not convincingly address multiple audiences the way it initially had. By the late 1960s, the prisons in both New South Wales and Pennsylvania became embroiled in constant conflicts between the administration, unionized guards and increasingly rebellious prisoners. It is to those histories that I now turn.

## **Chapter 2: “Open Up the System”: The Publicity of Prisoner Activism, Violence and Security in Pennsylvania**

### **Introduction: Publicity, Postwar Reform and Resistance**

In 1983, the Pennsylvania Bureau of Correction issued an official history marking the thirtieth anniversary of its inception following the riots that swept across the state in the early 1950s.<sup>427</sup>

The 56-page history detailed the growth and progressive administration of the Bureau, how it adopted new reforms in the 1960s and early 1970s during the height of the rehabilitation era and how it was meeting the current challenges posed by overcrowding. The commemorative history appeared at a moment early in Gov. Dick Thornburgh’s second term, when the Bureau of Correction was on the cusp of being elevated to a new cabinet-level Department of Corrections. The document, in this sense, marked the closure of period of penal reform and the beginning of new era of expanded prominence for the field of corrections.

Since 1970, there had been numerous attempts to create a Department of Corrections and consolidate Pennsylvania’s fragmentary penal apparatus, but they foundered on legislative disputes over the nature of penal treatment and discipline in the state prison system and the

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<sup>427</sup> Judith R. Smith, *30<sup>th</sup> Anniversary Commemorative History: The Bureau of Correction and Its Institutions* (Harrisburg: Commonwealth of Pennsylvania, Bureau of Correction, 1983).

proper scope of state authority vis-à-vis the smaller counties. The first major push to create the new department came on the heels of a major disturbance in July 1970 at Holmesburg Prison, the main institution in Philadelphia's county prisons. Republican governor, Raymond Shafer, implored the state's General Assembly to approve legislation to raise the Bureau of Correction to the departmental level, consolidate numerous state penal agencies and absorb all of the county prisons and jails throughout the state. Despite the publicity and violence of the Holmesburg riot, Shafer's plan failed. His successor, Democrat Milton Shapp also could not convince the legislature to approve the plan over two terms; neither could Gov. Dick Thornburgh who followed him during his first term. Nevertheless, the continual effort to bring this plan to fruition kept the notion that something was seriously wrong with the state's existing penal system in wide circulation. Supporters of a new department from both parties continuously returned to the argument that crime and punishment were now pressing issues in a way that they had not been for many years and that they could no longer be addressed adequately with the fragmented machinery of state government. The state's penal authority required the visibility, prestige and resources of any of the state's other major cabinet-level departments, according to these advocates.

Initially, the people who undertook this project also supported increasing the array of rehabilitation and training programs inside prisons and discretionary release and work programs outside in the community. By the late 1960s, these supporters, from a younger, college-educated and liberal generation of correctional officials, began to replace older administrators, like Commissioner Arthur Prasse, and exerted greater influence on penal policies and the day-to-day operations of agencies and prisons. Some of these officials,

especially Allyn Sielaff who succeeded Prasse, also tried to cultivate more public support for new correctional programs by reaching out to other state agencies, civic organizations, the media and the general public. These efforts were often tightly controlled and at times even disingenuous, but along with the community corrections programs that Sielaff championed, they brought the actual practices of punishment closer to many people who had little direct contact with prisons and penal agencies before. The 1983 commemorative history described this as Sielaff's effort to "open up the system."<sup>428</sup>



*Figure 3: Allyn Sielaff (Second from left) meeting with public*

Figure 3 Allyn Sielaff (Second from left) meeting with public. Source: Judith R. Smith, *30<sup>th</sup> Anniversary Commemorative History: The Bureau of Correction and Its Institutions* (Harrisburg: Commonwealth of Pennsylvania, Bureau of Correction, 1983), 10.

From the mid-1960s onward, however, the growing number of people interested in criminal justice reform and producing penal knowledge outstripped the control of criminal

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<sup>428</sup> *Ibid.*, 10.

justice agencies. This diversity of participants (and their differing standpoints) included many individuals, organizations and coalitions that had previously not worked on prison matters. Perhaps the most important of these new voices belonged to imprisoned people themselves. Of course, some incarcerated people had always commented on their plight, but until the late twentieth-century, their voices were subject to suffocating control by prison administrators and often held little appeal for many outside audiences.<sup>429</sup> Criminologist John Pratt has convincingly argued that by the late nineteenth-century penal authorities in most Anglophone countries had securely established themselves as experts on crime and punishment and “were able [to] proclaim their truth as ‘*the truth*,’” and either “silence or discredit competing versions.”<sup>430</sup> State penal authorities in the jurisdictions Pratt studied rarely faced intense public scrutiny during much of the twentieth-century.<sup>431</sup> Even when severe disturbances swept across prison systems in the early 1950s, the fledgling penal bureaucracies weathered scandals and reconstituted

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<sup>429</sup> On the control of communication by prisoners, see Yvonne Jewkes and Helen Johnston, “‘Cavemen in an Era of Speed-of-Light Technology’: Historical and Contemporary Perspectives on Communication within Prisons,” *The Howard Journal of Criminal Justice*, 48 (May 2009), 132-143. On the related common law notion of attainder or civil death, which justified silencing prisoners, see Rebecca M. McLennan, “The Convict’s Two Lives: Civil and Natural Death in the American Prison,” in David Garland, Randall McGowan, and Michael Meranze (eds.), *America’s Death Penalty: Between Past and Present* (New York: New York University Press, 2011); Caleb Smith, *The Prison and the American Imagination* (New Haven: Yale University Press, 2009); David Brown and Meredith Wilkie (eds.), *Prisoners as Citizens: Human Rights in Australian Prisons* (Sydney: Federation Press, 2002); Mirjan R. Damaska, “Adverse Legal Consequences of Conviction and Their Removal: A Comparative Study,” Parts I *Journal of Criminal Law, Criminology and Police Science*, 59 (September 1968), 347-360; Mirjan R. Damaska, “Adverse Legal Consequences of Conviction and Their Removal: A Comparative Study,” Part II, *Journal of Criminal Law, Criminology and Police Science*, 59 (December 1968), 542-568. Of course, slavery has long been structured on similar notions of civil or social death. For a classic overview, see Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982).

<sup>430</sup> John Pratt, *Punishment and Civilization: Penal Tolerance and Intolerance in Modern Society* (London: Sage, 2002), 81-144, quote 124. See also his “The Acceptable Prison: Official Discourse, Truth and Legitimacy in the Nineteenth Century” in John Pratt and George Gilligan (eds.), *Crime, Truth and Justice: Official Inquiry, Discourse, Knowledge* (Cullompton: Willan Publishing, 2004), 71-88.

<sup>431</sup> Pratt’s research included material from Australia, Canada, New Zealand the United Kingdom and the United States.

prison regimes, often by adopting aspects of rehabilitative reforms proposals, which had been circulating in professional penological circles since the 1920s.

As a large literature now attests, the late 1960s and 1970s marked an important turning point for this arrangement of penal power in places like Pennsylvania.<sup>432</sup> While not unraveling entirely, the contentious situation from the late-1960s onward eroded the hegemonic voice of leading penal officials, especially those most closely identified with reformatory programs, like Sielaff and his successor Stewart Werner, and it created deep fissures in the legitimacy of state penal arrangements. Penal officials faced challenges within the prisons from both inmates and guards and from beyond the walls as they struggled to reassure the general public of the efficacy of their policies and convincingly explain simultaneous increases in crime rates, prison unrest and escapes. According to Pratt, “it was as if scandal had become systematic, symptomatic of the way in which prisons were no longer performing the functions the public expected of them.”<sup>433</sup> Inside prisons, many of the new rehabilitation programs and privileges,

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<sup>432</sup> Recent examples include: Michael H. Tonry, *Malign Neglect: Race, Crime, and Punishment in America* (New York: Oxford University Press, 1995); Marc Mauer, *Race to Incarcerate* (New York: New Press, 1999); Christian Parenti, *Lockdown America: Police and Prison in the Age of Crisis* (London: Verso, 1999); David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2001); Michael H. Tonry, *Thinking about Crime: Sense and Sensibility in American Penal Culture* (New York: Oxford University Press, 2004); Michael W. Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (New York: Columbia University Press, 2005); Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (New York: Cambridge University Press, 2006); Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2006); Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham: Duke University Press, 2009); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010); Heather Ann Thompson, “Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History,” *Journal of American History*, (December 2010); William J. Stuntz, *The Collapse of American Criminal Justice* (Cambridge: Belknap Press, 2011); Todd R. Clear and Natasha A. Frost, *The Punishment Imperative: The Rise and Failure of Mass Incarceration in America* (New York: New York University Press, 2014); Jonathan Simon, *Mass Incarceration on Trial: A Remarkable Court Decision and the Future of Prisons in America* (New York: New Press, 2014); Robert A. Ferguson, *Inferno: An Anatomy of American Punishment* (Cambridge: Harvard University Press, 2014).

<sup>433</sup> Pratt, *Punishment and Civilization*, 153.

which aimed to normalize prisons and encouraged greater self-reflection and expression among prisoners, also provided incarcerated people with tools to criticize their confinement and reach larger audiences. The extent and availability of these programs can be easily overstated, but they increasingly opened avenues for incarcerated people to voice their concerns through writing and education.<sup>434</sup>

This increasing outspokenness of prisoners attests to the powerful influence exerted by the broader civil rights movements of the 1960s. Many prisoners, especially those from the state's major urban areas of Philadelphia and Pittsburgh, deeply identified with civil rights protests, Black Power activism, decolonialism and a host of other radical and anti-authoritarian political movements, often drawing inspiration from these causes in their challenges to prison regimes and the legal and social status of a prisoner. The successful litigation and collective actions by imprisoned Black Muslims from the late 1950s onward explicitly drew the lines of racial identity, prisoners' rights and civil rights together, initiating many of the legal strategies that were soon adopted by other groups of prisoners and addressed to different concerns.<sup>435</sup> In

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<sup>434</sup> For an illuminating discussion of how literature and writing programs dovetailed with prisoner activism, see Theodore Hamm, *Rebel and a Cause: Caryl Chessman and the Politics of the Death Penalty in Postwar California, 1948-1974* (Berkeley : University of California Press, 2001); Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford: Stanford University Press, 1994); For examples on the how rehabilitative reform language was applied to more authoritarian prison regimes, see James B. Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977); Mona Lynch, *Sunbelt Justice: Arizona and the Transformation of American Punishment* (Stanford University Press, 2010); Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire* (New York: Metropolitan Books, 2010).

<sup>435</sup> John Pallas and Robert Barber, "From Riot to Revolution" in Erik Ohlin Wright (ed.), *The Politics of Punishment: A Critical Analysis of Prisons in America* (New York: Harper Torchbooks, 1973), 237-261; Jacobs, *Stateville*, 58-69; John Irwin, *Prisons in Turmoil* (Boston: Little, Brown and Company, 1980), 68-70, 102-103; James B. Jacobs, "Race Relations and the Prisoner Subculture" in Jacobs (ed.), *New Perspectives on Prisons and Imprisonment* (Ithaca: Cornell University Press, 1983), 61-79; Kathleen M. Moore, "Muslims in Prison: Claims to Constitutional Protection of Religious Liberty" in Yvonne Y. Haddad, (ed.), *Muslims of America* (New York: Oxford University Press, 1991), 136-156; Christopher E. Smith, "Black Muslims and the Development of Prisoners' Rights," *Journal of Black Studies*, 24 (December 1993), 131-46; Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford: Stanford University Press, 1994), 63-92; Darlene J. Conley and Julius Debro, "Black Muslims in California Prisons: The Beginning of a Social Movement for Black Prisoners in the United States," in *Race, Class, Gender, and Justice in*

some cases, the discourse of contemporary social movements also organized and provided a cover for illicit networks and activities within prisons. This was especially the case with many Black Muslims associated with Philadelphia's Mosque No. 12 in state and county prisons after 1970.<sup>436</sup>

Yet, until the late 1960s, penal authorities, the media and researchers in Pennsylvania, and the United States more generally, rarely acknowledged the extent of the criminalization of people of color, their overrepresentation in prison and how this connected to the history of racial discrimination.<sup>437</sup> But, these issues became unavoidable with the upsurge of civil rights protests and nationalist politics sweeping over the globe during the 1960s. The racialization of crime and the criminalization of race both have long histories in Pennsylvania, but they now appeared with renewed vigor.<sup>438</sup> Many investigations, court cases, media accounts and research involving prisons now forthrightly addressed how race related to patterns of prison violence, squalid living conditions, classification decisions, disciplinary infractions and administrative punishments. Authors often situated their observations in reference to the

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*the United States*, Charles E. Reasons, Darlene J. Conley and Julius Debro, eds. (Boston: Allyn & Bacon, 2002), 278–91; Sean Patrick Griffin, *Philadelphia's Black Mafia: A Social and Political History* (Boston: Kluwer Academic Publishers, 2003); Liz Samuels, "Improvising on Reality: The Roots of Prison Abolition" in Dan Berger (ed.), *The Hidden 1970s: Histories of Radicalism* (New Brunswick: Rutgers University Press, 2010), 21-38; Donald F. Tibbs, *From Black Power to Prison Power: The Making of Jones V. North Carolina Prisoners' Labor Union* (New York: Palgrave Macmillan, 2012); Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era* (Charlotte: University of North Carolina Press, 2014); Zoe Colley, "All America Is a Prison": The Nation of Islam and the Politicization of African American Prisoners, 1955–1965," *Journal of American Studies*, 48 (May 2014), 393-415. George Zdenkowski and David Brown have argued that the American judiciary was more open to prisoners' rights claims than similar courts in Australia. See Zdenkowski and Brown, *The Prison Struggle*, 112-132; Zdenkowski, "Judicial Intervention in Prisons," *Monash University Law Review* (June 1980): 294-330.

<sup>436</sup> For the alliance between the Nation of Islam's Mosque No. 12 and Philadelphia's Black Mafia (or Black Brothers, Inc.), see Griffin, *Philadelphia's Black Mafia*, 20-34, 114-116.

<sup>437</sup> Jacobs, "Race Relations and the Prisoner Subculture."

<sup>438</sup> Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge: Harvard University Press, 2011); Edney, "Indigenous Punishment in Australia"; Sercombe, "The Face of the Criminal is Aboriginal" in Judith Bessant, Sandy Cook and Kerry Carrington (eds.), *Cultures of Crime and Violence: The Australian Experience* (Bundoora: La Trobe University Press, 1995), 76-92.



general state of race relations, official racial policies and the strategies of social movements' challenges to racial norms.

Although hardly unprecedented, the interconnections of race, crime and punishment also provided a seemingly, race-neutral way for some actors to disparage and resist contemporary civil rights projects through appeals for law and order policies.<sup>439</sup> Media representations often conflated blackness with criminality, which became more salient as the proportion of people of color in prisons and jails grew from the 1960s onward. Many urban newspapers in Pennsylvania, for instance, ran articles that dwelled on the marked, racial "otherness" of offenders and prisoners even if they did not explicitly attribute causal connections between these categories and criminal conduct. As a number of scholars have shown, the image of an unrepentant, incorrigible inmate or a perpetrator of terrible crimes gradually became less white over this period and less amenable to penal strategies of rehabilitation and societal re-inclusion. This accentuated how deeply the postwar, therapeutic reforms rested on the assumption of the whiteness of the targets of reform and recuperation.<sup>440</sup> Thus, the revalorization of incarceration as a major social policy since the

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<sup>439</sup> This can perhaps be seen most clearly in the race-less categories of actuarial penology and criminology, which are in this respect a corollary to other color-blind state policies that became more common in the wake the civil rights movements of the 1960s and 1970s. See, for instance, Naomi Murakawa and Katherine Beckett, "The Penology of Racial Innocence: The Erasure of Racism in the Study and Practice of Punishment," *Law & Society Review*, 44 (September-December 2010), 695–730.

<sup>440</sup> Phillip Jenkins, *Decade of Nightmares: The End of the Sixties and the Making of the Eighties* (New York: Oxford University Press, 2006), 12-16, 41-46, 134-151, 236-243; Loïc Wacquant, "Deadly Symbiosis: When Ghetto and Prison Meet and Mesh," *Punishment & Society*, 3 (January 2001), 95-133; Dario Melossi, "Changing Representations of the Criminal," *British Journal of Criminology*, 40 (Spring 2000), 296-320; John M. Sloop, *The Cultural Prison: Discourse, Prisoners and Punishment* (Tuscaloosa: University of Alabama Press, 1996), 62-131; Regina G. Kunzel, *Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality* (Chicago: University of Chicago Press, 2008), 149-189; Chris Cunneen, "Punishment: Two Decades of Penal Expansionism and its Effects on Indigenous Imprisonment," *Australian Indigenous Law Review*, 15, 1 (2011), 8-17.

1970s, its attendant refashioning of prison regimes and the outpouring of penal knowledge should all be read as much as a discourse on race.<sup>441</sup>

I focus on several interrelated ways this racialized penal discourse appeared in Pennsylvania during the 1970s. First, I discuss how rebellious, violent black prisoners featured prominently in several prison narratives surrounding Philadelphia's prisons, especially Holmesburg, from the late 1960s onward. In 1968, an unprecedented judicial investigation of sexual violence in the county prisons determined that older black inmates, often with extensive institutional histories, committed the vast majority of sexual assaults and that most of their victims were young, frail, inexperienced white prisoners. Two years later, several city officials, notably Police Commissioner Frank Rizzo, portrayed the July 1970 rebellion at Holmesburg as a race riot. Although, subsequent investigations painted a much more complex picture, it was clear that race played an enormous part in patterns of discriminatory imprisonment, violence and victimization that the riot revealed.

Second, I examine how racial politics grounded prisoner activism in the state prison at SCI Pittsburgh, the state's oldest prison and main maximum-security facility after the closure of SCI Philadelphia in 1970. After the appointment of a liberal, reformist superintendent in 1968, black prisoners engaged in several strikes and demonstrations with the help of outside allies in

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<sup>441</sup> For recent works addressing this theme, see Amy E. Lerman and Vesla M. Weaver, *Arresting Citizenship: The Democratic Consequences of American Crime Control* (Chicago: University of Chicago Press, 2014); Becky Pettit, *Invisible Men: Mass Incarceration and the Myth of Black Progress* (New York: Russell Sage Foundation, 2012); Michael Tonry, *Punishing Race: A Continuing American Dilemma* (New York: Oxford University Press, 2011); Alexander, *The New Jim Crow*; Thompson, "Why Mass Incarceration Matters"; Wacquant, *Punishing the Poor*; Glenn C. Loury, Pamela S. Karlan, Loïc Wacquant and Tommie Shelby, *Race, Incarceration, and American Values* (Cambridge: MIT Press, 2008); Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation Publications, 2007); Vesla Mae Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," *Studies in American Political Development*, 21 (Fall 2007), 230-265.

an attempt to force greater recognition of the rights and cultural identity of the prison's large black population. This led to a prolonged three-way struggle between prisoner activists, the prison's administration (and to some degree, the Bureau's central office) and the guard force who resisted both the activists and the liberal superintendent. Activists saw the administration's eventual crackdown on their activities as emblematic of the American state's disingenuous commitment to civil rights and the enforcement of rigid racial hierarchy.

Finally, I analyze how race factored into the turn toward greater custodial control in prisons in 1973 after a series of killings of staff members. The deaths of four staff members in Holmesburg, SCI Graterford and SCI Pittsburgh led to an immediate crackdown by guards in each institution and the tightening of prison security across the state. In three of the killings, the perpetrators were African American and the victims white. In the last instance at Pittsburgh, the victim, a senior officer, was black and the assailants were white and unabashedly racist. In response to the deaths, the guards' union pushed for the creation of a separate, high-security "maxi-max" unit in an isolated area of the state to confine "incurribles." The administration of Gov. Shapp initially supported this idea, but the proposal provoked strong resistance from penal reform groups, radical activists and liberal and African American members of the General Assembly. Nevertheless, the nature of penal debate at this point shifted decisively toward questions of maintaining order and isolating difficult inmates. The imagined target of this intervention was not just incorrigible, but the black, radical prisoner who defied penal authorities and occupied a space beyond the reach of therapeutic and recuperative penal practices. The Bureau of Correction's disciplinary procedures and their

extensive use of isolation became a legal battleground during much of the decade as segregated prisoners petitioned courts for release.

The confluence of all these trends amplified the visibility of prisons and the people who lived and worked inside of them. It simultaneously increased prison unrest, which led to more systematic judicial intervention, public inquires, and similar, if less public, internal investigations in an effort to quell mounting turmoil. Since these kinds of forums provided platforms for critics, they often sparked more controversy, unrest and change. It is hard to overstate the effects of these interventions and the activities that prompted them. For better or worse, most of the transformations in prison conditions, institutional management and inmate reform in Pennsylvania during the last half century occurred precisely because of the volatile mix of collective resistance by prisoners, legal mandates and inquiries. More often, simply the threat posed these factors was enough to spur drastic change.<sup>442</sup>

Even as the creation of the new penal agency stalled throughout the 1970s, the plan formed a backdrop to these other problems in both the state's prison system and the extensive network of county jails scattered across the state. Centralizing the state's fragmentary penal agencies into a unified system appeared to many supporters as the only way to feasibly address all of these problems and restore order and purpose to the state's penal institutions. Officials in the Bureau of Correction and governor's office claimed that only they had the jurisdiction, expertise and resources to rectify widespread dilemmas like squalid conditions in jails, lax security and a lack of activities and programs for prisoners. By the mid-to-late 1970s, however,

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<sup>442</sup> James Jacobs famously traced how the threat of litigation transformed the routines and order of the secluded, authoritarian regime at Stateville to one based on bureaucratic rationalities, written documentation and legal accountability. See, Jacobs, *Stateville*.

the many supporters of the new department, from both parties, had become much more cynical about the efficacy of the types of reintegration programs that had been a crucial part of the initial effort to create the new department. Increasingly, many state officials saw the penological value of the prison lying more in its ability to simply incapacitate offenders for long periods of time rather than transform them.

This well-known departure in penal policy during the 1970s, from a therapeutic or reintegration approach to a more retributive or incapacitating rationale, often tends to obscure how the state-crafting project of increasing the scope and grandeur of penal authority straddled both these positions and was shared by liberals and conservatives, Democrats and Republicans, alike. Sociologist Loïc Wacquant has recently argued that the massive growth of the penal estate in the United States in the last thirty years underscores the level of agreement between competing parties on the value of imprisonment as social policy and ruling strategy as opposed to the pre-1970s, welfarist approaches to managing market-generated social problems.<sup>443</sup> In Pennsylvania, there was in fact a remarkable level of agreement across the political spectrum about the wisdom of expanding the state's role in the administration of justice in general and prisons in particular.

However, I argue that the initial effort to augment the state's penal capacity in the late 1960s through the early 1970s was, *less punitive* on the part of leading correctional officials, like Allyn Sielaff, and many of their supporters in the legislature than Wacquant's account suggests.

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<sup>443</sup> Wacquant, *Punishing the Poor*; Loïc Wacquant, *Prisons of Poverty* (Minneapolis: University of Minnesota Press, 2009); Loïc Wacquant, "Crafting the Neoliberal State: Workfare, Prisonfare, and Social Insecurity," *Sociological Forum*, 25 (June 2010), 197-220; Loïc Wacquant, "Deadly Symbiosis: When Ghetto and Prison Meet and Mesh" *Punishment and Society*, 3 (January 2001), 95-134; Loïc Wacquant, "The New 'Peculiar Institution': On the Prison as Surrogate Ghetto," *Theoretical Criminology*, 4 (August 2000), 377-389.

Sielaff and his colleagues saw many of the state's prisons as brutal, criminogenic dungeons that simply needed to be dismantled. Whether or not they were effective or widely available, the types of correctional programs these officials supported focused more on reintegrating and normalizing offenders, often in the community, or even in programs that diverted them away from correctional agencies altogether. Yet, the increased reach of the penal bureaucracy that these reformers saw as necessary to implement such policies was also shared by many people who deeply opposed their penological visions and could easily be redeployed for different, more punitive, purposes while still selectively targeting the same population. Senior penal bureaucrats, administration officials, legislators, the judiciary, guards, police and reform groups fought over such policies but were, nevertheless, in Wacquant's words, "enmeshed in relations of antagonistic cooperation as they vie[d] for preeminence inside the bureaucratic field."<sup>444</sup> This highly public competition further diminished the authority of the prison officials, who appeared overwhelmed by endemic controversy surrounding the state prisons and county jails. As the post-1953 penal arrangements deteriorated, a highly contentious public debate on prisons and

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<sup>444</sup> Loïc Wacquant, "Crafting the Neoliberal State," 201. Wacquant, following Pierre Bourdieu, uses the concept of bureaucratic field to theorize the state. The field in this instance is as a semi-restricted social space with its own idiosyncratic rules and norms that constitutes and governs competition by contending officials and factions over policies, definitions, categories and resources. See Loïc Wacquant (ed.), *Pierre Bourdieu and Democratic Politics: The Mystery of Ministry* (Cambridge: Polity, 2005); Pierre Bourdieu, "The Abdication of the State" in Pierre Bourdieu (ed.), *The Weight of the World: Social Suffering in Contemporary Society* (Stanford: Stanford University Press, 1999), 181-188; Pierre Bourdieu, *The State Nobility: Elite Schools in the Field of Power* (Stanford: Stanford University Press, 1998); Pierre Bourdieu, "Rethinking the State: Genesis and Structure of the Bureaucratic Field" in George Steinmetz (ed.), *State/Culture: State-Formation after the Cultural Turn* (Ithaca: Cornell University Press, 1999), 53-75; Pierre Bourdieu, *The Field of Cultural Production* (Cambridge: Polity Press, 1993). For assessments of Bourdieu's theory of fields, see Mathieu Hilgers and Eric Mangez (eds.), *Bourdieu's Theory of Social Fields: Concepts and Applications* (New York: Routledge, 2015); David Swartz, *Culture & Power: The Sociology of Pierre Bourdieu* (Chicago: University of Chicago Press, 1997); Craig Calhoun, "Habitus, Field, and Capital: The Question of Historical Specificity" in Edward LiPuma, Moishe Postone and Craig Calhoun (eds.), *Bourdieu: Critical Perspectives* (Chicago: University of Chicago Press, 1993), 61-88.

punishment emerged and widened, often reflecting and informing many of the social and political struggles over the nature of citizenship in the 1960s and 1970s.

### **The Urban Crisis and County Prisons in Philadelphia**

From the late 1960s onward, violence, charges of mismanagement, investigation and scandalous media coverage haunted the three local county prisons of Philadelphia: the Detention Center, the House of Correction and especially Holmesburg Prison.<sup>445</sup> The troubles besetting these prisons formed the basis for several different investigations and lawsuits brought by current and former inmates and their allies in both state and federal courts, and collectively they had a major influence on activities in Pennsylvania's state prison, which was jurisdictionally-separate from the numerous county penal systems throughout the state. Such problems also informed several highly-publicized media narratives, which largely defined the public image of Philadelphia's prison system, both locally and nationally, and arguably contributed to ongoing tension within these institutions.

While the press often mentioned these prisons in articles about particular crimes and criminals or even in stories about trends in offending, this was usually in passing. In contrast, the exposé of the problems confronting the county prisons, which began appearing more frequently in the late 1960s and especially after July 1970, focused more on the dilemmas and difficulties of criminal justice administration, highlighting state and local penal policy and

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<sup>445</sup> Since the mid-nineteenth century Philadelphia County and the city have been jurisdictionally coterminous. Thus, the county prisons there are often simply referred to as city prisons.

specific aspects of the local prisons. The Philadelphia press, as well as dailies elsewhere in the state, became far more critical than in previous years, painting an overall picture of crisis and institutionalized disorder with certain topics like mismanagement, medical testing on inmates, overcrowding, racism and sexual violence featuring prominently in many stories. Such critical media accounts were deeply interwoven; journalists braided articles and narratives together over many incidents and years, with later articles often explicitly referencing the coverage of past disclosures, narratives and actors.<sup>446</sup> Such accounts did not stop at the prison gates. Journalists followed the institutional lives of people inside, detailing relationships between people organized through their institutional roles, like “inmates,” “officers,” and “superintendents,” as well as the nature of differences among and within these groups. By the mid-1970s, a thick, public complex of penal knowledge about Philadelphia’s prisons, composed of news accounts, interviews with officials, guards and inmates, and increasingly, publications by current and former inmates and prisoners’ rights organizations, circulated throughout the state and well beyond. This activity dramatically increased the awareness of the city’s prisons (and penal policy more generally) as a political issue and major aspect of the city’s discordant racial politics.

Philadelphia’s prisons rivaled the size of state prisons and often suffered from problems not seen in smaller county jails.<sup>447</sup> Unlike state prisons, however, county institutions usually

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<sup>446</sup> The following is based on my observations as a resident George C. McDowell Fellow in 2008. The archive of the *Bulletin* is now located at the Temple University’s Urban Archives in the Paley Library.

<sup>447</sup> There were a few other counties that had large prisons and jails. The Allegheny County Jail within the city of Pittsburgh and the Allegheny County Workhouse in Blawnox were both large by county standards across the state. see American Foundation, *The County Jails and Prisons of Pennsylvania* (Philadelphia: Institute of Corrections, Studies in Corrections, March, 1965), 9.



only held short-term inmates, whether sentenced or awaiting legal disposition.<sup>448</sup> Since most county prisoners spent less than a year in custody, prisoner populations in county prisons and jails often fluctuated rapidly.<sup>449</sup> Such features and the lack of stable routines and programs made prisoners in these facilities unsettled and restless in comparison to their counterparts in state prisons. The volume of people passing through Philadelphia's prisons compounded these issues. As of February 20, 1964, for instance, Philadelphia County held 3,266 prisoners or 46.6 percent of the total county prison population in the entire state.<sup>450</sup> Even Allegheny County (Pittsburgh), the second largest county system in the state, could not rival its eastern counterpart, holding only 14.5 percent of Pennsylvania's total county prison population. No other county came close to either Philadelphia or Allegheny in this regard.<sup>451</sup> It's worth noting that Philadelphia penal officials housed a population of over three thousand imprisoned people in three facilities. At rough the same time, the state of Pennsylvania held 7,788 prisoners in eight state correctional institutions.<sup>452</sup> Twenty-seven Pennsylvania counties had less than ten prisoners each.<sup>453</sup>

The difficulties in managing such a large concentration of people and services in Philadelphia meant that the county's prison authorities worked more closely with the state's Bureau of Correction on a number of matters. A large portion of the people committed to the

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<sup>448</sup> Prior to the 1970s, the lack of many uniform, statewide regulations for county facilities meant that a few counties did incarceration some long term prisoners, including those serving life sentences. See *Ibid.*, 10-11.

<sup>449</sup> *Ibid.*, 7-9.

<sup>450</sup> *Ibid.*, 9. There were a total of 7210 county prisoners disbursed in 69 county prisons and jails in the state on February 20, 1964, according to data collected by the American Foundation and Pennsylvania Bureau of Correction.

<sup>451</sup> *Ibid.* Allegheny County held 1019 prisoners in two institutions, according to this census.

<sup>452</sup> *Ibid.*, 2, 9.

<sup>453</sup> *Ibid.*, 9.

state's prisons came directly from Philadelphia, which meant that they often spent the initial period of their time in custody in county facilities before being sentenced and transferred to state prisons. County officials compiled many of the initial dossiers on inmates, which they transferred to staff at the state's Eastern Diagnostic and Classification Center at SCI Philadelphia several miles from Detention Center, the House of Correction and Holmesburg Prison. The state also temporarily transferred sentenced, state prisoners to county facilities for court appearances or while they were evaluated or treated at city hospitals.<sup>454</sup>

During the 1960s, the relationship between the state and county penal agencies grew more complex as the state hoped to increase its presence in the city with new specialized facilities and community corrections programs.<sup>455</sup> The emerging functional diversity of penal operations in Philadelphia created more avenues for contact, practical integration and formal agreements between the state and county penal agencies. Because of the size and scope of these interactions, many policy changes and events in one agency often reverberated in the other. Perhaps the most obvious indicator of this relationship was the large number of people that passed through both systems during their time in custody.

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<sup>454</sup> This frequency of moving prisoners for post-conviction appeals become especially onerous in the 1960s. See Vincent A. Carrol to Honorable William C. Sennett, September 29, 1969 and Kenneth E. Taylor to Hon. William C. Sennett, October 7, 1969. RG-15 Department of Justice, Attorney General, Conference-Creamer, 1968-69 SN 13-1082, box 3, folder: Corrections – August to December, 1969. Pennsylvania State Archives, Harrisburg (hereafter PSA).

<sup>455</sup> For example, see Act No. 472 S. B. No. 685 Establishing a correctional facility for criminological diagnosis, classification, social and psychological treatment and research, medical treatment and staff training; the special issue on the replacement for Eastern State Penitentiary, *The Prison Journal*, 46 (April 1966); Pennsylvania Prison Society, *Pennsylvania Correctional Complex Authorized for Location in the Philadelphia Area: Brief Digest of Model Correctional Program Proposal for the Mandated Institution* (Philadelphia: Pennsylvania Prison Society, April 1969); Pennsylvania Bureau of Correction, *Community Treatment Services*, pamphlet, (Harrisburg: Pennsylvania Bureau of Correction, 1970).

By the mid-1960s, Philadelphia's prison system began a long period of persistent overcrowding, which lasted for decades.<sup>456</sup> The prisons' population still fluctuated, but within the overall growth trend. The large increase in Philadelphia County's prison populations eventually appeared in other counties, albeit to a lesser degree, and also spread to the state system as well. When the problem first appeared in the early 1960s, the county responded much as it had during previous population upswings by assigning more than one person to a cell and temporarily transferring prisoners to nearby state prisons while retaining legal authority over them.<sup>457</sup> By 1966, however, the sheer number of people committed to Philadelphia county prisons overwhelmed these options and seriously strained the supervisory abilities of the prison staff.<sup>458</sup> Inspectors from the state's Bureau of Correction noted in 1966 that Holmesburg Prison had, at most, only 33 staff members on duty during the day, managing 1,252 prisoners - a guard to inmate ratio of 1 to 38.<sup>459</sup>

As the prison population grew, its racial composition also shifted with African Americans prisoners surpassing white prisoners during the decade.<sup>460</sup> The increased presence of African Americans within the county's penal institutions reflected a broad racial and political-economic transformation in postwar, urban geography in Philadelphia and many other metropolitan centers in the United States. As a number of scholars have demonstrated since the 1990s, a

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<sup>456</sup> American Foundation, *The County Jails and Prisons of Pennsylvania*, Table 1.

<sup>457</sup> *Ibid.*, 20

<sup>458</sup> See the bundle of the Bureau of Correction's inspection reports for Holmesburg Prison attached to the correspondence of Arthur Prasse to Fred Speaker, August 20, 1970. RG-15 Dept. of Justice, Att-Gen, Gen. Corresp, Corrections, box 4, folder: Corrections-Criminal Justice Improvement Alan for Phila.-Special File. PSA. These reports covered the years from 1966 to 1970.

<sup>459</sup> See the report for 1966 in *Ibid.* Subsequent inspections reported persistent overcrowding and understaffing.

<sup>460</sup> Alan J. Davis, *Report on Sexual Assaults in the Philadelphia Prison System and Sheriff's Vans* (Philadelphia: Philadelphia District Attorney's Office, 1968), 84-85.

combination of migration, federal and local policies and capital flight created poor, densely populated African American ghettos in many urban centers during the mid-twentieth century.<sup>461</sup> As manufacturing industry moved away from urban areas, especially in the northern part of the U.S., employment opportunities in these emerging African American neighborhoods dwindled while poverty, crime and inequities in public services increased.<sup>462</sup> Philadelphia's deeply racialized and discriminatory, postwar residential patterns and labor market concentrated African Americans within the northern and western areas of city.<sup>463</sup> Since the city and county of Philadelphia have coterminous borders, African Americans represented a much

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<sup>461</sup> The interplay of capital movement and federal, state and local policies since the New Deal created racial residential enclaves in urban areas, which formed the basis for racial segregation in many other areas of social policy, politics and late twentieth century American culture. Seminal works on these changes include, Arnold R. Hirsch, *Making the Second Ghetto: Race and Housing in Chicago 1940-1960* (Chicago: University Of Chicago Press, 1983); Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985); Douglas Massey and Nancy Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge: Harvard University Press, 1993); Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s*, 2nd ed., (New York: Routledge, 1994); Thomas J. Sugrue, *Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton: Princeton University Press, 1996).

<sup>462</sup> William Julius Wilson, *The Declining Significance of Race: Blacks and Changing American Institutions*, 2nd ed., (Chicago: University of Chicago Press, 1980); William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass and Public Policy* (Chicago: University of Chicago Press, 1987); Mercer L. Sullivan, "Getting Paid": Youth Crime and Work in the Inner City (Ithaca: Cornell University Press, 1989); Elijah Anderson, *Streetwise: Race, Class, and Change in an Urban Community* (Chicago: University of Chicago Press, 1990); William Julius Wilson (ed.), *The Ghetto Underclass: Social Science Perspectives* (Newbury Park: Sage, 1993); Michael B. Katz, *The Underclass Debate: Views from History* (Princeton: Princeton University Press, 1993); Philippe Bourgois, *In Search of Respect: Selling Crack in El Barrio* (Cambridge: Cambridge University Press, 1995); Elijah Anderson, *Code of the Street: Decency, Violence, and the Moral Life of the Inner City* (New York : W.W. Norton & Company, 1999); Katherine S. Newman, *No Shame in My Game: The Working Poor in the Inner City* (New York: Vintage, 1999); Elijah Anderson, *Against the Wall: Poor, Young, Black, and Male* (University of Pennsylvania Press, 2008); Loïc Wacquant, *Urban Outcasts: A Comparative Sociology of Advanced Marginality* (Cambridge: Polity Press, 2008); Loïc Wacquant, *Punishing the Poor*; Wacquant, *Prisons of Poverty*.

<sup>463</sup> Guian A. McKee, *The Problem of Jobs: Liberalism, Race, and Deindustrialization in Philadelphia* (Chicago: University Of Chicago Press, 2008); Matthew J. Countryman, *Up South: Civil Rights and Black Power in Philadelphia* (Philadelphia: University of Pennsylvania Press, 2006); Guian Mckee, "Urban Deindustrialization and Local Public Policy: Industrial Renewal in Philadelphia, 1953-1976," *Journal of Policy History*, 16 (January 2004), 66-98; Carolyn Adams, David Bartelt, David Elesh, Ira Goldstein, Nancy Kleniewski, and William Yancey, *Philadelphia: Neighborhoods, Division, and Conflict in a Postindustrial City* (Philadelphia: Temple University Press, 1991); John F. Bauman, *Public Housing, Race, and Renewal: Urban Planning in Philadelphia, 1920-1974* (Philadelphia: Temple University Press, 1987).

larger segment of the population than in other Pennsylvania counties, a fact that alone would have led to their greater presence in Philadelphia County prisons.

Yet, even taking into account these broader structures of racialized space and population distribution, the number of African Americans in Philadelphia's prisons far outstripped their proportionate population in the city and county – a fact that was obvious to law enforcement officials, prisoners and Philadelphia's African American community.

Philadelphia incarcerated black men at a much greater rate than either white or Hispanic Philadelphians relative to each group's population in the county. By 1968, African Americans accounting for 80.5 percent of Holmesburg's prison population.<sup>464</sup> A confluence of trends contributed this disproportionate increase. Many people, especially the police and major Philadelphia news dailies often attributed the growing prison population to patterns of dangerous and disorderly behavior by young, African American males who engaged in reckless

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<sup>464</sup> Like many other northern and Midwestern cities, the size of African American populations growth dramatically during the mid-twentieth mainly from the influx of southern migrants. Philadelphia's total population in 1960 stood at 2,002,512 person, according to the U.S. Census. Of this, census takers listed 529,240 people as black, or 26.4 percent of the city's population. In 1970, the city's population had declined to 1,948,609 people, but the black population increased numerically – 653,791 persons – and proportionately – 33.6 percent. Nevertheless, Alan Davis's 1968 study noted that 80.5 percent of the population of Philadelphia County prisons were black. Curiously, he noted that 19.5 percent were white. Imprisoned members of the city's substantial Latino population were subsumed into one or both of these categories. Eighteenth United States Census, 1960. vol. 1 General Population Characteristics: Pennsylvania. Table 21. 40-133; Nineteenth United States Census, 1970. vol. 1 General Population Characteristics: Pennsylvania. Table 24. 40-129; Davis, *Report on Sexual Assaults*, 84-85. Racial profiling, disproportionate arrests, brutality and over policing of African American neighborhoods by Philadelphia's police force has a long history. Some texts addressing these themes are Roger Lane, *Roots of Violence in Black Philadelphia, 1860-1900* (Cambridge: Harvard University Press, 1986); G.S. Rowe, "Black Offenders, Criminal Courts, and Philadelphia Society in the Late Eighteenth-Century," *Journal of Social History*, 22 (Summer 1989), 685-712; Leslie C. Patrick-Stamp, "Numbers That Are Not New: African Americans in the Country's First Prison, 1790–1835," *Pennsylvania Magazine of & Biography*, 119 (January/April 1995), 95-128; Elijah Anderson, "Race and Neighborhood Transition" in Joe W. Trotter and Eric Ledell Smith (eds.), *African Americans in Pennsylvania: Shifting Historical Perspectives* (University Park: Penn State University Press, 1997), 469-497; Anderson, *Code of the Street*; Sean Patrick Griffin, *Philadelphia's Black Mafia: A Social and Political History* (Boston: Kluwer Academic Publishers, 2003); Mumia Abu-Jamal, *We Want Freedom: A Life in the Black Panther Party* (Cambridge: South End Press, 2004); Kali N. Gross, *Colored Amazons: Crime, Violence, and Black Women in the City of Brotherly Love, 1880-1910* (Durham: Duke University Press, 2006); Muhammad, *Condemnation of Blackness*. See also the seven-part, 1972 series "Crime and Injustice" by Donald L. Barlett and James B. Steele, for the *Philadelphia Inquirer*.

civil rights activism, gang activity and crime.<sup>465</sup> Widely-cited research circulating among policy-makers also suggested that prison populations were likely to rise simply because the large, postwar, Baby Boom birth cohort was beginning to enter the age range (teens and early twenties) most susceptible for both criminal behavior and incarceration.<sup>466</sup>

Still others argued that overcrowding was a much more direct result of the behavior law enforcement agencies, the judiciary and state and local government. Philadelphia's largely white police force, especially under the direction of Police Commissioner Frank Rizzo, was well-known for its heavy-handed approach to policing African American neighborhood.<sup>467</sup> Rizzo often publicly equated civil rights activism with lawlessness and violent crime in statements to the press and his actions, and those of his officers', became a continual source of racial friction in the city. Throughout the decade, the Philadelphia police arrested a large number of young, black men. Even those lucky enough to avoid immediate detention or initial sentences of

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<sup>465</sup> For an insightful analysis of both the press's disparaging view of blacks and the ineffectiveness of police leaders during the 1964 North Philadelphia riot, see Nicole Maurantonio, "Standing By Police Paralysis, Race, and the 1964 Philadelphia Riot," *Journalism History*, 38 (Summer 2012), 110-121.

<sup>466</sup> The President's Commission on Law Enforcement and Administration of Justice (1965-1967) popularized this theory. See President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society: A Report by the President's Commission on Law Enforcement and Administration of Justice* (Washington: U.S. Govt. Print. Off., 1967), 27-28, 56.

<sup>467</sup> Rizzo served as the city's police commissioner from 1967 to 1971, but was a very influential, senior police officer (deputy commissioner and a division captain) for years prior assuming that role. For more on Rizzo and general complaints about brutality and corruption by Philadelphia police, see Joseph R. Daughen and Peter Binzen, *The Cop Who Would Be King: The Honorable Frank Rizzo* (Little, Brown and Company, 1977); S.A. Paolantonio, *Frank Rizzo: The Last Big Man in Big City America* (Philadelphia: Camino Books, Inc., 1994), 71-78, 134-136, 291-292, passim; Jerome H. Skolnick and James J. Fyfe, *Above the Law: Police and the Excessive Use of Force* (New York: Free Press, 1993), 135-142; Mumia Abu-Jamal, *We Want Freedom*; Countryman, *Up South*, 154-179, 212-257, 287-294; Griffin, *Philadelphia's Black Mafia*, 70-74; United States Commission on Civil Rights, Pennsylvania Advisory Committee, *Police-Community Relations in Philadelphia: A Report to the United States Commission on Civil Rights* (Philadelphia: Pennsylvania Advisory Committee, 1972); Pennsylvania Crime Commission, *Report on Police Corruption and the Quality of Law Enforcement in Philadelphia* (Harrisburg: Pennsylvania Crime Commission, 1974); The Police Project of the Public Interest Law Center of Philadelphia, *Deadly Force: Police Use of Firearms 1970-78* (Philadelphia, 1979), [www.pilcop.org/reports-studies/#sthash.5HhqlYX8.d3K7LMzL.dpbs](http://www.pilcop.org/reports-studies/#sthash.5HhqlYX8.d3K7LMzL.dpbs); The Committee of Seventy, *Philadelphia Police Department Governance Study* (Philadelphia: The Committee of Seventy, 1998); Bruria Tal, *Civilian Oversight of Police in Philadelphia: The First 50 Years*, [www.phila.gov/pac/PDF/HistoryofOversight.pdf](http://www.phila.gov/pac/PDF/HistoryofOversight.pdf)

confinement, nevertheless, entered police records and became more susceptible to future imprisonment.

Philadelphia's judiciary also created overcrowding pressures at the county's prisons as the number of untried and unsentenced prisoners grew throughout the 1960s.<sup>468</sup> Extended delays and continuances in processing cases, understaffing in the judiciary and public defender's office, and high bail requirements led to unnecessarily long periods in detention for many people, especially poor, people of color, as they awaited preliminary hearings or trials.<sup>469</sup> These practices and policies kept many people in county custody for months even in cases where the district attorney's office decided ultimately to not pursue criminal charges against particular people. Convicted, but unsentenced, people also spent long periods of time in county institutions prior to sentencing even if the nature of their conviction meant that they would serve their sentence in the state's prison system.<sup>470</sup> While all these various factors fed into the swelling prison population, city and county officials spent a considerable amount of time blaming each other for the mounting problem, often through the press, rather than jointly devising a method for containing the prison population or finding other alternative capacity solutions. Mayor James Tate and District Attorney Arlen Specter, for instance, both criticized the courts for the unnecessarily long delays in processing cases, but they also did little to

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<sup>468</sup> "1969 Report Gave Warning At Holmesburg," *Evening Bulletin*, (July 6, 1970), newsclipping, Bulletin Mounted Clippings, box 100, Clips Bulletin Holmesburg Prison--Probe 1969. Temple University, Urban Archive, Philadelphia (hereafter TUUA).

<sup>469</sup> "Indigents Without Lawyers Crowding City Institutions," *Bulletin*, (November 10, 1960), newsclipping, Bulletin Mounted Clippings, box 186, folder: Clips Bulletin Prisons-Phila Overcrowding. TUUA.

<sup>470</sup> "Untried Prisoners Serve Long 'Terms' at Holmesburg," *Bulletin*, (January 24, 1968), newsclipping, Bulletin Mounted Clippings, box 100, folder: Prisoners 1969 and Prior. TUUA.

alleviate the problem with the administrative tools available to them, such as expanded use of early release procedures or alterations in policing practices.<sup>471</sup>

By the latter half of the decade, the Philadelphia press reported increasing tensions, violent altercations and organized protests by inmates at the county's institutions.<sup>472</sup> Many of these incidents echoed the changing tenor of civil rights activism in Philadelphia, which became more confrontational over the course of the decade.<sup>473</sup> The hostility and mistrust between many of the city's African American residents and the law enforcement extended to the cell blocks of the county prisons, but in a much more condensed, volatile form. Mutual incriminations, resentments, fears and anger, cultivated in urban political disputes over space and resources, permeated the relationships and daily interactions of white members of the guard force and the mainly African American prison population, with the former in a position to coercing and disciplining the latter.

This made Philadelphia's prisons, like many other prisons and jails in the midwest and northeast at the time, fertile recruiting ground for the Nation of Islam from the 1940s onward

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<sup>471</sup> "Specter Offers Plan to Speed Court Justice," *Sunday Bulletin*, (October 20, 1968), newsclipping, Bulletin Clippings (loose), folder: Bulletin Clips--Criminals--1967-68-69. TUUA; "'Criminals' Won't be Taking Over, Tate Says after Talk with Judges," *Bulletin*, (August 20, 1969), newsclipping; "Sloane Urges Constitutional Change to Permit Denial of Bail to Repeaters," *Bulletin*, (August 21, 1969), newsclipping; "Judges Reject Tough Policy, Bar Reports," *Bulletin*, (August 26, 1969), newsclipping; "Rizzo Sets Up Meeting with Judge Carrol," *Bulletin*, (August 27, 1969), newsclipping. Bulletin Clippings (loose), Bulletin Clips--Criminals—Philadelphia. TUUA; "Judges Blasted On Packed Jails by Prison Head," *Bulletin*, (September 21, 1969), newsclipping. Bulletin Mounted Clippings, box 186, folder: Clips Bulletin Prisons--Phila Misc, Prior to 1970. TUUA.

<sup>472</sup> "City Prisoners Revolt, Demand Better Food and Sexology Books," *Philadelphia Inquirer*, (August 20, 1967); "Hearing Scheduled on Prison Rampage," (April 24, 1969); "Hearing Delayed After Prison Riot," (April 30, 1969); "900 Inmates Refuse to Eat at Holmesburg," *Evening Bulletin*, (June 2, 1969). Newsclippings, Bulletin Mounted Clippings, box 100: Prisoners 1969 and Prior. TUUA.

<sup>473</sup> Matthew Countryman surveys many of the different areas of racial conflict and politics that permeated Philadelphia politics in the 1960s. See his *Up South*, especially 120-330. See also the essays in Miriam Ershkowitz and Joseph Ziskmund (eds.), *Black Politics in Philadelphia* (New York: Basic Books, Inc., 1973).



and eventually other Black Power organizations by the mid-to-late 1960s.<sup>474</sup> The Nation of Islam, which focused many of its proselytizing and recruiting activities within prisons, largely began what would later become known as the prisoners' right movement through its successful litigation challenging prison administrations with religious discrimination.<sup>475</sup> In Pennsylvania, Black Muslims, mainly from Philadelphia, engaged in a long campaign against state and county prison officials over the acceptable parameters of their religious and organizational practices while extending their influence among black prisoners.<sup>476</sup> The organization, discipline and solidarity of the Black Muslims provided a collective model for action by prisoners and as a

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<sup>474</sup> Many of the Nation's leaders, including Wallace D. Fard, Elijah Muhammad and Malcolm X, had spent time in prison and intimately connected with the concerns of many incarcerated African Americans. For works discussing the formative role that prison played for many Black Muslims, their faith and their activities inside such institutions, see, C. Eric Lincoln, *Black Muslims in America* (Boston: Beacon Press, 1961), 24-30, 82-83, 114-115; Malcolm X, with Alex Haley, *The Autobiography of Malcolm X* (New York: Ballantine, 1964), especially chapters 9 and 10; Pallas and Barber, "From Riot to Revolution," 237-261; Jacobs, *Stateville*, 58-69; Irwin, *Prisons in Turmoil*, 68-70, 102-103; Moore, "Muslims in Prison: Claims to Constitutional Protection of Religious Liberty," 136-156; Smith, "Black Muslims and the Development of Prisoners' Rights," 131-46; Cummins, *The Rise and Fall of California's Radical Prison Movement*, 63-92; Clifton E. Marsh, *From Black Muslims to Muslims: The Resurrection, Transformation, and Change of the Lost-Found Nation of Islam in America, 1930-1995* (Lanham: Scarecrow Press, 1996); Claude Andrew Clegg III, *An Original Man: The Life and Times of Elijah Muhammad* (New York: St. Martin's Griffin, 1997); Clifton E. Marsh, *The Lost-Found Nation of Islam in America* (Lanham: Scarecrow Press, 2000); Karl Evanzz, *The Messenger: The Rise and Fall of Elijah Muhammad* (New York: Vintage, 2001); Conley and Debro, "Black Muslims in California Prisons," 278-91; Griffin, *Philadelphia's Black Mafia*; Hamid R. Kusha, *Islam in American Prisons: Black Muslims' Challenge to American Penology* (Farnham: Ashgate, 2009). Manning Marable, *Malcolm X: A Life of Reinvention* (New York: Viking, 2011), 87-99.

<sup>475</sup> Jacobs, *Stateville*, 58-69; James B. Jacobs, "Race Relations and the Prisoner Subculture" in Jacobs (ed.), *New Perspectives on Prisons and Imprisonment* (Ithaca: Cornell University Press, 1983), 61-79; Smith, "Black Muslims and the Development of Prisoners' Rights"; Eric Cummins, *The Rise and Fall of California's Radical Prison Movement*, 63-92; Conley and Debro, "Black Muslims in California Prisons"; Kusha, *Islam in American Prisons*.

<sup>476</sup> Sociologist Sean Patrick Griffin discusses the overlap between the Black Mafia, a Philadelphia-based, African American organized crime enterprise, and Philadelphia's chapter of the Nation of Islam. Griffin argues that one of the benefits for the Black Mafia was the influence that the Muslims had in state and county prisons in the Philadelphia area. See Griffin, "Philadelphia's 'Black Mafia': Assessing and Advancing Current Interpretations," *Crime, Law & Social Change*, 39 (April 2003), 263-283. For relevant legal opinions, see *Knuckles v. Prasse*, 302 F. Supp. 1036 (Dist. Court, ED Pennsylvania 1969); *Perley Wilson v. Arthur T. Prasse et al.*, 463 F.2d 109 (3rd Cir. 1972). For a case involving similar issues at Lewisburg Penitentiary, a federal prison system in Lewisburg, PA, see *Long v. J Parker X. Walker*, 390 F. 2d 816 (3rd Cir. 1968). For a national perspective on litigation by Muslim prisoners and its role in the larger prisoners' rights movement, see Smith, "Black Muslims and the Development of Prisoners' Rights"; Eric Cummins, *The Rise and Fall of California's Radical Prison Movement*, 63-92; Conley and Debro, "Black Muslims in California Prisons"; Kusha, *Islam in American Prisons*.

number of sources attested, the Black Muslims controlled large segments of prison population in all Philadelphia area prisons, state and county alike.<sup>477</sup> Turner DeV Vaughn, who had been recently released from Holmesburg, told a journalist that “Islam as a way of life or religion is basically taboo to prison officials. Yet, more than half the black inmates claim Islam as their religion.”<sup>478</sup> Even among African Americans who did not join the Nation of Islam, the latter’s interpretation of American history and contemporary society offered inmates a way to explicitly connect their own imprisonment and the overwhelming presence of other African Americans Philadelphia’s prisons to the long history of slavery.

Thus, race was the central interpretive category for the emerging narrative of difficulties in Philadelphia’s prisons, echoing similar accounts of incarceration, crime and civil rights protest in many other northern urban centers throughout the country. As discriminatory public policies and employment patterns forged large African American enclaves in Philadelphia, the city’s criminal justice system formed a second order of racial discrimination and segregation, in essence feeding off the spatial concentration of Philadelphia’s African American population and the social problems created by it growing impoverishment and isolation. The combination of discriminatory law enforcement, prison overcrowding, racial tensions in the county’s prisons and the receptiveness of many African American inmates to increasingly radical, civil rights and Black Power forms of protest catapulted the problems of Philadelphia’s prisons into the public sphere. A series of disruptions and investigations punctuated this growing visibility of the

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<sup>477</sup> “Ex-Inmate Tells of Boredom, Terror of Daily Life in Prison,” *Bulletin*, (July 6, 1970), newsclipping, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4. TUUA; Griffin, “Philadelphia’s ‘Black Mafia,’” 274.

<sup>478</sup> *Ibid.*

turmoil engulfing the county's prisons, and a steady stream of news articles thrust a litany of prison management problems into public discourse. These events influenced debates about penal policy and practice in Pennsylvania's larger state prison system as it became increasingly clear that Philadelphia officials were ill-equipped to deal with their strife in the county prisons alone.

### **The Davis Report: Penal Subjects and Sexual Violence**

The problems of overcrowding and racial conflicts between staff and inmates and among inmates were well-known to many city officials, especially those working in the criminal justice system, but they became much more publically prominent through a series of newspaper articles on overcrowding and especially with the publication of a report in 1968 by Allan Davis, the Chief Assistant District Attorney for Philadelphia, detailing an "epidemic" of sexual assault in Philadelphia's three prisons.<sup>479</sup> Davis's investigation, which soon attracted national attention, came at the behest of Judge Alexander Barbieri, after two inmates told him that they had been raped while in custody. Police Commissioner Rizzo soon began a similar inquiry, which eventually merged with the district attorney's project.<sup>480</sup> Davis examined evidence from a two year period between 1966 and 1968, interviewing thousands of inmates

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<sup>479</sup> "DA Calls Jails Inadequate for Emergencies," *Evening Bulletin*, (March 1, 1968); "Indigents Without Lawyers Crowding City Institutions," *Bulletin*, (November 10, 1968); "City's Jailer, Specter Clash on Transfer," *Evening Bulletin*, (December 26, 1968); "Jail Population Still Growing, Hendrick Says," *Sunday Bulletin*, (January 12, 1969); "Board Probes Overcrowding at City Prisons," *Evening Bulletin*, (April 24, 1969); "Phila. Prisons 'Inhuman,'" *Philadelphia Inquirer*, (July 11, 1969); "City Hunting for Key to Jam-Packed Prisons," *Bulletin*, (August 3, 1969). Newsclippings, Bulletin Mounted Clippings, box 186, folder: Clips Bulletin Prisons-Phila Overcrowding. TUUA; Davis, *Report on Sexual Assaults*.

<sup>480</sup> Davis, *Report on Sexual Assaults*, 1-2.

and reviewing administrative reports and other documents. In addition to his official report to Judge Barbieri, Davis also published a more accessible summary of his work for the journal, *Trans-action*, which would become one of the more widely cited studies of sexual violence in prison over the next two decades.<sup>481</sup>

Perhaps more than any other contemporary account, Davis's two reports, but especially the *Trans-action* piece, cemented the image of African American inmates and sexual violence in prison. Both reports depicted numerous instances of brutal sexual violence in the county's penal institutions and prisoner transportation vans. Davis argued that the county's prisons had extremely high rates of sexual assaults, including gang rape, and claimed that much of the violence was interracial. The report contained numerous descriptions of vicious criminal activity and inexcusable neglect by authorities. Most of the victims identified by Davis were white, youthful prisoners, who were of small physical stature, often "better-looking," and for the most part inexperienced with prison life.<sup>482</sup> The assailants, however, were usually older, black inmates who had previous records of imprisonment. Despite discussing numerous deficiencies in the management of the prisons as well as larger problems of racial discrimination in the broader administration of justice in the larger, original report, Davis's condensed version in *Trans-action* centered on sexual violence and largely became known for the brutality of the rapes he discussed. In this article, Davis deliberately eschewed social scientific, medical and legal language in favor of "the raw, ugly language used by the witness[es] and victims."<sup>483</sup> The

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<sup>481</sup> Alan J. Davis, "Sexual Assaults in the Philadelphia Prison System and Sheriffs Vans," *Trans-action*, 6 (December 1968), 8-17.

<sup>482</sup> *Ibid.*, 14-15.

<sup>483</sup> *Ibid.*, 9.

cruelty and racialized nature of sexual violence in Davis's description undoubtedly contributed to the text's notoriety and broad circulation in a variety of press and professional accounts.

According to communications theorist, John Sloop, and historian, Regina Kunzel, many American media portrayals of sex and sexuality in prison shifted dramatically during the 1960s.<sup>484</sup> In the immediate postwar years, most penal experts claimed that homosexual behavior demonstrated a stunting or reversal of the normal linear process of sexual and psychological maturation.<sup>485</sup> While they believed that for some prisoners homosexual behavior indicated a pre-existing homosexual preference and identity, they also considered it to be an adaption to prison life for many others. The adaptive-response theory suggested that sexuality was unstable and that institutionalization could produce a shift toward homosexuality in a person who had been heterosexual prior to incarceration.<sup>486</sup> In other words, the deprivation of heterosexual sex in prisons produced what was often referred to as "situational homosexuality," but this could easily become fixed as prisoners gradually drifted further from normative, heterosexual sex.<sup>487</sup> Prison authorities also believed homosexuality and homosexual behavior were connected to violence among inmates.<sup>488</sup> Despite these views, few prison administrators and researchers believed even during the height of the rehabilitation era that "true" homosexuals could be reformed or cured of either their sexual identity or their

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<sup>484</sup> Sloop, *The Cultural Prison*, 64, 74-84, 121-122; Kunzel, *Criminal Intimacy*, 149-189.

<sup>485</sup> Kunzel, *Criminal Intimacy*, 89-90.

<sup>486</sup> This understanding of sexuality had been popularized by the controversial Kinsey Report on male sexuality in 1948. Alfred Charles Kinsey, Wardell Baxter Pomeroy and Clyde Eugene Martin, *Sexual Behavior in the Human Male* (Philadelphia: W.B. Saunders Co., 1948).  
Report

<sup>487</sup> Kunzel, *Criminal Intimacy*, 88-90.

<sup>488</sup> Sloop, *Cultural Prison*, 48-49.

propensities toward crime.<sup>489</sup> Prison staff often separated known homosexual prisoners from the general population, containing them in homosexual units.<sup>490</sup>

Partly because of the widely-publicized accounts of Philadelphia's prisons, depictions of homosexual sex between inmates in the press, law and social science literature became far more violent after the late 1960s – much more a matter of rape and interpersonal violence between inmates than an indication of mental illness, non-normative sexuality or the effects of institutionalization. Additionally, the tendency of earlier accounts to deemphasize or ignore the race of the prisoners gave way to more explicit discussion of race by the late 1960s. Not only did racial categories become more prominent, authors frequently positioned African Americans as assailants and white inmates as victims of sexual violence.<sup>491</sup> Such accounts drew on the well-established trope of “black degeneracy and...the predatory black male rapist,” yet they also departed from previous iterations of this image.<sup>492</sup> Perhaps the most obvious difference

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<sup>489</sup> Ibid., 48-49, 60; Kunzel, *Criminal Intimacy*, 87-93.

<sup>490</sup> Classification practices at mid-century often explicitly contained a category for homosexuals.

<sup>491</sup> Ibid., 169-180.

<sup>492</sup> Kunzel, *Criminal Intimacy*, 169. For discussions of the earlier iterations of this narrative, see Ida B. Wells, *Southern Horrors: Lynch Law in All Its Phases* (1892) and *A Red Record* (1895) reprinted in Jacqueline Jones-Royster (ed.), *Southern Horrors and Other Writings: The Anti-Lynching Campaign of Ida B. Wells* (Boston: Bedford Books, 1997), 49-157; George M. Fredrickson, *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817-1914* (New York: Harper & Row, 1971), 256-282; Joel Williamson, *The Crucible of Race: Black-White Relations in the American South since Emancipation* (New York: Oxford University Press, 1984), 111-139, 209-215, 300-310, 466-467; Nell Irvin Painter, “Social Equality, Miscegenation, Labor and Power” in Numan V. Bartley (ed.), *The Evolution of Southern Culture* (Athens: University of Georgia Press, 1988), 47-67; Edward L. Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992), 152-159; Glenda Elizabeth Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896-1920* (Chapel Hill: University of North Carolina Press, 1996), 61-118; Martha Hodes, *White Women, Black Men: Illicit Sex in the 19<sup>th</sup>-Century South* (New Haven: Yale University Press, 1997); Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation on the South, 1890-1940* (New York: Vintage Books, 1998), 199-239; Leon F. Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York: Vintage Books, 1998), 280-325; Glenda Elizabeth Gilmore, “Murder, Memory, and the Flight of the Incubus” in David S. Cecelski and Timothy B. Tyson (eds.), *Democracy Betrayed: The Wilmington Race Riot of 1898 and Its Legacy* (Chapel Hill: University of North Carolina Press, 1998), 73-94; LeeAnn Whites, “Love, Hate, Rape, Lynching: Rebecca Latimer Felton and the Gender Politics of Racial Violence” in Cecelski and Tyson (eds.), *Democracy Betrayed*, 143-162; Stephen Kantrowitz, *Ben Tillman and the Reconstruction of White Supremacy* (Chapel Hill: University of North Carolina Press, 2000), 156-197, 259-261; Jane Dailey, *Before Jim Crow: The Politics of Race in Postemancipation Virginia* (Chapel Hill:

being that white women were not immediately present in discussions of violence in male prisons even if white victims were said to be transformed into women by the violence. Davis's report became widely influential in this new conceptualization of the nexus between inmate sexuality, race and violence.<sup>493</sup>

Contrary to earlier accounts, Davis de-emphasized the issue of sexuality, focusing more on the violence and what he claimed was the willful attempt by predominantly African American aggressors to dominate and humiliate white victims. Davis argued that these rapes did not involve questions of sexual gratification, sexual prowess or sexuality for the assailants, but were better understood as attempts by black inmates to recuperate a sense of masculinity that had been profoundly diminished by the racism and economic disadvantage marring urban life in Philadelphia.<sup>494</sup> Rape offered some black inmates a way of forcefully asserting their masculinity through victimizing—and feminizing—white inmates. Davis's line of argument resonated with other contemporary understandings of race, masculinity and sex, according to Kunzel, especially feminist theorizations of rape as an act of power and liberal racial theories about the psychological damage of racism on African Americans.<sup>495</sup> Yet, his report also

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University of North Carolina Press, 2000), 77-102, 140-141; Jane Dailey, "The Limits of Liberalism in the New South: The Politics of Race, Sex, and Patronage in Virginia, 1879-1883" in Jane Dailey, Glenda Elizabeth Gilmore and Byrant Simon (eds.), *Jumpin' Jim Crow: Southern Politics from Civil War to Civil Rights* (Princeton: Princeton University Press, 2000), 88-114; Nancy MacLean, "The Leo Frank Case Reconsidered: Gender and Sexual Politics in the Making of Reactionary Populism" in Dailey, Gilmore and Simon (eds.), *Jumpin' Jim Crow*, 183-218; Kari Federickson, "'As a Man, I Am Interested in States' Rights': Gender, Race and the Family in the Dixiecrat Party, 1948-1950" in Dailey, Gilmore and Simon (eds.), *Jumpin' Jim Crow*, 260-274.

<sup>493</sup> Both Kunzel and Sloop, in fact, confer significant weight on Davis's report as a periodization device for this change. Kunzel summarizes much of Davis work in the first few paragraphs of "Chapter Five: Rape, Race, and the Violent Prison," *Criminal Intimacy*, 149-150; Sloop, *Cultural Prison*, 79-81, 83.

<sup>494</sup> Davis, *Report on Sexual Assaults*, 4-5, 37-40, 84-85; Davis, "Sexual Assaults in the Philadelphia Prison System," 15-16.

<sup>495</sup> Kunzel, *Criminal Intimacy*, 169-180. See also Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Simon & Schuster, 1975). See also Carl Weiss and David James Friar, *Terror in the Prisons: Homosexual Rape and Why Society Condone It*, (Indianapolis : Bobbs-Merrill, 1974); Anthony M. Scacco, Jr., *Rape in Prison*

minimized evidence that did not neatly fit into this narrative. For instance, despite finding evidence of sexual aggression by white inmates and victimization of black inmates by black rapists, Davis focused his explanations on the more numerous instances of victimization of white inmates by African American assailants.<sup>496</sup> He offered no explanations or gender analysis for the other rapes.

Davis placed a large amount of culpability for the incidence of rape on the prisons' administration, including the superintendent, the Board of Trustees and the mayor's office, and he also revealed serious mismanagement and corruption in Philadelphia's prisons. His criticism of the penal authorities extended from the top echelons of the command structure down to the actions of low-level employees, especially the guards assigned to escort prisoners to and from the city's courts. Most lower-level staff in Davis's narrative appeared either indifferent to the suffering of the victims of sexual violence or powerless to stop it. More worrisome, Davis indicated that some guards laughed at the victims' abuse and seemed to have been more directly complicit in setting up some of the attacks.<sup>497</sup>

Davis's recommendations for reducing the incidence of rape consisted of a familiar list of pragmatic interventions, like bail reform, enhancing prison security, improving inmate classification and creating more work opportunities and activities for inmates.<sup>498</sup> Yet, Davis's

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(Springfield: C. C. Thomas 1975); Leo Carroll, *Hacks, Blacks and Cons: Race Relations in a Maximum Security Prison* (Lexington: Lexington Books, 1974); Lee Bowker, *Prison Victimization* (New York: Elsevier, 1980); Daniel Lockwood, *Prison Sexual Violence* (New York: Elsevier, 1980); Wayne S Wooden and Jay Parker, *Men Behind Bars: Sexual Exploitation in Prison* (New York: Plenum Press, 1982); Robert W. Dumond, "The Sexual Assault of Male Inmates in Incarcerated Settings," *International Journal of the Sociology of Law*, 20 (June 1992), 135-157.

<sup>496</sup> Davis also argued that since white inmates were overwhelming outnumbered in Philadelphia's prisons, it was simply safer and easier for African American inmates to attack members of a vulnerable racial group, who lacked the numbers to deter such attacks. Davis, *Report on Sexual Assaults*, 85; Davis, "Sexual Assaults in the Philadelphia Prison System," 15.

<sup>497</sup> Davis, "Sexual Assaults in the Philadelphia Prison System," 10, 14.

<sup>498</sup> Davis, *Report on Sexual Assaults*, 97-103.



discussion of the aggressors in the attacks hardly made them appear amenable to many of these reforms. Quite the contrary, they appeared unrepentant and unreformable. Whatever the merits of the reforms Davis proposed, it was the image of vastly outnumbered white inmates, futilely trying to defend themselves against an ever-growing population of incorrigible African Americans, determined to humiliate their victims, that became a staple of press and academic accounts of the racial and sexual violence in Philadelphia's prison system.

One of the more troubling things that Allan Davis found at Holmesburg Prison was the influence exerted by a research laboratory in Holmesburg Prison operated by Dr. Albert Klingman, a dermatologist and faculty member at University of Pennsylvania's medical school, with the full support of Edward J. Hendrick, the Superintendent of Philadelphia County Prisons. According to historian Allan Hornblum, Dr. Klingman first began treating prisoners at the prison during the early 1950s, but soon envisioned future dermatological research at Holmesburg.<sup>499</sup> Dr. Klingman later told a reporter that upon entering Holmesburg, "All I saw was acres of skin. It was like a farmer seeing a fertile field for the first time."<sup>500</sup> Soon afterward, Dr. Klingman established a private dermatological business, testing pharmaceuticals on prisoners for companies and government agencies, including the military.<sup>501</sup> Inmates participating in the program received cash payments as compensation for the skin tests that far exceeded any income available to them from other work at the prison.<sup>502</sup> The Philadelphia County prison

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<sup>499</sup> Allen M. Hornblum, *Acres of Skin: Human Experiments at Holmesburg Prison* (New York: Routledge, 1998), 37-40.

<sup>500</sup> "Prisoners Volunteer to Save Lives," *Bulletin*, (February 27, 1966) quoted in Hornblum, *Acres of Skin*, 37 and Allen M. Hornblum, *Sentenced to Science: One Black Man's Story of Imprisonment in America* (University Park: Penn State University Press, 2007), 52.

<sup>501</sup> Hornblum, *Acres of Skin*, 37-71; Thomas B. Congdon, Jr., "The Convict Volunteers," *The Saturday Evening Post*, (March 2, 1963), 62-63.

<sup>502</sup> Davis, *Report on Sexual Assaults*, 29-30; Hornblum, *Acres of Skin*, 4-28.

system, and the county's general coffer, benefitted as well, collecting a portion of the money that various companies and agencies paid to Dr. Klingman for testing their products. Prison administrators also used inclusion into the lucrative skin studies as a disciplinary device to reward or punish inmates and maintain institutional control.<sup>503</sup>

Allan Lawson and Leodus Jones, prison activists who spent time at Holmesburg, later recounted at a U.S. Senate hearing on human experimentation that many inmates entered Holmesburg in desperate need of cash and had few avenues for obtaining it.<sup>504</sup> Newly admitted inmates especially had numerous immediate needs, like basic toiletries and bail money, in addition to multiple "free world" obligations like rent and family support that suddenly became much harder to meet once they were imprisoned.<sup>505</sup> The lure of cash from Dr. Klingman's experiments was simply too enticing for many prisoners in such situations, which made the notion of voluntary participation farcical. Subsequent research and litigation established that many of the experiments, like those for dioxin (an active ingredient in Agent Orange) and the acne medication Retin-A, were quite dangerous and many of the volunteers suffered long term health problems as a result of their participation.<sup>506</sup>

Allan Davis focused less on the deleterious health consequences of Dr. Klingman's program, which were not as well-known at the time, but he accused the prisons' senior

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<sup>503</sup> Ibid.; Hornblum, *Acre of Skin*, 16-24.

<sup>504</sup> Allan Lawson was the director of the Prisoners' Rights Council. Leodus Jones was also a member of the Prisoners' Rights Council and a prominent member of Community Assistance for Prisoners. United States Congress, Senate, Committee on Labor and Public Welfare, Subcommittee on Health, *Quality of Health Care-- Human Experimentation, 1973. Hearings, Ninety-Third Congress, first session, on S. 974. March 7 and 8, 1973* (Washington, U.S. Govt. Printing Office, 1973), 822-835.

<sup>505</sup> Ibid., 822-826.

<sup>506</sup> Hornblum, *Acre of Skin*, 119-244; "Flippin' the Script: 10 Former Holmesburg Inmates Sue 'The System,'" *Philadelphia Tribune*, (December 5, 1995); "Experiments Scar Former Inmates: Holmesburg Prisoners Dealing with Aftermath of Tests," *Philadelphia Tribune*, (October 20, 1998); "Prison Experiments Leave Legacy of Pain: Holmesburg Scientists' Practices Met Ethical Standards of the Era," *Philadelphia Tribune*, (October 27, 1998).

management and Dr. Klingman of fostering corrupt and abusive relationships between, and among, staff and inmates that undermined prison order. Davis worried that the dermatological laboratory had become too influential in the overall management of the county prisons:

Because there is a dearth of alternative programming at Holmesburg, and because the project pays 20% of the inmates' wages to the Prison system, prison administrators have allowed the project to expand to the point where it constitutes a separate government within the prison system.<sup>507</sup>

The cash payments inmates earned in the experiments not only altered the distribution of wealth and power among the prisoners (something the prison administration was supposed to prevent in Davis's view), but they also structured a whole range of interrelated, illicit markets and activities, including the coercion of sexual favors.<sup>508</sup> Although many guards resented the disruption of the prison hierarchy and discipline caused by Klingman's experiments, Davis found instances of guards accepting bribes from inmates involved in the experiments.<sup>509</sup> It appeared to Davis that the pernicious influence of the program affected everyone.

In many cases, bribery emanating from the experiments directly abetted sexual violence and exploitation. Davis illustrated this point through the activities of one inmate - Stanley Randall. Working as a research assistant in Dr. Klingman's laboratory, Randall eventually gained the power to distribute assignments to lucrative experiments, which he used to ensnare unsuspecting, newly admitted inmates who desperately needed cash, guidance and protection. Randall bribed guards into assigning newly admitted, young inmates to bunk in his cell and he then provided them with access to the studies. Over time, Randall pressured them into sexual

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<sup>507</sup> Davis, "Report on Sexual Assaults in the Philadelphia Prison System and Sheriff's Vans," 29.

<sup>508</sup> *Ibid.*, 30-32.

<sup>509</sup> *Ibid.*, 32.

services through various threats, including exclusion from the studies.<sup>510</sup> Davis argued that situations like this and management's role in blindly sustaining them subverted the prison's order and lead to innumerable instances of sexual victimization.

The Philadelphia press carried multiple stories on the county's prisons in the wake of Davis's investigation, depicting an ineffective prison administration that was simply unable or unwilling to control criminal behavior within the prison's walls and appeared to harbor numerous corrupt employees.<sup>511</sup> Several national media publications also reported on the Davis's work, often in an uncritical, alarmist fashion, and it soon became an embarrassment for the city, Supt. Edward Hendrick, and Dr. Klingman.<sup>512</sup> Both the *New York Times* and *Time* magazine published articles reiterating Davis's description of the endemic sexual violence in Philadelphia's prisons and the inability, and at times unwillingness, of prison officials to stop it.<sup>513</sup>

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<sup>510</sup> *Ibid.*, 30-31.

<sup>511</sup> "Lab Testing Program Tied to Prison Sex Corruptions," *Philadelphia Inquirer*, (September 12, 1968); "Chalfin Asks Pact on Medical Research on Prisoners," *Bulletin*, (January 14, 1969); "Prison Addition Urged By Phila. Grand Jury," (March 3, 1969), newsclippings, Bulletin Mounted Clippings, box 99, folder: Clips Bulletin Holmesburg Prison - Employees and Guards. TUUA; "DA Says Convict Enjoyed Lobster, Liquor in Prison," (April 24, 1969), newsclippings, Bulletin Mounted Clippings, box 99, folder: Clips Bulletin Holmesburg Prison--Miscellaneous 1946 and later. TUUA. See also Hornblum, *Acre of Skin*, 189-194.

<sup>512</sup> Without directly dismissing Davis's findings, sociologists Mark S. Fleisher and Jessie L. Krienert have cast doubt on the level of violence David reported, noting that in 70 years of professional literature on sexual violence in prisons the level of violence in Davis's reported far exceeds any other findings. Part of the weakness in Davis's report stemmed from the speculative nature of his figures, which Davis admitted were estimates. However, Davis's methods point to the difficulty of ever having a reliable quantitative understanding of sexual violence since so few people ever report their own victimization. Besides being humiliated, many victims would be well aware of their vulnerability to retaliation if they reported their abuse to the authorities. Davis's investigation also noted that many prison staff were complicit in the violence. See, Mark S. Fleisher and Jessie L. Krienert, *The Myth of Prison Rape: Sexual Culture in American Prisons* (Lanham: Rowman & Littlefield Publishers, Inc., 2009), 17-19.

<sup>513</sup> "Prisons: Catalogue of Savagery," *Time*, (September 20, 1968) and Linda Charlton, "The Terrifying Homosexual World of the Jail System," *New York Times*, (April 25, 1971).

Despite these larger audiences for some of the report's findings,<sup>514</sup> Davis primarily intended it as pragmatic analysis and a proposal for reform. It immediately became a common reference point and source of authority for other city agencies as well as state officials and activists groups, like the Pennsylvania Prison Society and Prisoners' Rights Council, who frequently referred to Davis's findings while calling for dramatic changes in the county prisons.<sup>515</sup> The reforms it proposed were hardly new, but the scandalous nature of the violence and mismanagement covered in the report provided a compelling source of moral outrage for pushing changes. Many different groups, sometimes ones that were deeply opposed to each other like prisoner advocates and guards, found valuable suggestions and proposals in the report. Despite the publicity surrounding Davis's work, city officials moved slowly implementing toward the reforms he recommended; many of them simply languished.<sup>516</sup> Dr. Klingman's dermatological experiments at Holmesburg continued, albeit with greater oversight.<sup>517</sup>

### **The Unresolved Question of Penal Jurisdiction: State or County Prisons...or Both?**

The problems of Philadelphia's prisons during the 1960s renewed a longstanding debate in Pennsylvania about who should control local penal affairs: the state government in

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<sup>514</sup> Davis's abridged version of the report in the journal *Trans-action* was more accessible than the original report prepared for Judge Barbieri. However, it's likely that many people came to know of Davis's work through its coverage in the press.

<sup>515</sup> Allan Lawson and Leodus Jones, of the Prisoners' Rights Council and Community Assistance for Prisoners' respectively, cited Davis's work in their testimony before a U.S. Senate committee hearing on human experimentation chaired by Sen. Edward Kennedy. United States Congress, Senate, Committee on Labor and Public Welfare, Subcommittee on Health, *Quality of Health Care--Human Experimentation, 1973*, 824.

<sup>516</sup> "Tate Disavows Blame for Riot at Holmesburg," *Bulletin*, (July 6, 1970), newsclipping, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4 Trials. TUUA.

<sup>517</sup> Dr. Klingman's experiment would, nevertheless, return as a topic of controversy a few years later. See United States Congress, Senate, Committee on Labor and Public Welfare, Subcommittee on Health, *Quality of Health Care--Human Experimentation, 1973*; "Experiments on Prisoners," (February 21, 1974), newsclippings, Bulletin Mounted Clippings, box 99, folder: Clips Bulletin Holmesburg Prison Editorials; Hornblum, *Acres of Skin*, 195-209.

Harrisburg or the sixty-seven county governments. Most county governments jealously guarded their authority vis-a-vis the state's government on many matters, but they were often all too willing to cede responsibilities for prisons to the state's Bureau of Correction or especially the state's general fund. While Philadelphia's prisons were Pennsylvania's largest and most troubled county facilities, state correctional officials worried about the living conditions in county institutions across the state and the potential legal liabilities the state might face if such institutions became subject to federal judicial intervention. Most senior state correctional officials and professional advocacy organizations, like the Philadelphia-based Pennsylvania Prison Society, felt that many counties operated jails with deplorable living conditions substantially below the standard of the state penal system.<sup>518</sup>

Yet, the state's ability to rectify this was limited because constitutionally they had little direct authority over the penal operations in the counties.<sup>519</sup> While the Bureau of Correction could inspect county facilities and investigate misconduct, it could only offer recommendations for changes.<sup>520</sup> Improvements to jail programs and the physical plant were low priorities for county leaders with meager funds. This situation developed into a political stand-off over penal policy between the state and counties as the latter simply could, or would, not pay for improvements. Basic differences in the nature of confinement in the two different jurisdictions also contributed to the tension between county and state penal authorities. Consistent with national and international penological trends, the Bureau of Correction introduced numerous

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<sup>518</sup> American Foundation, *The County Jails and Prisons of Pennsylvania*, 14-17; Pennsylvania Crime Commission, *Corrections in Pennsylvania: Task Force Report* (Harrisburg: Pennsylvania Crime Commission, 1969), 20-27; "Shame of the County Jails in State Kept Under Wraps; Reforms Slow in Coming," *Gettysburg Times*, (September 7, 1970).

<sup>519</sup> The Bureau of Correction operated an inspectorate that investigated allegations of wrongdoing in county facilities and evaluated their overall conditions, but they had almost no power to force changes on the counties.

<sup>520</sup> Act of December 27, 1965 (P.L.1237, No.502), Establishing Regional Correctional Facilities.

new training and educational opportunities during the 1950s and 1960s as well as community corrections programs in the late 1960s. The relatively short periods of incarceration for county jail inmates, however, made such rehabilitation and training efforts difficult to implement at best, but Bureau officials claimed that adaptations could be made for this population.

In the early 1960s, the Bureau of Correction undertook an ambitious plan to reduce the penal authority of the counties by developing a state-wide network of regional jails that would hold prisoners serving sentences over six months.<sup>521</sup> This plan would have removed many prisoners from county institutions and placed them in large, Bureau-operated jails, with catchment zones encompassing several counties. Advocates of the regional jail network, and even some its critics, argued that the Bureau of Correction could marshal greater resources and expertise for work, education and rehabilitation programs in these types of institutions.<sup>522</sup> Several administrations pitched this plan as a way to assist financially-burdened counties, but it also furthered the desire of some senior staff in the Bureau of Correction to reduce the penal capacity of the counties, potentially eliminate some deplorable county jails and extend the reach and professional prestige of the Bureau.<sup>523</sup>

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<sup>521</sup> The legislation establishing this authority permitted counties to legally imprison people for up to five years in facilities approved by the Bureau of Correction, but gave them the option of shifting this responsibility to the state prison system. Act of December 27, 1965 (P.L.1237, No.502), Establishing Regional Correctional Facilities.

<sup>522</sup> Pennsylvania Bureau of Correction, *Regional Correctional Facility Program* (Camp Hill: Pennsylvania Bureau of Correction, 1969). William Nagel, the leading penologist for the American Foundation and a former superintendent, argued that the regional jail concept handcuffed the Bureau of Correction and its abilities by requiring inmates to be held in the jail closest to their place of commitment. Nagel believed that this negated the full use of specialized programs and regimes located in different prisons throughout the state. He advocated for greater flexibility for the Bureau in this regard, but agreed that the Bureau was better positioned to handle most inmates serving short sentences. See American Foundation, Institute of Corrections, *The County Prisons and Jails of Pennsylvania* (Philadelphia: American Foundation, 1965), 14-16.

<sup>523</sup> Pennsylvania Crime Commission, *Corrections in Pennsylvania: Task Force Report* (Harrisburg: Pennsylvania Crime Commission, 1969), 20-27.

By the late 1960s, however, the regional jail plan stalled despite the successful passage of enabling legislation in 1965.<sup>524</sup> The Bureau of Correction encountered numerous difficulties securing suitable locations for regional jails in several parts of the state and obtaining the necessary construction funds from the General Assembly. Similar problems haunted some of the Bureau of Correction's other expansion plans, especially establishing community correction centers throughout the state and replacing SCI Philadelphia, the 140 year-old Eastern State Penitentiary, which occupied an entire city block in the middle of Fairmount, a neighborhood in North Philadelphia. The General Assembly authorized the construction of several new facilities in the Philadelphia area to replace SCI Philadelphia, but at the time of Davis's 1968 report the Bureau of Correction had still not found suitable locations for the new prisons, much like the regional jails.<sup>525</sup> Nevertheless, the state moved ahead with its plan to decommission SCI Philadelphia. Originally opened in 1829, the prison and its solitary confinement regime were known throughout the world as one of the most innovative penal reforms during much of the nineteenth-century, but by the 1960s, nearly everyone involved in the corrections field believed that the prison was antiquated, deteriorating and needed to be closed.<sup>526</sup> Republican Attorney-General, Fred Speaker, described the ancient prison as "a disgrace and a condemnation of the

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<sup>524</sup> Act of December 27, 1965 (P.L.1237, No.502), Establishing Regional Correctional Facilities.

<sup>525</sup> "City Asks State Not to Build Prison Here," *Bulletin*, (May 9, 1966), newsclipping; "'Plenty of Space' for Prison in the Northeast, Judge Says," *Bulletin*, (October 13, 1966), newsclipping; "Courts Have Role in Prison Plans, Carroll Says," *Bulletin*, (October 11, 1969), newsclipping. Bulletin Mounted Clippings, box 186, folder: Clips Bulletin Prisons--Phila Misc, Prior to 1970. TUUA; William C. Sennett to Mr. Edmund N. Bacon, November 9, 1969. RG-15 Dept of Justice, Att-Gen, Gen. Corresp, Corrections-Credit, box 5, folder: Eastern State Penitentiary. PSA; Arthur T. Prasse to Mr. Edmund N. Bacon February 18, 1970; Dr. Gayle K. Lawrence to Attorney General William C. Sennett, telegram, February 20, 1970; Arthur T. Prasse to Dr. Gayle K. Lawrence, March 4, 1970; William C. Sennett to Honorable Theodore B. Smith, Jr., May 21, 1970. RG-15 Attorney-General, General Correspondence, Corrections, box 4, folder: Corrections (1970) Jan. to June. PSA.

<sup>526</sup> Arthur T. Prasse to William C. Sennett August 28, 1969. RG-15 Department of Justice, Attorney General, General Correspondence, box 5 Corrections-Credit, folder: Eastern State Penitentiary, PSA, PA.



society that permits, even perpetuates, its use.”<sup>527</sup> Other state leaders and correctional officials echoed Speaker’s views as did the Pennsylvania Prison Society.<sup>528</sup>

Philadelphia leaders, however, saw an opportunity to alleviate many of the problems caused by overcrowding in the county’s prisons by acquiring or leasing SCI Philadelphia from the state. Nearly everyone agreed that the growth of the prisoner population presented a serious management problem and had created a dangerous, tense atmosphere at the county prisons, especially Holmesburg. In addition to the sheer growth of the prison population, many penologists, prison staff and inmates worried about the large increase in the number of people confined while awaiting the disposition of their cases (“detentioners”).<sup>529</sup> A federally-funded study of Philadelphia’s prisons noted in 1970 that detentioners comprised nearly a third of the total prison population in 1963, but surpassed two thirds by 1969.<sup>530</sup> Penologists and prison staff generally considered a large detentioner population to be a serious administrative challenge, mainly because they lacked information about such prisoners. Pre-sentence information, of varying quality, usually accompanied sentenced prisoners, and prison staff had often already observed and interacted with many of these inmates before they were sentenced.<sup>531</sup> Thus, they had a better sense of who among the sentenced group were vulnerable, aggressive, mentally ill, or had previous prison experience, among other concerns.

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<sup>527</sup> Fred Speaker to Raymond P. Shafer, November 25, 1970 RG-15 Department of Justice, Attorney General, General Correspondence, box 5 Corrections-Credit, folder: Eastern State Penitentiary (correspondence), PSA, PA.

<sup>528</sup> Statement Presented Before City Council Committee, Executive Director, The Pennsylvania Prison Society, RG-15 Department of Justice, Attorney General, General Correspondence, box 5 Corrections-Credit, folder: PA Prison Society, PSA, PA.

<sup>529</sup> This group was commonly referred to as “detentioners” in Philadelphia and Pennsylvania at the time. In New South Wales, they were called, “remandees.”

<sup>530</sup> “Corrections Consultant Task Force Study of the Philadelphia Prison System: LEAA Corrections Technical Assistance Project” (December 1970), 3. [893-8]. General Pamphlet Collection, Additions, Part 2: Camden, NJ – Culture, TUUA.

<sup>531</sup> Ibid.

By contrast, the same 1970 report referred to detentioners as “unknowns” and cautioned about the perils of mixing them with other categories of inmates and the difficulties of housing them in multiple occupancy cells.<sup>532</sup> People being held as detentioners were always haunted by the uncertainty of their status, making their adjustment to imprisonment particularly difficult to endure. This situation often left them restless, unsettled and, in the view of security-conscious staff members, a potentially volatile group of people who had little investment in prison order. Incorporating SCI Philadelphia into the county prison system would have provided more space to ease overcrowding, but would have also enhance the ability of prison administrators to separate detentioners from sentenced prisoners.

Mayor Tate, the Philadelphia City Council and Representative Herbert Fineman, a prominent member of the General Assembly and senior Democratic Party leader, pressured Governor Raymond Shafer and Arthur Prasse, the Commissioner of Corrections, to lease, sell or simply grant the old prison to Philadelphia, but both Shafer and Prasse balked at the idea. Each man worried about the financial burden of repairing the aging institution and also believed that the temporary relief from overcrowding pressures would simply enable the city to avoid the more difficult task of reforming the legal, bureaucratic and judicial practices feeding the population growth. When Philadelphia’s City Council failed to commit funds toward the project, Shafer became even more reluctant to permit the prison to remain open. To further complicate matters, Philadelphia’s leaders had hindered the Bureau of Correction’s expansion plans in southern Pennsylvania. Despite promises of assistance, city leaders had done little to help the state locate suitable property for a replacement for the diagnostic and classification center that

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<sup>532</sup> Ibid., 3, 9.

had once been housed at SCI Philadelphia and a new regional jail for southeastern part of the state.<sup>533</sup> Some Philadelphia officials actually openly resisted the state penal agency's policies. For instance, Philadelphia's powerful police commissioner, Frank Rizzo, vocally opposed the Bureau of Correction's plans for locating a community correction center in the city.<sup>534</sup>

This stalemate over penal matters affected more than just conditions with the county jails. The fragmented nature of governance between the counties and state exacerbated the conflict over a range penal policies as both the Shaffer administration and the Philadelphia leaders effectively frustrated the other's plans and options. The conflicts between the city and state contributed to acute problems within each prison system that would last well over a decade and generated a stream of adverse media coverage, which painted a picture of poor overall administration of the penal apparatus and intransigence on the part of each side in the dispute.<sup>535</sup> The constitutional division of jurisdictions, of course, structured the entire dispute, but mattered little in the public representations of penal mismanagement. Despite the formal separation, the Philadelphia County Prison System and Bureau of Correction were in fact deeply interwoven with inmates and knowledge constantly moving between them. As would soon become more obvious to the general reading public, serious problems with prison living

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<sup>533</sup> William C. Sennett to Mr. Edmund N. Bacon, November 9, 1969. RG-15 Dept of Justice, Att-Gen, Gen. Corresp, Corrections-Credit, box 5, folder: Eastern State Penitentiary. PSA; Arthur T. Prasse to Mr. Edmund N. Bacon February 18, 1970; Dr. Gayle K. Lawrence to Attorney General William C. Sennett, telegram, February 20, 1970; Arthur T. Prasse to Dr. Gayle K. Lawrence, March 4, 1970; William C. Sennett to Honorable Theodore B. Smith, Jr., May 21, 1970. RG-15 Attorney-General, General Correspondence, Corrections, box 4, folder: Corrections (1970) Jan. to June. PSA.

<sup>534</sup> William C. Sennett to Mayor James H.J. Tate, September 16, 1969. RG-15 Dept of Justice, Att-Gen, Gen. Corresp, Corrections-Credit, box 5, folder: Eastern State Penitentiary. PSA.

<sup>535</sup> The city's attempt to obtain SCI Philadelphia was largely unknown to the general public before 1970, but it became a more prominent public issue afterward.

conditions, violence between inmates, and abuse by guards spanned county and state penal institutions.

### **Holmesburg Prison: The Independence Day Uprising**

On July 4, 1970, a massive disturbance erupted at Holmesburg Prison that injured over a hundred people.<sup>536</sup> Many, but not most, of the prison's inmates participated in the melee, which only ended after heavily armed police and dogs stormed the prison. The police and the district attorney began investigating the violence and interviewing hundreds of people immediately at the scene of the uprising, disseminating the first and perhaps most powerful narrative theme of the event. Within a few hours, these officials, especially Police Commissioner Rizzo, declared that the uprising was caused by politicized, African American prisoners who attacked white inmates and guards. Several prison reform organizations and prisoner's right groups countered this explanation within a few days, pointing to the longstanding evidence of overcrowding and the lack of meaningful activities and work at the prison and citing evidence of guards and police abusing prisoners after they quelled the uprising. They publicly criticized county officials for attempting to deflect their roles in permitting a volatile situation to develop over years by blaming the entire event on racial animosity. In addition to this disagreement, it soon became apparent that city and county officials were deeply divided over the problems at Holmesburg and how to deal with them. While many of these problems were already well known to city and county officials, no one

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<sup>536</sup> "Blacks Riot Stab 3 Whites at Holmesburg," and "82 Prisoners, 34 Guards Are Hurt in Riot at Holmesburg, Racial Trouble Blamed," *Bulletin*, (July 5, 1970), newsclipping, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4. TUUA; "Pennsylvania Prison Riot Leaves 103 Persons Injured," *Bulletin*, (July 6, 1970).

wanted to shoulder the blame for them. So, the question over who would lead the official investigation took on an additional political valence with several of the people involved, especially Commissioner Rizzo, District Attorney Arlen Specter and members of local judiciary, also harboring much large political ambitions

There was little disagreement that race played a major role in the July 4<sup>th</sup> violence at Holmesburg, but the various officials, prisoners, guards and prison reform groups differed significantly in how they thought about race and its role in both the disturbance and the general state of the county's prisons. Such differences shaped their response to the violence and the nature of changes they envisioned for the county's prisons afterward. Many law enforcement officials narrowly construed race in their narratives to explain patterns of criminal offending and what they saw as political extremism by some members of Philadelphia's African American community. Speaking shortly after police stormed the prison, Rizzo and Superintendent Edward Hendrick blamed the disturbance entirely on a small group of "hard-core black militants" who had been fomenting discord between black and white inmates for quite some time.<sup>537</sup> Rizzo, who was widely expected to run for mayor in 1971, dismissively claimed that while he was not a sociologist, he was present at the scene of the disturbance and from his vantage point, the racial hatred of the militants motivated the violence, which pitted

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<sup>537</sup> "Racial Unrest and Conditions Blamed for Holmesburg Riot" *Evening Bulletin*, (July 6, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4 probe; "Rizzo Insists Cause of Riot Was Racial," (July 6, 1970), newsclipping; "Rizzo, Specter, Tate and Holmesburg," (July 8, 1970), newsclipping; "Independent Study: Judges Say Rizzo, DA, Block Prison Probe," *Bulletin*, (July 13, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4. TUUA.

black and white inmates against each other.<sup>538</sup> “Where were the so-called experts,” Rizzo rhetorically asked the press.<sup>539</sup>

The tone of these statements would have been familiar to many Philadelphians. At least since the early 1960s, Rizzo was known for racially polarizing language and actions, which increasingly resonated with the city’s large white, ethnic, working-class constituency and many business owners.<sup>540</sup> The outspoken police commissioner frequently warned city residents about violent crime in African American neighborhoods through the city’s major news dailies while also deriding civil rights and Black Power activism, the Police Review Board and the judiciary.<sup>541</sup> Throughout the 1960s and early 1970s, Rizzo argued that security needed to be restored in Holmesburg and the county’s other prisons and foolish penal reform experiments, especially forms of discretionary release, endangered the public and should be curtailed.<sup>542</sup> In Rizzo’s view, many offenders and “extremists” could never be reformed, leaving long prison terms, isolation in prison and the death penalty as the only reasonable methods of dealing with them.<sup>543</sup> Rizzo’s public statements not only established his interpretations as the dominant account of the problems at the county’s largest prison, but also heralded his preferred approach to managing the city’s prisons if he were to become mayor.

Many people agreed that the disturbance was deeply racialized, but they disagreed with Rizzo and Hendrick’s account of how race factored into the violence. Much like the situation in

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<sup>538</sup> Ibid.

<sup>539</sup> Ibid.

<sup>540</sup> Countryman, *Up South*, 162-164.

<sup>541</sup> See, for instance, “Rizzo Defends Tough Stand On Criminals,” *Bulletin*, (October 11, 1967), newsclipping; “Rizzo Deplores ‘Pampering’ of Criminals (February 29, 1968), newsclipping. Bulletin Clippings (loose), Bulletin Clips--Criminals--1967-68-69. TUUA; “Rizzo Quells Disorders in South Phila.,” *Bulletin*, (July, 27, 1967).

<sup>542</sup> Ibid.

<sup>543</sup> “Rizzo Defends Tough Stand on Criminals.”

1968, over eighty-five percent of the inmates were African American, and while most of the low-ranking guards were also black, their superiors were white. These disparities, obvious to those imprisoned at Holmesburg, created seething resentments that permeated much of the interactions between white and black inmates and guards.<sup>544</sup> This situation was the longstanding, and systemic product of multiple sites of racial discrimination in residential and employment patterns and the actions of criminal justice agencies and the judiciary. In other words, it was not something that could be reduced to the actions of a few hardcore militants, however much the latter eventually turned out to be responsible for attacking other inmates and guards.

Moreover, as some people pointed out, “hardcore militants” and “Black Panthers and Black Muslims” were often simply scapegoats for Rizzo, a device he repeatedly used to justify authoritarian police tactics. Shortly after the riot, members of a number of civil rights, Black Power and anti-war organization held a demonstration outside the walls of the former SCI Philadelphia focusing attention on the racial discrimination in the criminal justice system and the county’s prisons.<sup>545</sup> Governor Raymond Shafer had recently permitted the county to transfer a number of prisoners to the former SCI Philadelphia in an effort to re-establish control at Holmesburg. Demonstrators from the Council of Organizations on Philadelphia Police Accountability and Responsibility (COPPAR), the Black Panthers, the Welfare Rights

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<sup>544</sup> For an excellent contemporary polemic statement about the Holmesburg riot and its relationship to race, slavery and American democracy see, A. Leon Higginbotham, Jr., “The Black Prisoner: America’s Caged Canary,” in Hugh Davis Graham (ed.), *Violence: The Crisis of American Confidence* ( Baltimore: Johns Hopkins Press, 1971), 103-125. The prison authorities requested the presence of Higginbotham, an African-American federal judge, because they felt he could develop a report and negotiate with the inmates better than any corrections official.

<sup>545</sup> “Rizzo Backs Gun-Carrying Request of Off-Duty City Prison Guards,” (July 15, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison—Riot 1970, July 4 probe. TUUA.

Organization and Philadelphia Resistance demanded that these prisoners be returned to Holmesburg and that the city abandon the ancient SCI Philadelphia, much as the state had recently done. They also implored the city to end racial segregation at Holmesburg and cease the “political harassment and scapegoating of Black Panthers and Muslims.”<sup>546</sup>

A number of critics argued that recourse to simplistic racial explanations for the uprising jeopardized the possibilities for reforming the far more serious and widespread problems with the county’s prisons. Robert Landis, chancellor of the Philadelphia Bar Association, and several chaplains comprising the Interfaith Chaplains Committee of the Philadelphia Prisons each accused Rizzo, Hendrick and Assistant Superintendent Edmund Lyons of prejudicing the inquiry before it was completed with reckless statements about the culpability of black militants.<sup>547</sup> Members of the Chaplains Committee released a statement to the press denouncing such statements as a “smokescreen of racism,” designed to divert attention from the need for major reform and public investment in the county’s prisons.<sup>548</sup> Even District Attorney Arlen Specter, who worked closely with Rizzo during the investigation, distanced himself from what he felt were divisive comments by the police commissioner.<sup>549</sup>

Related to the dispute over the racial contours of the riot, a public struggle also emerged over who would lead the investigation into the causes of the disturbance and whose

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<sup>546</sup> Ibid. For more on COPPAR and the Philadelphia chapter of the Black Panthers, see Countryman, *Up South*, 259-294; Mumia Abu-Jamal, *We Want Freedom*.

<sup>547</sup> “Racial Unrest and Conditions Blamed for Holmesburg,” *Evening Bulletin*, (July 6, 1970) and “Judges, Bar Chancellor Accuse Specter, Rizzo of Blocking Probe,” (July 14, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison—Riot 1970, July 4 probe. TUUA.

<sup>548</sup> “Racial Unrest and Conditions Blamed for Holmesburg,” *Evening Bulletin*, (July 6, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison—Riot 1970, July 4 probe. TUUA.

<sup>549</sup> “Courts Join Law Officers in Probe of Prison Riot,” (July 7, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison—Riot 1970, July 4 probe. TUUA.



account of the events would prevail. Rizzo and Specter moved quickly on this matter; police detectives started interviewing prison employees at Holmesburg almost as soon as they subdued the prisoners. Chief Inspector Joseph O'Neill and Assistant District Attorney James Crawford led the joint investigation with the latter assigned by Specter to produce a comprehensive report.<sup>550</sup> At the behest of the Judges Edmund Speath, Theodore Smith and Robert Nix, who together comprised the Prison Committee of the Philadelphia Common Pleas Court, they were soon joined by Allan Davis, the former assistant district attorney who completed the 1968 report on sexual assaults. At a press conference, the judges stated that their investigation, unlike the police and district attorney's, was less concerned with ascertaining criminal culpability and more focused on assessing the state of the prisons and how to improve them.<sup>551</sup>

The judges' efforts immediately drew resistance from Rizzo and Specter who blocked Davis's access to the prison. Both men had higher political ambitions and did not want to risk being upstaged by the judiciary, especially since they each also had longstanding disagreements with the courts over what they considered lenient sentencing, delays in processing cases and restrictions on police conduct.<sup>552</sup> According to the judges, Specter initially told Davis that he would be permitted access to the evidence, allowed to interview witnesses and could produce

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<sup>550</sup> "Rizzo, Specter Question Personnel at Prison," (July 7, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison—Riot 1970, July 4 probe. TUUA.

<sup>551</sup> "Courts Join Law Officers in Probe of Prison Riot," (July 7, 1970); "Judge Spaeth Hopes Prison Reforms Will Result From Holmesburg Riot," (July 8, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4. TUUA.

<sup>552</sup> "Specter Seeks Right to Appeal on Acquittals," *Bulletin*, (June 4, 1967), newsclipping; "Rizzo Defends Tough Stand on Criminals," *Bulletin*, (October 11, 1967), newsclipping; "Rizzo Deplores 'Pampering' of Criminals," *Bulletin*, (February 29, 1968), newsclipping. Bulletin Clippings (loose), folder: Bulletin Clips--Criminals--1967-68-69. TUUA; "Rizzo, Specter, Tate and Holmesburg," *Bulletin*, (July 8, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4. TUUA.

his own report. After Rizzo objected to this arrangement, Specter barred Davis's access.<sup>553</sup> He later offered a more limited, subordinate role for Davis, but only permitted the production of one report over which he had exclusive control.<sup>554</sup> The judges, Specter and Rizzo traded accusations through the press for several weeks, with each side claiming that the other was politically motivated, overreaching their authority and harming the public interest.<sup>555</sup> These officials, along with Mayor James Tate, also tried to blame each other for the violence and general state of the prisons. Tate, Rizzo, and to a lesser degree Specter, admonished the courts for the large number of detentioners at the prison and judges' unwillingness to send many inmates to state prisons.<sup>556</sup> Judge Vincent Carrol, president of the Common Pleas Court, retorted that the city failed to provide funds for adequate staffing levels, work and rehabilitation programs and proper living conditions at the city's prisons.<sup>557</sup> While each party in the dispute had a point, the larger effect was to broadcast to the reading public the magnitude of the prisons' many serious problems and at least the appearance of incompetence by public officials who could not work constructively together on penal matters.

In addition to the issue of the state of the prison before the riot what followed the disturbance played as much of a role in the dispute. Rizzo and Specter promised a broad

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<sup>553</sup> "Judges, Bar Chancellor Accuse Specter, Rizzo of Blocking Probe," (July 14, 1970), newsclipping, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4 Trials. TUUA.

<sup>554</sup> "DA Says Judges' Probe Would Hurt Riot Prosecutions," *Evening Bulletin*, (July 17, 1970), newsclipping, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison—Probe (State Senate) 1972. TUUA.

<sup>555</sup> "Tate Disavows Blame for Riot at Holmesburg," *Bulletin*, (July 6, 1970), newsclipping; "Independent Study: Judges Say Rizzo, DA, Block Prison Probe," *Bulletin*, (July 13, 1970), newsclipping; "Carrol Says Courts Refuse to Accept Blame for Riot," *Evening Bulletin*, (July 7, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4 Trials. TUUA; "DA Says Judges' Probe Would Hurt Riot Prosecutions," *Evening Bulletin*, (July 17, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison—Probe (State Senate) 1972. TUUA.

<sup>556</sup> *Ibid.*

<sup>557</sup> "Carrol Says Courts Refuse to Accept Blame for Riot," *Evening Bulletin*, (July 7, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4 Trials. TUUA.

inquiry, but nevertheless focused most of their public statements on the immediate causes of the violence and identifying perpetrators. Judges Speath, Smith and Nix took a much different tack. On July 13, 1970, a detentioner, Cephus Bryant petitioned the Court of Common Pleas, asking to be released pending the disposition of their cases because they claimed that being imprisoned at Holmesburg constituted a violation of the Eight Amendment's prohibition of "cruel and unusual punishment."<sup>558</sup> His case would soon be merged with a similar petition from another detentioner James Goldstein. Judge Carrol assigned the case to the Prison Committee of Speath, Smith and Nix, who promptly granted an initial hearing. Assistant District Attorney Richard Sprague petitioned the judges, asking them to recuse themselves from hearing the case since they were also attempting to investigate the riot.<sup>559</sup> When they refused to step aside, Sprague asked the Pennsylvania Supreme Court to intervene, arguing that the judges were simply using the inmates' writ of habeas corpus to pursue a wide-ranging investigation, which exceeded their authority and undermined the district attorney.<sup>560</sup> The high court refused to take the case, and the three judges heard testimony from numerous current and former Holmesburg prisoners for four days in July 1970.<sup>561</sup>

In addition to describing unsanitary, vermin-infested living and eating quarters, the two petitioners and numerous other current and former inmates testified about routine drug

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<sup>558</sup> "Burglary Suspect Asks Release at Holmesburg," *Bulletin*, (July 16, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison-Prisoners 1970. TUUA.

<sup>559</sup> "3 Probers Refuse to Step Aside in Case of Holmesburg Prisoner," *Philadelphia Inquirer*, (July 18, 1970); "Sprague Sees Conflict if Judges Hear Prison Case," *Bulletin*, (July 17, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4 Arraignments.

<sup>560</sup> The judges argued that the judiciary had a constitutionally legitimate role and duty to investigate problems with the penal system. An example of Judge Spaeth's reasoning on this matter can be found in Edmund B. Spaeth Jr., "The Courts' Responsibility for Prison Reform," *Villanova Law Review*, 16 (August 1971), 1031-1046.

<sup>561</sup> "High Court Refuses to Halt Prison Hearing," (July 21, 1970), newsclipping, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4 Trials. TUUA.

trafficking and sexual violence in the prison and a lack of work, recreational activities and programs. Compounding the problem of idleness, the witnesses claimed that there was inadequate supervision by guards throughout much of the prison, making life extremely tense. In his testimony, Cephus Bryant also confirmed accounts of abuse by guards and police during and after the riot.<sup>562</sup> He told the court that he saw guards beating prisoners several times after the riot and heard screams at night coming from the prison's central control point where only guards were permitted during the night.<sup>563</sup> Bryant also said he saw "Seven to eight guards...using table legs, sticks, broken pieces of window frames and mop handles to beat" a prisoner who was then forced to run back and forth in a cell block for a half an hour while guards continued assaulting him.<sup>564</sup> One of the witnesses, nineteen-year-old Barry Harmon, said that on two separate occasions guards forced him to run a gauntlet through a cell block while they beat him and 20 other prisoners with "wooden table legs, billy clubs and blackjacks."<sup>565</sup> Upon seeing the scars on Harmon's body from the assault, Judge Nix arranged for a city employee to photograph his injuries.

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<sup>562</sup> "Convict Phones Newspaper: 'We Are Gonna Die,'" *Bulletin*, (July 5, 1970), newsclipping, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4 Trials. TUUA; "Prisoner Tells Judges of Beating," *Bulletin*, (July 19, 1970), "Ex-Holmesburg Inmates Tell of Beatings," *Philadelphia Inquirer*, (July 19, 1970), "Prisoner Tells Judges of Beatings," *Bulletin*, (July 19, 1970), "Inmates, Ex-Cons Tell of Beatings in the 'Blue Room,'" *Bulletin*, (July 26, 1970), "Inmate Says He Was Beaten in Retaliation for July 4 Riot," (July 27, 1970), newsclippings, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4. TUUA; "Holmesburg Guard Confirms 'Revenge' Beatings," *Philadelphia Daily News*, (July 20, 1971), newsclipping, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison—Probe (State Senate) 1972. TUUA.

<sup>563</sup> "Ex-Holmesburg Inmates Tell of Beatings," *Philadelphia Inquirer*, (July 19, 1970), "Inmates, Ex-Cons Tell of Beatings in the 'Blue Room,'" *Bulletin*, (July 26, 1970), "Inmate Says He Was Beaten in Retaliation for July 4 Riot," (July 27, 1970), newsclippings, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4. TUUA.

<sup>564</sup> "Prisoner Tells Judges of Beatings," *Bulletin*, (July 19, 1970), newsclippings, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4. TUUA.

<sup>565</sup> "Inmate Says He Was Beaten in Retaliation for July 4 Riot," (July 27, 1970), newsclippings, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4. TUUA.

Not all of the testimony came from people who had been imprisoned at Holmesburg. David Myers, a Methodist chaplain who visited prisoners at Holmesburg, recalled that on July 4<sup>th</sup> he and several of his colleagues observed thirty to forty guards assaulting inmates with clubs and table legs as they forced them to run a gauntlet through a cell block.<sup>566</sup> When one of the prisoners called for the chaplain to help him, the guards forced the chaplains to leave the area. Myers and his colleagues reported the violence to Superintendent Hendrick and Assistant Superintendent Edmund Lyons who equivocated and did nothing to stop the assaults. Several prisoners stated that the beatings by guards continued for weeks after the riot, with staff repeatedly assaulting some inmates during the night.<sup>567</sup>

As these scandalous revelations mounted, the district attorney attempted to shift the public image of his investigation. After the Pennsylvania Supreme Court refused to halt the habeas corpus hearings, Specter publically named a twelve-member advisory committee of prominent people to aid his investigation.<sup>568</sup> William Nagel, a former prison administrator and senior bureaucrat, was perhaps the only person with any specialized knowledge of penology on the advisory committee. Most of the other members came from other public agencies, education, private welfare organizations as well as the business world.

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<sup>566</sup> *Commonwealth ex rel. Bryant v. Hendrick*, Crim. No. 1567 (C.P. Phila. County, Aug. 11, 1970), 26-29. A copy of the three-member panel's opinion and order can be found in RG-15 Department of Justice, Attorney General, RG-15 General Correspondence, Corrections-Credit B5, f-Holmesburg. PSA. For an analysis of the ruling and its confirmation by the Pennsylvania Supreme Court, see "Criminal Law-Penal Reform-Habeas Corpus Available to Challenge Conditions of Confinement. *Commonwealth exrel. Bryant v. Hendrick*, 444 Pa. 83, 280 A.2d 110 (1971)," *Rutgers Camden Law Journal*, 120 (Spring 1972), 601-612.

<sup>567</sup> "Prisoner Tells Judges of Beatings," *Bulletin*, (July 19, 1970); "Specter Aide to Arrest 19 Inmates in Probe of Prison Riot," *Bulletin* (August 2, 1970), newsclipping, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4. TUUA.

<sup>568</sup> "Specter Names Committee to Aid Riot Probe," *Evening Bulletin*, (July 24, 1970), newsclipping, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison-Probe (State Senate) 1972. TUUA.

The participation of these respected individuals and their organizations publicly buttressed Specter's position and enhanced the legitimacy of the district attorney's investigation.<sup>569</sup> According to Specter, the Advisory Committee on Prisons would help draft the final report and explore policy questions about "new programs, new legislation and new approaches to correction and rehabilitation of 'offenders'."<sup>570</sup> He even suggested that the committee might consider similar issues in the state's penal system because of its relationship to the county penal system.

As the hearings in Bryant and Goldstein's case recounted the horrors of the riot and life in Holmesburg, Specter accompanied members of his advisory committee on a tour of the prison, complete with a press conference and update on the progress on the investigation.<sup>571</sup> After blocking Allan Davis's access to the prison, the tour reinforced the public image of Specter's control over much of the material and most of the people crucial to any investigation of the riot. Specter positioned himself as focused on future reforms with the aid of a distinguished committee and subtly chided the judges knowledge of prisons and their stake in reform, telling the press that, "it was very refreshing to have the thinking of people who are not in this field every day. They have come up with some very fresh approaches."<sup>572</sup>

At the conclusion of the Common Pleas Court hearings, the judges issued an order granting Bryant's and Goldstein's habeas corpus request and ordered the city to transfer them

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<sup>569</sup> This is a frequent occurrence in the appointment of inquiries. See Ashforth, "Reckoning Schemes of Legitimation" and Gilligan, "Royal Commissions of Inquiry."

<sup>570</sup> "Specter Names Committee to Aid Riot Probe," *Evening Bulletin*, (July 24, 1970).

<sup>571</sup> "Specter Tours Prison With His Committee," (July 29, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison-Probe (State Senate) 1972. TUUA.

<sup>572</sup> *Ibid.*

out of Holmesburg.<sup>573</sup> They also declared a thirty day moratorium on new petitions from inmates, which they expected to eventually receive, and gave the city the same amount of time to make at least some minimum progress on emergency reforms, like reducing Holmesburg's detentioner population.<sup>574</sup> Shortly after this case ended, the district attorney's office began prosecuting inmates for the disturbance while also stating that they would charge guards for brutality if they found evidence that it occurred.

Various versions of how the riot started began to circulate in the press as the criminal trials commenced, most of which attributed the violence to the extremism of a relatively small group of "Black Muslims and Black Panthers."<sup>575</sup> According to testimony from some of these people, they planned the uprising and staged a diversionary altercation in a separate part of the prison to draw security personnel away from the main scene of the uprising in Holmesburg's

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<sup>573</sup> *Commonwealth ex rel. Bryant v. Hendrick*, Crim. No. 1567 (C.P. Phila. County, Aug. 11, 1970), 56-66.

<sup>574</sup> *Ibid.*; "Prison Called 'Disgusting,' Judges Order 2 Transferred," *Bulletin* (August 11, 1970); "DA Appeals Order to Move 2 from Prison," *Bulletin*, (August 12, 1970); "Specter Acts to Stop Shift of 2 Inmates," (August 14, 1970); "30 Days for Prison Progress," (August 14, 1970), newsclippings. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Prisoners 1970. TUUA.

<sup>575</sup> See for instance, "Jurors Divided in Prison Riot Case," (Jan 4, 1971), newsclipping; "Prisoner Tells of Threats in July 4 Holmesburg Riot," *Bulletin*, (Jan 30, 1971), newsclipping; "1<sup>st</sup> Prisoner Guilty in Riot at Holmesburg," *Bulletin*, (January 23, 1971); "Policeman Identifies Prison Rioter," (February 2, 1971), newsclipping; "Officer Says Inmates Used Cleaver in Riot," (February 2, 1971), newsclipping; "Inmate Found Guilty in Riot at Holmesburg," (February 4, 1971), newsclipping; "Inmate Convicted of Stabbing Guard," (Mar 30, 1971), newsclipping; "Prison Rioter Gets 8 to 10 Years," (Jun 30, 1971), newsclipping; "18 More Cited for Rioting at Holmesburg," *Bulletin*, (August 3, 1970), newsclipping; "DA to Seek Life Term for Prison Rioter," *Evening Bulletin*, (May 1, 1972), newsclipping; "23d Prisoner is Convicted in Holmesburg Riots," (May 24, 1972), newsclipping; "Holmesburg Prisoner Convicted of Rioting," (June 16, 1972), newsclipping; "Technicality Frees Inmate in Riot Case," (July 25, 1972), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4 Warrants. TUUA; "They'll Be Arraigned at Prison," (July 15, 1970), newsclipping; "Judge Sets Tuesday Hearing Date for 15 Charged in Holmesburg Riot," *Evening Bulletin*, (July 16, 1970), newsclipping; "'Sick of This Place,' Rioting Prisoner Yelled," *Bulletin*, (July 23, 1970), newsclipping; "DA Prepares Cases Against 33 More in Holmesburg Riot," *Evening Bulletin*, (July 23, 1970), newsclipping; "'Ringleaders' Charged in Riot at Prison," (July 16, 1970), newsclipping; "DA Prepares Warrants for 19 Prisoners," (August 1 1970); "13 Say They Saw Prisoner in Clever Attack at Riot," *Bulletin*, (August 11, 1970), newsclipping; "Prisoner Tells of Stabbings During Riot," *Bulletin*, (August 23, 1970), newsclipping; "8 Inmates Held for Court in July 4 Holmesburg Riot," *Bulletin*, (November 5, 1970), newsclipping; "2 Sentenced in Holmesburg Riots in 1970," (n.d.), newsclipping, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4 Arraignments. TUUA.

cafeteria.<sup>576</sup> Witnesses, victims and assailants also confirmed the racialized nature of the violence, but they noted that it was not simply a matter of “blacks against whites” as Commissioner Rizzo insisted. The small group of African American prisoners did in fact target white inmates, but also attacked African American guards as well as black inmates who refused to join in the plot. According to Kenneth Saunders, the only African American prisoner who testified for the prosecution, one of the prisoners leading the riot yelled at him and other black inmates, “Any of you niggers who are not with us are going to die like these whites.”<sup>577</sup>

Nevertheless, it was unclear how all of the people involved in the plot were affiliated with either the Black Panthers or the Black Muslims or in fact what the nature of these groups was in Philadelphia’s prisons by 1970. The district attorney’s office and the press simply stated that the perpetrators were either Black Panthers or Black Muslims. Any further explanation was unnecessary since these designations alone carried with them the connotations of violent extremism and racial hatred. Yet, people self-identifying as Black Panthers or Black Muslims or simply Muslims in Philadelphia’s prisons accounted for far greater numbers than the small group of people thought to have caused the riot. Since both groups provided a compelling, oppositional black nationalist interpretation of race and imprisonment, they appealed to the racial and masculine identifications of a large number of prisoners in Philadelphia’s prisons. Likewise, it was also well-known among people who lived and worked in prison that these affiliations were often fleeting or motivated by fear and the need for protection for many

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<sup>576</sup> “2d Riot Cited as ‘Diversion’ at Holmesburg,” (July 9, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4. TUUA. “350 Inmates to Leave Holmesburg; Most Will Go to Eastern State,” (July 9, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison-Prisoners 1970. TUUA.

<sup>577</sup> “Prisoner Tells of Stabbings During Riot,” *Bulletin*, (August 23, 1970), newsclipping, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4 Arraignments. TUUA.



inmates. The common term “jailhouse Muslim” captured this temporary identification that often did not survive beyond a person’s release from custody.<sup>578</sup>

Despite major disagreements over politics and movement strategies between the Black Panthers and the Nation of Islam, the preliminary report produced by Assistant District Attorney James Crawford and the press represented these two groups as one large extremist tendency within the prisons. Crawford’s unpublished, but widely read, report cited many of the same lingering problems discussed by Allan Davis two years earlier.<sup>579</sup> Virtually all the people Crawford spoke to claimed that the mixture of prolonged detention and uncertainty frustrated most of the men at Holmesburg and spawned a series of other problems, especially overcrowding.<sup>580</sup> Crawford was careful in his discussion of race, noting especially how the disproportionate numbers of African Americans in the prison affected the politics of race within the institution. However, he accused those he considered instigators—Black Muslims and Black Panthers—of advocating destructive “racial hatred.”<sup>581</sup>

In the context of the Philadelphia’s strident racial politics, which had become increasingly confrontational during the 1960s, the riot and the race of people accused of starting it provided a way for many white Philadelphians to reaffirm their stance with Rizzo’s law and order positions, confirming his frequent conflation of civil rights activism and criminality. The racial distribution of the roles of assailant and victim in accounts of the

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<sup>578</sup> Hornblum, *Sentenced to Science*, 146.

<sup>579</sup> James D. Crawford, *Preliminary Report on the July 4, 1970 Riot at Holmesburg Prison* (Philadelphia: District Attorney’s Office and Police Department, unpublished report, n.d.), 81-102.

<sup>580</sup> Crawford noted that this view was held by “inmates, defense attorneys, prison authorities, social workers and impartial observers alike.” *Ibid.*, 62. Commonly cited poor conditions at Holmesburg included overcrowding, inedible food, vermin, guard brutality and laxity in prison rules.

<sup>581</sup> *Ibid.*, 58-60.

Holmesburg riot are instructive in this regard. Despite evidence – even from Rizzo – that many African American guards were also attacked and that many African American inmates helped white prisoners and likewise incurred the wrath of the instigators, the press rarely depicted African Americans as victims. It was perhaps telling that one of the articles to do so at length was an extended interview with a guard who was stabbed rather than a synopsis of the events in the journalist’s authoritative voice. The guard in question – who was in fact white – acknowledged that the first person to be attacked was one of his African American colleagues. In most public accounts, the true criminals in Holmesburg were black radicals. The city’s press portrayed the victims as less criminal despite the fact that most of them were also prisoners. Descriptions of the stabbing victims sometimes mentioned the reason for their current imprisonment, but rarely explored their pasts beyond that. In contrast, the newspapers listed the assailants’ current reasons for being held in Holmesburg in addition to other aspects of their criminal records. The articles especially noted those inmates who had convictions or current charges for violent crimes, like murder and assault with intent to kill.

Along with Davis’s report on sexual assaults, the competing public statements and accounts emerging in the aftermath of the July 4<sup>th</sup> riot cemented the association of race, criminality and prisons in Philadelphia and Pennsylvania politics. Much like the broader national trends, the image of the prisoner became blacker, more violent and less amenable to rehabilitation.<sup>582</sup> This “typical prisoner” would increasingly inform debates about prison reform in Philadelphia and Pennsylvania and what penal authorities could legitimately claim to

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<sup>582</sup> Jenkins, *Decade of Nightmares*, 12-16, 41-46, 134-151, 236-243; Melossi, “Changing Representations of the Criminal”; Loïc Wacquant, “Deadly Symbiosis”; Sloop, *Cultural Prison*, 62-131.

accomplish with people sent to prison. Many of the suggested avenues of reform following the riot, such as increased rehabilitation and work training programs, sat uneasily with this understanding of many of the people imprisoned in Holmesburg and Philadelphia's other institutions. Nevertheless, advocates of these therapeutic approaches, which included the district attorney's office, argued that the current regime only cultivated hopelessness, resentment and fear.

Aside from Commissioner Rizzo, the prominent public officials and figures involved in the debate about the county penal system rarely questioned rehabilitation as a goal, set of interventions or a coherent penal philosophy. Instead, they depicted it as an effective penal strategy that was unfortunately untried in Philadelphia and to some degree in Pennsylvania in general. It was always at the mercy of other priorities, especially security, and hampered by a lack of funding, support by the city and overcrowding. The knowledge and faith that it worked elsewhere and reflected the consensus among national and international penological professionals buttressed this view. For example, when asked in a televised interview if rehabilitation actually worked anywhere in the world, Assistant District Attorney Crawford replied that it certainly did in places like California, New Jersey and the federal Bureau of Prisons as well as in other countries like Norway, the Netherlands and Sweden.<sup>583</sup> All that was needed was the political resolve to support and fund a similar set of programs in Philadelphia's prisons; the practices, expertise and evidence was already well-established.

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<sup>583</sup> "Prison Showed Bad Judgment, DA Charges," (August 16, 1970), newsclipping, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison-Probe (State Senate) 1972. TUUA.

At the same time, the riot and the political dispute following it eroded the authority of penal experts and many other public officials tasked with managing the prisons and setting penal policy. The events reflected poorly on Mayor Tate, the City Council, the prison's Board of Trustees and Superintendent Hendrick, among others. This process opened up greater discursive space on penal matters for people who had previously remained largely unheard or unacknowledged, especially the voices and perspectives of prisoners and guards. The extensive publicity generated by the July 4<sup>th</sup> disturbance also spawned years' worth of news coverage. The event itself provided a periodization device, which officials, activists and the press often used to mark the progress of penal reform or the lack of it.<sup>584</sup> The riot and the state of affairs just prior to it gradually became the negative penal benchmark to evaluate the city's reform project: it was either ameliorating the conditions that existed on July 4, 1971 or reverting to that state depending on the account, speaker and topic. Within a few months, the state Supreme Court upheld the Common Pleas court habeas corpus order, and several inmates brought another, more comprehensive Eight Amendment suit against the county prison system, which demand drastic intervention to alleviate the poor living conditions.<sup>585</sup> District Attorney Specter decided nearly a year after the riot to drop any attempt to prosecute the guards

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<sup>584</sup> For instance, see "A Visitor Tours Holmesburg Prison, Finds Inmates and Guards Wary," *Bulletin*, (October 5, 1970), newsclippings, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Prisoners 1970. TUUA; "Holmesburg Prison One Year Later" Drifting Back to Pre-Riot Conditions," *Bulletin*, (July 4, 1971); "Since the Holmesburg Outburst: How Penal Reform Has Fared Here," *Bulletin*, (September 9, 1971) newsclipping, Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4. TUUA; "2 Years After Holmesburg Riot: Prison Adds Drug Center, Expands Work-Release," *Philadelphia Inquirer*, (July 23, 1972).

<sup>585</sup> Filed in February 1971, *Jackson et al. v. Hendrick*, 321 A2D 603 (1974) became the basis for over a decade's worth judicially ordered of prison reform and population control. See David Rudovsky, "Litigating Prison Conditions in Philadelphia," *The Prison Journal*, 65 (April 1985), 64-72; William G. Babcock, "Litigating Prison Conditions in Philadelphia: Part II," *The Prison Journal*, 70 (October 1990), 74-85.

responsible for the brutal reprisals following the uprising.<sup>586</sup> Specter publicly acknowledged that such assaults had in fact occurred, but that no one was willing to testify against the guards for fear of additional reprisals.<sup>587</sup> Many critics felt that the district attorney had never intended to bring the guards to trial regardless of the circumstances.<sup>588</sup> Perhaps one of the most significant changes to emerge from the turmoil of the riot and the political fighting afterward was the increasing presence of state government in county penal policy and prison operations.

### **“Corrections is an Entity within Itself”: Expansion and Contention in State Prison Administration**

Despite the ongoing dispute between the state and Philadelphia officials over the disposition of the recently closed SCI Philadelphia, Gov. Shafer immediately permitted Philadelphia prison administrators to temporarily use the aging facility to regain control over the prison population, with “about 30 of Holmesburg’s ‘troublemakers’” being immediately transferred.<sup>589</sup> The governor also offered to accommodate more county inmates in the state’s prisons until the city could provide additional space, and he outlined a plan for other areas of

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<sup>586</sup> “DA Rules Out Trying Guards in Prison Riot,” *Bulletin*, (August 9, 1971), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Riots 1970, July 4. TUUA.

<sup>587</sup> Ibid.; See also James D. Crawford, “Prisoners' Rights - A Prosecutor's View,” *Villanova Law Review*, 16 (August 1971), 1055-1069; Joseph R. Brierley, Victor Rabinowitz, Edmund B. Spaeth Jr., James D. Crawford and Victor Taylor, “Prisoners' Rights and the Correctional Scheme: The Legal Controversy and Problems of Implementation,” *Villanova Law Review*, 16 (August 1971), 1088-1118.

<sup>588</sup> See the exchange during a panel discussion on prisoner rights at Villanova University in 1971 reprinted in Joseph R. Brierley, Victor Rabinowitz, Edmund B. Spaeth Jr., James D. Crawford and Victor Taylor, “Prisoners' Rights and the Correctional Scheme.”

<sup>589</sup> “Gov. Shafer Asks Prison Take-Over: Move Follows Riot by 400 in Philadelphia Jail,” *New York Times* (July 12, 1970); News Information for Release to Sunday Media, August 23, 1970. RG-15 Attorney-General, General Correspondence, Corrections, box 4, folder “Corrections-Criminal Justice Improvement Plan for Phila.-Special File”. PSA; “City to Transfer 350 From Holmesburg,” (July 10, 1970), newsclipping and “350 Inmates to Leave Holmesburg; Most will Go to Eastern State,” *Evening Bulletin*, (July 9, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Prisoners 1970; Crawford, *Preliminary Report on the July 4, 1970 Riot*, 30, 110.

immediate state assistance to county prison officials, including more correctional personnel and training, developing trade and education programs for prisoners as well as providing more funds and people to Philadelphia's judiciary to reduce the number of detentioners.<sup>590</sup> However, Shafer and officials in the Bureau of Correction believed that the difficulties of Philadelphia's prisons and similar problems in other county facilities could only be solved by bringing county penal operations under state authority.<sup>591</sup>

Gov. Shafer used the Holmesburg disturbance to highlight the widespread difficulties in other counties as well as in the state's prisons. In an address to the General Assembly on July 14<sup>th</sup>, the governor outlined a proposal for reorganizing state government by abolishing or consolidating some units and creating four new departments, chief among which was a new Department of Corrections.<sup>592</sup> This was perhaps the most visible and controversial of his proposals because it involved stripping the counties of significant authority, but Shafer argued that the riot at Holmesburg made it imperative. "The need to create a single agency, responsible for the incarceration, treatment and rehabilitation of criminals, both young and old, has become abundantly clear," Shafer told the legislators.<sup>593</sup> "The recent riot at Holmesburg in

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<sup>590</sup> "Shafer Offers to Take 500 at Holmesburg," *Evening Bulletin*, (August 20, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Prisoners 1970; Governor's Press Release, August 20, 1970, RG-15 Department of Justice, Attorney General, General Correspondence, Corrections-Credit B5, f-Holmesburg. PSA.

<sup>591</sup> "Shafer to Seek End of County Prison System," *Bulletin*, (July 7, 1970), newsclipping. Bulletin Mounted Clippings, box 100, folder: Clips Bulletin Holmesburg Prison--Prisoners 1970.

<sup>592</sup> "Shafer Urges Reform in 'Last Message,'" *Pittsburgh Press*, (July 14, 1970); "Shafer Plan Urges Government Reform," *Pittsburgh Post-Gazette*, (July 15, 1970); "Most Legislative Leaders Backed Shafer on Reorganization Program," *Observer Reporter*, (July 15, 1970); "House Democrats Balk at Shafer Reform: Set Own Path to Streamline State Government," *Pittsburgh Press*, (July 19, 1970); "Task Forces Appointments Are Questioned," *Pittsburgh Press*, (July 23, 1970).

<sup>593</sup> Commonwealth of Pennsylvania, House of Representatives, Committee on Law and Order, "Report on Administrations Recommendation for the Establishment of a Department of Corrections," September 15, 1970. RG-15 Dept of Justice, Att-Gen, Gen. Corresp, Corrections, box 4, folder: Corrections Task Force, PSA.

Philadelphia is a symptom of the failure of the present prison system."<sup>594</sup> The violence underscored the bureaucratic difficulties that had hindered prison reform for years, even when most parties agreed that Philadelphia's prisons were deeply troubled.

Since people sentenced to state prison usually passed through county institutions before arriving in state custody, there had always been some degree of integration between the two levels, but counties were independent of each other as well as the state. The state legislature and administration set standards for county jails and the Bureau of Correction conducted routine inspections of county facilities, but they lacked any authority to mandate change. This meant that the Bureau of Correction often negotiated with 67 separate jurisdictions over both standards and the practical matters of inmate custody transfer, like the sharing of information on inmate health, classification and outstanding warrants and detainers. By the 1960s, the disputes between the state agency, with its new emphasis on classification, training and education, and the counties became more commonplace and public. As courts became more willing to intervene in penal matters, officials in successive administrations also began to worry about the potential for costly litigation that would ultimately burden state coffers.

If one of the unspoken rationales for the regional jail plan was to tip the balance of correctional jurisdiction toward Harrisburg, Gov. Shafer now proposed settling the matter once and for all by absorbing all the county facilities scattered across the commonwealth. The new agency envisioned by Shafer, Prasse and his soon-to-be replacement, Allyn Sielaff, would consolidate several other independent agencies and functions, like probation and parole and juvenile justice, within a single cabinet-level Department of Corrections. Shafer argued that this

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<sup>594</sup> Ibid.

restructuring would enhance the penal bureaucracy's visibility vis-a-vis other cabinet departments, conferring upon it a degree of importance that would also prioritize its concerns, augment its budget and enable it to hire more and better qualified people.<sup>595</sup> Accordingly, Shafer ordered a major assessment of the state's prisons by a task force of experts drawn from numerous disciplines, agencies and organizations with the goal of laying the intellectual and pragmatic groundwork for elevating the Bureau of Correction to a cabinet level department and expanding the reach of its authority.<sup>596</sup> The foreboding image of future prison turmoil embodied by the violence at Holmesburg, thus, became the initial impetus for a massive expansion and revalorization of penal authority at the state level.

The awkwardly-named Legislative-Executive Task Force on Reorganization of Government (Department of Corrections) held public hearings across the state, seeking testimony from a wide-range of criminal justice officials, social welfare organizations, and other concerned groups and people. However, the composition of the Task Force and many of the witnesses that later appeared before it, largely came from administrative backgrounds in public service. The Task Force also sought statements from prominent penal experts in other states and national professional associations, inviting them to share their knowledge of penal organizations across the country. Somewhat ironically, the written statement of one such outside expert, Russell Oswald, the leader of New York's State Board of Parole, would be widely

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<sup>595</sup> Draft copy of "Toward Reducing Crime in Pennsylvania: Report of the Legislative-Executive Task Froce on Reorganization (Corrections)," (September 15, 1970), 26-31. RG-15 Attorney-General, General Correspondence, Corrections, box 4, folder: Corrections Task Force. PSA.

<sup>596</sup> Raymond P. Shafer to Fred Speaker, July 14, 1970. RG-15 Attorney-General, General Correspondence, Corrections, box 4, folder "Corrections Task Force." PSA.



circulated among Task Force members.<sup>597</sup> Oswald, who was appointed as New York's Commissioner of Correctional Services soon afterward, would be publicly discredited the following year during the Attica rebellion and massacre. In the summer of 1970, however, he was widely considered to be an innovative thinker in the field of corrections and had previously led penal agencies in Wisconsin and Massachusetts.<sup>598</sup> He recently co-chaired a panel in New York that undertook a consolidation study similar to the one in Pennsylvania. It's clear from Oswald's statement that many of the concerns about a fragmented penal apparatus expressed by Gov. Shafer were widely discussed among criminal justice experts across county at this time. Like his counterparts in Pennsylvania, Oswald argued that truly effective inmate rehabilitation that could reduce recidivism could only be effectuated within a unified penal bureaucracy that could mobilize sufficient expertise and resources, reduce bureaucratic conflicts between service units and eliminate the duplication of services.<sup>599</sup>

Some employees of the Bureau of Correction, with frontline experience in the prisons, echoed Oswald's views and argued that the current moment provided them with the perfect opportunity to enhance the place of penal knowledge and prison administration in state government. Psychologist Jay Roseman, for instance, complained during a hearing that presently there were no senior state officials with sufficient knowledge of corrections.<sup>600</sup>

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<sup>597</sup> There are multiple copies and sections of Oswald's statement in RG-15 Attorney-General, General Correspondence, Corrections, box 4, folder: Corrections Task Force. PSA.

<sup>598</sup> Note from William G. Nagel, August 28, 1970. RG-15 Attorney-General, General Correspondence, Corrections, box 4, folder: Corrections Task Force. PSA.

<sup>599</sup> The Task Force heard from several other outside experts, including: Peter Bensinger (Department of Corrections, Illinois), Charles P. Chew (Probation and Parole Board, Virginia), Sanger B. Powers (Division of Corrections, Wisconsin), Walter G. Sartorius (Association of Paroling Authorities), E. Preston Sharp (American Correctional Association), Alfred B. Vuocolo (Superintendent, Training School for Boys, New Jersey).

<sup>600</sup> Testimony of Jay I. Roseman. RG-15 Attorney-General, General Correspondence, Corrections, box 4, folder: Corrections Task Force. PSA.

Likewise, the Attorney-General, who was responsible for the Bureau, often knew very little about prison issues. This lack of senior penal expertise meant that the Bureau of Correction and related agencies suffered from poor political and financial support. Since “Corrections is an entity within itself,” Roseman argued that it required a cabinet-level expert with direct access to the governor.<sup>601</sup>

However, some witnesses worried that the proposed new agency, if raised to the cabinet level, would become subject to the normal political conflict that came with such a visible position close to a governor.<sup>602</sup> The same move to prioritize corrections, essentially shifting it closer to attention and funding, also meant that the penal bureaucracy would become an easier target for scrutiny and attacks by political opponents of the administration or even members of rival departments. Prison administration could become, as it was in the past, deeply politicized by its re-insertion into the field of political competition that surrounded elected officials and their high profile, proximate appointees. The Bureau of Correction, created in the early 1953, had been far more insulated from this type of conflict than many other state departments and agencies. Commissioner Prasse, more a penal expert than politician, remained in his position through five different administrations with both Democratic and Republican governors. Such tenure by a correctional expert would become simply unthinkable in this new environment.

Other people challenged the state’s effort to absorb the county penal systems. Shortly after Shafer appeared on a July 12<sup>th</sup> television program discussing penal policy, John Dougherty,

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<sup>601</sup> Ibid.

<sup>602</sup> For instance, see the statements of Anthony A. Guarna and Robert E. Woodside. RG-15 Attorney-General, General Correspondence, Corrections, box 4, folder: Corrections Task Force. PSA.

a senior probation and parole officer and past president of the Pennsylvania Association of Probation, Parole and Correction, wrote to the governor, disputing the wisdom of creating a department-level penal agency.<sup>603</sup> Dougherty argued that the proposed absorption of county jails by the state would destroy local autonomy and democratic government. He claimed that in his home county, Berks, the local jail had instituted numerous beneficial programs with the consent of local taxpayers. Dougherty feared that if the state superseded such local decision-making and funding, most of the state's counties would, in effect, finance the penal policies of the state's two largest urban counties, Philadelphia and Allegheny (Pittsburgh), with their comparatively much larger prisoner populations.

Gov. Shafer used the fallout from the Holmesburg riot to highlight the problems of crime and the criminal justice system for a national audience as well. Shafer was the sitting Chairman of the Committee on Law Enforcement, Justice and Public Safety of the National Governor's Conference. This position gave him an enormous platform to push his vision of major public investment in law enforcement and corrections to executives from across the country. On August 20, 1970, he presented a discussion paper to the 62nd meeting of the conference at the Lake of the Ozarks in Missouri titled, "Highlighting the Significance of Corrections in the Criminal Justice System." In prepared remarks, Shafer noted that the "Evidence of the failure is all around us...The purpose of our corrections system is to protect

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<sup>603</sup> John F. Dougherty to Raymond P. Shafer, July 16, 1970. RG-15 Attorney-General, General Correspondence, Corrections, box 4, folder: Corrections Task Force. PSA.

society by deterring crime and by correcting the offender. It does neither successfully."<sup>604</sup>

Shafer went on to argue in the paper that:

The present system of warehousing and caging rather than curing and rebuilding offenders has not worked since prisons (some still being used) were established in the US in the 1800's, despite many reformers and dedicated prison officials' efforts. Consider these high-minded principles and goals:

- Reformation, not vindictive suffering, should be the purpose of the penal treatment of prisoners.
- The prisoner should be made to realize that his destiny is in his own hands.
- Prison discipline should be such as to gain the will of the prisoner and conserve his self respect.
- The aim of the prison should be to make industrious free men rather than orderly and obedient prisoners.

These principles were adopted in 1870 by the forerunner of the American Correctional Association. Obviously this commitment to humane, enlightened treatment of offenders has not resulted in the improvement of all corrections. Reform is possible but it will take strong political leadership at all levels of government.<sup>605</sup>

Shafer, like many liberal penologists and criminologists, saw much of this failure stemming from "a peculiarly American unwillingness to base penal philosophy on reason rather than emotion."<sup>606</sup>

Seeking vengeance over everything else, penal policy across the country failed to live up to its stated commitment to rehabilitation and produced greater recidivism among people

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<sup>604</sup> News Information, P.M. News Media Release, August 12, 1970 – Governor Raymond P. Shafer, of Pennsylvania, Chairman, Law Enforcement, Justice, and Public Safety, National Governors' Conference. RG-15 Dept of Justice, Att-Gen, Gen. Corresp, Corrections, box 4, folder: corrections-Criminal Justice Improvement Alan for Phila.-Special File. PSA.

<sup>605</sup> Raymond P. Shafer, "Highlighting the Significance of Corrections in the Criminal Justice System," Discussion Paper Offered by the Committee on Law Enforcement, Justice, and Public Safety, National Governors' Conference, (August 1970), 2-3. RG-15 Dept of Justice, Att-Gen, Gen. Corresp, Corrections, box 4, folder: corrections-Criminal Justice Improvement Alan for Phila.-Special File. PSA.

<sup>606</sup> Ibid., 6.

subjected to prisons. Shafer saw the pragmatic solution to this problem in the current emphasis on community corrections in progressive penology circles. Citing Myrl Alexander, the former director of the federal Bureau of Prisons, Shafer told his colleagues that they, "“must blur the line between the institution and the community” if they were to spare people “the traumatic transition from prison to society”<sup>607</sup> Shafer argued that:

Offenders must maintain constructive community ties. The programs and techniques of community-based corrections are known. They include probation, parole, half-way houses, work release, short term-community linked residential facilities and special programs outside the correctional system for alcoholics, drug abuser and other truly sick offenders.<sup>608</sup>

While he acknowledged that secure confinement was still needed for the few, truly dangerous offenders, the vast majority of offenders would be more effectively dealt with in the community. But, to achieve this, Shafer emphasized, required strong leadership by executives at the state-level who needed to both convince the public of the need for different rationales for penal policy and demand greater performance from correctional officials. Shafer’s press release succinctly stated that, “There must be revolutionary changes in our thinking and our laws. We must stop acting as though repression, legislative fulmination and long prison sentences will solve the crime problem.”<sup>609</sup>

In Pennsylvania, the final report of Shafer’s Task Force, predictably, recommended a new cabinet-level Department of Corrections with greatly expanded powers, combining adult

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<sup>607</sup> Ibid., 11.

<sup>608</sup> Ibid., 7.

<sup>609</sup> News Information, P.M. News Media Release, August 12, 1970 – Governor Raymond P. Shafer, of Pennsylvania, Chairman, Law Enforcement, Justice, and Public Safety, National Governors’ Conference. RG-15 Dept of Justice, Att-Gen, Gen. Corresp, Corrections, box 4, folder: corrections-Criminal Justice Improvement Alan for Phila.-Special File. PSA.

corrections, probation and parole and the juvenile justice system.<sup>610</sup> The Task Force meetings and their final report brought a sustained level of public attention on corrections as a state activity and major priority, and it also led to more debate in the General Assembly on such matters. Yet, while generally supportive of Shafer's plans, the House of Representatives failed to pass any legislation based on the Task Force's work before the end of Gov. Shafer's time in office.<sup>611</sup> The legislature proved reluctant to drastically changing the structure of government in such a short period of time, and some members, especially K. Leroy Irvis, also wanted to tie administrative restructuring to a major commitment to prison-based, rehabilitation programs and community corrections.<sup>612</sup> Over the course of the next decade, the General Assembly would consider several bills designed to create a new corrections department. Shafer's successor, Gov. Milton Shapp, also supported the creation of a cabinet level penal agency as did Gov. Dick Thornburgh, who took office in early 1979. This debate, often mired in the details of administrative structure, became more polarized by the late 1970s, as sharp divisions over penal philosophies crystalized.

### **A Public of Penalty**

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<sup>610</sup> "Toward Reducing Crime in Pennsylvania: A Report of the Legislative-Executive Task Force on Reorganization (Corrections), September 15, 1970, Draft – For Discussion Purposes Only." RG-15 Dept of Justice, Att-Gen, Gen. Corresp, Corrections, box 4, folder: Corrections Task Force. PSA.

<sup>611</sup> "Ongoing Correctional Reform," *Pittsburgh Post-Gazette* (December 21, 1970); "Shame of the County Jails in State Kept Under Wraps; Reforms Slow in Coming," *Gettysburg Times*, (September 7, 1970); "Before the Task Force: Corrections Unit Pushed for the State," *Pittsburgh Press*, (August 21, 1970); "Panel Downs Plan to Add New Bureau," *Gettysburg Times*, (August 20, 1970); "Correction Dept. Concept Dies," *Pittsburgh Press*, (August 20, 1970).

<sup>612</sup> Commonwealth of Pennsylvania, House of Representatives, *Legislative Journal* v. 1, n.138 (Monday, September 14, 1970), 2814; Irvis H.R. 479 press release (marked: For Use Sunday, February 25, and Thereafter) and "Prison Reform Law" KDKA (Pittsburgh) radio and television editorial, broadcast September 26-28, 1970, script in K. Leroy Irvis Papers, 1979 Addition, 1945-1979 Political Subject Files, 1945-1978, box 5, folder 35. UPASC.

The Holmesburg riot exemplified the emerging visibility of prison matters during the late 1960s and 1970s. Controversial events like this became more common and generated multitudes of public accounts of life and work behind prison walls. While periods of intense prison unrest and rapid reform had occurred as recently as twenty years before, the public debate around such events and the variety of accounts were much more restrained. Additionally, the Bureau of Correction's reforms of the 1950s, while framed in the humanitarian language of rehabilitation, relied on a tightly-controlled, authoritarian governing style, personified by the charismatic leadership of Commissioner Arthur Prasse.<sup>613</sup> By the 1970s, this sweeping, top-down style of bureaucratic governance of penal affairs encountered explicit, and often public, resistance by lower level staff, prisoners, legislators, judges, the media and numerous interest groups. In this respect, many of the processes of past penal change transformed, becoming much more democratic, but simultaneously more conflictual, controversial and protracted.

While these different groups held conflicting goals, the one thing they shared in common was the desire to craft and control public representations of what life in prison was like, what such institutions were supposed to do and what they failed to accomplish as a means of securing reform or radical change. Disagreements over policies, whether they involved major statewide legislation or idiosyncratic practices at a particular prison, quickly circulated in print and broadcast media. While journalists and editors became more interested in publishing prison stories, the disputants themselves also increasingly turned to a receptive media to air

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<sup>613</sup> My characterization of Prasse follows from James Jacobs's discussion of the correctional leadership of one of Prasse's most well-known contemporaries - Joseph Ragen. See, Jacobs, *Stateville*, 28-51.

their grievances in the hopes of forcing action by senior corrections officials, legislators, the governor and the broader public. The Bureau of Correction also played a large part in generating this new degree of publicity in the way they used the media to draw attention to the Bureau's new rehabilitation and community corrections programs and invite to greater public participation and support. Public relations campaigns like this increased during the latter years of Commissioner Arthur Prasse's time in office, but they became especially prominent in the reformist administrations of his immediate successors, Allyn Sielaff and Stewart Werner.

Many of the new accounts of prison originated with the activities of incarcerated people, especially their efforts to organize collective forms of resistance and force change through litigation, legislation and more direct forms of protest, like sit-downs strikes. These tactics paralleled the efforts of activists outside the prison, many of whom were also former prisoners. Empowered by the broader civil rights and anti-war movements of the 1960s, several organizations led by former prisoners formed in Philadelphia and Pittsburgh during the late 1960s and early 1970s. The Barbwire Society, Community Assistance for Prisoners, and the Prisoners' Rights Council were perhaps the most prominent of these organization in Philadelphia, but there were many others active in the area.<sup>614</sup> The Prisoners' Rights Council's Victor Taylor and Allan Lawson became especially well-known for their public education and media outreach efforts regarding prisoners' rights. Taylor, Lawson and other members of the Prisoners' Rights Council served time together in local Philadelphia prisons and at SCI Graterford, often participating in the latter prison's inmate-operated law clinic. In Pittsburgh,

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<sup>614</sup> "Ex-Prisoners Speak Out for The 'Forgotten,'" *Sunday Bulletin*, (February 14, 1971), newsclipping. Bulletin Clippings (loose), Bulletin Clips—Jones, Leodus—Barbwire (sic) Society. TUUA.



penal activists also formed several different groups and often worked jointly in coalition with many older labor activists, especially those associated the Catholic Church's Pittsburgh Diocese such as Monsignor Charles Owen Rice. The most prominent organization with numerous former prisoners was the Vibration II Committee on Penal Reform, which emerged after the destruction of Vibrations, an inmate-run journalism collective at SCI Pittsburgh.

These organizations were relatively new participants in the state's penal politics and often more radical than established penal reform and civil liberties groups, like the American Civil Liberties Union, the American Friends Service Committee and the Pennsylvania Prison Society. Leaders in these older organizations were well-known to many politicians and bureaucrats, having cultivated government contacts over many years of lobbying and consultation. The newer groups, pursued quite styles of political activity, including direct forms of protest, and were often unknown to their political and bureaucratic adversaries.<sup>615</sup> The political horizons of the more radical groups extended much further than the former organizations as well, often framing their activities in relation to the civil rights and Black Power movements in the United States and wars of decolonization abroad. A programmatic statement in the newsletter of Vibration II captures these views:

Attica, San Quentin, My Lai, and Western Pennsylvania are the very same. Vibrations II is about progressive, positive and real change in all the colonies of this land. Those who are in economic, political, social and penal prisons need some measure of relief. We know that in order to remedy or correct any one prison, we must necessarily deal with them all!<sup>616</sup>

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<sup>615</sup> Some participants in radical prison movement organizations would have been known to government official through their criminal and prison records.

<sup>616</sup> *Vibration II Committee for Penal Reform Newsletter*, 2 (October 1971). Charles Owen Rice Papers, Subject Files, 1894-2005, box 17, folder 1. UPASC.

Such organizations may have pressured officials in Harrisburg and protested outside the walls of specific prisons within the state, but they viewed such institutions as instruments of oppression in service of a national and transnational ruling elite, dedicated to maintaining an exploitative racial and class order on a global scale.

Despite differences with older penal reform and civil liberties groups, these newer organizations usually maintained working relationships with the older groups and often benefitted from their advice and resources. The board of directors for the Prisoners' Rights Council, for instance, included numerous members of established organizations, like Spencer Coxe of the Philadelphia chapter of the ACLU, whose long experience and professional contacts facilitated some of the organization's projects. In some cases, coalitions involving all of these groups over specific issues like the use of solitary confinement helped push what would have otherwise been marginal critiques of the prison into direct dialogue with state officials.

The prominence of prison issues in public life was also apparent in the increased volume of news media reporting devoted to state and local prisons in Pennsylvania. Prisons articles mainly appeared in four broad, often interrelated areas: (1) the new community corrections programs and liberalization of prison regimes instituted by the liberal administrations of Commissioner Allyn Sielaff and later Commissioner Steward Werner; (2) descriptions of poor prison conditions; (3) reports of prison activism, protests and litigation by organizations and individual prisoners; and (4) reports of criminal activity by inmates as well as prison violence, especially involving riots and the deaths of inmates and staff. Many accounts included all four facets with authors often placing the blame for crime and violence behind bars on the first

three areas. Such associations resembled the linkages many conservatives drew between liberal, Great Society social programs and crime, urban riots and political protest movements. While the diverse (and at times conflicting) penal reform agendas of liberal penologists, prison reform organizations, and more radical prison activists focused more on the inhumane effects of imprisonment and poor prison conditions, they were haunted by the issues of prison violence and institutional disorder, which gradually became tethered to conservative, custody-oriented framings and solutions.

Long genealogies of media reports about certain prison issues and events, especially those involving intractable problems, stretched throughout the decade and into the 1980s with each successive set of articles building on preceding press accounts. For several years following the July 1970 disturbance at Holmesburg, for instance, the fates of its participants, litigation and reform efforts appeared recurrently in the city's newspapers. Retrospective articles periodically punctuated these accounts, explicitly exploring what had changed since the riot, taking stock of the progress of reform and its frustrations. In November 1970, the *Philadelphia Inquirer* published an article tellingly titled, "Few Improvements Made Since Holmesburg Riot."<sup>617</sup> The authors, Mike Willmann and Jerry Heymsfeld recounted many of the same complaints that emerged in the immediate aftermath of the riot: rat infestation, beatings, non-existent classification system for detentioners, and a lack of enough guards. However, Willmann and Heymsfeld also noted the positive reduction in overcrowding. A couple of years later, the *Inquirer* told readers that Holmesburg had since instituted and expanded a number of programs, including drug treatment and work release, with the aid of federal funds from the

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<sup>617</sup> "Few Improvements Made Since Holmesburg Riot," *Philadelphia Inquirer*, (November 1, 1970).

Law Enforcement Assistance Administration.<sup>618</sup> Nevertheless, the overall dismal assessments of these articles invited future reevaluations of the prison and its distance from the pre-riot status quo.

These assessments, one from a few months after the riot, the other two years later, clearly framed the prison and its conditions within a liberal reform narrative. Holmesburg either made progress by modernizing its operations or it remained temporally and socially mired in the punitive practices of the past that simply warehoused idle prisoners in dangerous conditions. The administrators interviewed for the articles, especially Superintendent Hendrick and his successor, Louis Aytch, each described revelatory significance of the July 4th disturbance and the subsequent Common Pleas Court investigation in the arc of prison reform. They all agreed with many of the criticisms leveled at the prison system and said that the violence finally marshaled the political and financial support to address longstanding and well-known problems: “According to Ernest W. Goldsborough, assistant superintendent for programs of the county prisons, the value of the 1970 riot was that, ‘It brought to light that something was very wrong.’”<sup>619</sup> Despite this reformative framing of the disturbance, the *Inquirer* observed that, “The most visible reminder of the violence that erupted two years ago at Holmesburg Prison is a small, maximum-security area at the nearby Detention Center where seven young, white inmates now live.”<sup>620</sup> Severely beaten on July 4, 1970, these particular inmates were too vulnerable to live in general population; protection through segregation was

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<sup>618</sup> “2 Years After Holmesburg Riot: Prison Adds Drug Center, Expands Work Release,” *Philadelphia Inquirer*, (July 23, 1972).

<sup>619</sup> *Ibid.*

<sup>620</sup> *Ibid.*

the only way to address certain aspects of the prisons' racial polarization and the realities of sexual violence.

The unresolved nature of many of these specific topics, the activism and judicial action surrounding them and the continuing editorial decisions to highlight such issues propelled the continual coverage of prisons in Pennsylvania's major dailies, television and radio journalism and many smaller newspapers located near state prisons during the 1970s. These accounts, which formed the main source of knowledge about the state's penal system for most people in the state, stressed the horrific nature of the institutions, the brutality many of the people working or living in them and stressed the challenges and shortcomings of reform and those tasked with such endeavors. Even articles that favorably depicted new programs, like work furloughs, often framed their rationale and success as overcoming the destructive aspects of incarceration and the limited ability of correctional officials to reform people in institutional settings.

The negative qualities of such depictions, rather than being simply a shortcoming in journalism as it's often portrayed, was actually intrinsic to their newsworthiness and accelerated their dissemination in public discourse. According to anthropologist Andrew Arno, news stories appeal to interested consumers largely through mobilizing feelings of threat, fear, relief and security.<sup>621</sup> Events and issues that lack these valences are largely unremarkable in this medium. As much as journalists and editors at major dailies showed a greater interest in prisons during the late 1960s and 1970s, the penal system itself became a source of increasingly newsworthy events by the criteria outlined by Arno. Media accounts of state and county

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<sup>621</sup> Andrew Arno, *Alarming Reports: Communicating Conflict in the Daily News* (New York: Berghahn Books, 2011).

prisons emphasized institutional disorder, strife and violence, like the reporting on Holmesburg, or rested on the background threat of such turmoil. Because of the focus on such threats, such accounts also tapped into broader insecurities of white and middle class readers that had been nurtured by recent histories of urban rioting, similar reports of increasing street crime and high profile incidents of official corruption or incompetence.<sup>622</sup> The result was a broad, diverse and at times deeply conflicting reform debate where nearly every participant agreed that something was wrong with the state of the prisons and this was reflected in negative media coverage.

The thickening of prison stories in circulation during the 1970s can also be glimpsed behind the scenes, so to speak, in the structure and productive capacities of the archive of the *Bulletin*, one of Philadelphia's main daily broadsheets. The *Bulletin's* staff employed an extensive system of filing cabinets to manage the history of its reporting. Each cabinet contained envelopes, organized by topic, with newsclippings from the *Bulletin*, as well as from competing newspapers like the *Philadelphia Inquirer*, arranged in a loose chronological order.<sup>623</sup> From the late-1960s onward, the envelopes on prison matters in this data management system bulged with articles as the newspaper's coverage of such stories increased. The number of

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<sup>622</sup> Thompson, "Why Mass Incarceration Matters; Simon, *Governing Through Crime*; Jenkins, *Decade of Nightmares*; Flamm, *Law and Order*; Gottschalk, *The Prison and the Gallows*; Tonry, *Thinking about Crime*; Garland, *The Culture of Control*; Ted Gest, *Crime & Politics: Big Government's Erratic Campaign for Law and Order* (Oxford: Oxford University Press, 2001); Bruce Schulman, *The Seventies: The Great Shift in American Culture, Society, and Politics* (New York: Free Press, 2001); David Brian Robertson (ed.), *Loss of Confidence: Politics and Policy in the 1970s* (University Park: Pennsylvania State University Press, 1998); Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (New York: Oxford University Press, 1997); Frank Anechiarico and James Jacobs, *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective* (University of Chicago Press, 1996); Stuart A. Scheingold, *The Politics of Street Crime: Criminal Process and Cultural Obsession* (Philadelphia: Temple University Press, 1991); Stuart A. Scheingold, *The Politics of Law and Order: Street Crime and Public Policy* (New York: Longman, 1984).

<sup>623</sup> By "loose" I mean to indicate that some of the articles in the envelopes are out of a daily order, but are largely consistent by a weekly, monthly and yearly linear chronology.

entries under established prison-related categories grew in abundance, and new penal, filing categories also appeared, such as a dedicated envelop for the Inmates Action Council, an organization of Holmesburg inmates formed in the mid-1970s, which filed several legal challenges against the county.

This system enabled the *Bulletin's* writers to produced densely interwoven press accounts of prisons and penal policy. Nearly any article on Holmesburg prison, for instance, contained a context or background paragraph, sometimes more than one, that summarized many of the main points of immediately preceding articles. With a perusal of past articles in the files, the *Bulletin's* staff succinctly narrated complex events, like the Holmesburg riot and later reform efforts, setting up more current information about the prison. As journalists published new stories about Holmesburg, they also filed a copy in the dedicated envelopes. Since such stories appeared over many different issues of the newspaper, many readers might not have noticed this explicit, intertextual relationship, but would nevertheless recognize that this particular issue was the subject of previous and ongoing press coverage. The short historical narratives that the archive supported enabled many readers to frame any particular report within a contemporary penal history, which rarely stretched back beyond 1960. The shallow historical depth of most these articles occluded similar difficulties in past decades and thereby underpinned the immediacy of the present threat. Such journalistic conventions enhanced the sense that something profoundly new and perverse was occurring in both the criminal justice system and the patterns of crime itself.

**SCI Pittsburgh: "A Monument to Ignorance or Indifference"**

“If there is a slum within the Commonwealth's correctional system, it exists behind the walls at Pittsburgh.”<sup>624</sup>

The numerous difficulties of Philadelphia's prisons publicized by Allan Davis's sexual violence report and the 1970 riot resembled some of the problems besetting the state's prisons. However, many of the latter institutions did not receive a comparable level of publicity because they were located further away from large population centers, the media and urban-based organizations with an interest in prisons. The major exceptions to this were SCI Graterford, located about thirty-five miles north of Philadelphia, and SCI Pittsburgh, situated on the north shore of the Ohio River within the city of Pittsburgh. The Bureau of Correction used these two maximum security institutions as terminal points for many of the prisoners that staff considered to be dangerous or otherwise difficult to handle.<sup>625</sup> Many Philadelphia-based activists visited prisoners at SCI Graterford and journalists often covered events at the institution, but its distance from the city still precluded the kind of attention that its counterpart in the western part of the state often received.

SCI Pittsburgh, often called the Western State Penitentiary or simply Western Pen, was more thoroughly enmeshed in local politics, activism and journalism as well as the city's

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<sup>624</sup> Allyn R. Sielaff and Stewart Werner to J. Shane Creamer, July 13, 1972. RG-15 Dept of Justice Attorney-Gen Correspondence Recom to close SCI PGH 1972 Series 200 72-04-12-200.

<sup>625</sup> SCI Graterford was the larger of the two, capable of holding over 1,600 prisoners by the early 1970s, while SCI Pittsburgh, the oldest prison in use, could confine about 1,065 people at the beginning of the decade. Graterford was a medium-security prison for most of its operational life up until this point, but after the closure of SCI Philadelphia in 1970, the Bureau of Correction began the process of enhancing security at Graterford to accommodate prisoners classified for a maximum-security regime. During the early-to-mid-1970s, each prison had unused cell space, but this disappeared over the course of the decade as prisoner populations grew. By the end of the 1970s, Graterford would hold around 1,800 people and Pittsburgh confined nearly 1,200. See Pennsylvania Bureau of Correction, *Monthly Populations in the Bureau of Correction, June 1970*, v.16, n.4 (Camp Hill: Bureau of Correction, 1970), 4; Pennsylvania Bureau of Correction, *1979 Annual Statistical Report* (Camp Hill: Bureau of Correction, 1980), 20.



support infrastructures of social welfare, philanthropy, education and medicine. However, it was a deeply troubled facility. Built along the Ohio River, just north of downtown Pittsburgh in the late 19<sup>th</sup> century, the massive, fortress-like prison was excessively expensive to maintain. Flooding from the river was a recurrent issue, as was severe cold, ice damage, and sewage disposal, all of which often hampered the full use of the prison and contributed to its reputation for harsh living conditions.<sup>626</sup> It was the scene of the worst rioting in the state's prisons in 1952, which led to a sweeping administrative reorganization that created the Bureau of Correction. By the late 1960s, SCI Pittsburgh became increasingly difficult to control compared to many of the state's other prisons. After the closure of SCI Philadelphia in 1970, SCI Pittsburgh became the oldest operational prison among the Bureau of Correction's institutions; many of the same evocative images correctional officials used to describe the limitations of Eastern State Penitentiary's antiquated, inhumane plant applied as well to SCI Pittsburgh. Its design and construction reflected the prisoner management practices of the 1870s and 1880s, when inmates spent considerably longer periods in cells. A hundred years later, this meant that previously innocuous spaces in the prison now became risky areas with poor lines of sight that were difficult for staff to supervise with inmates spending a greater amount of their time outside their cells. The prison's two large, multi-tiered cell blocks also presented supervisory challenges for staff because of the numbers of prisoners held in them and the difficulty of traversing and securing the narrow walkways on the tiers.

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<sup>626</sup> John C. McWilliams, *Two Centuries of Corrections in Pennsylvania: A Commemorative History* (Harrisburg: Commonwealth of Pennsylvania, 2002), 37-38; Pennsylvania Department of Corrections, "Western Pen/SCI Pittsburgh--Troubled from the Beginning," *Correctional Newsfront*, (March, 2004), 27-28.

With the appointment of a reformist superintendent, Joseph Brierley, in December 1968, prison security became a major point of contention between the prison's administration and the guard force. Brierley was considered to be a liberal penologist among many of his colleagues. He instituted greater recreational activities for inmates and shared the Bureau's emphasis on rehabilitation, including supporting the creation of a "good time" system for prisoners to earn reductions in their minimum sentences through good behavior and progress in rehabilitation programs.<sup>627</sup> Such views soon earned him the animus of many of the guards who felt that Brierley had created a dangerous situation at the prison by relaxing security too far. Perhaps nothing exemplified the contentious of this situation as much as Brierley's attempt to establish a representative inmate organization to advise the prison's administration, the Bureau of Correction, General Assembly and governor about the views of the prison's residents.

At the time of Brierley's appointment, no prison in the state had such an organization. In fact, senior prison officials and guards routinely monitored prison social structures for signs of threatening inmate organization, fearing that such groups would foster collective resistance and violence.<sup>628</sup> However, by the late 1960s, experiments in tightly-controlled, inmate self-government began to appear in several jurisdictions and receive serious consideration in professional literature.<sup>629</sup> Advocates saw such organizations as a possible palliative for many of

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<sup>627</sup> "Warden is Popular with the Inmates," *Pittsburgh Post-Gazette*, (December 6, 1969); "Cons, Wives to Mingle at Western Pen," *Pittsburgh Post-Gazette*, (December 24, 1969); "Inmate Sets Record Straight On Black Mood Article About Pen," *New Pittsburgh Courier*, (January 17, 1970); "Differences at Western Pen," *Observer-Reporter* (September 11, 1970); "New Prison Seen for Woods Run," *Pittsburgh Post-Gazette*, (October 8, 1971).

<sup>628</sup> Bureau of Correction (State Correctional Institution at Pittsburgh), *State Correctional Institution at Pittsburgh, Pennsylvania, Handbook for Inmates* (Bureau of Correction, 1962), 4-5; *Handbook of Information and Rules for Officers and Employees of the State Correctional Institutions* (Camp Hill: Bureau of Correction, n.d. [1954-1970?]), 8; Western State Penitentiary, *Manual of Rules, Regulations and Required Duties for Corrections Officers* (Pittsburgh: Bureau of Correction, 1958), 12, 22-23, 26.

<sup>629</sup> For an overview see David Fogel, *We Are the Living Proof: The Justice Model for Corrections* (Cincinnati: W.H. Anderson, 1975).

the routine sources of tension within prisons as prisoners could collectively raise grievances in these forums. Many prison administrators believed that such organizations had the potential to reduce or prevent more serious trouble, like uprisings. Detractors of any form of inmate self-government feared that such policies would, in fact, inflame tensions within prisons and provide a collective vehicle for powerful, violent inmates and political militants.<sup>630</sup>

On November 21, 1969, Superintendent Brierley permitted the formation of the United Inmate Advisory Council as a means to foster inmate participation in institutional life and communicate with the staff.<sup>631</sup> In a memo distributed to inmates and staff at the prison, Brierley stated that the group's functions were to be purely advisory and that he was not granting it any administrative authority, which was to remain exclusively with prison personnel.<sup>632</sup> Given Brierley's liberal penological inclinations, the formation of such an organization was not surprising, even if it was the first of its kind in Pennsylvania. However, an article appearing in the *New Pittsburgh Courier* in early December 1970 suggests that Brierley may have been pushed into this decision by the unofficial, but collective, actions of numerous inmates, many of whom were African American.<sup>633</sup> The article reported that Brierley formed the body "after a three day hunger strike" by inmates protesting conditions at the prison and the lack of a "black culture program" at the prison. The hunger strike occurred a week after the first Afro-American Mass was held at the prison by Father Augustus Taylor and Father Dennis

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<sup>630</sup> Ironically, the next Commissioner of Corrections, Allyn Sielaff, opposed such organizations. Despite Sielaff's reputation as liberal, he believed these types bodies fostered resistance and unrealistic expectations for improvements among prisoners. See Allyn R. Sielaff to The Honorable Ernest Kline, December 17, 1971. MG-309 Gov. Milton J. Shapp Papers, General File, 1971-1979, box 24, folder 18. PSA.

<sup>631</sup> To All Citizens of Pennsylvania, (from the "Inmates at Western Penitentiary"), n.d. [bundle of stapled papers, ~early 1970], Charles Owen Rice, April 19, 1970, box 17, folder 3, Charles Owen Rice Papers. UPASC.

<sup>632</sup> "Black Inmates Demands Granted at Western Pen," *New Pittsburgh Courier*, (December 6, 1969).

<sup>633</sup> Ibid.

Kinderman, each members of the recently formed Interdiocese Black Catholic Ministries.<sup>634</sup>

Both priests planned to participate in the development of the new black cultural program, and they supported the creation of the United Inmate Advisory Council. The well-known veteran, labor activist Monsignor Charles Own Rice also lent his support to the prisoner activists.<sup>635</sup>

While Superintendent Brierley permitted the formation of the inmate council, he banned both Taylor and Kinderman from visiting the prison in mid-December 1971.<sup>636</sup> The *Courier*, which reported the banning, claimed that Brierley was motivated partly by their critical December 6<sup>th</sup> article, but subsequent litigation suggests that Brierley also disapproved of how the priests conducted the Mass, which he later described as more of “a political rally” than “a religious service.”<sup>637</sup> According to Brierley:

It did not attract Catholic inmates but rather self-proclaimed Black Nationalists and Black Panthers. In fact less than two per cent of the inmate population, or ten prisoners are Negroes who profess Roman Catholicism. Plaintiff Father Taylor began the Afro-American Mass by holding his clenched fist in the air. He said "I do not believe in a honky Christ." He went on to say that he is a revolutionary. The entire theme of his address to those in attendance was black militancy. There was little reference at all to any religious matters, with the exception of the receiving of communion which was indiscriminately given to non-Catholic prisoners. Father Taylor's speech was followed by inmates standing in the pulpit giving testimonials to Black Nationalism.<sup>638</sup>

Brierley later readmitted the priests after personally meeting with them and Msgr. Rice at Brierley's home. During the meeting, the superintendent also approved black literature

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<sup>634</sup> Ibid.; “Young Priest Heads Ministry to Blacks,” *New Pittsburgh Courier*, (October 4, 1969).

<sup>635</sup> For more on the history of Rice's political activism, see Patrick J. McGeever, *Rev. Charles Owen Rice: Apostle of Contradiction* (Pittsburgh: Duquesne University Press, 1989); Kenneth J. Heineman, *A Catholic New Deal: Religion and Reform in Depression Pittsburgh* (University Park: Pennsylvania State University Press, 1999).

<sup>636</sup> “After Courier Expose Western Pen Closes Door to Minister,” *New Pittsburgh Courier*, (December 20, 1969).

<sup>637</sup> *O'Malley v. Brierley*, 477 F.2d 785 (3d Cir. 1973).

<sup>638</sup> Ibid.,

“without restrictions as to any titles” as well as the “wearing of tiki’s by my fellow inmate brothers.”<sup>639</sup>

These actions earned him the vocal support of at least a few members of the United Inmate Advisory Council. In January, one of the council members wrote a letter to the *New Pittsburgh Courier*, to clarify what occurred at the prison in November and December 1969, correct some of the media coverage of the events and reaffirm the supportive actions of Brierley.<sup>640</sup> The writer – who remained anonymous, but self-identified as a “black man through and through” – did not directly address the banning of Taylor and Kinderman, but explained that the matter had been resolved. He assured the *Courier’s* readers of Brierley’s good intentions, stating that, “Inner City Vernacular might aptly describe Warden Brierley as ‘together’ – and with this we all agree.”

Such kind words about Brierley from an inmate leader and the superintendent’s conciliatory approach did not please many of the prison’s staff. Some of the institution’s guards rejected Brierley’s new policies and disciplined African American inmates for wearing or possessing black nationalist items and symbols during November and December 1969, after the superintendent officially permitted such items.<sup>641</sup> Brierley intervened to stop such practices, but he was also careful to place some boundaries for his liberal policies.<sup>642</sup> To effectively manage the institution’s guard force, he had to balance his liberal positions of prisoner

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<sup>639</sup> “Inmate Sets Record Straight On Black Mood Article About Pen,” *New Pittsburgh Courier*, (January 17, 1970).

<sup>640</sup> Ibid.

<sup>641</sup> Several inmates appear to have been segregated at least in part for actions related to their black nationalist views and practices. Who ordered such segregation remains ambiguous, and it may have not reflected the unanimous support of the staff. “After Courier Expose Western Pen Closes Door to Minister,” *New Pittsburgh Courier*, (December 20, 1969); “Inmate Sets Record Straight On Black Mood Article About Pen,” *New Pittsburgh Courier*, (January 17, 1970).

<sup>642</sup> *O’Malley v. Brierley*, 477 F.2d 785 (3d Cir. 1973).

amenities and privilege with the disciplinary expectations and security concerns of the prison's guards.<sup>643</sup> The fact that much of the hunger strike, the founding of the inmate council and the banning of the priests played out in the pages of the Pittsburgh print media only contributed to some of the tension building around the fault lines of expectations of prisoners and the prerogatives of guards.

Despite the Brierley's initial support for the black cultural program, he soon objected to the positions espoused by visitors associated with the program and their influence on the institution's residents. African American prisoners continued to write to the *New Pittsburgh Courier*, appealing for their support and publically airing their grievances in a way that they could not on the United Inmate Advisory Council. In March 1970, an inmate who withheld his name told the *New Pittsburgh Courier* that the administration had been whittling away these privilege since Brierley approved them, culminating with the banning of "several black Pittsburghers...who were requested by inmates to speak there on Feb. 21 during a memorial service for Malcolm X."<sup>644</sup> As evidence, the anonymous correspondent provided the newspaper with "several official institutional documents signed by prison official, disapproving the requests of the men."<sup>645</sup> In response, prisoners refused to attend a sports award banquet that included "22 prominent local sports figures,"<sup>646</sup> which publically embarrassed the superintendent who had to apologize to the guests. Brierley segregated five prisoners after the boycott, telling the *Pittsburgh Press* that they had coerced others into participating in the

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<sup>643</sup> "Warden is Popular with the Inmates," *Pittsburgh Post-Gazette*, (December 6, 1969).

<sup>644</sup> "Western Pen Inmates Upset Over Visitor Ban," *New Pittsburgh Courier*, (March 7, 1970).

<sup>645</sup> Ibid.

<sup>646</sup> "Some Inmates End Western Pen Strike," *Pittsburgh Press*, (March 6, 1970).

protest.<sup>647</sup> The implication of Brierley's comments was, of course, that the boycott was the work of a few troublesome, but powerful inmates and did not reflect actual broad support for such actions among the institution's residents.

Despite Brierley's view, nearly 500 prisoners walked off their institutional jobs on March 5<sup>th</sup> in protest over how Brierley disciplined the five men.<sup>648</sup> The strike was peaceful, but staff locked the demonstrators in their cells for the duration of the demonstration. Brierley and his staff spoke with each participant individually trying to persuade them to abandon the strike. By the weekend, many of the strikers had returned to work, but 336 prisoners still held out.<sup>649</sup> Brierley waited out the demonstration, but disbanded the United Inmate Advisory Council on March 7<sup>th</sup>, citing the organization's role in causing the disruptions and intimidating other prisoners.<sup>650</sup> "Some day," Brierley reassured the press, "all prisons will have councils of this kind. But when men act for their own personal glory, it destroys the concept of what really constitutes an inmate council. We have good inmates here but also some hard-core men who were intimidating others."<sup>651</sup> The superintendent ended up echoing the arguments of his critics on the guard force.

While it would be mistaken to think that most of the conflict spanning autumn of 1969 and spring of 1970 ever made it into public media forums, what did appear illustrated not only the unusual level of publicity and interest in the conflict, but also how the area's newspapers

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<sup>647</sup> Ibid.; "500 at Western Pen Stage Orderly Sit-in: Protest Action Against 5," *Pittsburgh Post-Gazette* (March 6, 1970); "Sit-in Goes On at Western Pen," *Pittsburgh Press*, (March 7, 1970).

<sup>648</sup> Ibid.; "500 at Western Pen Stage Orderly Sit-in: Protest Action Against 5," *Pittsburgh Post-Gazette* (March 6, 1970); "Sit-in Goes On at Western Pen," *Pittsburgh Press*, (March 7, 1970).

<sup>649</sup> "200 Inmates Return to Jobs at Penitentiary," *Pittsburgh Post-Gazette*, (March 7, 1970); "Protest Seen Letting Up at Penitentiary," *Observer-Reporter*, (March 7, 1970).

<sup>650</sup> Ibid.

<sup>651</sup> Ibid.

and various community members played a larger role in that way the seemingly internal prison conflict unfolded. African American inmates repeatedly turned to the press, especially the *New Pittsburgh Courier*, for help with the difficulties they experienced with prison officials. The *New Pittsburgh Courier*, a direct descendant of the renowned *Pittsburgh Courier*, was nationally known as one of the preeminent dailies in the black community and had a reputation for civil rights advocacy.<sup>652</sup> It provided a far friendlier outlet for inmate complaints than the city's two major papers, the *Pittsburgh Press* and *Pittsburgh Post-Gazette*, which provided greater coverage of the perspectives of penal officials and contained more extensive quotes and information from Superintendent Brierley.

Each side of the conflict attempted to sway or manipulate public representations, but the prison administration especially tried to suppress much of the criticism while also cultivating better relationships with press critics. William Johnson and Sylvester Lockhart, both members of the dissolved United Inmate Advisory Committee, described these strategies to Msgr. Charles Owen Rice in letters from April 1970. Each man informed Msgr. Rice that they faced growing harassment from guards and senior prison officials after the strike collapsed. In April 1970, the black culture program lost its institutional support and meeting space in the prison's school house. Johnson and Lockhart noted that having no other option, the program organizers moved their library, a tape recorder and other materials to their individual cells. The tape recorder, a gift from Msgr. Rice, provided the inmates a novel way to produce their own

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<sup>652</sup> Publisher John Sengstacke, who also owned the *Chicago Defender*, purchased the original *Pittsburgh Courier* in 1966 and re-launched it under the title the *New Pittsburgh Courier*. "John Sengstacke: Keeping Dreams Alive," *New Pittsburgh Courier*, (December 15, 2010); Andrew Buni, *Robert L. Vann of the Pittsburgh Courier* (Pittsburgh: University of Pittsburgh Press, 1974).



media and communicate with activists in the community. Yet, its presence in an individual's cell, along with other program material, immediately rendered them potentially vulnerable to confiscation as contraband.<sup>653</sup> Guards seized the recorder and several tapes, according to Johnson and Lockhart, but returned them after several inmates pressured them about it.<sup>654</sup> Johnson and Lockhart each felt that it was probably only a matter of time before it was permanently confiscated. Nevertheless, the fact that the guards returned it, reflected their hesitancy in dealing with some groups of influential prisoners and the overall tension within the prison population.

Lockhart, who was the much older of the two, also informed Rice in a letter dated April 19<sup>th</sup> that the authorities planned to transfer him to SCI Graterford the following morning.<sup>655</sup> He pointed out that these retaliatory measures, targeting mainly African Americans, occurred at the same time that Supt. Brierley received an award at a public dinner for a blood donor drive held at the prison from his erstwhile critic, the *New Pittsburgh Courier*.<sup>656</sup> The hypocrisy of this rankled Lockhart all the more so, he told Rice, because the superintendent was taking credit for an idea that he and other inmates had developed. Lockhart feared for his life and doubted that he would actually make it to Graterford. Nevertheless, he implored Rice to contact Graterford's Catholic priest to inquire about his welfare, especially since he believed that the authorities would immediately send him to "the hole," severing his contact with outsiders.<sup>657</sup>

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<sup>653</sup> William "Billy" Johnson to Msgr. Charles Own Rice, April 19, 1970; Sylvester Lockhart, Jr. to Msgr. Charles Own Rice, April 19, 1970, box 17, folder 3, Charles Owen Rice Papers. UPASC.

<sup>654</sup> Ibid.

<sup>655</sup> Sylvester Lockhart, Jr. to Msgr. Charles Own Rice, April 19, 1970, box 17, folder 3, Charles Owen Rice Papers. UPASC.

<sup>656</sup> Ibid.

<sup>657</sup> Ibid.

Lockhart claimed that he was not the administration's sole target: "the move on me is part of a mass move this Warden is making on all the black inmates you met here in the school house."<sup>658</sup> He noted that prison staff had already begun laying the groundwork for other transfers and segregation orders by disrupting social contacts between some African American inmates and outside friends and family:

Mon. some of the black brothers family mail are now being returned to their families stamped "discharged" – possibly to isolate them from their families and set them up for moves such as the one I am facing tomorrow morning.<sup>659</sup>

Even though white inmates participated in the strike and constituted half of the inmate council, Lockhart observed that, "Very few white inmates are being transferred away."<sup>660</sup> In addition to fostering racial divisions, he also believed Brierley intended to exploit standing disagreements within SCI Pittsburgh's population of politicized, black inmates. Since Lockhart felt that he alone had "held blacks off from making violence here," he argued that his removal would eliminate one of the brakes on violence among prisoners and between them and the staff.<sup>661</sup> He cynically, but perhaps realistically, feared that this would create "an opportunity for officials here to deliberately provoke my black brothers into a violent encounter. Thus, the Warden will be able to discredit our black culture projects and at the same time strike back at Diane Berry [a *Courier* journalist] and the same black newspaper that gave him the recent award."<sup>662</sup>

Brierley, the liberal penologist, undercut some of the criticism from the black press while also appeasing guards who wished to eliminate the inmate council and segregate or

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<sup>658</sup> Ibid.

<sup>659</sup> Ibid.

<sup>660</sup> Ibid.

<sup>661</sup> Ibid.

<sup>662</sup> Ibid.

transfer certain inmates. The manner in which these events unfolded over the course of the spring 1970 highlight the changing relationship between prison officials, inmates and the larger surrounding community, which became much more contentious and public than it had been under the direction of Brierley's predecessor, James F. Maroney. The media and outside activists not only criticized the prison's administration more intensely than in previous years, but prison staff and inmates alike more actively sought the support and publicity of these outside people, organizations and forums in their seemingly internal disputes.

None of this is to suggest that Brierley's policies or his mishandling of the situation was the sole cause of the conflict at SCI Pittsburgh. His policies certainly departed from those of the more conservative regime of James Maroney, but they exemplified the Bureau of Correction's reform agenda and were also widely shared in many national and international penology circles. While the history of imprisonment is replete with examples of prisoner resistance, one of the distinguishing features of it during the late 1960s and 1970s was its collective and assertive nature, resembling similar, contemporary counter-cultural struggles. The "civil rights movement and Black Power era legitimized new forms of confrontational protest," which appeared behind bars as well as on the streets.<sup>663</sup> This change became more pronounced over the course of the 1960s and early 1970s as the average age of the inmate population trended younger and the percentage of African Americans and Latino prisoners grew from the 1960s

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<sup>663</sup> Stephen Tuck, "'We Are Taking Up Where the Movement of the 1960s Left Off': The Proliferation and Power of African American Protest during the 1970s," *Journal of Contemporary History*, 43 (), 637-654, quote 641. Dan Berger, *Captive Nation*; Samuels, "Improving on Reality"; Dan Berger, *The Hidden 1970s: Histories of Radicalism* (New Brunswick: Rutgers University Press, 2010), 21-38; Cummins, *The Rise and Fall of California's Radical Prison Movement*; Jacobs, "Race Relations and the Prisoner Subculture"; Pallas and Barber, "From Riot to Revolution," 237-261.

onward. Brierley's appointment occurred at roughly the same time that such changes were becoming a defining feature of contemporary prison life.

The controversy over Brierley's administration at SCI Pittsburgh did not end with the inmate council's demise and the repression of its members. By September 1970, Brierley's administration, the policies of the Bureau of Correction and State Representative K. Leroy Irvis came under criticism in the media from two different sources and for two different, but interrelated reasons, which reflected the diversity of competing penal agendas. During much of 1970, K. Leroy Irvis, the state representative for the 19<sup>th</sup> District in Pittsburgh as well as the Democratic House Majority Leader, worked on drafting comprehensive penal reform legislation, which included a "good time" provision to permit inmates to earn early release through good behavior and progress in an individualized rehabilitation program. The legislation, while still formative, was contentious around the state and had numerous detractors. The United Inmate Advisory Council had planned to lobby the General Assembly and administration officials concerning penal reform legislation, and provide an inmate's perspective on the matter, but with their demise, any formal collective submission from SCI Pittsburgh prisoners appeared less likely. Nevertheless, numerous people at the prison wrote to legislators, especially Rep. Irvis, asking him to visit the institution and speak with them about the "good time bill," as the package was often called. Irvis made arrangements to speak with the prisoners, but canceled the visit three times over the summer of 1970. This prompted Rabbi Abba Leiter, one of the prison's chaplains, to publicly criticize the exclusion of prisoners from

the reform debate and to point out how the repeated snubs fostered resentment and restlessness among prisoners.<sup>664</sup>

Rabbi Leiter's criticism was especially harsh toward Brierley, Rep. Irvis and officials in the Bureau of Correction. Although a subsequent letter from the rabbi, published by the *Pittsburgh Press*, suggested that the reporter misleadingly used some of Leiter's comments, the rabbi maintained that discontent was rife at SCI Pittsburgh, and he feared that the prison was drifting toward a riot.<sup>665</sup> Leiter warned that the one of the primary sources of frustration, among the prisoners he had spoken to, was the widely-held view that they had not been sufficiently consulted about the prison reform legislation currently being debated in Harrisburg. The widespread nature of this view attests to the inclusive, democratic reach of the prisoners' right movement and its role in crafting the political subjectivities of confined people. Leiter believed that Brierley and other Bureau officials pressured Irvis into postponing his visit, precisely to contain this political upsurge among prisoners, which they feared would jeopardize their preferred version of the legislation.

Brierley and Irvis immediately rebuked Leiter in print. Brierley went so far as to suggest that the rabbi would be responsible for any outbreak violence at the prison after his criticism.<sup>666</sup> Nevertheless, both men agreed that the institution's population was extremely frustrated and disgruntled – "a powder keg," according to Brierley.<sup>667</sup> Irvis also confirmed that Brierley and

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<sup>664</sup> "State's Deaf Ear Igniting Western Pen, Chaplain Warns," *Pittsburgh Press*, (September 3, 1970); "Rabbi Explains Aim in Prison Fuss," *Pittsburgh Press*, (September 10, 1970); "Differences at Western Pen," *Observer-Reporter*, (September 11, 1970); "Irvis Denies Western Pen Pressure Charge," *New Pittsburgh Courier*, (September 12, 1970).

<sup>665</sup> *Ibid.*; For Leiter's qualifications several days after his initial comments, see "Rabbi Explains Aim in Prison Fuss," *Pittsburgh Press*, (September 10, 1970).

<sup>666</sup> "Chaplain Key to Trouble, Warden Says," *Pittsburgh Press*, (September 3, 1970).

<sup>667</sup> *Ibid.*; "Irvis Denies Western Pen Pressure Charge," *New Pittsburgh Courier*, (September 12, 1970).

Deputy Attorney-General Frank Lawley persuaded him that his visit could easily spark a major riot. Their concern, Irvis told the *New Pittsburgh Courier*, was that if he met with a deputation of only a few inmates, as he had planned to, the rest of the population would be incensed at being excluded.<sup>668</sup> Meeting with the entire prisoner population would have also presented control problems for the staff, especially since the conversation was likely to be highly charged. Rabbi Leiter believed that security precautions could have been arranged for such an important meeting and argued that the Bureau of Correction's leadership simply did not want direct inmate participation in creating the legislation. They mobilized fear to block a more politically-inclusive process.<sup>669</sup>

Resistance to Brierley also emanated from a large group of SCI Pittsburgh's guards about the same time. At first, they pursued their goals relatively quietly. By the end of the summer of 1970, several staff members, including some senior officers, contacted officials in Harrisburg, requesting an investigation into Brierley's regime. In early September, the guards changed their tactics and made their displeasure publicly known, telling the local media that Brierley had created a dangerous atmosphere at the prison by loosening discipline too far and reducing penalties for prison offenses. Led by two lieutenants, Charles Kozakiewicz and George Kebles, over half the prison's guard force urged Pennsylvania Attorney-General Fred Speaker to investigate what they called "the complete lack of consideration for the welfare, safety and well-being of employees and inmates" at SCI Pittsburgh.<sup>670</sup> Since Brierley's appointment, they

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<sup>668</sup> "Irvis Denies Western Pen Pressure Charge," *New Pittsburgh Courier*, (September 12, 1970).

<sup>669</sup> "State's Deaf Ear Igniting Western Pen, Chaplain Warns," *Pittsburgh Press*, (September 3, 1970); "Rabbi Explains Aim in Prison Fuss," *Pittsburgh Press*, (September 10, 1970).

<sup>670</sup> "Western Pen Guards in Bid for Reform," *Pittsburgh Press*, (September 8, 1970).

claimed that many of the prison's 900 residents had armed themselves, mainly out of fear of assault, leaving the place "an armed camp."<sup>671</sup> The guards argued that they too wanted the new prison reform legislation enacted, but it appeared that their disagreement with Brierley was largely over security, their sense of proper prison order and their own personal safety.<sup>672</sup>

The Bureau of Correction obliged, interviewing every member of the prison's staff to ascertain the veracity of the allegations. Within a few days, Deputy Commissioner of Correction Kenneth Taylor announced that there would be several changes at the prison, but he did not elaborate. However, he described some of the guards' claims as exaggerations. Lt. Kozakiewicz and Lt. Kebles also claimed that "some remedial action had already started," but likewise declined to discuss the specific nature of the changes. Brierley remained in his position and cryptically acknowledged that the investigation enhanced the communication and understanding between his administration and the guards.

Even if the nature of the immediate changes remained obscure, the confrontation illustrated that the growing militancy behind the institution's walls came not just from prisoners, but also from prison staff, especially guards. Despite lacking a legally-recognized union at the time of Brierley's appointment, guards collectively asserted their positions and engaged in organized protests over prison management issues at this time.<sup>673</sup> Brierley's policies

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<sup>671</sup> Ibid.

<sup>672</sup> Ibid.; "Differences at Western Pen," *Observer-Reporter* (September 11, 1970);

<sup>673</sup> Unlike every other state in the country, Pennsylvania retained a large patronage system for public employees into the 1970s with tens of thousands of appointments available to the administration. Although some lines of employment, like the prison service, became more stable and less open to direct political interference, guards were not permitted to form a union until the state ended the patronage system in 1970 with the passage of the Public Employee Relations Act of July 23, 1970, P.L. 563, No. 195. See Dan Cupper, *Working in Pennsylvania: A History of the Department of Labor and Industry* (Harrisburg: Pennsylvania Historical and Museum Commission and Department of Labor and Industry, 2000), 66-71; Sidney Wise, *The Legislative Process in Pennsylvania* (Harrisburg: Commonwealth of Pennsylvania, 1984), 34-35; Paul C. Beers, *Pennsylvania Politics Today and Yesterday: The Tolerable Accommodation* (University Park: Pennsylvania State University Press, 1980), 348-350; Philip S. Klein and

and those emanating from Harrisburg directly challenged many of the guards' longstanding practices and authority over inmates. The policy of creating inmate council, for instance, stood in stark contrast to the guards' practice of hindering the formation of cohesive groups of inmates and the belief that such practices would only empower powerful inmates and militants. The militancy of SCI Pittsburgh's staff, while perhaps exceptional in its degree, nevertheless reflected a more general pattern among prison staff statewide and among many other public employees as well.

The fact that the guards flouted the chain of command so publicly, directly appealing to the press and public, displayed both Brierley's (and the Bureau's) legitimacy deficit among the staff as well as the novel interest such matters held beyond prison walls. As the *Pittsburgh Press* editorialized in September 1970, one of the most noteworthy aspects of the disputes involving the guards, Brierley, Leiter and Irvis was their unusual publicity: "The out-in-the-open squabble over conditions at Western Penitentiary in the Woods Run section of Pittsburgh has produced both heat and light in an area where darkness and cold usually prevail."<sup>674</sup> The disputes quickly became a source of public commentary and underscored how the press participated in the conflict and shaped it. While left unmentioned, the recent violence at Philadelphia's

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Ari Hoogenboom, *A History of Pennsylvania*, 2nd ed., (University Park: Pennsylvania State University Press, 1980), 524-527; Reed M. Smith, *State Government in Transition* (Pittsburgh: University of Pittsburgh Press, 1961), 83. For a discussion of public employee unions in the 1960s and 1970s, see Francis Ryan, *AFSCME's Philadelphia Story: Municipal Workers and Urban Power in the Twentieth Century* (Temple University Press, 2011); Joseph A. McCartin, "Turnabout Years: Public Sector Unionism and the Fiscal Crisis" in Bruce J. Schulman and Julian E. Zelizer (eds.), *Rightward Bound: Making America Conservative in the 1970s* (Cambridge: Harvard University Press, 2008), 210-226; Joseph A. McCartin, "Bringing the State's Workers In: Time to Rectify an Imbalanced U.S. Labor Historiography," *Labor History*, 47 (February 2006) 73-94.

<sup>674</sup> "Prison Problems," *Pittsburgh Press*, (September 11, 1970).



Holmesburg Prison, which occurred only two months before, and possibility of another urban prison riot enhanced the threat and newsworthiness of the conflicts at the Woods Run facility.

The contentious events following Brierley's appointment displayed how much the field of recognition, legitimacy and public debate in penal matters had transformed since World War II. Criminologist John Pratt has argued that, in contrast, public disputes like this were in fact unusual, easily contained and short-lived for much of the twentieth-century. Senior leaders in penal bureaucracies dominated penal policy since the late nineteenth-century and were able to discursively marginalize or simply exclude the voices of prisoners, guards, activists and other concerned citizens in public debates. These other groups of people were obviously present in previous penal arrangements, but their actions and voices were often disregarded in public debate or constrained by the authority of penal expertise and discipline. Of course, both guards and inmates held far greater power within the prisons, a fact officials implicitly acknowledged in the types of regimes and informal orders they permitted or tolerated. Yet, such recognition did not extend to public statements about the methods and rationales of imprisonment.

During the 1960s and 1970s, this relationship changed considerably. Prisoners, guards, activists and other concerned citizens now engaged penal authorities on a much more frequent basis, often in a public manner and from a much stronger position. They often employed the language of penal reform and drew sustenance from the postwar rehabilitation discourse and practice even if they did not actually share same assumptions about crime causation and individualized treatment. In a sense, these other groups met penal authorities in the Bureau of Correction part way, by adopting and modifying many aspects of penal reform discourse to

press their claims and carve out greater spaces of control within the institutions.<sup>675</sup> Thus, the inmate council, long thought of among professional penologists and academics as a way to defuse tension in prison and encourage the creation of responsible, liberal subjects, became the organizational basis for further Black Power politics among SCI Pittsburgh's residents.

Yet, the Bureau of Correction's leadership did not simply retreat from this debate, but also intensified its public relations efforts, especially when it came to defending new programs and reform plans for the state's prisons. The September 1970 retirement of Arthur Prasse, the Commissioner of Correction since 1952, did as much as anything to mark the emergence of this new orientation. Prasse's replacement, Allyn Sielaff, had a well-known reputation as a liberal reformer. As deputy commissioner, he had spearheaded many of the Bureau of Correction's recent, new initiatives, including the community corrections programs. He embraced Gov. Shafer's plans to elevate the penal agency to a cabinet level department and generally enjoyed the support of the governor and Attorney-General Fred Speaker who oversaw the Bureau of Correction. Much more than his predecessor, Sielaff engaged directly with the media, often holding long press conferences trying to explain and mobilize public support for controversial programs while responding to criticism from the judiciary and police. He also attempted to liberalize some prison regimes, especially in the area of censorship and personal expression by

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<sup>675</sup> My theoretical orientation here informed by Gramsci's concept of hegemony, but one influenced by the interpretations of Kate Crehan, William Roseberry, Anne Sassoon, and Gavin Smith. See Kate Crehan, *Gramsci, Culture and Anthropology* (Berkeley: University of California Press, 2002); William Roseberry, "Hegemony and the Language of Contention" in Gilbert Joseph and Daniel Nugent (eds.), *Everyday Forms of State Formation: Revolution and the Negotiating of Rule in Modern Mexico* (Durham, 1994), 355–366; Anne Showstack Sassoon, "Gramsci's Subversion of the Language of Politics" in Sassoon, *Gramsci and Contemporary Politics: Beyond Pessimism of the Intellect* (London: Routledge, 2000), 42-50; Gavin Smith, *Confronting the Present: Towards a Politically Engaged Anthropology* (Oxford: Berg, 1999); Gavin Smith, "Hegemony" in David Nugent and Joan Vincent (eds.), *A Companion to the Anthropology of Politics*, (Oxford: Blackwell, 2004), 216-230.

prisoners, but these efforts were uneven and strenuously resisted by many staff members.

Sielaff's policies included granting the media greater access to the prison system than they had enjoyed in many years.

In December 1970, for instance, the *Pittsburgh Press* ran a four-part series called "Behind the Walls," which focused especially on SCI Pittsburgh.<sup>676</sup> I dwell on these articles here for two reasons. First, the level of detail in the articles and the access the reporter, Jack Grochot, had to the prison would have been unthinkable a few years earlier. The first article in the series framed the entire series around this novelty, directly connecting it to Gov. Shafer's call for major prison reforms in the wake of the Holmesburg disturbance: "Atty. Gen. Fred Speaker opened the prison doors to newsmen, permitting them for the first time to talk at length with inmates and administration alike."<sup>677</sup> Second, the articles clearly formed part of the public relations effort of the Bureau of Correction, especially after Sielaff assumed its top post, and laid out the problems with prisons like SCI Pittsburgh and the agency's plans to change them.

Grochot began the series by painting a bleak picture of the degrading life led by people confined at SCI Pittsburgh. Steeped in violence, idleness and boredom, most prisoners had few opportunities for meaningful work, education and therapeutic programming and often lived in fear of physical and sexual assault. Grochot described how the daily routines of most prisoners were born more of intense boredom than any planned program of education, training or

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<sup>676</sup> "Animal Howls, Attacks Fill Nightmare of Western Pen," *Pittsburgh Press* (December 13, 1970); "Trained Mice, Endless Polishing Fill Censored Days," *Pittsburgh Press*, (December 14, 1970); "Pen Short of Funds, But Fights Inmate Return to Wire Warehouse," (December 14, 1970); "Greensburg Jail Aim: Rehabilitation, Not Revenge," (December 16, 1970).

<sup>677</sup> "Animal Howls, Attacks Fill Nightmare of Western Pen," *Pittsburgh Press* (December 13, 1970).

treatment. Prisoners occupied themselves training a mouse, sketching, repeatedly polishing a cell floor, pacing back and forth in the yards, playing bocci, producing makeshift puzzles out of ripped up papers and deliberating feigning mental illness in an effort to entertain themselves, and ironically, maintain their sanity.<sup>678</sup> The best employment options included producing license plates for the state, lockers for the National Guard and bed frames for other state institutions. Yet, these jobs were monotonous as well and limited in number. License plate production required sitting “at a machine for eight hours a day and feed[ing] it a piece of tin, then another, then another, and another...”<sup>679</sup>

Grochot praised Brierley’s attempts to institute greater rehabilitation options with the meager funds available to him. These initiatives included holding new night classes in which prisoners could earn college credits and having the few counselors employed by the prison visit inmates rather than remaining in their offices simply processing paperwork.<sup>680</sup> Additionally, William Schnupp, the assistant superintendent, arranged for some mechanics to teach automobile repair to prisoners on donated vehicles. Nevertheless, this limited, piecemeal approach to rehabilitation could at most only reach about a hundred prisoners, according to Grochot. The more than 900 other men were simply excluded; many by their own choice. Grochot did not explore the question of the aims and efficacy of these efforts.

Many of the changes under Brierley’s regime, like additional, out-of-cell recreation time in the evenings, still provoked resentment among guards.<sup>681</sup> Despite the resolution reached in

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<sup>678</sup> “Trained Mice, Endless Polishing Fill Censored Days,” *Pittsburgh Press*, (December 14, 1970).

<sup>679</sup> “Animal Howls, Attacks Fill Nightmare of Western Pen,” *Pittsburgh Press*, (December 13, 1970).

<sup>680</sup> “Pen Short of Funds, But Fights Inmate Return to Wire Warehouse,” (December 14, 1970).

<sup>681</sup> *Ibid.*

September 1970, more than half the guard force called off with the “blue flu” a month later protesting new inmate privileges.<sup>682</sup> In an interview with Grochot, Brierley claimed that such resentment remained a persistent disposition among the guards. While some guards supported greater treatment-orientated approaches to prisoner management, many still considered themselves as “public avengers,” surrogates for a victimized general public who desired strict, austere conditions for prisoners – a position that “confused discipline with dehumanization” in Brierley’s view.<sup>683</sup>

Grochot explained to readers that the routine “dehumanizing process” at SCI Pittsburgh produced hateful, vengeful people.<sup>684</sup> Throughout the first three articles, Grochot repeatedly mentioned the anger welling up in the people confined at SCI Pittsburgh, the noble efforts of people like Brierley notwithstanding. There were simply not enough funds, political support or adequate facilities to counter the hate produced by the institution and its routines. Certain practices in particular sharpened this pervasive anger. For instance, Grochot recounted a typical disciplinary incident in which a guard ordered a prisoner to visit the institution’s barber because his “sideburns were a half-inch too long.”<sup>685</sup> This constituted a formal infraction of prison rules, which landed the prisoner in punitive segregation where he lost all privileges for the duration of his punishment.<sup>686</sup> Conditions in the “hole” were spartan. The cells lacked sinks, but included a toilet that flushed automatically every hour. Staff restricted reading material and headphones

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<sup>682</sup> “Guards ‘Ill,’ Inmates Vow to Behave,” *Pittsburgh Post-Gazette*, (October 20, 1970).

<sup>683</sup> “Pen Short of Funds, But Fights Inmate Return to Wire Warehouse,” (December 14, 1970).

<sup>684</sup> The phrase appears early in the first article: “From the instant a convicted man ambles through the giant stainless steel door of the old prison in the North Side’s Woods Run section, the dehumanizing process swallows him.” “Animal Howls, Attacks Fill Nightmare of Western Pen,” *Pittsburgh Press*, (December 13, 1970).

<sup>685</sup> “Trained Mice, Endless Polishing Fill Censored Days,” *Pittsburgh Press*, (December 14, 1970).

<sup>686</sup> *Ibid.* Grochot notes that the prison’s authorities called solitary confinement “the home block,” but prisoners called “the hole.”

to listen to the institution's radio system, thus harnessing and accentuating the prison's normal boredom and monotony for control purposes. Grochot evocatively highlighted the social isolation of the hole: "For companionship, he has a glaring lightbulb and the footsteps of a guard bringing a meal three times a day."<sup>687</sup> This loss of social contact and boredom was broken periodically by the coyote-like howls of other isolated men. In Grochot's view, a person subjected to this regime of solitary confinement simply "hates even more."<sup>688</sup>

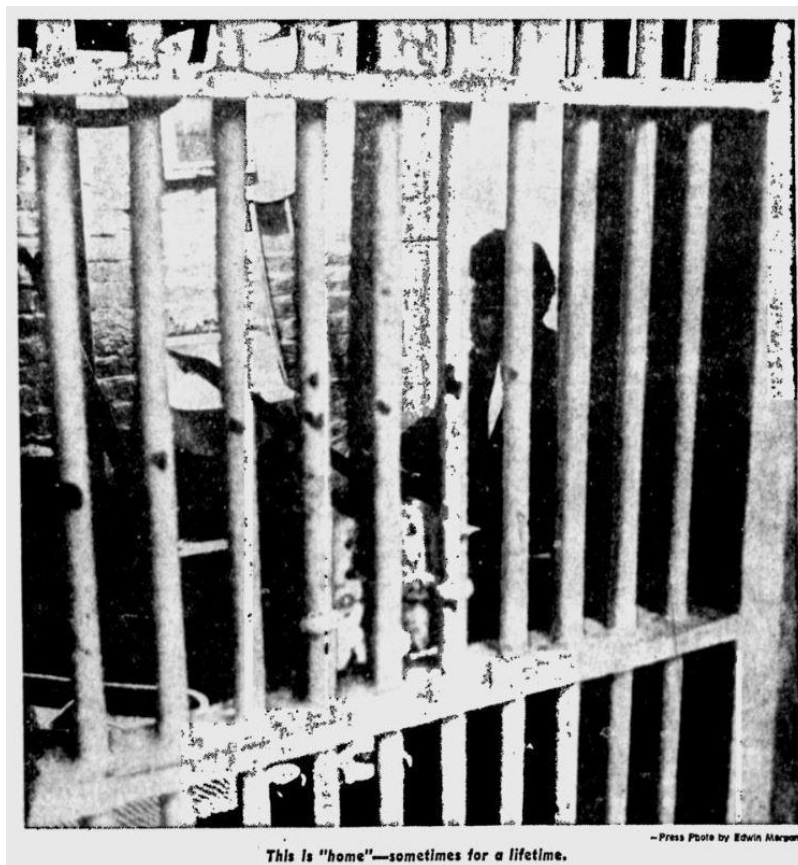


Figure 4: Grochot's portrayal of a cell at SCI Pittsburgh

Figure 4. Grochot's portrayal of a cell at SCI Pittsburgh from the *Pittsburgh Press's* Behind the Wall series. Source: "Animal Howls, Attacks Fill Nightmare of Western Pen," *Pittsburgh Press*, (December 13, 1970).

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<sup>687</sup> Ibid.

<sup>688</sup> Ibid.

At first blush, it may have appeared that the penal authorities, whether Supt. Brierley, Com. Sielaff, Attorney-Gen. Speaker or even Gov. Shafer, took a major risk in granting Grochot access for the articles, but they actually invited the publicity of his criticism to bolster their own reform program, positions which Grochot seemed to have shared. The “Behind the Walls” series described in fine detail many aspects of how prisoners accommodated themselves to the harsh conditions of the prison as well as the well-intentioned actions of embattled correctional officials like Brierley and a few equally humane, if paternalistic, officers who treated the institution’s residents with dignity.<sup>689</sup> Grochot’s exposé was clearly critical of the current state of SCI Pittsburgh, but certain topics could not be raised, nor questions posed, in the analytical and narrative frame of the series. No doubt, his views were vetted by the penal authorities, who may have welcomed certain criticisms, but did not want to open the door to the types of challenges they faced from activist inmates on the United Inmate Advisory Council, the *New Pittsburgh Courier* reporters and the politicized clergymen. None of these people and organizations were interviewed or even mentioned in the “Behind the Walls” series despite the coverage the same newspaper (*Pittsburgh Press*) devoted to each in 1969 and 1970. The series also downplayed the guards’ militancy, and did not quote any staff member articulating views opposed to Brierley or Harrisburg’s current policy positions.

Grochot’s articles could not accommodate the assertive or politicized responses of prisoners, which had become far more common than any time in the last few decades.

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<sup>689</sup> For an example of the latter, see especially the section on Captain John Jasak. “Pen Short of Funds, But Fights Inmate Return to Wire Warehouse,” (December 14, 1970).

Although the prison administration had transferred some of the more vocal leaders on the inmate council, like Sylvester Lockhart, there were still plenty of similarly politicized African Americans held at SCI Pittsburgh who understood their imprisonment in terms far different from those depicted by Grochot. Even among many white inmates who did not situate their imprisonment in a longer narrative of racial injustice, captivity and oppression, the examples of successful litigation by Black Muslims encouraged similar appeals to the courts. Grochot failed to mention this civil litigation by prisoners or the existence of jailhouse lawyers, both of which had become increasingly common by 1970.<sup>690</sup> He also largely sidestepped the issue of prison violence and only obliquely mentioned prisoners' fear of rape. The articles were notably silent about the influence of the racially-patterned violence at Holmesburg Prison, even though that disturbance had occurred only a few months before.

Instead, Grochot's representations of the people confined at SCI Pittsburgh stressed their desperation and psychological deterioration, and he avoided the topic of race entirely. While some of this imagery would have been disturbing, it appealed more to the sympathies and support of white, middle class citizens, much like liberal attacks on racial discrimination that highlighted the psychological damage caused by white racism.<sup>691</sup> Most inmates in the first three articles of the series struggled to maintain their sanity in SCI Pittsburgh by devising ways

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<sup>690</sup> Litigation among inmates had by this point become a serious concern for prison administrators across the country. For a discussion of this issue in Pennsylvania, see, Joseph R. Brierley, "The Legal Controversy as It Relates to Correctional Institutions - A Prison Administrator's View," *Villanova Law Review*, 16 (August 1971), 1070-1076; Victor Taylor, "The Correctional Institution as a Rehabilitation Center - A Former Inmate's View," *Villanova Law Review*, 16 (August 1971), 1077-1081; "Prisoners' Rights and the Correctional Scheme: The Legal Controversy and Problems of Implementation - Afternoon Panel Discussion" *Villanova Law Review*, 16 (August 1971), 1088-1118

<sup>691</sup> Daryl Michael Scott, *Contempt and Pity: Social Policy and the Image of the Damaged Black Psyche, 1880-1996* (Chapel Hill: University of North Carolina Press, 1997); Davison M. Douglas, "Justifying Racial Reform," *Texas Law Review*, (1998), 1163-1184.



to interrupt the prisons attritional boredom: one prisoner created a puzzle from ripped up papers, another trained one of the many mice that infested the prison, yet another privately entertained himself by yelling at his imaginary chess partner in the yard to elicit a wary reaction from his fellow prisoners. One man, suffering from Parkinson's disease, showered repeatedly to ease his symptoms and threw excrement at guards when the shaking became intolerable. The "animal" adjective in the title of the first article – "Animal Howls, Attacks Fill Nightmare of Western Pen" – may have been directed more at the harsh conditions that produced the behavior Grochot described, but it also reduced the people he observed to simply targets of repressive discipline and neglect who could now only react in a primal, child-like or irrational manner. The fact that a common joke told among the institution's psychologists - "it would take a medical expert to conclude that the 1,000 inhabitants technically classify as living human beings." - also cast doubt on the effectiveness and commitment to what little rehabilitative interventions occurred at the prison.<sup>692</sup>

Grochot's "Behind the Walls" series, along with the publicity of recent events at SCI Pittsburgh, underscore how publicity was quickly becoming a major problem for penal governance. Whether at the level of a particular prison, especially a sensitive one like SCI Pittsburgh, or the state's larger penal bureaucracy, destructive criticism in the press could hinder policy changes and adequate funding as well as foment conflict between inmates, staff and administrators. This is not to suggest that prisons were invulnerable to bad press or scandals in the past. They certainly were not. However, the penetration of public criticism and the dialogue between people inside and outside the prison had grown considerably within a

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<sup>692</sup> "Animal Howls, Attacks Fill Nightmare of Western Pen," *Pittsburgh Press*, (December 13, 1970).

few short years. In the 1970s, sociologist James Jacobs described similar changes at Stateville Penitentiary in Illinois, which he saw as part of a larger process of incorporating previously marginalized groups and institutions into the legal standards, recognitions and accountabilities of “mass society.”<sup>693</sup> Much like the situation in Illinois, the hierarchical organization of penal authority in Pennsylvania after World War II insulated the prisons from a lot of outside interference, providing brakes on the incidence and degree of scandals.<sup>694</sup> By the late 1960s, the quiescence of this penal arrangement, sustained by a mixture of internal authoritarianism and external indifference, rapidly deteriorated.

In such a context, prison officials like Commissioner Allyn Sielaff and his deputy, Stewart Werner, realized that publicity, especially through the press, was not only a considerable threat to their work, but also a potential political and penological resource. The “Behind the Walls” series was in this sense a well-managed critic of the state’s prisons, exemplified by SCI Pittsburgh, which aided their penological preferences and reform agenda. Grochot was not a mere tool for the Bureau of Correction, but the agency’s leadership had instrumental reasons for granting him a generous level of access, allowing him to produce long, distinctive articles. From some of Grochot’s commentary, it appears that he largely shared their reformist views and supported new penal legislation. For example, during his discussion of how a person deals with prolonged segregation, Grochot explicitly pointed to a possible, if currently frustrated,

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<sup>693</sup> Jacobs’s study was indebted to the elaboration of the Weberian concept of mass society by sociologist Edward Shils. See Jacobs, *Stateville*, 5-6, 102-105, 200-211; Edward Shils, “*The Theory of Mass Society*,” *Diogenes*, 39 (September 1962), 45-66.

<sup>694</sup> Much of this was, of course, by design to prevent prisons from being exposed to many of the disruptions in state patronage systems.

solution to many of the problems at SCI Pittsburgh: “He can think about legislation for prison reform, which has been proposed to the General Assembly and has traveled no further.”<sup>695</sup>

Grochot’s final piece in the series further articulated the wisdom of the Bureau of Correction’s plans for drastically altering the state’s prison system. Grochot shifted focus away from SCI Pittsburgh to the new Greensburg State Regional Correctional Facility (SRCF Greensburg), which had only been operating for about a year. Unlike the “medieval concept of prison” exemplified in the first three articles on the Western Penitentiary, Grochot informed his readers that the program at SRCF Greensburg prison emphasized “Conditioning a lawbreaker for the outside, but forcing him to earn his freedom. In a word, rehabilitation. It’s working”<sup>696</sup>

The institution had more work opportunities for training and education than SCI Pittsburgh and a work release program, which inmates could participate in after successful performance in other institutional jobs and successful screening. Two of the three photographs accompanying the article included a corrections counselor and a psychologist; the other one showed men exiting the prison through a door, supposedly for their work release day jobs. Such images emphasized the reformatory nature of the prison’s regime and its connections to world outside.

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<sup>695</sup> “Trained Mice, Endless Polishing Fill Censored Days,” *Pittsburgh Press*, (December 14, 1970).

<sup>696</sup> “Greensburg Jail Aim: Rehabilitation, Not Revenge,” *Pittsburgh Press*, (December 16, 1970).



-Press Photos by Kent Badger

**WITH ACCENT ON REHABILITATION**, prisoner at left consults with corrections counselor Grant Mc-

Cormick, center, and psychologist Robert Freeman. Still experimental, only short-timers are accepted.

*Figure 5: The new focus on reintegration programs at SRCF Greensburg*

Figure 5. The new focus on reintegration programs at SRCF Greensburg – a far cry from the despair at SCI Pittsburgh. Source: “Greensburg Jail Aim: Rehabilitation, Not Revenge,” *Pittsburgh Press*, (December 16, 1970).



*Figure 6: Community corrections leave at SRCF Greensburg*

Figure 6. Many people imprisoned at SRCF Greensburg people leave for work or education during the day in one of the Bureau of Correction's new transitional, community corrections programs Source: "Greensburg Jail Aim: Rehabilitation, Not Revenge," *Pittsburgh Press*, (December 16, 1970).

The article did not explore the daily institutional routines of the men confined at SRCF-Greensburg in the same manner as their counterparts at SCI Pittsburgh. Instead, Grochot detailed the place of this "successful model" in the state's prison system and the plans for

expanding its role. The article was more an endorsement of the aspirational potential of its reform program. The Bureau of Correction's leadership still considered SRCF-Greensburg's regime experimental and it only held 140 people with short sentences. Most had sentences under a year, according to Grochot, which was well below the normal sentence range for the more than 1,000 men confined at SCI Pittsburgh, many of whom were serving terms with a minimum of ten years. Since the closing of the old Eastern State Penitentiary earlier in the year, SCI Pittsburgh had become the sole facility in the state's prison system that was entirely rated for maximum security.<sup>697</sup> The difference between the regimes and the people confined at Greensburg and Pittsburgh made the comparisons between them somewhat misleading; a point which Grochot did not emphasize.<sup>698</sup>

Nevertheless, Commissioner Sielaff told Grochot that institutions like SRCF-Greensburg would eventually replace "dungeons" like SCI Pittsburgh. Sielaff envisioned a future prison system composed mainly of similar institutions with only one maximum security prison for the small number of prisoners requiring higher security. He told Grochot that one of the more recently-constructed prisons would be converted to hold such people; massive institutions like SCI Pittsburgh would be decommissioned. The major obstacle to such plans, according to the officials Grochot spoke to, was the lack of funding. Soon, however, greater hurdles would appear that centered on many of the issue that Grochot left out of the "Behind the Walls" series: violence, staff security concerns, segregation and the rights of "dangerous" prisoners,

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<sup>697</sup> There were, however, a number of other prisons that had maximum security sections.

<sup>698</sup> SRCF-Greensburg was never intended for long-term confinement or the high degree of security exemplified at SCI Pittsburgh. Originally built as a county jail by Westmorland County in the early 1960s, the facility was purchased by the state for conversion into one of the several new regional correctional centers envisioned by the Bureau of Correction in the 1960s.

the relatively few people that many parties believed could not be held in the general population of any institution.

### **Resistance and Control of the Dangerous**

As the uprising at Holmesburg indicated, many prisons in the United States became much more unstable, violent places during the late 1960s and 1970s.<sup>699</sup> Although there were many causes for this, which varied from place to place, there is general agreement among contemporary and secondary sources about several of developments that contributed to the increasingly violent atmosphere behind bars. Increasing racial discord among inmates and the growing assertiveness and political consciousness of many prisoners infused their interactions with guards with more hostility and undermined many of the routines and control mechanisms that had maintained relatively orderly prisons up to the late 1960s. As a number of researchers noted in the 1940s and 1950s, inmate leaders played an important informal role in maintaining prison order in exchange for preferential treatment by prison staff or permission to control illicit internal markets. The unspoken truth in these accounts was that such leaders were white

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<sup>699</sup> Collective Violence Research Project, *Collective Violence in Correctional Institutions: A Search for Causes* (Columbia: South Carolina Department of Correction, 1973); University of Maryland, Institute of Criminal Justice and Criminology, *Prevention of Violence in Correctional Institutions* (Washington: National Institute of Law Enforcement and Criminal Justice, 1973); Leo Carrol, *Hacks, Blacks and Cons*; Tom Wicker, *A Time to Die: The Attica Prison Revolt* (New York: Ballantine, 1975); Jacobs, *Stateville*; Bowker, *Prison Victimization*; Irwin, *Prisons in Turmoil*; James G. Fox, *Organizational and Racial Conflict in Maximum-Security Prisons* (Lexington: Lexington Books, 1982); Charles Stastny and Gabrielle Tyrnauer, *Who Rules the Joint: The Changing Political Culture of Maximum Security Prisons in America* (Lexington: Lexington Books, 1982); John J. Dilulio, Jr., *Governing Prisons: A Comparative Study of Correctional Management* (New York: Free Press, 1987); Bert Useem and Peter A. Kimball, *States of Siege: U.S. Prison Riots, 1971-1986* (New York: Oxford, 1989); Mark Colvin, *The Penitentiary in Crisis: From Accommodation to Riot in New Mexico* (Albany: State University of New York Press, 1992); Michael C. Braswell, Reid H. Montgomery, Jr. and Lucien X. Lombardo, *Prison Violence in America* (Cincinnati: Anderson, 1994); Reid H. Montgomery, Jr. and Gordon A. Crews, *A History of Correctional Violence: An Examination of Reported Causes of Riots and Disturbances* (Lanham: American Correctional Associates, 1998).

and a racial hierarchy structured the social order of prison, much as it did in the world beyond the walls. By the 1960s, a greater influx of African American and Latino prisoners challenged established racial hierarchies among prisoners and between them and the largely white guard forces. As the control exerted by elite, white prisoners waned during the 1960s, the predominately white prison staff also lost one of their informal methods of enforcing prison order and began relying more on blunt custodial practices, like segregation and transfers to control or punish prisoners. Unsurprisingly, prison staff disproportionately targeted African Americans with these tactics. By the 1970s, they also increasingly used them to manage people suffering from mental illness who began appearing with greater frequency in penal institutions as a result of hospital deinstitutionalization policies.

Spatial disciplinary tactics, like isolation and movement, animate the prison itself and predate it in other forms of punishment.<sup>700</sup> However, they are only one of the many different resources for maintaining and enforcing order in prisons and arguably the least effective. Prison staff resorted to isolation, transfers and other harsh forms of control like beatings more often as more effective and benign means eliciting compliance from prisoners, if not their consent, either evaporated or were simply discarded. The increased prominence of these disciplinary methods also signaled the racial transformation of prison populations and the loss of faith in many of the postwar rehabilitative practices.<sup>701</sup> They also heavily relied on these techniques to counter prisoner resistance and dissolve or prevent the formation of collective inmate actions.

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<sup>700</sup> They were integral to the more common use of banishment and transportation prior to the creation of modern penitentiaries.

<sup>701</sup> The greater use of isolation and transfer can also be considered as much a part of the “reactivation of the penitentiary techniques” that Foucault saw in previous moments of intense prison reform. Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Alan Sheridan, trans. (New York: Vintage, 1977, 1975), 268-271, quote 268.



Similar to a few other states, the stalking horse of this trend actually appeared before the late-1960s with the arrival of a greater number of followers of the Nation of Islam behind bars.<sup>702</sup> The collective recruitment, prayer meetings and martial drilling of the Black Muslims on prison yards concerned administrators in Pennsylvania who feared that they posed a potential challenge to the institutional and racial order. Accordingly, prison staff often isolated or transferred Black Muslims in an attempt to crush their collective activities when they lacked other means of dissuading them from their activities.<sup>703</sup> Similar actions awaited prisoner activists, like Sylvester Lockhardt, a decade later. Such men faced increasingly long periods in isolation and multiple transfers because of their political outspokenness and organizing. For prisoners like Lockhardt, it became much easier to end up in “the hole,” yet often more difficult to ascertain exactly why one was placed there or secure a way out. For prison administrators, this shift entailed a reimagining of prison space. By the mid-1970s, they began creating more segregation units and refurbished old ones. In Pennsylvania, such trends were apparent by 1970, but increased throughout the decade. As they did, a whole new discourse of contention and activism blossomed around the use of these techniques and the procedures and protections attending them. Prisoner activism often focused as much on the issue of these control techniques as it did on other aspects of imprisonment.

Prison administrators also used isolation and transfers to stifle the relationships prisoner activists had with outside supporters and organizations. As prison walls became more porous in

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<sup>702</sup> Jacobs, *Stateville*, 58-69; James B. Jacobs, “Race Relations and the Prisoner Subculture”; Smith, “Black Muslims and the Development of Prisoners’ Rights”; Eric Cummins, *The Rise and Fall of California’s Radical Prison Movement*, 63-92; Conley and Debro, “Black Muslims in California Prisons”; Kusha, *Islam in American Prisons*.

<sup>703</sup> Paul Kahan, “Seminary of Virtue: The Ideology and Practice of Inmate Reform at Eastern State Penitentiary, 1829-1971,” (PhD. Diss, Temple University, 2009), 266-268.

some respects from the late 1960s onward, these disciplinary techniques developed this duality, targeted at both the person directly subject to isolation and transfer as well as supporters from beyond the walls who prison staff nevertheless saw as a disruptive influence inside. The irony, of course, is that many prison authorities, especially senior bureaucrats, welcomed greater public involvement and at times even invited criticism, like that displayed in the “Behind the Walls” series. Prison staff and police had the legal authority to suppress outside demonstrations in some cases, but most gatherings were peaceful enough that law enforcement usually just monitored protestors. Without a direct tool to disperse crowds outside the urban prison, prison officials relied on their ability to move their compatriots inside.

In December 1970, the same month that Pittsburgh Press ran the “Behind the Walls” series, a group of twelve prisoners at SCI Pittsburgh started a newspaper called *Vibrations*, which demonstrates the relationship of prisoner activism, outside supporters and the use of segregation and isolation.<sup>704</sup> The publishers described *Vibrations* as more than just a “traditional institutional ‘gripe sheet,’” but rather a “tri-communal” newspaper aimed at reaching three primary audiences – inmates, prison authorities and members of “unwalled society.”<sup>705</sup> Donations from outside businesses, like Copco Papers Inc., and the sponsorship of a few treatment staff members sustained the efforts of the twelve original members of the collective that produced the newspaper.<sup>706</sup> Over the first few months of 1971, the newspaper

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<sup>704</sup> [Vibrations II,] “Prison Reform Proposal,” Charles Owen Rice Papers, box 17, folder 8. UPASC; Rep. William S. Moorhead (PA), “Pennsylvania Prison Inmates Publish Newspaper,” 92nd Cong., 1st sess., *Congressional Record* 117 (April 21, 1971), H. 11637-11639; J. Van Dusen, “Gray v. Creamer, No. 71-1714 (3rd Cir. August 14, 1972),” *Prison Law Reporter*, (September 1972), 320-322.

<sup>705</sup> Rep. William S. Moorhead, speaking on Pennsylvania Prison Inmates Publish Newspaper, H. 11639; “Protests End of Prison Newspaper,” *New Pittsburgh Courier*, (May 29, 1971).

<sup>706</sup> *Ibid.*

collective became more outspoken and established numerous links with community groups and individuals, including meeting with a group of high school students.<sup>707</sup>

At first, the administration tolerated the uncensored newspaper, but otherwise offered it little support. Yet, tensions with Superintendent Brierley and SCI Pittsburgh's line staff increased as the newspaper became more critical, which finally culminated on April 19, 1971, when the administration shuttered the Vibrations' office, confiscated their production equipment and ordered an institutional shakedown. Prison staff claimed that they discovered illicit items in the possession of several members of the Vibrations collective and subsequently placed them in administrative segregation without disciplinary hearings or formal charges.<sup>708</sup> They were soon transferred to several different prisons.<sup>709</sup> Over the next two weeks the administration targeted at least ten more prisoners with connections to Vibrations, transferring them to other prisons where they were immediately placed in segregation. Those affected by these transfers also claimed that they were not charged or tried through normal disciplinary procedures.<sup>710</sup>

The newspaper's staff and many of their supporters accused the administration of simply trying to suppress the controversial newspaper under the pretext of security. In the days following the shakedown, the Pittsburgh Press and Pittsburgh Post-Gazette both reported that demonstrators gathered in the streets next to the prison to voice their disapproval of Vibrations' demise: "a group of hippie-type pickets marched around the area" immediately

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<sup>707</sup> "Protests End of Prison Newspaper," *New Pittsburgh Courier*, (May 29, 1971).

<sup>708</sup> "Western Pen Search Nets 40 Weapons," *Pittsburgh Press*, (April 19, 1971); [Vibrations II,] "Prison Reform Proposal," Charles Owen Rice Papers, box 17, folder 8. UPASC.

<sup>709</sup> "License Tag Deadline Now May 15," *Pittsburgh Press*, (April 23, 1971).

<sup>710</sup> "Warden Accused in Shakedown of Pen Cells," *Pittsburgh Press*, (April 21, 1971); J. Van Dusen, "Gray v. Creamer," 321; [Vibrations II,] "Prison Reform Proposal," Charles Owen Rice Papers, box 17, folder 8. UPASC.

outside the prison walls, “protesting ‘censorship’ of the prison newspaper.”<sup>711</sup> Inside the prison, a “near revolt” and a fire temporarily delayed production in the state’s main license plate factory.<sup>712</sup> Brierley and Commissioner Sielaff confirmed the delay and damage, but refused to publicly acknowledge prisoner resistance as the cause.<sup>713</sup>

Brierley rejected the accusation of censorship, but said that since the newspaper had “an-outside-the-prison circulation” he did not “want the public misinformed”; the publication had to be an “‘acceptable’ newspaper and not one with underground overtones.”<sup>714</sup> He claimed that *Vibrations* was only temporarily halted until a new review board was formed to oversee the work of the inmate writers. The shakedown, he said, was simply a routine practice and not directed at the newspaper.<sup>715</sup> This explanation did not satisfy many of the people who knew members of the collective and supported the publication. Denise D. Speaks, one of the high school students who visited members of the newspaper’s staff, later told the *New Pittsburgh Courier*, that “the realism represented in the paper frightened the prison officials, and is the basic cause of the discontinuation of *Vibrations*.”<sup>716</sup>

The prison administration’s actions were obviously aimed at suppressing the views of radical prisoners, but the destruction of *Vibrations* and the United Inmate Advisory Council before it illustrates how practices like isolation and transfers were also meant to sever the connections that some inmates maintained with members of the “unwalled society,”

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<sup>711</sup> “License Tag Deadline Now May 15,” *Pittsburgh Press*, (April 23, 1971), quote; “Western Pen Is Picketed,” *Pittsburgh Post-Gazette*, (April 24, 1971).

<sup>712</sup> “‘Near Revolt,’ Damage Cited at Western Pen,” *Pittsburgh Post-Gazette*, (April 23, 1971).

<sup>713</sup> “License Tag Deadline Now May 15,” *Pittsburgh Press*, (April 23, 1971).

<sup>714</sup> *Ibid.*

<sup>715</sup> “Warden Accused in Shakedown of Pen Cells,” *Pittsburgh Press*, (April 21, 1971).

<sup>716</sup> “Protests End of Prison Newspaper,” *New Pittsburgh Courier*, (May 29, 1971).

connections that prison staff found threatening to institutional order. The administration suppressed these particular challenges, but their actions fomented resentment in the community among supporters of both organizations who soon formed a new prison activist organization called Vibrations II Committee for Penal Reform. The group drew greater attention to problems of SCI Pittsburgh and imprisonment in Pennsylvania in general. They participated in numerous protests outside the prison's walls over the next few years.

Prison authorities, of course, prevented direct contact between inmates and certain outside groups and individuals through institutional bans. Brierley's initial refusal to permit the two radical, Catholic priests in the autumn of 1969, for instance, appears to have been an attempt to set the terms of, not only their visits with inmates, but also the cultural programming and other activities of numerous African American prisoners. Brierley later renewed this particular ban in September 1971, following a public demonstration outside the walls of SCI Pittsburgh in the aftermath of the Attica uprising in western New York. The superintendent claimed that this demonstration alarmed him because of how it affected prisoners inside SCI Pittsburgh and by the fact that among the seventy or so protestors there were a number of people who had been recently imprisoned at SCI Pittsburgh. The demonstrators, many of whom were members of Vibrations II, professed solidarity with the Attica inmates and demanded greater access to SCI Pittsburgh and more information about the people being held there.<sup>717</sup> One of the organizers, Boyd Puryear, summed up his frustration, telling a reporter: "We can't get any news from behind those walls on what is going on inside.

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<sup>717</sup> "Marchers Ask Facts at Western Pen," *Pittsburgh Post-Gazette* (September 21, 1971).

And we can't get people in to check on what's happening. The only way they'll tell us is if we demand to know."<sup>718</sup>

Brierley, who monitored the demonstration from inside the prison, claimed that prisoners in the facility's South Block could hear the protesters and each group shouted back and forth to each other through windows.<sup>719</sup> Brierley feared that this might spark a violent confrontation inside, especially since the situation was already tense following the violence at Attica. So, he immediately removed prisoners from the South Block of the prison near the street where the demonstrators were located.<sup>720</sup> He also wrote a letter to Father Augustus Taylor and Father John O'Malley the same day, telling them that, "after witnessing your so very active part in the demonstration outside the institutional walls at noon today, I can readily see that it is your sole purpose to incite the prison population to riot and I am therefore forced to rescind the approval permitting you to enter the confines of this institution."<sup>721</sup> The U.S. Third Circuit Court of Appeals later upheld Brierley's ban after the priests filed suit against him.<sup>722</sup>

The location of SCI Pittsburgh within the city enabled prison activists and the family and friends of prisoners to stage frequent protests like this within earshot of those confined inside. This meant that penal reform organizations and more radical prison movement groups had a much greater degree of contact with prisoners at SCI Pittsburgh than they did with people confined in rural prisons, which were not only much further away from the urban bases of such activists, but also had larger, secure buffer zones outside the walls. This direct communication,

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<sup>718</sup> Ibid.

<sup>719</sup> *O'Malley v. Brierley*, 477 F.2d 785 (3d Cir. 1973).

<sup>720</sup> Ibid.

<sup>721</sup> Ibid, quote; "Pittsburgh Western Pen Called 'Worst in State,'" *New Pittsburgh Courier*, (October 9, 1971); "Priests Sue Pen Warden," *New Pittsburgh Courier*, (October 16, 1971).

<sup>722</sup> Ibid; "Federal Judge Refuses to Order Western Pen Visitation Rights," *New Pittsburgh Courier*, (Dec 25, 1971).

thus, presented staff with a series of concerns that were not present at most of the state's other institutions.<sup>723</sup> Messages and other forms of contraband were at times thrown over the wall by those inside and outside the prison, obviously bypassing security screening. In August and September 1972, a well-coordinated statewide work stoppage by prisoners in four institutions across the state exemplified some of patterns of communication, activism and subversion that was becoming increasingly common in Pennsylvania prisons in general and urban prisons like SCI Pittsburgh in particular.

The origins of the strike started secretly with a small group of committed prisoner activists, but quickly spread throughout the prison system with the aid of sympathetic lawyers, activists groups and, ironically, the Bureau's practice of frequently transferring activist inmates to control their activities.<sup>724</sup> Letters found by staff in the possession of several inmates at SCI Pittsburgh in August 1971 revealed the existence of a list of 41 demands for improvements to the prison system that was circulating through underground networks inside the prisons and outside among activists and lawyers. By late August, many of the outside groups and individuals openly acknowledged the efforts for a work stoppage. In Pittsburgh, representatives of the Vibrations II and the Western Pennsylvania Committee to Free All Political Prisoners publicly announced their support for a "statewide prison labor strike" aimed at forcing the state

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<sup>723</sup> However, these issues also played a large role in institutions in or near Philadelphia, like the county prisons, SCI Philadelphia (until its closure in 1970) and to a lesser extent SCI Graterford, which was located about 35 miles north of the city.

<sup>724</sup> Stewart Werner to Governor Milton J. Shapp, September 8, 1971. MG-309 Milton J. Shapp Papers, General File, 1971-1979, box 24, folder 18. PSA; "Prepare for Strike in Pa. Prisons," *Gettysburg Times*, (August 22, 1971); "Strike Looms at Western Penn," *New Pittsburgh Courier*, (August 26, 1972); "Jail Strike Defense Nil," *Pittsburgh Post-Gazette*, (September 2, 1972); "Demonstrators at Pen Support 41 Demands: 150 Prisoners in Work Strike," *Pittsburgh Post-Gazette*, (September 6, 1972); "40 March to Support Grievances of Western Penitentiary Inmates," *New Pittsburgh Courier*, (September 9, 1971).

government to implement reforms.<sup>725</sup> The strike, which was to occur immediately after Labor Day, was also intended to mark the anniversary of the Attica uprising. The activists strategically held this press conference at the William Penn Hotel in downtown Pittsburgh, which was also hosting the annual meeting of the America Correctional Association, attended by Gov. Milton Shapp.<sup>726</sup>

The ensuing strike emerged in stages across the state. The first actions appeared at SCI Graterford, north of Philadelphia, where nearly 750 inmates refused to work and were locked in their cells.<sup>727</sup> At least 50 inmates at SCI Dallas, located in a largely rural area near Wilkes-Barre, also refused to work as did 30 prisoners at SCIMuncy, the state's only women's prison. Prisoners at SCI Pittsburgh did not walk off the job in the morning, according to Deputy Commissioner Stewart Werner, but "at noon and in concert with peaceful picket lines outside the institution (community groups) about 300 demonstrated in the institution yard at the instigation of four individuals."<sup>728</sup> Guards later locked about 150 inmates in their cells when they refused to work.

People inside SCI Pittsburgh disputed the prison officials' account in a handwritten note, which was affixed to a ball and thrown over the institution's wall to the demonstrators. In a September 9<sup>th</sup> article, the *New Pittsburgh Courier* quoted the note as stating: "Contrary to the

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<sup>725</sup> "Strike Looms at Western Penn," *New Pittsburgh Courier*, (August 26, 1972)

<sup>726</sup> Ibid.

<sup>727</sup> Stewart Werner to Governor Milton J. Shapp, September 8, 1971. MG-309 Milton J. Shapp Papers, General File, 1971-1979, box 24, folder 18. PSA; "750 Graterford Inmates Join Work Stoppage: Confusion Over Strike Date," *Bulletin*, (September 5, 1972), newsclipping. Bulletin Clippings (loose), Eastern Penitentiary Graterford Prisoners 1972. TUUA; "Group Denies 'Agitators' Led Prison Strike," (September 6, 1972), newsclipping. Bulletin Clippings (loose), Eastern Penitentiary Graterford Prisoners 1972. TUUA; "Inmates' Strike Continues at Graterford," (September 6, 1972), newsclipping. Bulletin Clippings (loose), Eastern Penitentiary Graterford Prisoners 1972. TUUA.

<sup>728</sup> Stewart Werner to Governor Milton J. Shapp, September 8, 1971. MG-309 Milton J. Shapp Papers, General File, 1971-1979, box 24, folder 18. PSA.



administration official word – 90 per cent of the inmate population is on strike - please notify the news media – also we'd like all supporters to move onto the railroad tracks in front of the jail"<sup>729</sup> Within two days, prison staff at all the affected institutions reported that only a few "dissidents" still refused to work and remained locked up. However, in Pittsburgh prison staff cited "some unconfirmed reports that community agitation will be renewed in support of 'work stoppage' this weekend, 9 and 10 September."<sup>730</sup>

The threat of a protests dissipated over the weekend, but the leadership of the Bureau of Correction was concerned about the mutual influence and communication between radical political groups and individuals on both sides of the walls. Deputy Commissioner Werner explained to Gov. Shapp on September 8<sup>th</sup> that the extent of the work stoppage and its coordinated statewide pattern could be traced back to these relationships:

Though the 'work stoppage' itself started from a small inmate committee whose membership was spread throughout institutions of the Bureau, the effort was given considerable impetus by community groups and individual attorneys who worked overtly as well as surreptitiously in support of the 'work stoppage' effort.<sup>731</sup>

This placed the Bureau's relatively new leadership of Allyn Sielaff and Stewart Werner in an ironic quandary. During the last few years of Arthur Prasse's tenure as commissioner, the Bureau had developed new community corrections programs and made numerous calls for greater public support and involvement in inmate reform efforts. Sielaff and Werner were

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<sup>729</sup> "40 March to Support Grievances of Western Penitentiary Inmates," *New Pittsburgh Courier*, (September 9, 1971).

<sup>730</sup> Stewart Werner to Governor Milton J. Shapp, September 8, 1971. MG-309 Milton J. Shapp Papers, General File, 1971-1979, box 24, folder 18. PSA.

<sup>731</sup> Ibid.

instrumental in the development of many of these policies and inherited and expanded them after Prasse's retirement. However, the groups and individuals that showed the most interest in penal reform and alternatives to incarceration were in Werner's view a source of "community agitation," fomenting disorder in the state's prisons. The increased porousness of the prison system's boundaries became fraught with threats of political activism and discrediting scandals.

The Bureau's reform efforts faltered in other ways as well, which revealed the outlines of an emerging field of partisan competition over penal policies that embroiled the state's prisons in ever greater debate and controversy throughout the decade. Gov. Shafer left office in early 1971 without achieving the major prison reform he sought – the elevation of the Bureau of Correction to a cabinet level department. His successor, Milton Shapp, also supported the creation of a Department of Corrections but, the details of the proposal, which was redrawn several times, met with a lot of resistance by counties and some agencies, like the Board of Probation and Parole, which feared the loss of their autonomy. Many police officers and judges opposed versions of the plan because it included extending the Bureau's already controversial community corrections programs, which they despised. Even among those who supported the proposal, like many members of the General Assembly's Democratic caucus, the specific policies included in bills generated resistance, like the earned good time system.

Nevertheless, Gov. Shapp was interested in major prison reform, and he retained the nationally well-regarded Allyn Sielaff to lead the Bureau of Correction. However, the administration's effort were often presented poorly to the public and the governor himself occasionally stumbled through prison reform proposals, eliciting resistance and criticism from other administration officials which simply embroiled an already difficult subject in further

controversy. For instance, the governor tried to revive the idea of creating representative inmate councils in all the state's prisons.<sup>732</sup> Sielaff, the liberal penologist, adamantly opposed the idea citing both the danger such bodies posed and the wealth of knowledge about inmate views that the Bureau had already gathered in several official studies. The Bureau's work furlough program and the effort to locate sites for new community corrections centers and regional prisons proved to be persistent sources of negative publicity, especially if it involved escapes. The rate of escape rose dramatically in the first years of Shapp's administration, which in a letter to the governor, Sielaff attributed to among other things, the looser restrictions on inmate movement within prisons, outside work details and community corrections programs.<sup>733</sup> Other members of the administration knew that such explanations might convince penologists, but played poorly in press conferences. Norval Reece, Shapp's personal assistant, succinctly commented on Sielaff's letter: "This report on prisoner escapes from Allyn Sielaff is devastating. I find none of the reasons stated for the escape record to be convincing to the public...Let's talk about this. Something has to be done."<sup>734</sup>

The lack of movement on the departmental consolidation further frustrated Sielaff's reform agenda, in part by leaving his agency with inadequate funding and political support to extend community corrections programs and replace institutions like SCI Pittsburgh. Sielaff soon found greener pastures. On May 17, 1973, he announced that he was resigning to take a position as head of the Illinois's cabinet-level Department of Corrections, which controlled both

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<sup>732</sup> Allyn R. Sielaff to The Honorable Ernest Kline, December 6, 1971. MG-309 Milton J. Shapp Papers, General File, 1971-1979, box 24, folder 18. PSA.

<sup>733</sup> Allyn R. Sielaff to Honorable Milton J. Shapp, March 7, 1973. MG-309 Milton J. Shapp Papers, General File, 1971-1979, box 24, folder 18. PSA.

<sup>734</sup> Norval Reece to the Governor and Dick Doran, March 15, 1973. MG-309 Milton J. Shapp Papers, General File, 1971-1979, box 24, folder 18. PSA.

adult and juvenile penal institutions as well as the probation and parole service.<sup>735</sup> Sielaff claimed that his decision was entirely to improve his career, but to many people in Pennsylvania, the message was that their state's penal bureaucracy was so poorly structured and mired in legislative bickering that they could not compete with others for talented public administrators, like Sielaff.

Soon after, Shapp appointed Sielaff's deputy, Stewart Werner, as the next Commissioner of Correction.<sup>736</sup> Like Sielaff, Werner advocated offender reintegration through community corrections programs and the normalization of prison regimes, but public attention shifted during 1973 to a greater focus on prison and jail security. Several high profile murders of correctional staff and increasing reports of escapes and prison disturbances largely supplanted the discussion of many other areas of prison reform and the benefits of existing programs. Tightening institutional security and finding ways to control the dangerous became highly public, top priorities.

The first set of murders of prison staff occurred at Philadelphia's Holmesburg Prison where two prisoners stabbed the warden and deputy warden to death after a dispute over meeting space for Muslims.<sup>737</sup> The two assailants, Joseph Bowen and Frederick Burton, were said to have smuggled shanks into a meeting with Deputy Warden Fromhold<sup>738</sup> over space for

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<sup>735</sup> Sielaff also received a nearly \$10,000 raise, almost a third of his Pennsylvania salary. "Reformist Corrections Boss Quits State for Illinois Post," *Pittsburgh Press*, (May 18, 1973); "Pa. Correction Chief Allyn Sielaff Resigns: Accepts Illinois Post," *Pittsburgh Post-Gazette*, (May 18, 1973).

<sup>736</sup> Governor's Press Release on Werner appointment, July 1973. MG-309 Milton J. Shapp Papers, General File, 1971-1979, box 24, folder 18. PSA.

<sup>737</sup> "Warden Was Killed by Chance," *Bulletin*, (June 1, 1973), newsclipping. Bulletin Mounted Clippings Box 100 Clips Bulletin Holmesburg Prison--Stabbings, Deaths. TUUA.

<sup>738</sup> During subsequent trials there was some question as to whether Bowen and Burton obtained the weapons from a small cache of confiscated items in the warden's office.

Muslim religious services and assassinated him after their meeting turned into an argument. The pair then stabbed Warden Curran and Capt. Leroy Taylor when they tried to come to Fromhold's aid. Only Taylor survived.

While the murders occurred in a county prison, their effects did not respect jurisdictional boundaries. Curran and Fromhold's deaths made national news and overwhelmed prison reform narratives in Philadelphia and Pennsylvania. Philadelphia's prison had been reeling from criticism, investigation, and violence for several years, but the murders of such senior officials called into question many of the reforms that had been implemented since the Independence Day riot. The deaths highlighted the vulnerabilities of all prison staff and the lack of institutional control that appeared to characterize not only Philadelphia County's prisons, but many institutions across the country.

The descriptions of the two men responsible for the deaths could not be easily accommodated with the reform discourse attending the new reintegration programs and policies at either the county and state level. Bowen and Burton were both awaiting trial for separately killing police officers and each stridently espoused Black Nationalism and Sunni Islam.<sup>739</sup> Bowen, the older of the two, had a long violent criminal and prison record and Burton had been a member of the Black Unity Council, a short-lived splinter group of Philadelphia's Black Panther Party, which fatally ambushed several police officers in 1970.<sup>740</sup> Yet, in most public accounts, their social and political views remained superficial at best and neither man

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<sup>739</sup> Bowen and Burton were not members of the Nation of Islam, but aligned with a radical, splinter group that followed the teachings of Malcolm X after his departure from the Nation of Islam.

<sup>740</sup> *Commonwealth v. Burton*, 330 A.2d 833, 834-36 (Pa. 1975); Paolantonio, *Frank Rizzo*, 100-102; Griffin, *Philadelphia's Black Mafia*, 73.

commanded much vocal support in the wider community. In media descriptions of the men, their recourse to violence framed their beliefs rather than the other way around; neither man seemed reformable nor indeed willing to accept lawful authority. Prison staff at Holmesburg immediately transferred Bowen and Burton to state custody where they were placed in control units at SCI Graterford (Bowen) and SCI Pittsburgh (Burton).

On September 16, 1973, another correctional staff member was killed, this time in the state system at SCI Graterford. Stephen P. Ary Sr., a 28-year old food service worker, was stabbed to death allegedly by Albert Andrew Ford, who was serving life for a 1971 double murder.<sup>741</sup> This was first time a correctional employee had actually been killed at Graterford.<sup>742</sup> Graterford's administration immediately placed the entire facility on total lockdown. During an emergency meeting of the guards' union, *American Federation of State, County and Municipal Employees* (AFSCME) Local 4297, members voted to maintain the lockdown until the Bureau acquiesced to 20 demands for security improvements, increased staffing and the resignation of the Graterford's superintendent, Robert Johnson, who was widely considered to be a liberal reformer.<sup>743</sup> A union spokesman told reporters that guards were told that if the prison's leadership ordered them to open a cell, "they were to hand the ' keys over and go home."<sup>744</sup> When a guard was suspended for doing just this on September 21<sup>st</sup>, between over 75 percent of the institution's guards as well as clerical and maintenance workers walked off the job,

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<sup>741</sup> Employees Killed in the Line of Duty," *Correctional Newsfront*, 1 (2004), 31; "Graterford Employees Walk Off Jobs," *Pottstown Mercury*, (September 21, 1973); "20 Security Demands of Workers at Prison: Warden's Dismissal Sought," *Pottstown Mercury*, (September 21, 1973).

<sup>742</sup> Ibid.

<sup>743</sup> Ibid.; "20 Security Demands of Workers at Prison: Warden's Dismissal Sought," *Pottstown Mercury*, (September 21, 1973).

<sup>744</sup> Ibid.; "20 Security Demands of Workers at Prison: Warden's Dismissal Sought," *Pottstown Mercury*, (September 21, 1973).

leaving Graterford manned by senior officers and small detachment of state police.<sup>745</sup> The guards demanded that the Bureau hire more guards and reassign existing staff at the prison to purely custodial duties.

Ary's death occurred amid controversy over the abrupt liberalization of many routines and norms at Graterford.<sup>746</sup> Although, the impetus for such moves came from the central office in Harrisburg, Supt. Johnson, much like Supt. Brierley at SCI Pittsburgh, shouldered much of the guards' resentment for the changes. After, Ary's death, the guards' animosity toward Johnson soared. Among their demands were many items clearly aimed at reversing some of the liberal reforms Johnson instituted, like permitting prisoners to wear civilian clothing instead of uniforms.<sup>747</sup> Albert Ford, the man charged with stabbing Ary forty times, was confined in solitary where he would remain for years, either at Graterford or SCI Dallas, where he was later transferred.<sup>748</sup> Ford claimed in subsequent litigation that Graterford's guards ruthlessly beat him in segregation before he was finally moved to Dallas.<sup>749</sup>

Finally, on December 10, 1973, four white inmates in the restricted housing unit at SCI Pittsburgh fatally beat and stabbed Lt. Walter L. Peterson, who was African American, in what was described by other staff as a clearly racially motivated assault. One of the assailants, Stanley Hoss, already had a notorious reputation inside and outside prison as an extremely

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<sup>745</sup> Ibid.; "20 Security Demands of Workers at Prison: Warden's Dismissal Sought," *Pottstown Mercury*, (September 21, 1973); "Murder Sparks Walkout," *New Castle News*, (September 21, 1973).

<sup>746</sup> Thomas W. Jennings to Nick Salandria, May 18, 1972 and "Meeting with Graterford Guards on March 16, 1972," Thomas W. Jennings to Dante Mattioni, March 22, 1972. RG-15 Department of Justice, Attorney General, General Correspondence, box 81, folder 6. PSA; "Inmate Claims Guards Abused Him," *Bulletin*, (March 16, 1976), newsclipping, Bulletin Clippings (loose), Eastern Penitentiary Graterford Prisoners 1975-1979.

<sup>747</sup> "Graterford Employees Walk Off Jobs," *Pottstown Mercury*, (September 21, 1973).

<sup>748</sup> "Inmate Claims Guards Abused Him," *Bulletin*, (March 16, 1976), newsclipping, Bulletin Clippings (loose), Eastern Penitentiary Graterford Prisoners 1975-1979. TUUA; *Com. ex rel. Ford v. Jeffes*, 260 Pa.Super. Ct. 432 (1978)

<sup>749</sup> Ibid.; *Com. ex rel. Ford v. Jeffes*, 260 Pa.Super. Ct. 432 (1978)

violent person, having been convicted of raping a woman, killing a police officer, and kidnapping and killing a woman and her two-year old daughter during a prison escape - facts that media reports of Peterson's killing reiterated.<sup>750</sup> Even though Hoss and his accomplices were segregated in the prison's Behavioral Adjustment Unit, the design of the unit was vulnerable to manipulation. The prisoners clearly planned their attack. After luring Peterson into the unit, they tied the door handles together with sheets preventing staff from accessing the unit.<sup>751</sup> All the guards could do was watch their colleague being murdered from behind a caged observation point near the entrance.

Following Peterson's death, AFSCME Local 2500, which represented guards at SCI Pittsburgh, sent Commissioner Stewart Werner and the prison's new superintendent, Gilbert Walters, a list of twelve demands and threatened to strike if they were not met.<sup>752</sup> Like the demands presented by Graterford's staff, these involved greater security procedures and calls for the hiring of more staff. The guards at Pittsburgh also wanted to reopen "the Dungeon," an ancient subterranean isolation unit below the Behavioral Adjustment Unit that Gov. Milton Shapp and former commissioner Allyn Sielaff had recently shuttered.<sup>753</sup> Werner averted the

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<sup>750</sup> "Western Pen Officer Beaten, Kicked, Dies," *Pittsburgh Post-Gazette*, (December 11, 1973); "Slaying at Pen Stirs Strike Talk," *Pittsburgh Press*, (December 11, 1973); "Four Inmates Charged in Killing of Pen Guard," *Pittsburgh Post-Gazette*, (December 12, 1973); "Hoss, 3 Pals Charged with Murder," *Pittsburgh Press*, (December 12, 1973); "Locked-in Prison Guard Watched Murder at Pen," *Pittsburgh Post-Gazette*, (December 13, 1973); "Suspects Hurt in Guard Slaying," *Pittsburgh Press*, (December 13, 1973); James G. Hollock, *Born to Lose: Stanley B. Hoss and the Crime Spree that Grippled a Nation* (Kent: Kent State University Press, 2011).

<sup>751</sup> Stacy Lee, "Peterson's murder caused national outcry," *Triblive News*, (December 11, 2010), [http://triblive.com/x/dailynews/mckeesport/s\\_713161.html#axzz3SolwUxGX](http://triblive.com/x/dailynews/mckeesport/s_713161.html#axzz3SolwUxGX). Last viewed on February 20, 2015; Stacy Lee, "Convicted murderer denies killing guard 37 years ago," *Triblive News*, (December 11, 2010), [http://triblive.com/x/dailynews/mckeesport/s\\_713337.html#axzz3SolwUxGX](http://triblive.com/x/dailynews/mckeesport/s_713337.html#axzz3SolwUxGX). Last viewed on February 20, 2015

<sup>752</sup> "Slaying at Pen Stirs Strike Talk," *Pittsburgh Press*, (December 11, 1973).

<sup>753</sup> Gov. Shapp ordered the unit closed after personally inspecting it in 1972. Walter L. Foulke to Allyn R. Sielaff, January 7, 1972; Michael Louik to F. John Hagele, January 7, 1972; Walter L. Foulke to Mr. Joseph R. Brierley, January 10, 1972; F. John Hagele to Hon. J. Shane Creamer, January 11, 1972; Allyn R. Sielaff to Superintendent Brierley, January 19, 1972; Walter L. Foulke to Honorable Milton J. Shapp, February 9, 1972; Allyn R. Sielaff to



guards' walkout by conceding to all of the demands. Gov. Shapp, who attended Peterson's funeral on December 14<sup>th</sup>, personally approved the limited reopening of the Dungeon.<sup>754</sup> Shapp's and Werner's decisions significantly tightened security at the institution, something which the guards and Allegheny County's district attorney, Robert Duggan, had been calling for since Brierley was appointed superintendent in 1968.<sup>755</sup> Following Peterson's murder, Duggan also implored leaders in the General Assembly to reinstate the death penalty to deter prisoners who had little left to lose in attacking prison staff.<sup>756</sup> Asaline Peterson, the slain guard's wife, told the *Pittsburgh Post-Gazette* that her husband had, in fact, been quite upset by a the recent Supreme Court decision halting capital punishment, fearing that some prisoners would become more violent and confrontational without the deterrent of the death penalty.<sup>757</sup>

The murders of these four correctional workers condensed many of narratives about the deteriorating conditions behind bars and for some people (especially guards) provided a compelling argument about the dangers of liberalizing prison regimes. One cannot overstate the combined effects of prison violence, inmate radicalization, racial polarization and the growing presence of gangs on the drift of penal change in the state over the ensuing weeks, months and years. These issues were not always or necessarily related even if they often

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Walter L. Foulke, March 3, 1972. RG-15 Dept of Justice, Att-Gen, Gen. Corresp, 1971 Series 200 71—03-16-230 to 71-03-22-211, box 7, folder: Corrections 71-03-18-234. PSA; "Incorrigibles Threat to Prison Life," *Pittsburgh Post-Gazette*, (December 31, 1973); "State Officials Approve Union Safety Demands," *Pittsburgh Post-Gazette*, (December 12, 1973); "Pen Adopts Stiff Rules on Security," *Pittsburgh Post-Gazette*, (December 14, 1973); "Guard's Death Brings Change at Western Pen," *Pittsburgh Post-Gazette*, (December 20, 1973). For information on Shapp's prison tour, see MG-309 Milton J. Shapp Papers, General File, 1971-1979, box 328, folder 29-32; PSA. "Shapp Tours Western Pen, Urges Reform," *Pittsburgh Press*, (February 11, 1972).

<sup>754</sup> Ibid.; "Pen Adopts Stiff Rules on Security," *Pittsburgh Post-Gazette*, (December 14, 1973); "Slain Guard Mourned, Buried," *Pittsburgh Press*, (December 14, 1973).

<sup>755</sup> "Pen Status Dangerous, DA Reports," *Pittsburgh Post-Gazette*, (February 7, 1973).

<sup>756</sup> "Slain Guard's Wife Recalls Job Fears," *Pittsburgh Post-Gazette*, (December 12, 1973).

<sup>757</sup> Ibid.; The U.S. Supreme Court established a moratorium on capital punishment in *Furman v. Georgia*, 408 U.S. 238 (1972).

intersected, but the staff killings wove these trends together and did so in very personal narratives of the slain staff invoking duty, honor, family and sacrifice, which resonated with a much wider audience than policy and expert discourse. After the murders, security and custodial concerns began displacing reintegration and normalizations in many public penal accounts. Custody took greater precedence over programming, education and work inside the state's secure institutions, and the authorities intensified the security classification process for participants in minimum security institutions and community corrections programs.

Central to moment was the push to expand the use of isolation and develop new control units by the state's guard force and their union. Prison authorities have historically oscillated between two primary philosophies – dispersal and concentration – to control a relatively small subset of prisoners they consider dangerous or difficult to manage with routine practices. As the terms suggest, the difference between the two involves the decision whether to distribute and integrate the target group within the broader, secure prison population or isolate them in dedicated facilities or units for prolonged periods. The two philosophies were often hard to distinguish in practice and to some degree have been used in tandem. Nevertheless, these two control strategies informed many of the policies and dispositions of competing sections within the Bureau of Correction and state government.

The crucial difference between these strategies rested on an assumption about whether or not the subjects of control could be socialized into the routines of the mainline population of a maximum security institution. Advocates of dispersal believed that most conflicts in prison arose more from the specific nature of interpersonal relationships a prisoner had with staff and other inmates in a particular location. Once removed from conflictual settings, a seemingly

difficult prisoner would often become more compliant. Proponents of concentration disagreed, arguing that an increasing number of people in Pennsylvania's prisons were rebellious and simply refused to respond to normal prisoner management practices. According to this view, such people were intrinsically disruptive or dangerous, and posed a threat to staff, other inmates and institutional order. They could only be controlled with the use of high security control units, which not only segregated difficult people for various periods of time, but also provided a potent deterrent in the economy of institutional penalties.

The majority of the state's guard force favored the implementation of concentration policies, and many also wanted the reinstatement of capital punishment. Most guards resented the loosening of prison rules under Sielaff and Werner, especially those that curtailed the use and duration of isolation. Their views gained increasing salience in official policies and public discourse during 1973, following the killings of the prison staff members. The way the press portrayed the assailants in these killings displaced other representations of the offender and inmate. This morally oriented narratives and their audiences toward the authoritarian methods favored by guards.<sup>758</sup> The prisoners in these representations became increasingly monstrous and distant to images of law-abiding citizens, and the methods deployed against them emphasized greater bodily control and restrictions on their movements inside prisons.<sup>759</sup>

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<sup>758</sup> Jonathan Simon, "Total Incapacitation: The Penal Imaginary and the Rise of an Extreme Penal Rationale in California in the 1970s" in Marijke Malsch and Marius J. A. Duker (eds.), *Incapacitation: Trends and New Perspectives* (Farnham: Ashgate, 2012), 15-35.

<sup>759</sup> For useful discussions of the changing targets of penological intervention see Jonathan M. Metz, *The Protest Psychosis: How Schizophrenia Became a Black Disease* (Boston: Beacon Press, 2009), 186-212; Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham: Duke University Press, 2009), 195-239; Dario Melossi, "Changing Representations of the Criminal," *British Journal of Criminology*, 40 (March 2000), 296-320; David Garland, "Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society," *British Journal of Criminology*, 36 (Autumn 1996), 445-471; Jonathan Simon, "From Big House to Warehouse: Rethinking Prisons and State Government in the 20<sup>th</sup> Century," *Punishment & Society*, 2 (April 2000), 213-234; Jonathan Simon, "The 'Society of Captives' in the Era of Hyper-Incarceration," *Theoretical Criminology*, 4 (August

Communication theorist John Sloop has similarly described the effects of the interrelationship between representations of prisoners and penal practices during this period, noting that, “Just as the altruistic and redeemable inmate allows for the justification of rehabilitation and treatment programs, the representation of the prisoner as irrational and irredeemable is much more likely to justify a more control-centered incarceration, a philosophy of the old penology.”<sup>760</sup> The problems of security and violence were certainly real, and the representations of Bowen, Burton, Ford, Hoss and his associates were not necessarily inaccurate - many of their peers in prison in fact feared and reviled them as well.<sup>761</sup> My point is that these men and their actions dominated many accounts of the problems besetting state and county prisons penal policy for years, and they were not easily reconcilable with the image of a redeemable prisoner and the kinds of reintegration programs that the Bureau’s leadership promoted.

Less than a week after Walter Peterson’s funeral, Gov. Shapp and other senior administration officials met with dozens of representatives from the state’s guard force who lobbied for the creation of a separate institution for prisoners they considered too violent to be housed in any of the existing prisons.<sup>762</sup> The guards’ position was hardly new, but the highly public deaths of correctional staff endowed it with additional political salience. Shapp, who

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2000), 285-308; Sloop, *The Cultural Prison*; John T. Dilulio, Jr., “Understanding Prisons: The New Old Penology,” *Law & Social Inquiry*, 16 (Winter 1991), 65-99.

<sup>760</sup> Sloop, *The Cultural Prison*, 76.

<sup>761</sup> Bowen, Burton and Hoss in particular were known as intimidating, dangerous prisoners among other inmates. See, for instance, Edward “Butch” Anthony’s description of his encounter with both men just prior to their assault on Fromhold and Curran in Hornblum, *Sentenced to Science*, 149-157.

<sup>762</sup> “Social Units Gain Shapp Jail Parley,” *Pittsburgh Press*, (December 19, 1973); “Shapp Will Meet Group Pushing Convicts’ Rights,” *Pittsburgh Post-Gazette*, (December 20, 1973); “Shapp Wants Separate Institution for State’s Most Dangerous Felons,” *Observer-Reporter*, (December 22, 1973); “Special Prison Urged for Hard Core,” *Pittsburgh Post-Gazette*, (December 22, 1973); “Zord Vows To Probe Penal Units,” *Pittsburgh Post-Gazette*, (December 22, 1973); “Isolation Pushed for Incurrigibles,” *Pittsburgh Press*, (December 22, 1973).

made reforming the state's prisons a major priority early in his tenure, acquiesced to the guards' demands and proposed converting one of the state's existing institutions to hold "chronic troublemakers" and "incorrigibles."<sup>763</sup> He described the proposed facility as an "intensive care unit," but refused to name a location for it.<sup>764</sup> It soon became clear, however, that the intended site was located in the rural, far northeastern corner of the state at Farview State Hospital, the state's only maximum-security forensic facility.<sup>765</sup> The "maxi-max" unit was to be located in a converted wing of the existing hospital controlled by the Bureau of Correction and renamed "Waymart."

Civil liberties groups and prisoner advocates implored Shapp not to overreact to the news of Peterson's death. A delegation of representatives from the National Lawyers Guild, Justice Commission of the Catholic Diocese of Pittsburgh, National Emergency Civil Liberty Committee, ACLU, Social Relations Department of the Episcopal Diocese of Pittsburgh, University of Social Realities, Friends Peace Center, NAACP, Association of Pittsburgh Priests and the Thomas Merton Center met with the governor on December 21<sup>st</sup> to try to persuade him against supporting the creation of a new control facility. For the time being, however, the guards held sway with the governor and his staff. Msgr. Charles Owen Rice, who attended the meeting, told reporters afterward that he worried about how the Bureau and its staff would use the new facility: "Who is to determine who is an incorrigible?"<sup>766</sup> Civil rights activist William "Bouie" Haden added that he felt "political incorrigibles" would be sent to the special prison.<sup>767</sup>

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<sup>763</sup> "Isolation Pushed for Incorrigibles," *Pittsburgh Press*, (December 22, 1973); "Special Prison Urged for Hard Core," *Pittsburgh Post-Gazette*, (December 22, 1973).

<sup>764</sup> "Special Prison Urged for Hard Core," *Pittsburgh Post-Gazette*, (December 22, 1973).

<sup>765</sup> *Ibid.*

<sup>766</sup> *Ibid.*

<sup>767</sup> *Ibid.*

Aside from the contention over the establishing such a facility, the choice of Farview itself was controversial. The hospital was notorious.<sup>768</sup> Not only did Farview carry the stigma of criminally insanity, its location in a remote region of the state meant that being committed to the hospital was tantamount to social and geographic banishment. Patients committed to Farview often spent decades there. Staff tended to see nearly all patient behaviors as evidence of dangerousness when making decisions to release people.<sup>769</sup> This changed during the early 1970s after a series of lawsuits, legislative hearings and investigations by researchers agreed that many people were being unnecessarily held at the hospital.<sup>770</sup> Afterward, Farview's population dropped drastically like other state hospitals,<sup>771</sup> but unlike these latter institutions, its physical plant and custodians were well-equipped to handle people in high security situations. Gov. Shapp's plan called for reusing this excess capacity for the new control facility. As administration developed this plan, the Bureau tightened security at the state's existing

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<sup>768</sup> For a summary of the issues surrounding Farview, see Terence P. Thornberry and Joseph E. Jacoby, *The Criminally Insane: A Community Follow-Up of Mentally Ill Offenders* (Chicago: University of Chicago Press, 1979); Joseph E. Jacoby, "Endurance of Failing Correctional Institutions: A Worst Case Study," *The Prison Journal*, 82 (June 2002), 168-188.

<sup>769</sup> Thornberry and Jacoby, *The Criminally Insane*.

<sup>770</sup> "Farview Patients Shifting: Mental Lockup Patients Moving to Mayview," *The Pittsburgh Press*, (March 23, 1973); "Prison-like Mental Hospital Outlives Uses," *The Pittsburgh Press*, March 23, 1973; "Mental Unit Closing Opposed," *The Pittsburgh Press*, (March 28, 1973); "Farview Involved: State Stalls Patient Shift to Mayview," *Pittsburgh Press*, (April 19, 1973); "Farview Fate Pondered by Shapp," *The Pittsburgh Press*, (May 17, 1973); "Farview Patients' Shift Supported," *Pittsburgh Post-Gazette*, (May 28, 1973); Thornberry and Jacoby, *The Criminally Insane*; Jacoby, "Endurance"; Wendell Rawls, *Cold Storage* (New York: Simon and Schuster, 1980); Bill Thomas and S. L. Stebel, *The Shoe Leather Treatment: The Inspiring Story of Bill Thomas's Triumphant Nine-Year Fight for Survival in a State Hospital for the Criminally Insane as Told to S.L. Stebel* (Los Angeles: J.P. Tarcher, 1980).

<sup>771</sup> For a sample of some of the issues surrounding deinstitutionalization, see George Paulson, *Closing the Asylums: Causes and Consequences of the Deinstitutionalization Movement* (Jefferson: McFarland, 2012); E. Fuller Torrey, *American Psychosis: How the Federal Government Destroyed the Mental Illness Treatment System* (New York: Oxford University Press, 2014); Simon Goodwin, *Comparative Mental Health Policy: From Institutional to Community Care* (London: Sage, 1997); E. Fuller Torrey, *Out of the Shadows: Confronting America's Mental Illness Crisis* (New York: Wiley, 1996); Gerald N. Grob, *From Asylum to Community: Mental Health Policy in Modern America* (Princeton: Princeton University Press, 1991).

prisons with SCI Pittsburgh remaining on total lockdown for over a week after Peterson's death.<sup>772</sup> Shapp pledged that the new security unit would be operational by mid-1974.

However, resistance to plan from a collation of prison activists, penal reformers and civil libertarians stiffened throughout 1974. In addition to the loose coalition from Pittsburgh that had already met with the governor, larger coalitions of social justice and prisoner activist groups coalesced in Philadelphia to oppose Shapp's Waymart plan. The first, called the Prisoners' Defense Coalition, was composed of radical activist organizations and unaffiliated individuals many of whom were African American and had either spent time in prison themselves or had friends and family members who did. The Prisoners' Defense Coalition focused heavily on Waymart and similar issues in the federal Bureau of Prisons, but they also saw themselves as concerned with a range of other topics. Part of the motivation for forming the group was to bring the many smaller, disparate activist groups working on criminal justice, social welfare and racial justice in the Philadelphia area together to share experiences and resources and to present a united front to the state. Most constituent member organizations advocated a fundamental restructuring of the prison system and society in general. They saw the Waymart plan as another effort to crush one front of the broad civil rights movement, one of many techniques deployed by the "U.S. government in its effort to repress our struggle."<sup>773</sup>

By August 1974, another coalition opposed to the Waymart plan formed in the Philadelphia area under the named the Coalition to Reduce the Causes of Prison Violence.<sup>774</sup> In

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<sup>772</sup> "Social Units Gain Shapp Jail Parley," *Pittsburgh Press*, (December 19, 1973).

<sup>773</sup> Prisoners Defense Coalition – Statement of Principles. Papers of the Prisoners' Rights Council, box 20 PRC-ORGS-Prison Defense Coalition 1974, folder 16. TUUA.

<sup>774</sup> See the correspondence in Papers of the Prisoners' Rights Council, box 11, folder 7: Behave Mod Project Farview.

many ways, it was an outgrowth of the organizing efforts of the Prisoners' Defense Coalition. Many of the members of the latter group were also part of the new one.<sup>775</sup> However, the new coalition included a number of more established organizations with professional, white, middle class membership and leadership. This group's racial and social standing granted it a greater degree of access to the Shapp administration, to lobby against the use of Waymart.<sup>776</sup> Margery Velimesis, from the Pennsylvania Program for Women and Girl Offenders, took the lead role organizing the coalition, which included the Prisoners' Rights Council, Community Assistance for Prisoners, Pennsylvania Prison Society, Philadelphia Commission for Effective Justice, Chancellor's Office of the Philadelphia Bar Association, ACLU, American Foundation Institute of Corrections and Philadelphia chapter of the National Alliance Against Racist and Political Repression.<sup>777</sup> As their name suggested, the group acknowledged the existence of serious institutional violence, but desired alternative strategies to address it. Its message and organizational goals were narrower than some of the more radical and far-reaching views expressed in the Prisoners' Defense Coalition in this respect.

From the outset, both coalitions solicited the views of currently serving prisoners on the issue of the proposed control unit and prison violence in general. With the help of the prisoners' law clinic at SCI Graterford and the consent of the Bureau of Correction and

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<sup>775</sup> Two key prison activist organizations, the Prisoners' Right Council and the Community Assistance for Prisoners, were part of both groups.

<sup>776</sup> Members of the Prisoners' Defense Coalition recognized the utility of enlisting the help of lawyers and professional organizations in their campaign and discussed strategies to increase their involvement. See copies of their meeting notes in Prisoners' Rights Council, box 20, folder 16: PRC-ORGS--Prison Defense Coalition 1974. TUUA. "Maximum Farview Cells Under Fire," *Pittsburgh Press*, (January 7, 1975); "Opposition Surfaces on Prison Plan," *Reading Eagle*, (March 10, 1975).

<sup>777</sup> Margery Velimesis et al. to Residents at Graterford Prison, August 9, 1974; Margery Velimesis to Members of the Coalition, September 3, 1974. Papers of the Prisoners' Rights Council, box 11, folder 7: Behave Mod Project Farview.



Graterford's superintendent, Ronald Marks, they arranged a meeting with a group of about fifteen prisoners, all of whom had earlier signed a petition protesting the proposed new facility along with nearly 200 other Graterford residents. The Bureau's description of the people it intended to hold in the new unit – incorrigible prisoners, unreachable through any routine penological methods – left many of these men and the activists concerned about the unit's potential uses and skeptical about the Bureau's reassurances about the humane regime it intended to install at the Waymart maxi-max unit.

The prisoners and their activist allies believed that a range of control techniques used in similar units in other states, especially those described as forms of behavior modification, like “Edison medicine” (electroshock therapy), psychosurgery, token economies, psychotropic and emetic drugs and aversion therapy, would eventually be employed at Waymart.<sup>778</sup> Since the later 1960s, increasingly critical portrayals of these techniques appeared in mainstream media.<sup>779</sup> Some widely-popular, scathing accounts of contemporary prisons, like Jessica Mitford's *Kind & Usual Punishment*, devoted considerable attention to behavior modification. Within prisons, the fear of such “Clockwork Orange” techniques was profound.<sup>780</sup> Knowledge and stories of behavior modification techniques circulated among prisoners across the county

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<sup>778</sup> Alexandra Rutherford, “The Social Control of Behavior Control: Behavior Modification, Individual Rights, and Research Ethics in America, 1971–1979,” *Journal of the History of the Behavioral Sciences*, 42 (Summer 2006), 203–220.

<sup>779</sup> Ibid.; Alexandra Rutherford, “Radical Behaviorism and Psychology's Public: B. F. Skinner in the Popular Press, 1934–1990,” *History of Psychology*, 3 (November 2000), 371–395; Alexandra Rutherford, “B. F. Skinner's Technology of Behavior in American Life: From Consumer Culture to Counterculture,” *Journal of the Behavioral Sciences*, 39 (Winter 2003), 1–23.

<sup>780</sup> Prisoners and activists commonly referenced the film *A Clockwork Orange*, which dealt explicitly with criminality, reform and abusive behavior modification techniques, when describing many of the Skinnerian criminal reform practices that emerged in the 1970s. For an overview of behavioralism and behavior modification in prisons, see Rutherford, “The Social Control of Behavior Control,”; Jessica Mitford, *Kind and Usual Punishment: The Prison Business* (New York: Knopf, 1973), 104-150.

and many of Graterford men would have had either direct experience with some of them or knew of prisoners who had. While these techniques, which were quite varied and not always compatible, had appeared in prison in numerous jurisdictions, the most well-known and notorious applications were in the federal Bureau of Prisons, especially the Special Treatment and Rehabilitative Training (START) program located at the Medical Center for Federal Prisoners in Springfield, Missouri and the planned expansion of a similar program at FCI Butner in North Carolina.

Federal prison authorities were often vague in their statements about the behavior modification programs on these facilities, but what they said resembled many of the statements of officials in the Shapp administration. Like the planned Waymart facility, federal officials claimed these programs targeted a relatively small population of persistent, violent troublemakers who refused to conform to institutional rules. The interventions were ambiguously described as state-of-the-art treatment designed to compel prisoners to adjust to institutional settings. However, they were not intended to reform people or prepare them for their ultimate release and reintegration into society. The goal of these various techniques was to break down or restructure a person's personality so that they obeyed institutional rules. There were well-founded reasons for concern about such practices. Not only were they being used by the most influential prison system in the country (U.S. Bureau of Prisons), but there was already evidence that state and county prison authorities in Pennsylvania over-medicated prisoners for the purposes of control. Moreover, Holmesburg Prisons operated the now well-known medical testing program that often coerced and disregarded the rights and welfare of

inmate test subjects.<sup>781</sup> Additionally, Farview's remoteness from the state's major urban centers made it even more difficult for prisoner advocates to monitor the unit for the use of such practices.

The conversion of Farview for the Bureau of Correction moved slowly, however. The hospital's isolation also posed problems for the Bureau. The distance of the hospital from other state prisons created numerous logistical problems for transporting prisoners and finding adequate personnel, problems which had in fact plagued the hospital for decades.<sup>782</sup> Additionally, the Bureau of Correction required modifications to the physical plant in the wing it was going to inherit from the Department of Public Welfare. These practical problems, in addition to mounting political opposition from civil libertarians, penal reformers and some legislators, slowed down the opening of the unit.

This, in turn, renewed criticism from the AFSCME leadership and union locals at many of the state's prisons.<sup>783</sup> Despite repeated statements by several different administration and Bureau officials that the facility would be ready in mid-1974, the project was continually delayed. In early 1975, AFSCME began accusing Shapp of caving in to prison reform groups and reneging on his promises for a separate control unit. As one AFSCME local director Vincent O'Brien described the situation, "Physically the wing has been converted for Waymart; politically it hasn't been converted."<sup>784</sup>

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<sup>781</sup> Hornblum, *Acres of Skin*.

<sup>782</sup> Critics of Farview often cited the hospital's lack of qualified medical professionals. See *Dixon v. Attorney General of Commonwealth of PA.*, 325 F.Supp. 966 (1971); Jacoby, "Endurance," 172-173.

<sup>783</sup> "Shapp Ripped on Jail Security," *Pittsburgh Press*, (February 22, 1975); "Prison Guards Hit Delay on New Facility," *Beaver County Times*, (March 18, 1975); "Worst 6,000 State Convicts Get Own Jail," *Observer-Reporter*, (March 31, 1975); "Plan to Cut Violence Nearer in Pa. Prisons," *Pittsburgh Post-Gazette*, (March 31, 1975); "Pa. May Soon Have Place to Send Most Violent of Its Prison Population," *Gettysburg Times*, (April 2, 1975).

<sup>784</sup> "Segregate Hard Cons, Guards Ask," *Pittsburgh Post-Gazette*, (February 28, 1975).

The exorbitant costs involved in creating the unit also provided critics with a platform to attack the proposal. The development of the new facility requiring \$1.2 million in supplemental funding in the Bureau's budget and would continue to absorb nearly \$800,000 a year thereafter.<sup>785</sup> Such an expenditure needed approval from the Pennsylvania General Assembly were intense budgetary disputes had become a regular occurrence during the 1970s.<sup>786</sup> However, budgetary concerns were only part of the problem for the administration's plan in the legislature because it attracted the critical attention of the House of Representatives Subcommittee on Crime and Corrections, which held hearings on the matter in May 1975. The Waymart plan was especially controversial among many African American representatives, such as subcommittee chairman Charles Hammock and David Richardson, both of Philadelphia, and Joseph Rhodes of Pittsburgh.<sup>787</sup> Each representative worried that the selection criteria for being sent to the isolation unit would disproportionately target African Americans and politically outspoken inmates. Richardson in particular felt the plan was "an indication of racial tactics...to move toward a concentration camp to hold prisoners, to try to get away from the real causes of crime."<sup>788</sup>

Pennsylvania Attorney-General Robert Kane, who oversaw the Bureau of Correction,<sup>789</sup> defended the Waymart proposal before the admitted Subcommittee on Crime and Corrections,

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<sup>785</sup> "State Readies Top Security Prison Unit," *Pittsburgh Press*, (June 29, 1974).

<sup>786</sup> For a analyst of the contentious budgetary battles of the 1970s, see Klein and Hoogenboom, *A History of Pennsylvania*, 523-527, 531-532; Beers, *Pennsylvania Politics Today and Yesterday*, 387-402.

<sup>787</sup> "Imprisonment Plan Attacked," *Reading Eagle*, (April 23, 1975).

<sup>788</sup> *Ibid.*

<sup>789</sup> Until the office of attorney-general became elective in the 1980s, it was considered one of the cabinet positions under the governor. The Bureau of Correction was located within the Department of Justice under the command of the Pennsylvania Attorney-General.

but admitted that its location was far from ideal.<sup>790</sup> Kane told the subcommittee that the unit was temporary, but immediately needed because of the upsurge in prison violence. He said that two new, permanent units would be established at Pittsburgh and Philadelphia by the end of the decade, and he repeated his reassurance that prisoners held at Waymart would “not receive psychosurgery, medical experimentation or treatment services through the behavior conditioning-token economy, aversive conditioning approach.”<sup>791</sup> Such reassurances failed to mollify critics who argued that the administration had not sufficiently explored alternatives, adequately explained the new institution’s program, or indicated how prison authorities would identify people for transfer to Waymart. These issues further stalled the project, and the General Assembly stripped the additional funding for Waymart out of Gov. Shapp’s proposed budget the following month.<sup>792</sup>

As the effort to establish Waymart encountered stiffer resistance, guards became increasingly militant over the issue of administrative segregation and the use of the existing Behavioral Adjustment Units in the state’s prison system. Walter Peterson’s death dramatically highlighted the conflicts between prisoners, guards, superintendents and the Bureau’s central office over the nature of confinement in the Behavioral Adjustment Units and these units now became the front line in a conflict over whose views of order, security, and the rights of both prisoners and employees would prevail. Any proposed changes in these units and how they were to be used risked confrontations. For example, the planned closing of the Behavioral

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<sup>790</sup> “Attorney General Defends New State Prison Concept,” *Observer-Reporter*, (May 9, 1975).

<sup>791</sup> *Ibid.*

<sup>792</sup> “State Budget Shifts May Aid City: House Dem Offer Funds Revision,” *Pittsburgh Press*, (June 2, 1975); “Budget Plans Debated by State House,” *Observer-Reporter*, (June 12, 1975).

Adjustment Unit at SCI Pittsburgh in May 1975 led to a several-day long walkout by the institution's guard force at the end of the month.<sup>793</sup> SCI Pittsburgh superintendent, James Howard informed reporters once the strike commenced that some of the concessions the Bureau agreed to after Walter Peterson's murder were in violation of state-mandated standards for segregation units.<sup>794</sup> The closing of the unit had been discussed with the guards and their union for some time and there were plans for shifting some inmates to the Behavioral Adjustment Unit at SCI Huntington. The rest of the residents were placed in SCI Pittsburgh A-Block, which was not as secure as any of the state's control units.

Werner and Howard claimed they were puzzled by the guards' actions since they had been notified about the closure well ahead of time, but it was apparent that the guards' prisoner management prerogatives, their sense of security and their claims to control over the prison were jeopardized.<sup>795</sup> The Bureau's plans threatened to destroy the union's workplace gains from 1973, and coupled with the long delay on the Waymart plan, placed the guards in a defensive position where they believed they had to resist the administration's decision to close the Behavioral Adjustment Unit even if they had actually been consulted in advance. For many officers, the closing disrespected their colleague's death, but also devalued their own lives as people who had to work in dangerous situations. President Judge James Bowman of the

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<sup>793</sup> Bureau of Correction, Department of Justice, Special Advisory, May 23, 1975. MG-309 Gov. Milton J. Shapp Papers, 1971-1979, box 26, folder 11. PSA; "Pen Guards Leave Posts, 15 Suspended," *Pittsburgh Post-Gazette*, (May 23, 1975); "Striking Pen Guards Defy Court Order," *Pittsburgh Post-Gazette*, (May 24, 1975); "Western Pen Inmate Life Unchanged Despite Strike," *Pittsburgh Post-Gazette*, (May 26, 1975); "Cause Lost, Striking Guards at Pen Concede," *Pittsburgh Post-Gazette*, (May 27, 1975); "Compromise Ends Strike of Western Pen Guards," *Pittsburgh Post-Gazette*, (May 28, 1975); "Guards Back at Prison," *Pittsburgh Post-Gazette*, (May 29, 1975).

<sup>794</sup> "Striking Pen Guards Defy Court Order," *Pittsburgh Post-Gazette*, (May 24, 1975).

<sup>795</sup> Both Supt. Howard and Commissioner Werner told the press that they were surprised by the guards' actions. "Striking Pen Guards Defy Court Order," *Pittsburgh Post-Gazette*, (May 24, 1975); "Western Pen Inmate Life Unchanged Despite Strike," *Pittsburgh Post-Gazette*, (May 26, 1975); "Cause Lost, Striking Guards at Pen Concede," *Pittsburgh Post-Gazette*, (May 27, 1975).

Commonwealth Court issued an injunction against the officers and ordered them back to work, but he also forced the administration to reopen the Behavioral Adjustment Unit or enhance the security of the A-Block.<sup>796</sup> The guards defied the court, but returned to work within a few days after the administration agreed to greater security measures. The guards' ability to counter this plan and some of the other liberalizing changes ushered in by Sielaff and Werner was certainly enhanced by the passage of the Public Employee Relations Act in 1970, which permitted state employee to unionize.

Despite their increased clout, however, the guards were not able to force the opening of the Waymart unit. The General Assembly refused to allocate operational funds for it, but two more pressing issues emerged that brought the plan to a halt. First, Commissioner Stewart Werner increasingly lost favor with senior administration officials, including the governor. Lt. Gov. Ernest Kline terminated him on July 23, 1975, citing mismanagement and conflicts over penal philosophy.<sup>797</sup> Kline stated that Werner's ambitious reintegration programs were costly, poorly evaluated and simply failed to produce the desired results.<sup>798</sup> The various forms of community corrections and early release also created a considerable amount of friction with law enforcement and the judiciary and negative publicity, which expended much of the administration's political capital when it came to pursuing greater criminal justice reform. For

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<sup>796</sup> "Striking Pen Guards Defy Court Order," *Pittsburgh Post-Gazette*, (May 24, 1975); "Western Pen Inmate Life Unchanged Despite Strike," *Pittsburgh Post-Gazette*, (May 26, 1975); "Cause Lost, Striking Guards at Pen Concede," *Pittsburgh Post-Gazette*, (May 27, 1975).

<sup>797</sup> E. Patton, G. Jeffes, L. Hewitt, B. Malone, J. Mazurkiewics and T. Fulcomer to Lt. Governor Ernest P. Kline, May 1, 1975; Ernest P. Kline to Superintendents Ernest Patton, Glen Jeffes, Lowell D. Hewitt, B. Malone, Joseph Mazurkiewics and Thomas Fulcomer, May 22, 1975; "News Conference by Governor Milton J. Shapp Concerning the Bureau of Correction," July 23, 1975. MG-309 Gov. Milton J. Shapp Papers, 1971-1979, box 26, folder 11. PSA.

<sup>798</sup> "News Conference by Governor Milton J. Shapp Concerning the Bureau of Correction," July 23, 1975. MG-309 Gov. Milton J. Shapp Papers, 1971-1979, box 26, folder 11. PSA.

Shapp, who lacked strong support from his own party, this was a steep price to pay. The proposed elevation of the Bureau of Correction to cabinet-level department was indefinitely stalled in the legislature.

Gov. Shapp replaced Werner with William B. Robinson, the warden of the Allegheny County Jail in Pittsburgh.<sup>799</sup> Unlike Werner and Sielaff before him, Robinson was considered conservative in penology circles and had direct custodial experience. Starting his career as a guard in 1954, he ascended the ranks in the Allegheny County prison system, serving as deputy superintendent of the Allegheny County Workhouse in Blawnox to eventually become warden of the county jail in 1967, a position he held for eight years. Many observers viewed Robinson's appointment as an effort by Shapp to clamp down on expenditures and security as well as temper the pace and public image of some of the community corrections programs. Robinson favored these latter programs, which he had also developed in Allegheny County, but he was much more security-conscious and emphasized stringent program evaluation and screening practices.<sup>800</sup> These latter concerns also made him leery of how Werner had been developing the selection criteria for transferring people to the Waymart unit. He vowed to halt the project until it was further evaluated, a position which both Lt. Gov. Kline and Gov. Shapp supported.

The second roadblock for Waymart was ultimately more damaging to the state. In late 1974, rumors about suspicious deaths at Fairview began reaching senior officials in the Shapp

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<sup>799</sup> Ibid.; "Warden Named Corrections Head," *Beaver County Times*, (July 24, 1975).

<sup>800</sup> Robinson oversaw the development to a diagnostic and classification system for the Allegheny County Jail with funding from the Governor's Justice Commission, the state agency that distributed money from the federal Law Enforcement Assistance Administration. Although, it appears that there was some concern about fiscal management, a review of the program by Governor's Justice Commission and the Pennsylvania House of Representatives demonstrated the county penal officials' interest in robust classification as a cornerstone of their overall operations. See Select Committee to Investigate the Administration of Justice, 1973-1974, box 6, folders 296-302. Pennsylvania General Assembly, House of Representatives Archive, Harrisburg.



administration.<sup>801</sup> Wayne County Coroner Robert Jennings asked the Department of Public Welfare and the Department of Justice to investigate a series of patients deaths that he believed were caused by guard brutality and later covered up.<sup>802</sup> Although the administration initially tried to dismiss the claims as unfounded, Coroner Jennings persisted and eventually the issue became a major scandal lasting for the rest of the decade.<sup>803</sup> Over twenty deaths appeared to be caused by neglect or abuse. Although sufficient evidence for prosecution was lacking in most cases, the state eventually brought murder charges in several cases.<sup>804</sup> As the scandal grew over the course of 1975, Gov. Shapp asked the Bureau of Correction to consider alternatives to the Waymart maxi-max unit.

While the administration eventually abandoned the Waymart project, the controversy over control units continued, although in often less public ways. Guards remained sensitive to changes in segregation policies and desired greater flexibility in placing prisoners in isolation. They also wanted to eliminate restrictions on how long prisoners could be isolated. Many of the prisoners who ended up in these units during the 1970s were political activists, Muslims or associated with prison or street gangs. As such, many of them had experience with organized forms of prisoner resistance and petitioning courts for redress of their grievances, skills they proceeded to use against the state's segregation practices.

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<sup>801</sup> "Opening of Prison is Delayed," *Beaver County Times*, (January 13, 1975); "Kane Scoffs at Farview Deaths Story," *Pittsburgh Post-Gazette*, (April 17, 1975).

<sup>802</sup> For an overview, see Rawls, *Cold Storage*.

<sup>803</sup> *Ibid.*; "Kane Scoffs at Farview Deaths Story," *Pittsburgh Post-Gazette*, (April 17, 1975); "State Fails to Find Farview Violations," *Pittsburgh Press*, (April 17, 1975); "Farview Probe Continues," *Beaver County Times*, (April 17, 1975).

<sup>804</sup> "Panel Asks 3 Indictments in Farview Patient Killing," *Pittsburgh Post-Gazette*, (November 1, 1977); "Grand Jury Indicts 3 Guards for 1963 Murder at Farview," *Observer-Reporter*, (November 1, 1977); "7 Indicted in Farview Case," *Pittsburgh Press*, (October 5, 1978); "Grand Jury Recommends Indictment of 9 Guards," *Gettysburg Times*, (October 11, 1978).

Three federal district courts (Eastern, Middle and Western Pennsylvania), the Third Circuit Court of Appeals and to a lesser extent, Pennsylvania's state courts heard challenges to the Bureau of Correction's segregation policies and the constitutionality of the conditions in the state's many Behavioral Adjustment Units. Prisoners litigated over the justification, procedures and legal protections involved in isolating a prisoner.<sup>805</sup> Since the Bureau held many prisoners indefinitely in such units, at times seemingly outside the regulations spelled out in the Bureau's written policy on segregation, prisoners often tried to force the authorities to clarify their release criteria and how they evaluated an isolated prisoner's status and continued placement in the hole.<sup>806</sup> Frederick Burton, one of the assailants in the slaying of the Holmesburg warden and deputy warden, pursued a long-running case on the issue of release criteria against the Bureau and the administration of SCI Pittsburgh, where he was isolated in the Behavioral Adjustment Unit.<sup>807</sup> The Western District court eventually ordered the Bureau to formulate more precise release procedures, but did not believe Burton's contention that the years he spent in isolation constituted cruel and unusual punishment according to the Eight Amendment.<sup>808</sup>

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<sup>805</sup> See, for instance, *Mims v. Shapp*, 399 F.Supp. 818 (W.D.Pa. 1975); *Mayberry v. Maroney*, 529 F.2d 332 (3d Cir. 1976); *Mayberry v. Maroney*, 418 F. Supp. 669 (W.D. Pa. 1976); *Mayberry v. Robinson*, 427 F.Supp. 297 (1977).

<sup>806</sup> The governing policy was Bureau of Corrections Administrative Directive 801 (BC-ADM 801), which went through several revisions during the 1970s. Inmates often charged that, contrary to BC-ADM 801, they were not given an initial disciplinary hearing or one with adequate due process before being placed in segregation. Likewise, they claimed that they were often uninformed about why they were placed in segregation or the rationale for keeping them there.

<sup>807</sup> *Mims v. Shapp*, 399 F.Supp. 818 (W.D.Pa. 1975); *Mims v. Shapp*, 541 F.2d 415 (3d Cir.1976); *Mims v. Shapp*, 457 F. Supp. 247 (W.D. Pa. 1978); *Burton v. Shapp*, 500 F.Supp. 760 (W.D.Pa.1980); *Burton v. Shapp*, 672 F.2d 903 (3d Cir.1981); *Burton v. Shapp*, No. 82-5107, slip op. (3d Cir. Nov. 29, 1982); *Burton v. Shapp*, 702 F.2d 453 (3d Cir.1983); *Burton v. Shapp*, 574 F. Supp. 637 (W.D. Pa. 1983).

<sup>808</sup> *Mims v. Shapp*, 457 F. Supp. 247 (W.D. Pa. 1978); Pennsylvania Bureau of Correction, *Annual Report 1978* (Camp Hill: Bureau of Correction 1979), 17.

Much of the litigation prisoners brought against the Bureau also involved the actual conditions inside the isolation units. In such cases, whether or not prison officials had acted legally in segregating someone, the nature of the units themselves and their amenities (or lack thereof) formed the point of contention. The three federal district courts received numerous petitions over prison conditions in general during the 1970s, many which contained extensive complaints about the conditions in segregation units and the treatment people received in them. Eventually U.S. District Court for the Eastern District of Pennsylvania consolidated many of these cases with a sweeping complaint filed by the Imprisoned Citizens Union in November 1970, which covered nearly every aspect of daily life in the state's maximum-security prisons and devoted considerable attention to segregation practices.<sup>809</sup>

Several jail-house lawyers and other prisoner activists, many of whom had spent time in segregation units, formed the Imprisoned Citizens Union as a way to collectively and comprehensively sue the Bureau of Correction in a class action over conditions across the entire prison system.<sup>810</sup> The organization's driving force was Richard O.J. Mayberry, a renowned jail-house lawyer who had filed and won numerous complaints in federal courts since the early-1960s and edited a newspaper called the Prisoners Free News.<sup>811</sup> Subsequent complaints were

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<sup>809</sup> For a synopsis of this case by Kristen Sagar, see: <http://www.clearinghouse.net/detail.php?id=923>. Last checked May 10, 2015.

<sup>810</sup> "Constitution of the Imprisoned Citizens Union." Papers of the Prisoners' Rights Council box 14, folder 12. TUUA.

<sup>811</sup> Mayberry had filed a claim specifically against the conditions in SCIPittsburgh's Behavioral Adjustment Unit and the way prison authorities used it. See *Mayberry v. Maroney*, 529 F.2d 332 (3d Cir. 1976); *Mayberry v. Maroney*, 418 F. Supp. 669 (W.D. Pa. 1976); *Mayberry v. Robinson*, 427 F.Supp. 297 (1977). For more on Mayberry, see Mumia Abu-Jamal, *Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.* (San Francisco: City Light Books, 2009), 39, 151-166, 208, 216, 218; Amy Linn, "Getting the Word to Inmates' Families a Sister Turns Years Of Pain and Caring Into a Newsletter for Others With Loved Ones in Prison," (October 02, 1988), [http://articles.philly.com/1988-10-02/news/26271991\\_1\\_conjugal-visits-prison-system-prisonworld#sthash.YRZfdqBp.dpuf](http://articles.philly.com/1988-10-02/news/26271991_1_conjugal-visits-prison-system-prisonworld#sthash.YRZfdqBp.dpuf); John M. Baer, "Jailhouse Lawyer Sues Over Solitary," (May 25, 1993), [http://articles.philly.com/1993-05-25/news/25966739\\_1\\_prison-guard-jailhouse-lawyer-philadelphia](http://articles.philly.com/1993-05-25/news/25966739_1_prison-guard-jailhouse-lawyer-philadelphia)

so similar that Judge Joseph Lord III combined them into the large class action suit, *Imprisoned Citizens Union vs. Shapp*. Parties to the case reached an agreement on many of the issues raised in the lawsuit, which provided the basis for a far-reaching consent decree that required the Bureau of Correction to develop and promulgate a comprehensive set of procedures governing interactions between prison officials and inmates.<sup>812</sup> In many ways, the consent decree was an attempt by prisoners to force the Bureau to live up to its pledge for a prisoners' Bill of Rights based on the United Nations Standard Minimum Rules for the Treatment of Prisoners, which it adopted in 1970.<sup>813</sup> However, instead of broad principles, the consent decree explicitly required the Bureau to develop clear policies that were available to prisoners and provided avenues for the redress of grievances. The consent decree also established the U.S. District Court for Eastern Pennsylvania as the dedicated forum managing the agreement and the court soon heard accusations from prisoners that the Bureau had failed to fulfill its obligations.<sup>814</sup>

Despite the consent decree, a few areas remained unsettled. The most prominent was the constitutionality of the Behavioral Adjustment Units at SCI Graterford, SCI Dallas, SCI Huntington and SCI Muncy, the state's only prison for women.<sup>815</sup> In 1974 and 1975, Judge

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jails#sthash.Xoi3d39X.dpuf; John M. Baer, "Inmate 'Lawyer' Stays In Solitary," (June 04, 1993), [http://articles.philly.com/1993-06-04/news/25971707\\_1\\_prison-officials-confinement-david-s-owens#sthash.R7XNUomH.dpuf](http://articles.philly.com/1993-06-04/news/25971707_1_prison-officials-confinement-david-s-owens#sthash.R7XNUomH.dpuf). All three last check on May 21, 2015.

<sup>812</sup> *Imprisoned Citizens Union v. Shapp*, Consent Decree, Civ. A. Nos. 70-3054, 71-513, 71-1006, 70-2545 (E.D. Pa. 1978).

<sup>813</sup> "Pennsylvania Inmates Get New Rights," *New York Times*, (October 5, 1971); "Prisoners' Rights: What Rights for the Slave of State?" *New York Times*, (December 26, 1971).

<sup>814</sup> The consent decree governed much of litigation concerning prisoners' rights for the next twenty years. After the passage of the federal Prison Reform Litigation Act in 1995 the consent decree became much more vulnerable to challenge by the renamed Pennsylvania Department of Corrections. In May 1998, the Department successfully petitioned the court to terminate the consent decree. On appeal the same year, the U.S. Court of Appeals for the Third Circuit (Judge Samuel Alito) upheld the lower court's decision, ending a prisoners' right lawsuit that commenced in 1970. *Imprisoned Citizens Union v. Shapp*, 11 F.Supp.2d 586 (E.D.Pa. 1998); *Imprisoned Citizens Union v. Shapp*, 169 F.3d 180 (3rd Cir. 1999).

<sup>815</sup> *Imprisoned Citizens Union v. Shapp*, 451 F.Supp. 893, 898 (E.D. Pa.1978).

Joseph Lord III toured each of the prisons, inspecting the conditions in the control units, which he found acceptable, if “grim and cheerless,” in Graterford, Dallas and Muncy.<sup>816</sup> However, he ordered the Bureau to immediately close a range of three isolation cells at Huntington known to inmates as the “Glass Cage.”<sup>817</sup> These cells were separate from fourteen nearby disciplinary segregation cells by a heavy steel door and surrounding glass walls. The court found the degree of isolation, poor lighting and ventilation, repugnant odor and lack of bedding in the Glass Cage offensive and unacceptable. Within a few months, Judge Lord III reversed this order after the Bureau made numerous improvements and agreed to only use the cells for short term segregation.<sup>818</sup>

## **Conclusion**

The commonly told narrative of the decline of the rehabilitation foregrounds the disillusionment of prison officials, researchers and the larger public with correctional experts and their ability to reform offenders. While this is certainly true, it tells only part of the story in places like Pennsylvania. From the violence at Holmesburg Prison to the protests over the creation of a control unit at Farview, the tensions running through Pennsylvania’s prisons revealed a shift in the racialization of punishment in the late 1960s onward. The postwar rehabilitation project, whatever its limitations and abuses, fundamentally envisioned white, heterosexual subjects as its preferred targets of reform. However, over the course of the 1960s,

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<sup>816</sup> Ibid.

<sup>817</sup> Ibid.

<sup>818</sup> *Imprisoned Citizens Union v. Shapp*, 461 F. Supp. 522 (E.D. Pa. 1978).

and certainly by the 1970s, the subject of penal discourse and intervention gradually became blacker. As it did, the assumption that the subject of prison discipline and reform was still reclaimable eroded, which paralleled doubts in other parts of American society about the effectiveness and desirability of racial assimilation policies. For many white audiences (especially of penological professionals), rehabilitation appeared less plausible and less convincing as an account of what prisons could, and should do, with the people sent to them once the image of the offender became blacker and less willing to accept a subordinate status while confined. Even community corrections seemed less likely to succeed when the communities in questions were poor, largely black, inner-city neighborhoods in Philadelphia and Pittsburgh.

African Americans had always been imprisoned at disproportionate rates, but until the mid-to-late twentieth century they were still not the largest racial group within most prisons in the northern and western United States. Prison regimes, run by white administrators and guards, simply presumed that the typical offender in their custody would be white. As this changed, racial animosities and misunderstandings invested the already authoritarian relationship between keepers and the kept. During the racially contentious atmosphere of the 1960s and 1970s, this made nearly every interaction between white officers and black prisoners, or between white and black prisoners, potentially volatile. For many members of the Pennsylvania's predominantly white guard force, this undermined their ability to communicate with prisoners and maintain order. For many black prisoners, this led to a litany of racial slights, abuses, neglect and discrimination on a daily basis. However, it also provided the raw materials for a larger narrative of white oppression that politicized many black prisoners during the era of

civil rights activism. For many black prisoners, imprisonment was not the result of individualized, psycho-social problems and criminal conduct as the discourse of rehabilitation conceptualized it. Rather, it constituted the latest evidence of continual racial discrimination that destroyed black communities and predominantly targeted young, black men. They need only look around them to see their disproportionate presence behind bars.

This penological manifestation of the country's larger racial formation shaped the activism of prisoners like Sylvester Lockhart and the efforts of their supporters like Msgr. Charles Owen Rice. However, it also informed the positions of guards who demanded greater security and the elimination of programs benefitting prisoners. The tensions between these views mounted in the late 1960s, reaching their denouement in the mid-1970s, when guards succeeded in convincing the administration to either support their demands or halt further concessions to prisoners.

While the history of rehabilitation's decline, prisoner activism and prison officer unionism in Pennsylvania paralleled similar developments in New South Wales, race played far less of an explicit role in the events of the latter state. The civil rights movement in New South Wales, and Australia in general, was not as large or visible as its American counterpart, and the number of Aboriginal prisoners was far smaller than the number of black prisoners in Pennsylvania. The prisoner activists in New South Wales were almost entirely of European descent. Class-based critiques of prisons were more prominent among these activists. This was significant for how race shaped the changing penal imaginary in each place. While the re-emergence of custodial priorities and the winnowing of rehabilitation programming in Pennsylvania's prisons resembled some of the changes affecting New South Wales' prisons a

few years later, these developments increasingly constituted anti-black prison regimes in Pennsylvania, whether or not this framing was explicitly named. Much like Khalil Gibran Muhammad's description of notions of early-twentieth century criminality in the urban north as the "condemnation of blackness," the prisoner management tactics deployed in Pennsylvania during the mid-1970s also disproportionately targeted black prisoners and formed a counterpoint to the ideal white subject of rehabilitation.<sup>819</sup> This is not to say that all the prisoners subjected to such tactics were black. As the case of Lt. Walter Peterson and Stanley Hoss indicated, violent white prisoners also murdered black officers and ended up in permanent isolation.<sup>820</sup> The point is that the shift to stricter prisoner management routines and resistance to prisoners' rights was always racially significant in the image of its presumed subjects. This means that tactics like isolation, which were presumably the same in both New South Wales and Pennsylvania, carried substantively different racial valences in both places. It also means that the decline of rehabilitation needs to be understood not just as a racialized narrative, but one that varied significantly from place to place.

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<sup>819</sup> Muhammad, *The Condemnation of Blackness*. See also Micol Seigel, "'Convict Race': Racialization in the Era of Hyperincarceration," *Social Justice*, 39 (April 2014), 31-51.

<sup>820</sup> Hoss was found hanged in cell several years after killing Peterson.



### Chapter 3: "Prisons Belong to the Community": Prisoner Activism, Inquires and Security and in New South Wales

*Prisons belong to the community. Subject to the needs of proper administration and security, they should at all times be open to scrutiny by the public, interested bodies and the media. The more prisons are open, the less the risk of abuses in the system being hidden. A fuller knowledge of the world of prisons and the workings of the Department is necessary to dispel public apathy and make possible open and healthy comment and criticism.*

*The Department has complained of hindrance to its programmes of reform by conservative public opinion; but it has never attempted to inform the people of New South Wales of its problems or the state of the prisons. Indeed, it has actively impeded the public from gaining the knowledge it is entitled to have and has effectively shut off the prisons from view. It is surprising to find how many reputable and distinguished citizens have been banned from entry to prisons. They include the present Premier, Mr Wran, other members of Parliament including some who are now Ministers of Cabinet, barristers and solicitors, members of the public interested in prison reform and representatives of the media. This restrictive policy is incomprehensible.*

*The appointment of this Commission resulted as much from public disquiet with the prison system in general as with any single or series of events. Apart from a few dedicated groups, the public generally has little knowledge of prisons, even less of prison policies. The apathy of the community has been frequently mentioned in this Report. The Department has done little to remedy this. In fact, the secrecy with which it has surrounded its activities can fairly be described as obsessive.*

*Justice John F. Nagle, Report of the Royal Commission into New South Wales Prisons<sup>821</sup>*

#### **Introduction: Bathurst, October 1970**

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<sup>821</sup> John F. Nagle, *Report of the Royal Commission into New South Wales Prisons* (Sydney: Government Printer, 1978), 22, 428.

Similar to Pennsylvania, events in the year 1970 proved to be a crucial turning point for penal politics in New South Wales over the next couple of decades. During October 19<sup>th</sup> and 20<sup>th</sup>, a short-lived uprising by youthful prisoners at Bathurst Gaol and the subsequent reprisal by guards set the stage for an ongoing campaign by prison reformers and activists to establish a royal commission investigation into the state's entire prison system. Most accounts of this uprising began with about sixty young prisoners absconding from a mandatory muster, running into C Wing and smashing cell fixtures. The complaints of the prisoners and tension in Bathurst was longstanding. The Department of Corrective Services later made public a log of disturbances at the prison, which stretched back several years.<sup>822</sup> In fact, Bathurst had earned a reputation for violence and rebellion many decades before.<sup>823</sup> Yet, unlike many prison riot investigations, this "pre-history" was not of much interest to subsequent investigators or many other people interested in the events of October 19<sup>th</sup> and 20<sup>th</sup>. Narrators and interpreters of the events were less focused on determining the causes of the 1970 disturbances, but often saw them as the cause of later events.<sup>824</sup> Nevertheless, most subsequent inquiries and accounts acknowledged that prisoners staged a peaceful sit-down strike in one of the recreation yards the previous Friday, the 18<sup>th</sup>, over Bathurst's squalid living conditions and arbitrary, harsh discipline, both of which had earned the institution a notorious reputation among prisoners and

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<sup>822</sup> Exhibit 281a: Diary of disturbances in penal institutions prior to 1970. Bathurst Riot. Royal Commission into New South Wales Prisons Exhibits 9/5307. SANSW.

<sup>823</sup> Nagle, *Report of the Royal Commission*, 54.

<sup>824</sup> Justice John F. Nagle, the sole Royal Commissioner in the major Royal Commission into New South Wales Prisons, discussed some of the events and patterns at Bathurst leading up to the October 1970 disturbance, but the bulk of the chapter (4) devoted to this event dealt with actions taken by staff and the senior leadership of the Department of Corrective Services after the uprising. The following chapter (5) and part of the one after that (6) also deals with the aftermath of the October 1970 uprising. See Nagle, *Report of the Royal Commission*, 53-132.

warders alike.<sup>825</sup> Questions about what followed the uprising in the hours and years after the uprising mattered more to the subsequent shape of penal politics in New South Wales and, to some degree, the rest of the country.

Immediately after breaking away from the muster, several prisoners and guards exchanged blows before a standoff developed, with inmates barricading themselves inside C Wing. The young prisoners withdrew several hours later after receiving assurances that they would not face any reprisals. Bathurst's superintendent, John Winter Pallot, permitted them to share cells that night, which many prisoners hoped would deter potential assaults by the staff.<sup>826</sup> But, the retaliation came anyway. Superintendent Pallot delivered the first blow the following morning, striking an inmate in the face in front of assembled guards after taunting him about the events of the previous day.<sup>827</sup> Guards then extracted people from the cells and forced them to strip naked while repeatedly kicking, punching and beating them with batons.<sup>828</sup> Some of the inmate's injuries were severe. The beatings rendered a number of people unconscious and bleeding on the cellblock floors before guards dragged them back into their cells. Many prisoners later recounted the terror of waiting in their cells, listening to the screams and cries in the cellblock grow louder as the guards moved closer to them, cell by cell.<sup>829</sup>

Maxwell Hanrahan, one of Bathurst guards, disagreed with his colleagues' actions. He later told

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<sup>825</sup> Ibid., 54-57.

<sup>826</sup> Ibid., 54-79; *Bathurst Batterings – October 1970: The Case for a Royal Commission into the Department of Corrective Services of New South Wales* (Sydney, 1971); Bob Jewson, "The Prisoners' Action Group's Summary of the Royal Commission into NS.W Prisons Compiled Following the Hearing of Evidence" in Paul R. Wilson and John Braithwaite (eds.), *Two Faces of Deviance: Crimes of the Powerless and the Powerful* (St. Lucia: University of Queensland Press, 1978), 256-271.

<sup>827</sup> Ibid., 68.

<sup>828</sup> Ibid., 67-79.

<sup>829</sup> Ibid., 73.

investigators that as he observed the reprisal from a landing that another guard, Mr. Chandler, commented to him, “They will never keep this behind four walls,” a sentiment that Hanrahan shared.<sup>830</sup>

Over the next few months, accounts of these events escaped the confines of Bathurst’s cellblocks as numerous victims took their stories to the Sydney press, civil rights groups and circles of friends and family after their release. This kind of violence against prisoners, in itself, was hardly new. Accounts of penal authorities inflicting violence against inmates had circulated in New South Wales since the era of the penal colony, and they usually found less than receptive audiences beyond prison walls. However, in 1970, this had begun to change. For much of the previous decade, but especially following 1966, a series of social movements blossomed in Sydney,<sup>831</sup> which challenged numerous institutions, from schools to the military, to the family. In fact, it sought to fundamentally transform political and social life. A manifestation of wider activism and counterculture of the “global 1960s,” its specific form in Australia, pulled together numerous strands of anti-authoritarian and radical thought and practice. Drawn especially from anti-war resistance to Australia’s involvement in the American-led Vietnam War, the civil rights and Black Power movements fighting racial discrimination

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<sup>830</sup> Nagle, *Report of the Royal Commission*, 82; Testimony of Maxwell Hanrahan in *Proceedings of the Royal Commission into New South Wales Prisons*, 1915.

<sup>831</sup> This was not confined to Sydney. Several other major Australian cities had equally vibrant radical political movements. See Terry Irving and Rowan Cahill, *Radical Sydney: Places, Portraits and Unruly Episodes* (Sydney: University of New South Wales Press, 2010); Tanja Luckins and Seamus O’Hanlon (eds.), *Go! Melbourne in the Sixties* (Armadale: Melbourne Pub. Group, Gazelle Book Services, 2005); Jeff Sparrow and Jill Sparrow, *Radical Melbourne 2: The Enemy Within* (Carlton North: The Vulgar Press, 2004); Jeff and Jill Sparrow, *Radical Melbourne: A Secret History* (Carlton North: The Vulgar Press, 2001); Raymond Evans and Carole Ferrier (eds.), *Radical Brisbane: An Unruly History* (Carlton North: The Vulgar Press, 2004); Richard Neville, *Hippie, Hippie Shake: The Dreams, the Trips, the Trials, the Love-Ins, the Screw Ups--the Sixties* (Melbourne: Heineman, 1993); Robin Gerster and Jan Bassett, *Seizures of Youth: ‘The Sixties’ and Australia* (South Yarra: Hyland House, 1991).

against Aboriginal Australians, and women's liberation and feminism.<sup>832</sup> The anti-war movement, in particular, drew critical attention to the established institutions of government.

As historian Donald Horne commented:

Vietnam was seen as a transcendent issue, sweeping all issues up into the one concept of 'the radical', so that those who were enraged by the slaughter in Vietnam would become enraged by so many other issues that they might lift their sights above mere reform to the belief that *the whole structure must be changed*.<sup>833</sup>

Many of the often young people involved in these movements were not only more receptive to the types of protests coming from prisoners, but some of them had also been imprisoned themselves for short periods of time for their political activism.<sup>834</sup> This experience of imprisonment, however limited, helped forge a link between prisons and the larger radical social movements of the time.<sup>835</sup>

While resembling prison activism in other parts of the world, the movement in New South Wales was deeply moored to the specific struggles in the state's prisons and the local conditions shaping public discourse, policies and possibilities. The publicity of the American prisoners' rights movement, especially some of its more charismatic organic intellectuals like

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<sup>832</sup> Michelle Arrow, *Friday on our Minds: Popular Culture in Australia since 1945* (Sydney: University of New South Wales Press, 2009); Ann Curthoys, *Freedom Ride: A Freedom Rider Remembers* (Sydney: Allen & Unwin, 2000); Marilyn Lake, *Getting Equal: the History of Australian Feminism* (St. Leonards: Allen & Unwin, 1999); Greg Langley, *A Decade of Dissent: Vietnam and the Conflict on the Australian Home Front* (Sydney: Allen & Unwin, 1992); Gerster and Bassett, *Seizures of Youth*; Dennis L. Cuddy, "The American Role in Australian Involvement in the Vietnam War," *Australian Journal of Politics and History*, 28 (December 1982), 340-353; Michael Saunders, "Law and Order and the Anti-Vietnam Movement 1965-72," *Australian Journal of Politics and History*, 28 (December 1982), 367-379; Donald Horne, *A Time of Hope: Australia 1966-72* (Sydney: Angus & Robertson, 1980).

<sup>833</sup> Horne, *A Time of Hope*, 51-52.

<sup>834</sup> Wendy Bacon, "Silverwater Days" as reprinted in *Bathurst Battering*, 26-29.

<sup>835</sup> One must be careful about such connections: a few days or weeks imprisonment for activists of middle class backgrounds was hardly equal to the long sentences, multiple imprisonments and commonality of this experience more typical of the lower class population that was held in the state's institutions.

George Jackson, exerted a lot of influence on the discourse of prisoners' rights in Australia and elsewhere, but it did not resonate as broadly throughout Australian society in the same way as it did in the U.S. As political scientist Marie Gottschalk has argued, the prisoners' rights movement in the U.S. was in many ways an outgrowth of the civil rights movements, which had dominated national politics throughout the 1960s and much of the postwar period.<sup>836</sup> The social and political ferment in Australia, while substantial, was more recent and not as directly connected to the plight of prisoners as it was in the U.S.

In addition, there were certain political and institutional features, which both constrained and channeled the emerging penal politics in New South Wales that produced a markedly different prisoners' rights movement. Perhaps key among these was the high degree of authoritarian, executive control over the prisons and the lack of counterbalancing institutional forces which prisoners and their allies outside could draw on. The presence of independent federal courts, habeas corpus and formal constitutional protections in the U.S. played a major role in prying open prisons and exposing abuses. As the dispute in Philadelphia over the riot investigation indicated, the dispersed or fragmented nature of penal governance often led to highly public, politicized conflicts over prison management and order. In contrast, the sitting government in New South Wales, and more specifically, penal bureaucracy, tightly controlled prisons and determined the level of access the public had to those inside. As the epigraph at the beginning of this chapter reveals, the Department of Corrective Services could even ban numerous members of government from the institutions. The Department firmly

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<sup>836</sup> Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in American* (New York: Cambridge University Press, 2006), 165-196.

controlled prisoners with little or no oversight. A visiting justice, who usually held court in the superintendent's office, adjudicated all prisoner infractions as well as the latter's complaints of abuse. Until the mid-1970s, prisoners had no right of appeal to an outside court.<sup>837</sup> Arguably, this lack of any forum for the redress of prisoner grievances, meant that tensions with the prisons during a time of widespread social upheaval and anti-authoritarianism quickly escalated into conflict.

Unlike the intense news coverage of the July 4<sup>th</sup> riot in Philadelphia and the competition over who would lead the inevitable inquiry, the violence at Bathurst did not lead to an immediate investigation. Nor did the mistreatment spark much publicity at the time. The major Sydney and national dailies initially devoted little attention to the event, uncritically accepting the explanations and reassurances of John Maddison, the current Minister for Justice in the Liberal/Country Coalition government. An article in the *Sydney Morning Herald*, for instance, began by simply paraphrasing Maddison's dismissive response to critics: "The administration of NSW prisons was neither harsh nor oppressive by world standards."<sup>838</sup> Maddison often repeated this refrain to the press in the ensuing months, denying wrongdoing while boasting of how the state's modern penal practices compared to global standards.<sup>839</sup> While a few questions

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<sup>837</sup> After July 1977, prisoners could appeal the decisions of the visiting justice. See *R v Fraser* [1977] 2 NSWLR 867 (CCA). See also George Zdenkowski, "Judicial Intervention in Prisons," *Monash University Law Review*, (June 1980), 294-330.

<sup>838</sup> "Prisons Not Harsh Says Maddison," *Sydney Morning Herald*, (October 21, 1971); Matthew Peacock, "Blood on the Reporters' Hands" in Keith Windschuttle and Elizabeth Windschuttle (eds.), *Fixing the News: Critical Perspectives on the Australian Media* (North Ryde: Cassell Australia, 1981), 164-168, quote 164.

<sup>839</sup> *Ibid.*, 165-166.

emerged in Parliament within days of the event, they were largely uncritical and mainly concerned with the security of prison and the potential for escape.<sup>840</sup>

Despite the stifling control of the Department of Correctives Services and Maddison, the questions about what occurred at Bathurst in October 1970 did not abate. The narratives of the event emanating from the prisons continued to grow and thickened over the next year as statements and allegations by prisoners, several guards and psychologists employed by Corrective Services appeared in public forums. These included chronicles from the press and Parliament, as well as before more delimited audiences in guard union meetings and the cellblocks and yards of the state's prisons. Years later, between 1976 and 1978, a royal commission established that the leadership of the Department of Corrective Services, and Commissioner Walter McGeechan in particular, purposely misled the public about the events at Bathurst, essentially covering up assaults on prisoners by the guards and senior staff, including Superintendent Pallot.<sup>841</sup> While some staff members at Bathurst and other prisons remained adamant that they did not use violence on prisoners, many others acknowledged that it occurred. Some publicly stated it was justified: the only way to control recalcitrant prisoners and to deter others through terror.

While numerous authors, including the Royal Commissioner, Justice John F. Nagle, have dealt with the cover-up extensively and the subsequent violence at Bathurst in 1973 and 1974, it is nevertheless, instructive to revisit how these issues came to light and especially how the subsequent Royal Commission into New South Wales Prisons (often called the Nagle

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<sup>840</sup> See for instance Clive Osborne, member for Bathurst, asked Maddison for reassurance about the potential for escape. "Prisons Not Harsh Says Maddison," *Sydney Morning Herald*, (October 21, 1970).

<sup>841</sup> Nagle, *Report of the Royal Commission*, 81-105.



Commission) altered the prison system and the discussion of punishment more broadly. Since the Royal Commission, the state's prison system has been the subject of repeated inquiries and conflicts between unionized prison guards and the administration to the point that these regimes of investigation and disputes over their findings and recommendations became a regular part of the organization of incarceration. Commissions of inquiry, whether major, like the Nagle Commission or smaller, have a long history in New South Wales and Australia, in general. Prior to representative government, royal commissions and boards of inquiries were a common feature of the administration of the penal colony. Australian governments still use royal commissions to a far greater degree than in many other Commonwealth countries, including the United Kingdom. George Gillian claims that between 1970 and 2002 there have been 74 royal commissions in Australia.<sup>842</sup> This figure does not account for the volume of lesser inquiries. Between the late nineteenth century and 1970s, inquiries directed at prison authorities were far less frequent in New South Wales than they have become since Justice Nagle finished his work.

If solely judged on the caliber of reform it initiated and the implementation of its recommendations, the Nagle Commission has a mixed record.<sup>843</sup> Rather than viewing in this

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<sup>842</sup> George Gilligan, "Royal Commissions of Inquiry," *Australian and New Zealand Journal of Criminology*, 35 (2002), 291. See also John Pratt and George Gilligan (eds.), *Crime, Truth and Justice: Official Inquiry, Discourse, Knowledge* (Cullompton: Willan Publishing, 2004); Desmond McDonnell, "Committees and Commissions of Inquiry into Criminal Justice Agencies: A History Repeating Itself" in Mike Enders and Benoît Dupont (eds.), *Policing the Lucky Country* (Sydney: Hawkins Press, 2001), 223-232; Patrick Weller (ed.), *Royal Commissions and the Making of Public Policy* (Melbourne: Macmillan, 1994); D.H. Borchardt, *Commissions of Inquiry in Australia: A Brief Survey* (Melbourne: LaTrobe University Press, 1991).

<sup>843</sup> See the comments in "The Nagle Report – 25 Years on Symposium," *Current Issues in Criminal Justice*, 16 (July 2004), 93-111; David Brown, "Commission of Inquiry and Penal Reform" in Sean O'Toole and Simon Eyland, *Corrections Criminology* (Sydney: Hawkins Press, 2005), 42-52; David Brown, "Continuity, Rupture or Just More of the 'Volatile and Contradictory'?: Glimpses of New South Wales' Penal Practice Behind and Through the Discursive" in John Pratt, David Brown, Mark Brown, Simon Hallsworth and Wayne Morrison (eds.), *The New Punitiveness: Trends, Theories, Perspectives* (Cullompton: Willan Publishing, 2005), 27-46.

way, I examine how the Royal Commission marked the beginning of a period of inquiry, publicity and rapid change for the prison system that to some degree continues to this day. As much as the inquiry discredited the prison system's leaders, many staff and a host of practices, it also cleared the ground for the reconstitution of authority even if this latter process remained unresolved and controversial for years. I also try to read against many of the powerful guiding questions that the Royal Commission pursued in its work, highlighting how the inquiry produced and circulated knowledge about the internal order of the state's prisons, as well as those in other parts of the world and created a framework for posing questions and pressing claims. But, it is to the aftermath of October 19<sup>th</sup> and October 20<sup>th</sup>, 1970 that I now turn.

### **Prison Unrest and the Questions of a Royal Commission**

By the end of November 1970, a number of prisoners who had been at Bathurst in October were released and produced statutory declarations about the violence, which George Peterson, Member of Parliament for Illawarra, forwarded to Maddison. Peterson, who was well-known for his interest in prison reform, challenged Maddison to publicly investigate the prisoners' claims.<sup>844</sup> At about the same time, four psychologists employed by Corrective Services wrote a letter to Commissioner McGeechan, claiming to have heard from numerous prisoners about "atrocities" that took place at Bathurst in October.<sup>845</sup> One of the psychologists, Len Evers, also passed this information onto George Peterson who, along with a few sympathetic colleagues, again pressed Maddison throughout the summer of 1970 and 1971 for

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<sup>844</sup> *Bathurst Batterings*, 3-10.

<sup>845</sup> *Ibid.*, 8-11, 19-20; Nagle, *Report of the Royal Commission*, 86-89, 193-194.

more information about the events at Bathurst. Maddison sidestepped such questions, derided Peterson's reputation, and refused to grant him and other Labor MPs permission to speak with prisoners at Bathurst and other prisons.<sup>846</sup>

Nevertheless, the pressure mounted for a greater reckoning of what occurred at Bathurst.<sup>847</sup> In June 1971, a group of unnamed lawyers circulated an anonymous polemical pamphlet titled, *Bathurst Batterings – October 1970: The Case for a Royal Commission into the Department of Corrective Services of New South Wales*, to numerous public officials, the media and organizations.<sup>848</sup> The 32-page pamphlet collected much of the existing allegations, quoted prisoners at length and argued that only a royal commission could adequately assess the truth of this event and evaluate the current administration of the state's prisons. Within a week of the release of *Bathurst Batterings*, a guard and secretary of the Prison Officers' Association branch at the Long Bay prison complex named John Ristau also called for a royal commission during a nationally televised interview, arguing that the Department's position on the events at Bathurst was misleading.<sup>849</sup> Ristau's colleagues officially censured him within a week of his

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<sup>846</sup> *Bathurst Batterings*, 1-2, 21-22; George Zdenkowski and David Brown, *The Prison Struggle: Changing Australia's Penal System* (Ringwood: Penguin, 1982), 158-162.

<sup>847</sup> "Bashing Claim – Open Letter to Maddison," *Sydney Morning Herald*, (July 7, 1971); "Law Society Wants Royal Commission: Jail Bashing Allegations," *Sydney Morning Herald*, (July 28, 1971).

<sup>848</sup> The authors initially feared that they could be prosecuted for publishing the pamphlet. In the official history of the New South Wales Council for Civil Liberties, authors Dorothy Campbell and Scott Campbell claim that Jim Staples, Tom Kelly and Jack Grahame, all members of the Council for Civil Liberties, wrote the document, but were assisted by George Peterson and Len Evers, one of the psychologists employed by Corrective Services at Long Bay who wrote to McGeechan about the abuse at Bathurst. See Dorothy Campbell and Scott Campbell, *The Liberating of Lady Chatterley and Other True Stories: A History of the NSW Council for Civil Liberties* (Glebe: NSW Council for Civil Liberties, 2007), 98-99; *Bathurst Batterings – October 1970*; "Bathurst Jail Bashing Alleged," *Sydney Morning Herald*, (June 29, 1971).

<sup>849</sup> "Prison Officer Censured," *Sydney Morning Herald*, (July 8, 1971); "Lawyer's Jail Papers Stolen," *Sydney Morning Herald*, (July 6, 1971).

statement and he would face further intimidation by the Department of Corrective Services over the ensuing years.<sup>850</sup>

While publicly refusing to hold an inquiry, Maddison quietly asked Commissioner McGeechan for a fuller account of what occurred at Bathurst. McGeechan assigned E.A. Quin, one of the department's legal officers, the task of interviewing prisoners who had either made accusations of abuse or were named by others as victims. Much of what is known about this internal investigation became public five years later during the work of the Royal Commission. The latter inquiry described the Department's investigation as perfunctory at best and more likely an attempt to bury a potential scandal under the guise of a seemingly official inquiry.<sup>851</sup> Quin and McGeechan both sought to discredit and intimidate prisoners during the interviews and encouraged dishonest responses from prison staff, including Bathurst's superintendent, John W. Pallot.<sup>852</sup> Despite Quin's bias, he concluded that "a prima facie case exists against Prison Officers generally at Bathurst gaol...but no case against any specific Officer."<sup>853</sup> McGeechan refused to pursue Quin's acknowledgement that abuse occurred at Bathurst. Questions arose during the Royal Commission about whether McGeechan failed to inform Maddison about Quin's findings or if Maddison was also complicit in concealing them from Parliament.<sup>854</sup>

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<sup>850</sup> Ibid.; "Criticism of Jails Was His Downfall," *Sydney Morning Herald*, (February 7, 1979); *Nagle Report*, 101, 193; Exhibit 267: "Announcement of Judgment" and "Judgment" of 29th May, 1973, of Crown Employees Appeals Board—Ristau and Department of Corrective Services; Exhibit 270: Copy of letter from Commissioner of Corrective Services to Superintendent, Milson Island concerning services of J. Ristau dated 1st December, 1975. Royal Commission into New South Wales Prisons Exhibits 9/5307. SANSW.

<sup>851</sup> *Nagle Report*, Chapter 5 – Bathurst: The "Inquiry," 81-105.

<sup>852</sup> For McGeechan's interview with Pallot, see Nagle, *Report of the Royal Commission*, 89-90.

<sup>853</sup> Nagle, *Report of the Royal Commission*, 96.

<sup>854</sup> Ibid., 96-105. Without the authority to investigate Maddison, the Royal Commission focused on McGeechan and found that he repeatedly buried unpleasant information. Many commentators, however, believed that it was highly unlikely that Maddison knew so little about the routine abuses practiced by staff in the department he

Regardless of whether Maddison knew or not, he publically announced in July 1971 that he was satisfied by the internal inquiry's findings that the allegations of abuse were baseless and the officers had used force appropriately to protect themselves and restore order at Bathurst.<sup>855</sup> There was no need, he said, for a costly inquiry that opponents would just use to smear the government and Corrective Services. Nevertheless, Maddison attempted to defuse some of the opposition by announcing the appointment of the Corrective Services Advisory Committee, a body of criminal justice experts to assist the minister and Commissioner McGeechan.<sup>856</sup> The Advisory Committee had little real power and Maddison and McGeechan largely ignored its advice and complaints.<sup>857</sup> Maddison's decisions did not entirely quell the calls for an inquiry, and it arguably worsened the frustration of prisoners and tension between them and prison staff in many of the state's institutions.<sup>858</sup>

Unlike past accounts of abuse by prison staff, the government struggled to silence its critics and assert its position as hegemonic.<sup>859</sup> A key difference by the early 1970s was that prison issues now dovetailed with a host of other anti-authoritarian, anti-war and civil rights movements that made challenges to established authorities much more common, persistent

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oversaw. See Anne Summers and Bob Jewson, "Did the Minister Lie," *National Times*, (January 17-22, 1977); "Maddison Gives Evidence to Prisons Inquiry," *Sydney Morning Herald*, (May 24, 1977); "A Form of Words," *Sydney Morning Herald*, (May 24, 1977); Zdenkowski and Brown, *The Prison Struggle*, 175, 245-247.

<sup>855</sup> "Govt Says No to Jail Inquiry," *Sydney Morning Herald*, (July 21, 1971); "Minister Describes Bathurst Jail Riot," *Sydney Morning Herald*, (July 21, 1971).

<sup>856</sup> Ibid.

<sup>857</sup> Nagle, *Report of the Royal Commission*, 236-241.

<sup>858</sup> Matthew Peacock argued that the media also contributed to this problem by refusing to challenge the government's explanations of the violence in the face of mounting evidence of wrongdoing. See, "Blood on the Reporters' Hands", 164-168.

<sup>859</sup> As recently as 1967, the well-known armed robber Darcy Dugan accused prison authorities of sadistic repression at Grafton Gaol upon his release from custody. Yet, Grafton's brutal intractable regime lasted well into the mid-1970s. See Darcy Dugan, "Brutality and Sadism at Grafton Jail," *Sunday Telegraph* September 24, 1967; Rod Hay, *Catch Me If You Can: The Life and Times of Darcy Dugan* (Sydney: Pan Macmillan, 1992), 270-275; Testimony of Darcy Dugan, *Proceedings of the Royal Commission*, 3031-3032.

and effective.<sup>860</sup> Much like other parts of the world at approximately the same time, prisoner rights activism and radical abolitionist movements blossomed in New South Wales as part of these countercultural and political movements. Prison activists in New South Wales frequently drew on language, symbols and strategies from similar movements in other states and countries as well as a broad Anglophone activist and academic literature.

Bernie Matthews, a long-term prisoner who spent years in segregation, later remarked that he saw the effects of this new political disposition among many of the prisoners he served time with:

As more and more conscientious objectors and Vietnam War protestors became imprisoned, they introduced a new mentality of 'stand up and be counted' that ran contrary to the old crims' philosophy of copping it sweet and doing their time as easily and quietly as possible. A new political awareness and social consciousness had been injected into the prison system.<sup>861</sup>

Surely, some of the novelty of this political awareness among these activists reflected their more privileged social backgrounds. They stood out among most prisoners for this as much as their politics and would likely never have been imprisoned if it had not been for their civil disobedience. Their willingness to complain to other government authorities when they experienced life in the state's prisons, as well as the receptiveness of some officials, differ from the view of state authorities held by many lower class and Indigenous prisoners.<sup>862</sup> The masculine disposition of quiet endurance in the face of routine abuses in prison, or "copping it

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<sup>861</sup> Bernie Matthews, *Intractable: Hell Has a Name, Katingal: Life Inside Australia's First Super-Max Prison* (Sydney: Pan Macmillan Australia Pty, Limited, 2006), 119.

<sup>862</sup> Mike Jones and Janice Jones, "Keeping Up with the Jones's: Jailhouse Rock," *The Union Recorder*, March 18, 1971), 5-7.

sweet” as Matthews and many other inmates refer to it, was less common among these younger, privileged prisoners.

The events at Bathurst in October 1970 and lingering questions surrounding them played a key constitutive role in catalyzing a broader mobilization around reforming, and even abolishing, the entire state prison system.<sup>863</sup> A number of existing organizations developed significant campaigns around these issues and new ones formed specifically in response to the violence and cover-up. The New South Wales Council for Civil Liberties established a prison subcommittee to devote more attention to these issues and several of its members anonymously authored the influential *Bathurst Batterings* pamphlet.<sup>864</sup> This subcommittee included several former prisoners, including Tony Green who spoke publicly about his experiences at Bathurst. Also in 1971, Green, the former Long Bay Gaol psychologist, Len Evers, and several others established a related organization, the Penal Reform Council. This organization worked closely with the Council for Civil Liberties over the next decade, but focused, as the name suggests, exclusively on prison matters.<sup>865</sup>

By 1973, however, Tony Green and several other members of the Penal Reform Council grew increasingly uneasy with the organization’s reformist line, opting instead for more radical abolitionist critiques of imprisonment. Consequently, Green, Liz Fell, Wendy Bacon, and Matt

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<sup>863</sup> George Zdenkowski and David Brown emphasize the vibrancy and local character of the prison movement in New South Wales and highlight the reprisals against prisoners at Bathurst in October 1970 as a definitive periodizing moment, marking the beginning, as it were, of the movement. See their *Prison Struggle*, Introduction, xv-xxi.

<sup>864</sup> For an authorized history of the Council for Civil Liberties, see Campbell and Campbell, *The Liberating of Lady Chatterley*.

<sup>865</sup> Tom J. Kelly to George Zdenkowski, (May 6, 1981); Jack Grahame to George Zdenkowski, (June 1, 1981); George Peterson to George Zdenkowski, (June 4, 1981). George Peterson Collection, box 80, folder Prisons 1985-1987. University of Wollongong (hereafter UW).

Peacock organized another organization, the Prisoners Action Group. While they acknowledged the importance of pragmatic reforms to improve prisoners' lives, this organization saw its final goal as the abolition of prison as an institution altogether.<sup>866</sup> The Women Behind Bars, which focused on the unique and often overlooked difficulties faced by female prisoners, also emerged from this split with the Penal Reform Council and included many of the same people who formed the Prisoners Action Group.<sup>867</sup> Despite the considerable differences among these organizations in terms of their composition, social background, politics and strategies, they all publicly denounced the government's management of the prisons and kept the issue alive in public debate through publications, media appearances, conferences and demonstrations. As the scholars-activists George Zdenkowski and David Brown argued, "The net result was an unprecedented escalation of information about prison. Attacks on the credibility of the critics became more difficult to sustain as the embryonic group became a small phalanx."<sup>868</sup>

Over the next two and a half years, resistance to the state's penal authorities was even more pronounced inside several prisons. By the autumn of 1973, strife had returned to Bathurst.<sup>869</sup> After the peaceful resolution of a sit-in by approximately 150 Bathurst prisoners in

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<sup>866</sup> "Prisoners' Action Group," pamphlet; "...The Present System," pamphlet fragment; Glebe House: A Refuge for Ex-Prisoners," pamphlet, Ephemera on crime prevention in New South Wales: including pamphlets, leaflets etc. related to law enforcement, the Police Force, the Department of Corrective Services, individual prisons, remand centres and gaols, box 1. Mitchell Library, State Library of New South Wales. Prisoners' Action Groups also formed in during the decade in Victoria, Queensland, Western Australia and the Australian Capital Territory. "Victorian Prisoners Action Committee," and "W.A. Prisoners Action Committee," *Alternative Criminology Journal*, 1:3 (March-June 1976), 26-30; "QLD P.A.G." and "VIC P.A.G." *Jail News*, 1 (September 16, 1978), 3; *Broken Bars: A.C.T. Prisoners Action Group's First Newsletter*, 1 (November 1980), National Library of Australia; Zdenkowski and Brown, *Prison Struggle*, 82-86; Anthony Green and David Brown to Mr. K. Berry, May 5, 1976, Prisoner's Action Group application for leave to appear before the Royal Commission Inquiry into Prisons. George Peterson Collection, box 6, folder: Prisons, UW.

<sup>867</sup> "Women Behind Bars," *Jail News*, 1 (October 26, 1978), 5.

<sup>868</sup> Zdenkowski and Brown, *Prison Struggle*, 165.

<sup>869</sup> Inquiry Used as 'Stage': Barrister's View on Jail Beating Claim," and "Prisoner Used Jail Inquiry," *Daily Telegraph*, (November, 17, 1973), newspaper clippings. George Peterson Collection, box 131, folder: Prisons 1976-9. UW; Public



late October, Superintendent Pallot tightened discipline, further curtailed privileges and simply ignored the grievances raised in the sit-in.<sup>870</sup> Despite promises to the contrary, the staff transferred several people involved in the sit-in to other prisons and placed several others in segregation.<sup>871</sup> Throughout the spring and early summer, tensions between staff and prisoners worsened, but little was done by Pallot and McGeechan to alleviate the situation despite prescient warnings of pending trouble by senior custodial officers who were dispatched from headquarters to evaluate the situation.<sup>872</sup> After another sit-in in January and what appeared to have been several weeks of preparation, prisoners openly rebelled on February 3<sup>rd</sup> and 4<sup>th</sup>, 1974, destroying significant portions of the prison and setting it ablaze.<sup>873</sup> Guards eventually subdued the rebels with firearms and tear gas, seriously wounding several people and forcing the rest of the participants into the segregated Back Special Yards. Many of these inmates later claimed that when the guards moved them to buses for transportation to other prisons, they forced them to run through a large gauntlet of baton-wielding officers who repeatedly beat them as they passed by.

After the extensive publicity of the October 1970 disturbance and the accusations of misconduct by the authorities, the far more destructive events of early 1974 at the same institution drew outrage from a number of people and organizations. Renewed calls for a royal

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Service Board (Lewer), *Inquiry into Incidents Involving Four Prisoners at the Central Industrial Prison on 15<sup>th</sup> October 1973, and other matters* (Sydney: Government Printer, 1973).

<sup>870</sup> Nagle, *Report of the Royal Commission*, 109-113.

<sup>871</sup> *Ibid.*, 111-112; Bob Jewson, "The Prisoners' Action Group's Summary of the Royal Commission into NS.W Prisons Compiled Following the Hearing of Evidence," 273-276.

<sup>872</sup> *Ibid.*, Jewson, "Prisoners' Action Group's Summary," 274-276.

<sup>873</sup> *Ibid.*, 112-132; Jewson, "Prisoners' Action Group's Summary," 278-293. Additionally, the transcript of the proceedings deals extensively with witnesses' accounts of February 3<sup>rd</sup> and 4<sup>th</sup> at Bathurst. See especially volume 2, 3 and 4 of the *Proceedings of the Royal Commission*.

commission gained additional weight within days as another disturbance erupted at Goulburn Gaol on February 10<sup>th</sup>.<sup>874</sup> After harsh questioning in Parliament over the next few weeks, Maddison conceded that the government would establish a royal commission to investigate the riot and its causes, but stated that it would have to follow the prosecution of inmates involved in the uprising.<sup>875</sup> Since the initial proceedings against the Bathurst prisoners did not occur until about a year later, this effectively stalled the promised inquiry.

It did not, however, mollify the government's critics. In the early-to-mid 1970s, a number of existing and new prisoner-operated newspapers inside several facilities began publishing articles that were more openly critical of the current state of prisons and debated the possibilities for change. Although far less radical and confrontational than publications produced outside the prison system, this emerging debate, nevertheless, pointed to increasing restlessness among prisoners, the growing articulation of shared difficulties and grievances, and the loosening control of prison authorities who still tried to repress this activity.<sup>876</sup> In 1974, a number of prisoners at Cessnock Corrective Centre in the Hunter region of northern New South Wales formed the Prison Legal Cooperative, a more politically confrontational organization, which sought to "preserve, protect, and to extend the rights of prisoners and ex-prisoners."<sup>877</sup>

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<sup>874</sup> "Tear Gas Used on Goulburn Prisoners," *Sydney Morning Herald*, (February 11, 1974).

<sup>875</sup> Royal Commission into Department of Corrective Services – Urgency, *Parliamentary Debates (Hansard)*. (February 21, 1974), Parliament of New South Wales, Legislative Assembly, 637-641.

<sup>876</sup> Such publications were not available at all prisons. Staff members at Bathurst, for instance, were notorious for their control over even mainstream newspapers. See Nagle, *Report of the Royal Commission*, 320. For a sampling of prisoner newspapers see, *Contact: Magazine of the Parramatta Jail Resurgents*, *The Goulburn Link*, and *Inside Out*. Produced by the Parramatta Resurgents Debating Society, *Contact*, especially, featured critiques of the prison system and commentary on the ongoing public debate about penal policy. By the end of the 1970s after the Royal Commission, several other publications appeared that were much more openly critical such as *Time and Life* and *INprint*. Copies of these papers are held in the Mitchell Library, State Library of New South Wales.

<sup>877</sup> "Prisoner's Legal Cooperative," George Peterson Collection, box 79, folder: Prison Matters 1976-80. UW; Prison Legal Cooperative Brett Collins, "Super Mac and de Judge," *Alternative Criminology Journal*, 2:1&2 (August 1977), 34-38.

The organization focused on legally challenging restrictive rules, disciplinary and transfer procedures, and limited access to services and opportunities, like education. While it only existed inside the state's prisons, the cooperative collaborated with several outside organizations that supported their work. Prison staff continually repressed their activities by transferring or segregating members as well as confiscating their legal materials, correspondence and books. Within a short period of time, however, the Prison Legal Cooperative established a more stable presence in the state's prison system with members and sympathizers scattered across different institutions.

In the wake of the February 1974 disturbance at Bathurst, many of these prison reform and abolitionist organizations in the community escalated their activities, holding regular meetings, conferences and demonstrations as well as publishing a number of critical periodicals and pamphlets.<sup>878</sup> The Prisoner's Action Group, for instance, held a major three-day conference, titled "Alternatives to Prison," at the University of New South Wales in May 1975. The symposium ended with a heated dispute between attendees that revealed, not only the range of different positions and perspectives in the prison movement, but also the degree of radicalization among some groups.<sup>879</sup> The argument involved a motion put forth by Barry York of the Prisoners Action Committee of Victoria, which called for supporting rebellions by prisoners like the recent examples of Bathurst and Goulburn, as well as the 1971 Attica uprising

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<sup>878</sup> For instance, see James F. Staples, *Mr. Maddison, It's Just Not Good Enough* (Cammeray: Prisoners Action Group, Tomato Press 1974); Tony Green and Geoff Mullen, *1974 Bathurst Bashings and the Perversion of Justice in N.S.W.* (Cammeray: Prisoners Action Group and Penal Reform Council, 1974); Anthony Green and David Brown to Mr. K. Berry, May 5, 1976. George Peterson Collection, box 6, folder: Prisons. UW.

<sup>879</sup> "Courts, Police, Officials at Fault Over Bathurst Riots – Judge," *Sydney Morning Herald*, (May 12, 1975); "'Partisan' Comments by Judge on Jail Riot," *Sydney Morning Herald*, (May 13, 1975); "Uproar as Action Group Votes for Jail Revolts," *Sydney Morning Herald*, (May 13, 1975).

in Upstate New York. Ken Buckley, President of the Council for Civil Liberties, opposed the motion as counterproductive because such a radical stance would alienate potential support for penal reform. However, the attendees passed the motion by a large margin.<sup>880</sup>

In 1975, the Prisoners Action Group also began disseminating its radical critique of the prison in two publications. The first, the *Alternative Criminology Journal*, published scholarly articles as well as updates and analysis of the state's prison system, the prison movement and the ongoing efforts to establish a royal commission. It frequently included articles by currently serving inmates. A little later, the group also began producing the *Jail News*, a much more accessible newspaper with shorter articles intended for a broader audience. Together, these periodicals resembled similar prison activist publications in other parts of the world, often including news from other jurisdictions in addition to reproductions of iconic images and satirical cartoons about prisons. The wide circulation of these latter images revealed the extent of shared concerns with imprisonment across national and sub-national borders. They were both highly flexible in that they could be easily situated into local politics, but they also condensed powerful critiques of carceral practices or exemplified inmate solidarity. These qualities enabled their circulation and translation into many different contexts. While some of these images were more general (Figures 3.1 and 3.2), others more clearly signaled their local context and the circumstances of their production, even if they also addressed larger concerns.

Early issues of the *Alternative Criminology Journal* featured a regular column titled, "From the Inside," which provided an example of the latter (Figure 3.3). The column contained commentary by prisoners and news about events activities in specific prisons across the state,

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<sup>880</sup> Ibid.

like sit-down strikes and other forms of direct action. Emblazoned prominently above the title was a photograph taken by a journalist in D-Yard at the Attica Correctional Facility in Western New York during the September 1971 uprising (see Figure 3.3).<sup>881</sup> This iconic picture of mostly (but not exclusively) African-American prisoners hands raised in the clenched-fist, Black Power salute symbolized the political empowerment and solidarity of inmates.

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SENTENCING	FRENCH SOCIALIST REFORM
<p>One hundred and fifty prisoners are thought to be affected by rulings on sentences given in Neddy Smith's, Les Burr's, and Nancy Burr's cases.</p> <p>Most people don't know what the decisions were and whether or not they are affected - so we're printing a summary of the law.</p> <p>The decision could mean some people should be released, apply for licence or have their parole dates changed. If you think you are affected, are not sure, or want something done about it, send all the details to Legal Work care of PO Box 215 Glebe 2037.</p> <p><u>Smith v Corrective Services Commission</u> was decided by the High Court last year and said that a prisoner whose parole had been revoked did NOT lose any remission under Regs 110 &amp; 111 of the Prison Regulations, which he or she was entitled to before his or her release to parole.</p> <p>Crude examples :-</p> <p>(1) Pre Smith's Case</p> <p>1970 - sentenced to 9 years with a non-parole period of 3 years.            1971 - released to parole.            1974 - parole revoked &amp; executed (i.e. person brought back into custody to serve balance of parole)</p> <p>Time served before parole = 3 years            so balance of sentence left = 9-3 = 6 years            3 remission off 6 years = 2 years            Therefore balance of parole with remission = head sentence (9) less time served before parole (3) less 3 remissions (2) = 4 years.            (Assume for the purposes of this example that the prisoner had not served a goal sentence prior to the one s/he received in 1970. If s/he had done time before, then only entitled to 2.)</p> <p>(11) After Smith's Case.</p> <p>Some Facts.</p> <p>However, 3 remission should come off the total head sentence of 9 years - which leaves you with 3 years.</p> <p>Therefore balance of parole to serve = head sentence (9years) less time served before parole (3 years) less 3 remissions (3) = 3 years.</p> <p>Burr's case in the Court of Criminal Appeal on 25.7.81 concerned a situation where a prisoner whose parole had been revoked is sentenced on another matter, but the sentencing judge was given the wrong expiration date of the balance of parole as the calculations were done pre-Smith's case.</p> <p>Using example (1) above :-</p> <p>1970 - 9 with 3 npp            1971 - paroled            1974 - balance of parole            1975 - cumulative sentence imposed on the sentence, hearing, the goal recorder</p>	<p>gives evidence to say that with remissions (ie 3 off 6 years (pre Smith's)) the R.P.P. expires June 1978. The judge then sentences the man to 6 years accumulative with a non-parole period to expire June '82. (Clearly the judge intends to impose an 8 year sentence with 4 years 'on the bottom').</p> <p>HOWEVER, if the remissions had been properly calculated according to Smith, 3 should have been taken off 2 years.</p> <p>Therefore, the balance of parole should have been said to expire in June 1977. And so the new non-parole period as set by the sentencing judge in 1975 should have been said to expire in June 1981.</p> <p>In Burr the Court of Criminal Appeal set aside the non-parole period that Les Burr had received, &amp; substituted a new one in accordance with remissions owing under Smith.</p> <p>The C.C.A. went on to comment on the desirability of consideration by the executive government of other cases similarly affected by Smith's decision with a view to release on licence.</p> <p>I have a client at the moment in a similar position to Les Burr. I have prepared an application for his early release on licence and I understand that the Department will make a decision at the end of this week. I also understand that the Department is viewing this application as a "test case" after Burr.</p> <p>The new French Socialist government released 6,500 of the 42,000 prisoners in France, at the time they took office. By September, 1981, the prison population was decreased to 30,000. As most prisoners were short term, an estimated 130,000 people went through jails under the old government. The new rulers have set a limit on the amount of time a person can be remanded for trial, and they are also trying to avoid short term sentences which desocialise prisoners. French Socialists hope to close at least 35 of the 180 prisons by directing judges to apply legal alternatives to jail sentences, such as fines, work release and bans of various kinds. Educational and work programmes aimed at giving a plan of life, a potential future, to prisoners, is being attempted. In 1975 the number of French Control Units (called CPUS), suddenly rocketed from 90 to 229, then to 300. There was an average of 75 inmates in each Unit. Inside the Units there was no time off for 'good behaviour', few ways of getting an easier classification or changes of life sentences to twenty years sentences. Prisoners had nothing to lose by taking desperate steps. Now the Security Wings are to be dismantled. The committee responsible for deciding what should be done with these Units, objected to opaque windows, beds and chairs bolted to the floor, 'arbitrary assignment of trouble makers and protestors with no chance of getting out', and, of course, to the total isolation.</p> <p style="text-align: right;">conf. on page 22</p>
<p>Hanette Rogers</p> 	

Figure 7: Rehabilitated corpse, New South Wales

Figure 7. Rehabilitated corpse, New South Wales - *Jail News*, 4 (February 1982).

<sup>881</sup> See Figure 1.

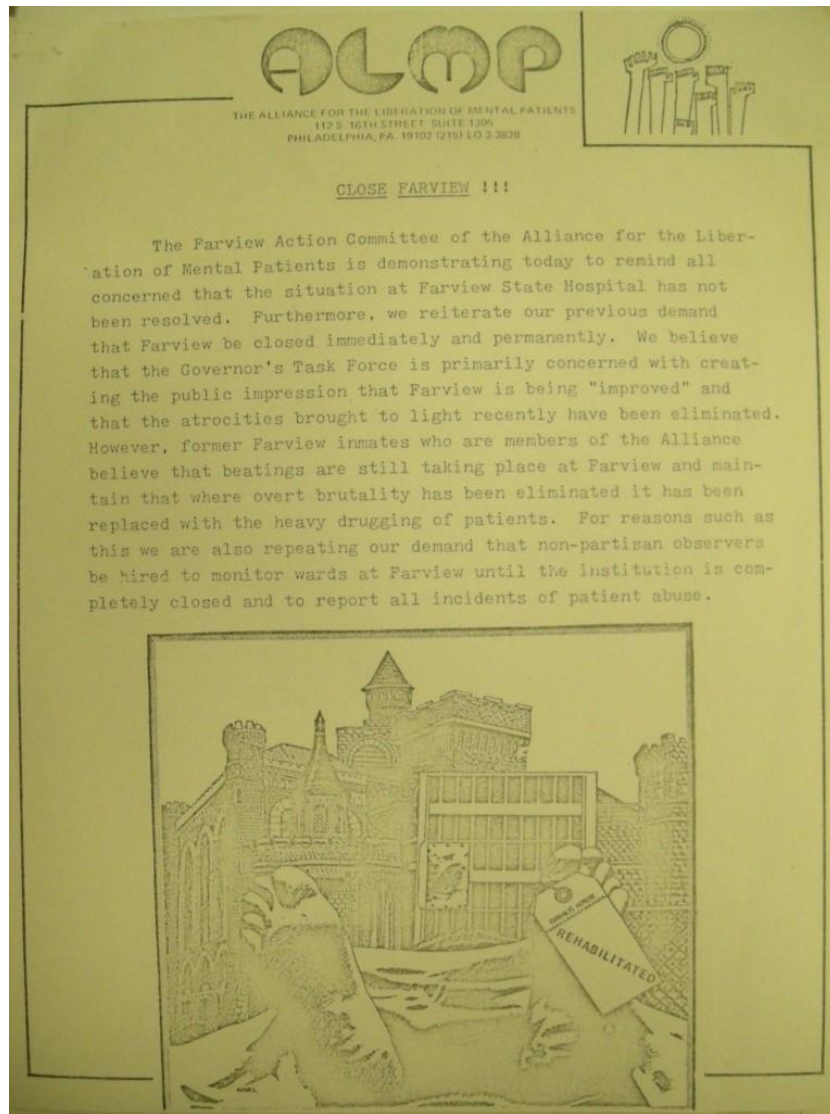


Figure 8: Rehabilitated corpse, Pennsylvania

Figure 8. Rehabilitated corpse, Pennsylvania - Introduction flyer for Alliance for the Liberation of Mental Patients (reissue of Pennsylvania Department of Justice report), *The Farview Papers: The Confidential Investigation by the Pennsylvania Department of Justice into Threats, Beatings, Illegal Contraband, and Deaths at Farview State Hospital, Waymart, Pennsylvania* (Philadelphia: Alliance for the Liberation of Mental Patients, 1977). MG-309 Governor Milton Shapp J. Records, Files of the Special Assistant for Human Services, Slot no. 14-0953, box 4 "F-H", folder: Farview State Hospital folder 4/1.



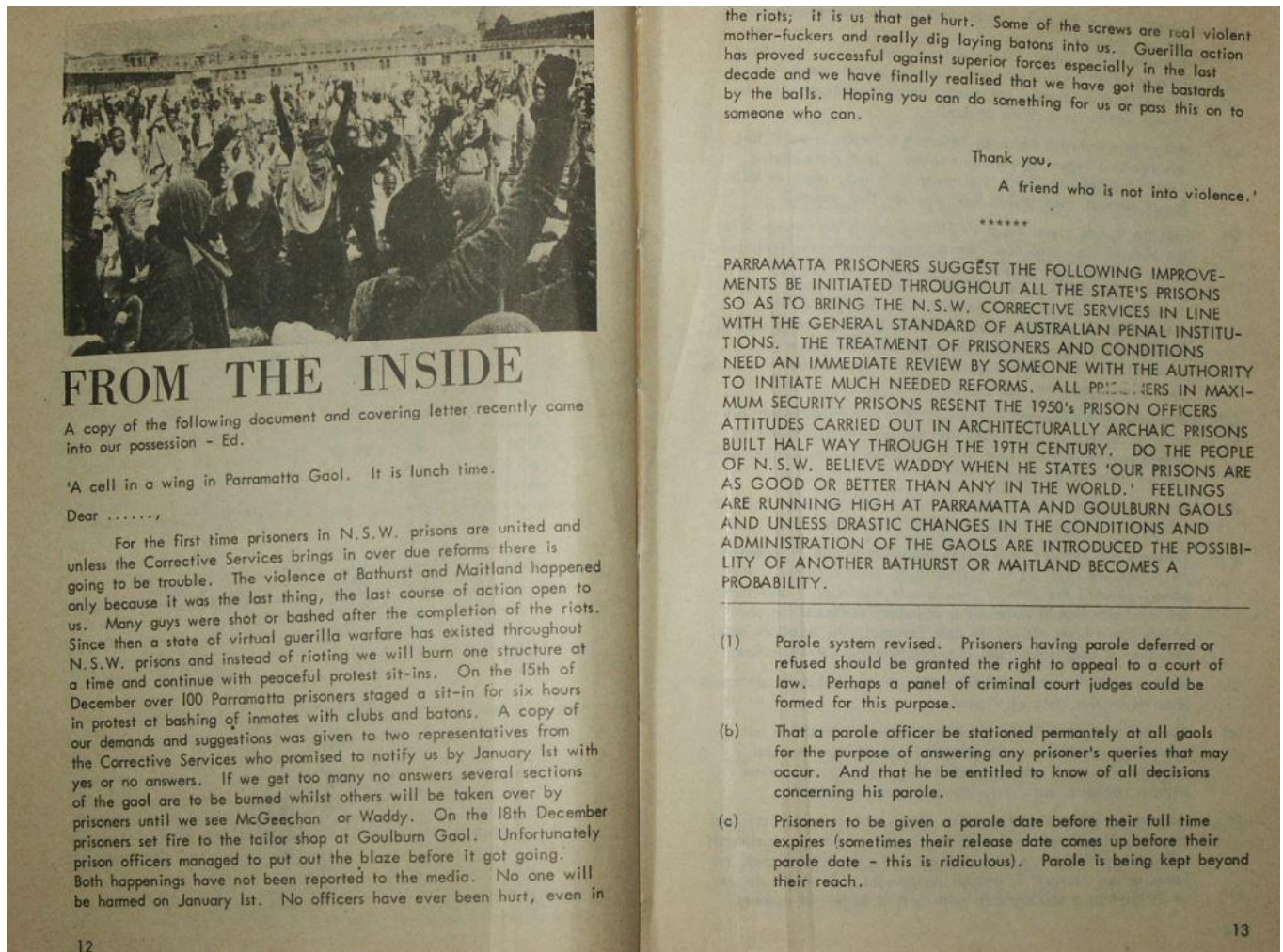


Figure 9: From the Inside column, *Alternative Criminology Journal*

Figure 9. Example of the "From the Inside" column in the *Alternative Criminology Journal*, 1 (March-June 1976), 12.

It is notable, however, that in the Australian prison movement of the 1970s, articulations of race, punishment and criminality were far more subdued, if mentioned at all, even though there were clear signs of the overrepresentation of Indigenous Australians in custody.<sup>882</sup> Unlike much of the prisoner rights activism in the United States, prisoners of white, European heritage played a much more prominent role in the prison movement in New South Wales and Australia, in general.<sup>883</sup> The silence in many activist publications about race and Indigeneity was in itself a part of how the racial formation operated in Australian society.<sup>884</sup> However, it also pointed to the fact that most current and former Indigenous prisoners in New South Wales did not participate in penal reform campaigns, whether inside or outside of

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<sup>882</sup> M. S. Dewdney and M. H. Miner, *1974 Census of Prisoners - Aborigines in Prison* Publication No. 11 (Sydney: New South Wales Department of Corrective Services, Research and Statistics Division, 1974); Angela Gorta, Roz Hunter and Geoff Gordon, "A Profile of Aborigines in Prison, 1981," Research Publication No. 5 (Sydney: New South Wales Department of Corrective Services, December 1982); Angela Gorta, Roz Hunter and Geoff Gordon, "Aborigines: Treatment in Prison, 1981," Research Publication No. 6 (Sydney: New South Wales Department of Corrective Services, December 1982).

<sup>883</sup> For incisive comments on the invisibility of race and the Indigenous in Australian imprisonment and its study, see Richard Edney, "Indigenous Punishment in Australia: A Jurisprudence of Pain," *International Journal of the Sociology of Law*, 30 (September 2002), 219–234.

<sup>884</sup> *Ibid.* Bernie Matthews gives an account of inmate solidarity that crossed racial lines in his memoir, *Intractable*, points up the unusualness of such an alliance. Matthews describes how after the state's guard union blocked his transfer to the Work Release program, he was approached by a Koori prisoner named Ernie Hinton who was leading a group of prisoners protesting the guards' actions. Matthews notes that Hinton had been involved in activism for Aboriginal prisoners and "went in hard for his people behind the walls," yet there is no mention of him beyond this incident or other Aboriginal prisoner activists. Matthews writes of the protest of his misfortune, that while "most of the guys had self-interest at heart [they were also worried about being blocked from the Work Release program] it was heartening to see a jail population close ranks for a common good. It was even more impressive to see racial harmony to the extent that a Koori was leading the charge and going in to bat for a gubba (white man)." For a fuller account of the incident, see Matthews, *Intractable*, 302-319, quotes 312. See also Susan Janson and Stuart MacIntyre, *Through White Eyes* (Sydney: Allen and Unwin, 1990); Andrew Markus, *Australian Race Relations: 1788-1993* (St. Leonards: Allen and Unwin, 1994); Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s* (New York and London: Routledge, 1994); Ghassan Hage, *White Nation: Fantasies of White Supremacy in a Multicultural Society* (Sydney: Pluto Press, 1998); Gillian Cowlishaw, *Rednecks, Eggheads, and Blackfellas: A Study of Racial Power and Intimacy in Australia* (Ann Arbor: University of Michigan Press, 1999); Elizabeth A. Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism* (Durham: Duke University Press, 2002); Aileen Moreton-Robinson (ed.), *Whitening Race: Essays in Social and Cultural Criticism* (Canberra: Aboriginal Studies Press, 2004); Marilyn Lake and Henry Reynolds (eds.), *Drawing the Global Colour Line: White Men's Countries and the International Challenge of Racial Equality* (Cambridge: Cambridge University Press, 2008); Jane Carey and Claire McLisky (eds.), *Creating White Australia* (Sydney: Sydney University Press, 2009).



prison.<sup>885</sup> As Paul Coe of the Aboriginal Legal Services would later argue in a submission to the Royal Commission, many of the deprivations of prison life that animated the protests by white activists were not often viewed in the same light by many Indigenous people who routinely lived with hardships in the community.<sup>886</sup>

Some sources of complaint for Indigenous prisoners reflected their particular circumstances and were not widely shared by many white inmates. The lack of adequately explained prison rules and opportunities especially disadvantaged many Indigenous inmates who either would not or could not communicate well with white authority figures. Such prisoners also frequently told representatives of the Aboriginal Legal Services that they were subjected to harsh racist insults by guards and given the dirtiest, most degrading jobs available in prison. Perhaps the greatest area of concern for Indigenous prisoners was the department's new parole scheme, which Maddison often cited as evidence of the state's modern penal practices compared to the rest of the world.<sup>887</sup> The criteria for granting parole and its reporting requirements often implicitly relied on white assumptions about proper employment, residential patterns and family life that conflicted with prevailing employment and migratory norms in much of Australian Indigenous society.<sup>888</sup> Nevertheless, the Aboriginal Legal Services supported many of the aims of the penal reform groups and pressured the government and Department of Corrective Services for changes in areas affecting Indigenous people.

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<sup>885</sup> Exhibit 716: Submission by Aboriginal Legal Service. Submission on general issues, 7. Royal Commission into New South Wales Prisons Exhibits 5/9310. SANSW.

<sup>886</sup> *Ibid.*, 7-8.

<sup>887</sup> Peacock, "Blood on the Reporters' Hands."

<sup>888</sup> Exhibit 716: Submission by Aboriginal Legal Service, 8-9, 11-13.

As the prison movement grew, a few journalists also developed a greater interest in exposing what occurred at Bathurst in 1970 and 1974. A few publications, like the Australian Communist Party's *Tribune* and several student-run university papers, routinely criticized the government's handling of the Bathurst events, but their circulation was small in comparison to many of the major news dailies. The *National Times* stood out among the mainstream newspapers for several series of critical, investigative articles between 1974 and 1976, which delved deeper into the events at Bathurst and the Department of Corrective Services, in general, than any of the other major newspapers.<sup>889</sup> At about the same time, Nick Franklin, a radio journalist at the 2JJ station, began broadcasting the Prisoner's Program, featuring news from inside the state's prisons and an ongoing discussion of state penal politics. As George Zdenkowski and David Brown noted in the early 1980s, "the regular weekly prisoners' program played a significant role as a lifeline of communication between the prison cell and the outside movement."<sup>890</sup> Judging by the frequent references to the program in contemporary prisoners' writings, listening to it became almost a ritual for many incarcerated individuals.<sup>891</sup>

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<sup>889</sup> See, for instance, "Have Police Investigated Jail Assault Claims? They Will Not Say," *National Times*, (October 28-November 2, 1974); "Bathurst Inquiry," *National Times*, (November 11-16, 1974); "No Comment," *National Times*, (November 18-23, 1974); "Crisis in Jails," *National Times*, (December 16-21, 1974); "Tight Security," *National Times*, (June 9-14, 1975); "Whose Justice," *National Times*, (August 11-16, 1975); "Justice in NSW?" *National Times*, (September 8-13, 1975); "Not Exactly Radical Investigators, But the Truth May Yet Be Told," *National Times*, (April 12-17, 1976); "The Day the Screws Were Turned Loose," *National Times*, (April 19-24, 1976); "If Prison is Purgatory, Then Grafton Is Hell," *National Times*, (April 26-May 1, 1976); "NSW Prison Officers Declare: 'We Won't Be the Scapegoats,'" *National Times*, (May 31-June 5, 1976); "How Prisoners Were Bashed," *National Times*, (July 12-17, 1976); "A Motion of Censure," *National Times*, (November 15-20, 1976).

<sup>890</sup> Zdenkowski and Brown, *Prison Struggle*, 307.

<sup>891</sup> Tim Anderson, *Inside Outlaws: A Prison Diary* (Marrickville: Redfern Legal Centre Publishing, 1989), 68. Matthews, *Intractable*, 203; Ray Denning and Donald Catchglove, *Ray Denning: My Life and Time with the Prison Diaries* (Sydney: Ironbark, 1994), 41, 51, 88, 91, 124, 173, 220-224. Frequent reference is also made to the program in multiple issues of the *Jail News*.

Despite the mounting calls for an inquiry, the Liberal-Country government attempted to avoid what some in their ranks feared would be an embarrassing series of revelations if an inquiry was held. In August 1975, Maddison's replacement, John Waddy, cast further doubt on the possibility of an inquiry, reportedly stating that there would be little benefit in investigating past events and that perhaps an evaluation by an expert from overseas would suffice.<sup>892</sup> Jack Grahame, the lawyer for many of the Bathurst prisoners and a member of the Penal Reform Council, described Waddy's statements as, "a kite-flying exercise by the Government to see if the community would accept the fact that there would be no Royal Commission."<sup>893</sup> The *Sydney Morning Herald's* editorial page also criticized the government's apparent intention to forego the inquiry and reminded them of the growing and widespread public concern with the state of prisons.<sup>894</sup>

As the government wavered on whether they would hold an inquiry, prisoners increasingly demanded improvements in living conditions and many other reforms, especially to the disciplinary system. In October 1975, prisoners at Maitland Gaol staged two sit-ins protesting, among other things, the harsh discipline handed out to a fellow prisoner by the visiting justice and petty rule enforcement in general. Minister Waddy had scheduled a visit to Maitland on October 29<sup>th</sup>, and most inmates believed that a small deputation of prisoners would be able to directly discuss their grievances with him. When Waddy departed without talking to prisoners, many younger prisoners immediately held a sitdown demonstration in the

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<sup>892</sup> "Drop Jail Riot Trials, Says Justice Staples," *Sydney Morning Herald*, (August 4, 1975); "Stalling Tactics," *Sydney Morning Herald*, (August 4, 1975); "The Reluctant Minister," *Sydney Morning Herald*, (August 17, 1975); "The Dogfight Over NSW Prisons...Waddy Fires a Burst," *Sydney Morning Herald*, (August 22, 1975); Zdenkowski and Brown, *Prison Struggle*, 166.

<sup>893</sup> "Drop Jail Riot Trials, Says Justice Staples," *Sydney Morning Herald*, (August 4, 1975).

<sup>894</sup> "Stalling Tactics," *Sydney Morning Herald*, (August 4, 1975).

yard, which lasted until the evening at which time someone started a fire in one of the workshops.<sup>895</sup> Maitland's guards fired tear gas canisters at the demonstrators and forced them back to their cells after running through a gauntlet of baton-wielding guards. This drew immediate condemnation by prison reforms groups and the leader of the Labor opposition, Neville Wran, who pledged to fulfill Maddison's original promise for a royal commission if they ousted the Liberal-Country government in the next election.<sup>896</sup> The same day, an editorial in the *Sydney Morning Herald* opined that:

...it cannot be maintained that the shortcomings of the NSW prison system are capable of correction simply by closed magisterial inquiry, established administrative procedures and subsequent bureaucratic action. A Royal Commission with the widest terms of reference is required and should be established by the NSW Government at the earliest opportunity.<sup>897</sup>

On the following day, November 3<sup>th</sup>, another fire erupted at Parramatta Gaol near Sydney on, which, according to one press account, caused twice the damage of the Maitland fire.<sup>898</sup> Within days, the government reaffirmed its intention to hold a royal Commission after the Bathurst inmates' trials had ended, which were expected to end in early 1976.

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<sup>895</sup> The *Sydney Morning Herald* reported that Waddy had in fact met with a group of prisoners, but a subsequent investigation by the New South Wales Ombudsman confirmed that Waddy left without speaking with prisoners. See "Tear Gas Ends Jail Riot After \$100,000 Damage – Sky Glows Red at Night as Fires Blaze," *Sydney Morning Herald*, (October 30, 1975); New South Wales Office of the Ombudsman, *Report under section 31 of the Ombudsman act 1974, concerning the investigation of certain complaints made by prisoners to the Royal Commission into New South Wales Prisons* (Sydney: Government Printer, 1979).

<sup>896</sup> "Prisons Inquiry Promised: Royal Commission by a State Labor Govt," *Sydney Morning Herald*, (November 3, 1975).

<sup>897</sup> "Penal Reform," *Sydney Morning Herald*, (November 3, 1975)

<sup>898</sup> "\$200,000 Fire at Jail, Waddy Warns Prisoners," *Sydney Morning Herald*, (November 4, 1975).

## Arrival of the Royal Commission into New South Wales Prisons

The government finally ordered a royal commission in late February 1976.<sup>899</sup> However, to the dismay of many penal reformers, prisoners and activists, however, the initial composition of the commission did not include anyone with sufficient knowledge about prisons and the government also wanted to retain the services of the prominent, conservative British criminologist, Leon Radzinowicz.<sup>900</sup> The Council of Civil Liberties and the Penal Reform Council petitioned the government to include a former prisoner on the commission at least in a lesser capacity, but they rejected this proposal.<sup>901</sup> However, within two months, before the Royal Commission began its work, the Liberal-Country government fell from power and the new Labor Premier, Neville Wran, altered some aspects of the inquiry. Wran reduced the number of commissioners from three to one, appointing New South Wales Supreme Court Justice John F. Nagle as the sole Royal Commissioner.<sup>902</sup> The terms of references, which were very broad, remained the same.

Despite these changes, many of the activists who fought so diligently to establish the inquiry, now seriously considered boycotting it or even holding their own alternative inquiry.<sup>903</sup> Many activists, especially those associated with the Prison Legal Cooperative, the Prisoners Action Group and the Women Behind Bars, feared that the Royal Commission could simply

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<sup>899</sup> "State Orders Inquiry into Prisons," *Sydney Morning Herald*, (February 25, 1976).

<sup>900</sup> Zdenkowski and Brown, *Prison Struggle*, 168.

<sup>901</sup> "Former Prisoner Urged for Inquiry into Jails," *Sydney Morning Herald*, (March 15, 1976); "Prison Action in N.S.W. – Royal Commission into N.S.W. Prisons," *Alternative Criminology Journal*, 1 (March-June 1976), 23-25; Zdenkowski and Brown, *Prison Struggle*, 168-169.

<sup>902</sup> The government dispensed with the services of Leon Radzinowicz although Justice Nagle later corresponded with him. Nagle, *Report of the Royal Commission*, Appendix A, 494-495.

<sup>903</sup> "Royal Commission into N.S.W. Prisons," *Alternative Criminology Journal*, 1:4 (September 1976), 76-78.

become an instrument of legitimation, effectively whitewashing the department's policies, exonerating McGeechan, Pallot and Bathurst's staff and making any future change even less likely. They worried that unless they staked out clear abolitionist positions in their official statements to the Royal Commission, their participation would be read as a "tacit endorsement of its findings" regardless of their content.<sup>904</sup>

Although the terms of reference were wide, requiring the inquiry to investigate the entire operations of the Department of Corrective Services, questions abounded about the ability of prison activists, reform organizations and, above all, prisoners to fully participate. Prisoners justifiably feared the possible reprisals by guards and the department if they testified or spoke with investigators. Many groups and individuals could also not afford legal representation, which was necessary since the Royal Commission proceeded in an adversarial fashion, with witnesses subject to multiple examinations and cross-examinations. The government eventually provided legal aid to some parties appearing before the inquiry, but only after Nagle attempted to consolidate many diverse parties into one "counter-group" as a cost-saving gesture for legal representation.<sup>905</sup> Perhaps more troubling was the potential for guards and senior staff to block the ability of prisoners to communicate with the Royal Commission by confiscating correspondence or transferring inmates to country prisons away from metropolitan Sydney.<sup>906</sup> Nagle ordered the posting of an official announcement of the

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<sup>904</sup> Ibid., 77. See also Brett Collins, "Super Mac and de Judge," *Alternative Criminology Journal*, 2:1&2 (August 1977), 34-38.

<sup>905</sup> This issue consumed many of the initial sittings of the Royal Commission on April 14, 27, 29 and May 10, 1976. See *Proceedings of the Royal Commission*, 1-27; Zdenkowski and Brown, *The Prison Struggle*, 169-170.

<sup>906</sup> Anthony Green and David Brown to Mr. K. Berry, May 5, 1976, Prisoner's Action Group application for leave to appear before the Royal Commission Inquiry into Prisons; Anthony Green to W.R. McGeechan, May 13, 1976. George Peterson Collection, box 6, folder: Prisons. UW.

inquiry in all the state's penal institutions, which included an invitation for submissions by prisoners. Hundreds of prisoners took their chances and scrambled to submit evidence.

After nearly five years of continual pressure by prisoners, penal reform activists, a variety of small radical political organizations and the Australian Labor Party, the Royal Commission into New South Wales Prisons finally held its preliminary sitting on April 14, 1976 and began hearing testimony on July 12, 1976, well after the election of the new government. Justice Nagle submitted interim recommendations on March 4, 1977, an interim report on December 20, 1977 and a final report on March 31, 1978, which included 252 recommendations. The inquiry's terms of reference required Justice Nagle to investigate the entire Department of Corrective Services, "in light of contemporary penal practice and knowledge of crime and its causes."<sup>907</sup> Nagle, therefore, encouraged wide ranging testimony from inmates, staff, senior officials and various interested parties, pursued an exhaustive examination of documents and ordered an overseas study tour to inspect penal operations in numerous jurisdictions.

During the two years of its existence, the Royal Commission accumulated an enormous archive of material on penal practices in New South Wales and, to a lesser extent, other parts of the world, especially Anglophone countries. The Royal Commission's official exhibit list included over one thousand items, and 249 witnesses testified at the hearings.<sup>908</sup> Additionally, Nagle or representatives from the inquiry interviewed over seventy experts, visited many of the state's

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<sup>907</sup> Nagle, *Report of the Royal Commission*, Appendix A, 494.

<sup>908</sup> See the Appendices of the *Report of the Royal Commission* for a listing of exhibits, witnesses, submissions, conferences, inspections, interviews, a concise history of imprisonment in New South Wales, and a bibliography. *Nagle Report*, 493-629.

prisons and traveled abroad to observe penal practices.<sup>909</sup> The inquiry amassed a large collection of secondary literature, inquiry reports and administrative material from numerous penal bureaucracies in addition to voluminous working files and correspondence. This carceral archive and the report, itself, became a reservoir of ideas, critiques, solutions and a source of legitimacy in several penal reform projects, industrial struggles and political campaigns for the next several decades.

Many groups and individuals appearing before the Royal Commission produced submissions created specifically for the occasion such as position statements on penal reform. However, many other documents presented to the inquiry were originally generated as part of the routine operations of the penal bureaucracy and intended for different audiences. The following ten items, selected at random from the list of official exhibits, provide a sense of the variety of material the Royal Commission collected:

75. Corporate Plan of Department of Corrective Services. 1972.
76. Corporate Plan of Department of Corrective Services. 1976.
77. Security documents concerning concepts for Detention Centre. Letters from:
  1. Wormald Safe & Vault Co.
  2. K. A. Jessup Pty Ltd.
  3. Australian Security Systems.
78. Handwritten explanation by Mr. Saunders in regard to Prisoner Z.
79. Correspondence between Solicitors for Prisoners' Action Group and Mr. McGeechan  
concerning visits to prisons in connection with the Royal Commission.
80. File of documents relating to certain control units in Great Britain.
81. Article entitled "solitary Confinement-Insolation as coercion to Conform", by Dr Lucas,  
contained in the Australian & New Zealand Journal of Criminology,  
September, 1976.
82. Plan of Katingal Cell.

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<sup>909</sup> Ibid.; "Report of the Overseas Inspection Tour made by Mr. Hunt, Q.C., June-August 1977" in vol. 5 supplementary to *Nigel Report*.



83. Extracts from Movement File of Prisoner AE.
84. Movement File of Prisoner AI.
85. Movement File of Prisoner AJ.<sup>910</sup>

Despite the breadth of the material covered, a number of critics pointed out that Justice Nagle narrowly interpreted the terms of reference on several crucial matters. George Zdenkowski and David Brown convincingly argue that Nagle foreclosed an examination of certain topics (like prison abolition) and some individuals (former Minister for Justice John Maddison) that many people in the prison movement believed were central to understanding the problems of imprisonment in general and New South Wales' prisons in particular.<sup>911</sup> Critics also criticized Nagle at the time for his undertheorized approach to much of the material before him.<sup>912</sup> He eschewed many larger questions about the purposes and principles of punishment as well as the nature of crime and its causation even though questions were clearly in the terms of reference or arose early on in submissions by the department. Instead, Nagle tended to isolate the prison from these larger questions as well as its relation to political economy, state politics and the legacies of colonialism.

### **The Royal Commission as an Ethnography of Prison Life**

Instead of reiterating these critiques at length, I want to instead emphasize the surplus of knowledge about the prisons and penal authority that emerged from the inquiry and the

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<sup>910</sup> Nagle, *Report of the Royal Commission*, 508.

<sup>911</sup> Justice Nagle, for instance, chose not to examine the depth of John Maddison's knowledge of the abuse of prisoners while he held the prisons portfolio as Minister for Justice for the Askin government. Nagle argued that this was outside the terms of reference for the inquiry. A sustained analysis and critique can be found in Zdenkowski and Brown, *Prison Struggle*, especially Chapter 10, 158-192.

<sup>912</sup> Zdenkowski and Brown, *Prison Struggle*, 173-179.

effects that it had on penal discourse and practice afterward. Nagle's empirical pursuit of answers to inquiry's often unspoken guiding questions in the terms of reference opened windows to other material, which revealed numerous working routines, practical adaptations, guiding assumptions and the circumstances of life inside the prisons. Perhaps unintended, this recourse to the mundane minutia of prison life covered material that was simply unmentioned in public articulations of official policies and even in most representations of prison in the arts. The Royal Commission and the broader public glimpsed in such material features of specific, sub rosa prison orders and the penal knowledge necessary to navigate them. Such knowledge competed directly with the official representations of the Department of Corrective Services in their publications and public statements, and it afforded greater agency to inmates, prison guards and other administrative staff. This knowledge highlighted how these groups requisitioned the official materiality of the prison for their own purposes and willfully subverted prison rules.

This evidence was more than merely a description of life in places like Bathurst, however, because it factored into how investigators evaluated causality and the expectations that could, or should, be placed on those working and living in penal establishments. The practical contours of everyday life in prison that emerged from these items and the inquisitive narratives bundled with them also publicized the state's prisons and the questions of punishment to a degree, which had not been central to prison accounts in many decades. The length of the proceedings meant that the internal workings of the state's prisons and misdeeds of many employees and prisoners became, at times, almost a daily topic in the state's major news dailies and television news broadcasts, even if many of these forums treated such

material in an uncritical fashion. While this knowledge was not new for many people inside prisons or those knowledgeable about them, it provided much different sources of knowledge about prisons for larger audiences.

In the next two subsections, I focus on two items from the exhibit list in more depth partly because they are in some ways unusual, even among the routine operational material examined, but also because they illustrate the breadth of the Royal Commission's interest, how they drew connections between different aspects of the prison system and its operations and how certain material items anchored inquisitive narratives. These items were interesting, too, because they appeared as supplements or by-products of the effort to answer many of the powerful, but often implicit, guiding questions of the inquiry. While these items spoke to the questions queried, they did so indirectly and often appeared of relatively little importance or easily aggregated under more general headings, like poor prison conditions. It may have held multiple, rich meanings and ambiguities, but not all of these features captured the interest of the Royal Commissioner, nor were the problems these items exposed necessarily easy to assess or act upon.

***Exhibit 12: Heating and Cooking devices made by Prisoners at Malabar—"Boiling up Appliances"***

Exhibit 12 consisted of two items: (1) an oily, flat canister, strong with the odor of burnt resin, with a wick protruding from a hole in the center of the lid and (2) a small piece of flat

wood attached to a bed spring with two separate wires affixed to the top of the spring.<sup>913</sup> These were two separate examples of a range of makeshift devices that inmates used for illicitly cooking in their cells. The first item, a modified shoe polish canister, was for “burning-up,” heating food either directly or in some sort of pan or pot. The polish, made of materials like turpentine, was highly flammable, and could be burned under moderate control through the central hole. Prisoners used the second item, “boiling-up wires,” to heat liquid. The piece of wood rested atop a container of water with one end of the spring immersed below. The insulated wires, wrapped around the top of the spring, were then attached to a source of direct electrical current, usually a manipulated light fixture.

The use and possession of both items violated prison rules in New South Wales, but prison staff found it next to impossible to reduce the production and use of such items. The range of testimony concerning these practices before the Royal Commission suggested that boiling-up was a more vexing problem for prison authorities and perhaps more common than burning-up.<sup>914</sup> Cooking in one’s cell was likely to be more time consuming and difficult to hide from staff. Whereas, boiling water for a hot drink was easier, quicker and more concealable. After lock-up, many incarcerated individuals stripped the covers off light fixtures and directly accessed the electrical wiring for boiling-up. Since this practice necessitated extinguishing the lights before baring the wires, inmates often affixed the wires of the boiling-up device by match light after sundown.

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<sup>913</sup> Exhibit 12: Heating and Cooking devices made by Prisoners at Malabar—“Boiling up Appliances.” Royal Commission into New South Wales Prisons Exhibits 5/9318. SANSW.

<sup>914</sup> Testimony of John Edward Nash, *Proceedings of the Royal Commission*, 593-595.

Occasionally, a number of people doing this at the same time would overtax a facility's electric system, blowing out fuses. In some prisons, the resulting blackout could affect an entire cellblock, leaving numerous occupants in the dark. In others places, each cell had its own fuse, which if blown out, easily led staff to a person illicitly boiling-up. People affected by blown fuses, whether they were the ones boiling-up or not, often hailed guards for help, loudly banging on their cell doors and yelling ("knocking-up"). Prison staff resented the disruption and extra work created by blown fuses, and they frequently charged inmates with prison offenses for possessing improvised heating devices, but to no avail. The practice was common throughout the state's prisons.

These rather mundane items came to the attention of the Royal Commission as it investigated the Department of Corrective Services' disciplinary system and the nature of rule violations by imprisoned people. Many of the submissions the Royal Commission received from inmates, civil libertarians and legal professionals contained sharp criticisms of how the prison staff enforced discipline and adjudicated charges. The Royal Commission reviewed a wide range of written materials, conducted interviews, heard testimony and corresponded with penology experts on the matter, trying to assess both how the department's system worked in practice and the current state of the art on prison disciplinary systems in other jurisdictions. Two sets of official documents examined by the Royal Commission contained detailed instances of offenses and their resolutions. The first, inmates' classification files, listed disciplinary charges ("write-ups") and the punishments handed out to inmates. The second, prison superintendents' punishment books, logged all write-ups issued by guards, the penalties superintendents handed out for lesser violations and similar information for cases heard by a Visiting Justice.

Burning-up and boiling-up were minor offenses usually dealt with by the superintendent or deputy superintendent, but they were one of the most frequent entries in the punishment books, as well as common entries in prisoners' classification files.<sup>915</sup> Because of this, they also formed a frequent friction point between prisoners, guards and the formal prison disciplinary system. Since makeshift heating devices were contraband, inmates caught with them could expect the suspension of amenities, like reading material, buy-ups<sup>916</sup> and showers plus a few days of cellular confinement, possibly in special disciplinary cells. Convictions for these offenses did not add additional time to the current sentence being served by an inmate, but they could adversely affect other decisions, like transfer requests or inclusion in certain programs, especially if there were multiple write-ups in one's record. While conducting routine cell searches, guards also inspected light fixtures for tampering, looking specifically for evidence of illicit heating.<sup>917</sup> Staff often removed the electrical fuses for the lighting in cells with damaged light fixtures for a few days leaving the cell, and the person in it, in darkness as punishment. According to John Nash, the Chief Superintendent of the Malabar Complex, all of these measures did little to persuade imprisoned people to stop boiling-up at two of the Malabar complex's major maximum-security prisons, the Central Industrial Prison and Metropolitan Reception Prison.

The Royal Commission inspected three pieces of correspondence between Nash by two of his subordinates, Senior Overseer B. Vanny and Assistant Superintendent S.A. Cumberland,

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<sup>915</sup> Derek Cassidy, counsel appearing before for the Department of Corrective Services, noted that boiling-up was the most common offense listed in the official superintendent's punishment book for the Central Industrial Prison. *Ibid.*, 593.

<sup>916</sup> Buy-ups were concession items, like extra food and toiletries, purchased from the prison's canteen.

<sup>917</sup> This was one among many specific points of inspection that guards considered during cell searches. *Proceedings of the Royal Commission*, 439.

concerning the subject, which Nagle deemed important enough to incorporate verbatim into the official transcript.<sup>918</sup> The letters described the continual damage to light fixtures and the seemingly futile efforts to repair them. Vanny estimated that nearly fifty percent of the light fixtures in the Central Industrial Prison and Metropolitan Reception Prison were damaged from boiling-up.<sup>919</sup> Citing the practice's constant drain on maintenance work and potential for electrocution, Vanny implored Nash to renew its effort to eliminate the practice through more consistent punishment, like removing fuses from affected cells, a practice which had recently lapsed.<sup>920</sup> He also suggested going forward that they either install a low voltage system or power points in each cell or encase the entire fixture in wire mesh and inspect this encasement for tampering as part of a routine cell search.<sup>921</sup> Nash mentioned, almost in passing, that the main cause of the problem was the long hours prisoners spent locked in their cells in the complex's maximum security prisons. He stated that he never saw tampering with light fixtures in the lower security prisons at Malabar where cooking facilities were more accessible.<sup>922</sup>

These makeshift devices provided the inquiry with one of the many entry points they used to analyze the cascading interrelationships of control practices, prisoner amenities and disciplinary problems in the state's prisons. In this respect, Nash's comment highlighted how the policy of extended cellular confinement led to increasing disciplinary problems by how it converged with the limited cell amenities and the growing consumption expectations of people imprisoned in maximum security facilities. Evening lock-up in most maximum security prisons in

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<sup>918</sup> *Ibid.*, 593-594.

<sup>919</sup> *Ibid.*, 593.

<sup>920</sup> *Ibid.*

<sup>921</sup> *Ibid.*

<sup>922</sup> *Ibid.*

the state was 4 o'clock in the afternoon, which constrained the ability of imprisoned people to obtain hot water and food. Prisoners could post notes outside their cells, notifying the wing sweeper (an inmate worker) that they wanted hot water, which was then dispensed to them by the cup at the cell door.<sup>923</sup> However, given the prevalence of illicit appliances, it appeared that the demand for hot items exceeded this method of providing them. The voluminous entries in the punishment books for burning and boiling up or being caught with these contraband devices exposed some of the effects of what the Royal Commission believed to be an unnecessarily repressive level of cellular lockup and control.<sup>924</sup>

The uncontrollable production and use of boiling-up devices also pointed to the changing expectations of material and bodily comfort for people confined in the state's prisons and how this conflicted with the prevailing penal order and built environment. The cellular lockup rules nourished a growing sense of relative deprivation among prisoners, creating the conditions for a rash of minor offenses against prison order. While being denied access to hot water for tea might not be on par with being denied adequate food or water, it increasingly conflicted with the daily nourishment expectations in much of Australia's postwar, consumption-driven political economy. The prevalence of electric kettles at this time was part of a structured routine consumption, which also produced normative expectations of nourishment that could not be met in maximum-security cells, many of which dated from the early twentieth century and had undergone little change since.<sup>925</sup>

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<sup>923</sup> Ibid., 460, 519.

<sup>924</sup> Recommendation 134: "Prisoners should not be locked in their cells overnight for longer than ten hours." Nagle, *Report of the Royal Commission*, 330-331, 471 quote.

<sup>925</sup> Elizabeth Shove, *Comfort, Cleanliness and Convenience: The Social Organization of Normality* (Oxford: Berg, 2004); Elizabeth Shove, Matt Watson, Martin Hand and Jack Ingram, *The Design of Everyday Life* (Oxford: Berg,



The electric lighting itself dated from another period of intense penal reform in the early twentieth-century.<sup>926</sup> At the time, penal authorities installed lighting in the cells at Malabar as a way to ameliorate prison conditions and potentially enhance the effectiveness of reformative incarceration.<sup>927</sup> They envisioned lighting as a supporting component of the ideal of the reading inmate educating himself in his cell. However, as collective understandings of comfort, standardized technologies and infrastructure shifted over the postwar decades, the electrical wiring became more vulnerable to counter-uses, like illicitly heating water. These alternative uses not only revealed the ingenuity of people locked in their cells for much of the day, it also indicated that some of the “pains of imprisonment” were painful precisely because of how they corresponded to the historically-specific, interlocking dynamics of consumption, political economy, and the daily routines and expectations of comfort and convenience.<sup>928</sup>

As persistent and dangerous as the tampering was, Superintendent Nash and his subordinates rejected a much less costly solution – permitting prisoners to keep thermos flasks in their cells. Although Nash initially said he was concerned about replacing damaged thermoses, his main disagreement with the proposal was the prospect of “long lines of prisoners” waiting to fill their thermoses before lockup.<sup>929</sup> The security concerns of supervising

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2008); Elizabeth Shove, Mika Pantzar and Matt Watson, *The Dynamics of Social Practice: Everyday Life and how it Changes* (London: Sage, 2012).

<sup>926</sup> Stephen Garton, “Crime, Prisons and Psychiatry in Australia” in Peter Becker and Richard F. Wetzell (eds.), *Criminals and their Scientists: The History of Criminology in International Perspective* (Cambridge: Cambridge University Press, 2006), 245.

<sup>927</sup> *Ibid.* This underscores a common theme in the history of imprisonment: the recurrent conflict between on the one hand, the hope that normalizing prison conditions to correspond as much as possible with the conditions of life outside the prison will enhance reform efforts; and on the other hand, the demands of the principle of less eligibility, which strives to make criminals dread a harsh existence behind bars.

<sup>928</sup> The phrase “pains of imprisonment” comes from Gresham Sykes’s *The Society of Captives*. I adapt the coupling “comfort and convenience” from the title of Elizabeth Shove’s *Comfort, Cleanliness and Convenience*.

<sup>929</sup> *Proceedings of the Royal Commission*, 460, 512-514, 519-520.

these lines of prisoners and delaying lockup overrode what to the inquiry appeared to be a simple solution and one that other maximum security prisons in the state had in fact instituted. This latter fact also highlighted the localism of many prison rules, how they were enforced and the differences in amenities available at different prisons. While the Royal Commission recognized the need for variation among institutions, they also repeatedly criticized the department for not clearly communicating and enforcing more uniform prison rules. This in itself, Nagle argued, frustrated inmates who had spent time in several institutions of a similar security classification.<sup>930</sup>

The burning and boiling up devices resembled similar inventions by imprisoned people that have appeared in numerous parts of the world at different times. There was nothing especially novel about their production, but such items rarely, if ever, formed the subject of such intense public scrutiny as they did during the Royal Commission proceedings. Moreover, in this context, the penal authorities lost much of their control over the devices, which they had, of course, already confiscated from prisoners. They became the anchor in a series of questions about the stifling level of cellular confinement and petty discipline at the Long Bay complex, which only enflamed tensions between the keepers and the kept.

The cooking devices were also significant because they connoted more humane, domestic and sympathetic representations of prisoners than the inventions that administrators and cabinet ministers were more accustomed to displaying to the public. Against carefully staged exhibits of makeshift weapons and escape tools (like rope and grappling hooks) that the department periodically performed for the media, the public display of cooking devices

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<sup>930</sup> Nagle, *Report of the Royal Commission*, 189-191, 210, 212, 220-221

reminded onlookers of basic bodily needs and desires that most people could easily identify with.

Nevertheless, it is noteworthy that the Royal Commission's focus on these items and practices dealt more directly with the problems facing staff than prisoners. Before the Royal Commission, burning up and boiling up were disciplinary problems before they were anything else. In addition, much of the discussion, and indeed the correspondence, dealt with these issues as managerial and building maintenance problems. Even when these items or the disciplinary penalties related to them surfaced in the testimony of prisoners, the counsel appearing before the Royal Commission avoided examining it in a similar detailed manner.<sup>931</sup> Richard Edney has argued that the gulf between official prison histories and prisoner accounts is often greatest on matters related to discipline and violence, both extraordinary and routine.<sup>932</sup> Even though the correspondence and the Royal Commission's work differed from the official history that Edney examined, one can still detect a similar pattern of avoiding direct consideration of the role of violence by guards in the production of disciplinary infractions. Numerous prisoners mentioned the pettiness of some guards in issuing disciplinary infractions, especially in maximum-security settings like the Central Industrial Prison and Metropolitan Reception Prison.<sup>933</sup> Superintendent Nash, himself, commented on the difference in boiling up charges between these prisons and the lower-security institutions at the same prisons complex.

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<sup>931</sup> This was likely because the range of abuse prisoners described far exceeded the typical punishments for these low-level infractions.

<sup>932</sup> Richard Edney, "Contested Narratives of Penal Knowledge: H Division Pentridge Prison and the Histories of Imprisonment," *Current Issues in Criminal Justice*, 17 (March 2006), 362-379. See also David Brown, "Giving Voice: The Prisoner and Discursive Citizenship" in Thalia Anthony and Chris Cunneen (eds.), *The Critical Criminology Companion* (Leichhardt: Hawkins Press, 2008), 228-239.

<sup>933</sup> For instance, see Anderson, *Inside Outlaw*; Jewson, "Prisoners' Action Group's Summary."

Could it be, as it was in so many prisons in New South Wales at the time, the high incidence of entries in the punishment books reflected the aggressiveness of the staff, who could always find these infractions if they looked for them? If they were as common as witnesses suggested, or simply widely considered to be so, would a person charged with boiling up stand much of a chance in a disciplinary hearing? Or, would they just concede? How many other actions and opinions could be punished in the act of removing a fuse from a cell and leaving a person in darkness in the name of curbing boiling up? While the Royal Commission felt that an alternative procedure for providing hot water would cut down on the incidence of boiling up, they left unexamined the possibility that in policing it, the practice also provided guards with a flexible disciplinary tool.

***Exhibit 136: Notes written on cigarette papers found in possession of T. Haley at Bathurst Gaol on 3<sup>rd</sup> December, 1973.***

Exhibit 136 included a handwritten note on six sheets of cigarette rolling paper that were pasted together and a typed version of the same text. The contents of the note were alarming, describing an escape plan, violence against specific prison officers, a planned assault on a nearby police station and a prisoner's defiant interaction with Bathurst Gaol's superintendent, John W. Pallot. The text ran as follows:

Hi Mano

If still here next week go ahead with the plan we need Chandler to order the screws on the tower to drop the guns. Dress the screws in greens. Where do they keep fork lift? We will use that to hoist us up and ladder on other side. If there is enough of us we will take Bathurst Police Station. I want to get as close to Newcastle as possible.

I'll get a girl to fix up a boat when time is right. Make sure you get Chandler though. He's yellow and will do whatever we say.

Grab me that spunky young screw too. I'll do the job on him before we go. I said to Pallett in cross examination. "I put it to you Mr. Pallett that you are senile and incapable of running a jail what do you say to that." He stamped his foot and said "I am not senile."

Hope to see you soon china say hello to Wally for me.

Signed the ambling ape

Castros right hand man.

P.S. If I get pelted to another jail I'll drop you a line and let you know whats doing.<sup>934</sup>

Several guards found the note in the possession of Terry Haley, an inmate at Bathurst Gaol, on December 3, 1973, a couple months after a serious confrontation between inmates and staff and prior to the February 1974 uprising, which effectively destroyed the prison. Haley admitted to having the note during his testimony before the Royal Commission, but claimed to have received it under unusual circumstances. He disputed being either the author or addressee of the note. According to Haley's statement to the Royal Commission and his subsequent testimony, a prisoner unknown to him passed him the note and indicated that it was from a friend of Haley's, a prisoner named Wayne Newman. Earlier in November, officers had segregated Newman, Mick McHannigan and Gary Stevens in Bathurst's Back Special Yards after

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<sup>934</sup> Exhibit 136: Notes written on cigarette papers found in possession of T. Haley at Bathurst Gaol on 3<sup>rd</sup> December, 1973. Royal Commission into New South Wales Prisons Exhibits 9/5307. SANSW. I base my reproduction on both the original and transcription included in the exhibit.

they protested the recent banning of weightlifting, which followed a sit-down strike in October 1973 over numerous grievances and general living conditions at Bathurst.<sup>935</sup>

Haley claimed he was suspicious of the note's authenticity and the story of its origin, but could not contact Newman directly because of the latter's placement in segregation. So, Haley tried to contact Newman through a cook who delivered food to the Back Special Yards. However, before he could verify the note's authenticity, three officers (Mutton, Chandler and Stevens) confronted him in Bathurst's library where Haley worked and strip searched him on the spot. Haley claimed that the only other prisoner in the library, Lenny Lawson, witnessed the entire event. The strip search occurred shortly after Haley received the note and he was clearly the only target of the search. From all of the accounts of the incident, it was clear that the officers came looking specifically for Haley, believing he was in possession of contraband. They soon discovered the note in his jacket pocket.

Much of the Royal Commission's interest in the note settled on what occurred next and how it was addressed later. Haley claimed that upon finding the note, Officers Mutton and Chandler escorted him to a segregation cell in B wing. Mutton ordered the two inmate wing sweepers present, Patrick James and Robert Merrit, to leave the building and stay in 3 yard immediately outside. Haley claimed that as he entered the cell Mutton attacked him, punching and kicking him repeatedly. Haley said Chandler also hit him, but eventually relented and restrained Mutton who continued to kick him in the ribs. Patrick James corroborated Haley's account, testifying to the Royal Commission that he heard Haley's screams and blows to his

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<sup>935</sup> Bob Jewson, "Bathurst Gaol and the Royal Commission into Prisons – A Summary by the Prisoners' Action Group," *Alternative Criminology Journal*, 2 (February 1978), 25.

body emanating through one of B wing's windows onto 3 yard.<sup>936</sup> The Royal Commission accepted Haley's account of the assault and tried to assess what senior officials knew of the incident and what they did in response to it.

Officer Mutton seriously injured Haley. When another officer, named Paget, checked on Haley later, he was still lying on the floor in obvious pain. He was moved to his own cell and treated by a nurse. The next day, Superintendent Pallot questioned Haley about the note and Haley used the opportunity to accuse Mutton of assaulting him. Pallot inspected Haley's ribs in the presence of a nurse, but said he did not see any injury. Haley was segregated for several days until a Visiting Justice heard the charge against him for possessing the note. Haley pled guilty and received ten additional days of cellular confinement, but he repeated his claim about the assault. The Visiting Justice told him to make a statutory declaration in writing and submit it to Pallot to forward onto Commissioner McGeechan. Haley complied and was later seen by Bathurst's physician, Dr. Doust, who ordered x-rays and diagnosed Haley with fractured ribs.<sup>937</sup> Despite this, Haley was soon before the Visiting Justice again, charged with falsely accusing Mutton of assault. The Visiting Justice denied Haley's request to submit medical evidence and call witnesses and sentenced him to another three days confinement for putting his accusation in writing. Pallot also refused to consider Dr. Doust's findings. According to Haley, the magistrate told him, "It's no use. I would take the officer's word anyway."<sup>938</sup> Pallot maintained

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<sup>936</sup> Statement and Testimony of Patrick James, *Proceedings of the Royal Commission*, 1763, 1766-67.

<sup>937</sup> This was later confirmed by additional x-rays performed at Parramatta Gaol. Jewson, "Prisoners' Action Group's Summary," 278.

<sup>938</sup> Statement and Testimony of Terrence Haley, *Proceedings of the Royal Commission*, 1432.

his position when later questioned about the incident at the Royal Commission and repeatedly disputed the seriousness of Haley's injuries.<sup>939</sup>

In the Royal Commission's final report, Nagle subsumed this event under an analysis of prisoner discipline and the problems the Visiting Justice system.<sup>940</sup> Since Nagle's interest centered more on Haley's physical and procedural mistreatment after being discovered with the note and possible improvements to the Vesting Justice system, the note itself was of less interest. The Royal Commission's final report referred to the note itself only through its illicit status – a prisoner was caught with an item of "contraband." It could have been almost any illicit item. Counsel appearing before the Royal Commission initially pursued a few questions about whether the note and the escape plot was "real" or "faked." When asked, Haley denied being "Mano," the note's addressee, and claimed that Wayne Newman, the supposed author, was simply called Wayne and never known to him as the "Ambling Ape." He said that he knew of no inmate with such a nickname, but stated that many inmates disparagingly referred to Mr. Dempsey, the Deputy Superintendent of Bathurst, by that name. While he did not believe that Dempsey wrote the note, Haley said he suspected that the guards (or one of them) actually authored the note and had the unknown prisoner pass it to him.

Pallot appeared not to take the note and the escape plan too seriously. Over the years, he claimed that numerous stories like this had reached him only to prove chimerical.<sup>941</sup> Of course, he may also have known that the note did not actually reveal what it literally purported.

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<sup>939</sup> At one point, Haley had accused Pallot of suggesting that his injuries came from a fight he had with another prisoner. *Ibid.*, 1432.

<sup>940</sup> Nagle, *Report of the Royal Commission*, 349-356, 366-367. Much of this material appears in Chapter 25: Prison Discipline.

<sup>941</sup> Testimony of John Windsor Pallot, *Proceedings of the Royal Commission*, 2397-2398, 2413-2414, 2452-2453.



Despite the escape plan, Pallot soon released Haley back to normal discipline after serving his cellular confinement. The guards union voted to accept the release of Newman, McHannigan and Stevens from the Back Special Yards within a month of the incident as well.<sup>942</sup>

Numerous questions about the note, raised either directly or implicitly in the testimony, lingered unresolved: were the contents of the note fabricated or did they describe an actual conversation between prisoners? Was the note an artifact of an actual escape plan or a believable ruse by guards? Was there both an actual escape plot and a faked note referring to it? How did Haley come to have the note, who arranged for it to be passed to him? Did the guards observe Haley receiving the note? Did a prisoner(s) inform the officers he had it? Though they never stated so directly, Nagle accepted Pallot's claim that such plot and contraband were in fact a normal part of life in a maximum security prison. Pallot considered the entire matter resolved after the Visiting Justice convicted Haley. Similarly, Haley's account suggested that he had also given up on the matter, having exhausted his formal avenues for redress and paid a steep price for doing so.<sup>943</sup>

Yet, how resolved was it? The incident occurred in December 1973, but the department held onto the note and produced it in court several years later. No one contested that the note on the cigarette papers entered into evidence was the original note; questions of its authenticity centered more on who originally wrote it, who exchanged it and for what reasons. Since the results of those proceedings were not appealable to a higher court, the matter would

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<sup>942</sup> Jewson, "Bathurst Gaol and the Royal Commission into Prisons," 27.

<sup>943</sup> Convictions before a Visiting Justice were not subject to appeal prior to July 1977. *R v Fraser* [1977] 2 NSWLR 867 (CCA). See also Zdenkowski, "Judicial Intervention in Prisons,"; Matthew Groves, "Proceedings for Prison Disciplinary Offences: the Conduct of Hearings and Principles of Review," *Monash University Law Review*, 24 (2: 1998), 338-398.

have been legally settled at that point. Yet, the authorities considered it worth saving, which was remarkable considering the extremely poor quality of the records of Visiting Justice proceedings.<sup>944</sup> Whether the note was a true part of an escape plan or a ruse by guards, the prison administration may have perceived some risks in simply destroying it, whether from future investigations or losing some potentially valuable information about activities among prisoners or even guards.

The note posed other risks, as well. Whether it was an actual or concocted artifact of an escape plot, the note endangered any inmate who possessed it. Furthermore, the risks it presented exceeded the immediate threat of violence and discipline. Although central to critical accounts of Bathurst, the note itself and its contents tended to recede in the accounts of other prisoners and activists in favor of descriptions of Haley's mistreatment. If it was a true account of conspiracy among inmates, how would its truths have affected the charge of brutality by the guards or the larger goals of the prison movement in exposing guards' violence throughout the system?

Many of the initial audiences were other prisoners, at first in Bathurst, then in other prisons. These prisoners focused more on Haley's beating and the injustice of the Visiting Justice hearing. It became a central event in narratives about the enflamed tensions between staff and inmates at Bathurst leading up to the February 1974 disturbance. Many inmates who spent time at Bathurst imbued the incident with causal significance, citing it as one of the most

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<sup>944</sup> Nagle described the specific Visiting Justice records in Haley's case as "so sketchy as to be almost completely useless as a guide to what transpired at the hearings." Nagle, *Report of the Royal Commission*, 356.

significant precursors of the disturbance.<sup>945</sup> The Royal Commission viewed it in a similar manner, and it was a major reference point for activists trying to establish the inquiry.

The use of the narrative of Haley's mistreatment outlasted the Royal Commission, appearing two years after Nagle completed his work in a popular 1980 feature film about the Bathurst riot titled, *Stir*.<sup>946</sup> Bob Jewson, a prison movement activist who was incarcerated at Bathurst during the riot, wrote the screenplay for the film and played a central role in the Prisoners Action Group's participation in the Royal Commission.<sup>947</sup> In this cinematic depiction of Haley's experience, the guards surprise a prisoner named Albie (Number 24) in the chapel (rather than the library) and search his jacket. One of the guards covers his right hand and sleeve with the jacket while ostensibly searching it and quickly produces the note. The implication is that he pulls the note from his own sleeve. Closely following the accounts of the sweepers, the film then shows the guards taking the prisoner to the "pound cells" (segregation), where the viewer hears the sounds of a vicious, off-camera beating. The scene never broached the topic of the note's contents, but the guards clearly used the pretense of discovering the note to violently punish Albie for his involvement in an organized protest the day before.<sup>948</sup> The event is one of the causal precursors leading up to the later riot.

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<sup>945</sup> Jewson, "Bathurst Gaol and the Royal Commission into Prisons"; Bob Jewson, "The Prisoners' Action Group's Summary of the Royal Commission into N.S.W. Prisons Following the Hearing of Evidence," 255-301.

<sup>946</sup> Bob Jewson, *Stir* directed by Stephen Wallace (1980, Sydney: New South Wales Film Corp, Smiley Productions). This film appeared in theaters during a period when the Neville Wran's Labor government attempted to implement many of Nagle's recommendations.

<sup>947</sup> David Brown and Justice Action, "In memory of the late Bob Jewson," (March 2, 2005) available at <http://nswcna.blogspot.com/2005/03/in-memory-of-late-bob-jewson.html>. Last viewed on November 20, 2014.

<sup>948</sup> In a synopsis of Royal Commission testimony and evidence, Jewson had earlier suggested that note was in fact fabricated and planted on Haley by the guards. Jewson, "Prisoners' Action Group's Summary," 274-276.

Definitively resolving the question of who authored the note would likely have robbed it of much of the arbitrary, subversive, disciplinary, polemical and inquisitive power that condensed around it. That the account of the note and its divergent interpretations was not just possible, but believable or likely, conferred significance on it because it raised questions about the various possibilities of its existence, the range of different uses it could have been put to and the whole gamut of relationships and collusions it revealed among prisoners, guards, senior prison staff, the Visiting Justice and the department. Pallot was surely correct in asserting that escape plans and rumors were rife in maximum-security prisons, but they rarely made it over the walls in such a public manner. That such an account formed part of a public inquiry was not only novel, but also crucial in publicizing the state of the prisons in New South Wales and how they operated.

### **Creating an Opening for the Voices of Prisoners**

Of all the things that the Royal Commission into New South Wales Prisons produced for large public audiences outside the prisons, perhaps the most significant was the testimony of those currently serving time in these institutions. While imprisoned people had been interviewed by past inquiries, their voices had not been accorded the same level of recognition and their claims the same degree of acceptance since the nineteenth-century.<sup>949</sup> More often, investigators and senior government officials dismissed prisoners' claims about life in prison, especially if it involved accusations of wrongdoing by staff, by calling into question the moral rectitude of prisoners and their ability to speak truthfully. This was not just the position investigators or the

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<sup>949</sup> Mark Finnane, *Punishment in Australian Society* (Melbourne: Oxford University Press, 1997), 140-147.

media took sporadically. It was also woven into the very fabric of prison discipline system overseen by a Visiting Justice, usually stipendiary magistrates from a nearby Court of Petty Sessions, who adjudicated many violations of prison rules. Prisoners appearing before these justices could not call witnesses or have legal representation and the Visiting Justice himself was required to “‘see that discipline is enforced’ and to ‘support the officers in the exercise of their authority.’”<sup>950</sup> This created a situation whereby the word of the charging officer was always believed. The authorities frequently charged prisoners with making a false statement for denying charges or accusing staff of wrongdoing.<sup>951</sup> The message sent to prisoners this system was to simply be quiet and accept whatever sentence was pronounced.

At the outset of the Royal Commission’s work, Justice Nagle invited submissions by prisoners and spoke to many of them during tours of the state’s institutions. The Sydney press published summaries of claims made by prisoners during the hearings, often quoting them directly. As had previously been the case, numerous commentators in the media, legislators and especially the guards’ union decried prisoners’ testimony, citing the criminal histories of prisoners and their lack of truthfulness. This was, in fact, also the position Walter McGeechan, the Commissioner of Corrective Services, maintained throughout the proceedings.<sup>952</sup> During the inquiry and in the Department’s internal investigation of the 1970 violence at Bathurst, McGeechan produced the criminal and institutional disciplinary histories of prisoners who were giving evidence. In the Royal Commission’s list of exhibits, prisoners’ submissions are listed

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<sup>950</sup> Nagle, *Report of the Royal Commission*, 352.

<sup>951</sup> *Ibid.*, 351-356.

<sup>952</sup> *Ibid.*, 195-196.

sequentially with these records, which were obviously appended in an attempt to discredit the witnesses.<sup>953</sup>

Despite such hurdles to being heard and taken seriously, prisoners sent numerous submissions to the Royal Commission. Just the opportunity to do so created a certain level of protection, which had not existed before. Recalling the work of the Royal Commission in a 2004 symposium, former prisoner Brett Collins explained:

I was in Grafton Jail when Justice Nagle visited with David Hunt back in 1976. I was serving 17 years, was in segregation and had served five of the almost ten I eventually did. The prison movement outside had made the Royal Commission aware of the plight I was in as one of the prisoner organisers. That attention meant I was safer from that time on.<sup>954</sup>

Many of the activities, which the Department had suppressed for years, were either permitted to surface or at least not pursued as vigorously as they had been. For instance, the ability to communicate directly with the Royal Commission, ostensibly without interference, meant that many of the complaints that animated the work of the Prison Legal Cooperative for years could now be directly raised with outside authorities without the same level of subterfuge previously required to get the message to outside activists.<sup>955</sup>

This opening permitted prisoners to articulate their experiences and denounce abusive conduct by their warders bringing the prison system, especially its most secluded parts, like the control facilities of Grafton and Katingal, into a greater public of debate and discussion. Since Justice Nagle was especially interested in the claims of malfeasance and abuse in maximum-

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<sup>953</sup> The exhibit list appears in *Ibid.*, Appendix E, 506-529.

<sup>954</sup> Brett Collins, Comments in "The Nagle Report – 25 Years on Symposium," *Current Issues in Criminal Justice*, 16 (July 2004), 105.

<sup>955</sup> See for instance, Brett Collins' extensive correspondence with the Royal Commission as a representative of the Prison Legal Cooperative. Royal Commission into New South Wales Prisons, Correspondence Files, 5/9324. SANSW.

security prisons and disciplinary units, the Royal Commission heard extensive evidence from many prisoners who spent years in these institutions. Such testimony provided fascinating narratives for the reading public. Some of the prisoners held in the high security disciplinary units were already well-known to the public through their criminal exploits. Darcy Dugan, for instance, had been the subject of both denunciatory and romantic headlines for his brazen robberies and escapes since the 1940s.<sup>956</sup>

More often, however, the press portrayed prisoners held in these units as simply monsters. A diatribe against the Royal Commission and the Wran government in the April 6, 1978 edition of the *Daily Telegraph* best illustrates this (Figure 3.4). Arranged under a large banner headline declaring, "THE BRUTES OF KATINGAL," the newspaper published pictures of nine prisoners held at the Katingal maximum security block at the Long Bay prison complex, along with a short description of their crimes and dangerousness. Within a few days, the Prisoners Action Group and the Close Katingal Campaign responded with a publication mocking the *Daily Telegraph* titled, "The Real Brutes" (Figure 3.5).<sup>957</sup> The piece replaced the prisoners' pictures with photographs of Walter McGeechan and John Maddison. These competing portrayals, coming as they did at an unusual moment when prisoners publicly denounced their mistreatment in state custody, displayed an intense struggle over the image of the confined person and their his forms of knowledge. Opponents tried to use many of the same incarcerated individuals who testified as symbols of radicalism, violence and mayhem to not

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<sup>956</sup> Dugan's life is the subject of Rod Hay's biography, *Catch Me If You Can: The Life and Times of Darcy Dugan* (Sydney: Pan Macmillan, 1992). His history and the narratives about him recall some of the sympathetic portrayals of the social banditry of the bushrangers from earlier in the century.

<sup>957</sup> Matthews, *Intractable*, 237.

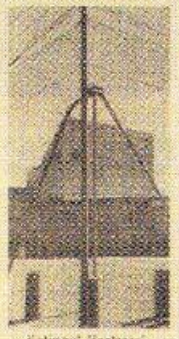
only discredit the Royal Commission, but to enhance their control over the prisons and remove McGeehan, who was despised by many corrections officers. To do so, these prisoners had to be stripped of their voices, denying them of what scholar David Brown has called in a different context, their “discursive citizenship.”<sup>958</sup> This lesser, status of a non-citizen, or better yet one who forsakes their citizenship by offending against the community, has been a common way of conceiving of the subject of penal sanctions and their rights. It was, therefore, unsurprising that many of the public conflicts over the state’s prisons involved struggles over how prisoners were represented, made to speak and resisted these characterizations in their acts of baring public witness.

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<sup>958</sup> Brown, “Giving Voice.” David Brown, “Prisoners as Citizens” in David Brown and Meredith Wilkie (eds.), *Prisoners as Citizens: Human Rights in Australian Prisons* (Sydney: Federation Press, 2002), 308-325.



# THE BRUTES OF KATINGAL



Katingal 'fortress'

## They must stay, say warders

If the Government wants to move the brutes of Katingal it will have to move them itself.

That was the message from angry prison warders last night following a Government pledge to close the \$1.5 million maximum security block at Long Bay in the wake of Mr Justice Nagle's controversial report on prisons.

The brutes are the 24 inmates — men so violent the warders believe it needs a fortress like Katingal to contain them or whose crimes are such that they cannot in safety be allowed to mix with other prisoners.

They include Allan Baker, serving life for killing farmers wife Victoria Marie de Mores — one of the State's most notorious murders.

There are Anthony McCaffery who committed three murders and never he would amount four more.

Edward James 'Rocky' Smith, serving life for the attempted murder of a fellow-prisoner.

And Steven Skelley, the armed robber and sniper who is serving 20 years.

If a handful of warders could not handle them last night they would walk out if the Government's plan is made to move the inmates.

The secretary of the Prison Officers Association, Mr Tim Kicker,



ALLAN BAKER, 30, life for two murders, including wounding three policemen.



WARWICK JAMES, 26, life for killing a fellow prisoner at Geelong.



BERNIE MATTHEWS, 18 years for armed robbery, warders say he is uncontrollable.



DENIS MARTIN, 27, life sentence, charged outside attempted murder, multiple wounding.



STEVEN SKELLETT, 26, 20 years for murder and 25 years for escape.



ROY POLLITT, 20-22 years armed robbery, shooting of police, Keweenaw on the Red Sea.



RON SUTTON, 14 years, has a record for escape and attempted escape.



EDWARD 'JOCKEY' SMITH, 25, life, attempted murder of a policeman.



ARCHIBALD McCAFFERY, 26, three life sentences for 'brill' murders.

## Others in the cells

Some of Katingal's inmates are pictured. The others are:

N. Humphrey, 12 years, armed robbery and rape. Jeffrey Holmes, 15 years, assault on a warder.

James Murray, 20-22 years, armed robbery and assault on a warder.

Mike Markovsk, 20, life, murder and assault on a warder.

James Murray, 20-22 years, armed robbery and assault on a warder.

They would take part in the transfer.

The closure of Katingal is one of the major recommendations of the Nagle report.

The Premier Sir Brian Robertson on Tuesday he would act on it within a month.

Mr Swan described Katingal as an 'intractable cell'.

HARRY POPPICK, the Daily Telegraph's State political reporter, visited the maximum security jail yesterday.

The isolated and bleak Katingal at Long Bay is the regional gateway for rebel prisoners

who think they have a licence to kill, rape or maim.

Yesterday, 24 hardened criminals were on Katingal's books — six of them had three for their own convictions.

Even hardened criminals have their peccata and child killers or rapists would not be safe here.

When the lights go out and the steel doors slide back it's time for the inmates to sit up and take notice.

The 24 had their faces painted, nose and mouth red in the occasion, yesterday when the Government had

an 'open day' at the jail.

The guided tour followed the report of the royal commission inquiring into prison problems which recommended the scrapping of Katingal despite its \$1.5 million cost.

### Intractables

This means the intractables of Katingal face an easier life in the secure jail in the near future.

The tour of Katingal was to have lasted from about 10.1 am to the 'inmate' lunch hour, when they are locked in their cells.

idea to get the 22 prisoners — prisoners and warders — into the main gate leading to the fortress-like complex.

The visitors were treated to a tour with a metal detector for weapons and asked for identification.

It was a case of trying to create a large access into the prison complex out of the sliding doors of heavy iron bars.

The visit was orderly when the prisoners — voices sounding stirred — decided to perform.

There was a clatter of about 200 inmates.

Continued p 2

Figure 10: The Brutes of Katingal

Figure 10. The Brutes of Katingal. Source: Daily Telegraph, (April 6, 1978).



# THE REAL BRUTES

## Conspiracy-Warders 'protected'

The worst conspiracy by the establishment since the slaughter of the blacks. This was revealed by Justice Nagle in his report on the Royal Commission into Prisons last week.

The conspiracy involves hundreds of people including ministers, heads of departments, magistrates, departmental lawyers, doctors, journalists and media bosses and all the prison employees.

However the report while making a public attack on the N.S.W. prisons, continues the conspiracy by its failure to recommend prosecutions or sacking of prison officers and others involved.

Similarly the media who have for years hidden the truth continue their conspiracy. In an unprecedented front page, the Daily Telegraph on Thurs. 6th April, presented a shattering, true and savage attack on prisoners in Kaituma.

Underneath they always give an aerial impression of the appearance of the men, and devoted to heighten the picture, were highly descriptive descriptions of the men, circumstances and their original convictions that set the nation for its being in Kaituma, rather than in other sections of the jail.

public, ignoring Warden violence. It fabricated stories about the prisoners. By continuing the coverage in this way, the conspirators become more respectable while the real victims are turned into the villains.

### Complaints ignored

While the prison officers, who are organised, have the right to strike and the means to convey their grievances, the prisoners have no such means.

Their only way of voicing their complaints, apart from an outside public support group taking them up, is actions which are depicted as inhuman and senseless acts of violence, leading to further convictions against them.

For example, last Friday, four days after the Commission report, four Kaituma prisoners were defending charges of writing time to Kaituma.

One of the prisoners is alleged to have said: 'We came here to get stuck together. People have to know what's happening in this electronic zoo.'

### Abolish Jails?

While the report exposes the brutality of prisons, and makes recommendations for penalty and treatment, these improvements will be ineffective as long as the real brutes remain in the prison system to obstruct any changes.

More importantly, the report does not even question whether prisons perform the function intended of them — to deter and prevent crime.

Not does it question why crime exists in society, or why 80% of prisoners are working class.

### Wran's Half-hearted Promises

Despite Wran during his time as Premier, has always backed-down in the face of opposition, like any true opportunist. With the prospect of an election in September and a shift to the right in the Labor Party, it is unlikely that Wran will make any fundamental changes in the prison system — there are no votes in prisons.

Unless pressure is put on him by the public, he may implement some of the Report's recommendations. He may even postpone or back down from his promise to 'break Kaituma within a week.'

### Demands

The Promoters Action Group, Workers Behind Bars, and members of ex-prisoners today made the following demands:

- It is not enough to close Kaituma down it must be demolished so that it cannot be used again.
- Warders' clothes should not be used as an excuse to build small Kaitumas in other prisons.
- The sacking of all warders who the Royal Commission has found to have illegally absconded prisoners — any delay is a crime in itself.
- The pardon of any prisoners convicted of incidents connected with the 1974 Bathurst trial.
- The payment of compensation to all prisoners.

continued on page 2



WALTER McGECHAN has become the scapegoat of the Royal Commission, the press and the government. That is not to say he is not guilty of everything they accuse him of, and to give you an idea of the man, his admitted instructions to Fallon at the end of the 1970 Bathurst riot were: "... babies are more than Jack. I want them dispersed. Jack, I want them dispersed. I want them dead and I want them friends. I want them to lose interest in this. Always out to protect his own skin, he was no more specific. McGeochan told many lies to the Royal Commission. He is instinctively dishonest.



J. C. MADDISON lied to Parliament about the 1970 beatings. If he was ignorant, he voluntarily chose to remain that way to ease the way for the conspiracy. Maddison also stopped police investigations of assaults by prison officers in 1973. He sent letters to parliament and others who questioned the actions of Kaituma. The letters stated that Kaituma had been carefully planned with the involvement of many highly specialised people in fact. In the concluding paragraph of these four letters, he stated his opinion that prisoner would find Kaituma more pleasant than Griffiths — a particularly cynical comment given his knowledge of Griffiths. Maddison has said Kaituma should be given a 10 year trial. Perhaps he might care to refer himself for the assessment.

KAITUMA: Temperature Artificial (air conditioned) BATHURST: Cold. T.V.: A privilege LOTTERIES: Central Courts Daily.

Figure 11: The Real Brutes

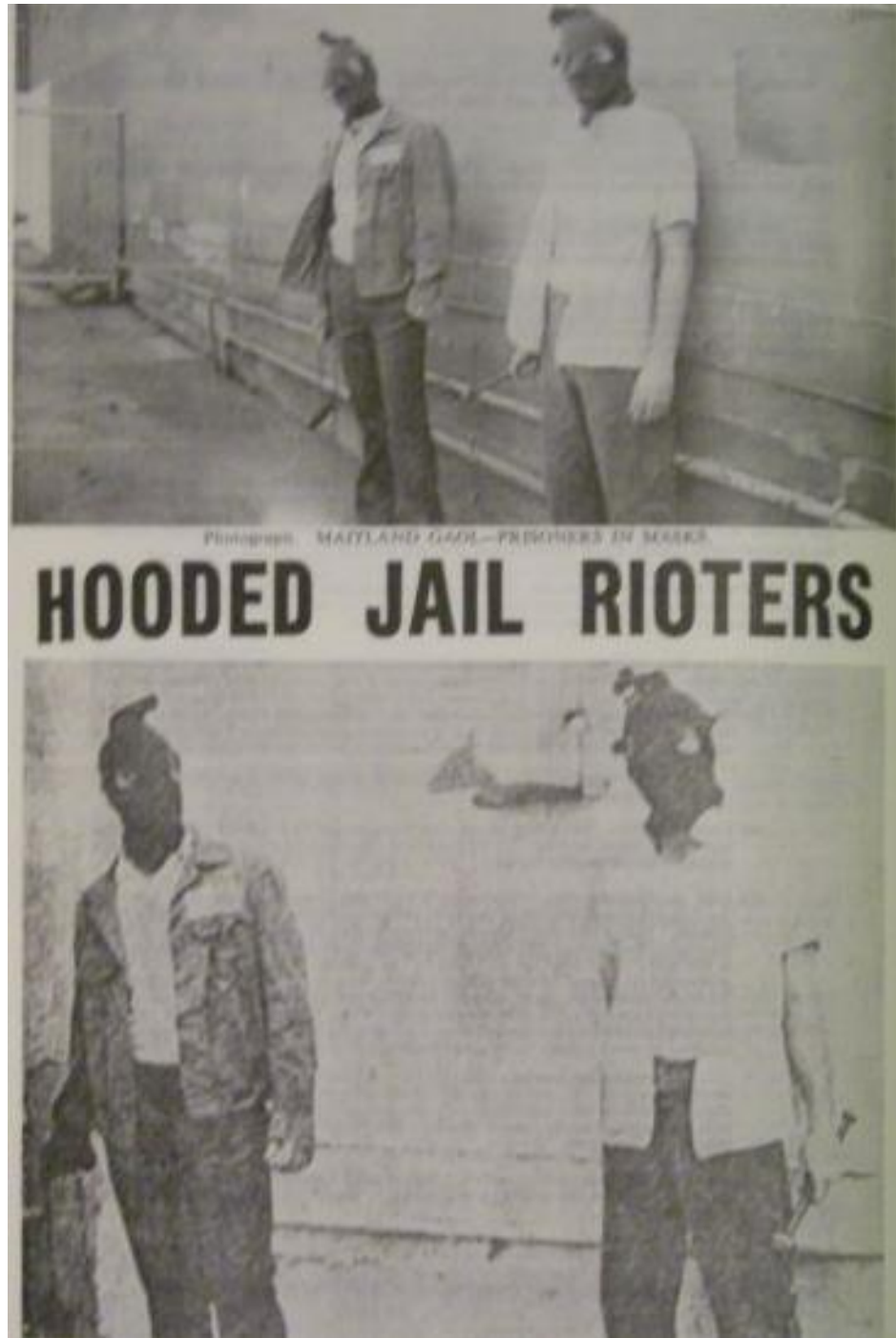
Figure 11. The Real Brutes. Source:

Another example of this area of contention emerged from an investigation of a disturbance at Maitland Jail in 1975 by the New South Wales Ombudsman. Numerous prisoners complained to the Royal Commission about abuses during the disturbance similar to what had occurred at Bathurst, including guards forcing inmates to run a gauntlet. Justice Nagle referred these complaints to the state's Ombudsman in an effort to save time and address other matters. Among the press coverage of the disturbance, *The Sun* published an image of two hooded prisoners holding weapons with a banner identifying them as "HOODED JAIL RIOTERS." During the Ombudsman's investigation, it came to light that these photographs were taken over five days *after* the riot on November 4, 1975.<sup>959</sup> The inmates depicted in the image were working in Maitland's kitchen when a guard summoned them to a secluded extension yard, had them change out of their kitchen work cloths and into standard prisoner green uniforms. The guard and some of his colleagues then had them don hoods and hold makeshift weapons while they took several pictures of them with a Polaroid camera.<sup>960</sup> The guards essentially forced the prisoners to participate in creating threatening images of themselves, which they used to, not only satisfy media requests for information, but also justify their actions in forcefully putting down the recent demonstration by prisoners.

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<sup>959</sup> New South Wales Office of the Ombudsman, *Report under section 31 of the Ombudsman act 1974, concerning the investigation of certain complaints made by prisoners to the Royal Commission into New South Wales Prisons*, 144.

<sup>960</sup> *Ibid.*, 144, Appendix M 175-178.



*Figure 12: Officers forced prisoners to pose as rioting prison radicals*

Figure 12. Officers forced prisoners to pose as rioting prison radicals. Source: New South Wales Office of the Ombudsman, *Report under section 31 of the Ombudsman act 1974, concerning the investigation of certain complaints made by prisoners to the Royal Commission into New South Wales Prisons* (Sydney: Government Printer, 1979), Appendix G, 164.



Yet, when inmates were able to control their own message in public forums a much different picture emerged. Many of them described systemic brutality at several prisons, most notably at Grafton Gaol, the disciplinary terminus for the entire prison system, located in the northern part of the state. These detailed, graphic testimonials of vicious beatings were consistent from prisoner to prisoner, painting a picture of the official, deliberate physical violence that constituted Grafton's' intractable regime. Such abuse had become so routine at the prison that certain aspects of it were ritualized, bounded as specific events and named, the most notorious example being the "reception biff" inmates received after being stripped naked upon arrival. The reception biff was a brutal, humiliating disciplinary shock administered to new prisoners, announcing the austere nature of the regime they had just entered.

The description of a reception biff by William Henry Baldry, a prisoner who had been at Bathurst during the 1974 riot, illustrates the degree of detail in prisoner submissions:

Smith rolled up his sleeves and had a short, black truncheon in his hand. My belt was removed by Wencell and three other screws came into the yard, also carrying black truncheons. Wencell "The Hun" said "take off your overalls", Smith and the other three screws stood around me and beat me to the ground with their batons. They were hitting me on both arms, both thighs and the back continually and heavily. Smith said whilst flogging me "I will teach you to give evidence against us". I collapsed. Wencell told me to get up and I did so. He said "Open your mouth" and I did. He looked into my mouth and said "Have you got false teeth?" I said "No". He said to the other screws "He's right. Give it to him again". They repeated the flogging with much more enthusiasm. This time they directed their attention to my underarm area, across my lateral muscles. One of the screws said to me "How do these batons feel, like feather dusters?" They were sniggering. I went down to the ground and Wencell said "Get up". I did. By this time I had shit and pissed myself. Wencell asked me to open my mouth again, which I did. He looked in my mouth and then said "Turn around and bend over and spread the cheeks of your arse". I did so and he looked in my arse

which was covered with shit as were my legs. He said “He’s right. Give him some more”. They repeated the flogging the same way and I collapsed.<sup>961</sup>

Baldry was beaten more as he was led to his cell and similarly abused for the next few days. Baldy described to the Royal Commission yet another reception biff he was subjected to months later after he returned to Grafton from a court appearance in Sydney for charges stemming from the Bathurst riot. Baldry claimed that the institution’s Deputy Superintendent, Allan Penning, participated in this beating and was especially infuriated that Baldry had claimed in court that he was mistreated at Grafton.<sup>962</sup> Baldy submitted that Penning backhanded him and said, “I don’t know why you blokes always go so crook on us. It’s the very men you complain to who condone Grafton. We are only here carrying out their orders. When are you going to wake up to that?”<sup>963</sup>

Grafton’s reputation and the reception biff had become so deeply entrenched in the state’s institutional penal culture that it also featured prominently in many prisoners’ conceptualization of the appropriate, masculine disposition toward official violence and authority. Bernie Matthews, who served several periods at Grafton for escape attempts, later recalled both the viciousness of abuse he suffered at Grafton and the struggle to properly endure it. As Matthews explained, one’s beating and how one handled it had an audience beyond the immediate inmate and baton-wielding guards encircling him:

There was no protection. A nude man is totally vulnerable. Defenseless. Every psychological and physical advantage belongs to the guard. Superiority. They had it down to a fine art and used it to its fullest.

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<sup>961</sup> Testimony of William Henry Baldry in *Proceedings of the Royal Commission*, 1576.

<sup>962</sup> *Ibid.*, 1577-1578.

<sup>963</sup> *Ibid.*, 1578.

I gritted my teeth and remembered what other tracs [prisoners classified as “intractable”] had told me about the reception biff at Grafton. Never yell or make a noise during the flogging. It was a sign of weakness to other prisoners if you yelled or screamed out in pain. Tracs were judged by how well they could handle it. Pain and suffering was hard currency inside the walls of Grafton Jail. I continued to grit my teeth and tried to cover my naked body as their batons beat a tattoo over my back and shoulders.

The crescendo of batons meeting bare flesh made a distinct sound. It was a sound I would never forget. A sound that would haunt me and remain buried in the recesses of my memory for the rest of my life.

My pain-fogged brain could faintly decipher frenzied screams of 'cunt', 'bastard', 'asshole', 'maggot' before one baton slammed across my face and blood flowed from my nose and mouth. Blood has a thick, gluey taste. Fear has a distinctive pungent smell. I tasted my blood and I smelled my fear that afternoon inside Grafton.<sup>964</sup>

Faced with numerous consistent descriptions of this kind of violence, the prison officers' union chose to concede that physical repression was part of Grafton's regime rather than trying to refute every accusation.<sup>965</sup> However, they attempted to shift the blame, much as Penning did in Baldry's account, to the leadership of the Department of Corrective Services, saying that they were following official policy. While Nagle determined the senior leadership of the Department at least knew of this violence and was responsible for it, he did not accept the guard's version of the superior orders defense, saying that “such a defense is redolent of other debates concerning more sinister and more notorious happenings.”<sup>966</sup>

Prisoners' testimony, like that of Matthews's and Baldry's, played a crucial role in exposing Grafton's regime. Established in 1943 by then Acting Comptroller-General of Prisons Leslie Nott, Grafton's regime was modeled on a similar repressive, concentration program

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<sup>964</sup> Matthews, *Intractable*, 27.

<sup>965</sup> Nagle, *Report of the Royal Commission*, 145-148; Exhibit 758: Submission by Public Service Association (Prison Officers Vocational Branch) on General Issues, 13-19. Royal Commission into New South Wales Prisons Exhibits 9/9313. SANSW.

<sup>966</sup> *Ibid.*, 17.

adopted in Canada in the 1930s. For over thirty years, the state's penal authorities used it to control difficult prisoners and crush resistance elsewhere in the prison system. Perhaps the most revealing thing about the scandalous attention given to Grafton's regime in the mid-1970s was that the accusations of brutality were hardly new. They had, in fact, surrounded the institution since the 1940s. Yet, complaints by prisoners simply fell on deaf ears, whether the audience consisted of members of the judiciary, officials from other state agencies, legislators or the media. By the late 1960s, some criticisms of Grafton's regime began to gain more traction in the press and arts, reflecting the growing influence of civil rights discourse and activism.<sup>967</sup> Nevertheless, the Royal Commission provided the first official platform for these accounts to be acknowledged and explored in detail.

The inquiry also provided the public with its first extensive look at Grafton's replacement, the small maximum-security control unit at the Long Bay complex called Katingal. Prisoners described it initially as being a large improvement over Grafton's brutal regime. This 40-cell unit was the state's most secure facility. It had only been in operation a few years before the Royal Commission commenced. As Justice Nagle noted in his final report, the Department was very secretive about Katingal and did not fully inform the Corrective Services Advisory Committee about its existence until construction was well underway.<sup>968</sup> Katingal appeared to have been the product of importing and adapting several overseas models that representatives of the Department observed on a study tour during the late 1960s. It bore a striking

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<sup>967</sup> Darcy Dugan made extensive accusations against the then Department of Prisons for his treatment at Grafton. Dugan spent over eleven years at the institution in the 1950s and 1960s and would later return in the 1970s. See Nagle, *Report of the Royal Commission*, 146; Hay, *Catch Me If You Can*, 184-211, 217-228, 241-244, 268-282.

<sup>968</sup> Nagle, *Report of the Royal Commission*, 154-156, 237.



resemblance to the control unit at the American federal penitentiary at Marion, Illinois.<sup>969</sup>

Katingal lacked the physical repression of Grafton and other maximum security prisons (at least at first). Instead, it deployed isolation to a much greater degree and featured numerous electronic security devices and physical barriers, which monitored inmates and prevented them from coming into contact with staff members.

Overtime, prisoners subjected to Katingal's limited space, lack of natural air and light, and monotony began to deteriorate mentally and physically. Many prisoners tried to mentally occupy themselves with reading, writing and art as a bulwark against Katingal's attritional regime. Like many other control units, new transfers were given a basic set of privileges, but they could earn more through good behavior, moving up successive stages.<sup>970</sup> The authorities would eventually grant amenities, like access to television, reading material and greater correspondence privileges, things which simply did not exist at Grafton.<sup>971</sup> The combination of these privileges and the Royal Commission's solicitation of prisoners' knowledge enabled several people held at Katingal to produce extensive submissions for Justice Nagle. In addition to describing the abuse at the hands of warders, some people offered substantive recommendations for improving the state's prison system and ensuring there were adequate legal protections and avenues for redress.

Bernie Matthews, who suffered persistent back problems from the beatings he received at Grafton in the early 1970s, described his transition to Katingal in a subsequent memoir. His

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<sup>969</sup> Superintendent A.N. Cerinich, *Study Tour Overseas Prisons* (Sydney: Department of Corrective Services, May 1979), 4-10.

<sup>970</sup> Matthews, *Intractable*, 180-182.

<sup>971</sup> *Ibid.*

narrative is instructive not only for understanding prisoners' initial reactions to the new facility, but also how he used its affordances and the discursive opening created by the Royal Commission to conduct research and craft an alternative penal account. In 1975, the Department of Corrective Services began to replace Grafton as a disciplinary prison and transferred Matthews and all of Grafton's other intractable prisoners to Katingal. By now, the leadership of the Department felt that Grafton had outlived its useful life and was likely to become a public embarrassment. Matthews described the Katingal as a windowless, mind-numbing tomb, which nevertheless lacked the overt physical abuse of Grafton and permitted him certain amenities that were unavailable there as well. After a short while, it was apparent that the number of prisoners simply could not endure the psychological onslaught of isolation, confinement in a small, institutional space and the relentless boredom.<sup>972</sup>

Once Matthews attained Programme 3, the highest privilege level, he gained access to avenues for communication with the outside world, and he began an extensive letter writing and research campaign on prisoners' rights and defamation. Matthews harbored profound resentments about how he had been treated at Grafton and portrayed in the Sydney press after an escape in 1970.<sup>973</sup> Much of his correspondence dealt with ascertaining the nature of the

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<sup>972</sup> Two psychiatrists who evaluated Katingal after it was operational felt that confinement would be damaging to the mental health of people held there over a year. Dr. W. Lucas considered solitary confinement to be a form of torture and worried that the limited association of prisoners at Katingal would be insufficient to ward off the negative effects of the facility. See Dr. W. E. Lucas, "Solitary Confinement: Isolation as Coercion to Conform," *Australian and New Zealand Journal of Criminology*, 9 (September 1976), 153-167; Anne Summers, "Life at Supermax's: Is The New Grafton Just One More Prison Problem?" *National Times*, (May 3-8, 1976); Nagle, *Report of the Royal Commission*, 163-165; Matthews, *Intractable*, 168-199. For a more recent discussion of the history of isolation units, including Katingal, see Jeffery Ian Ross (ed.), *The Globalization of Supermax Prisons* (New Brunswick: Rutgers University Press, 2013); Bree Carlton, *Imprisoning Resistance: Life and Death in an Australian Supermax* (Sydney: Institute of Criminology Press, 2007); Lorna A. Rhodes, *Total Confinement: Madness and Reason in the Maximum Security Prison* (Berkeley: University of California Press, 2004).

<sup>973</sup> 182. Matthews' anger at the press stemmed from stories about him which ran after he escaped from prison in 1970. A woman was kidnapped and raped at about the same time Matthews escaped, and the press immediately

rights a person retained while confined in New South Wales and many other countries, but he was also looking for outside leverage, a way to appeal to legal authorities beyond the Department of Corrective Services and New South Wales government. He initially contacted the state's Law Reform Commission, as well as several federal agencies, including the Attorney-General's office.<sup>974</sup> Eventually, Matthews remarked, "That pursuit took me to the USA, France, Britain and New Zealand without stepping outside my cell. In effect I had wrapped myself in a cocoon of mental activity which the physical surroundings of Katingal failed to penetrate."<sup>975</sup> In addition to preparing material for his own legal actions, Matthews produced several submissions to the Royal Commission based on this transnational correspondence and research.

Matthews was especially concerned with prisoners' access to the law. Since English precedents shaped Australia's laws and penal codes, he obtained recent legal cases involving the rights of British prisoners, which in turn led him to the effects of the European Common Market on British law. As Matthews explained to Nagle in one of his submissions, since the U.K. had signed European Convention on Human Rights, British prisoners could now appeal to the European Court of Justice. One prisoner, named Sidney Golder, won a case against British prison authorities in the EU court, which held that the British penal code violated the convention by preventing Golder from contacting a lawyer after he was accused of participating in a prison riot. Matthews acknowledged in his submission that this court did not have

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associated the two occurrences. Matthews was never investigated for the crime upon his recapture. See Matthews, *Intractable*, 15-16.

<sup>974</sup> Ibid.

<sup>975</sup> Ibid., 182.

jurisdiction over Australia and he was also aware that even though Australia was a signatory to the U.N. Declaration of Human Rights, its enforcement mechanisms were also lacking. But, he told Nagle that this was a glaring deficiency in the state's legal protection for confined people.

Matthews also provided the Royal Commission with examples of the recent history of the prisoners' rights movement and judicial intervention in the United States. More specifically, he described an officially-recognized, representative, prisoner organization in the state of Washington somewhat similar to the grievances committees Commissioner McGeechan tried to establish, but which had far more independence and influence on institutional policies. Some of the material Matthews presented to Justice Nagle included information about unofficial prisoner organizations in places like California and New York that were organized around widely-shared grievances with state penal officials.

Matthews also described the ongoing litigation of the Imprisoned Citizens Union in Pennsylvania, which he said challenged "virtually every facet of prison life in the state's prisons."<sup>976</sup> At the time, Matthews wrote to Nagle, the Imprisoned Citizens Union had not yet reached a consent decree with the Pennsylvania Bureau of Correction, but the legal material described the areas of prison life covered in the suit, including segregation practices similar to what Matthews endured at both Grafton and Katingal. The prisoners' rights movement and receptiveness of authorities in both Australia and the United States, however limited, nevertheless created the context for Matthews to conduct this research and address it to a senior judicial official. Likewise, the newfound interest of the American federal courts in prisons and the activism of prisoners before him gave Richard O. J. Mayberry the opening to bring such

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<sup>976</sup> Ibid., 49.

an encompassing lawsuit against the Pennsylvania Bureau of Correction. The irony, of course, is that both men were held in high-security segregation at the time.

Despite Matthews's placement in what was in the mid-1970s one of the most secure facilities in the Asia-Pacific region, he was able to analyze his situation and make recommendations to the Royal Commission based on a set of global knowledge about prisoners' rights and self-governing organizations. He was well aware that these things were lacking New South Wales and pointed this out to Justice Nagle. Matthews framed this paucity as an opportunity for the Royal Commission to bring the state's penal practices in line with many other Anglophone countries, a comparative and mimetic practice which had plenty of antecedents in other areas of Australian public policy.<sup>977</sup> In doing so, he articulated a global vision of local prison reform that resembled how Justice Nagle evaluated prisons in New South Wales, in part, through a global perspective. For Matthews, the conjuncture that permitted his endeavors, not only helped him endure the claustrophobic confines of Katingal, it also shaped his political subjectivity:

I became more politicised with the growing accumulation of overseas information but the Katingal screws saw no danger in my intellectual pursuits. It was a serious error of judgement on their part because my typewriter became a lethal weapon that eventually created more havoc than I ever did with a balaclava and cut-down shotgun.<sup>978</sup>

### **The Royal Commission and Resistance to Open institutions**

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<sup>977</sup> For a classic theoretical statement about this process, see Paul J. Dimaggio and Walter W. Powell, "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields," *American Sociological Review*, 48 (April 1983), 147–160.

<sup>978</sup> Matthews, *Intractable*, 201.

While the Royal Commission focused most of its attention on the difficulties of maximum-security prisons and control units, it also provided a forum for people concerned about the other end of the custodial spectrum – namely at the Department of Corrective Services’ open institutions, especially the agricultural or afforestation camps. The Department operated twelve open institutions in the mid-1970s, including six camps.<sup>979</sup> In addition, there were seven variable security institutions, which had sections with a comparable level of security.<sup>980</sup> Established in the early twentieth-century, New South Wales operated afforestation camps as step-down institutions, sending prisoners to them after they had served the initial part of their sentences in maximum security. As suggested by the term “open institution” these facilities had a low level of security and in many cases operated on the honor system. At times, prisoners slipped away from the camp or work details, which is why some people brought these institutions to the attention of the Royal Commission.

In 1977, a number of residents living near the Mannus Afforestation Camp (sometimes referred to as the Brookfield camp) and its smaller satellite the Leslie Nott Afforestation Camp (or Laurel Hill) wrote to the Department of Corrective Services, Bill Haigh (the new Labor government Minister holding the prisons portfolio) and eventually the Royal Commission concerning the possible expansion of the camps and a number issues they had with camp management. In March 1977, rumors surfaced around the town of Tumbarumba, located about 300 miles southwest of Sydney, that the Department was attempting to purchase several lots of land adjoining the nearby Mannus camp as well as re-open the recently closed Leslie Nott

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<sup>979</sup> New South Wales Department of Corrective Services, *General Information Booklet* (Sydney: Department of Corrective Services, 1978), 4

<sup>980</sup> *Ibid.*

camp.<sup>981</sup> The Department apparently tried to keep these plans quiet. They placed a notice in the local newspaper, but did not consult the local council directly or hold any community meetings.<sup>982</sup> Instead, they approached individual landowners with lands adjoining the camps.<sup>983</sup> The possibility of the camps expanding alarmed the Tumbarumba Shire Council and some residents after they learned of the Department's plans. They were especially worried about losing tax revenue on the lands acquired by the state and the possible distorting market effects on local land prices because the Department was reportedly offering some residents above-market value for their land.<sup>984</sup> Some people feared that the loss of taxable land in the shire would necessitate raising taxes on the remaining private holdings or cutting services.<sup>985</sup>

However, the most controversial and visceral concern about camp expansion was the potential it held for more escapes from custody, which in fact had already recently increased.<sup>986</sup> Since the camps were expanding, and in the Leslie Nott camp's case actually re-opening, many people assumed that the population of the camps would grow, leading to greater security difficulties for the camps' staff. Given the prominence of industrial actions by prison officers

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<sup>981</sup> "Laurel Hill Prison Camp to Re-Open; More Land at Mannus," *Tumbarumba Times*, (March 9, 1977), newsclipping. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

<sup>982</sup> "Alarmed by Prison Expansion," *Sydney Morning Herald*, (April 12, 1977); "Opposition to Extension of Prison Camp 'Political,'" *Sydney Morning Herald*, (April 13, 1977).

<sup>983</sup> *Ibid.*; "Opposition to Extension of Prison Camp 'Political,'" *Sydney Morning Herald*, (April 13, 1977).

<sup>984</sup> W.H. Haigh to Mrs. G. McEachern, n.d.; W.H. Haigh to The Hon. Sir Eric Willis, K.B.E., C.M.G., M.L.A., Leader of the Opposition, n.d. [after March 7, 1977]; Gordon Mackie, M.L.A. to The Hon. R. J. Mulock, L.L.B., M.L.A., January 19, 1977; Mr. S.J. Guest to W.H. Haigh, February 2, 1977; Mr. S.J. Guest to Sir Eric Willis, February 2, 1977; Mrs. G. McEachern to The Premier, Mr. Wran, February 8, 1977; C.G. Cotton, Shire Clerk to Mr. G. Mackie, M.L.A., February 14, 1977; L.A. Punch, Leader of the County Party to The Hon. W. H. Haigh, M.L.A., February 24, 1977; Mrs. Joyce McEachern to The Hon. Sir Eric Willis, M.L.A., March 1, 1977; Eric Willis, Leader of the Opposition to The Hon. W.H. Haigh, M.L.A., March 2, 1977; A.R.L. Gordon for Premier to Mrs. G. McEachern, March 9, 1977; W.H. Haigh to The Hon. L.A. Punch, M.L.A., March 28, 1977. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

<sup>985</sup> See the letters listed in above note.

<sup>986</sup> Testimony of Clyde William Piggot, *Proceedings of the Royal Commission*, 738-739.

elsewhere in the state during the 1970s, local residents feared the consequences of a possible labor strike by guards.<sup>987</sup> The Department insisted the camps' expansion was not intended to create more population capacity but to develop a more efficient agricultural business operation for the camps and create more meaningful work opportunities for inmates.<sup>988</sup> Minister Haigh informed Sir Eric Willis, the Leader of the Opposition, that they needed to enhance the acreage of productive fields as well as expand their beef cattle operations to achieve a greater economy of scale.<sup>989</sup>

Shortly after the Department's plans had become widely known, some residents opposed to the expansion of the camps approached their local shire council, local Member of Parliament and local branch of the Country Party in an attempt to galvanize support for blocking the Department's plans. They also contacted authorities in Sydney, including the Leader of the Opposition, Sir Eric Willis of the Liberal Party, the state's Ombudsman and eventually the Royal Commission, which had been sitting for nearly a year. Mrs. Joyce McEachern, one of the most vocal critics, wrote a letter to the *Sydney Morning Herald*, accusing the Department of secretly buying land and informing the nearby residents only after the fact.<sup>990</sup> She also accused the Department of maintaining inappropriate security at the Mannus camp, not informing residents of escapes and refusing to compensate them for property damage or theft by escapees. McEachern's accusations, published in the state's preeminent

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<sup>987</sup> Purchase of property at Mannus – Local reaction of some land holders, Project Officer's report, February 24, 1977. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

<sup>988</sup> W.H. Haigh to The Hon. Sir Eric Willis, K.B.E., C.M.G., M.L.A., Leader of the Opposition, March 28, 1977. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

<sup>989</sup> Ibid.

<sup>990</sup> "Alarmed by Prison Expansion," *Sydney Morning Herald*, (April 12, 1977).



news daily, brought a rural dispute over land and escapes that seemed to mainly involve only about seven families near the camp within the fold of the state's contentious penal politics. The next day, Minster Haigh responded to McEachern's letter in the same newspaper. He denied the claims of secrecy and disputed the number of escapes that McEachern claimed to have occurred to previous year.<sup>991</sup> He also dismissed her concern with escapes, claiming that her complaint was manufactured by the local Country Party Member of Parliament, Gordon Mackie. Within a few days, the exchange provoked a response from Len Evers, a former psychologist in the Department and member of the Penal Reform Council.<sup>992</sup> Evers reassured McEachern that escapees were largely harmless to locals, but he decried Minster Haigh's response as dismissive and denigrating. The intensity of the exchange further drew the attention of the Royal Commission and Ombudsman.

A spokesman for the group of residents informed the Tumbarumba Times that they had not only established contact with the Royal Commission, but were preparing a formal submission and hoped to testify as a group.<sup>993</sup> Even before the exchange of letters in the *Sydney Morning Herald*, the Royal Commission's secretary had contacted Commissioner McGeechan about the land purchases and dispute over the camps, requesting that he send all of the Department's files regarding on this topic to the inquiry.<sup>994</sup> This later became an

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<sup>991</sup> Each side disputed the actual number of escapes in 1976. McEachern claimed that there had been 40; Haigh and McGeechan claimed that there had only been 17 escapes. "Opposition to Extension of Prison Camp 'Political,'" *Sydney Morning Herald*, (April 13, 1977).

<sup>992</sup> "Prison Expansion and Haigh's Reply," *Sydney Morning Herald*, (April 19, 1977).

<sup>993</sup> "Move to Have Objections Go to the Royal Commission," *Tumbarumba Times*, (March 9, 1977), newsclipping. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

<sup>994</sup> K. Berry to the Commissioner, Department of Corrective Services, March 21, 1977. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

additional problem for the Department because they needed the files to fulfill a similar request by the state's Ombudsman who had also received numerous letters from several residents near the camps.<sup>995</sup>

The concern with escapes exploded at the end of March when two young prisoners escaped from Mannus and held three women at gunpoint in a remote home until the women surrendered a small sum of cash and keys to a car, which the prisoners subsequently stole.<sup>996</sup> The police caught the men soon afterward, but the publicity the incident generated brought the Department into greater conflict with the community. In addition to the fear of criminal activity by escapees, the episode also renewed another longstanding complaint in the area, namely that the state did not compensate victims whose property had been damaged or stolen by escaped prisoners.<sup>997</sup>

Furthermore, some people suspected that the Department was deliberately underreporting the actual number of escapes from the camps.<sup>998</sup> It was well-known in the area that escapes were not uncommon given the open security of the camps, but they had in fact

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<sup>995</sup> K. Smithers to Mr. McGeechan, March 3, 1977 [Two separate letters on same date, one marked 0/235, the other 0/234]; K. Smithers to Mr. McGeechan, March 10, 1977; W.R. McG [stamp of Commissioner McGeechan] to Mr. K. Smithers, C.B.E., March 23, 1977; K. Smithers to Mr. McGeechan, April 22, 1977; W.R. McG [stamp of Commissioner McGeechan] to Mr. K. Smithers, C.B.E., May 3, 1977; Deputy Commissioner of Correctives Services to Mr. K. Smithers, C.B.E., June 16, 1977.

<sup>996</sup> "Two Escapees Held Women at Gunpoint," *Tumbarumba Times*, (April 5, 1977); "Meeting of Fifty Resolves to Urge Closure of Prison," and "Glenroy Residents, Department React to Escapees Armed Hold-Up," *Tumbarumba Times*, (April 6, 1977), newsclippings. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

<sup>997</sup> W.H. Haigh to Hon N.K. Wran, Q.C., M.L.A.; Crown Solicitor to Commissioner of Corrective Services, August 10, 1977. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

<sup>998</sup> W. J. Hurlston to The Minister for Services, Mr. Haig, July 5, 1977; W.R. McGeechan, Commissioner of Corrective Services Submission to Minister memo Brookfield Afforestation Camp: Representations by W.J. Hurlston and draft reply; W.H. Haigh to Mrs. G. McEachern, n.d., draft reply; Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW; "Alarmed by Prison Expansion," *Sydney Morning Herald*, (April 12, 1977); "Opposition to Extension of Prison Camp 'Political,'" *Sydney Morning Herald*, (April 13, 1977).

increased during Walter McGeechan's tenure as Commissioner of Corrective Services.<sup>999</sup> The causes of the increase in escapes became a major area of dispute between the Department and the local community, especially since the Department refused to enhance the security of the institutions, arguing that to do so would nullify their status as open institutions.<sup>1000</sup> The Department argued that overcrowding at the Mannus camp caused by the 1975 closure of the Leslie Nott camp and transfers from the Emu Plains camp combined with the lack of "meaningful work" at Mannus, increased the incidence of escape at Mannus.<sup>1001</sup>

Many local residents and the media did not accept McGeechan's explanation and believed that the level of escapes was a manifestation of more than just a temporary overcrowding or capacity problem at the camps. Instead, they argued that the number of escapes reflected systemic changes in the economy of penalties and custody levels available to penal authorities in the state. In particular, new sentencing options, like periodic detention, the extension of parole and other forms of community corrections alternatives, like work release schemes, had altered the profile of the prisoners who were now being sent to the camps.<sup>1002</sup> The Department still used the camps as a stepdown institution to prepare long term prisoners

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<sup>999</sup> Ibid.; W.H. Haigh to Mrs. G. McEachern, n.d., draft reply; Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW; "Alarmed by Prison Expansion," *Sydney Morning Herald*, (April 12, 1977); "Opposition to Extension of Prison Camp 'Political,'" *Sydney Morning Herald*, (April 13, 1977).

<sup>1000</sup> Ibid.; W.H. Haigh to Mrs. G. McEachern, n.d., draft reply; Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW; "Meeting of Fifty Resolves to Urge Closure of Prison," newsclipping. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW. "Alarmed by Prison Expansion," *Sydney Morning Herald*, (April 12, 1977); "Opposition to Extension of Prison Camp 'Political,'" *Sydney Morning Herald*, (April 13, 1977).

<sup>1001</sup> Ibid.

<sup>1002</sup> Exhibit 767: Submission by Tumbarumba Residents (Mrs McEachern) on Mannus Camp. Royal Commission into New South Wales Prisons Exhibits 9/9315. SANSW; "Abandon Mannus: Women Terrorized," newsclipping. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

who had been in maximum-security for release, but now the alternative options diverted many other prisoners who required less security away from the camps altogether. The result was a greater percentage of the recent prisoners, according to a press account, “tended to be ‘hard core’” offenders who had spent considerable time in maximum-security before being sent to Mannus, Leslie Nott, and other camps.<sup>1003</sup> The Tumbarumba residents essentially argued, contrary to the Department’s position and without much supporting evidence, that the increase in the number of escapes represented the decisions of the penal authorities to treat less serious offenders in a different manner and populate the camps with more dangerous, desperate men. Their call to close the camps entirely rested on the notion that the prisoners therein were, in general, dangerous to local residents.

Immediately after the two escapees had been caught, Deputy Commissioner of Corrective Services Bill Weston flew to Tumbarumba and tried to reassure a group of local residents and elected officials of the overall safety of the camps.<sup>1004</sup> While sympathetic to the concerns of some of the Department’s opponents, Weston told the assembled group that the Department would not change either the security of camps or the type of inmates it was currently sending to them. He said bluntly that people living in the area had to deal with the reality of escapes from time to time or they should seek the closure of the camps.<sup>1005</sup> Soon afterwards about fifty residents held a contentious public meeting at the Rosewood Gold Club where they established the Close the Camp Committee and resolved to have both Mannus and

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<sup>1003</sup> “Abandon Mannus: Women Terrorized,” newsclipping. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

<sup>1004</sup> “Meeting of Fifty Resolves to Urge Closure of Prison,” newsclipping. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

<sup>1005</sup> Ibid.

Leslie Nott shuttered.<sup>1006</sup> Some attendees expressed extremely negative views of the prisoners held at the camps. For instance, one speaker told the assembly, “Prisoners are animals. They are dogs, they are born that way, and will stay that way.”<sup>1007</sup>

The vehemence expressed at the meeting was not universally shared in the area, however, and it provoked criticism from many other nearby residents who saw the camp as a major contributor to the local economy. The local newspaper received letters supporting the Department’s stated aims of rehabilitating prisoners and saw the camps much as the Department did as a way for long-term prisoners to transition to an open environment prior to their release. One letter-writer, Margot Martin, chastised members of the Close the Camp Committee: “Prisoners—although they may have sinned against our society—are not sub-human. They are paying the penalty for their crime. They need help and guidance and even, dare I say it, a little compassion.”<sup>1008</sup> Other people accused the Close the Camp Committee of undermining property values themselves with the negative publicity they generated. A few people rhetorically asked members of the Close the Camp Committee, in letters to the *Tumbarumba Times*, how they planned to make up the loss of revenue that the camps provided to the entire community if they were closed.<sup>1009</sup>

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<sup>1006</sup> Ibid.; “Minister May Be Invited to Tumbarumba Over Mannus Prison Issue,” *Tumbarumba Times*, (April 14, 1977), newsclipping. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

<sup>1007</sup> Ibid.; “Abandon Mannus: Women Terrorized,” newsclipping. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

<sup>1008</sup> “Letter to the Editor,” *Tumbarumba Times*, (April 6, 1977). Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

<sup>1009</sup> Readers Divided on Mannus Prison Camp Issue, Letters to the Editor, n.d. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

In their submission to the Royal Commission, the Rosewood-Mannus Residents group opposed the continued operation of the camps, but largely muted their dire view of imprisoned people. Perhaps responding to some of the critical comments from their neighbors at community meetings or in the local press, or perhaps sensing the liberal position of Justice Nagle, the group of residents framed their submission partly in terms of their concern for the humane treatment of prisoners. They tried to persuade Justice Nagle that the prisoners would be much better off somewhere else since Mannus was so far from the urban coastal areas that most prisoners called home.

The prisoners detest Mannus as a Siberia of the prison system. The miserable winter climate, its extreme remoteness and scarcity of family visits due to lack of public transport to the area and the distance from nearest large centres of population, all combine to alienate the prisoner from the community. The urge to escape under these circumstances apparently is overwhelming.

A wife with young children, not owning a vehicle, finds a visit to Mannus almost impossible, yet contact with family and wife is an important part of rehabilitation.<sup>1010</sup>

Arguing that the camps' security was inadequate for the higher risk prisoners that the Department was currently sending to them, the Rosewood-Mannus Residents group demanded the government close the camps.<sup>1011</sup>

The Royal Commission visited and inspected the Brookfield and Leslie Nott camps in July 1976, prior to the disputes.<sup>1012</sup> They also spent a lot of time hearing evidence from Clyde Piggot, the Superintendent of the Brookfield Camp at Mannus, but they did not directly address the

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<sup>1010</sup> Exhibit 767: Submission by Tumbarumba Residents (Mrs McEachern) on Mannus Camp. Royal Commission into New South Wales Prisons Exhibits 9/9315. SANSW.

<sup>1011</sup> Ibid.

<sup>1012</sup> Notice of inspection tour of Brookfield and Leslie Nott camps, July 6, 1976. *Proceedings of the Royal Commission into New South Wales Prisons*, 131.

expansion disputes.<sup>1013</sup> Nevertheless, the Royal Commission's presence shaped the dispute in several ways. As a number of people pointed out at the time, the Brookfield camp opened in the 1920s. So, it was hardly the case that the residents of the area were unfamiliar with the camp or that the controversy was necessarily similar to the types of disputes that emerge when the state builds a prison in an area that did not previously have one. While Superintendent Piggot admitted there was evidence of hostility from some residents over the issue of escapes in the past, he felt this was a minority of local residents and that it had waned by the time he took command.<sup>1014</sup> Nevertheless, it appeared that the number of escapes had increased at precisely the same time that the Department, as a whole, was under intense public scrutiny by the Royal Commission and the subject of alarming media accounts of rioting prisoners and industrial actions by guards.

The Department's secretiveness, or simply lack of effective public relations, in the dispute over the camps was familiar to the Royal Commission, which had recurrently uncovered incidents of untruthfulness or disregard for the public. As Nagle described the Department's record in this area, "the secrecy with which it has surrounded its activities can fairly be described as obsessive."<sup>1015</sup> This can be seen in the normal rules governing Mannus. Despite the fact that Superintendent Piggot was the most senior official permanently assigned to the area and had established local relationships, he was very limited in what he could communicate to the public, especially in regard to security and escapes.<sup>1016</sup> With frequent reports about the

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<sup>1013</sup> See the Statement and Testimony of Clyde Piggot in *Proceedings of the Royal Commission into New South Wales Prisons*, 729-763.

<sup>1014</sup> *Ibid.*, 754-755.

<sup>1015</sup> Nagle, *Report of the Royal Commission*, 428.

<sup>1016</sup> Testimony of Clyde Piggot in *Proceedings of the Royal Commission into New South Wales Prisons*, 738-739.

inquiry in both print and broadcast media, the behavior of the Department's officials in the area around Tumberumba not only seemed suspicious, but as evidence of serious mismanagement and an affront to local residents. Activities that appeared scandalous to locals quickly ascended the penal hierarchy not only because the activists appealed to senior politicians and the Sydney press, but because it was the Department's policy not to delegate such matters to officials like Piggot. Minister Bill Haigh not only replied to Joyce McEachern's letter to the editor in the *Sydney Morning Herald*, but also corresponded directly with her and other activists. He would later attend a community meeting in the area and face direct criticism over camp security and the land purchases. The Labor government, led by Neville Wran, placed a great deal of importance on effectively controlling the topic of prisons since it played such a prominent role in their rise to power, and the public identified them with the Nagle Commission. The political context of the prisons, still very fluid with the Royal Commission sitting and serious prison disturbances occurring, amplified a dispute near a small, rural prison camp into a highly visible, state political issue.

Another way the Royal Commission's work affected this dispute was in the language that the residents adopted in many of their statements. In addition to challenging the government over how the Department's policies affected local taxes, land valuation or farming competition with local farmers, they also took issue with camp management and penology. Their concern with escapes dealt with more than just how the community was alerted to a breach or the issue of reimbursement for damaged property. The resident activists made claims about the internal workings of the camp, the Department's classification system, the economy of penalties and alternatives to custody, as well as the camps' training activities and whether or



not they counted as rehabilitation. The residents' concern for these matters was surely not that deep or longstanding. Yet, with all of these issues being routinely debated in the press accounts of the Royal Commission, it is hardly surprising that they focused on them and crafted their arguments with these concerns in mind. For example, several of the activists repeatedly disputed the wisdom of the Department's plan to build a large Aberdeen Angus herd on the newly acquired land to train prisoners in the beef industry.<sup>1017</sup> The market for beef, according to these farms, was depressed with many herders currently selling meat below their production costs. They believed that prisoner labor would never be able to compete in the shrinking market. Moreover, they claimed that most of these prisoners would never find employment in the industry with a surplus of trained workers without criminal records. Instead of wasting state funds on farming, they argued that the Department should focus more on the timber industry, among other things, which was more closely related to the camps' longstanding afforestation projects.

Haigh visited the area in May 1977 and met with local officials and a deputation of the activists, but he did not concede to any of their demands. He admitted that he and the Department had communicated poorly with local residents since the beginning of the expansion process, but stated that the camps were expanding and focusing more on beef cattle herding. Nevertheless, the minister agreed to recommend the creation of an additional police officer position in the area, and to increase the telephone lines between the camps and shire

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<sup>1017</sup> For instance, see Gordon Mackie, M.L.A. to The Hon. R.J. Mulock, L.L.B., M.L.A., January 19, 1977; W.H. Haigh to Mr. G. Mackie, M.L.A., n.d.; "Times' Open Column: Corrective Services Issue: Albury Member Defends His Role," *Tumbarumba Times*, n.d.; "Mannus Prison Farm – To The Editor," (May 25, 1977), newsclipping "Farm is Hope as Deterrent," *Border Morning Mail*, (May 21, 1977), newsclipping. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

officials to alert them of escapes. Haigh also said he would ask relevant officials about the possibility of providing compensation for property damage caused by escapees as well as finding ways to offset adverse effects on local tax revenues. However, Haigh balked at the idea of including community participation in screening procedures and population management, in general. They acknowledged that more thorough screening was a serious local concern, but provided little in the way of assurances or detailed information that this would be improved. Instead, the government proposed the creation of an Advisory Committee with representatives drawn from the Department, the shire council, the local Chamber of Commerce, sporting clubs, service clubs, churches, schools, hospital organizations and the Rosewood-Mannus Residents group.<sup>1018</sup> It was to be the first of several such committees the Department of Corrective Services established to address the larger role that communities near prisons played in the new configuration and visibility of penal power.<sup>1019</sup>

## **Conclusion**

The history and institutional governance structure of New South Wales, and to a lesser extent Australia in general, profoundly shaped how the state's prison system transformed over the course of the 1970s. It also played a large role in the specific form the prison activist movement took in New South Wales and how the broader public came to know about life behind bars. Much of this can be seen in the overwhelming importance of the Royal

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<sup>1018</sup> Report on Proceedings, "Advisory Committee" held 9<sup>th</sup> August, 1977 at Tumbarumba by W.R. McGeechan, Commissioner of Corrective Services, 16<sup>th</sup> August, 1977. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

<sup>1019</sup> "Information for Jail's Neighbors," *Sydney Morning Herald*, (November 6, 1978);

Commission into New South Wales Prisons. From the late 1960s until 1976, activists and critics of the Liberal-Country government campaigned for the establishment of a royal commission. Between 1976 and 1978, Justice John Nagle oversaw the Royal Commission, which revealed gross mismanagement, disclosed routine torture, empowered prisoners' voices and recommended over two hundred specific changes. After Nagle tendered his report, the Royal Commission monitored some of the actions the Department of Corrective Services took on the recommendations through periodic update reports, but this did not last long. For the next decade, disputes over prison policy centered on how people interpreted Nagle's report and whether or not certain reforms would be implemented.

Perhaps the biggest dispute over the findings of the Royal Commission involved the possible persecution of officers for physical violence against prisoners. Nagle recommended that the state's public prosecutor review the evidence, but stopped short of calling for prosecutions. The Labor government, under Neville Wran, also balked at the idea, but only after a long period of silence and inaction.<sup>1020</sup> While some of their supporters demanded greater accountability for the officers, the most stalwart in this position were people in the prison movement who were politically far to the left of the Wran government and not a crucial part of their electoral coalition. However, Wran knew full well that pursuing prosecutions risked a major walkout by prison officers and possibly lost votes from other public employee unions and more socially conservative members of the working class. Frustrated with the government's intransigence, the Prisoners' Action Group pursued a private prosecution of the officers named

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<sup>1020</sup> "Cabinet to Meet in Bid to Prevent Jail Crisis," *Sydney Morning Herald*, (October 22, 1980); "Two Jail Officers to be Charged," *Sydney Morning Herald*, (October 23, 1980); "Weak Compromise," *Sydney Morning Herald*, (October 23, 1980).

in Nagle's report only to fail in court.<sup>1021</sup> Private prosecutions, while legal in New South Wales at the time, had become a rarity by the turn of the century as a public prosecutors representing the state subsumed this role. The Prisoners' Action Group's tactic spoke more to their anger, desperation and frustration after having their claims of official abuse widely acknowledged but ultimately dismissed. Abusing prisoners might be wrong, but not that wrong, and as many people argued, it was now in the past.

Despite avoiding criminal sanction, some of the named officers were officially reprimanded, but none of them lost their jobs. Nevertheless, the state's decision to sanction some officers drew condemnation and a labor strike from the officers' union. It also cause protests by prisoners, which prison guards put down by force.<sup>1022</sup> Industrial actions like this had become commonplace in horrible relationship between the Department of Corrective Services' senior management and its lower level staff. The Prison Officers' Vocational Branch (POVB) hated most of Nagle's findings and recommendations and attempted to prevent many of the changes he endorsed in his report.<sup>1023</sup> Throughout the 1970s and early 1980s, the POVB used job walkouts at particular prisons to block changes in local practices as well as larger statewide actions to defeat broad policy changes they opposed.<sup>1024</sup> Perhaps the most significant of these was Nagle's recommendation to close Katingal, which he dubbed the "electronic zoo." Instead of one central control unit, Nagle recommended adopting the British practice of using dispersal

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<sup>1021</sup> Ibid.; "Two Jail Officers to be Charged," *Sydney Morning Herald*, (October 23, 1980); "Prison Officers Cleared of Charges," *Sydney Morning Herald*, (January 21, 1981); George Zdenkowski, "Brett Collins – Prison Activist under Attack," *Legal Service Bulletin*, 7 (June 1982), 137-138.

<sup>1022</sup> "Shots, Gas in Jail Riot: Four Prisoners Wounded, Taken to Hospital," *Sydney Morning Herald*, (October 24, 1980); "It's Chaos Behind Those Walls," *The Sun-Herald*, (October 26, 1980); "Chaos in State's Jail System," *Sydney Morning Herald*, (October 27, 1980).

<sup>1023</sup> Personal interview with Noel Day, former Deputy Chairman of the Corrective Services Commission, April 2009.

<sup>1024</sup> For an overview of the POVB's actions, see Vinson, *Wilful Obstruction*.

units, essentially smaller control units located within the state's maximum security prisons.

Premier Neville Wran approved Katingal's closure and the construction of dispersal units, but this policy failed to appease either the POVB, who frequently called for reopening Katingal, or prison activists, who viewed the dispersal units as simply smaller versions of Katingal with all the same dehumanizing problems.

Even before Nagle submitted his final report, Wran relieved Walter McGeechan of his position as Commissioner of Corrective Services. This had been Nagle first recommendation, but he also suggested eliminating the position and replacing it with a five-member commission. The government created the new Corrective Services Commission and appointment Tony Vinson, a professor of social work and former parole officer, as its first chairman. Vinson strongly supported the changes advocated by Nagle and saw transforming the prison system as his major task. Vinson quickly discovered what McGeechan repeatedly complained about during his testimony before Nagle: the POVB simply blocked his plans through walkouts, disobedience, intimidation and leaking information to the press and political opposition. After only two and a half years, Vinson was relieved of his duties as his policies had generated numerous high-profile labor strikes and made for embarrassing exposés by the Sydney media. Vinson's departure did not end the struggle between the POVB, the Corrective Services Commission, the government and the remaining prison activist groups. Even after the government defeated a 35-day statewide POVB walkout in 1984, the POVB was still a major player in the management of the state's prisons.

Unlike Pennsylvania, the judiciary in New South Wales played a minor role in the state's penal politics. With the exception of granting prisoners the right to appeal the decisions of

Visiting Justices, the state's courts deferred to prison authorities in the management of the penal institutions. Without the existence of constitutional provisions similar to those used by prisoners in American courts, there was very little legal basis for court intervention. This meant that federal courts in Australia simply did not have powers corresponding to American federal courts in relation to the states on matters of civil rights. This severely limited the ability for prisoners to seek the help of outside authorities and placed them under much stricter control of the Department of Corrective Services. The access that prisoners in Pennsylvania had to outside organizations, journalists and lawyers, while stark in its own way, exceeded the limitations placed on prisoners in New South Wales. This stifling level of control partly contributed the tension between staff and prisoners and the frequent outbursts of violence throughout the 1970s. The small size of Australian civil rights movement compared to the U.S. and its lack of focus on prison matters, meant that New South Wales did not have a large, longstanding campaign to reform prisons that existed for quite some time in the U.S. before the 1970s.

Such authoritarian control and lack of a large movement organized around race and civil rights made the Royal Commission all the more significant. Along with the February 1974 uprising at Bathurst, the Royal Commission, opened the gates. Although, the institution of the royal commission itself demonstrated a degree of centralization that was absent in Pennsylvania. The sitting government appointed the Royal Commission. It was, in other words, not independent like the American judiciary. The legacy of this executive power is apparent on the official notice of the Royal Commission and its final report both of which were approved by the Governor of New South Wales, Roden Cutler, the viceregal representative of Queen

Elizabeth II. Despite this degree of control, the Royal Commission's work was much broader and thorough than that usually seen in American legal cases. Unlike any other twentieth century, Australian prison inquiry up to that point, it listened to prisoner accounts of life inside and treated them with respect. Most other inquiries, if they bothered to speak with prisoners at all, dismissed their views as unreliable or untruthful based on their status as criminal offenders. In these respects, the inquiry fundamentally changed the prison system in New South Wales and anchored most of the state's penal politics for decades to come.

#### Chapter 4: “Overcrowding is the Future of Corrections”: Prison Population and the Politics of Knowledge, Suffering and Prison Construction in Pennsylvania

*In light of the fact that all of the agencies and officials involved in recommending a new prison admit that the overcrowding problem is immediate, but only short term, and since a new prison is neither immediate nor short term, it does not seem to be the appropriate solution to the problem we are now facing.*

*Sam McClea, Judiciary Committee Staff,  
House of Representatives, 1981<sup>1025</sup>*

*Pennsylvania’s increased reliance on incarceration to effect public safety has resulted in a prison and jail crowding crisis. Even though a decade of construction has increased our institutional capacity by 51%, construction has not kept pace with our incarceration policy. However, the simple truth is that it is highly unlikely that any governor or general assembly will advocate the kind of expenditures necessary to safety and humanely institutionalize all the offenders sentenced to prison and jail. It is just too costly.*

*Pennsylvania Commission on Crime and  
Delinquency, Corrections Overcrowding  
Committee, 1990<sup>1026</sup>*

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<sup>1025</sup> “House Bill 1645, P.N. 1924 – Capital Budget funds for building a new state prison,” Sam McClea, Judiciary Committee Staff to Hon. John White, June 23, 1981. Dick Thornburgh Papers, box 265, folder 17: H.B. 1645 (authorization of public improvement projects): legislation, amendments, legislators' votes, and legislative debates June, 1981. University of Pittsburgh Archive Service Center (hereafter UPASC).

<sup>1026</sup> *Pennsylvania Commission on Crime and Delinquency, Corrections Overcrowding Committee, Containing Pennsylvania Offenders: The Final Report of the Pennsylvania Commission on Crime and Delinquency Corrections Overcrowding Committee* (Harrisburg: PCCD, March 1990), 1. The quote in the chapter title is also from this report, 14.



## Introduction: The Emergence of Persistent Overcrowding

After the 1970 Independence Day violence at Philadelphia's Holmesburg Prison, prison overcrowding emerged as one of the major new themes in penal discourse during the 1970s and 1980s. While no one exclusively blamed overcrowding for the violence at Holmesburg, prison officials, the district attorney and his staff and the courts, nevertheless, cited it as a major contributing factor, which also overtaxed staffing levels and the availability of programs and work for inmates. Despite this, they disagreed on who or what caused it and how to remedy it. Over the next two decades, a similar debate on prison overcrowding appeared across the state as most county penal systems stretched their capacities and the state's prison system entered a period of protracted growth, which has not abated. The problem of prison overcrowding became more pronounced over the course of the 1970s and exploded as arguably the major problem in corrections during the 1980s and 1990s. It was a major theme of public discourse about prisons during the 1980s, but with some notable exceptions, the descriptions and metaphors used by state officials and journalists presented it as a technical problem. Prison administrators and political leaders tried to find the best way to reestablish balance to an admittedly very imbalanced system, but it was a managerial problem, amenable to managerial solutions. Prison population and capacity statistics provided perhaps the most powerful representation of this problem in this discourse. However, the phenomena these figures purported to quantify changed over time, revealing disagreements over the definitions of overcrowding, as well as the normative ratios of space and services to people from which overcrowded institutions departed.

This chapter is about this debate on prison overcrowding, how various actors conceptualized the problem of overcrowding and how it affected prison life and penal politics in Pennsylvania during the 1970s and especially the 1980s. In recent theory and historiography, scholars have treated prison overcrowding as a consequence of an overall shift in governing strategies in the wake of profound racial, economic and social change during the late twentieth century. Such work, focused on different analytical scales, explores the multiple origins of increased punitiveness and the growth of prison populations, but it rarely considers how prison overcrowding became a penological problem in itself during these decades and how various actors understood and endured it. I take a fourfold approach to exploring this topic by focusing first on the phenomenon of large increases in prison populations and some of the problems that arose by simply defining what actually constituted overcrowding. While I touch upon causal arguments for these increases, I am less interested in explaining the cause of increased prison populations. I find the multiple accounts in the existing sociological and historical literature convincing in this regard. I am much more interested in the types of arguments and understandings that actors deployed at the time regarding prison overcrowding because they were inseparable from the multiple strategies they developed to address the issue, whether this was finding a way to reduce the number of court commitments or finding a way to resolve disputes with one's new cellmate. To be sure, many of these contemporary debates involved the types of causal arguments that became more common in subsequent scholarly work. Some are convincing, but I deal less with trying to evaluate their accuracy than situating them in a broader discourse on punishment and appropriate use and nature of confinement.

First, a caveat about the term “overcrowding” and why I use it. Like a number of other common terms in penal discourse (like rehabilitation), overcrowding was often very ambiguous and condensed and drew upon numerous different meanings and facets of prison life. Yet, it was in most cases a term of governing, one that presumed a privileged vantage point, where a broad, if not entirely synoptic, vision surveyed the entire penal apparatus, marking deficits of space and services. Government officials, researchers and Pennsylvania’s major media forums conceptualized prison overcrowding almost exclusively in this way, as an administrative description usually expressed in systems metaphors. They occasionally also used the term “crowding,” but it was usually interchangeable with overcrowding. Each term referenced an abundance of prisoners exceeding the prison system’s operational capacity standards, which had been designed to optimally accommodate a certain number of imprisoned people. Once the number of prisoners crossed that threshold a litany of problems ensued, which disrupted many of the intended levels of services, security and safety. Sometimes, these elite actors discussed overcrowding as a problem caused by a deficit of prison capacity rather than too many prisoners. Such views formed a crucial part of proposals to build new prison cells. Regardless of how it was framed, these arguments implied the existence of predetermined optimum standards for the prolonged confinement of people as well as assumptions about what constituted imprisonable offenses. Thus, the debate about overcrowding often quietly pointed up these normative penological assumptions and the investments many people had in them. While speaking at a prison activist demonstration during the 1970s, philosopher Michel

Foucault succinctly pointed out the assumptions and partiality of this term: “They tell us that the prisons are overcrowded. But what if the population is overimprisoned?”<sup>1027</sup>

Much like many other common terms in political discourse, overcrowding carried other valences depending on its audiences and speakers. Prisoners often adopted the word overcrowding and other systems terminology in describing their plight, but usually added different meanings to it, reflecting their much different relationship to the problems of overcrowding. They often spoke of overcrowding in both a holistic way – it effected everything in their daily lives – and because of that, as an explanatory device, summarizing what had gone so terribly wrong inside the state’s institutions. More frequently, they expressed their frustrations with the current situation in words and ways that simply escaped the language of experts who did the most to define the public perception of overcrowding. At times they conceptualized the pains of imprisonment in large scale terms – a reaction against civil rights and latest iteration of America’s endemic racism, fostering punitive, exclusionary practices at multiple sites in the state apparatus, which channeled a greater number of poor, largely African American, young men into custody for ever longer periods of time. More often, prisoners described the immediacy of one of the many problems traceable to overcrowding, such as having to share a cell with other people, the increasing lapses in security or the prolonged waiting times for basic services.

Despite their position, however, prisoners’ use of the term overcrowding still retained certain assumptions about the macro-order of a prison and prison system. Their views often

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<sup>1027</sup> Quoted in Alan D. Schrift, “*Discipline and Punish*” in Christopher Falzon, Timothy O’Leary, and Jana Sawicki (eds.), *A Companion to Foucault*, 1st ed., (Malden: Wiley-Blackwell, 2013), 137-153, quote 137.

challenged the specific content of the assumptions of administrators, but the latter's expertise and problem constructions, the built environment of the prison and its routines still established the terrain of this debate. In this sense, I see the presence of the term in prisoner or activist speech and publications as similar to their use of the word "riot."<sup>1028</sup> While lacking the pejorative qualities of that term, overcrowding, nevertheless, positioned incarcerated people as incarcerated people, objects of population to be managed, sorted and distributed in a secure, cost-effective and efficient way. With these points in mind, I use the term throughout this chapter. It was a common term in penal discourse at the time, which deserves analysis. I see no reason to discard it in favor of some more neutral term to describe this phenomenon, which I do not believe exists. Highlighting the conditions of its existence through its use offers a way to think about overcrowding as both a powerful concept in late modern penality and lived reality for imprisoned people and staff.<sup>1029</sup>

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<sup>1028</sup> A number of social historians and sociologists have usefully analyzed the pitfalls in accepting the term riot and its conventional understandings in the archive, which more often than not reflect the views of elites and the authorities tasked with restoring order. While accepting these arguments, many participants in "prison riots" displayed all the rationality of the subjects in crowds studied by Rudé, Thompson and Hobsbawn, but also adopted the term "riot" as their own, adding to it masculine qualities of valor, honor and strength in their opposition to prison authorities. Other prisoners, of course, were terrified of "riots" and viewed them in much the same way as elites, albeit with the much more immediate concern for their personal safety. George Rudé, *The Crowd in History: A Study of Popular Disturbances in France and England, 1730-1848* (New York: John Wiley & Sons, Inc., 1964); E.P. Thompson, "Moral Economy of the English Crowd in the Eighteenth Century," *Past & Present*, 50 (February 1971), 76-136. See also Alyssa Ribeiro, "'A Period of Turmoil': Pittsburgh's April 1968 Riots and Their Aftermath," *Journal of Urban History*, 39 (March 2013), 147-171. I take exception with Amanda I. Seligman's recent call to use "neutral language" when describing conflicts, like riots or civil disorders. I do not believe that there is such a thing as neutral language in describing events like "civil disorders." One can write a nuanced account of conflicts, using the terms of the time, while also pointing up the contemporary politics and silences of language. See her "'But Burn—No': The Rest of the Crowd in Three Civil Disorders in 1960s Chicago," *Journal of Urban History*, 37 (March 2011), 230-255. I thank David Pederson for pointing me to this issue and some of this literature.

<sup>1029</sup> I am indebted in this to William Roseberry's understanding of Gramsci's concept of hegemony as a way to analyze historically specific forms of struggle rather than consent. "What hegemony constructs, then, is not a shared ideology but a common material and meaningful framework for living through, talking about, and acting upon social orders characterize by domination." William Roseberry, "Hegemony and the Language of Contention," in Gilbert M. Joseph and Daniel Nugent, eds., *Everyday Forms of State Formation: Revolution and the Negotiation of Rule in Modern Mexico* (Durham: Duke University Press, 1994), 355-366, quote 361.

While overcrowding became a common term in penal discourse in Pennsylvania after the 1970 Holmesburg riot, it has been a perennial problem of prison management since the inception of the institution much like classification and the separation of prisoners. Even during times of excess capacity, it has always been one of the major preoccupations administrators, a possibility to anticipate and avoid. Pennsylvania's state and county institutions have also had other periods of pronounced overcrowding. Although, these earlier episodes were usually short, lasting only a few years at most. County jails, especially in urban areas, were particularly prone to drastic population fluctuations because they mainly held detainees and people sentenced to short terms; a large influx of people could be met with an even greater exodus of people the following week. This volatility meant that it was not uncommon for some county jails to oscillate between periods of overcrowding and slack capacity in short periods of time. State prison populations by contrast remained much more stable. Since they largely consisted of people serving long sentences, population changes were more subdued.

The increase in prison populations during the 1960s was not isolated to Philadelphia's prisons, but it was also not yet a widespread problem in most other county penal systems or the state's prisons. At the time, penologists like William Nagel of the Philadelphia-based American Foundation did not consider overcrowding to be an unusual or widespread problem in the state, but he believed it soon would be unless something was done to enhance the capacity of the state and county institutions.<sup>1030</sup> Like many other prison administrators, he believed that the advance of the large postwar Baby Boom generation into their late teens and

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<sup>1030</sup> American Foundation, *The County Jails and Prisons of Pennsylvania* (Philadelphia: Institute of Corrections, Studies in Corrections, March, 1965), 7-8.

twenties would likely increase the number of people committed to correctional authorities. In a study of the state's county prisons for the American Foundation, Nagel determined that sixteen of Pennsylvania's seventy county penal institutions were overcrowded on February 20, 1964.<sup>1031</sup> Many of these institutions were located in large metropolitan areas or smaller urban counties, like Dauphin County (Harrisburg), but even a few rural counties, like Clarion County, had stretched the capacity of their jails by the mid-1960s.<sup>1032</sup> The state Bureau of Correction as a whole, operated well below the crowding threshold Nagel used (discussed below) even if some of the individual institutions in the state system, like SCI Camp Hill near Harrisburg, exceeded it at the time.<sup>1033</sup>

In retrospect, these problems would be the beginning of a long period of prison population growth that eventually spread to most secure penal institutions in the state, in both county and state jurisdictions. As this occurred, disagreement and debate about how to define and measure overcrowding, let alone counter it, also began to appear with greater frequency in penal agency reports, legislative hearings, public commentary and activist campaigns. For much of the postwar period, the definitions of acceptable accommodation were fairly stable and uncontroversial among most prison professionals who, in addition, had a firmer grip on the few public discussions about this topic that took place. Some aspects, like the principle of one person, one cell, were in fact quite old. Established in the late eighteenth and early nineteenth centuries, this practice famously formed the basis of a specific theory and method of penal reformation – the Pennsylvania model of cellular isolation. According to its advocates, isolation

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<sup>1031</sup> Ibid.

<sup>1032</sup> Ibid., Table 1, 29-30.

<sup>1033</sup> Ibid., 13.

and enforced silence severed a criminal's relationship with corruptive associates and habits, forced him to confront his guilt and begin the process of personal and spiritual redemption.<sup>1034</sup> The state's penal code incorporated the principle of one person, one cell, and it continued to govern penal accommodation through the 1970s. This was by no means a universally accepted standard. Most prisons in the world during the late eighteenth and early nineteenth centuries did not separate prisoners in this manner and many still do not. Even in places where this is the standard, short-term detention centers (jails and immigration centers) often hold prisoners in large groups as a matter of routine policy.

The principle of one prisoner, one cell was not a sufficient metric of prison capacity for many administrators even in Pennsylvania, however. Managing a prison also required the flexibility to move prisoners within the institution, separate them as needed and accommodate an unknown number of new arrivals. In a 1965 American Foundation report, penologist William Nagel argued that prison administrators needed to have ten percent of an institution's cells available as "breathing space" for these reasons. Thus, he defined a prison utilizing over ninety percent of its cell space as overcrowded.<sup>1035</sup> This was a very pragmatic definition, based as much on Nagel's own experience as a prison superintendent than any consensus in the field, but it would have found support among many senior prison staff who dealt with similar concerns on a daily basis.

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<sup>1034</sup> For two good accounts of isolation and the Pennsylvania model of prison discipline, David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little, Brown, 1971) and Michael Meranze, *Laboratories of Virtue: Punishment, Revolution and Authority in Philadelphia, 1760-1835* (Chapel Hill: University of North Carolina Press, 1996).

<sup>1035</sup> *Ibid*, 7.



If some facets of overcrowding appeared relatively straightforward, like having more than one person in a cell, other indications of overcrowding were more ambiguous and open to greater interpretation. As the Bureau of Correction developed a greater set of rehabilitation programs, training opportunities and activities for prisoners, these services also became incorporated into the standard expectations of accommodation, and thus, notions of overcrowding, as well. These services were never as comprehensive as policy statements would have had the public believe, but they informed the notions of care and living standards that effected people confined in the state's prisons and jails. When they could not be met because they were thinly spread across too many people, they affected the perception of crowding by staff and prisoners alike. Extensive waiting lists for programs and long lines for meals and sick call were a recurrent feature of overcrowded prisons by the 1980s. Similarly, methods of prisoner management and security changed considerably over the course of the twentieth century. The standards of supervision and time out of cells not only went through considerable flux as prison regimes liberalized after World War II, but these routines, or rather their deficits, also informed notions of overcrowding. These normative qualities of imprisonment were not systematically quantified in the 1960s and 1970s, but many other aspects of prison operations were increasingly subjected to this type of knowledge production.

The Bureau of Correction began publishing monthly and annual statistical reports covering a variety of population categories during the 1970s. Prior to this time, such statistics were not as comprehensive or widely available and the range of categories they tracked was limited. Once the Bureau devoted greater attention to this form of knowledge, the number of categories expanded and their parameters, importance and content often shifted throughout

the ensuing years. Yet, seemingly basic knowledge proved to be difficult to establish. Nothing demonstrates this more than the effort the Bureau devoted to the question of how many prisoners it had in its institutions. The constant movement of prisoners proved to be a fundamental obstacle in this project. Prisoners frequently moved in and out of the Bureau's immediate care, if not legal custody. Sometimes, they transferred prisoners to private hospitals or those operated by the Department of Welfare; sometimes, they moved prisoners back to county jails as part of legal proceedings; sometimes prisoners left penal institutions on furlough, work release or bereavement leave. Where was a person who was moving between different prisons considered to be for the purposes of counting his or her presence?

In the hopes of gauging the overall population amid this flow, the Bureau developed numerous measurements, temporal snapshots and averages of the number of people in its custody. Individual prisons created daily population figures, based on counts by guards at regular inmate musters, which were designed to thwart escapes as much as anything else. Prisoners had to be accounted for as a routine part of institutional security, but these counts also inform weekly population figures, which the Bureau used to finesse transfers between the different institutions. The Bureau also produced monthly averages for each prison and end-of-month totals. The Bureau monitored new court commitments and broke down most population figures into subsets categorized by race, age, sex, offense category and sentence length among other groupings. Penal officials and researchers represented overcrowding through a number of these categories, but most assessments of the state of overcrowding focused on the year-end totals and the average daily population for the year.

At different points, the Bureau calculated these figures in different ways, which makes historical comparisons difficult. Sometimes, officials revised past summations when they adopted new calculating practices, but this was not a uniform practice or legal requirement. The historical depth of these statistics also varied between the reports with certain years eventually disappearing, making the problem of overcrowding, not only more presentist, but also appear normal when the earlier years of lower prison populations were simply excluded in the reports.<sup>1036</sup> By the mid-to-late 1980s, the statistical reports showed a trend of consistently overcrowded prisons. The report for 1985 only went as far back as 1980.<sup>1037</sup> One can only speculate what the figures would be for these now missing years because they would have to be recalculated according to the most current criteria, assuming of course, that such criteria were unproblematic. These counting variations also involved a trend toward greater disaggregation of the inmate population into ever more specific categories in the hopes of better understanding and managing the mass of confined people.

Thus, drawing on annual statistical reports to show the increasing numbers over a period of years (see Figure 3.1) misses how much effort Bureau staff and penal researchers expended in trying to understand and represent prison populations. Some of this effort can be gleaned from, ironically, the amount of space in the statistical reports devoted to just representing the shortfall of space in the prisons. Over the course of the 1970s, the Bureau's

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<sup>1036</sup> The historical coverage of each statistical report varies. Some have figures covering more than 10 or 15 years, while other only provide information for 5 years. At certain times, definitive breaks occur in the coverage with statistics for previous years being left out of all subsequent reports. See, for instance, Commissioner Williams Robinson's preface to the 1979 annual statistical report explain that this would be the last year that data from 1960-1969 would be included. Robinson gave no reason for this change. Pennsylvania Bureau of Correction, *1979 Annual Statistical Report* (Camp Hill: Bureau of Correction, 1980), Preface.

<sup>1037</sup> Pennsylvania Department of Corrections, *Statistical Report for the Years 1980 -1985* (Harrisburg: Department of Corrections, 1986), 5.

personnel began featuring prison capacity utilization for each prison along with population totals until prison capacity became a standard, standalone category in the reports by the early 1980s.<sup>1038</sup> In addition, a new statistical category permanently appeared in these later reports – capacity deficits (see Figure 3.2). This gap between capacity and population became a new statistical entity in itself to track over time and informed proposals for new cell construction – efforts to close the gap (see Figure 3.3 and 3.4). What counted as “capacity” itself also underwent change during the mid-1980s with later statistical reports readjusting previously reported figures.<sup>1039</sup>

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<sup>1038</sup> <sup>1038</sup> See Pennsylvania Bureau of Correction, *1981 Annual Statistical Report* (Camp Hill: Bureau of Corrections, 1982), 9; Pennsylvania Bureau of Correction, *1983 Annual Statistical Report* (Camp Hill: Bureau of Corrections, 1984), 6-8; Pennsylvania Department of Corrections, *1984 Annual Statistical Report* (Camp Hill: Department of Corrections, 1985), 6-8; Pennsylvania Department of Corrections, *Statistical Report for the Years 1980-1985*, 5-7; Pennsylvania Department of Corrections, *Statistical Report, 1980-1986* (Camp Hill: Department of Corrections, 1987), 5-6; Pennsylvania Department of Corrections, *Statistical Report, 1980-1987* (Camp Hill: Department of Corrections, 1988), 21-22; Pennsylvania Department of Corrections, *1988/1989 Annual Statistical Report: State Correctional System* (Camp Hill: Department of Corrections, 1990), 13.

<sup>1039</sup> Pennsylvania Department of Corrections, *Statistical Report, 1980-1986*, 5.

Table 3: Pennsylvania average daily prison population, 1960-2005

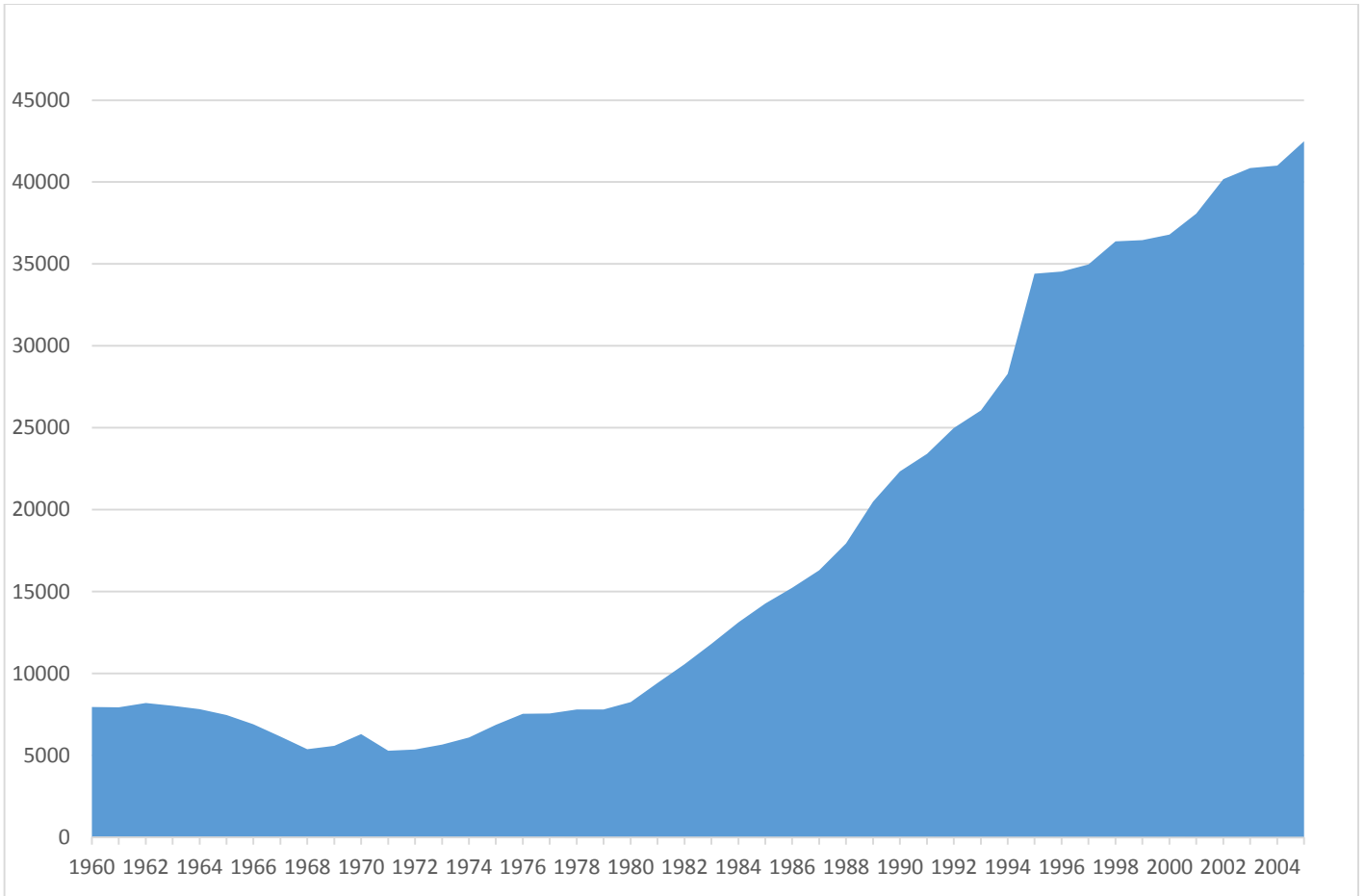


Table 3. Pennsylvania Average Daily Prison Population, 1960-2005. Source: Pennsylvania Department of Corrections, Bureau of Correction, *Annual Statistical Reports* for the years 1970-2005.

Table 4: Tracking capacity shortfalls

Year	Number of Inmates	Capacity	Capacity Utilization %
1980	8,243	8969	91.9
1981	9,420	8959	105.1
1982	10,572	8975	117.8
1983	11,798	9451	124.8
1984	13,126	9907	132.5
1985	14,260	10742	132.7
1986	15,227	11048	137.8
1987	16,302	12447	131.0
1988	17,929	12972	138.2
1989	20,490	13825	148.2
1990	22,325	14338	155.7

Table 4. Tracking capacity shortfalls. Source: Pennsylvania Department of Corrections, *1990 Annual Statistical Report* (Camp Hill: Department of Corrections, 1990).

Table 5: County jail average daily population and capacity, 1980-1989

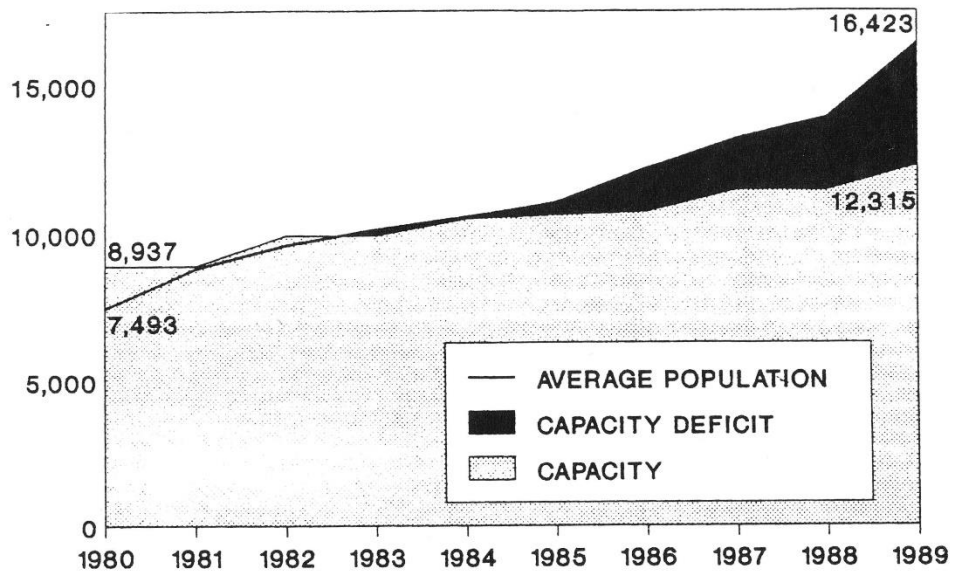


Table 6: Department of Corrections year-end population and capacity, 1980-1989

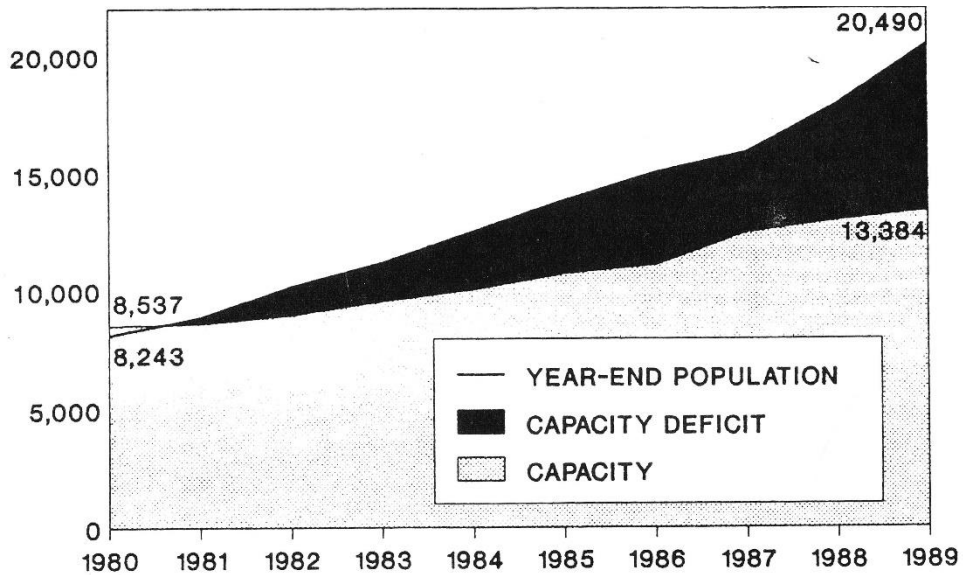


Table 5 and 6. Minding the gap. The discrepancy between actual jail and prison populations compared to actual jail and prison capacity. Source: Reproduced from *Pennsylvania Commission on Crime and Delinquency, Corrections Overcrowding Committee, Containing Pennsylvania Offenders: The Final Report of the Pennsylvania Commission on Crime and Delinquency Corrections Overcrowding Committee* (Harrisburg: PCCD, March 1990), 4-5.

Senior staff in both the Bureau of Correction and the administrations of Gov. Milton Shapp (1971-1979) and Gov. Dick Thornburgh (1979-1987) devoted greater resources to this effort to better understand the state's prison population throughout this period. By the late 1970s, the Pennsylvania Commission on Crime and Delinquency also made understanding the causes of prison overcrowding one of its major priorities. While most researchers, government officials and legislators knew that dealing with overcrowding would involve multiple strategies, they saw prison construction as a major component of any strategy. The research accumulated over the 1970s and early 1980s demonstrated that the increase in prisoners would last for at least a decade before falling and new, harsh sentencing laws would add even more prisoners to the state's already overcrowded system. The research not only buttressed proposals for building new cells, it also highlighted the geographic areas within the state that produced the most court commitments to prison and the areas that where the Bureau often had to move prisoners for activities like court appearances, medical evaluation, education and work release. Among many others. Gov. Thornburgh, his immediate policy advisors and the leadership of the Bureau of Correction believed that any new prison construction designed to deal with overcrowding had to accommodate areas of need in the system and hopefully better facilitate the use of cell space elsewhere in the system.

Consequently, the Thornburgh administration attempted to locate a new prison in the Pittsburgh area, which would assume the tasks of classification for Pennsylvania's western governmental catchment zone and provide sorely mental health treatment for disturbed prisoners. This proposal was key to how the Bureau envisioned managing the swelling prison



population. In addition to the new cell space, the proposed prison would also remove many of the seriously mentally ill prisoners from other prisons, who had begun to cause increasing difficulties for prison staff who, because of recent mental health legislation, could no longer transfer most people to state hospitals. The classification functions of the new prison would also enhance the distribution of prisoners to the appropriate levels of security and reduce the overuse of maximum-security prisons. This strategy soon foundered, however, on resistance from local communities in Pittsburgh who protested the closure and planned conversion of an old state hospital into the new prison. The quest to locate a place for the “missing prison,” in the words of one administration official, spoke to one of the unforeseen problems of prison overcrowding and the strategies designed to address it.<sup>1040</sup>

### **System Analysis, the Pennsylvania Commission on Crime and Delinquency and the Problem of Overcrowding**

From the late 1970s onward, the Pennsylvania Commission on Crime and Delinquency (PCCD), devoted a considerable amount of its resources and time to understanding the causes of prison overcrowding in Pennsylvania’s penal institutions and developing strategies to address them. This project, and the existence of the PCCD itself, originated in the unprecedented, federal interventions into criminal justice policymaking during the 1960s. While crime and law enforcement recurrently appear in state and local politics, they rarely played much of a role in

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<sup>1040</sup> "The Missing Prison," Harold Miller to Rick Stafford, January 19, 1982, Dick Thornburgh Papers, box 265, folder 14: Possible Conversions of Pennsylvania welfare institutions into correctional prison facilities April-October, 1981. UPASC.

national policy debates and electoral campaigns until the 1960s. As a number of scholars have argued, the issues of crime and law enforcement dovetailed with contemporary debates on racial discrimination and civil rights, but as Naomi Murakawa points out, these “foundational years for federal crime politics” were not simply a “backlash” against Great Society liberalism. Rather, they emerged from longstanding strategies of resistance to African American civil rights and in many ways resembled earlier iterations of how crime and punishment articulated white supremacy.<sup>1041</sup>

Viewed in this manner, it is easier to understand why President Johnson’s landslide victory in the 1964 presidential elections failed to diminish the appeal of the issue of crime and law and order rhetoric, which Barry Goldwater and George Wallace had each made a centerpiece of their campaigns.<sup>1042</sup> Johnson and the Democratic-controlled Congress tried to claim this issue, however, by devising an extensive federal crime program to compliment other Great Society anti-poverty initiatives. The Law Enforcement and Assistance Act of 1965, one of the first major pieces of legislation on his matter, established the Office of Law Enforcement Assistance, which distributed federal funds to local law enforcement agencies for crime-fighting

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<sup>1041</sup> Naomi Murakawa, “The Origins of the Carceral Crisis: Racial Order as ‘Law and Order’ in Postwar American Politics” Joseph Lowndes, Julie Novkov, and Dorian Warren (eds.), in *Race and American Political Development* (New York: Routledge, 2008), 234-255, quote 244. Murakawa warns against seeing the nationalization of the problem of crime as sui generis: “The U.S. did not confront a crime problem that was then racialized; it confronted a race problem that was then criminalized.” Ibid, 236.

<sup>1042</sup> In general, see Michael W. Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (New York: Columbia University Press, 2005); Malcolm M. Feeley and Austin D. Sarat, *The Policy Dilemma: Federal Crime Policy and the Law Enforcement Assistance Administration, 1968-1978* (Minneapolis: University of Minnesota Press, 1980); Stuart A. Scheingold, *The Politics of Street Crime: Criminal Process and Cultural Obsession* (Philadelphia: Temple University Press, 1993); Ted Gest, *Crime & Politics: Big Government’s Erratic Campaign for Law and Order* (Oxford: Oxford University Press, 2001); Heather Ann Thompson, “Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History,” *Journal of American History*, 97 (December 2010), 703-734; Elizabeth Hinton, “‘A War within Our Own Boundaries’: Lyndon Johnson’s Great Society and the Rise of the Carceral State,” *Journal of American History*, 102 (June 2015), 100-112.

programs. President Johnson still desired a larger federal role in crime control and established the Commission on Law Enforcement and Administration of Justice in 1965 to study the nature of contemporary crime and law enforcement and build greater support for more extensive legislation.

By 1968, however, the issue of crime had only worsened for President Johnson and liberals, in general. Widely publicized results from national polls showed that many Americans believed crime had increased, and they often equated it with civil rights protests and urban rioting, which had dramatically increased since 1965.<sup>1043</sup> President Johnson's proposed crime legislation, which relied on much of the Commission's work, met stiff resistance from Congressional Republicans and Southern Democrats. Among other things, President Johnson's Congressional opponents objected to the proposed legislation's direct provision of federal, crime-fighting funding to localities through the use of categorical grants.<sup>1044</sup> The administration had used this same funding practice in other Great Society programs as a way to bypass administration opponents in state governments and build coalitions in large urban centers. In its revisions, Congress substituted block grants to state governments for the categorical grants, which removed the direct influence of administration liberals over the use of the funds. It also empowered governors to appoint members to newly created state planning agencies, which decided how to distribute federal crime-control monies.<sup>1045</sup> Ironically, the President's

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<sup>1043</sup> Flamm, *Law and Order*, 124-141; Vesla Mae Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," *Studies in American Political Development*, 21 (Fall 2007), 230-265; Naomi Murakawa, "The Origins of the Carceral Crisis: Racial Order as 'Law and Order' in Postwar American Politics" Joseph Lowndes, Julie Novkov, and Dorian Warren (eds.), in *Race and American Political Development* (New York: Routledge, 2008), 234-255.

<sup>1044</sup> *Ibid.*, 132-135; Feeley and Sarat, *The Policy Dilemma*, 40-49.

<sup>1045</sup> In many states, this meant that suburbs and rural areas, with a greater white population, received a disproportionate amount of money even though they did not have the same problems with crime that urban areas experienced.

Commission also endorsed this method of distributing federal funds, albeit quietly. In their view, the county's law enforcement agencies were deeply fragmented and the lacked the necessary degree of coordination between the police, the courts and corrections agencies to support the development of rational crime control practices.<sup>1046</sup> The Commission's members worried that categorical grants directly to local governments would only exacerbate this problem. Johnson, now a lame-duck president mired in Vietnam and urban riots, grudgingly signed the legislation. The new law expanded the Office of Law Enforcement Assistance, renaming it the Law Enforcement Assistance Agency (LEAA) and created a state-level institutional framework for managing and distributing LEAA funds.

In Pennsylvania, Gov. Raymond Shafer created the Pennsylvania Crime Commission as the state's planning agency for LEAA block grants on the day the Omnibus Crime Control and Safe Streets Act passed.<sup>1047</sup> In 1970, Gov. Shafer created another agency, the Pennsylvania Criminal Justice Planning Board, to exclusively fulfill this task because the Pennsylvania Crime Commission had some potentially conflicting duties.<sup>1048</sup> Upon assuming office in 1971, Gov. Milton Shapp renamed the agency the Governor's Justice Commission.<sup>1049</sup> The central state agency utilized smaller regional planning councils to help evaluate local funding applications, distribute funds and monitor projects undertaken by local law enforcement agencies,

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<sup>1046</sup> Feeley and Sarat, *The Policy Dilemma*, 44-45. See recommendation 280 in President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*. Washington, D.C.: U.S. Government Printing Office, 1967), 301.

<sup>1047</sup> Pennsylvania Commission on Crime and Delinquency, Allegheny Regional Advisory Committee, "Toward a Safer Community: Criminal Justice in Transition, LEAA Program in Allegheny County in the 1970s," vol. IX, book 5, (Allegheny Regional Advisory Committee, December 1980), 2-4.

<sup>1048</sup> Ibid. The Pennsylvania Crime Commission devoted most of its resources toward investigating organized crime and building case for prosecution.

<sup>1049</sup> Ibid., 5

researchers and private criminal justice organizations across the state over the course of the 1970s. Many of the funding recipients included county penal agencies. For instance, Warden William Robinson, the future Pennsylvania Commissioner of Correction, obtained LEAA funding from the Governor's Justice Commission to create and implement a new classification system for the Allegheny County Jail in Pittsburgh.<sup>1050</sup>

While LEAA funding helped launch numerous crime control and treatment programs across the state, it also became a major political resource and point of contention. The fights over appointments to the state agency and regional councils, as well as disputes over funding proposals, soon replicated at the state level many of the concerns over the political use of the crime program that members of Congress and the Johnson administration initially aired during the legislative wrangling over the Omnibus Crime Control and Safe Streets Act.<sup>1051</sup> Gov. Shapp's handling of the Governor's Justice Commission drew criticism and charges of partisanship from people such as U.S. Attorney Dick Thornburgh and later Philadelphia Mayor Frank Rizzo. Mayor Rizzo actually demanded the power to appoint all the members of the Philadelphia regional council.<sup>1052</sup> The central agency and regional councils emerged as new sites for political patronage and internal disputes between factions of the state's Democratic Party, both of which were rife in Pennsylvania during the 1970s.<sup>1053</sup> Even Shapp's Attorney-General, Robert

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<sup>1050</sup> See the material pertaining to this grant and subgrant in Select Committee to Investigate the Administration of Justice, 1973-1974, box 6, folders 296-302. Pennsylvania General Assembly, House of Representatives Archive, Harrisburg.

<sup>1051</sup> Gest, *Crime & Politics*, 24.

<sup>1052</sup> "Capitol Opinion: State's Fight Against Crime in Shambles," *Beaver County Times*, (February 17, 1973).

<sup>1053</sup> For instance, Allegheny County Sherriff Eugene Coon appears to have appealed to Gov. Shapp to remove Democratic rivals from the Allegheny Regional Planning Council. This was especially important to Shapp who as a political outsider had always lacked strong support from the Democratic Party machine. In addition to being the local sheriff, Coon was also the new chairman of the Allegheny Democratic Party, a position which could deliver a lot of Western Pennsylvania votes for the governor. Shapp's interference not only angered the rival Democratic faction, but also many Republican members of the council. The council's chairman, and future governor, Dick

Kane, publicly criticized the governor's use of LEAA funds for a controversial corruption investigation of Philadelphia police, which Shapp abruptly terminated once it appeared a major discrediting exposé was at hand.<sup>1054</sup>

These political disputes at the state and local level underscored two major problems signaled by the President's Commission on Law Enforcement and Administration of Justice. First, the Commission argued that the instructional structure of American criminal justice was deeply fragmented into numerous overlapping and competing agencies. This administrative structure exacerbated conflicts between officials and their respective political interests and local party organizations. This type of conflict was especially pronounced in Pennsylvania. After civil service reforms eliminated most of the state's political patronage positions in the early 1970s, party organizations struggled to find a new currency of political influence to cement coalitions and punish rivals.<sup>1055</sup> Appointments to regional planning councils and funding approvals for crime-control programs provided just this source of legitimate reward. The second problem, related to the first, was that there were not enough experienced personnel in

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Thornburgh, resigned in January 1973 in protest over what he considered blatant patronage politics. See "Coon's Coup: Or the Wages of Politics," *Pittsburgh Post-Gazette*, (December 29, 1972); "Staisey Turns Down Anti-Crime Position: 'Mired in Politics,' He Tells Shapp," *Pittsburgh Post-Gazette*, (January 9, 1973); "Shapp Names Stokes Justice Panel Chief," *Pittsburgh Post-Gazette*, (January 19, 1973); "Stokes and Public Confidence," *Pittsburgh Post-Gazette*, (January 19, 1973); "Capitol Opinion: State's Fight Against Crime in Shambles," *Beaver County Times*, (February 17, 1973); "Thornburgh Rips Shapp Handling of Crime Fight," *Pittsburgh Press*, (January 25, 1974).

<sup>1054</sup> Philip S. Klein and Ari Hoogenboom, *A History of Pennsylvania*, 2nd ed., (University Park: Pennsylvania State University Press, 1980), 532-533.

<sup>1055</sup> Consultant contracts formed another prominent source of political reward after the decline of more traditional sources of political patronage. "Pennsylvania's Assembly: How It Is Out of Control," *Philadelphia Inquirer*, (September 10, 1978); "How Your Tax Dollars Reward the Party Faithful," *Philadelphia Inquirer*, (September 11, 1978); "Life on the Expense Account: A Guide to Chiseling," *Philadelphia Inquirer*, (September 12, 1978); "The Scheme: Scholarships as Patronage," *Philadelphia Inquirer*, (September 15, 1978); "Ethics? Pennsylvania's Legislators Ignore a Code," *Philadelphia Inquirer*, (September 17, 1978); Sidney Wise, *The Legislative Process in Pennsylvania* (Harrisburg: Bipartisan Management Committee, House of Representatives, Commonwealth of Pennsylvania, 1984), 11-19.

the states who could serve in planning agencies, evaluate crime control programs, craft comprehensive plans and successfully manage large federal funds.<sup>1056</sup> Federal officials worried that many members of state planning agencies and regional councils would only represent the views and financial desires of their respective law enforcement agencies (police departments were usually overrepresented) or political coalitions rather than approaching the problem of crime in a systemic or holistic manner.<sup>1057</sup> In short, the Commission worried that the project of criminal justice planning suffered from a lack of competent professionals, the influence of parochial interests and a labyrinth of bureaucracies and programs.

President Johnson and his Democratic allies in Congress may have failed to nationalize crime control in the way that they had envisioned, but the nature of administrative fragmentation and the desire for greater standardization became a central concern throughout the administration of criminal justice.<sup>1058</sup> These problems – more problems of the proper government of crime than crime itself – revealed a preoccupation with the nature of order, interconnections and cohesive action common in contemporary systems analogies and thinking. Historian Howard Brick has noted that such systems-oriented understandings of nature and society “appeared promiscuously throughout elite culture” during the 1960s, after gaining influence in government and the academy during massive mobilizations of World War

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<sup>1056</sup> Gest, *Crime & Politics*, 24-25.

<sup>1057</sup> *Ibid.*, 21-25.

<sup>1058</sup> In this regard, they succeeded as much as their conservative counterparts, in making crime a national issue. Of course, they framed the problem in different ways with different casual forces and solutions, but the idea that institutional fragmentation frustrated the effectiveness of criminal justice policies was remarkably flexible and amenable to the policies of both Democrats and Republicans alike. As Nikolas Rose and Peter Miller argue, “programmes of government” elaborate problems and instantiate objects of action. “They make the objects of government thinkable in such a way that their ills appear susceptible to diagnosis, prescription and cure by calculating and normalizing intervention.” Nikolas Rose and Peter Miller, “Political Power beyond the State: Problematics of Government,” *British Journal of Sociology*, 43 (June 1992), 173-205, quotes 181, 183.

II.<sup>1059</sup> For criminal justice reformers and planners, this problem construction placed a premium on research, knowledge and pragmatic interventions that addressed how best to conceptualize and overcome the hurdles of administrative fragmentation.

This type of criminal justice knowledge and problemization came from a new set of experts who were neither well-versed in the sociological or criminological traditions nor knowledgeable about the practice of penology. Yet, the federal government's attempt to nationalize the issue of crime empowered these experts whose synoptic, pragmatic knowledge made them invaluable technical analysts and planners. Chief among these new intellectuals was Dr. Alfred Blumstein, a member of the President's Commission on Law Enforcement and Administration of Justice, who became increasingly influential in Pennsylvania during the 1970s and 1980s. Blumstein did not originally work on criminal justice issues, but the reputation of his work in operations research and systems analysis for the military brought him to the attention of Department of Justice officials who perceived the usefulness of a similar systematic approach to crime control. This led to Blumstein's appointment to the President's Commission where he became the Director of the Science and Technology Task Force.<sup>1060</sup> In Chapter 11 of *The*

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<sup>1059</sup> Howard Brick, *Age of Contradiction: American Thought and Culture in the 1960s* (Ithaca: Cornell University Press, 2000), 124-145, quote 126.

<sup>1060</sup> Before joining the President's Commission, Blumstein was the Director of the Office of Urban Research at the Institute for Defense Analyses, a national security, non-profit think-tank in Virginia. Carnegie Mellon University Heinz College faculty website for Alfred Blumstein [http://www.heinz.cmu.edu/faculty-and-research/faculty-profiles/faculty-details/index.aspx?faculty\\_id=9](http://www.heinz.cmu.edu/faculty-and-research/faculty-profiles/faculty-details/index.aspx?faculty_id=9); For representative early works see President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: U.S. Government Printing Office, 1967), especially Chapter 11 "Science and Technology," 245-272; Alfred Blumstein, *A National Program Of Research, Development, Test And Evaluation on Law Enforcement and Criminal Justice* (Arlington: Institute of Defense Analysis, 1968); Alfred Blumstein, "A Model to Aid in Planning for a Total Criminal Justice System" in Leonard Oberlander (ed.), *Quantitative Tools For Criminal Justice Planning* (Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, 1975), 129-161; Alfred Blumstein and Richard Larson, "Models of Total Criminal Justice System," *Operation Research*, 17 (March-April 1969), 199-232.



*Challenge of Crime in a Free Society*, Blumstein and his staff advocated a greater use of the insights of systems analysis and operation research to understand the interrelationship between criminal justice entities and how deficits of coordination and integration between these sites contributed to haphazard and ineffective crime-control policies. Blumstein’s Task Force produced one of the most lasting artifacts of the Commission, a famous flowchart, representing the many different agencies and temporal stages of governing crime as an integrated criminal justice system (Figure 4.1). Authors and officials often abbreviated this institutional formation as the “CJS.”

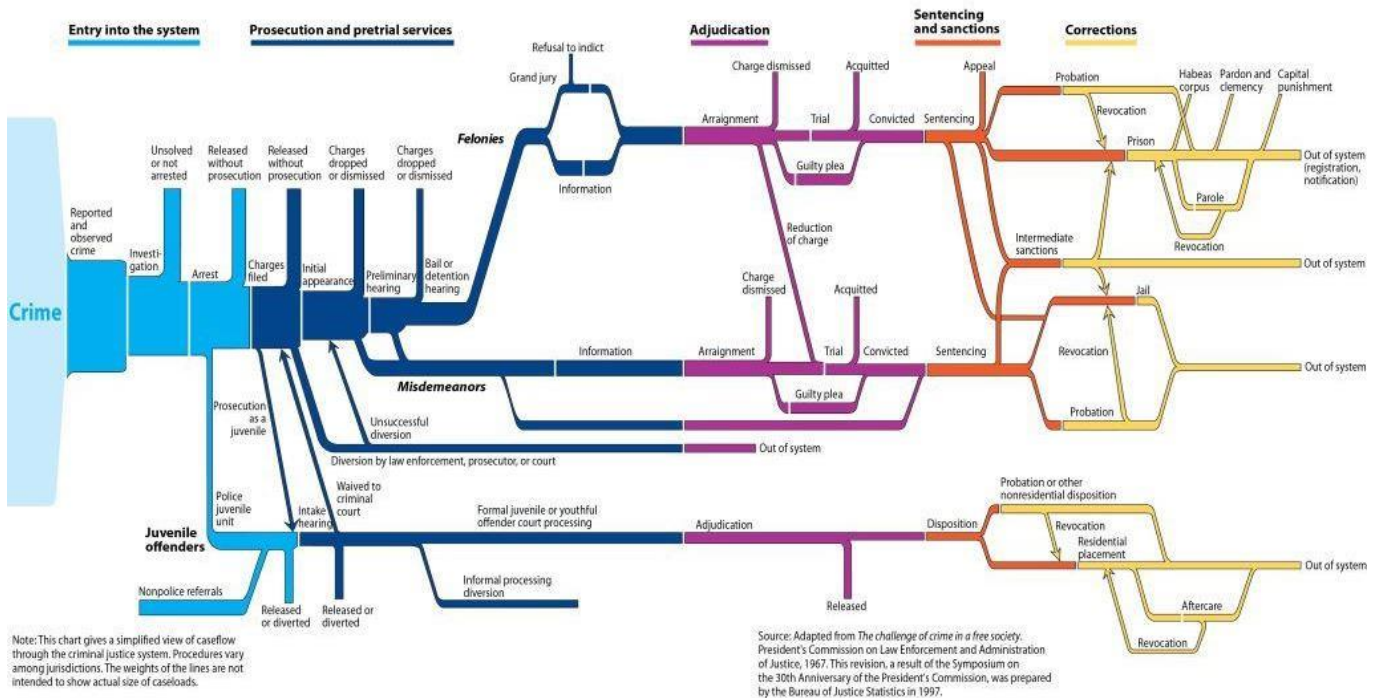


Figure 13: Sequences of events in the criminal justice system

Figure 13. Systems analysis representation of the criminal justice system and its temporal sequence. Source: Bureau of Justice Statistics. Available at <http://www.bjs.gov/content/justsys.cfm#contents>.

This flowchart was a crucial intellectual tool in Blumstein's approach to the problems of criminal justice, including prison overcrowding. In major works funded by the President's Commission and later the LEAA, Blumstein and several of his colleagues introduced numerous similar models representing criminal justice agencies as an interrelated, if not well-integrated, system in which "units of flow" (i.e. arrestees, defendants, prisoners) passed through various processing stages (such as the courts, prison, and parole) incurring certain amounts of work and cost at each stage.<sup>1061</sup> Using these models, Blumstein and his colleagues sought to demonstrate how some of the persistent problems in the criminal justice administration could be addressed by tracing the impact of multiple decisions at different stages along this process. This was a crucial intervention. It not only established a generic model of evaluation and analysis, but through repetition and enactment in various programs, it brought the "criminal justice system" into being as a coherent, institutional object to be studied and acted upon. This is not to say the various criminal justice institutions ever closely resembled the models in the work of Blumstein and his colleagues, either alone or as a group, but the ascendance of such models authorized certain understandings and interventions, precluded others, and eventually pulled the entire field of criminal justice toward greater integration. In terms of how state officials allocated resources and prioritized certain penological goals, it did not matter much that police, courts,

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<sup>1061</sup> Some representative work includes, but is not limited to, Alfred Blumstein and Jacqueline Cohen, "A Theory of the Stability of Punishment," *Journal of Criminal Law, Criminology and Police Science*, 63 (June 1973), 198–207; Jacob Belkin, Alfred Blumstein and William Glass, "Recidivism as a Feedback Process: An Analytical Model and Empirical Validation," *Journal of Criminal Justice*, 1 (March 1973), 7-26; Jacqueline Cohen, Kenneth Fields, Michel Lettre, Richard Stafford and Claire Walker, "Implementation of the JUSSIM Model in a Criminal Justice Planning Agency" *Journal of Research in Crime and Delinquency*, 10 (July 1973), 117-131; Alfred Blumstein, Jacqueline Cohen and Daniel Nagin, "The Dynamics of a Homeostatic Punishment Process," *Journal of Criminal Law and Criminology*, 67 (July 1976), 317–334; Alfred Blumstein and Daniel Nagin, "On the Optimum Use of Incarceration for Crime Control," *Operations Research*, 26 (May-June 1978), 381-405; Alfred Blumstein, Jacqueline Cohen and Harold Miller, "Demographically Disaggregated Projections of Prison Populations," *Journal of Criminal Justice*, 8:1 (1980), 1-26.

social welfare organizations, jails, prisons and hospitals were not the coherent formation desired by planners. In fact, this deficit actually propelled greater discursive elaboration and action along this line of thought.

By the early 1970s, Blumstein had moved to Pittsburgh from Virginia and became the director of the Urban Systems Institute at Carnegie Mellon University. While he and several of his co-authors still produced reports for national criminal justice audiences based on national data sources, they also began highly detailed empirically studies of Pennsylvania's criminal justice agencies and even those located in Allegheny County.<sup>1062</sup> One of Blumstein's primary areas of interest was in developing practical tools for criminal justice planning agencies to evaluate newly proposed programs. He saw prediction and modeling tools as especially useful for understanding the relationships of prison populations to other institutional areas and the forces affecting their fluctuation over time. The first major product of the research undertaken by Blumstein and his colleagues was a computer program, the Justice Simulation (JUSSIM), that enabled state planners to establish a baseline of the current costs and workloads of a set of integrated criminal justice agencies, then project the consequences of policy changes.<sup>1063</sup>

In several versions of the JUSSIM program and a host of other models, these researchers largely conceptualized the process of flow in a unidirectional fashion. This was a common motif in operations research in other areas of government and industry. Effects of actions on one stage became noticeable in subsequent stages, eventually accumulating into major problems

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<sup>1062</sup> Pittsburgh is located in Allegheny County.

<sup>1063</sup> Alfred Blumstein, Jacob Belkin and William Glass, "JUSSIM, An Interactive Computer Program for Analysis of Criminal Justice Systems," (Report of the Urban Systems Institute, School of Urban and Public Affairs, Carnegie Mellon University, Pittsburgh, PA, 1971); Alfred Blumstein, "Crime Modeling," *Operations Research*, 50 (January - February, 2002), 16-24.

toward what would appear to be "the end" of the criminal justice apparatus. Blumstein and his colleagues knew the unidirectional flow of their models potentially limited their use, but they had difficulty in conceptualizing actions that escaped this predominate direction of flow. Conceiving such issues as "upstream" problems or the products of "feedback loops" drew attention to these difficulties, but still maintained most of the focus on the production of "downstream" effects.<sup>1064</sup> Blumstein advocated an intervention strategy that stressed changing the behavior of actors located institutionally further upstream. As the flowchart in Figure 1 indicates, the agencies at the end of the process were in the area of Corrections. Blumstein's expertise and the knowledge he and his colleagues produced, therefore, held particular relevance for the study of systemic problems originating in other areas of the criminal justice system, which later affected prisons. Despite this targeting of decision points along a chain of interconnected "people-processing organizations,"<sup>1065</sup> the work of Blumstein and his colleagues often treated this topic like a natural process. The hard work of changing the behavior of bureaucrats or the political and ethical struggles over policies and law enforcement tactics at times appeared in these studies more like the technical decisions of dam or canal construction – the task at hand was to locate the best points from which to hinder or redirect the river of people flowing through criminal justice agencies.<sup>1066</sup>

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<sup>1064</sup> While systems analysis is often criticized for its technical or mechanical conceptualizations of social phenomenon, the prominence of terms like "flow," "upstream" and "downstream" also point to naturalistic understandings.

<sup>1065</sup> Yeheskel Hasenfeld, "People Processing Organizations: An Exchange Approach," *American Sociological Review*, 37 (June 1972), 256-263.

<sup>1066</sup> In a similar vein, Zimring and Hawkins have written about the correctional forecasting experts approaching their work on "prison population as though it were a natural phenomenon like rainfall totally beyond the control of policy agencies." Franklin E. Zimring and Gordon Hawkins, *The Scale of Imprisonment* (Chicago: University of Chicago Press, 1991), 62.

Several of Blumstein's colleagues affiliated with the Urban Systems Institute used the JUSSIM computer program to help evaluate the effects of new policies on a series of agencies they identified as the Allegheny County Criminal Justice System. One of their first areas of analysis was to project changes to the detentioner population in the Allegheny County Jail if greater information was available to judges in making their decisions on granting bail.<sup>1067</sup> In a 1973 article on the project for the *Journal of Research in Crime and Delinquency*, the lead author, Jacqueline Cohen, and the rest of the project team argued that the use of JUSSIM in situations like this could actually reduce the harm of incarceration to many people while also saving the county a large amount of money by highlighting intervention points in upstream areas to reduce the jail population.<sup>1068</sup>

Perhaps just as importantly, they extolled the depoliticizing effects of adopting a system analysis approach and tools like JUSSIM for program evaluation and planning. Cohen and her co-authors argued that the planning agencies created by the Omnibus Crime Control and Safe Streets Act were inherently political and often consisted of representatives of opposing law enforcement agencies.<sup>1069</sup> Proposals for new programs invariably generated conflicts between advocates and opponents, but also often created a third group of neutral committee members who, according to the essay's authors, were "much more sensitive to the empirical issues of any particular proposal."<sup>1070</sup> The JUSSIM program and systems analysis, in general, would empower this group, reduce political stalemates and facilitate the flow of funding to the

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<sup>1067</sup> Cohen, Fields, Lettre, Stafford and Walker, "Implementation of the JUSSIM," 126-129.

<sup>1068</sup> Ibid., 128-129.

<sup>1069</sup> Ibid., 129-131.

<sup>1070</sup> Ibid., 130.

most meritorious programs. The fruits of the project soon became incorporated into the Allegheny Regional Planning Council, which hired a fulltime staff member who was proficient in the use of JUSSIM.<sup>1071</sup> This project further embedded the systems analysis problem conceptualizations, modeling and planning tools into, not only this specific regional council, but also later the Governor's Justice Commission. It also emphasized the benefits of approaching these problems from a deliberately apolitical, technocratic perspective. During a time when scandals, corruption and accusations of illicit patronage were rife in state and local government, such a position held a great deal of appeal for people who sought to fundamentally reshape criminal justice policy and "clean up" government, like U.S. Attorney Dick Thornburgh, a rising influence in Pennsylvania's Republican Party.

The influence of system analyses in criminal justice policymaking in Pennsylvania, especially in the area of corrections, also grew from the mid-1970s because of the declining faith in rehabilitation and the concurrent rise of concerns about security, resource allocation and labor relations. By 1974, Pennsylvania's Bureau of Correction was mainly trying to defend and consolidate some of its community corrections programs while tightening security practices throughout its institutions. Major initiatives in the name of rehabilitation or reintegration had largely become a thing of the past. Gov. Shapp's dismissal of Stuart Werner, the liberal Commissioner of Correction, in 1975 effectively brought to an end the introduction of new innovative reintegration programs that had commenced in the last few years of Arthur Prasse's tenure and continued through much of Allyn Sielaff and Werner's leadership. Many people in the legislature, media and criminal justice fields interpreted Shapp's appointment of the more

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<sup>1071</sup> Ibid., 131.

conservative William Robinson a few months later as a penological retrenchment, if not outright disavowal, of the reforms introduced by Robinson's predecessors.<sup>1072</sup>

In addition, prison populations in the Bureau of Correction began to rise every year by the mid-1970s, matching a trend that was already occurring in many of the state's county jails. The rapid growth of incarcerated populations strained the resources of the Bureau of Correction and county penal agencies, including personnel, as hiring did not keep pace with prison population growth. This diluted the level of supervision by guards and service provision by other staff, which increased security problems, like drug-trafficking, assaults and idleness. As institutional living and working conditions declined, the threat and reality of both judicial intervention and labor strife increased. This placed additional emphasis on population management, stretching correctional budgets and maintaining institutional order - all of which were more amenable to governance with the type of systematic, synoptic knowledge being produced by Alfred Blumstein and his colleagues.

In 1978, the Republican, Dick Thornburgh, defeated former Pittsburgh Mayor Pete Flaherty in Pennsylvania's gubernatorial election. Thornburgh, a former prosecutor, campaigned explicitly on a law and order and anti-corruption platform, attacking the record of both the Shapp administration and the Democratic-controlled General Assembly for their unwillingness to clamp-down on both malfeasance and street crime.<sup>1073</sup> Upon assuming office,

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<sup>1072</sup> "News Conference by Governor Milton J. Shapp Concerning the Bureau of Correction," July 23, 1975. MG-309 Gov. Milton J. Shapp Papers, 1971-1979, box 26, folder 11. PSA; "Warden Named Corrections Head," *Beaver County Times*, (July 24, 1975); "The Choice of Mr. Robinson," *Pittsburgh Post-Gazette*, (August 7, 1975).

<sup>1073</sup> "The Republican Challenge...in Pennsylvania: An Address by Richard L. Thornburgh to the Republican City Committee," Bethlehem, Pennsylvania, Tuesday, November 1, 1977. Dick Thornburgh Papers, box 56, folder 6. UPASC: "Media Wars: 2 Candidates in Search of an Image," *Philadelphia Inquirer*, (October 2, 1978); "Thornburgh Beats Flaherty for Governor in Upset," *Philadelphia Inquirer*, (November 8, 1978); "Pennsylvania's Voters Demand and Get a Change," *Philadelphia Inquirer*, (November 9, 1978).

Thornburgh pursued a number of major crime control policies and assembled a close circle of advisors in the Governor's Office, including many researchers from Carnegie Mellon's Urban System Institute. Alfred Blumstein joined the administration as Thornburgh's choice for the first Chairman of the newly created Pennsylvania Commission on Crime and Delinquency (PCCD), which succeeded the Governor's Justice Commission.<sup>1074</sup> Several of Blumstein's students and co-authors followed him into state government or found receptive audiences for their work with administration officials. Jacqueline Cohen, Daniel Nagin, Richard Stafford and Harold Miller co-authored several reports, working papers, and peer-reviewed journal articles that became very influential in the Thornburgh administration's criminal justice planning.<sup>1075</sup> Miller, Nagin and Stafford joined the Thornburgh administration as trusted advisors holding key positions as the Director of the Office of Planning and Policy (Miller), Deputy Secretary for Fiscal Policy and

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<sup>1074</sup> An Act establishing the Pennsylvania Commission on Crimes and Delinquency, providing for its powers and duties establishing several advisory committees within the commission and providing for their powers and duties. House Bill 1333, Regular Session 1977-1978, signed into law as Act of November 22, 1978, P.L. 1166, No. 274; "Revamping Crime Funds Allocator," *Beaver County Times*, (October 1, 1978); Pennsylvania House of Representatives. *Legislative Journal*. 162nd Session of the General Assembly. vol.1, no.47. (Wednesday, September 27, 1978), 3365-3367. Changes in federal law required each state to reconstitute their state planning agencies through legislative statute rather than executive authority if they wished to continue receiving federal funds from LEAA. While the new agency continued administrating funds from LEAA, it was also more independent from the direct control of the attorney-general and governor. This had not previously been the case with the Governor's Justice Commission, which had gained the reputation of being political tool of Attorney-General Robert Kane who had direct control over funding and appointments to the agency's regional boards. After years of corruption scandals during the governorship of Milton Shapp, the independence of the new PCCD gave it a greater degree of public legitimacy and the appearance of non-partisan expertise. Similarly, the Attorney-General's office became elective in 1980 if an effort enhance the position's accountability to the public.

<sup>1075</sup> See, for instance, Cohen, Fields, Lettre, Stafford and Walker, "Implementation of the JUSSIM Model in a Criminal Justice Planning Agency"; Blumstein, Jacqueline Cohen and Daniel Nagin, "The Dynamics of a Homeostatic Punishment Process"; Blumstein and Nagin, "On the Optimum Use of Incarceration for Crime Control"; Blumstein, Cohen and Miller, "Demographically Disaggregated Projections of Prison Populations"; Alfred Blumstein, Jacqueline Cohen and Daniel Nagin (eds.), *Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates* (Washington, D.C.: National Academy of Science, 1978); Alfred Blumstein, Jacqueline Cohen and Harold Miller, "Crime, Punishment and Demographics," *American Demographics*, 2 (October 1980), 32-37; Harold D. Miller, "Projecting the Impact of New Sentencing Laws on Prison Populations," *Policy Sciences*, 13 (February 1981), 51-73; Sherwood E. Zimmerman and Harold D. Miller, *Corrections at a Crossroads: Designing Policy* (Beverly Hills: Sage, 1981); Alfred Blumstein and Jacqueline Cohen, "Sentencing of Convicted Offenders: An Analysis of the Public's View," *Law and Society Review*, 14 (Winter 1980), 223-261.



Analysis in the Pennsylvania Department of Revenue (Nagin), and the Secretary of Legislative Affairs (Stafford).<sup>1076</sup>

Together, these experts brought with them a set of penological assumptions and knowledge practices that complimented Dick Thornburgh's reputation as a stern prosecutor and advocate for more retributive sentencing and punishment practices. By the time Gov. Thornburgh assumed office, the commitment to rehabilitation among correctional professionals nationwide had significantly deteriorated. Thornburgh and his staff viewed this moment as a major departure and hoped to fundamentally reorient all major aspects of Pennsylvania's penal policy, from sentencing, to corrections, to parole. The title of a collection of essays, co-edited by Harold Miller, the director of Thornburgh's Office of Planning and Policy, aptly described this moment as *Corrections at a Crossroads*.<sup>1077</sup>

This view was hardly isolated to Thornburgh and his immediate advisors. Legislators from both parties proposed a series of new sentencing laws from the mid-1970s onward designed to reduce sentencing variations, increase penalties and lengthen the actual time many offenders spent behind bars. In 1976, both houses of the General Assembly embarked on a major legislative effort to create mandatory-minimum sentences for a range of serious offenses. A bill in the House of Representatives to increase legal protection for people whose leased property was stolen morphed of several revisions into a vehicle for increasing penalties

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<sup>1076</sup> Stafford, who had been a major figure in Thornburgh's gubernatorial campaign, would become one of the governor's most trusted advisors, the "majordomo of our internal think tank," as Thornburgh would later describe him in his memoirs. Dick Thornburgh, *Where the Evidence Leads: An Autobiography* (Pittsburgh: University of Pittsburgh Press, 2003), 76, 101-102, 108 quote, 113.

<sup>1077</sup> Zimmerman and Miller, *Corrections at a Crossroads*.

for other offenses, including robbery, arson and rape.<sup>1078</sup> The Senate and House eventually targeted the bill toward creating longer sentences for habitual felons, but it failed to reach a vote in the House, with too many members fearing what one source reported as an estimated \$28 million price tag for the expected increase in prison populations.<sup>1079</sup> The following year the General Assembly enacted, with Gov. Shapp's signature, a new law increasing penalties for the production and distribution of illegal drugs. The law also instated a sentencing commission, which was tasked with developing sentencing guidelines to reduce the disparity of sentences and the discretion of judges.<sup>1080</sup> Despite their disagreements about the best way to reform sentencing, most members of the Republican and Democratic caucuses in the General Assembly agreed that the state's longstanding indeterminate sentencing structure and discretion afforded to judges and parole boards needed to be curtailed. While some more liberal representatives hoped this could potentially reduce prison populations, most legislators and officials in the incoming administration desired exactly the opposite.

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<sup>1078</sup> Compare the earlier versions of the bill, An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, Senate Bill No. 995, Session of 1975, printer no. 1172, 1836, 2123, 2135 and the final version 2224. See also Pennsylvania General Assembly Senate, "Senate Democratic Wrap-Up for the 1975- 1976 Legislative Session," Available at <http://www.pasenate.com/session-information-2/legislative-review>. Last checked on July 14, 2015.

<sup>1079</sup> Pennsylvania General Assembly Senate, "Senate Democratic Wrap-Up for the 1975- 1976 Legislative Session"; Sam McClea, *Staff Report on the Use and Impact of Mandatory Sentencing in Pennsylvania* (Harrisburg: House of Representatives, Committee on the Judiciary, 1976).

<sup>1080</sup> An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for sentencing and providing for alteration of identification marks on personal property. Senate Bill 195, Regular Session 1977-1978, signed into law as Act of November 26, 1978, P.L.1316, No.319; An Act amending the act of April 14, 1972 (P. L. 233, No. 64), entitled "The Controlled Substance, Drug, Device and Cosmetic Act," further providing for certain schedules of controlled substances. Senate Bill 1425, Regular Session 1977-1978, signed into law as Act of Nov. 26, 1978, P.L.1392, No.328. See also Susan E. Martin, "The Politics of Sentencing Reform: Sentencing Guidelines in Pennsylvania and Minnesota" in Alfred Blumstein, Jacqueline Cohen, Susan E. Martin, and Michael H. Tonry (eds.), *Research on Sentencing: The Search for Reform*, v. 2, (Washington, DC: National Academy Press, 1983), 265-304; John H. Kramer and Cynthia Kempinen, "History of Pennsylvania Sentencing Reform," *Federal Sentencing Reporter*, 6 (November-December 1993), 152-157; John H. Kramer and Jeffery T. Ulmer, *Sentencing Guidelines: Lessons from Pennsylvania* (Boulder: Lynne Rienner Publishers, 2009), 13-39.

In 1979, the newly elected Thornburgh ignored the sentencing commission, preferring instead to push his own mandatory minimum sentencing bill through the legislature.<sup>1081</sup> The governor and his team rolled out a large public information campaign with a new sentencing proposal and Thornburgh, himself, gave numerous speeches and interviews about the mandatory-minimum proposal. In many of his remarks, Thornburgh drew upon the civil rights discourse, identified with victims, and tried to harness public fear and vindictiveness. In his words, the new sentencing reform was:

Designed to put fear to work for the citizen and not for the criminal. Designed to insure that first civil right that all of us are entitled to, the right to be free from fear in our homes, on our streets and in our communities.<sup>1082</sup>

The governor's proposal required five year minimum imprisonment terms for crimes involving a firearm, repeat violent offenders, and crimes committed on or near public transportation.<sup>1083</sup>

People convicted of a third violent offense would automatically receive a sentence of life imprisonment.<sup>1084</sup> Thornburgh also attacked discretionary forms of release. He discontinued

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<sup>1081</sup> "Thornburgh Seeks Major Changes in Sentencing," *Pittsburgh Press*, (April 28, 1981); Kramer and Ulmer, *Sentencing Guidelines*, 18-19, 33-34.

<sup>1082</sup> "in Pittsburgh State Committee GOP Dinner," 8-9. Republican State Committee, Pittsburgh, PA, October 28, 1981. Dick Thornburgh Papers. UPASC. Available at: <http://digital.library.pitt.edu/cgi-bin/t/text/pageviewer-idx?c=thornspeeches;cc=thornspeeches;g=thorntext;xc=1;yg=1;q1=crime%20package;op2=and;idno=AIS9830.11.01.0117;rgn=full%20text;didno=AIS9830.11.01.0117;view=pdf;seq=0001>. Last checked July 16, 2015. These themes of putting fear to work for the citizen and the first civil right being freedom from the fear of crime ran throughout numerous speeches and public statements by Thornburgh. He repeats them again in his memoirs. See Thornburgh, *Where the Evidence Leads*, 157.

<sup>1083</sup> The statute defined violent offenses as third degree murder, voluntary manslaughter, involuntary deviate sexual intercourse, robbery, aggravated assault and kidnapping or attempts to commit any of these. Senate Bill 1081 P.N 1515, Session of 1981, An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the imposition of certain mandatory sentences. Available at: <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=1981&sind=0&body=S&type=B&bn=1081>. Last viewed on July 7, 2015.

<sup>1084</sup> *Ibid.*

the practice of granting pardons to people serving life sentences and advocated abolishing the current parole system altogether.<sup>1085</sup>

As part of their work on the mandatory minimum legislation, Thornburgh's team of policy analysts focused on trying to understand fluctuations in prison populations and forecasting their future growth. This departed from the approach taken by the independent Pennsylvania Sentencing Commission. While the Commission's end product was surely going to result in greater prison commitments and lengthier sentences, the agency's enabling legislation actually avoided consideration of prison capacity in devising the new sentencing guidelines.<sup>1086</sup> Gov. Thornburgh's policy team, however, tied the mandatory minimum legislation to a funding provision for additional prison construction based on their best estimates about the growth of the state's prison population. Thornburgh and his staff claimed that doing so would minimize prison overcrowding caused by the sentencing changes and avoid federal litigation of prison conditions. To do otherwise, they argued, would have simply been "irresponsible."<sup>1087</sup>

In their campaign for the new crime legislation, however, Thornburgh and administration officials avoided discussing the Bureau of Correction's current shortfall of prison space. Early internal drafts of press releases directly acknowledged that the state's prisons were

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<sup>1085</sup> "Governor Asks Many Reforms: Tough Penal Code, Welfare Head List," *Pittsburgh Press*, (October 2, 1979); "Thornburgh: Reform Welfare, End Parole," *Pittsburgh Post-Gazette*, (October 3, 1979); "Judges, DA: Don't Abolish Parole," *Pittsburgh Press*, (October 7, 1979); "Twilight for Parole?" *Pittsburgh Press*, (October 10, 1979); "Reasons Behind Ending Parle," *Beaver County Times*, (October 19, 1979); "End to Parole Sought," *Beaver County Times*, (March 25, 1980); "Parole End, Long Terms Key Jail Reform Plan," *Beaver County Times*, (April 29, 1981); "State House Turns Down Prison, Parole Reforms," *Pittsburgh Post-Gazette*, (November 24, 1982); "Parole Reform Proposed," *Observer-Reporter*, (November 15, 1982); "Thornburgh Gets Tough on Lifers," *Bulletin*, (August 17, 1980); "Clemency's Not to Be Taken for Granted," *Philadelphia Daily News*, (June 23, 1982); "Pardons Cuts Sharply Under Thornburgh," *Pittsburgh Post-Gazette* (September 13, 1982); Dick Thornburgh Papers, box 267, folders 13-15: Section: Board of Pardons' Executive Clemency Policies. UPASC.

<sup>1086</sup> Kramer and Ulmer, *Sentencing Guidelines*, 17-18, 27, 34.

<sup>1087</sup> Information of Governor Thornburgh's Crime Package, Dick Thornburgh Papers, box 264, folder 40. UPASC. See also "Crime and the Commonwealth," *Pittsburgh Post-Gazette*, (May 19, 1981).

overcrowded, but this format never reached the press. Gov. Thornburgh's edited version of the draft eliminated any mention of overcrowding, his red pen marks completely crossing out a section titled, "How Serious Is Overcrowding in the State Prison System?"<sup>1088</sup> In public statements about sentencing legislation, overcrowding was a potential future problem that the administration wisely sought to avoid with additional prison construction. Dwelling on the issue in the present or in relation to the mandatory minimum bill would only hand ammunition to administration critics.

Yet, forecasting the size of prison populations and their future change was both a relatively new endeavor and speculative at best. Frank Zimring and Gordon Hawkins note in their study on the "scale of imprisonment" that correctional forecasting only became common in the 1970s as the object of study - prison populations - began to rise for several consecutive years.<sup>1089</sup> Correctional authorities in many jurisdictions tried to project their future prison space needs with simple linear models, which assumed the continuation of readily observable trends in a small sample of immediately preceding years. These models had limited value since they were basically static and had no way of accounting for any change in the trends used in crafting them.<sup>1090</sup> More sophisticated models soon appeared, but this emerging body of research was still limited as it usually only tried to analyze the effects of specific pieces of sentencing

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<sup>1088</sup> Information of Governor Thornburgh's Crime Package, Dick Thornburgh Papers, box 264, folder 35. UPASC; Personal communication with Nancy Watson, the curator of Dick Thornburgh's papers at the University of Pittsburgh and a personal friend of the former governor. Watson informed me that red pen editing on policy papers indicated that they were Thornburgh's. He was the only one among the administration's policy development team that used a red pen. This served as a way to identify the governor's edited drafts.

<sup>1089</sup> Franklin E. Zimring and Gordon Hawkins, *The Scale of Imprisonment* (Chicago: University of Chicago Press, 1991), 62-67.

<sup>1090</sup> *Ibid.*, 66-67.

legislation in isolation from other factors that affected the size of prison populations.<sup>1091</sup> By the time the Thornburgh administration began serious work on this issue, correctional forecasting was a clearly a nascent science at best, with few models and a scant research literature.

Nevertheless, a branch of the research program pursued by Alfred Blumstein and his colleagues at Carnegie Mellon's Urban System Institute dealt with historical variations in the size of prison populations and incarceration rates. Drawing on national imprisonment statistics (and later more detailed data from Pennsylvania), Blumstein and his student researchers at Carnegie Mellon published a series of articles in the 1970s in which they argued that incarceration rates in the United States for most of the 20th century fluctuated within a narrow range, always returning to a mean rate of around 110 prisoners per 100,000 people. They theorized that various criminal justice agencies behaved in a self-regulating manner over time, which maintained the level of incarceration with an acceptable, societal norm.<sup>1092</sup> According to this homeostatic theory of imprisonment, jurisdictions might differ from each other in terms of this mean level of incarceration, but these levels reflected the stable norm for that jurisdiction.

It was clear by the late 1970s, however, that the country's prison population as a whole, and those in many state systems, had grown well beyond the historical norm identified by Blumstein and his colleagues. At first glance, this unprecedented growth would seem to have contradicted this model, but the researchers suggested this growth actually marked a shift to a new stable level, which was still in progress. Since they only focused their analysis on periods of

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<sup>1091</sup> Ibid., 67-84; See also the criticism of existing models in Blumstein, Cohen and Miller, "Demographically Disaggregated Projections of Prison Populations"; Miller, "Projecting the Impact of New Sentencing Laws on Prison Populations."

<sup>1092</sup> See Alfred Blumstein and Cohen, "A Theory of the Stability of Punishment"; Blumstein, Cohen and Nagin, "The Dynamics of a Homeostatic Punishment Process."

relative stability, they portrayed spikes and dips in the use of incarceration as anomalous and unworthy of detailed analysis or explanation.<sup>1093</sup> Perhaps the most glaring weaknesses of these articles was they provided almost no discussion of what was driving the increase in the number of prisoners.<sup>1094</sup> Even the precise nature of the mechanisms of system stabilization, which corrected prison populations back to a mean, were more assumed to exist than actually explicated.<sup>1095</sup>

By the late 1970s, the same researchers, now closely affiliated with the Pennsylvania state government, sought to address the reasons for the growth of the state's prison population while estimating how anticipated changes in sentencing would effect this pre-existing trend. Alfred Blumstein, Harold Miller, Jacqueline Cohen, Rick Stafford and Daniel Nagin, among others, published many of these studies in public policy and criminology journals.

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<sup>1093</sup> Zimring and Hawkins, *The Scale of Imprisonment*, 24-29, 35-37.

<sup>1094</sup> At the time Blumstein and his colleagues produced these articles, a transformative debate was raging about the history of imprisonment, which canvassed numerous reasons, not only for "the birth of the prison," but the casual forces and social dynamics that maintained its use and explained variations in the size and scope of the penal apparatus. The 1970s also marked a renaissance for *Punishment and Social Structure*, a major work of Marxist penal scholarship published in 1939, that explicitly theorized a direct relationship between political economy and the form of punishment in general and the rate of unemployment and the levels of imprisonment in particular. This is not to say that these other analyses were necessarily right, but that Blumstein and his colleagues never mentioned the concerns and theories of causation these other authors explored. This untheorized quality to the work of Blumstein and his associates is detailed in *Ibid.*, 1-60. See also Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Columbia University Press, 1939, 1968 ed.); Anthony M. Platt, *The Child Savers; the Invention of Delinquency* (Chicago: University of Chicago Press, 1969); Rothman, *The Discovery of the Asylum*; David J. Rothman, *Conscience and Convenience: The Asylum and its Alternatives in Progressive America* (Boston: Little, Brown, 1980); Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Alan Sheridan trans., (New York: Pantheon Books, 1977); Douglas Hay, Peter Linebaugh, John G. Rule, E.P. Thompson, and Cal Winslow, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon, 1975); Andrew Scull, *Decarceration: Community Treatment and the Deviant* (Englewood Cliffs: Prentice Hall, Inc., 1977); Michael Ignatieff, *Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750-1850* (New York: Pantheon Books, 1978); Dario Melossi and Massimo Pavarini, *The Prison and the Factory: Origins of the Penitentiary System* (London: McMillan, 1981); E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London: Allen Lane, 1975); Stanley Cohen and Andrew Scull (eds.), *Social Control and the State: Historical and Comparative Essays* (New York: St. Martin's Press, 1983).

<sup>1095</sup> As Zimring and Hawkins point out, many of the casual mechanisms in this theory are exceedingly general. For instance, "society" for more on this argument, see *The Scale of Imprisonment*, 28, 34-36.

Yet, much of this work originated within the Governor's Office and the Pennsylvania Commission of Crime and Delinquency and was clearly intended to support the prison expansion proposal as part of the governor's mandatory minimum legislation.<sup>1096</sup> These researchers developed a prediction model based on how demographic trends in the state intersected with current arrest and conviction rates for certain categories of imprisonable crimes. Blumstein, Cohen and Miller argued that an unusually large cohort of young males who were entering the statistically peak age for imprisonment (early to mid-20s) drove the growth of Pennsylvania's prison population over the 1970s. Their argument portrayed this growth in naturalistic and deterministic terms, treating the large postwar demographic boom as a statistical floor upon which the effects of other considerations like changes in sentencing severity could then be estimated. An inexorable sense of momentum permeated this work, attributing much of the upward pressure on prison capacity to ostensibly agentless, demographic waves. Even if current conditions remained the same and no new sentencing legislation was passed, the state's prison population would continue to grow for several more years, according to these researchers, peaking in the 1990s before falling.<sup>1097</sup> They often referred to life course movement of this demographic bulge as the "pig in the python" effect that was working its way through the criminal justice system as it had affected public schools earlier.<sup>1098</sup>

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<sup>1096</sup> Blumstein and Nagin, "On the Optimum Use of Incarceration for Crime Control"; Blumstein, Cohen and Miller, "Demographically Disaggregated Projections of Prison Populations"; Blumstein, Cohen and Miller, "Crime, Punishment and Demographics"; Miller, "Projecting the Impact of New Sentencing Laws on Prison Populations"; Zimmerman and Miller, *Corrections at a Crossroads*.

<sup>1097</sup> Blumstein, Cohen and Miller, "Demographically Disaggregated Projections of Prison Populations," 18-20; Miller, "Projecting the Impact of New Sentencing Laws on Prison Populations," 58.

<sup>1098</sup> Alfred Blumstein, "Planning for Future Prison Needs," *University Illinois Law Review*, 207 (2: 1984), 207-230, quote 210.



There were, of course, good reasons for highlighting the significance of the postwar demographic change. The large, Baby Boom cohort of young adults composed a greater proportion of the overall population and most prisoners usually fell within this youthful age range. However, this type of analysis assumed that offending rates, policing, court dispositions, the availability and use of alternative sanctions would all remain consistent. Some of the disaggregated demographic categories employed by Blumstein, Cohen and Miller also quietly omitted highly charged political issues that were far from settled in many parts of the state. This was particularly the case with the two racial categories they used: “white” and “nonwhite.” The authors not only predicted the growth of proportion of nonwhites in Pennsylvania’s overall population, but based on existing racial disparities in arrest and imprisonment statistics, they also assumed that this group would commit more crime and be arrested and imprisoned at proportionately greater frequencies than their young white, male counterparts in the future.

Such an analysis assumed that criminogenic propensities adhered in racial categories without exploring reasons why “nonwhites” had disproportionately high rates of arrest and imprisonment and “whites” had fewer. How racial power quietly constituted the statistics and categories of their research simply did not enter into their analysis. They did not question how race intersected with urban decline, under- and unemployment, poor health and drug abuse, criminal behavior and the criminalization of behavior as well as a whole range of routine discriminatory practices among the police, judiciary, correctional staff, parole boards and probation and parole officers. While such questions were unlikely to be posed in such a pragmatic endeavor as predicting prison capacity needs, failing to do so only further obscured the operation of racial power at the very cusp of a massive upsurge in imprisonment. Naomi

Murakawa and Katherine Beckett have referred to this type of knowledge production as the “penology or racial innocence,” which “begins with presumptions of race-neutrality and adopts narrow definitions of racism, as well as data and methods often ill-suited to its analysis, even as the policies and practices of criminal justice expand in ever-more race-laden ways.”<sup>1099</sup> Moreover, the austere, technical language and methods in such analyses, combined with their demographic determinism and color-blind racism, minimized responsibility for policy decisions, including the severe sentencing changes under consideration at the time.

Unlike many other members of Thornburgh’s administration, however, Alfred Blumstein was not wholly committed to prison expansion and often pointed out some of the major weaknesses of solely relying on new construction. At the opening meeting of the PCCD, Blumstein told his staff that regardless of how they intervened, they should expect that demographic trends would drive an increase in crime rates, arrests and convictions in the near future. He emphasized that current research on rehabilitation suggested they would not be able to develop crime-control programs that would appreciably affect crime rates and reoffending and sentencing was simply outside the PCCD’s purview. However, he felt they could find reasonable alternatives to imprisonment that could be implemented for the “least dangerous.” He warned that creating these alternatives “must be done so that we target our inevitably limited prison capacity on those individuals where prison can be most effective. We must find them, identify them, and put them behind bars where they can be incapacitated from committing further crimes. The criminal justice system can also be effective in attacking the

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<sup>1099</sup> Naomi Murakawa and Katherine Beckett, “The Penology of Racial Innocence: The Erasure of Racism in the Study and Practice of Punishment,” *Law & Society Review*, 44 (September/December 2010), 695-730, quote 696.

rational criminals through deterrence, and this includes organized crime, white collar crime, and official corruption.”<sup>1100</sup> Prison capacity was not only a scare resource for Blumstein, he also recognized its limited effectiveness in controlling crime.

Shortly after assuming the chairmanship of the PCCD, Blumstein requested two separate forecasting studies to comparatively gauge the future growth of the prison population and assess the possible magnitude of prison overcrowding.<sup>1101</sup> The studies, completed by Phillip Renninger of the PCCD’s Criminal Justice Statistics Division and Carnegie Mellon University’s Harold Miller, differed in their final estimates but were based on numerous shared assumptions and data sources.<sup>1102</sup> Each predicted the prison population would crest around 1990 somewhere between 10,000 and 12,000 prisoners, then decline. Blumstein advised Gov. Thornburgh that since new prison cells would take several years to be constructed and would not be needed by the end of the 1990s, devoting enormous resources to prison expansion was not the best option to address current overcrowding and expected increases from sentencing changes.<sup>1103</sup> Although, he agreed some prison construction was necessary and believed it would enable the closure of older prisons, Blumstein felt it was more prudent to develop new alternatives to prison or invest more in existing community corrections programs and minimum security facilities.<sup>1104</sup>

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<sup>1100</sup> Minutes of the May 8, 1979 meeting of the Pennsylvania Commission on Crime and Delinquency. RG-10 Records of the Office of the Governor, Pennsylvania Commission on Crime and Delinquency, Official Meeting Minute Packets of the Governor’s Justice Commission and the Pennsylvania Commission on Crime and Delinquency, 1972-1985, box 6:, folder: 1979 Minutes. 2. Pennsylvania State Archives, Harrisburg (hereafter PSA).

<sup>1101</sup> Alfred Blumstein to Honorable Richard Thornburgh, January 10, 1980, Dick Thornburgh Papers, box 267, folder 2. UPASC.

<sup>1102</sup> Ibid.; Harold D. Miller to Mr. Phillip Renninger, Chief, February 8, 1980. Dick Thornburgh Papers, box 267, folder 2. UPASC. Miller would join Thornburgh’s administration shortly thereafter.

<sup>1103</sup> Ibid.

<sup>1104</sup> Ibid.

In his capacity as chairman of the PCCD, Blumstein also advised criminal justice officials and local politicians across the state about the difficulties they could expect in county jails from the demographic onslaught he and his colleagues had identified. In November 1981, he warned attendees at the fall convention of the state's Prison Wardens Association that "they're going to be your problem for the next decade" and they should expect a range of problems due to serious overcrowding.<sup>1105</sup> Blumstein recognized that the prison administrators in the audience had little control over policies that affected their institutions like sentencing, but told the audience they should be prepared for "The consequences of overcrowding...cruelty to inmates, the deterioration of prison programs, increased inmate control of institutions, staff morale problems, staff turnover, and a greater risk of riot and hostage-taking."<sup>1106</sup> He said there were only three possible ways to alleviate overcrowding pressures: sentence fewer people to imprisonment, release them earlier or build new prisons. Blumstein did not advocate any one of these solutions, pointing out that they all had serious drawbacks, but he said decisions such as these had to be made by well-informed local officials after a robust debate on the limited policy options.<sup>1107</sup>

Gov. Thornburgh and his immediate staff aggressively pursued prison construction with little consideration of the other options Blumstein raised. Thornburgh's support for harsher sentencing was well-known even before he ran for governor. He was also not a supporter of community corrections or forms of discretionary release. Shortly after becoming governor, Thornburgh also curtailed some of the discretionary release pathways. Unlike previous

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<sup>1105</sup> "Baby Boom Fills Up Jails Too, Expert Says," *Beaver County Times*, (November 6, 1981).

<sup>1106</sup> *Ibid.*

<sup>1107</sup> *Ibid.*

governors, for instance, he only sparingly exercised executive clemency to commute life sentences. In Pennsylvania, a life sentenced prisoner could only become eligible for parole (and participation in rehabilitation programs) if his life sentence was commuted. Once the governor commuted a life sentence, the prisoner began serving an indeterminate sentence with a minimum term; only then was release on parole a possibility.<sup>1108</sup> Thornburgh refused to grant commutations or pardons unless he felt there was a clear case of injustice. Some penological experts, such as Rendell Davis of the Pennsylvania Prison Society, harshly criticized Thornburgh's policy as a "cork stopping up the bottle," which created enormous tension and desperation among lifers.<sup>1109</sup> The governor maintained this policy throughout his two terms in office and attempted a far more significant change to the state's parole system, calling for its outright abolishment.

Gov. Thornburgh and members of his administration largely rejected the traditional, recuperative focus of criminology and penology of trying to reform offenders. This was certainly not a unique view at the time. The decline, and in some cases outright abandonment, of rehabilitation and its associated interventions had become the dominant position of most people involved in the criminal justice by the end of the 1970s. Thornburgh's position as governor and his long track record of law enforcement, gave him both the platform and

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<sup>1108</sup> Boards of Pardons to Dear Sirs, n.d. and Board of Pardons, *Rules* pamphlet. K. Leroy Irvis Papers, 1971 Original Deposit, box 20, folder 302: Board of Pardons, no date. UPASC.

<sup>1109</sup> "Thornburgh Gets Tough on Lifers," *Bulletin*, (August 17, 1980), newsclipping. Dick Thornburgh Papers, box 109, folder 25. UPASC. As part of its research on prison population growth, the PCCD examined this policy and argued that while growing in size, lifers as a category were still a relatively small portion of the state's prison population. They believed that Thornburgh's commutation policy was not yet a major factor in the rising prison population but could be in the future. Pennsylvania Commission on Crime and Delinquency, "Prison and Jail Overcrowding in Pennsylvania: A Report to the Prison and Jail Overcrowding Task Force," (Harrisburg: PCCD, August 1983), 19.

legitimacy to, not only advocate retribution and incapacitation as general penological principles, but to push for specific reforms and policies embodying them. With mounting bipartisan support for harsher penal policies, Thornburgh commanded the debate on prison capacity and overcrowding, which became more of a tertiary or technical sub-issue of sentencing reform, concerning how many new prison cells were needed and where to locate them.

Thus, most of the administration's internal knowledge production concentrated on predicting future growth of imprisonment, the effects of the mandatory minimum legislation and new sentencing guidelines and the base goal of determine how many new prison cells to construct. Building more cells was not only necessary, but the only responsible way to address crime, which would prevent the state's prisons from being overwhelmed with "units of work" – the bodies of confined people. The estimates produced by the Bureau of Correction, Blumstein and the PCCD and Harold Miller and his staff in the Governor's Office informed the decision to request funding for an additional 2,500 prison cells.<sup>1110</sup> Troubling questions about the social costs, the negative effects on communities, its intersection with questions of social insecurity and unemployment, and the worsening conditions in the state's prisons were either unmentioned, dismissed or given superficial consideration in this project. Dick Thornburgh's intellectual advisors laid the groundwork for a greater pragmatic departure from rehabilitation

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<sup>1110</sup> Harold Miller to Richard Stafford, March 24, 1981. Dick Thornburgh Papers, box 264, folder 30: Analysis of the parole abolition proposal and principal mandatory sentencing bills in legislature (S.B. 303 and S.B. 80) March 24, 1981. UPASC; Harold Miller to Richard Stafford, July 20, 1981 and attachments, box 264, folder 36: Background material for deciding on the elements of a Mandatory Sentencing Proposal, and summaries of impacts of proposal over time July 20, 1981. UPASC. The number of cell requested changed several times during legislative negotiations and after the administration encountered problems with converting existing state hospitals into prisons and finding suitable locations for new prisons.

through their, at times cautious, advocacy for a new penal policy focused more on the emerging penal philosophy of “selective incapacitation.”<sup>1111</sup>

While the notion that persistent offenders should be the primary target of imprisonment is quite old, the current iteration the concept, under the name selective incapacitation blossomed during the 1970s. Much like Blumstein’s work on criminal justice systems, research in this area drew on quantitative methods. By the late 1970s, many criminal justice research projects shifted from evaluating rehabilitation programs to attempting to determine both the deterrent and incapacitation effects of penal sanctions intended to better hone policies based on these penal theories. Blumstein, Cohen and Nagin played a key role in evaluating many of these studies for the National Academy of Sciences.<sup>1112</sup> Based partly on

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<sup>1111</sup> Although Dick Thornburgh frequently boasted of the deterrent effects of sending a message to serious offenders with the harsh new sentencing regime, researchers like Blumstein were well aware of the difficulty in determining the actual deterrent effects of penalties. Blumstein and his colleagues frequently cited an argument, which dates at least to the eighteenth-century writing of Cesare Beccaria, that the severity of punishment was not as effective as a deterrent to criminal behavior as the certainty of punishment. Examples of quantitative research from the 1970s that addressed this topic include: Benjamin Avi-Itzhak and Reuel Shinnar, “Quantitative Models in Crime Control,” *Journal of Criminal Justice*, 1 (1973), 185-217; David Greenberg, “The Incapacitation Effect of Imprisonment: Some Estimates,” *Law and Society Review*, 9 (1975), 541-580. One of the most influential texts on selective incapacitation that appeared in the early 1980s was Peter W. Greenwood’s, *Selective Incapacitation* (Santa Monica: Rand Corporation, 1982). The Rand Corporation also published another widely read text on selective incapacitation in 1982: Jan M. Chaiken and Marcia R. Chaiken, *Varieties of Criminal Behavior* (Santa Monica: Rand Corporation, 1982). Alfred Blumstein, Jacqueline Cohen, Daniel Nagin and many of their colleagues have criticized Greenwood for overestimating the effectiveness of selective incapacitation and pointed out the systematic knowledge deficits about “criminal careers” and “career criminals” that haunt this crime-control strategy made determining its overall effectiveness extremely difficult. Nevertheless, they argued that incapacitation does have some beneficial effects for reducing some kinds of criminal activity. See Blumstein, Cohen, and Nagin (eds.), *Deterrence and Incapacitation*; Alfred Blumstein and Soumyo Moitra, “The Identification of ‘Career Criminals’ from ‘Chronic Offenders’ in a Cohort,” *Law and Policy Quarterly*, 2 (July 1980), 321-334; Alfred Blumstein, “Selective Incapacitation as a Means of Crime Control,” *American Behavioral Scientist*, 27 (September, 1983), 87-108; Jacqueline Cohen, “Incapacitation as a Strategy for Crime Control: Possibilities and Pitfalls” in Michael Tonry and Norval Morris (eds.), *Crime and Justice: An Annual Review of Research*, v. 5, (Chicago: University of Chicago Press, 1983), 1-84; Jacqueline Cohen, “Incapacitating Criminals: Recent Research Findings,” *Research in Brief*, (Washington, D.C.: National Institute of Justice, 1986). Recently, Kathleen Auerhahn re-evaluated Greenwood’s work and again found it wanting. See Kathleen Auerhahn, “Selective Incapacitation and the Problem of Prediction,” *Criminology*, 37 (November 1999), 703-734.

<sup>1112</sup> Blumstein, Cohen and Nagin (eds.), *Deterrence and Incapacitation*.

their work in Pennsylvania and access to the knowledge base collected by the PCCD, they later tried to identify the life-course offending patterns of persistent offenders, the “criminal careers” of “career criminals.”<sup>1113</sup> In addition to relying more on quantitative methods, the scale and subject of such research also changed and its institutional location and funding sources also transformed.

In 1980, President Jimmy Carter eliminated LEAA, citing both its lack of clear, beneficial results and notorious wastefulness. Most state planning agencies collapsed when the federal funds disappeared, but a few persisted with new mandates. The PCCD under Blumstein’s direction was one of the more successful state planning agencies in this regard, and producing knowledge and policies on managing prison overcrowding was one of the chief reasons for its continued existence.<sup>1114</sup> The commissioners and researchers at the PCCD felt these types of problems were more amenable to targeted reforms than the vaguely defined problem of crime.<sup>1115</sup> Blumstein later described this movement, “the central problem has shifted from the unmanageable to the manageable...”<sup>1116</sup> The PCCD directed its efforts at identifying and rectifying wayward institutional practices within crime control bureaucracies rather than the more traditional problem of crime these institutions were originally designed to combat. Yet, Blumstein and his colleagues believed this reflexive administrative approach would make such

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<sup>1113</sup> Alfred Blumstein, Jacqueline Cohen, Jeffery A. Roth and Christy A. Visher, (eds.), *Career Criminals and “Criminal Careers,”* 2 vols., (Washington, D.C.: National Academy Press, 1986).

<sup>1114</sup> Blumstein would later argue that he believed much of the program’s tarnished legitimacy stemmed from the misguided choice to focus on crime prevention interventions in the upstream areas of criminal justice as well as rehabilitative efforts, like prison counseling programs. Even if these programs produced positive results, they escaped the evidentiary filters of the kind of knowledge Blumstein and his colleagues produced. It was hard to quantify or demonstrate direct causal relationships between the program and the desired result. Blumstein, “Planning for Future Prison Needs,” 211-212.

<sup>1115</sup> Ibid.

<sup>1116</sup> Ibid.



institutions more efficient at crime control even if they ultimately held modest expectations about their overall effectiveness.<sup>1117</sup>

Similarly, as the social scientists and administrators who championed rehabilitation and reintegration lost influence or shifted their views,<sup>1118</sup> the target and strategies of their intervention shifted. In some cases, a different set of professionals and forms of expertise emerged in correctional bureaucracies and related agencies. Blumstein and his colleagues, for instance, focused more on administrative concerns of resource management, overcrowding and security. James Jacobs described a similar transformation in the state of Illinois during the 1970s. As the prisoners' rights movement, street and prison gangs and federal courts pressed claims against Illinois' prisons, administrators responded by rationalizing numerous aspects of the penal agency's operation, fulfilling judicial mandates, creating new prisoner management standards and documenting activities that might become subject to future litigation. This new direction intensified over the course of the 1970s in many American states. The influence of

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<sup>1117</sup> For a theoretical analysis of the significance this kind of phenomenon in the latter half of the 20th century see Ulrich Beck, *Risk Society: Towards a New Modernity* (London: Sage, 1992); Ulrich Beck, Anthony Giddens, and Scott Lash, *Reflexive Modernization: Politics, Tradition and Aesthetics in the Modern Social Order* (Stanford: Stanford University Press, 1994).

<sup>1118</sup> James Jacobs notes that Allyn Sielaff, the leader of Illinois's Department of Corrections during his fieldwork, represented "a new generation of professional correctional administrators" and "dismissed the medical model (which regards inmates as 'sick' and in need of 'treatment') as naïve." I don't dispute Jacobs's characterization of Sielaff, but suggest that Sielaff's views on these matters probably evolved over time. In the late 1960s, when Sielaff was the Deputy Commissioner of Correction in Pennsylvania under Arthur Prasse, the discourse of prisoner reform was already transitioning away from the medical metaphor of rehabilitation, which was more common a decade before. Nevertheless, there were substantial continuities between that earlier iteration of rehabilitation and the focus on reintegration and normalization, which became more common in the late 1960s and early 1970s. Sielaff was very supportive for therapeutic programming during his tenure as Pennsylvania's Commissioner of Correction. With the possible exception of his successor, Stewart Werner, Sielaff was identified more than anybody else with the community corrections programs the Bureau of Correction developed in the 1970s. By the time Sielaff moved to Illinois in the mid-1970s, the "corporate management model" that Jacobs identified with Sielaff had made greater inroads into national correctional discourse and management training, while the community corrections movement was already slowing. See James B. Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977), 87.

judicial interventions, increasing prison populations and fiscal austerity increased administrators focus on resource management and reducing potential legal liabilities.

This intellectual and practical shift came at the expense of developing any new means of addressing prisoners as people in the way rehabilitation, for all its faults, had for decades. The knowledge produced by Blumstein and his colleagues had a profound effect on Pennsylvania's prison system and the swelling number of people confined in it. Yet, it could not provide the ground for a new prison regime; it "effaced the prisoners altogether, either as an object of correction or a subject of informal collusion," but established many of the structures and terms of legibility through which overcrowding and prison expansion would be understood in public discourse.<sup>1119</sup> Likewise, the sociological tradition of studying the institutional social life of prisoners, inmate subcultures and their effects on rehabilitation programs all but disappeared as the security, creation, allocation and design of penal space became paramount.<sup>1120</sup>

This was somewhat ironic because the nature of inmate society and life behind bars also underwent massive changes as Pennsylvania's prison and jail population soared after 1980 (see Figure 3:1). The Bureau of Correction's institutions as a whole exceeded their capacity in 1980 and never returned within capacity limits.

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<sup>1119</sup> Charles Bright, *The Powers that Punish: Prison and Politics in the Era of the "Big House," 1920-1955* (Ann Arbor: University of Michigan Press, 1996), 9. I borrow the concept of legibility from James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998).

<sup>1120</sup> James E. Robertson, "House of the Dead: Warehouse Prisons, Paradigm Change and the Supreme Court," *Houston Law Review*, 34 (Winter 1997), 1003-1063; Jonathan Simon, "The 'Society of Captives' in the Age of Hyper-Incarceration," *Theoretical Criminology*, 4 (August 2000), 285-308; Loïc Wacquant, "The Curious Eclipse of Prison Ethnography in the Age of Mass Incarceration," *Ethnography*, 3 (December 2002), 371-397; Ben Crewe, "Prisoner Society in the Era of Hard Drugs," *Punishment & Society*, 7 (October 2005), 457-481. Although see some of the new approaches in: Greg Newbold, Jeffrey Ian Ross, Richard S. Jones, Stephen C. Richards and Michael Lenza, "Prison Research From the Inside: The Role of Convict Autoethnography," *Qualitative Inquiry*, 20 (April 2014), 439-448; Justin Piché, Bob Gaucher and Kevin Walby, "Facilitating Prisoner Ethnography: An Alternative Approach to "Doing Prison Research Differently" *Qualitative Inquiry*, 20 (April 2014), 449-460.

## No Bodies to Spare

During the late 1960s, several prisoners at SCI Graterford began laying the intellectual ground for an organization composed of people who had spent time in prison and understood its travails that would fight for the rights of prisoners. On March 16, 1971, a group, called the Prisoners' Rights Council, achieved incorporated status as a non-profit organization. Victor Taylor became the group's first director, and he was soon joined by Allan Lawson after his release from Graterford. As part of their many campaigns they published a newsletter, the *Public Report Card*, which they distributed inside the state's prisons and to a variety of public officials and organizations. It featured updates on prison litigation and reports from the PRC's ongoing projects. This publication also included editorials on a variety of prison issues, penned by the staff at the PRC and inmate correspondents.

One such editorial written by Donald C. Coleman titled "Prisons--Tenants--Overcrowding," in 1978 began with a view on overcrowding far removed from the policy debates in Harrisburg and knowledge production at Carnegie Mellon:

Just about all the jails are overcrowded and it has been this way for quite some time. But this has got to stop somewhere because the jails are overcrowded with our bodies, and we don't have any bodies to spare.<sup>1121</sup>

Coleman, himself a former inmate, implored prisoners to take advantage of every opportunity afforded to them to gain skills, which could be "used in/by/for the community when they

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<sup>1121</sup> Donald C. Coleman, "Prisons—Tenants—Overcrowding," *Public Report Card*, 1 (June 1978), 6, boldface type in original. Prisoners' Rights Council, box 21, folder 21: PRC-Pubs-The Public Report Card (Final Publication) 1977-1978. Temple University Urban Archives (hereafter TUUA).

return.” Specifically, he argued that inmates needed find a way to educate themselves while imprisoned, especially by earning a GED, a high school diploma equivalent. Throughout his column, Coleman emphasized the responsibility to do this rested with the inmates themselves and if enough of them took up this task, not only would the community readily accept them upon their return, but “this would, I believe, remedy our problem of overcrowding.”<sup>1122</sup>

Coleman's idea was one of the many proposals offered as a solution to the growing problem of overcrowding in Pennsylvania's secure penal institutions. While one may question how effective his strategy might have been and the assumptions that supported it, his statement pointed to a big difference in how overcrowding was discussed and experienced by inmates, penal experts and administrators. Most of the archival record contains the reports, documents, and memoranda of penal administrators and politicians. Like Coleman's article, this official material deals with the purported causes of overcrowding and its possible remedies. However, the quantity of deficit that haunts the problem of overcrowding in the official material was one measured largely by spatial units and to a lesser degree services and employee manpower. There were no cells or beds, wings or units, to spare. A variety of more spaces for inmates were needed; the obstacles to overcome in obtaining them were finding suitable locations for new construction, political support and funding. Bureaucrats worried about the influx of greater numbers of inmates, but not having *bodies to spare*—“our bodies”—was not a framing to be found in official material on the problem of overcrowding. As Coleman's statement implies, people trapped in overcrowded institutions still envisioned other places and purpose for themselves beyond the immediate institutional confines and categories,

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<sup>1122</sup> Ibid.

but doing so became difficult with the immediacy of problems created or exacerbated by overcrowding.

This distinction presents a difficulty for recounting how the issue of overcrowding came to dominate most discussions of penal policy and prison life from roughly the late 1970s onward because, unlike Coleman's opening statement, most inmates did not usually directly address "overcrowding" as an issue in the way that bureaucrats did. Problems of institutional life often associated with or compounded by overcrowding, such as the inability to access programs, extended time in cells and sharing a cell with others, were often discussed by inmates in letters to activist organizations, such as the Prisoners' Rights Council. Inmate correspondence to senior prison officials asking for redress of certain difficulties, like delays in transfers and long queues at medical clinics, also attested to the effects of overcrowding. Occasionally, inmates pressed claims in court that specifically sought reliefs from overcrowding. More often than not, however, litigation by prisoners and their supporters outside cited other problems, which were often affected by overcrowding. Yet, many of the issues cited by inmates were long-standing complaints not necessarily related to contemporary overcrowding, like arbitrary discipline and segregation. The fact that the initial upswing in prisoner activism in Pennsylvania occurred in the 1960s and early 1970s meant that many of the contentious issues and conflicts besetting the prisons at that time were not directly affected by overcrowding, which became much more pronounced years later.

Nevertheless, it is clear from prisoners' correspondence, legal petitions, activist publications and memoirs that overcrowding did concern those living in such conditions and was inseparable from other contemporary problems, like the increase in interpersonal violence

and insecurity, austerity and lack of services in the prisons, the lack of a meaningful narrative of prison life, and the path for a way out. For many prisoners, overcrowding simply became synonymous with nothing working right.

Victor Hassine, a well-educated, activist prisoner, who began serving a life sentence at Graterford in 1981, described how overcrowding pressures overtaxed the number of personnel at the prison, which gradually reduced services and security. Once this trend began, Hassine claims it became difficult to focus on anything except one's immediate surroundings: "Our lives became a daily challenge to avoid injury and stay of trouble, which left us little time to reflect on the errors of our ways. In essence, the penitentiary evolved into a ghetto."<sup>1123</sup> The "terrified population of inmates," Hassine writes, "lost all sense of security and live[d] like 'moment dwellers' with no thought of the future."<sup>1124</sup> To make matter worse, Hassine notes that the level of personnel at the prison did not increase to accommodate this new population. The staff, stretched too thin to provide adequate security for most of the prisoners as well as themselves, simply retreated. In this environment, numerous Philadelphia-based street gangs flourished and competed for turf, contraband markets and new recruits.

Depending on how one determines prison capacity, Pennsylvania's Bureau of Correction surpassed its system-wide capacity at some point between 1980 and 1981. One of the first effects of this population surge was idleness among prisoners. Or perhaps better stated, the expansion of idleness, which had already effected significant parts of the prison system. Some employment opportunities actually shrank during this period and wages fell, as well, leaving an

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<sup>1123</sup> Victor Hassine, "Prison Overcrowding" in *Life Without Parole: Living in Prison Today* 2<sup>nd</sup> ed., (Los Angeles: Roxbury Publishing Company, 1999), 130.

<sup>1124</sup> Hassine, "Conclusion: Runaway Train" in *Life Without Parole*, 2<sup>nd</sup> ed., 155.

ever greater proportion of the inmate population without a legal means to earn income or occupy much of their time. The Bureau reduced the hours of many fulltime workers as well in an effort to spread the limited resource across more people.<sup>1125</sup>

Incarcerated people, especially those who had been behind bars before, frequently described how theft and violence between prisoners increased in tandem with idleness and the decline in staff supervision.<sup>1126</sup> Victor Hassine claimed that at SCI Graterford the increase in thefts often led to situations where one had to fight a thief caught in the commission of stealing.<sup>1127</sup> To not attack a thief in such a situation, announced one's weakness and invited repeated and eventually more serious victimization. Hassine recalled that during the first few months of his confinement, he accumulated and then later gave away numerous items he purchased in the commissary after a friend warned him about how vulnerable the possessions made him.<sup>1128</sup>

The interrelated problems of theft and violence became so acute that prisoners across the state demanded the Bureau provide padlocks for cells so that prisoners could protect their belongings while they were away from their cells during the day. Eventually, prison administrations altered cell fixtures to provide holes for padlocks, which prisoners could now buy in the institutions' commissary.<sup>1129</sup> Victor Hassine argued that this demand fell on deaf ears for quite some time before the administration complied. It was not until staff members started getting injured breaking up fights resulting from cell thefts that they agreed with the

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<sup>1125</sup> "Get-Tough Policy Packs Cellblocks," *Pittsburgh Press*, (February 20, 1983).

<sup>1126</sup> *Ibid.*; Hassine, "Things Missed" in *Life Without Parole*, 2<sup>nd</sup> ed., 25.

<sup>1127</sup> *Ibid.*, 23-24.

<sup>1128</sup> Hassine, "How I Became a Convict," in *Life Without Parole*, 2<sup>nd</sup> ed., 14.

<sup>1129</sup> *Ibid.*; "Get-Tough Policy Packs Cellblocks," *Pittsburgh Press*, (February 20, 1983).

proposal.<sup>1130</sup> It was basically “a tacit admission that they did not have control over their own prison.”<sup>1131</sup> Unfortunately, On the other hand, the padlocks did not deter many thieves who began forming groups for the sole purpose of invading cells when the occupant was present and the cell doors were unlocked during the day.<sup>1132</sup> Prisoners soon adapted to this continual threat by always staying awake while the cells were opened during the day and not using the toilet until lock-in.

As more and more prisoners entered the state’s institutions during the 1980s, prison administrations began experiencing ever greater shortages of guards. Few people applied for the position, and it had a very high turnover rate.<sup>1133</sup> Many of the state’s prisons actually operated well below their authorized compliment of guards. Prisons made up these shortfalls with the extensive use of overtime. A March 1980 study by the Citizens Crime Commission of Philadelphia noted that many institutions did not fully man their watchtowers and often allotted only a minimal guard compliment during the night. SCI Dallas in Luzerne County, for instance, had “an inmate population of 950,” but had “only 23 guards on duty at night.”<sup>1134</sup> This situation only worsened over the course of the decade as the approval for new hiring could not keep pace with influx of people committed to the prisons. A lawsuit brought by Major Tillery, Victor Hassine, Kenneth Davenport, William Grandison, Nelson Mikesell and Ellis Matthews against the state about the overcrowded conditions at SCI Pittsburgh in 1989 determined that the only seven guards supervised 741 inmates in the institution’s South Block during the

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<sup>1130</sup> Hassine, “Things Missed” in *Life Without Parole*, 2<sup>nd</sup> ed., 25.

<sup>1131</sup> *Ibid.*, 25.

<sup>1132</sup> Hassine, “Things Missed” in *Life Without Parole*, 2<sup>nd</sup> ed., 26.

<sup>1133</sup> Citizens Crime Commission of Philadelphia, “Security Issues in Pennsylvania State Prisons,” (Philadelphia: Citizens Crime Commission of Philadelphia, March 1980), 22.

<sup>1134</sup> *Ibid.*, 23.



day.<sup>1135</sup> Chief Judge Maurice B. Cohill, Jr. who conducted an unannounced inspection of the prison, determined that:

“Blind spots” abound throughout the block where incidents, including rape, assault, cell theft, cell arson and drug use may occur unknown to the corrections officers. The shower area is one of the most dangerous areas; no corrections officers control this area on a fulltime basis.<sup>1136</sup>

In many areas of the state’s prison the level of supervision was so inadequate that guards warily held back as far as possible for their own safety. Assaults, stabbings, rapes and gang fights were commonplace in SCI Pittsburgh’s auditorium and gym, especially since there was often only one guard to watch hundreds of prisoners. Judge Cohill noted that “corrections officers do not make rounds; they wisely choose to stand by the door next to the riot button.”<sup>1137</sup> Some prisoners readily admitted that they could see the toll this situation was taking on many officers. Charles Goldblum and Charles Busbee, both prisoners at SCI Huntington, wrote in the aftermath of a riot and lockup at their institution:

The stress on the guards who work here is nothing short of severe. Many of the more experienced officers are beginning to experience burn out and many inexperienced officers are being given responsibilities that they are not ready for. They are also being left alone in situations that create danger to both themselves and inmates. It is no wonder that they are having a hard time attracting good people.<sup>1138</sup>

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<sup>1135</sup> Findings of Fact, Conclusions of Law and Opinion, *Tillery v. Owens*, 719 F.Supp. 1256 (1989), 20.

<sup>1136</sup> Ibid.

<sup>1137</sup> Ibid.

<sup>1138</sup> Charles J. Goldblum and Charles Busbee to Mr. K. Leroy Irvis, November 18, 1989. K. Leroy Irvis Papers, 1995 Addition, Subseries 1, Camp Hill Prison Riots, 1989-1990, box 1, folder 4: Governor's Commission on Riots-Correspondence, November 10, 1989-November 30, 1989. UPASC.

The pair noted that personnel shortfalls also affected other types of staff. Correctional counselors had caseloads of over 200 people and they were rising. At the time of the writing, the prison employed very few more specialized treatment staff: only four full time psychologists and one part time psychiatrist.<sup>1139</sup>

The practice of double-celling, and later multiple-occupancy-celling, created perhaps the greatest immediate impact on the people living through the rapid population increase from the late 1970s onward. These practices became increasingly common throughout the country during this time, and were eventually the subject of federal court decisions.<sup>1140</sup> In 1981, the U.S. Supreme Court ruled in *Rhodes v. Chapman* that the practice of double-celling at an Ohio maximum security prison did not, in itself, constitute either an Eighth or Fourteenth Amendment violation. This decision paved the legal grounds for double-celling throughout the county, but Pennsylvania statutes concerning cell occupancy were actually much stricter than many other states. It was still unclear how Pennsylvania laws dating from 1790, which mandated solitary confinement, would be effected by the Supreme Court ruling, if at all. The federal ruling, nevertheless, gave some legislators the leverage to challenge these statutes over a dispute about overcrowding involving Philadelphia's county prisons. As part of the ongoing *Jackson v Hendrick* lawsuit stemming from the July 4, 1971 riot, a three judge panel from the Philadelphia Common Pleas Court ordered the city in March 1981 to provide one person per cell within four months by releasing numerous pre-trial detainees.<sup>1141</sup> This order would have

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<sup>1139</sup> Ibid.

<sup>1140</sup> *Rhodes v. Chapman*, 452 U.S. 337 (1981). In 1979, the Supreme Court made a similar, but more limited ruling that the temporary double-celling or pre-trial detainees was undesirable, nevertheless, constitutional. See *Bell v. Wolfish*, 441 U.S. 520 (1979).

<sup>1141</sup> "The Problem: Finding a Place for Prisoners," *Philadelphia Inquirer*, (March 31, 1981), newsclipping; "Phila. DA Seeks Reversal of Prisoner-Release Ruling," *Bulletin*, (April 1, 1981), newsclipping; "Federal Court OK of Double-

necessitated releasing over 800 detainees – a plan that several Philadelphia officials hoped to avoid. Consequently, Sen. Michael O’Pake (D-Berks) sponsored a bill in the state Senate, with the vocal support of Philadelphia District Attorney Ed Rendell, to amend state laws to permit double-celling.<sup>1142</sup> Passed in July, the amended law permitted Philadelphia County to ignore the Common Pleas Court order and allowed the state Bureau of Correction to begin the practice of double-celling.<sup>1143</sup>

The incidence of theft, assault and rape increased with double-celling, especially since prison officials often lacked effective ways to screen prisoners who were being bunked together. Passive or weak prisoners sometimes ended up sharing a cell with predatory inmates who repeatedly abused them within the confines of their own cells.<sup>1144</sup> Even in less severe situations, double-celling increased tension among prisoners throughout state and county prisons and jails. Hassine describes how routine arguments abounded after his “cell door opened and another man was shoved inside”:

My first argument with my new co-tenant was, of course, over who got the top or bottom bunk. Then we fought over lights on or off, hygiene habits, toilet-use etiquette, cell cleaning, property storage, and who friends could visit. There was missing property, accusation of thievery, snoring, farting, and smoking. As these arguments raged on every day, new ones would arise to make things worse.<sup>1145</sup>

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Celling Unlikely to Affect Pa., Expert Says,” *Bulletin*, (June 17, 1981), newsclipping; “Pa. Senate Moves to Block Release of Inmates with Double-Celling Plan,” *Bulletin*, (June 23, 1981), newsclipping; “Prison Plan Up in Air: Ruling May Affect Bucks Construction,” *Bulletin*, (June 25, 1981), newsclipping; “Jails Rolls Continue to Grow Amid Debate on How to Pare Them,” *Philadelphia Inquirer*, (August 17, 1981), newsclipping. Bulletin Mounted Clippings, box 186, folder: Clips Bulletin Prisons-Phila Overcrowding. TUUA.

<sup>1142</sup> “Pa. Senate Moves to Block Release of Inmates with Double-Celling Plan,” *Bulletin*, (June 23, 1981), newsclipping. Bulletin Mounted Clippings, box 186, folder: Clips Bulletin Prisons-Phila Overcrowding. TUUA.

<sup>1143</sup> An act repealing acts and parts of acts insofar as they require certain prisoners to be confined separate and apart from other persons. House Bill 644, Regular Session 1981-1982, signed into law as Act of July 10, 1981, P.L.218, No.68.

<sup>1144</sup> Hassine, “Prison Rape,” in *Life Without Parole*, 2<sup>nd</sup> ed., 134-135.

<sup>1145</sup> Hassine, “Prison Overcrowding,” in *Life Without Parole*, 2<sup>nd</sup> ed., 131.

In some cases, prisoners were lucky enough to find friends willing to share a cell, which reduced some of this friction.

In many of the state's older prison and jails, the small size of the cells made double-celling all the more burdensome. For example, SCI Pittsburgh's North Block had large cells, measuring eight by seven feet, and small cells, measuring six by six feet.<sup>1146</sup> These cells contained a bunk bed, desk and toilet and sink fixture as well as two footlockers and any personal belongings permitted by administration. The prison began double celling in both large and small cells in 1982.<sup>1147</sup> Judge Cohill later claimed that "During our inspection tour I entered one of the small double cells. I was unable to turn around once inside it and had to back out."<sup>1148</sup> Even though many of the prisoners in these smaller cells worked during the day, they nevertheless, often spent fourteen hours a day in their cells.<sup>1149</sup> Ironically, SCI Pittsburgh actually had numerous unoccupied cells on the top three tiers of the North Block, which Superintendent George Petsock left unused because he could not provide adequate security for these tiers. The administration only used 273 cells of a total of 636 cells in the North Block, but forced more than one person in each of the cells they used.<sup>1150</sup>

In other prisons, especially newer ones where the design permitted better line of site supervision, the administration used every cell, and they also reconverted some cells that had been turned into offices or storage space.<sup>1151</sup> Soon, prison administrators supplemented

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<sup>1146</sup> Findings of Fact, Conclusions of Law and Opinion, *Tillery v. Owens*, 719 F.Supp. 1256 (1989), 11.

<sup>1147</sup> *Ibid.*, 10.

<sup>1148</sup> *Ibid.*, 11.

<sup>1149</sup> *Ibid.*

<sup>1150</sup> *Ibid.*, 11.

<sup>1151</sup> Citizens Crime Commission of Philadelphia, "Security Issues in Pennsylvania State Prisons," 11.

double-celling with dormitory-style bunk bed accommodations in auditorium, gym, dining halls and other large spaces of some prisons.<sup>1152</sup> Policing such sleeping arrangements was even more difficult and dangerous for staff who often simply remained near door and escape paths. Recreational areas, of course, faced similar problems. In addition to the aforementioned violence and lack of supervision in SCI Pittsburgh's gym and auditorium, the institution's available outdoor recreational areas were extremely limited and poorly monitored. The age of the institution, which was opened in 1882, posed serious space limits because it was not designed with prisoner recreation or sports in mind. Compounded by the loss of space due to construction, the prison had an area the size of about half of a football field for 1,800 people.<sup>1153</sup> The lack of space and adequate staffing to support recreational activities and many forms of education and therapeutic programming often translated to prisoners spending extended periods of time locked in the cells where the routine arguments and resentments Victor Hassine described mounted.

The lack of space also effected the operation of the Bureau of Correction's classification system as well as the screening practices used in the institutions for cell and work assignments. Whereas in the past, official considerations, such as residence, health and work opportunities, influenced classification decisions along with unspoken, but crucial criteria, like race, the deciding factor often became just the availability of cell space. In practice, this frustrated the attempts of many prisoners to remain near their homes, loved ones and legal representation, and prevented them from gaining transfers to prisons with desired programs, regimes and

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<sup>1152</sup> Hassine, "Prison Rape," in *Life Without Parole*, 2<sup>nd</sup> ed., 134-135.

<sup>1153</sup> Findings of Fact, Conclusions of Law and Opinion, *Tillery v. Owens*, 719 F.Supp. 1256 (1989), 15.

friends. Gary G. Williams described this ordeal in a letter to the Prisoners' Rights Council, seeking their help.<sup>1154</sup> A Philadelphia resident, Williams began serving his sentence at SCI Graterford in the early 1970s. After an assault on a guard, the administration transferred him to SCI Huntington and placed him in the Behavioral Adjustment Unit for thirty days. He complained to the Prisoners' Rights Council that his family, who visited him at Graterford, could not afford the trip to Huntington. He also could not get a special diet at Huntington for stomach ulcers, which Graterford provided for him. Additionally, Williams said he was frightened by "some of the people here that are not on good terms [with] inmates and guards alike."<sup>1155</sup> He disputed the veracity of the original reason for his transfer, claiming that he was not the person who assaulted the guard. The officer later admitted so, according to Williams, dropped the charges and apologized to him. Nevertheless, Williams could not get transferred back to Graterford. He repeatedly implored the most senior official involved in managing population movement, Deputy Commissioner Erskind DeRamus, to authorize a move. DeRamus eventually consented to the move, but it still could not be completed because Graterford simply did not have any extra room.

In addition to compromising the classification system and distribution of services throughout the Bureau, the extra demand for services and space effectively rendered even the pretense of providing some types of services meaningless. In February 1982, the new Commissioner of Corrections, Ronald Marks, told a panel investigating a hostage taking incident

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<sup>1154</sup> Gary G. Williams to Sen. Truman Hawkins, April 14, 1977; Gary Williams to [Prisoners' Rights Council], February 15, 1979. Papers of the Prisoners' Rights Council, box 5 PRC-PC-Corresp. to and from Prisons-Specific-Pittsburgh-79, folder 2. TUUA.

<sup>1155</sup> Ibid.

at Graterford the prison system as a whole could not adequately care for an increasing number of mentally ill prisoners who did not meet strict criteria for transfer to the state's mental health system.<sup>1156</sup> Following a major disturbance several years later at SCI Camp Hill, near Harrisburg, a prisoner who chose to remain anonymous out of fear of reprisal, described some of the routine frustrations caused by overcrowding in a letter to K. Leroy Irvis, one of the people charged with investigating the riot.<sup>1157</sup> The numerous problems he listed affected most of Camp Hill's residents:

Vocational and Academic programs had long waiting lists due to overcrowding. These were also stipulated as a must before you could be released.

Counseling programs were limited and had long waiting lists due to overcrowding. These were also stipulated as a must before you could be released.

Recreational facilities were severely overtaxed. Too many inmates had nothing to do with their time because of overcrowding.

Privileges were being taken away under the pretense of security, when in reality everyone knew that the real reasons were too many people were trying to use these privileges (such as "Family Days") and causing excessive workloads on the staff.

Meals which had to be prepared hours ahead of time because of the amounts necessary to cook due to overcrowding were rancid, cold, skimpy and loaded with insects.

Yard times were cut short because guards didn't feel like running yard.

Water in showers were cold and shower rooms built for 12 people often had 40 to 50 people in them at a time.

Total lack of professionalism on the part of the medical staff. When you signed up for medical attention, it would often take at least 4 or 5 times before they

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<sup>1156</sup> "Graterford Panel Hears Both Praise, Warnings on Siege," *Philadelphia Inquirer*, (February 11, 1982).

<sup>1157</sup> RE: CAMP HILL RIOT, Anonymous to The Honorable K. Leroy Irvis. K. Leroy Irvis Papers, Addition 1995, box 1, folder 1. UPASC.

would give you serious consideration and you were lucky if you got it then. The medical staff would humiliate you and treat you as though you were feigning illness. Most times they ridiculed you and your illness in front of other guards and inmates.<sup>1158</sup>

These types of complaints were certainly not unique to overcrowded prisons. However, overcrowding contributed to the decline of prison conditions, which predated it by at least a decade, and provided an explanatory resource for prisoners who lived through this process.

As a normative discursive concept, overcrowding pointed to a sense among prisoners of the appropriate, tolerable and expected number of people who could be safely confined and care for in the state's prisons. This was, in this sense, both an approximation of the minimum spatial standards and the necessary level of guard supervision, services and opportunities that the state should provide. The comments of prisoners revealed the most frustration over these matters when prison officials, or certain practices like the process of parole consideration, acknowledged these expectations as normative but, nevertheless, tolerated situations in the prisons, which routinely negated these standards.

Of course, Pennsylvania's prisons were not necessarily better in many regards prior to overcrowding. The volume of litigation from the mid-1960s to 1980 attests to many routine arbitrary and brutal practices that existed before the rapid influx of new prisoners overwhelmed capacity constraints. Many of the criticisms inmates voiced about a lack of privacy, theft and violence were also endemic to these institutions, even if they were arguably less common and severe. Victor Hassine acknowledged as much in an essay on overcrowding, in which he located its "true evil" elsewhere:

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<sup>1158</sup> Ibid.



As the term implies, prisons must have been crowded before they became overcrowded. Crowding in prisons was planned; overcrowding was not. Since the early 1800s when penitentiaries were first built, the one aspect of prison design that has survived is the practice of housing as many inmates as possible in the smallest cells possible, while meeting their minimal needs using a minimum of staff... the true evil of overcrowding has very little to do with crowded living space. Human beings, if they must, can and have lived in caves and tunnels. The destructive nature of prison overcrowding stems from the fact that it came unplanned, and was imposed on a system specifically created to discourage that confinement of too many inmates in one place... Suddenly we inmates found ourselves at odds with our own rigidly designed environment.<sup>1159</sup>

In addition to actually overtaxing practices and built environments designed for far less people, overcrowding became a new central explanatory device for nearly every difficulty in the state's prisons. As the views of prisoners indicated, overcrowding seeped into nearly every aspect of life behind bars.

### **The Missing Prison: Localism, Penal Expansion and Institutional Geography**

"The Missing Prison" was the title of a memo dated January 19, 1982 sent to Rick Stafford from Harold Miller, both of whom were senior advisers and policy planners for Gov. Dick Thornburgh.<sup>1160</sup> Miller began the document by reminding Stafford that "we are still short 325 cells" after the recent failed attempt to convert a state hospital into a prison in an urban community. Miller reviewed a range of possible options to pursue, weighing the advantages and disadvantages, which involved either abandoning the project and accept the shortfall or pursue a few other potential sites for constructing an entirely new prison in a far less populated

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<sup>1159</sup> Hassine, "Prison Overcrowding," in *Life Without Parole*, 2<sup>nd</sup> ed., 130-131.

<sup>1160</sup> "The Missing Prison," Harold Miller to Rick Stafford, January 19, 1982, Dick Thornburgh Papers, box 265, folder 14: Possible Conversions of Pennsylvania welfare institutions into correctional prison facilities April-October, 1981. UPASC.

area on the other side of the state. Describing the prison as "missing" pointed to the assumption that prison expansion was the only available policy option.

The key planning staff in Thornburgh's administration considered and deployed a variety of different options to deal with the prison space shortfall, yet these choices were all geared toward expansion rather than decreasing the inmate population or developing some sort of diversion or alternative. Overcrowding and obtaining new bed space dominated the internal policy discussions of the administration. There was comparatively far less attention to prison education, work, and counseling, which had been the mainstays of the rehabilitative project inside the state's prisons a decade before. These concerns were not entirely absent; the administration wanted to enhance prison industries, for instance. However, these types of policies were clearly not the main concern for the Bureau of Correction or those senior advisors in the Thornburgh administration tasked with developing policy and legislation.

Thornburgh's sentencing legislation came bundled with a proposal for 2,500 new prison cells. Beyond the resistance to the passage of these reforms in the legislature, the question of where these new cells would be constructed shifted the political dispute over penal policy to a number of localities across the state. This process and determining actually what kinds of new cells would be constructed highlights, as Thomas Sugrue has argued, how localism remains a persistent factor in American political history, helps explain the way governments implement policy and how local actors either facilitate or frustrate this process.<sup>1161</sup> An important, but often overlooked aspect of prison overcrowding in the early 1980s was how it nourished local

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<sup>1161</sup> Thomas J. Sugrue, "All Politics is Local: The Persistence of Localism in Twentieth-Century America," in Meg Jacobs, William J. Novak and Julian E. Zelizer, eds., *The Democratic Experiment: New Directions in American Political History* (Princeton: Princeton University Press, 2003), 301-326.

political contention outside prison walls. As the number of prisoners increased inside the prisons, the state refashioned some of its institutional priorities, choosing to convert numerous state hospitals into prisons and discontinue a variety of institutional mental health and disability services. This decision encountered stiff resistance near a number of these institutions, which created the opportunity for businesses, political leaders and many community organizations in several rural, economically-depressed communities to approach the Thornburgh administration with proposals for hosting new prisons. As this prison siting process unfolded, it revealed and frustrated the preferences of some community members who objected to new prisons and punitive policies. In addition, the building of new racialized political coalitions around prison construction in rural areas complicated the plans of senior prison officials in the Bureau of Correction who had devised plans for managing the large influx of new prisoners with new cells at urban locations that were ultimately rejected.

From the perspective of Gov. Thornburgh and his circle of immediate advisors, there were several advantages to utilizing existing structures for the new cells, whether this meant additional construction at an already operational prison or converting state hospitals into prisons. Simply in terms of cost, it was far cheaper to pursue this strategy than to build an entirely new prison, especially if the latter option also entailed acquiring new land. In addition, this strategy potentially involved less political risk. Many of the administration's planners believed communities that already had state institutions would welcome continued public investment. They hoped that the political backlash they expected following the closure of some state hospitals might be mitigated if converting them into prisons ensured continued local employment and public spending. Even if the full complement of employees from the hospitals

could not be rehired for correctional work, some of the former custodial staff and maintenance workers would be better able to make this transition. Beyond the immediate circle of employees and their families, the administration's planners believed that the larger community around these hospitals would approve of continual public spending in the area, especially if this money represented a substantial portion of the local economy. They expected more opposition to their plans in areas that did not already have either a prison or a state hospital.

Scholars have described this latter kind of land-use opposition, often referred to as the Not In My Back Yard (NIMBY) syndrome, as largely a negative reaction to the specific choice of site rather than a more general opposition to the policy in question. Many people supported increased penalties and new prison building, but did not want to live near the new facilities. Since the 1990s, a number of scholars have shown that NIMBY opposition to prison siting also created opportunities for some civic leaders and local development boosters in economically-depressed, rural areas who welcomed new prison construction as an economic investment in their communities. This phenomenon certainly occurred in Pennsylvania, but it does not entirely capture how this process unfolded and how the Thornburgh administration stumbled into the more explicit policies of selling prison construction as a public investment in depressed, rural communities. In some cases, the opposition to new prison siting revealed a much deeper disagreement about the aims of penal and social policy and the likely targets of such interventions. The administration and especially senior prison officials in the Bureau of Correction did not initially favor the option of building prisons in rural areas.

While mindful of the financial and political costs associated with new prison construction, officials in the Bureau of Correction often had other considerations for the new

cells that reflected their particular management problems and how they envisioned the operation of a sound penal system. The Bureau practiced a type of regionalism that emphasized keeping inmates close to their counties of origin, which meant both where they entered the criminal justice system through arrest and adjudication and where they had ties to family and friends.<sup>1162</sup> In normal prison operations, inmates routinely moved between facilities for any number of reasons ranging from the need for specialized medical care or rehabilitation programs, such as drug treatment to disciplinary transfers, and the need for court appearances. The cost of transporting inmates over long distances was so prohibitive that it restricted the range of possible locations for new prisons. Despite the waning support for the types of reintegration programs introduced a decade earlier, the Bureau still operated a large network of community corrections centers and graduated release programs that worked best when the participants were near their home communities, potential employers, social services and the support of family and friends. Since the vast majority of state prisoners came from Philadelphia and Pittsburgh, these factors mitigated against prison expansion in rural areas.

There were several other major incentives for building new prisons near Philadelphia and Pittsburgh. Perhaps the most pressing was making sure any new prison had adequate nearby services in the event of emergencies. The availability of fire, police, and medical services were a constant concern to administrators hoping to avoid what they called "another Attica."<sup>1163</sup> Proximity to cities also increased the chances of attracting better qualified

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<sup>1162</sup> The proposals and correspondence in Section: Prison Construction for New Inmates under Mandatory Sentencing Law (box 265, folders 14-26) in the Dick Thornburgh Papers (UPASC) attest to the regionalism of how both the Bureau of Correction and Department of Welfare operated. More than anything, transportation costs dictated this institutional arrangement.

<sup>1163</sup> Almost immediately after the Attica riot became news, concerns swept across Pennsylvania's prisons about the possibility of a similar incident occurring in the state. For an early example of this, see "Marchers Ask Facts at

employees. This was especially the case for educated treatment staff like correctional counselors, psychologists and psychiatrists. For at least a decade, correctional administrators had also realized that the racial imbalance of the guard force, which was largely white, created persistent tensions with the large percentage of non-white, especially African American, prisoners that had only grown since the 1960s. While there was little evidence of a major push to address this problem, it was nonetheless another argument advocates mustered in favor of keeping any future prisons near urban centers.<sup>1164</sup>

The Bureau wanted much of the new cell space to be near Philadelphia and Pittsburgh. With most of the state's inmates originating from these two cities, any increase in the number of commitments from the courts would require more cell space nearby. More specifically, the Bureau wanted to increase size and capabilities of each region's Diagnostic and Classification Centers (DCC), which were located at SCI Graterford (Eastern or EDDC), north of Philadelphia, and SCI Pittsburgh (Western or WDDC), only a few minutes away from the city's downtown. Each of these units was located within the walls of a larger general population prison, but they were operated separately and people confined in them did not mix with the prisoners in the large adjacent prison. These centers received and classified newly committed inmates from their respective catchment zones. Although, they were not the only diagnostic and classification centers in the state – the other one was in the central part of the state at SCI Camp Hill (Central

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Western Pen," *Pittsburgh Post-Gazette* (September 21, 1971). For correctional officials, the threat of a major riot became a constant concern throughout the 1970s and 1980s. The New Mexico riot of 1980, in which 33 prisoners were killed, only exacerbated this concern.

<sup>1164</sup> See, for instance, "Farview as an Undesirable Site for a Correctional Institution," Dick Thornburgh Papers, box 266, folder 4: Fairview [State Hospital] as an Undesirable Site for a Correctional Institution undated. UPASC.

or CDCC) – they were the busiest centers and were often more overcrowded than the general population units at the same location given their smaller size.<sup>1165</sup>

It became much harder to move prisoners out of a DCC when the range of available prisons and cells began to shrink because of system-wide overcrowding. This was particularly an issue when the classification committee at one of the DCCs decided the space available in the system at the time was simply inappropriate for a specific prisoner or group of prisoners at a certain custody or need level.<sup>1166</sup> Scenarios like this eventually resulted in cumulative problems in the early 1980s because as certain prisoners could not be safely moved out of the DCC, the space and attention required for new admissions to these centers also receded.

As prison officials well knew, this was a potentially dangerous situation. Being still unclassified, the inmates in these units were not separated and sorted as they would be later once the authorities assigned them to other institutions. Part of the rationale for this initial classification process – arguably its most important aspect – was to prevent victimization of certain people by others as well as to break up any grouping of potentially disruptive inmates who might threaten the institutional security.<sup>1167</sup> Custody staff working in the DCCs made cell assignments within the centers based largely on their initial, informal judgment.<sup>1168</sup> An independent review of the Pennsylvania's classification procedures by a private consulting firm emphasized that this practice compounded the dangerousness of an already bleak situation.

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<sup>1165</sup> Pennsylvania Bureau of Correction, *1979 Annual Statistical Report* (Camp Hill: Bureau of Correction, 1979), 22.

<sup>1166</sup> Correctional Services Group, *Pennsylvania Classification Plan* (Kansas City: Correctional Services Group, 1982), 27, 34.

<sup>1167</sup> In general see American Correctional Association, *Classification as a Management Tool: Theories and Models for Decision-Makers* (College Park: American Correctional Association, 1982); American Correctional Association, *Classification: A Tool for Managing Today's Offenders* (Laurel: American Correctional Association, 1993).

<sup>1168</sup> Correctional Services Group, *Classification Plan*, 36-37.

They recommended creating a formal reception screening tool to reduce what it felt was a haphazard cell assignment process within the DCCs responsible for "serious incidents involving inmates that were not afforded adequate supervision."<sup>1169</sup> Senior Bureau staff felt that the larger intervention required to alleviate this problem was enhancing the space devoted to these centers. Not only would this clear up the congestion in these centers, it would potentially improve the quality of the initial classification evaluations, which would benefit the overall management of the wider system and reduce the risk of violence.

The process of expanding the DCCs was much easier in the eastern part of the state than it was in the west. Since 1970, the Eastern center was located at SCI Graterford. It had previously been part of SCI Philadelphia, the old Eastern State Penitentiary, but the Bureau transferred it to SCI Graterford after they decommissioned the old penitentiary. The Thornburgh administration briefly considered the idea of reopening SCI Philadelphia in 1980. In addition to the concern over the DCC, the closure of this prison a decade earlier removed over five hundred cells from the Bureau's apparatus, which the administration hoped they could bring back into service. However, after a team from the Bureau and several other departments inspected the old prison, they determined it was unusable in the current situation. While it was not yet in a state of terrible disrepair, it still would have cost \$3 million to demolish and renovate structures inside the prison walls for current use.<sup>1170</sup> The prison's lack of space for recreation and programming was a long standing complaint about the prison and one of the original reasons why Commissioner Arthur Prasse closed it. Superior Court Judge, Robert E.

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<sup>1169</sup> Ibid., 37.

<sup>1170</sup> Harold D. Miller to Lois S. Hagarty, January 21, 1982. Dick Thornburgh Papers, box 265, folder 14: Possible Conversions of Pennsylvania welfare institutions into correctional prison facilities April-October, 1981. UPASC



Woodside, once derided the continued use of the prison saying it was "the only place in the world where a football field turns a corner and a baseball diamond is a triangle."<sup>1171</sup> Coupled with poor lines of sight for guards, the lack of space for congregate industry, education, or any other form of major programming for the inmates, the old prison presented major difficulties in terms of control. Additionally, its location in a Philadelphia neighbor meant that the possibility of escapes posed a serious public relations problem.<sup>1172</sup> All of these issues and the fact it was now owned by the city of Philadelphia made it too costly to reopen. In a letter to State Representative Lois Hagarty, who had also inquired about reusing the old prison, Harold Miller, the head of Thornburgh's Office of Policy Development, explained that SCI Philadelphia's "construction reflected an emphasis on 'penitence' in that era, namely small cells with little recreational space. It would simply be impossible to use the existing buildings inside the wall for a modern prison."<sup>1173</sup> The entire process of evaluating the old prison was done quietly; the press and larger Philadelphia public never knew it was ever considered even a remote possibility.<sup>1174</sup>

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<sup>1171</sup> Advisory Committee to the Task Force on Eastern and Western Correctional Institutions, *Penal Institutions, Probation and Parole*, 72; Even the official *Handbook for Inmates* conceded that "recreational space at this institution is limited." Eastern State Penitentiary Historic Site, *Handbook for Inmates* reprint (Philadelphia: Eastern State Penitentiary Historic Site, n.d.), 3. The original version was issued in the 1950s and/or 1960s.

<sup>1172</sup> The prison's architecture emphasized surveillance from the center rotunda, especially in a tower above the second tier. Guards could see down every wing and into the exercise yards. Yet, this system of surveillance presumed that inmates would spend that vast majority of their sentences either in their cells or in the adjacent individual exercise yards. Once solitary confinement was abandoned, officially after 1913, other areas of the prison where inmates would be—group recreational yards or education classrooms, for instance required supervision arrangements that were never anticipated by the original designer, John Havilland. See Norman Johnston, *Forms of Constraint: A History of Prison Architecture* (Urbana: University of Illinois Press, 2007), 71; Teeters and Shearer, *The Prison at Philadelphia, Cherry Hill*, 220-223.

<sup>1173</sup> Ibid.

<sup>1174</sup> At the time, most mentions of the prison concerned how the city of Philadelphia was going to demolish the site or leave it intake for some other redevelopment. It is currently a museum devoted to its own history. See "No Escape From Prison Quandary," *Pittsburgh Post-Gazette*, January 19, 1977; "A Proposal to Bring the House Down," *Philadelphia Inquirer*, February 20, 1981; "A Wall of Resistance to the City's Plan for Eastern State," *Philadelphia*

When the Bureau closed SCI Philadelphia, they had planned to build several other prisons nearby, including a separate Diagnostic and Classification Center. Even though the General Assembly approved construction funds, several successive administrations never moved forward with these prisons because of opposition to its proposed locations.<sup>1175</sup> Throughout the late 1960s and 1970s local resistance also prevented the construction of several regional jails.<sup>1176</sup> These prison siting problems were recent enough to be well known to people in the Thornburgh administration, and it is clear from their correspondence about prison expansion that they considered local political fallout to be the major obstacle to obtaining the desired additional capacity.<sup>1177</sup> In the end, the Bureau decided they would construct the additional cells for the EDCC inside the existing walls of SCI Graterford, in essence expanding the existing center.<sup>1178</sup>

The biggest political opposition to the prison expansion project originated in the western part of the state. Gov. Thornburgh, who was from Pittsburgh, was especially cautious

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*Inquirer*, March 8, 1981; Paul Kahan, "Seminary of Virtue," 283-384; For the current museum visit <http://www.easternstate.org/>.

<sup>1175</sup> "Fuzzydele!: Pa. Eyes County for Newest Prison Plan," newspaper clipping, n.d. K. Leroy Irvis Papers, 1975 Addition, box 1, folder 41 Prison Reform. UPASC; "150-Acre Site Sought Here for New Jail," *Bulletin*, (February 26, 1966), in George D. McDowell Philadelphia Evening Bulletin Newsclipping Collection, Bulletin Mounted Clippings Box 186 Clips Bulletin Prisons—Phila New Jails, 3. TUUA; "Civic Group Backs State Prison Here," *Bulletin*, (May 12, 1966), "Reports of NE Prison Site Worry Eilberg Residents," *Bulletin*, (May 12, 1966), "Eilberg Fight On Prison Site Called Shocking," *Bulletin*, (May 22, 1966), George D. McDowell Philadelphia Evening Bulletin Newsclipping Collection, Bulletin Mounted Clippings Box 186 Clips Bulletin Prisons—Phila New Jails, 4. TUUA; "Retreat Announcement Background Sheet—April 8, 1981," MG-404 Dick Thornburgh Papers, 1979-1987, box 109, folder 26: Sentencing Commission. PSA.

<sup>1176</sup> "Prison Plan for Moosic is Dropped," *Gettysburg Times*, (April 12, 1975); "Opposition Grows on Proposed Prison," *Gettysburg Times*, (December 12, 1972).

<sup>1177</sup> One can see in their files, for instance, lists of potential sites, their corresponding legislative and senatorial district, and the names of specific representatives and senators. These lists were annotated in certain areas as being a "Political Problem." "Legislative Districts of Potential Prison Sites" and "Conversion of Welfare Institutions," May 21, 1981 and attached report, Dick Thornburgh Papers, box 265, folder 19: "Possible Conversions of Pennsylvania welfare institutions into correctional prison facilities April-October, 1981." UPASC.

<sup>1178</sup> "Description of the Proposed Prison Facility at Graterford" and related papers. Dick Thornburgh Papers, box 265, folder 18: Proposal to construct a prison facility at Graterford June-November, 1981. UPASC.

about prison siting in western Pennsylvania. Prefiguring the support to area gave to Ronald Reagan a few years later, Thornburgh performed much better than expected in the west during the 1978 gubernatorial election.<sup>1179</sup> His success was surprising given that most voters in this area were registered Democrats and his opponent was Pete Flaherty, the former Democratic mayor of Pittsburgh. Thornburgh worried about losing these votes in the upcoming 1982 election and was careful not to create unnecessary political problems for western Pennsylvania. An instance of this caution can be seen in how the administration dealt with lingering problems posed by the regional jail system, which was still only partially completed nearly fifteen years after the General Assembly approved its creation. The only two jails built were in western Pennsylvania - the State Regional Correctional Facility (SRCF) at Greensburg and SRCF Mercer. Prison officials considered the regional jail project as a costly "burden" that made the management of the state prison system unnecessarily difficult.<sup>1180</sup> These facilities aided counties by confining inmates serving a sentence with a maximum period between six months and two years instead of having these inmates remain in county jails. By 1980, however, with only two such institutions, the regional project never realized its intended purpose and by statute they could not be used to house regular state prisoners. The administration wanted to "back out" of the "regional concept," but feared the leaders in the counties would object to this proposal, especially since many county jails in the regional catchment zones were struggling

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<sup>1179</sup> John J. Kennedy, *Pennsylvania Elections: Statewide Contests from 1950-2004* (Lanham: University Press of America, 2006), 101-103.

<sup>1180</sup> Ronald J. Mark to Harold Miller, December 29, 1981: "Concept Paper for New Correctional Facilities," and "Bureau of Correction: Concept for a Total System" concept papers for new prison locations and construction, prepared by the Pennsylvania Bureau of Correction June, 1981-April, 1982," Dick Thornburgh Papers, box 265, folder 19. UPASC.

with overcrowding and were asking the state for additional help.<sup>1181</sup> The Thornburgh administration sought and received legislative authorization to build new cell space at the SRCF Greensburg and SRCF Mercer and loosen the criteria for using these facilities, but it stopped short of legally re-designating them as "state correctional institutions" because of the possible backlash from counties in the west.<sup>1182</sup> The sensitivity of this issue and the distance precluded using one of these regional jails as the site for the new Western Diagnostic and Classification Center.<sup>1183</sup>

Unlike the situation in the east at Graterford, Commissioner Marks and other Bureau officials were not enamored with the idea of expanding the existing center at SCI Pittsburgh and wished to avoid doing this as much as possible. At the time, the WDCC was inundated with more commitments than it could process in a timely manner, and the relatively small portion of the prison set aside for the center further complicated matters. The architecture of SCI Pittsburgh presented numerous blind zones, poor sight lines and other control difficulties compared many of the state's other prisons. The murder of a senior officer by several inmates in 1973 occurred in an area that was vulnerable to lapses of control.<sup>1184</sup> Because of these problems and continual costly maintenance, the Bureau did not want to further its dependence on the institution.

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<sup>1181</sup> "Alternative Sites for New State Prisons," April 21, 1981, Dick Thornburgh Papers, box 307, folder 6:"April, 1981." UPASC.

<sup>1182</sup> Pennsylvania General Assembly Senate, "Senate Democratic Wrap-Up for the 1981- 1982 Legislative Session," 5, available at: [http://www.pasenate.com/Archives/WrapUp/LegisWrapUp\\_1981-1982.pdf](http://www.pasenate.com/Archives/WrapUp/LegisWrapUp_1981-1982.pdf). Last checked: January 12, 2016.

<sup>1183</sup> Ronald J. Mark to Harold Miller, December 29, 1981: "Concept Paper for New Correctional Facilities," Dick Thornburgh Papers, box 265, folder 19. UPASC; "Alternative Sites for New State Prisons," April 21, 1981, Dick Thornburgh Papers, box 307, folder 6:"April, 1981." UPASC.

<sup>1184</sup> "Pen Status Dangerous, DA Reports," *Pittsburgh Post-Gazette*, February 7, 1973; "Western Pen Officer Beaten, Kicked, Dies," *Pittsburgh Post-Gazette*, (December 11, 1973); "Locked-in Prison Guard Watched Murder at Pen," *Pittsburgh Post-Gazette*, (December 13, 1973).

The plans crafted by Thornburgh's immediate advisors and the senior staff in the Bureau of Correction required moving the diagnostic and classification function to a new facility as well as creating a mental health unit in this new prison that could house mentally ill inmates currently in the general population at SCI Pittsburgh.<sup>1185</sup> They eventually targeted this plan on the C. Howard Marcy State Hospital within the city of Pittsburgh, which they hoped to convert into a small medium security prison in addition to housing the WDCC. The planners believed this change would redress space shortfalls at SCI Pittsburgh and reduce tensions in the old prison. Divesting the old prison of these specialized functions and removing categories of inmates needing specialized care would also enable the prison to become more of a "pure" maximum-security, general population facility, which would be easier to manage.<sup>1186</sup> Its location in the city and proximity to SCI Pittsburgh made the C. Howard Marcy State Hospital ideal for this type of conversion.

By June 1980, the Department of Public Welfare, which operated the hospital, was already considering closing C. Howard Marcy Hospital. Earlier in the year, Helen B. O'Bannon, the state's Secretary of Public Welfare, established a task force to assess the operations of all Pennsylvania's state hospitals in Allegheny County (Woodville, Mayview, Dixmont, the Western Restoration Center, and Marcy) and suggested ways to consolidate their operations and close unnecessary facilities.<sup>1187</sup> This assessment was part of a larger statewide plan to reduce the size

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<sup>1185</sup> "Concept Paper for New Correctional Facilities" June 8, 1981 Pennsylvania Bureau of Correction, Dick Thornburgh Papers, box 265, folder 19: "Concept Paper for New Correctional Facilities," and "Bureau of Correction: Concept for a Total System" concept papers for new prison locations and construction, prepared by the Pennsylvania Bureau of Correction June, 1981-April, 1982." UPASC.

<sup>1186</sup> Ibid.

<sup>1187</sup> "C. Howard Marcy State Center: A Report to the Secretary of Public Welfare," Prepared by Kathryn S. McKenna, Western Region, Department of Public Welfare, March 17, 1981, 2. Dick Thornburgh Papers, box 265, folder 15: "Conversion of the Marcy State Hospital into a correctional prison facility April-November, 1981." UPASC.

of the state hospital system and eliminate certain areas of care and responsibility. While the Department of Public Welfare and the administration still envisioned a major commitment to the care and custody of the severely mentally ill, they felt their role in providing institutional treatment for the “mentally retarded”<sup>1188</sup> needed to be reduced and ultimately discontinued.<sup>1189</sup> Accordingly, welfare department officials targeted many of the hospitals that primarily cared for the mentally retarded for consolidation and closure.

The task force determined that Marcy was the most likely candidate for closure. In 1974, the state re-designated the hospital, which had once treated tuberculosis patients, as a “transitional facility” for mentally retarded patients who were being transferred from other state centers prior to their release from state care. Ironically, the main impetus for converting March to this use was overcrowding in several other state hospitals for the mentally retarded.<sup>1190</sup> By the 1980s, the hospital was very costly to operate; it was the second most expensive hospital in the public system.<sup>1191</sup> Complicating this further, by the 1980-1981 fiscal year, over a third of its budget came from the federal government in the form of matching funds from Medicaid under the Intermediate Care Facilities for People with Mentally Retardation benefit. These funds came with the expectation that certain standards of care would be maintained as well as ensuring that the facility met the Life Safety Code for fire

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<sup>1188</sup> This term has gradually become a pejorative label in the last few decades, even though it was likewise adopted as a replacement for earlier terms that were seen as also seen as demeaning. In the early 1980s, however, this semantic shift was far from certain and the term was still widely used in the mental health, social service, and public policy fields to designate people displaying what would later be called, among other things, “developmental and intellectual disabilities.”

<sup>1189</sup> Dick Thornburgh, *Where the Evidence Leads: An Autobiography* (Pittsburgh: University of Pittsburgh Press, 2003), 150-152.

<sup>1190</sup> “Violations May Close Hospital,” *Pittsburgh Press*, (August 2, 1979).

<sup>1191</sup> “C. Howard Marcy State Center: A Report to the Secretary of Public Welfare,” Prepared by Kathryn S. McKenna, Western Region, Department of Public Welfare, March 17, 1981, 3. Dick Thornburgh Papers, box 265, folder 15: “Conversion of the Marcy State Hospital into a correctional prison facility April-November, 1981.” UPASC.

protection.<sup>1192</sup> It was clear Marcy would need additional renovations to maintain federal funding. Even then, a reviewer of the facility's operations noted that, "Marcy would still remain a large, old institution with an environment that will never be compatible with transitional living."<sup>1193</sup> The Department of Public Welfare's task force felt the required renovations needed to bring the facility up to federal code were simply too burdensome given the state's fiscal problems at the time. Yet, with the impending loss of federal support, the state would have had to pay for the hospital's entire operational costs. The task force argued that state monies would be better allocated by consolidating mental health institutions in Allegheny County, closing Marcy, as well as the Western Restoration Center, and either transferring patients to different institutions or settling them "in the community."<sup>1194</sup>

In general, the plan to close the hospital would not have been a major surprise to many people in the state. As with many other states in the country, Pennsylvania's use of state hospitals had declined drastically during the 1960s and 1970s.<sup>1195</sup> Gov. Thornburgh, a fiscal

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<sup>1192</sup> "C. Howard Marcy State Center: A Report to the Secretary of Public Welfare," Prepared by Kathryn S. McKenna, Western Region, Department of Public Welfare, March 17, 1981, 2, 6-8. Dick Thornburgh Papers, box 265, folder 15: "Conversion of the Marcy State Hospital into a correctional prison facility April-November, 1981." UPASC. For more on Medicaid and Medicare funding for mental retardation and mental health in general see, Gerald N. Grob, *From Asylum to Community: Mental Health Policy in Modern America* (Princeton: Princeton University Press, 1991), 64-70; Margaret W. Linn and Shayna Stein, "Nursing Homes as Community Mental Health Facilities," in David A. Rochefort (ed.), *Handbook on Mental Health Policy in the United States* (New York: Greenwood Press, 1989), 267-292; Joseph P. Morrissey, "The Changing Role of the Public Mental Hospital," in David A. Rochefort ed., *Handbook on Mental Health Policy in the United States* (New York: Greenwood Press, 1989), 311-338; U.S. Department of Health and Human Services, "Background and Milestones: Intermediate Care Facilities for People with Mentally Retardation," available at [http://www.cms.hhs.gov/CertificationandCompliance/09\\_ICFMRs.asp](http://www.cms.hhs.gov/CertificationandCompliance/09_ICFMRs.asp). Last checked on March 31, 2010.

<sup>1193</sup> C. Howard Marcy State Center: A Report to the Secretary of Public Welfare, Prepared by Kathryn S. McKenna, Western Region, Department of Public Welfare, March 17, 1981, 2. Dick Thornburgh Papers, box 265, folder 15 "Conversion of the Marcy State Hospital into a correctional prison facility April-November, 1981." UPASC.

<sup>1194</sup> "Release of Hundreds of Mentally Ill Aired," *Pittsburgh Post-Gazette*, January 16, 1981; "C. Howard Marcy State Center: A Report to the Secretary of Public Welfare," Dick Thornburgh Papers, box 265, folder 15: "Conversion of the Marcy State Hospital into a correctional prison facility April-November, 1981." UPASC.

<sup>1195</sup> Grob, *From Asylum to Community*.

conservative who had pledged to reduce government waste and improve the bureaucracy's efficiency, pushed the idea of closing more hospitals, arguing that the administration could realize substantial budget reductions this way.<sup>1196</sup> In addition, the state was entangled in costly, ongoing litigation over abuses at the Pennhurst State School and Hospital in eastern Pennsylvania and it appeared this case would require the state to make drastic changes at all of its state hospitals for the mentally retarded.<sup>1197</sup> Reducing the state's overall care of this population would, in effect, lessen the court order reforms and potentially ward off future litigation.

Despite the decline in the state hospital system, this policy was not without risks for the administration. The hospitals had a varied and vocal constituency of supporters composed largely of state employees and their union as well as families with relatives being treated at the hospitals. Earlier attempts to close state hospitals met with enough resistance that the administration retreated from ordering further closings.<sup>1198</sup> Moreover, closing state hospitals primarily as a way to save state resources could be seen as cruel or indifferent to the suffering

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<sup>1196</sup> "Sounding Retreat," *Pittsburgh Post-Gazette*, Friday, April 4, 1980; "State Hospital Closing Backed," *Beaver County Times*, April 9, 1980; "Thornburgh's Options Open, Signals Mixed," *Philadelphia Inquirer*, Sunday, April 12, 1981.

<sup>1197</sup> In general, see *Halderman v. Pennhurst State School & Hospital*, 446 F.Supp. 1295 (E.D. Pa., 1977); *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1 (1981); *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984);

"PA Has Plan on Retarded - 250 at Pennhurst Would be Moved," *Philadelphia Inquirer*, (Tuesday, June 16, 1981); "State Appeal Denied in Pennhurst Case," *Pittsburgh Press*, (September 3, 1981); "Pennsylvania Settles Key Suit on Facilities for the Retarded," *New York Times*, (July 15, 1984); David A. Ferleger and Patrice M. Scott, "Rights and Dignity: Congress, the Supreme Court, and People with Disabilities after Pennhurst," *Western New England Law Review*, 5 (Winter 1983), 327-361.

Being the father of a child with severe disabilities and considering his later support for the federal Americans With Disabilities Act, Thornburgh has also stated that he personally felt that it was inhumane to keep these people in institutions, state or otherwise. Dick Thornburgh, *Where the Evidence Leads: An Autobiography* (Pittsburgh: University of Pittsburgh Press, 2003), 150-152; Americans With Disabilities Act of 1990, P.L. 101-336, 104 Stat. 327, enacted July 26, 1990, codified at 42 U.S.C. § 12101.

<sup>1198</sup> "Sounding Retreat," *Pittsburgh Post-Gazette*, Friday, April 4, 1980.



of patients and employees, maybe even reckless if adequate alternatives were not in place for discharged patients. The administration was already the target of criticism by many people in the African-American community and social services professions for its plan to reduce the number of welfare recipients by over 60,000, a proposal often derided as “Thornfare.”<sup>1199</sup>

The proposal to close Marcy, announced in January 1981, encountered opposition from Allegheny County officials as well as the union representing hospital workers. Both groups claimed they supported the “deinstitutionalization” of those patients most able to function without institutional care. However, the Pennsylvania Social Services Union (PSSU) argued that many of the residents at Marcy had multiple disabilities that could simply not be met by existing community based services.<sup>1200</sup> They also noted that the lack suitable community based services would be even more acute for patients whose homes were outside of Allegheny County, which normally provided a higher level of mental health programs for its residents than surrounding counties. These points were also raised by the American Federation of State, County, and Municipal Employees Council 13.<sup>1201</sup> Allegheny County officials also objected to the closing. They argued that Marcy patients would be transferred to various community programs all of which were funded by a higher proportion of county resources. They criticized the state for drafting the plan without consulting or forewarning them and expecting them to simply accept patients and a greater fiscal burden.<sup>1202</sup> The Allegheny County chapter of the Association

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<sup>1199</sup> “Plan to Trim Welfare Rolls Draws Fire,” *Philadelphia Inquirer*, Thursday, February 26, 1981.

<sup>1200</sup> Joan C. Bruce to Kathryn S. McKenna, January 27, 1981, Dick Thornburgh Papers, box 265, folder 15: Conversion of the Marcy State Hospital into a correctional prison facility April-November, 1981. UPASC.

<sup>1201</sup> A Gerald W. McEntee to Kathryn S. McKenna, January 30, 1981, Dick Thornburgh Papers, box 265, folder 15” Conversion of the Marcy State Hospital into a correctional prison facility April-November, 1981. UPASC.

<sup>1202</sup> C.A. Peters to Kathryn S. McKenna, January 8, 1981, Dick Thornburgh Papers, box 265, folder 15: Conversion of the Marcy State Hospital into a correctional prison facility April-November, 1981. UPASC.

for Retarded Persons was not as critical of the plan to close Marcy as they recognized the coming shortfall of federal funding. As they stated:

We also understand that change is particularly imperative from an economic viewpoint given the threatened loss of federal funds and the economic drain on the MH/MR system by continued operation of large, inefficient and antiquated State facilities."<sup>1203</sup>

Nevertheless, they argued the state was jeopardizing the care and safety of patients by not settling the funding issues with the county prior to announcing its decision to close the facility.<sup>1204</sup>

At this point in the winter and spring of 1981, the Thornburgh administration had not yet publicly announced the idea of converting the C. Howard Marcy State Hospital into a prison after it was closed. It is not entirely clear when the latter position became more attractive to the administration officials tasked with planning new prison construction. The discussions within the administration about closing Marcy in 1980 and early 1981 were largely focused on rationalizing the operations of the Department of Public Welfare and its state-run institutions.<sup>1205</sup> It also appears that many more of the state's hospitals were vetted for their possible conversion to prisons.<sup>1206</sup> In some of these early proposals, several other hospitals—

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<sup>1203</sup> "Position Statement," of the Allegheny County chapter of the Association for Retarded Persons, Dick Thornburgh Papers, box 265, folder 15: Conversion of the Marcy State Hospital into a correctional prison facility April-November, 1981. UPASC.

<sup>1204</sup> Ibid.

<sup>1205</sup> "C. Howard Marcy State Center: A Report to the Secretary of Public Welfare," Prepared by Kathryn S. McKenna, Western Region, Department of Public Welfare, March 17, 1981:2, Dick Thornburgh Papers, box 265, folder 15: Conversion of the Marcy State Hospital into a correctional prison facility April-November, 1981. UPASC. In general, see the weekly reports to the governor from the Department of Public Welfare. Dick Thornburgh Papers, box 541, folder 3: Public Welfare, Department of 1979-1982. UPASC.

<sup>1206</sup> "Alternative Sites for New State Prisons," Harold Miller and George Riddle to Rick Stafford, April 21, 1981, Dick Thornburgh Papers, box 307, folder 6: April, 1981. UPASC; "Conversion of Welfare Institutions," Dick Thornburgh Papers, box 264, folder 33: Conversion of eight of the Department of Public Welfare's institutions into a prison May

not already slated to close—in the Pittsburgh area were considered for conversion along with or instead of Marcy. In one such proposal, the Bureau of Correction planned to convert both Marcy and the Dixmont State Hospital, which was further downstream from SCI Pittsburgh on the Ohio River.<sup>1207</sup> Marcy would operate the diagnostic and classification center, short-term mental health unit and a medical center. While Dixmont would be converted to a prison that offered “a number of specialized purposes,” including programming for short-term offenders, those soon to be released, and those participating in work release or vocational education. This would also enable SCI Pittsburgh to function solely as a maximum security prison with programs befitting this security rating. Subsequent proposals for the new prison in the Pittsburgh area dropped the idea of also using Dixmont State Hospital.<sup>1208</sup>

The conflict over the pending closure carried on throughout the spring and summer with local county and city officials, the unions, and families of the residents presented strong opposition to the administration’s plans.<sup>1209</sup> The hospital was located near the East Liberty section of Pittsburgh, which at the time was a largely African-American residential area that had suffered badly from the political-economic changes of the last thirty years. For many residents,

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21, 1981. UPASC.; “Concept Paper for New Correctional Facilities” June 8, 1981 Pennsylvania Bureau of Correction, Dick Thornburgh Papers, box 265, folder 19: Concept Paper for New Correctional Facilities," and "Bureau of Correction: Concept for a Total System" concept papers for new prison locations and construction, prepared by the Pennsylvania Bureau of Correction June, 1981-April, 1982. UPASC.

<sup>1207</sup> “Concept Paper for New Correctional Facilities” June 8, 1981 Pennsylvania Bureau of Correction, Dick Thornburgh Papers, box 265, folder 19: Concept Paper for New Correctional Facilities," and "Bureau of Correction: Concept for a Total System" concept papers for new prison locations and construction, prepared by the Pennsylvania Bureau of Correction June, 1981-April, 1982. UPASC.

<sup>1208</sup> See the later versions of the same general concept paper dated September 14, 1981 and September 28, 1981, Dick Thornburgh Papers, box 265, folder 19: Concept Paper for New Correctional Facilities," and "Bureau of Correction: Concept for a Total System" concept papers for new prison locations and construction, prepared by the Pennsylvania Bureau of Correction June, 1981-April, 1982. UPASC.

<sup>1209</sup> “Mental Hospital Cutbacks Harmful,” *Pittsburgh Press*, (February 19, 1981); “Home for Mentally Retarded Will Close,” *Observer-Reporter*, (August 1, 1981); “County, Hospital Officials Hit Marcy Closing,” *Pittsburgh Press*, (August 2, 1981).

the closure of Marcy would remove one of the areas main employers. Moreover, this particular closure dispute paralleled similar conflicts in other parts of the state where the administration was in the process of shuttering other public hospitals.<sup>1210</sup> Public employee unions, joined by some state officials, had taken the administration to court to try to block the closures, but they were gradually losing their fight. After the State Supreme Court refused to hear an appeal of a Commonwealth Court ruling that permitted the closures, it seemed likely that the opposition would lose the fight to keep Marcy open.<sup>1211</sup> Nevertheless, those opposed to the closure continued to describe the administration's fiscal arguments about closure as irresponsible and reckless with the lives of patients who could not care for themselves.<sup>1212</sup>

The nature of the conflict changed abruptly in September 1981 when the Thornburgh administration announced the plan to convert the Marcy State Hospital into a 325-bed medium security prison as part of a broad package of legislation calling for mandatory-minimum sentencing and expanded prison capacity. The proposed conversion of Marcy matched the plans from the internal discussions with the exception that the addition of other specialized penal operations at Dixmont were dropped, and never publically mentioned. The reaction of the surrounding community and the city when the plan became public on September 16, 1981 was explosive, especially in the neighborhoods of East Liberty, Larimer, and Lincoln-Lemington,

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<sup>1210</sup> "300 Demonstrate Against Stat's Plans to Close State Hospital," *Observer-Reporter*, (April 8, 1981); "Domino Effect Feared in Hospital Closings," *Reading Eagle*, (May 17, 1981); "More Suits are Threatened to Bar Hospital Closings," *Reading Eagle*, (August 9, 1981); "Home for Mentally Retarded Will Close," *Observer-Reporter*, (August 1, 1981); "County, Hospital Officials Hit Marcy Closing," *Pittsburgh Press*, (August 2, 1981); "Little Hope Remains that Hospital Will Stay Open," *Gettysburg Times*, (August 13, 1981).

<sup>1211</sup> *Edward Cook, President, County Commissioners of Schuylkill County, Pa. et al., Petitioners, v. Commonwealth of Pennsylvania et al., Respondents*. 61 Pa. Commonwealth. 152, 432 A.2d 1139, July 27, 1981.

<sup>1212</sup> "County, Hospital Officials Hit Marcy Closing," *Pittsburgh Press*, August 2, 1981.

which were near where Marcy was located.<sup>1213</sup> East Liberty, described by the Pittsburgh Press as “the city’s best politically organized, mostly black community,”<sup>1214</sup> was a bastion of Democratic Party. Although, Dick Thornburgh had polled better than expected in Pittsburgh in 1978 the city’s black community intensely disliked the governor and many of his policies, especially Thornfare, which disproportionately affected African Americans.<sup>1215</sup>

On September 24<sup>th</sup>, about 200 people turned out at the Lincoln-Larimer Athletic Association for a meeting organized by the staff of the Democratic Party’s 12<sup>th</sup> Ward to protest the administration’s plan.<sup>1216</sup> The meeting featured addresses by prominent local leaders, such as the 12<sup>th</sup> Ward Democratic Party Dock Fielder Jr., local NAACP Chairman, Harvey Adams and Frank Williams, the county director of property and supplies. State representative William Pendleton, who spoke to the media at the event, felt that a prison sent a bad symbolic message to a neighborhood that already had a juvenile detention facility: “The young people at Schuman Center can look right across the hill and see where they’re going.”<sup>1217</sup> He called for public hearings over the plan, something the Thornburgh administration surely wished to avoid.<sup>1218</sup> After several more community meetings, many East Liberty residents formed a pressure group

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<sup>1213</sup> “Governor Rapped on Spending Plans,” *Pittsburgh Press*, September 16, 1981; “Governor: Big Jails, Stiff Terms,” *Pittsburgh Post-Gazette*, September 17, 1981; Harold Miller to Rick Stafford, October 21, 1981, Dick Thornburgh Papers, box 543, folder 46: Marcy Hospital, Press Availability, Pittsburgh, PA November 12, 1981. UPASC.

<sup>1214</sup> “200 in East End Slam Hospital-Prison Plan,” *Pittsburgh Press*, September 25, 1981.

<sup>1215</sup> Klein and Hoogenboom, *A History of Pennsylvania*, 535-537; Paul B. Beers, *Pennsylvania Politics Today and Yesterday: The Tolerable Accommodation* (University Park: Pennsylvania State University Press, 1980), 445-456; Renee M. Lamis, *The Realignment of Pennsylvania Politics Since 1960: Two-Party Competition in a Battleground State* (University Park: Pennsylvania State University Press, 2009), 105-107.

<sup>1216</sup> “200 in East End Slam Hospital-Prison Plan,” *Pittsburgh Press*, September 25, 1981.

<sup>1217</sup> *Ibid.*

<sup>1218</sup> Harold Miller to Rick Stafford, October 21, 1981 and William Pendleton to Richard Thornburgh, October 1, 1981, Dick Thornburgh Papers, box 543, folder 46: Marcy Hospital, Press Availability, Pittsburgh, PA November 12, 1981. UPASC.

called the "12<sup>th</sup> Ward and Concerned Pittsburghers" to oppose the new prison. The group's executive committee wrote to the governor and the legislature recommending that Marcy be used for a more "positive purpose." They proposed approaching the Job Corps about establishing an office and training center at Marcy.<sup>1219</sup>

Letters from city and county officials decrying the plan soon flooded into the governor's Pittsburgh and Harrisburg offices.<sup>1220</sup> Pittsburgh's mayor, Richard Caliguiri, objected to the governor's plan publicly as well as through direct correspondence with the governor.<sup>1221</sup> Pittsburgh's City Council and the County Commissioners also criticized the proposed facility.<sup>1222</sup> State Senator Leonard Bodack rejected the plan and passed along petitions with 1,189 signatures from 12<sup>th</sup> Ward residents and 592 letters from city residents also opposed to the Marcy conversion.<sup>1223</sup> Many of the letters received by the administration and the House Judiciary Committee, not only voiced their opposition to the plan, but also called for public hearings in Pittsburgh.<sup>1224</sup> All of these local politicians and many residents frequently cited the administration's heavy-handed approach to the whole issue, especially the lack of forewarning

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<sup>1219</sup> The Executive Committee, 12th Ward and Concerned Pittsburghers to Pennsylvania House Judiciary Committee Members, October 14, 1981, Dick Thornburgh Papers, box 266, folder 1: Correspondence 1981-1983. UPASC.

<sup>1220</sup> Harold Miller acknowledged such in his October 21, 1981 letter to Rick Stafford, Dick Thornburgh Papers, box 543, folder 46: Marcy Hospital, Press Availability, Pittsburgh, PA November 12, 1981. UPASC.

<sup>1221</sup> Richard S. Caliguiri to Richard L. Thornburgh, October 2, 1981, Dick Thornburgh Papers, box 543, folder 46: Marcy Hospital, Press Availability, Pittsburgh, PA November 12, 1981. UPASC; "Officials Happy Marcy Center Jail Plans Barred," *Pittsburgh Press*, (November 13, 1981).

<sup>1222</sup> Tom Foerster, Cyril H. Wecht, and William R. Hunt to Richard L. Thornburgh, September 24, 1981 and Eugene P. DePasquale to Richard Thornburgh, September 30, 1981, Dick Thornburgh Papers, box 543, folder 46: Marcy Hospital, Press Availability, Pittsburgh, PA November 12, 1981. UPASC.

<sup>1223</sup> Leonard Bodack to Dick Thornburgh, October 13, 1981, Dick Thornburgh Papers, box 543, folder 46: Marcy Hospital, Press Availability, Pittsburgh, PA November 12, 1981. UPASC.

<sup>1224</sup> The Executive Committee, 12<sup>th</sup> Ward and Concerned Pittsburghers to Pennsylvania House Judiciary Committee Members, October 14, 1981; Ralph Proctor, Executive Director, Kingsley Association, Lillian Taylor Camp to Governor Dick Thornburgh, November 10, 1981; Ruth Hightower to Governor Thornburgh, November 11, 1981. Dick Thornburgh Papers, box 266, folder 1: Correspondence, 1981-1983. UPASC.

and consultation over the prison proposal. The hospital closure itself was already a contentious issue in the city. The prison proposal only compounded this problem.

Rep. William Pendleton, a first-term state legislator, emerged as the most vocal and visible of the administration's opponents over the Marcy State Hospital, which was located in his representative district. While he called for public hearings in statements to the press and correspondence with the governor, he informally lobbied the administration and House Judiciary Committee to hold public hearings in Pittsburgh over the proposal. In an October 14, 1981 private meeting with Harold Miller and Commissioner Ronald Marks, Pendleton indicated that even though the Judiciary Committee had dismissed the idea, he might nevertheless pursue public hearings on his own.<sup>1225</sup> This was something the administration wished to avoid. In the same meeting, Miller and Marks tried to persuade Pendleton to support the administration's plans.<sup>1226</sup> Pendleton said he was supportive of the administration's new sentencing proposal, but objected to the specific conversion of Marcy to accommodate the desire for new prison space. Pendleton argued that the area surrounding Marcy was a "very fragile neighborhood," as Harold Miller later recalled, and the presence of a prison would not help matters.<sup>1227</sup> While Pendleton was a freshman legislator, he was accompanied at the meeting by Stanley Mitchell, the personal assistant to Rep. K. LeRoy Irvis, whose district was also near the hospital. Rep. Irvis was the House's minority leader and previously the Speaker of the House. He was well-respected nationally and one of the state Democratic Party's most

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<sup>1225</sup> Harold Miller to Rick Stafford, October 21, 1981 Dick Thornburgh Papers, box 543, folder 46: Marcy Hospital, Press Availability, Pittsburgh, PA November 12, 1981. UPASC.

<sup>1226</sup> Ibid.

<sup>1227</sup> Ibid.

powerful legislators. The presence of his assistant lent more weight to Pendleton's position vis-a-vis the administration.

Miller reported to Rick Stafford and Gov. Thornburgh that despite their best efforts their arguments, specific plans and supporting maps failed to convince the representative that the new prison would not negatively affect the community, its image, and property values.

Pendleton recommended that if Marcy could not remain a hospital, the old facility should be used for some other purpose benefiting the surrounding area. This was a point Pendleton had raised in an earlier letter to the governor.<sup>1228</sup> He said the facility could be a "workfare training center," referring to the governor's plan to push thousands of people off the state's welfare rolls. Miller stated that establishing such centers was never considered by the administration. Pendleton hinted that it was his intention and that of other members of the legislature to introduce the idea of using "vacant space in state institutions for training 'Hard Core' welfare recipients."<sup>1229</sup> When Miller rejected this idea, Pendleton suggested the administration look into the possibility of using Herr's Island in the Allegheny River as the location for the new prison.<sup>1230</sup>

The area around Marcy was a largely African-American populated section of the city that was also substantially poorer than many other neighborhoods. In the debate over Marcy, those opposing the administration's plans often made reference to the racial and class characteristics of the area through oblique, but recognizable ways such as "very fragile neighborhood," which

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<sup>1228</sup> William W. Pendleton to Richard Thornburgh, October 1, 1981, Dick Thornburgh Papers, box 543, folder 46: Marcy Hospital, Press Availability, Pittsburgh, PA November 12, 1981. UPASC.

<sup>1229</sup> Harold Miller to Rick Stafford, October 21, 1981 Dick Thornburgh Papers, box 543, folder 46: Marcy Hospital, Press Availability, Pittsburgh, PA November 12, 1981. UPASC.

<sup>1230</sup> Ibid.



was "struggling to rebuild their community image."<sup>1231</sup> This difference was also apparent in an article on the issue in the *Pittsburgh Press* suggestively titled, "East Liberty Losing Ground in Marcy Prison Fight."<sup>1232</sup> The article included the comments of Rep. Terry McVerry, a white Republican representing the much wealthier suburb of Mt. Lebanon, who said he sympathized with his colleague Rep. Pendleton, but opined that prisons were going to generate opposition regardless of where they were located. He and Rep. Michael Fisher, Republican representing Upper St. Clair another wealthy, largely white, suburb of Pittsburgh, stated there were many advantages to the Marcy site. Both men had voted as members of the House Judiciary Committee to send the bill including the Marcy conversion out of the committee to the floor for a vote.<sup>1233</sup> Rep. Pendleton responded to their comments by simply pointing out, "That's easy for them to say. It isn't in their communities."<sup>1234</sup> The article also quoted the bill's prime sponsor, Republican Jeffery Piccola, who argued that "we're going to have to be willing to pay the price for the prisons" called for in the new sentencing legislation. Again, Pendleton referred to the number of halfway houses, a juvenile detention center, state and veteran's hospitals, and state police barracks in the area, and expressed that his constituents had "'paid our price in that end of town."<sup>1235</sup>

At first, the administration and its Republican allies in the General Assembly held fast to their original plan. Supporters deflected arguments against the conversion of Marcy, citing the general support across the state for the administration's effort to increase sentencing severity

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<sup>1231</sup> Ibid.; William W. Pendleton to Richard Thornburgh, October 1, 1981, Dick Thornburgh Papers, box 543, folder 46: Marcy Hospital, Press Availability, Pittsburgh, PA November 12, 1981. UPASC.

<sup>1232</sup> "East Liberty Losing Ground in Marcy Prison Fight," *Pittsburgh Press*, (October 25, 1981).

<sup>1233</sup> Ibid.

<sup>1234</sup> Ibid.

<sup>1235</sup> Ibid.

and construct a new prison. Even some of the people opposing the planned conversion of the hospital, like Rep. Pendleton, supported the increased penalties that were part of the same legislation authorizing the new prison construction.<sup>1236</sup> This did not quell the backlash against the plan, as Harold Miller acknowledged in an update on the issue to Rick Stafford and the governor on October 21st:

Of all the new prisons we have proposed, only Marcy has generated significant opposition (Even the opposition to the new prison at Graterford is limited and concerned more with whether we build it inside the existing wall or not).<sup>1237</sup>

Following the October 14th meeting with Rep. Pendleton, a series of other potential sites were suggested and vetted by representatives from the city, county, legislature, and the administration, including in the latter case Commissioner Marks and the superintendent of SCI Pittsburgh, George Petsock who assessed the site for penological suitability.

The administration followed up on Rep. Pendleton's suggestion to investigate Herr's Island. Staff from the Department of Environmental Resources, as well as the Bureau of Corrections and the Department of General Services, inspected the site, but their report was not favorable. The potential for flooding was high, which could hamper evacuation and access by fire, police and medical services if there were an emergency at a prison located on the island.<sup>1238</sup> These marks against the location precluded the need for assessing the possible political reaction from nearby communities. On November 5<sup>th</sup>, Rep. Pendleton arranged

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<sup>1236</sup> Ibid.

<sup>1237</sup> Ibid.

<sup>1238</sup> R. Timothy Weston to Mary T. Webber, October 30, 1981, Dick Thornburgh Papers, box 265, folder 23. UPASC; "Possible Pittsburgh Prison sites October-November, 1981."

another private meeting to discuss the assessment of Herr's Island and other potential sites in the City County Building in Pittsburgh. The meeting was attended by representatives from the mayor's office, the city council, and a host of county, state, and city level development and land-use bureaucrats, Pendleton and three staff members of SCI Pittsburgh, including Supt. Petsock.<sup>1239</sup> Rep. Pendleton reiterated his objection to the conversion of Marcy and Edward Deluca, the head of the city's economic development agency, stated there were no sites in the city of Pittsburgh available for a prison. Nevertheless, the county's director of development Myles Span, suggested there might be six or more sites in the surrounding area that would be appropriate for consideration. These sites were located in Monroeville, Braddock, Boyce Park, Tarentum and Collier Township near the Greater Pittsburgh Airport.<sup>1240</sup>

It appears the administration did not pursue these other options. With the exception of Collier Township, the distances between these sites and SCI Pittsburgh were greater than Marcy's location. More importantly, these areas, while not the most wealthy in the county, were home to largely white residents, many of whom were also working class. Braddock, especially, would have been considered an industrial center and working or middle class communities by most Allegheny County residents. The administration expected an even greater public rebuke if they tried to locate a prison in these largely white communities. The administration's planning staff reconsidered the possible conversion of the Dixmont State Hospital after the administration encountered resistance at Marcy, and also thought about

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<sup>1239</sup> Robert L. Frambach to Patrick J. Solano, November 6, 1981 and George Petsock to Ronald J. Marks, November 9, 1981, Dick Thornburgh Papers, box 265, folder 23: Possible Pittsburgh Prison sites October-November, 1981. UPASC.

<sup>1240</sup> Ibid.

converting Woodville and Mayview State Hospitals, which were also in southwestern Pennsylvania.<sup>1241</sup> None of these hospitals had been slated to close at that time, and the administration balked at these ideas because, as Harold Miller stated in assessment of the situation:

All of these are in relatively well-to-do areas of the county. It seems likely that if we are getting widespread opposition to Marcy, we will get even more at these sites, particularly if we have to close an institution instead of conversion or construction.<sup>1242</sup>

Despite opposition from the House of Representatives, Miller suggested they could still push forward with the Marcy plan because the broader sentencing legislation it was a part of had cleared the Judiciary committees in both chambers of the General Assembly. Miller believed the bill had a good chance of being approved in a floor vote in both chambers, but feared that much of Pittsburgh would be hostile to the administration if they proceeded in this direction, something that would be remembered in the next gubernatorial election only a year away.<sup>1243</sup>

As Miller was writing this letter, a standoff with several armed inmates who had taken hostages at SCI Graterford was in its second day of negotiations.<sup>1244</sup> The tense situation

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<sup>1241</sup> "Alternatives to Marcy for a Prison," October 30, 1981, Dick Thornburgh Papers, box 265, folder 15: Conversion of the Marcy State Hospital into a correctional prison facility April-November, 1981. UPASC.

<sup>1242</sup> Ibid.

<sup>1243</sup> Ibid.

<sup>1244</sup> For relevant articles in the Philadelphia press, which had the most reporters on scene, see "In Cold Blood: Portrait of Ringleader," *Philadelphia Inquirer*, (October 30, 1981); "Graterford Neighbors Stay Calm," *The Bulletin*, (October 30, 1981); "Inside, They Guard Against 'Another Attica,'" *Philadelphia Inquirer*, (October 31, 1981); "Long Siege Feared at Graterford-Officials: Talks 'Sporadic,'" *Philadelphia Inquirer*, (October 31, 1981); "In Town of Graterford, the Residents are Unfazed," *Philadelphia Inquirer*, (October 31, 1981); "A Different View of a Killer," *Philadelphia Inquirer*, (November 1, 1981); "Inmates Give Up," *Philadelphia Inquirer*, (November 3, 1981); "Governor Blames Legal Agency," unknown newspaper, (November 3, 1981) in George D. McDowell Philadelphia Evening Bulletin Newsclipping Collection, The Bulletin Clippings Eastern Penitentiary Graterford Prisons Prisoners Hostage 1981, Oct. TUUA; "After Siege, Looking for Answers: 7 Inmates Transferred to Lewisburg," *Philadelphia Inquirer*, November 4, 1981; "Good Ending at Graterford," unknown newspaper, (November 4, 1981) in George D.

captured headlines across the state and was picked up by the national media. The standoff lasted a few more days and was eventually resolved peacefully, but the media coverage of the event brought into focus serious system-wide management problems in the state's prison system, which could not have been lost on the participants in the Marcy conflict.<sup>1245</sup> In the days following the resolution at Graterford, the *Pittsburgh Post-Gazette* reported on a November 5<sup>th</sup>, behind-closed-doors meeting between the city, county and administration staff, which it referred to as the "latest chapter" of "the Battle Over Marcy."<sup>1246</sup> Without revealing any names, the paper stated local officials convinced the administration's delegation to consider seven other possible places to locate the new prison.

It appears that even while the administration sent some staff from SCI Pittsburgh to hear about Herr's Island and other possible sites, some of the more senior planners were already planning to drop the Marcy plan.<sup>1247</sup> It had become too politically costly and the hostage situation at Graterford did not help. Harold Miller recommended dropping the Marcy proposal and building a prison in another part of the state.<sup>1248</sup> Rick Stafford, concurred, advising

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McDowell Philadelphia Evening Bulletin Newsclipping Collection, The Bulletin Clippings Eastern Penitentiary Graterford Prisons Prisoners Hostage 1981, Oct. TUUA; "Street Asks for Probe of Graterford Prison," *The Bulletin*, (November 5, 1981); "Behind a Release From Solitary," *The Bulletin*, (November 6, 1981) in George D. McDowell Philadelphia Evening Bulletin Newsclipping Collection, Bulletin Clippings "Eastern Penitentiary Graterford Prisons Prisoners Hostage 1981, Oct. TUUA; "Deep Down at Graterford: Jo-Jo Bowen and 'The Hole,'" *Philadelphia Inquirer*, (November 8, 1981).

<sup>1245</sup> For coverage in Pittsburgh newspapers, see "Hostages Seized at State Pen," *Pittsburgh Press*, (October 29, 1981); "Hostage Talks at State Prison Deadlocked," *Pittsburgh Press*, (October 30, 1981); "New Talks Increase Hopes in 5-Day Graterford Siege," *Pittsburgh Press*, (November 2, 1981); "Convicts Make 12 Demands: Newsmen gets Terms at Prison," *Pittsburgh Post-Gazette*, (November 2, 1981); "Siege Ends at Graterford," *Pittsburgh Press*, (November 3, 1981); "Prison Siege Ends, All Safe: Graterford Convicts Give Up," *Pittsburgh Post-Gazette*, (November 3, 1981); "I Saw Guns...Some Place to Die: Graterford," *Pittsburgh Post-Gazette*, (November 4, 1981).

<sup>1246</sup> "New Prison Site in Marcy Feud," *Pittsburgh Post-Gazette*, (November 6, 1981).

<sup>1247</sup> "Alternatives to Marcy for a Prison," October 30, 1981, Dick Thornburgh Papers, box 265, folder 15: Conversion of the Marcy State Hospital into a correctional prison facility April-November, 1981. UPASC.

<sup>1248</sup> Rick Stafford to Governor and Jay Waldman, November 4, 1981, Dick Thornburgh Papers, box 265, folder 15: Conversion of the Marcy State Hospital into a correctional prison facility April-November, 1981. UPASC.

the governor that Marcy had generated a lot of opposition and that they could not afford to lose political support in Allegheny County. So, they began looking for sites elsewhere. On November 12, 1981, Thornburgh announced he was abandoning the conversion plan for Marcy, but that the hospital would still close. Speaking at a meeting of the International Society of Crime Prevention Practitioners, Thornburgh told reporters:

The case was made to our folks by elected officials and citizens groups that Marcy's proximity to neighborhoods that were fragile would have a very harmful effect on efforts made to increase the viability of the area.<sup>1249</sup>

He also tried to mitigate some of the political damage from the Marcy episode by supporting a plan suggested by Rep. Pendleton to approach the federal government about the possibility of relocating a Job Corps training center at the site of the closed hospital.<sup>1250</sup>

With an election coming up a year later, the Marcy campaign had angered too many voters in the western region, but dropping the plan left the administration with a shortfall of 325 beds and continued overcrowding difficulties at SCI Pittsburgh. This miscalculation on the part of the administration stemmed in part from the planners' mistaken assumption that local residents would view a mental hospital and a prison as similar enough to not object to the conversion. They may have also felt that a community that already had other institutions, like halfway houses and a juvenile detention center would not object to what they believed to be a similar institution. It was clear from many of the letters the administration received from local residents that in addition to the common NIMBY objections to unwanted development, many

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<sup>1249</sup> "Marcy Jail Plan Dropped," *Pittsburgh Press*, (November 12, 1981).

<sup>1250</sup> *Ibid.*

residents simply did not support the administration's punitive social policy. Suggestions for work centers, job training and other reformatory programs at the site revealed a major disagreement on this point. It was not simply that residents did not want a prison nearby, they wanted a solution to Marcy's possible closure that emphasized a more welfarist orientation to government intervention and public spending. Of course, many people still supported the continued use of the facility as a hospital.

As the Marcy plan deteriorated, several community groups and leaders from Frackville, a rural, largely white, mining town, approached the administration with proposals of support for locating the missing prison in their area. First, the Shenandoah Chamber of Commerce offered the Bureau of Correction over 200 acres of cleared, improved ground with utilities that had been planned as an industrial park.<sup>1251</sup> When this land proved to be insufficient for the new prison, the Greater Pottsville Industrial Development Corporation proposed two other sites in the area for the Bureau to consider.<sup>1252</sup> Frackville was nowhere near Pittsburgh or even the western half of the state. Located roughly sixty miles northeast of Harrisburg in Schuylkill County, Frackville was far from the urban centers that the Bureau identified as having the greatest need for new institutions. A new prison in the area would not be able to house either the classification center envisioned by Bureau planners or the mental health facilities. It was too far from the concentration of hospitals and medical professionals in the Pittsburgh and Philadelphia areas. Nevertheless, administration officials saw Frackville as the only politically-

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<sup>1251</sup> Martin F. Brophy, President [Shenandoah Chamber of Commerce] to Ronald J. Marks, Commissioner, October 6, 1981. Dick Thornburgh Papers, box 265, folder 24: Proposal to construct a prison facility at the Shenandoah Industrial Park in Schuylkill County October, 1981-December, 1982. UPASC.

<sup>1252</sup> "Status of Planning for a Prison in Schuylkill County," Harold Miller to Governor Thornburgh, Rick Stafford, Bob Wilburn and Richard Glanton, April 27, 1982. Dick Thornburgh Papers, box 265, folder 24: Proposal to construct a prison facility at the Shenandoah Industrial Park in Schuylkill County October, 1981-December, 1982. UPASC.

viable option for building the new prison and a way to add even more cells than would have been possible at Marcy.<sup>1253</sup> They decided that if they were going to build a prison from the scratch rather than converting an existing institution, like a hospital, then it would be more cost-effective to add additional cells to the prison design. The Frackville prison plan, therefore, called for 500 cells rather than the 325 cells originally envisioned at Marcy.<sup>1254</sup>

Compared to the controversial Marcy plan, the proposed Schuylkill County prison garnered a great deal of local support, but most of it came from businesses and the building trade unions not in the immediate area of the proposed sites.<sup>1255</sup> Policy analyst, Harold Miller told Rick Stafford, one of Gov. Thornburgh's closest advisors, that they had received letters of support from the United Labor Council of Schuylkill County, Bricklayers and Allied Craftsmen Union #47, Noble C. Quandel, Jr. and the Quandel Company, American Bank and Trust Co. of Pa., Cressona Aluminum Company, Richard B. Ryon Insurance, Union Bank and Trust Company of Pottsville and the Building and the Construction Trades Council of Schuylkill County in

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<sup>1253</sup> "Alternatives to Marcy for a Prison," Harold Miller and George Riddle to Bob Wilburn and Rick Stafford, October 30, 1981. Dick Thornburgh Papers, box 265, folder 24: Proposal to construct a prison facility at the Shenandoah Industrial Park in Schuylkill County October, 1981-December, 1982. UPASC.

<sup>1254</sup> Ibid.

<sup>1255</sup> While prison construction has always benefited some groups, it has only been since the 1980s that governments have come to frame new prison construction as a general economic development strategy for depressed, usually rural or deindustrialized areas. Thornburgh administration officials eventually discussed the Schuylkill County prison in this way, but privately they worried about making some rural areas dependent on public investment and also potential problems with providing adequate professional and emergency services to prison located far from urban centers. The literature on prisons as economic development is extensive. Some examples included: Tracy Huling, "Building a Prison Economy in Rural America" in Marc Mauer and Meda Chesney-Lind (eds.), *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (New York: The New Press, 2002), 197-213; Ryan Scoot King, Marc Mauer and Tracy Huling, "An Analysis of the Economics of Prison Siting in Rural Communities," *Criminology & Public Policy*, 3 (July 2004), 453-480; Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis and Opposition in Globalizing California* (Berkeley: University of California Press, 2007); Gregory Hooks, Clayton Mosher, Shaun Genter, Thomas Rotolo, Linda Lobao, "Revisiting the Impact of Prison Building on Job Growth: Education, Incarceration, and County-Level Employment, 1976-2004," *Social Science Quarterly*, 91 (March 2010), 228-244.



addition to the Greater Pottsville Industrial Development Corporation.<sup>1256</sup> However, Miller later noted they had not heard from “residents, public officials, businessmen, or organizations located in Frackville, which is close to one of the sites.”<sup>1257</sup> This was worrisome because the first site in the area that the Bureau considered encountered resistance by local residents who lived close to the possible prison site and this played a major role in the decision to abandon this initial location.<sup>1258</sup> The broader county level support was crucial in securing the new sites, which were not as close to residential areas as the first one.

Perhaps the most important source of support came from the local development corporation, which had purchased and improved much of the land that the state was now considering. The Greater Pottsville Industrial Development Corporation borrowed for these development projects without future tenants already in place. The original industrial park had been vacant for nearly five years and never had an actual business established on site. Because the public authority was legally separate from the elected local government their speculative investment in these development projects sidestepped the borrowing limits and voter authorization needed for debt-financed public capital projects.<sup>1259</sup> The land they offered to the

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<sup>1256</sup> “Prison in Schuylkill County,” Harold Miller to Rick Stafford, March 31, 1982. Dick Thornburgh Papers, box 265, folder 24: Proposal to construct a prison facility at the Shenandoah Industrial Park in Schuylkill County October, 1981-December, 1982. UPASC.

<sup>1257</sup> “Status of Planning for a Prison in Schuylkill County,” Harold Miller to Governor Thornburgh, Rick Stafford, Bob Wilburn and Richard Glanton, April 27, 1982. Dick Thornburgh Papers, box 265, folder 24: Proposal to construct a prison facility at the Shenandoah Industrial Park in Schuylkill County October, 1981-December, 1982. UPASC.

<sup>1258</sup> “Proposal for Brandonville Prison Stirs Protest,” *Pottsville Republican*, (November 23, 1981), newsclipping, “Prison Finds Favor in Frackville,” *Pottsville Republican*, (August 16, 1982), newsclipping, Dick Thornburgh Papers, box 265, folder 25: Newspaper clippings 1981-1982. UPASC.

<sup>1259</sup> On the legal and political history of public authorities, see Gail Radford, *The Rise of the Public Authority: Statebuilding and Economic Development in Twentieth-Century America* (Chicago: University of Chicago Press, 2013). Radford argues that Pennsylvania used public authorities at the state and local level more than most other American states. This was partly due to the state’s strict public borrowing laws. The Pennsylvania General State Authority had built many state buildings, including prisons. Radford, *The Rise of the Public Authority*, 145. The depoliticizing aspects of the public authorities described by Radford resembles James Ferguson’s description of

Bureau was already graded, had proper drainage and was close to sewage and other utilities. Unlike the backlash against Marcy, the public authority and Shenandoah Chamber of Commerce also absorbed much of the local resistance to the new prison instead of the Bureau and Thornburgh administration, which had greater support in the area in general than it did in Pittsburgh.<sup>1260</sup> Local protesters, upset over the initial site, directed anger more at these local bodies, who partly acquiesced by suggesting alternative sites. Even after the eventual site selection, the public authority acted as an intermediary between the local populace and the Bureau of Correction, answering queries about security and escapes as well as collecting employment applications and enquires.<sup>1261</sup>

On August 1982, the Bureau of Correction selected a site near Frackville for the planned \$27 million 500-bed prison.<sup>1262</sup> Gov. Thornburgh formally announced the new prison – later to be named SCI Frackville – in Pottsville on August 13<sup>th</sup> to an audience of local office holders, businessmen and labor leaders. The governor claimed that the new prison, part of over 3,000 cells to be added to the prison system, was needed to alleviate overcrowding, which was

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development projects in Lesotho as an “anti-politics machine.” James Ferguson, *The Anti-Politics Machine: “Development,” Depoliticization and Bureaucratic Power in Lesotho* (Minneapolis: University of Minnesota Press, 1994).

<sup>1260</sup> “Proposal for Brandonville Prison Stirs Protest,” *Pottsville Republican*, (November 23, 1981), newsclipping, “Schuylkill Prison Plan Stirs Debate,” *Sunday Patriot-News*, (September 5, 1982), newsclipping. Dick Thornburgh Papers, box 265, folder 25: Newspaper clippings 1981-1982. UPASC; Press release, Greater Pottsville Development Corporation, August 13, 1982. Dick Thornburgh Papers, box 265, folder 24: Proposal to construct a prison facility at the Shenandoah Industrial Park in Schuylkill County October, 1981-December, 1982. UPASC.

<sup>1261</sup> Press release, Greater Pottsville Development Corporation, August 13, 1982. Dick Thornburgh Papers, box 265, folder 24: Proposal to construct a prison facility at the Shenandoah Industrial Park in Schuylkill County October, 1981-December, 1982. UPASC.

<sup>1262</sup> “Frackville Site Picked for Prison,” *Pottsville Republican*, (August 14, 1982), newsclipping, “Prison Finds Favor in Frackville,” *Pottsville Republican*, (August 16, 1982), newsclipping, “Thanks for ‘Great News,’” *Pottsville Republican*, (August 19, 1982), newsclipping, “Governor Expected to Name Jail Site,” *Standard-Speaker*, (August 13, 1982), newsclipping, “Schuylkill Prison Would Hike Population,” *Standard-Speaker*, (August 23, 1982), newsclipping. Dick Thornburgh Papers, box 265, folder 25: Newspaper clippings 1981-1982. UPASC.

already plaguing the state's institutions and showed no signs of abating. He also acknowledged his administration's mandatory-minimum sentencing proposal would make overcrowding worse unless something else changed. He stated that their "campaign against crime has obliged us to put our money where our mouth is," and by building prisons, "We're not only talking tough. We're acting tough."<sup>1263</sup> Press coverage of the announcement emphasized the economic development the prison would directly bring to the area in the form of construction and routine time operations employment, but also the tertiary business that would develop to support the new institution.<sup>1264</sup> However, the news coverage and official statements by both the administration and the Greater Pottsville Industrial Development Corporation also clearly stated that overcrowding in the existing system and future growth of the state's prison population necessitated the additional cell space that would, as a byproduct, economically benefit places like Schuylkill County, which suffered from high unemployment as the mining industry declined. Local papers informed readers that, once operational, the new prison would consume "5,000 tons of anthracite coal annually, which will of course help the local coal industry."<sup>1265</sup> Beyond these direct economic benefits, locals could partake in Thornburgh's

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<sup>1263</sup> "Frackville Site Picked for Prison," *Pottsville Republican*, (August 14, 1982), newsclipping, Dick Thornburgh Papers, box 265, folder 25: Newspaper clippings 1981-1982. UPASC.

<sup>1264</sup> "Frackville Site Picked for Prison," *Pottsville Republican*, (August 14, 1982), newsclipping, "Prison Finds Favor in Frackville," *Pottsville Republican*, (August 16, 1982), newsclipping, "Thanks for 'Great News,'" *Pottsville Republican*, (August 19, 1982), newsclipping, "Governor Expected to Name Jail Site," *Standard-Speaker*, (August 13, 1982), newsclipping, "Schuylkill Prison Would Hike Population," *Standard-Speaker*, (August 23, 1982), newsclipping. Dick Thornburgh Papers, box 265, folder 25: Newspaper clippings 1981-1982. UPASC; Press release, Greater Pottsville Development Corporation, August 13, 1982. Dick Thornburgh Papers, box 265, folder 24: Proposal to construct a prison facility at the Shenandoah Industrial Park in Schuylkill County October, 1981-December, 1982. UPASC.

<sup>1265</sup> "Schuylkill Prison Plan Stirs Debate," *Sunday Patriot-News*, (September 5, 1982), newsclipping, "Economic Impact of Prison Outlined," *Shenandoah Evening Herald*, (September 9, 1982), newsclippings. Quote from latter article. Dick Thornburgh Papers, box 265, folder 25: Newspaper clippings 1981-1982. UPASC.

toughness and hardline against “the criminals” the governor referred to in his announcement.<sup>1266</sup>

The Frackville announcement ended the administration’s immediate campaign to secure additional cell space. In addition to the Schuylkill prison, the Bureau of Correction also added additional cells at several existing prisons (Graterford, 500 cells; Greensburg, 150 cells; Mercer, 180 cells; Dallas, 200 cells), planned to construct a new prison adjacent to the exiting one at Huntington (500 cells) and converted two state hospitals at Cresson (500 cells) and Retreat (500 cells).<sup>1267</sup> Internally, however, Thornburgh and his advisors were careful how they crafted their public message about these political victories. Briefing notes for the Frackville announcement, for instance, made clear that they needed to frame the project “as a response to general prison population increases and overcrowding, not as a replacement for Marcy.”<sup>1268</sup> The administration hoped to avoid public acknowledgement of their defeat at Marcy and the real consequences it would have for the Bureau’s classification system and mental health treatment, especially in the western region. Thornburgh and his advisors deemed it politically more prudent to portray themselves as taking responsibly for addressing crime with harsh sentencing and dealing with the inexorable climb of prison populations and the safety risks this posed to staff and inmates.

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<sup>1266</sup> “Frackville Site Picked for Prison,” *Pottsville Republican*, (August 14, 1982), newsclipping. Dick Thornburgh Papers, box 265, folder 25: Newspaper clippings 1981-1982. UPASC.

<sup>1267</sup> “Schuylkill Prison Plan Stirs Debate,” *Sunday Patriot-News*, (September 5, 1982), newsclipping. Dick Thornburgh Papers, box 265, folder 25: Newspaper clippings 1981-1982. UPASC; “Briefing Information on New Prison in Schuylkill County,” Harold Miller to Governor Thornburgh, August 5, 1982. Dick Thornburgh Papers, box 265, folder 24: Proposal to construct a prison facility at the Shenandoah Industrial Park in Schuylkill County October, 1981-December, 1982. UPASC.

<sup>1268</sup> “Briefing Information on New Prison in Schuylkill County,” Harold Miller to Governor Thornburgh, August 5, 1982. Dick Thornburgh Papers, box 265, folder 24: Proposal to construct a prison facility at the Shenandoah Industrial Park in Schuylkill County October, 1981-December, 1982. UPASC.

Yet, Thornburgh and most members of his inner circle of policy advisors and cabinet members knew the new cells would do little to alleviate overcrowding for years. The Frackville prison would take four years to build. Even the converted hospitals would not be ready for several years. The administration downplayed this, however, because it raised immediate questions about the how the alarming annual increases in prison populations would be addressed in the short-term. The same briefing notes warned against associating Marcy with the Schuylkill prison also acknowledged that Pennsylvania's prison population increased by 14.3 percent the previous year and was growing at a rate of over 100 a month in the current year (1982).<sup>1269</sup> At this pace, the new prisons would be filled and overcrowded once operational. In fact, a 1985 report produced by the Prison and Jail Overcrowding Task Force of the Pennsylvania Commission on Crime and Delinquency (PCCD) acknowledged that the growth of the state's prison population had already outstripped the number of cells still being constructed.<sup>1270</sup>

Prison officials pursued more immediate methods of trying to deal with the increasing number of people committed to their custody. In addition to double-celling, the administration also began deploying temporary modular housing within the secure perimeters of several prisons.<sup>1271</sup> Correctional officials viewed such measures as desperate responses that clearly compromised security and safety. Yet, they had few other managerial options to address overcrowding as the punitive sentiment engulfing penal policy simply closed off the greater use

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<sup>1269</sup> Ibid.

<sup>1270</sup> Pennsylvania Commission on Crime and Delinquency, Prison and Jail Overcrowding Task Force, *A Strategy to Alleviate Overcrowding in Pennsylvania's Prisons and Jails* (Harrisburg: PCCD, February 12, 1985), 2.

<sup>1271</sup> "Briefing Information on New Prison in Schuylkill County," Harold Miller to Governor Thornburgh, August 5, 1982. Dick Thornburgh Papers, box 265, folder 24: Proposal to construct a prison facility at the Shenandoah Industrial Park in Schuylkill County October, 1981-December, 1982. UPASC.

of “backend solutions,” like the greater use of parole, community corrections and sentence remission. These were precisely the type of short-term “relief valve” mechanisms the Chairman of the PCCD, Alfred Blumstein, pointed to as necessary components for addressing overcrowding.<sup>1272</sup> Sam McClea, a Democratic staff member of the House of Representatives Judiciary Committee, criticized the administration’s plan to build more prison cells, noting that short-term solutions, targeted at moving low-risk offenders into more community treatment centers, would be a more cost-effective and flexible strategy for dealing with prison overcrowding.<sup>1273</sup> While administration officials and legislators put forth such suggestions in a number of meetings on overcrowding sponsored by the PCCD, they did not carry enough broad-based, bipartisan support to become law. Many of Gov. Thornburgh’s immediate advisors and Thornburgh himself opposed many of these options.<sup>1274</sup>

Blumstein, among others, knew that there was no prospect of building their way out of the prison overcrowding problem.<sup>1275</sup> Moreover, the research on prison populations undertaken by Blumstein and his PCCD colleagues as well as some of his associates in the Governor’s Office, like Harold Miller, indicated that the overcrowding problem would peak

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<sup>1272</sup> Alfred Blumstein to Mr. Rendell A. Davis, October 29, 1979. Dick Thornburgh Papers, box 267, folder 2: Correspondence 1979-1982. UPASC (“relief valve” quote; Alfred Blumstein to Honorable Richard Thornburgh, January 10, 1980. Dick Thornburgh Papers, box 267, folder 2: Correspondence 1979-1982. UPASC; “Baby Boom Fills Up Jails Too, Expert Says,” *Beaver County Times*, (November 6, 1981).

<sup>1273</sup> “House Bill 1645, P.N. 1924 – Capital Budget funds for building a new state prison,” Sam McClea, Judiciary Committee Staff to Hon. John White, June 23, 1981. Dick Thornburgh Papers, box 265, folder 17: H.B. 1645 (authorization of public improvement projects): legislation, amendments, legislators’ votes, and legislative debates June, 1981. UPASC.

<sup>1274</sup> See the annotated copies of the report on the September 15, 1981 meeting that circulated within the Thornburgh administration. The writer (Harold Miller) and readers (Rick Stafford and Dick Thornburgh [red ink comments]) clearly found most of the alternatives to incarceration suggestion by Sam McClea unacceptable. Stafford in particular, dismissively wrote, “People want criminals in jail” in the margins of report and asked Miller to consult with other administration staff and “blow this up.” Dick Thornburgh Papers, box 264, folder 1: House Democratic Crime Package September 21, 1981.

<sup>1275</sup> “Baby Boom Fills Up Jails Too, Expert Says,” *Beaver County Times*, (November 6, 1981).

around 1990, then subside. Blumstein warned that focusing on a large building program would not address the immediate overcrowding problem and leave the state with excess prison capacity a decade or so later. In a letter to Gov. Thornburgh, dated January 10, 1980, he cautioned that “since it’s likely that much of the additional capacity will not be needed after 2000, provision of that capacity runs the risk that it will be used for individuals who do not warrant imprisonment.”<sup>1276</sup> Yet, this is precisely the primary strategy the administration adopted, surely knowing the gap between prison capacity and population would remain and widen.

Even if building new cell space appealed to many people in the Thornburgh administration as the best major policy option for dealing with overcrowding problems, the resistance they encountered at some of the sites, like Marcy, and the remoteness of eventual sites from urban areas compromised the Bureau’s spatial management strategies to leverage services provided by other agencies, industries and institutions, and attract professionals to the prison service. It also reduced the viability of work release programs and availability of programs run by volunteers and charitable organizations, which were more common near cities. Yet, the Marcy and Schuylkill County prison siting campaigns fundamentally altered the future penal geography of the state. After it opened in 1987, SCI Frackville soon surpassed its rated capacity. The administration of Gov. Robert Casey built additional prisons, one of which – SCI Mahanoy – was located within a few miles of SCI Frackville, which was upgraded to accommodate maximum-security prisoners. In addition, the federal government commissioned

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<sup>1276</sup> Alfred Blumstein to Honorable Richard Thornburgh, January 10, 1980. Dick Thornburgh Papers, box 267, folder 2: Correspondence 1979-1982. UPASC.

FCI Schuylkill in 1991 about fifteen miles from the two state prisons. Sentencing reform and the governance of an overcrowded prison system facilitated the construction of a local political coalition in Schuylkill County between business, labor, local government, public authority-development corporations and the state to obtain a new source of capital investment, employment and tax revenue. In the process, this economically declining county in the once-mining intensive Pennsylvania Coal Region transformed into a politically-safe area to locate new prisons. The almost entirely white population of the county contrasted sharply with the racial composition of the home counties of many of the prisoners who would eventually be held in the area's new prisons.<sup>1277</sup>

## **Conclusion**

While prisons overcrowding is a longstanding problem in the history of imprisonment, it has usually been short lived. Penal authorities have historically deployed a number of mechanisms to release some prisoners early, like parole, or divert new commitments to other forms of sanction, like probation. However, in the late twentieth century, overcrowding became a permanent aspect of prisons in most of the United States. In this regard, the

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<sup>1277</sup> The Justice Mapping Center has recently developed the concept of the Million Dollar Block, which demonstrates the geographic distribution of many of the economic costs of incarcerating people by showing how many people in a given area (usually a zip code) are in state prison. They launched a website with an interactive map detailing these costs for several American states. See Justice Atlas of Sentencing and Corrections at <http://www.justiceatlas.org>. Another line of research into the economic effects of punitive penal policies and new prison construction traces the flow of federal and state funding to areas based on population figures based on federal census-tracks. The U.S. Census counts prisoners as residing in the areas where they are imprisoned, not their places of origin. This policy channels millions of dollars away from the Million Dollar Blocks where many prisoners disproportionately come from. For more on this policy, see the work of the Prison Policy Initiative at <http://www.prisonersofthecensus.org>.



experience of people living and working in Pennsylvania prisons resembled accounts from many other American states.

Throughout the 1980s, overcrowding was arguably the central problem of Pennsylvania corrections. The early years of this problem, discussed here, created a sense of crisis among penal authorities and prisoners alike. Many other concerns, like safety, staffing levels and the lack of medical and mental health care for prisoners, all eventually led back to the pressure created by trying to house far too many people in institutions, and with standards, designed for much fewer people. While the efforts of prisoners, courts and some senior officials improved life behind bars for many people during the height of the prisoners' rights era, overcrowding quietly undercut these gains. After rehabilitation evaporated as a major organizing discourse, many of its associated programs and practices receded or were simply eliminated. The few programs that remained soon had long waiting lists. Some prisoners waited years for inclusion into an education or counseling program. Life for many prisoners in maximum-security institutions during the 1980s became a daily routine of trying to avoid trouble and seeking safety. For many others, this safety was found in one of the many prison gangs that began to flourish in the absence of other ways of organizing inmate sociality.

Victor Hassine's prison memoir, *Life Without Parole: Living in Prison Today* is very much an account of what daily life was like in overcrowded prisons. Most of his narrative is about learning to navigate the confusing mass of people he encountered at Graterford and later Pittsburgh. It is notable that he never discusses treatment, counseling, education courses or many of the other routines of the treatment era. He also often mentions the distance prison officers maintained from most inmates. Even a critical firsthand account of prison life during

the height of rehabilitation, like Malcolm Braly's *False Starts: A Memoir of San Quentin and Other Prisons*, is remarkably different in this regard.<sup>1278</sup>

As the discordant race relations that developed in the 1960s worsened throughout the 1970s and 1980s, prison administrators quietly began implementing control policies that concentrated black, and later Latino, prisoners in prisons near Philadelphia, like Graterford, and white prisoners in rural prisons, like Huntingdon. SCI Pittsburgh had a greater parity of black and white prisoners, but many black prisoners from Philadelphia viewed it more as a white prison.<sup>1279</sup> The authorities did not acknowledge this practice as it would have immediately attracted judicial attention, but it was one of the many ways that the authorities tried to manage racial hostility among prisoners in overcrowded prisons.

For officials like Alfred Blumstein, overcrowding became a major area of research and knowledge production, but ultimately a problem they could not solve. As the head of the Pennsylvania Commission on Crime and Delinquency, Blumstein organized a task force devoted to overcrowding and several major conferences on the issue with numerous high-ranking attendees from state government and law enforcement. The Prison Overcrowding Task Force released several extensive reports detailing the scale of the problem, some of its causes and a mix of possible remedies. As Blumstein had always maintained, prison overcrowding represented the confluence of several different causes and could really only be addressed with multiple interventions and policy changes. Yet, many of his recommendations fell on deaf ears in the administration of Gov. Thornburgh and his Democratic successor, Gov. Robert Casey.

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<sup>1278</sup> Malcolm Braly, *False Starts: A Memoir of San Quentin and Other Prisons* (Boston: Little Brown, 1976).

<sup>1279</sup> James B. Jacobs, "Limits of Racial Integration," in James B. Jacobs (ed.), *New Perspectives on Prisons and Imprisonment* (Ithaca: Cornell University Press, 1983), 82.

Suggestions to increase the use of parole and other forms of discretionary release or community corrections did not find favor with Gov. Thornburgh, who advocated eliminating parole all together. At a time when sentencing was becoming harsher and provided a way to garner political credibility, emphasizing decarceration strategies, even longstanding ones, was a political liability. Building new prisons, however, was not.

Overcrowding problems in Pennsylvania during the early 1980s stood in stark contrast with how penal authorities in New South Wales managed their state's prison population. While Commissioner Walter McGeechan developed several community corrections programs in the early 1970s, they began to receive greater use after 1973 when the prison population began to fall. This trend continued for several years after the Royal Commission, no doubt bolstered by Justice Nagle's recommendation that prison only be used as a "last resort." After Rex Jackson became the Labor government's Minister for Corrective Services<sup>1280</sup> in 1981, he began a new discretionary release program called "release on license" by using authority granted to him as a Minister under the Crimes Act of 1900 to release certain prisoners who were not yet eligible for parole.<sup>1281</sup> This program paralleled the parole system and the sentence remissions prisoners could earn during their imprisonment. In many cases, it by-passed these other mechanisms all together. The Department of Corrective Services further reduced the size of the state prison population with this program, but the release on license scheme also contained the seeds of its own demise. The discretionary release authority in the hands of the minister eventually

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<sup>1280</sup> The minister responsible for prisons went through several different name changes in the 1970s and 1980s. Among the various titles were, Minister for Services, Minister for Justice and Minister for Corrective Services.

<sup>1281</sup> For an overview of the development of this program and its downfall, see Janet Chan, *Doing Less Time: Penal Reform in Crisis* (Sydney: Institute of Criminology, 1992), 23-60. The statutory authority Jackson used from the Crimes Act of 1900 had actually be an amended form of the ticket of leave system that developed during the penal colony era of the early nineteenth century.

attracted criticism by the judiciary and political Opposition who felt that the scheme was undermining sentencing.<sup>1282</sup> The government abandoned the scheme in September 1983, but more serious problems with it soon arose. Rex Jackson had a serious gambling problem and had been recorded by police accepting bribes for the early release of prisoners to pay off debts. This eventually developed into a major scandal for the Labor government. Jackson was dismissed, tried and convicted and spent over seven years confined in the prison system he once oversaw. The scandal made other attempts to reduce the prison population with decarceration programs politically suspect for years.

In the mid-to-late 1980s, much like in Pennsylvania, politicians in New South Wales discovered the political mileage to be gained from punitive, law and order campaigning. The state's prison population began a steady climb around 1986 and exceeded capacity the same year, with a 102.1 percent occupancy rate.<sup>1283</sup> A much harsher "Truth in Sentencing" law passed by the new Liberal government in 1989 lengthened sentences and caused an additional increase in the number people behind bars.<sup>1284</sup> The prison population continued to grow throughout the 1990s, but it never reached the levels of incarceration or prison overcrowding that Pennsylvania did in the 1980s or since.

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<sup>1282</sup> Ibid., 116-134.

<sup>1283</sup> Richard Harding, "Prison Overcrowding: Correctional Policies and Political Constraints," *Australian and New Zealand Journal of Criminology*, 20 (March 1987), 17.

<sup>1284</sup> Angela Gorta, "Impact of the Sentencing Act 1989 on the NSW Prison Population," *Current Issues in Criminal Justice*, (March 1990), 308-317.

## **Chapter 5: The Transfer of Prisoners in New South Wales**

Scattered from the Bering Strait almost to the Bosphorus are thousands of islands of the spellbound Archipelago. They are invisible, but they exist. And the invisible slaves of the Archipelago, who have substance, weight, and volume, have to be transported from island to island just as invisibly and uninterruptedly. And by what means are they to be transported? On what?

Aleksandr I. Solzhenitsyn<sup>1285</sup>

### **Introduction: On the Move**

Early in the public Royal Commission hearings, Walter McGeechan, the Commissioner of Corrective Services, mentioned his Department moved roughly 85,000-86,000 prisoners between prisons and other facilities every year. Because he cited the figure so casually and did not specify any particular year for it, his statement made it appear this was a relatively normal level of prisoner movement for the Department of Corrective Services in any given year.<sup>1286</sup> In subsequent hearings, legal counsel for several penal reform groups<sup>1287</sup> and the Royal Commission asked McGeechan and his staff to clarify this figure and provide a rationale for this

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<sup>1285</sup> Aleksandr I. Solzhenitsyn, *The Gulag Archipelago, 1918-1956: An Experiment in Literary Investigation, Vol. I-II* trans. Thomas P. Whitney (New York: Harper and Row Publishers, 1974), 489.

<sup>1286</sup> Testimony of Walter Richard McGeechan, *Proceedings of the Royal Commission into New South Wales Prisons*, vol.9 (Sydney: Government Printer, 1978); 143

<sup>1287</sup> The Council of Civil Liberties and the Penal Reform Council.

level of prisoner movement.<sup>1288</sup> The figure seemed high to them, but they had little basis to judge what constituted a normal rate of inter-institutional prisoner movement.<sup>1289</sup> They asked McGeechan several times about the accuracy of the figure he mentioned and what this would have meant for the average number of movements for an inmate per year. McGeechan explained that calculating how many times an inmate moved on average by simply dividing the number of yearly transfers per inmate—a proposition put to him during questioning—obscured how and why specific inmates were moved or that some moved more often than others.<sup>1290</sup> Yet, he did not elaborate beyond this. The ambiguity in the figure, and the numerous reasons for transfers, invited further questioning over several different sessions of the Royal Commission.

On the thirteenth day of public testimony, P.L. Stein, counsel appearing for the Council of Civil Liberties and the Penal Reform Council, asked McGeechan bluntly, “is there a conscious policy of the Department to keep prisoners on the move from one establishment to another?” McGeechan denied there was such a policy, stating that in fact “the ideal would be to have no movements.”<sup>1291</sup> This failed to satisfy Stein. Almost nine months later, the Council for Civil Liberties again brought the issue to the attention of the Royal Commission, including it on a list of topics they proposed for further investigation. Specifically, they wished to know the:

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<sup>1288</sup> Testimony of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 378-379, 625-626.

<sup>1289</sup> The final report of the Royal Commission maintained this view, but again did not substantiate this position by providing a standard or norm for this activity. John F. Nagle, *Report of the Royal Commission into New South Wales Prisons*, (Sydney: Government Printer, 1978); 271.

<sup>1290</sup> Testimony of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 379

<sup>1291</sup> *Ibid.*

Necessity, function and real volume of prison movement, consequences to prisoners, families and management of using geographical movement as a policy instrument, effects of 'shanghais'<sup>1292</sup>, expense and alternative instruments.<sup>1293</sup>

The continued interest in this issue stemmed partly from the inability or unwillingness of officials from the Department of Corrective Services to elaborate on whether or not they considered it to be "high." McGeechan's figure also seemed odd to investigators because he repeatedly described an approximate number that varied between 80,000 and 86,000. This suggested the Department did not keep accurate records of these movements, which made this category appear less significant to the Department compared to the multitude of other figures that appeared in their annual reports to Parliament, their own internal data, and submissions to the Royal Commission.<sup>1294</sup> Some of these other statistics, the prison population figures in particular, made the volume of transfers appear excessive. The yearly average of daily prison population during McGeechan's tenure (1968-1978) never exceeded 4200 inmates.<sup>1295</sup> The total number of people the Department of Corrective Services received from the courts never exceeded 25, 000 a year over the same period and usually remained below 20,000 yearly committals.<sup>1296</sup> Many of the people represented in the yearly committal figures served short sentences, were released on bail, or simply had their charges dropped. Nevertheless, these

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<sup>1292</sup> "Shanghai" is Australian prison argot for a transfer to another prison, especially and unwanted or unexpected move. Numerous prison glossaries attest to this meaning and it was also mentioned in the testimony of the Royal Commission. Other terms used to describe these types of unexpected transfers are: "emptied," "lifted," and "tipped." See for instance Tim Anderson, *Inside Outlaws: A Prison Diary* (Marrickville: Redfern Legal Centre Publishing, 1989), 155 and cross-references; Bernie Matthews, *Intractable: Hell Has a Name, Katingal: Life Inside Australia's First Super-Max Prison* (Sydney: Pan Macmillan Australia Pty, Limited, 2006), 393-399.

<sup>1293</sup> Exhibit 676 A to F inclusive. Exhibit 676C "Submissions for Council of Civil Liberties and Penal Reform Council on Issues Sought to be Elaborated in the Future Evidence and Submissions." Royal Commission into New South Wales Prisons Exhibits 5/9309. SANSW.

<sup>1294</sup> Testimony of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 144, 376, 625.

<sup>1295</sup> Janet Chan, *Doing Less Time: Penal Reform in Crisis* (Sydney: Institute of Criminology, 1992), 52.

<sup>1296</sup> *Ibid.*

figures when set beside the numbers of transfers that McGeechan cited perplexed counsel appearing before the Royal Commission. The discrepancy suggested to them that Corrective Services moved inmates much more frequently than what they assumed to be a reasonable rate. The appearance of vagueness on this issue concerned the Royal Commission because of its implications for penological practice and the civil rights of prisoners, in addition to the high administrative and financial costs incurred by moving prisoners.

The commission sensed that something was amiss in the Department's practice of moving prisoners, but they were unable to articulate their concern beyond a few minor suggested changes (like giving more advanced warning of pending transfers, especially to family members). While it was not surprising to the Royal Commission that Corrective Services moved inmates, the practice nevertheless diverged from the presumed immobility of inmates implied by imprisonment. The tension over this issue also flowed from disparities between the various framings used by different actors. A synoptic, administrative perspective informed the descriptions of the routine practices, policies and statistical knowledge about transfers, which differed sharply from testimony by inmates and staff about particular examples of transfers. The synoptic framing was not novel to the commission investigators and the counsel participating in the proceedings. After all, the Wran government explicitly asked them to adopt this view in the commission's terms of reference. When analyzing transfers as a category in itself, however, this perspective emphasized the movement of inmates instead of their confinement behind walls. Nevertheless, the questions put to witnesses often suggested that investigators and counsel still considered movement to be an exceptional or episodic occurrence rather than a continual practice of circulation within the penal apparatus.



Certainly, most inmates remained at specific prisons for long periods of time once the penal authorities assigned them there. Even for the relatively few inmates that the Department moved frequently, the preference of penal authorities was too keep in them in place as long as they could. This was also usually what inmates preferred with some significant exceptions. However, in the yearly movement figures the Royal Commission glimpsed that system of confinement was, in fact, very mobile. Nevertheless, this mobility was still difficult to see in much of the evidence, the way it was presented, and the way it was discursively constituted.<sup>1297</sup>

The transfer figures, along with the other statistical data presented at the Royal Commission, depended on the fixity of their subjects in the very enumerative operations that constructed them. These quantitative methods assigned clear, distinct places to inmates (and to a lesser extent, staff as well) within the overall structure of penal space. These distinct spaces –the grids, categories and cells on forms – enabled the enumeration and description of inmates. They corresponded, at least conceptually, to inmates with such attributes in specific

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<sup>1297</sup> My thinking in this manner has been influenced in part by the emerging “mobility” literature in, mainly British, geography and sociology. Relevant examples are: Peter Adey, “If Mobility Is Everything Then It Is Nothing: Towards a Relational Politics of (Im)mobilities,” *Mobilities*, (March 2006), 75-94; Peter Adey, *Mobility* (New York: Routledge, 2010); Timothy Cresswell, *On the Move: Mobility in the Modern Western World* (New York: Routledge, 2006); Tim Cresswell and Peter Merriman, *Geographies of Mobilities: Practices, Spaces, Subjects* (Ashgate: Farnham, 2011); Mike Featherstone, Nigel J. Thrift and John Urry, *Automobilities* (London: Sage, 2005); Kevin Hannam, Mimi Sheller, John Urry, “Mobilities, Immobilities and Moorings,” *Mobilities*, (March 2006), 1-22. Works in history dealing with similar issues are: Cotten Seiler, *Republic of Drivers: A Cultural History of Automobility in America* (Chicago: University of Chicago Press, 2008) and Wolfgang Schivelbusch, *The Railway Journey: The Industrialization and Perception of Time and Space* (Berkeley: University of California Press, 1987). These works are useful, but still seriously deficient for thinking about punitive or coerced movement as much of it presumes comparatively elite or privileged agents. Some critiques, citing these problems, argue that mobility in much of this literature is a privilege in itself. See, for instance, Bryan S. Turner, “Enclosures, Enclaves, and Entrapment,” *Sociological Inquiry*, (May 2010), 241-260. See the excellent critique by Dominique Moran, Laura Piacentini, and Judith Pallot, “Disciplined Mobility and Carceral Geography: Prisoner Transport in Russia” *Transactions of the Institute of British Geographers*, 37 (July 2012), 446-460. While dealing explicitly with prisoner transfer, the authors limited their focus to the initial movements of newly convicted inmates, largely excluding the issue of subsequent transfers, the reasons for them, and their relation to workings of the wider penal apparatus. This omission could reflect, among other things, substantial differences in Russian penal practice.

places —usually prison cells. Correctional officials and the Department’s research staff would have been the first to point out that such statistical material was often based on abstractions distinct from actual inmates. For instance, the prison population statistics most often publically cited by officials were based on yearly or monthly calculated daily averages. These averages were, in turn, composites of actual inmate counts done at each prison, which were reported weekly, themselves being the summation of daily counts that occurred during three daily musters. These latter counts, the weekly and daily totals, were often the figures that matter most internally as staff used them in making placement and transfer decisions. In both instances, however, these calculations described a fixed number at any given point.

Enumerating inmates like this necessarily involved establishing and following standards delineating how to count inmates, which ones to include and exclude depending on, among other things, where they were.<sup>1298</sup> In other words, penal statistics followed rules dictating that an inmate must be counted here rather than there.<sup>1299</sup> Leaving aside questions of statistical validity, whether or how much these figures matched their objects in the “real world,” the methods worked against thinking of inmates as moving through penal space. In a discursive environment emphasizing the fixity of categories, inmates, and prisons, the topic of transfers seemed literally out of place.

In the section of the *Gulag Archipelago* from which I drew the epigram starting this chapter, Solzhenitsyn described the invisibility that obscured prisons, their inmates, and how

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<sup>1298</sup> Inmates were officially known by their assigned numbers rather than their names until the late 1970s, after the Royal Commission.

<sup>1299</sup> Theodore M. Porter argues that this is in fact a central feature of censuses in general. See, Theodore M. Porter *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton: Princeton University Press, 1995).

they were transported to and from places of confinement and forced labor.<sup>1300</sup> This invisibility was all the more remarkable because of the sheer scale of the Gulag system and the work that went into creating and sustaining it. Solzhenitsyn's characterization is useful for thinking about the similar, but clearly different, practices and policies of prisoner transfer in New South Wales during this period because of the way he foregrounds the movement of the confined. This routine movement is often left unstated or unexplored in the literature on prisons. It is arguably more prominent in the literature on convict "transportation," for which the penal colony of New South Wales. Yet, even here, the literature focuses less on the movement of the convicted once they disembarked in the new penal colony than on their initial voyage across the oceans.<sup>1301</sup> The title Solzhenitsyn chose for the section in question, "Perpetual Motion," summarized the routine aspect of this process, which the author, of course, saw from a very different viewpoint than that available to the Royal Commission.

In addition to Solzhenitsyn's questions in the epigram, one might also ask why prisoners were transported. How did this process relate to other changes sweeping over the penal

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<sup>1300</sup> Solzhenitsyn, *The Gulag Archipelago*, 489-615. For a better sense of the vast differences in the scale and purposes of penal transport in the gulag system see, Paul R. Gregory and Valery Lazarev, eds., *The Economics of Forced Labor: The Soviet Gulag* (Stanford: Hoover Institution Press, 2003). For continuities with current Russian penal practices see, Dominique Moran, "Between Outside and Inside? Prison Visiting Rooms as Liminal Carceral Spaces," *GeoJournal*, 78 (April 2013), 339-351; Dominique Moran, Judith Pallot, Laura Piacentini, "The Geography of Crime and Punishment in the Russian Federation," *Eurasian Geography and Economics*, (January-February, 2011), 79-104; Judith Pallot, Laura Piacentini, Dominique Moran, "Patriotic Discourses in Russia's Penal Peripheries: Remembering the Mordovan Gulag," *Europe-Asia Studies*, (January 2010), 1-33; Judith Pallot, "Russia's Penal Peripheries: Space, Place and Penalty in Soviet and post-Soviet Russia," *Transactions of the Institute of British Geographers*, (March 2005), 98-112; Laura Piacentini, *Surviving Russian Prisons: Punishment, Economy, and Politics in Transition* (Collumpton: Willan Publishing, 2004).

<sup>1301</sup> There are, of course, notable exceptions. For instance see, Robert Hughes, *The Fatal Shore: The Epic of Australia's Founding* (New York: Vintage, 1986); 129-157, 282-322. Much of the focus on the movement of convicts covers the period when the colonial government used convicts for public works projects (roads, especially) and when the authorities shipped repeat violators to places of secondary punishment; not too dissimilar to the use of contemporary control units or disciplinary prisons.

apparatus at this time? How was penal space and the routines investing it transformed during this period, and what did this entail for the manner in which prisons were governed? Answering these questions involves looking closer at the routines of prisoner movement and how it fit within the framework of penal operations, its changes, and points of friction, which became increasingly tenuous at the end of the 1960s and throughout the 1970s and early 1980s.

### **The Economy of Prisoner Movement in the Postwar Penal Apparatus**

There was one exception to the ambiguity in the prisoner transfer statistics. Corrective Services kept specific records for the number of transfers, or “escorts” as they were often called, that the Special Operations Division (S.O.D.) supervised. They provided this information to the Royal Commission in their first large submission.<sup>1302</sup> The S.O.D., created by McGeechan in November 1970, undertook difficult assignments like emergency response, riot control, and the transportation of prisoners deemed to pose a high risk of escape or assault.<sup>1303</sup> According to the Department’s submission to the Royal Commission, the S.O.D. conducted 4,573 escorts in 1975, of which 131 were considered to be in the high risk category.<sup>1304</sup> It is difficult to know why the S.O.D. was used only in a relatively small number of transfers or the specific protocols that determined when it was to be deployed ordinary custodial staff, or if needed, the police conducted most transfers, which did not require the specialized skills or equipment of the S.O.D. Since the unit was based in Sydney, it was also more difficult for it to be deployed to country prisons. Animosity toward the S.O.D. ran deeper however, among the prison officers’

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<sup>1302</sup> *Proceedings of the Royal Commission into New South Wales Prisons*, vol.9 (Sydney: Government Printer, 1978), 110.

<sup>1303</sup> *Ibid.*; Nagle, *Report of the Royal Commission*, 272-273.

<sup>1304</sup> *Proceedings of the Royal Commission*, 110.

union<sup>1305</sup> and most rank-and-file officers because they believed that it devalued their status in the penal hierarchy and suggested that could not handle certain situations. Derided as a “palace guard,” the S.O.D. appeared to be McGeechan’s ill-conceived, pet project, an unnecessary innovation that worsened the administration’s relationship with the guards’ union.<sup>1306</sup> This unit played an increasingly important role in the transfer particularly involving prison activists, violent inmates, and others formally classified as “intractable.” The topic of transfers and its related abuses was deeply interwoven with this unit’s creation and its reputation for brutality among inmates. Much of the Royal Commission’s discussion about explicit examples of disciplinary and punitive transfers implicated the S.O.D.. They also highlighted the problems that McGeechan and more senior staff members had with rank and file officers and their union, both of whom deeply opposed the S.O.D.’s elitism, which they believed devalued the role of most staff members.<sup>1307</sup> McGeechan’s attention to this unit and its elite (and “elitist”) reputation may partly explain the exactness of escort records concerning it compared to the much looser figures for overall prisoner movements.

The normal operations of the classification process, which distributed inmates to specific prisons, custody levels, and programs across the state, created the greatest volume of inmate movements. The Royal Commission staff and counsel appearing for other groups knew about this process, at least in its broad contours. It was not a major revelation, for instance,

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<sup>1305</sup> The Prison Officers Vocational Branch (POVB) of the Public Service Association (PSA). The latter body was, and still is, an umbrella organization with numerous different branches representing government workers in the state of New South Wales.

<sup>1306</sup> Nagle, *Report of the Royal Commission*, 272-273; Exhibit 759: “Submission by Public Service Association. Separate submissions prepared by officers of the Prison Officers Vocational Branch.” Royal Commission into New South Wales Prisons Exhibits 5/9313; Exhibit 766: “Submission by B. O. Todd. General submission from Prison Officer.” Royal Commission into New South Wales Prisons Exhibits 5/9315. SANSW.

<sup>1307</sup> *Ibid.*

that the Department of Corrective Services oversaw a hierarchy of different establishments and security levels designed to function together as a “system”—of some kind. Nor was it a surprise the penal authorities differentiated inmates from each other as they assigned them to these various prisons. This process, of course, entailed a substantial amount of prisoner movement between these facilities.

However, many participants in the Royal Commission hearings did not know much about the classification process as it was currently practiced or how all the state's penal institutions worked together. Thus, much of the testimony dealt with exploring the norms and routines of various regimes and programs throughout the prison system, the various moments of the classification process and its associated programs and industries, and how all these practices related to each other. While “transfers,” as a discreet and duly named activity, comprised only a small (if recurrent) part in this review, the inquiry nevertheless focused on a series of different practices that bore relation to the issue of transfers and suggested that they were becoming more frequent as problems arose in other areas of prisoner management.

Despite the fact that the New South Wales had a disproportionately large number of maximum security prisons in relation to its entire prison system, variations in the security regimes, programs, and industries between the different institutions ideally enabled the movement of prisoners to gradually looser regimes provided that they maintained good conduct.<sup>1308</sup> This network of prisons formed in Benedict Taylor’s words, “a spectrum of differentiated penal institutions, giving administrators a finely graded set of carrots and sticks

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<sup>1308</sup> Nagle, *Report of the Royal Commission*, 448; Vinson, *Wilful Obstruction*, 228-229; Prisoners Action Group, “2nd Submission to the N.S.W. Royal Commission into Prisons,” *Alternative Criminology Journal* (July 1980): 51-53.

with which to manage and manipulate inmate behavior."<sup>1309</sup> The high volume of inmate transfers reflected, in part, how prison authorities managed inmates by moving them through various stages along this spectrum, which itself was expanding, branching into ever finer gradations as new programs and forms of supervision were established. As Taylor has argued, the post-World War II penal bureaucracy gradually integrated the pre-war prison farms (innovations originally intended to replace prisons) into providing a supporting role for the more secure institutions. Inmates "stepped down" to these camps from maximum and medium institutions in the latter part of their sentences or after earning good marks elsewhere in the system.<sup>1310</sup> Inmates, of course, also flowed in the other direction along this spectrum of custody levels and privileges. The continued use of secure prisons and establishment of control or discipline units in some prisons, such as Grafton Gaol, permitted the penal authorities to transfer certain inmates to more regimented and harsher regimes for poor behavior, challenges to authority, or other concerns. Much of the control exercised at the lower end of the penal spectrum drew on the threat of moving inmates to the higher end if they did not conform to expectations. In either case, this system of incentives and punishments entailed moving inmates between institutions.<sup>1311</sup>

The centralized classification system linked all these institutions through its protocols for sorting newly received inmates and periodically reviewing their status. Drawing on the then

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<sup>1309</sup> Benedict Taylor, "Prison Without Walls: Prison Camps and Penal Change in Australia, c.1913-c.1975" (PhD. Diss, Sydney: University of New South Wales, 2010), 22.

<sup>1310</sup> Ibid, 22-23. See also Les Newcombe's memoir describing his time gradually stepping down from Long Bay to Berrima and eventually to an open institution Les Newcombe, *Inside Out: The True Story of the Simmonds-Newcombe Gaol Escape* (Sydney: Angus and Robertson Publishers, 1979), 27-39.

<sup>1311</sup> "Prisoners Action Group 2<sup>nd</sup> Submission to the N.S.W. Royal Commission into Prisons: Contemporary Penal Practices," *Alternative Criminology* (July 1980): 51-53.

current enthusiasm for social science expertise, the penal bureaucracy established the classification system in 1950 as a supplement to the previous practice of sorting inmates into various degrees of disposition toward authority and control, habitual criminality, and those thought to be redeemable. The new system's main governing body, the Classification Committee, included for the first time an educationalist, trade supervisor and psychologist, in addition to officers with custodial expertise.<sup>1312</sup> The Classification Committee evaluated newly committed inmates at the Long Bay prison complex near Sydney through formal psychological tests, a review of an inmate's work and education history, and interviews. Several prisons at the Long Bay complex (the Metropolitan Reception Prison, Metropolitan Remand Centre, and the Central Industrial Prison) largely held newly received or recently convicted inmates who had not yet been moved to their assigned placement.<sup>1313</sup>

Once moved to their placement prisons, inmates were evaluated again, although less rigorously, by a Program Review Committee at each establishment, which consisted of senior staff members along with a psychologist, parole officer, industrial officer, and supervising officer. This committee monitored inmates and assessed the continued suitability of their classification status.<sup>1314</sup> The committee renewed or altered a prisoner's custody level, taking into consideration their progress at a specific prison or section thereof, their disciplinary, work,

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<sup>1312</sup> Nagle, *Report of the Royal Commission*, 557-558, 567-568; Sean O'Toole, *The History of Australian Corrections* (Sydney: University of New South Wales Press, 2006), 158, 160-161; Philip Blake, "A Short History of NSW Prisons," in *Corrective Services in New South Wales* ed. Bill Cullen, Michael Dowding, and John Griffin (Sydney: Law Book, 1988), 13-14.

<sup>1313</sup> Inmates held in the Metropolitan Remand Centre (M.R.C.) were awaiting the disposition of their cases. Many inmates would have exited the system after their time in the M.R.C. rather than being moved to another prison. Although, they most likely would have been transferred to the M.R.C. from the Metropolitan Reception Prison or another receiving facility in the larger Sydney area.

<sup>1314</sup> Statement of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 33-34.



and education records, and any requests from the prisoner. This review initiated the reassignment of the inmate to another prison if this was deemed necessary.<sup>1315</sup> The actual movement had to be approved by a centralized Classification Committee, which evaluated the work of the Program Review Committee, and the Prisoner Movement Section, which actually issued a transfer order.<sup>1316</sup>

Prisoners often initiated this review by approaching superintendents and the Program Review Committees and requesting transfers to favorable locations for job and education opportunities or to be closer to family and friends. It is hard to know exactly how often inmates initiated such moves, but it was a frequent occurrence.<sup>1317</sup> In many instances, it was likely that such moves were both requested *and* suggested, produced as much from negotiation, albeit very unequal, between the inmate and the Programme Review Committee concerning a variety of possible placements. Many inmates had their hopes for a favorable transfer frustrated by the classification process. At times, the various officials needed to approve a transfer conflicted with each other or failed to communicate to such a degree that inmates desiring a move to a different location became trapped in a byzantine administrative conflict. In its final report, the Royal Commission highlighted a number of instances where administrative units obstructed already approved transfers, either purposely or through inaction and incompetence, causing inmates a great of annoyance and resentment. An inmate, referred to by the Royal

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<sup>1315</sup> Ibid.

<sup>1316</sup> Ibid, 34; Testimony of John Edward Nash, *Proceedings of the Royal Commission*, 580-581.

<sup>1317</sup> The Royal Commission's Interim Report while dealing corruption in the transfer system nevertheless discussed the system in a way that suggested that inmate requests for transfers were commonplace and part of the administrative tasks of the Program Review Committees and the central Classification Committee. See *Interim Report of the Honourable Mr. Justice Nagle, Royal Commissioner appointed to inquire in respect of certain matters relating to New South Wales Prisons*, in Nagle, *Report of the Royal Commission*, Appendix J, 579-615.

Commission only as “prisoner A,” wallowed in the Central Industrial Prison after being cleared to move next door to the Malabar Training Centre to work in the printing shop.<sup>1318</sup> The Program Review Committee approved his transfer, as did the Life Sentence Review Committee<sup>1319</sup> and the superintendent of the Central Industrial Prison, where prisoner A was located. Several months passed and Prisoner A remained in the Central Industrial Prison. It was not until the Royal Commission inquired about the inmate’s predicament while investigating the classification system that the inmate was finally moved.<sup>1320</sup> The Program Review Committee noted in one of its reports that “prisoner A would in all probability be languishing in the C.I.P.” if the Royal Commission had not drawn attention to his plight.<sup>1321</sup>

At other times, penal authorities quickly approved transfers and moved inmates. As will be discussed later in greater detail, the Wran government reconvened the Royal Commission in late 1977 after it had completed much of its work to consider certain accusations of corruption in the prisoner movement process. A low grade clerk in the Prisoner Movement Section stood accused of accepting bribes for favorable transfers. The investigation revealed at least one instance where a prisoner, Kevin Holland, was moved from a maximum security prison (Parramatta) to a minimum security prison (Berrima) without ever appearing before a Program Review Committee or even the central Classification Committee.<sup>1322</sup> The investigation left much of this unexplained with definitive evidence of bribery hard to obtain. Nevertheless,

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<sup>1318</sup> The penal complex at Long Bay contained both the Central Industrial Prison and the Malabar Training Centre.

<sup>1319</sup> The Life Sentence Review Committee was a second tier review dealing with inmates sentenced to life imprisonment.

<sup>1320</sup> Nagle, *Report of the Royal Commission*, 254-255

<sup>1321</sup> *Ibid.*, 255.

<sup>1322</sup> John F. Nagle, Draft of the *Interim Report of the Royal Commission into New South Wales Prisons*, 23-24. Royal Commission into New South Wales Prison, submissions, A1538 unprocessed files in 6 boxes and 3 folders, unnumbered. SANSW.

questionable transfers and pervasive rumors occurred enough to lead several members of the Program Review Committee at Parramatta to complain to McGeechan in writing about the abuse of the inmate movement system and what appeared to be, at the very least, informal arrangements circumventing official rules.<sup>1323</sup>

Prison authorities often moved inmates to medical and mental health facilities as well as to courts in various parts of the state. These types of movements could be frequent, especially if the needed expertise was located in a central facility or area. McGeechan mentioned during cross examination that the lack of qualified mental health professionals near some country prisons meant the Department incurred unnecessary costs for transporting inmates back and forth to urban areas for treatment.<sup>1324</sup> Inmates facing multiple charges were brought back and forth to court. For courts in the Sydney area, this involved moving between their placement prison to one of the prisons at Long Bay or Parramatta Gaol as well as to secure police or court lockups.<sup>1325</sup> Inmates often travelled directly to court lockups for court attendance away from the Sydney area,

This geographic disparity in placement of support services and the country prisons apparently created a lot of difficulties for inmates, as well. Even in situations where an inmate needed to be transferred for medical or mental health reasons, the disruption to their lives could be unsettling. When discussing this matter during his testimony before the Royal Commission, Superintendent John F. Barry of the maximum security Goulburn Training Centre

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<sup>1323</sup> Ibid., 39.

<sup>1324</sup> Testimony of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 144; See also the testimony of John Francis Barry, 779.

<sup>1325</sup> Tim Anderson, Ray Denning, and Bernie Matthews gave account of several such trips. See Tim Anderson, *Inside Outlaws*; Raymond John Denning, *The Ray Denning Diary* (Haymarket: Ray Denning Publications, 1982); Matthews, *Intractable*.

said, in general, long-term inmates did not like the disruption caused by such moves, especially since it could mean the loss of their property or their specific placement and cell in the prison upon return.<sup>1326</sup> Barry said he did not know the extent of the frustrations these types of moves caused inmates, but many had told him they did not want to leave. Occasionally, Barry said he arranged to have certain difficulties from the move minimized for those prisoners who requested it.<sup>1327</sup> Nevertheless, the implication was that these kinds of arrangements were the exception to the normal pattern of disruption caused by such moves.

These moves were, at times, particularly difficult for prisoners because throughout most of the 1970s the amount of personal property an inmate could collect was strictly limited. Even after the Department of Corrective Services relaxed such restrictions in some areas in the mid-to-late 1970s, the limited nature of the personal amenities a prisoner could have meant that transfers threatened this relatively small area of personal autonomy, control, stability, and relief. A desirable cell placement, enrollment in a trade or education course, accumulated personal effects, extra food, and books were high valuable in the limits set by prison rules. Transfers could easily jeopardize some or all of these amenities.

The range of gradations in the penal system, linked through the classification process, expanded in the years following McGeechan's appointment to the post of Comptroller-General of Prisons in 1968. McGeechan replaced John Morony who had led the Department since 1960.<sup>1328</sup> Within two years, the Department of Prisons changed its name to the Department of

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<sup>1326</sup> Testimony of John Francis Barry, *Proceedings of the Royal Commission*, 779

<sup>1327</sup> *Ibid.*

<sup>1328</sup> John Ramsland, *With Just but Relentless Discipline: A Social History of Corrective Services in New South Wales* (Kenthurst: Kangaroo Press, 1996); 310-323.

Corrective Services after absorbing the previously independent parole and probation service. The reorientation in penal philosophy toward rehabilitating inmates in its charge, evident in the name change, came under intense criticism during the Royal Commission. Derided for its superficial depth and ineffectiveness as well as its hubris and frightening unaccountability, the new focus and some of its practical consequences nevertheless accelerated the process of differentiation in the hierarchy of penal options. McGeechan oversaw the creation of two separate work release schemes, the establishment of the Silverwater Work Release Centre, the Parramatta Linen Service, the Mulawa Training and Detention Centre for Women, the Cessnock Corrective Centre and an unusual wilderness exercise and team-building program called Project Survival.<sup>1329</sup> Periodic detention centres (basically, weekend incarceration) were opened at several different sites across the state.<sup>1330</sup> Although, these latter facilities provided more of a sentencing option for judges than they did for the placement of prisoners assigned to other facilities, they still formed part of and relied on the hierarchy of imprisonment options. A regular prison sentence was the step up from periodic detention. The fact that many of the periodic detention centres were located next to secure prisons highlighted this relationship for those serving time on the weekends.

This gradual differentiation in the gamut of custody stages and programs over the postwar period increased the traffic of inmates between these levels. This process accelerated during the late 1960s and 1970s with the introduction of more minimum and medium security facilities and options, and at the same time, the creation and greater use of control units and

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<sup>1329</sup> For a summary see Grant, *Prisons: The Continuing Crisis*, 147-148. Otherwise Nagle, *Report of the Royal Commission*, Chapters 20, 30, 31, and 35.

<sup>1330</sup> Nagle, *Report of the Royal Commission*, 441-443.

disciplinary mechanisms at the high security end of the system. While this diversification helps to explain the volume of inmate movements cited by McGeechan during the Royal Commission hearings, the number of movements also suggested a less visible transformation behind prison walls and even in open institutions, like the minimum security penal farms. It may not have been apparent at various points in the late 1960s and early 1970s, but the prevailing system of inmate discipline, the manner in which staff, especially guards, ran prisons, was rapidly deteriorating.

Most of the accounts of this transformation were retrospective, usually coming on the heels of serious prison disturbances or scandals and part of broad reform proposals from the mid-1970s onward. There were multiple signs of this transformation, and it maybe that the introduction of some programs after 1968 both caused and responded to the breakdown of prison routines and control. Many of the postwar changes that reduced the social distance between guards and prisoners had also increased the level of friction between these groups. However, after McGeechan's appointment in 1968, the prisons became even more volatile. Officers resented changes that restricted their strict, physical prisoner management prerogatives. Prisoners resented the slow pace of actual change in prison conditions and seemingly farcical attempts to introduce new programs.

In the context of the late 1960s and 1970s, numerous prisoners began to organize these grievances through rights-based discourse and claims-making, resembling similar manifestations of prisoners' rights activism in other parts of the world. There were multiple sources of this political awakening behind bars. Much of it centered on younger politicized inmates who began to enter the state's prisons with increasing frequency in the late 1960s.

Many of these younger people had been part of anti-authoritarian social movements outside and they brought with them rights-based discourse and a much different style of resistance. As Bernie Matthews, himself a young inmate at the time, put it:

As more and more conscientious objectors and Vietnam War protestors became imprisoned, they introduced a new mentality of 'stand up and be counted' that ran contrary to the old crims' philosophy of copping it sweet and doing their time as easily and quietly as possible. A new political awareness and social consciousness had been injected into the prison system.<sup>1331</sup>

Accounts from older inmates who began serving time before the 1960s showed a marked difference in the way they expressed anti-authoritarian views (which were always pervasive among inmates).<sup>1332</sup> Rights-based claims-making held little appeal for an earlier generation of prisoners in an era when inmates were managed with severe discipline and the social movements most commonly identified with 1960s in Australia were less visible or nascent.

As these new political framings grew within Australia and on a global scale during the 1960s, so did the manifestations of rehabilitative practices in the New South Wales penal system. The relatively small changes made by penal authorities, like increased leisure activities, education, and less censorship, dovetailed with younger inmates' growing expectations for better treatment. These minor changes often became the basis for further demands. Sometimes, these changes provided platforms for greater criticism of the authorities. For instance, the Parramatta Resurgents, founded in 1964 with Comptroller-General Morony's support as a therapeutic discussion group led by a parole officer, later developed an inmate

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<sup>1331</sup> Matthews, *Intractable*, 119.

<sup>1332</sup> Rod Hay, *Catch Me If You Can: The Life and Times of Darcy Dugan* (Sydney: Pan Macmillan, 1992); Les Newcombe, *Inside Out: The True Story of the Simmonds-Newcombe Gaol Escape* (Sydney: Angus & Robertson, 1979); Jan Simmonds with Anne Gollan, *For Simmo* (Stanmore: Cassell Australia, 1980).

debating society, which, in turn, became more willing to criticize penal policies and practices in its activities and through its magazine, *Contact*. The Resurgents later submitted a collectively produced statement to the Royal Commission that was highly critical of Corrective Services and the practice of incarceration in general.<sup>1333</sup> When prison authorities removed some of these privileges as punishment or clearly used them as control devices, they produced even greater friction and resentment among inmates.

The movement of radical ideas described by Matthews was not unidirectional. Prisoner activism also inspired activists outside the prison system. Some inmates, such as Tony Green and Bob Jewson, turned the frustrations and resentments of the life they experienced in prison into the basis of far-reaching political advocacy for penal reform once they were released in the mid-1970s.<sup>1334</sup> Radical organizations formed inside various prisons, strategizing how best to create permanent and substantial change in the penal system. At various times during the 1970s, this involved trying to forge broad-based prisoner unions to compel concessions from penal administrators through well-coordinated tactics like work slow-downs, walk-offs, and sit-down strikes in recreation yards.<sup>1335</sup> These tactics were not necessarily new either, but their use

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<sup>1333</sup> Exhibit 744: "Submission by Parramatta Resurgent Group. Problems affecting the lives of prisoners and their families," Royal Commission into New South Wales Prisons Exhibits 5/9312. SANSW; For descriptions of the Resurgents beyond *Contact* see, "An Experiment in Group Counseling," *Sydney Morning Herald*, (April 20, 1966); Anderson, *Inside Outlaws*, 89-99; Hay, *Catch Me If You Can*, 248-249.

<sup>1334</sup> Zdenkowski and Brown, *Prison Struggle*, 79-86, 158-159. See also "Tony Green interviewed by Inge Reibe and Dianne Johnson," 1984-1985, sound recording, National Library of Australia, Canberra, ACT.

<sup>1335</sup> Inmates differed greatly about the most effective way to press their claims against the penal authorities and what their claims should include. For a sampling of the politics among inmates on these issues see the exchange between Mark Regan, Wal Missingham, and Lyle Radan and Rick Norton and his possible autonomous co-authors Brett Collins, John Cowell and Tony Green: "Crim vs Crim," *INprint*, (August 1979): 1, 3; "Democracy and the Goulburn Strike," *INprint*, (November 1979); "Missingham Replies on Goulburn Strike Issue," *INprint*, (November 1979); See the inmate comments about how a sit-down strike developed at the Maitland uprising in 1975 in Parliament of New South Wales Office of the Ombudsman, *Report under section 31 of the Ombudsman Act 1974, concerning the investigation of certain complaints made by prisoners to the Royal Commission into New South Wales Prisons*. No. 76., (Sydney: Government Printer, 1979). Darcy Dugan argued with the young inmate leaders



had always been more episodic and lacked a permanent organization among inmates resembling a union. Other groups, such as the Prisoners Legal Cooperative, pressed legal challenges to prison policies and rules where they could and marshaled inmate testimony once the government opened the Royal Commission inquiry.<sup>1336</sup>

Additionally, many “cleanskin”<sup>1337</sup> activists outside drew inspiration, rightly or wrongly, from the travails of certain inmates, who in turn often sought their support in the form of personal advocacy, help with legal matters, access to political material, or the maintenance of family and other social relationships outside. These immanent forms of prison activism, developing as much inside the walls, do not necessarily invalidate Matthews’s account of where this “new mentality” originated, but supplemented it. As George Zdenkowski and David Brown, two scholars allied with prisoner activists, acknowledged in the early 1980s, “the ‘prison movement’ is by no means monolithic.”<sup>1338</sup> The prison activism that blossomed in the late 1960s and early 1970s alarmed prison authorities who tried numerous methods of containing

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about how best to make their case to the authorities during the Maitland strike. He was overruled and threatened by inmate leaders who were determined to resist the prison staff until they were finally dispersed with tear gas, batons, and transfers. See Hay, *Catch Me If You Can*, 332-333. Hay misidentifies the state minister in charge of the prison’s portfolio at the time: it was John Waddy (Liberal) not Bill Haigh (Labor); On efforts to create prisoner unions, organizing strikes and other activism, and allying with the outside labor movement see, Exhibit 685: “Surveys results re formation of a Prisoners’ Union.” Royal Commission into New South Wales Prisons Exhibits 5/9309. SANSW; “Prisoners’ Union Liaison,” *Jail News*, (June 1979), 7; “Strike From Inside,” *Jail News*, (October 1980), 5; “Prisoners Union Liason,” *Contact: Magazine of the Parramatta Jail Resurgents*, (November 1978), 4; Zdenkowski and Brown, *Prison Struggle*, 75, 322-326. In general, the *Jail News*, a publication of the Prisoners Action Group, can be seen as providing a major organizing function for various prison activists. It became a clearinghouse for a number of different inmate political projects. Zdenkowski and Brown, *Prison Struggle*, 75, 322-326.

<sup>1336</sup> Brett Collins, “Super Mac and de Judge,” *Alternative Criminology Journal*, (August 1977), 34-38; “Crims Co-op Not Official,” *Jail News*, (September 30, 1978), 7.

Zdenkowski and Brown, *Prison Struggle*, 72-75.

<sup>1337</sup> “Cleanskin” was common word in Australian prison argot designating a person with no criminal background. This could at times include first-time inmates who also had no prior criminal or institutional record. In other words, one could be a prisoner, but not really be consider part of the criminal subculture.

<sup>1338</sup> Zdenkowski and Brown, *Prison Struggle*, 56.

prison radicals, their influence on other inmates, and interaction with outside allies. One of the primary means of doing this was to move them—a tactic, which itself became the subject of protest by inmates.

### **Transfers as a Control Mechanism and Resource**

In the late 1960s and 1970s, a broad struggle emerged over the terrain of the state's prisons, how they would be run and who would hold the most influence as the prison order that had prevailed since the 1940s and 1950s unraveled. Administrative policy changes and interventions from the senior levels of the Department of Corrective Services encroached on the longstanding prison routines of superintendents and guards; increasingly politicized, young inmates challenged the authority of the guards, superintendents and the central penal authorities through strikes, sit-ins, legal actions and disturbances; prison guards, through their union, tried to wrest back control through industrial action over such issues as the closure of certain control units, inmate management and disciplinary protocols, and their customary discretionary powers in running the prisons. In this context, the use of transfers to prevent problems, punish inmates, destabilize organized inmate actions, and prevent media scrutiny and investigations became one of the preferred options of the penal authorities from the central office level down to the guard force. However, transfers also provided a way for the guard force to pressure superintendents, senior penal bureaucrats, and the state government into taking certain actions or conceding in other areas of disagreement. The Department used

transfers for the purposes of establishing its control over the prison system. However, for them it was not just inmates they wanted to move about, but increasingly also their guards.

Prior to the late 1960s, prison staff derived a sense of pride and professional competence from being able to control prisoners in their charge. As a superintendent who rose from the ranks of prison officer later told David Grant, before late 1960s:

As far as prisoners were concerned, we managed our own—it was considered a slur to have to transfer a troublemaker to another gaol. Sometimes we used Grafton if we had to, but that was rare.<sup>1339</sup>

Routine prison rules and the practices permitted and encouraged prison staff to “manage their own” rather than relying on the lateral movement of inmates to a similar prison. The Department of Prisons afforded prison officers much greater latitude in how they applied force in the state prisons and the prison rules themselves severely restricted inmate behavior. Lateral transfers between prisons of a similar custody rating occurred, but not as much as they would later. Disciplinary transfers involved moving up the penal spectrum. For those inmates already in maximum security facilities (the majority of inmates), this usually meant being sent to Grafton Gaol, the state’s disciplinary prison.<sup>1340</sup>

Once New South Wales abandoned the death penalty, Grafton's “intractable section” became the terminus of the prison system. Comptroller-General of Prisons Leslie Nott established this regime in 1943 as a response to a period of rampant prison disorder in the

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<sup>1339</sup> Grant, *Prisons: The Continuing Crisis*, 146-147.

<sup>1340</sup> A pamphlet produced by the liberal Prison Reform Committee in the mid-1940s mentioned that “Transfer to Another Gaol” for disciplinary purposes only entailed movement to Grafton. Prison Reform Committee, *Punishment or Correction?: Conditions in Gaols in N.S.W.* (Sydney: Prison Reform Committee, 1944?); 8-9.

1930s and early 1940s.<sup>1341</sup> Upon arrival, a squad of prison officers met transferred inmates, stripped them and severely beat them with batons, often until they were unconsciousness.<sup>1342</sup> Known as the "reception biff," this officially condoned practice greeted all inmates sent to Grafton classified as "intractable" (usually simply called "tracs") from 1943 to 1976. Thereafter, prison staff subjected inmates to periodic beatings for minor infractions or simply on a whim. Inmates had to follow highly regimented routines and lived in Spartan conditions.<sup>1343</sup>

Periodically, rumors or explicit claims of the routine abuse at Grafton appeared in public forums, but the Department of Prisons effectively contained any potential scandals arising from such these accounts.<sup>1344</sup> The general sensibility toward punishment at the time and the legal leeway given to penal administrators meant the abusive practices at Grafton and in other state prisons largely remained behind the walls and did not disturb the existing penal arrangements if they did periodically become publically known.<sup>1345</sup> By the mid-1960s, however, this general acceptance of harsh punishment and the bureaucratic latitude enjoyed by the Department

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<sup>1341</sup> "Gaol Experiment Succeeds," *Sydney Morning Herald* Monday, November 8, 1943; Comptroller-General Leslie Nott borrowed the idea for using Grafton in this way from reforms instituted in Canada during the 1930s. Nott visited Canada in 1942 on an inspection tour. Mark Finnane, *Punishment in Australian Society* (Melbourne: Oxford University Press, 1997); John Morony, *The More Things Change: A History of Corrections in New South Wales* (Sydney: J. Morony, 1988); 526- 527; O'Toole, *The History of Australian Corrections*, 158; 141-144; Nagle, *Report of the Royal Commission*, 134, 145; *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: J. O. Patenaude, Printer to the King, 1938); On the decline of capital punishment in Australia see, Ivan Potas and John Walker, *Capital Punishment: Trends & Issues in Crime and Criminal Justice No. 3* (Canberra: Australian Institute of Criminology, 1987) and Robyn Lincoln and Shirleene Robinson, "When the Penalty Was Death," in Robyn Lincoln and Shirleene Robinson, eds., *Crime Over Time: Temporal Perspectives on Crime and Punishment in Australia* (Newcastle: Cambridge Scholars Publishing, 2010): 187-210.

<sup>1342</sup> For inmate descriptions of the regime at Grafton, see Arthur Stanley Smith and Tom Noble, *Neddy: The Life and Crimes of Arthur Stanley Smith* (Balmain: Kerr Publishing Pty Ltd, 1993); 31-33; Simmonds and Gollan, *For Simmo*, 96-97, 124-161; Hay, *Catch Me If You Can*, 184-197; Newcombe, *Inside Out*, 143-154; and Matthews, *Intractable*, 26-31, 57-116, 155-166. See also Nagle, *Report of the Royal Commission*, 134-148.

<sup>1343</sup> Nagle, *Report of the Royal Commission*, 134-148

<sup>1344</sup> *Ibid.*

<sup>1345</sup> In general see, John Pratt, *Punishment and Civilization: Penal Tolerance and Intolerance in Modern Society* (London: Sage, 2002).

began to erode. The various sources of this change are beyond the scope of this chapter. However, some of the specific accusations made by inmates and their families concerning Grafton in, particular, gained more attention and political traction.

One of these incidents involved the suspicious death of Kevin Simmonds in 1966. Simmonds was already well-known to the general public for his participation in a prison escape and prolonged manhunt with his friend Les Newcombe in 1959, during which they killed a prison guard at the Emu Plains penal farm.<sup>1346</sup> Both men were held at Grafton for many years, with Simmonds finally dying there, found hanged in his cell. Rumors circulated within the prisons and outside about the true circumstances of Simmonds' death.<sup>1347</sup> At the very least, his official cause of death—suicide—was seen by many as resulting from his brutal treatment at Grafton. By all accounts, he was beaten into submission, a shadow of his former self. "Grafton Gaol reduced him to a shuffling, vacant-eyed mumbler who burned his arms with cigarettes."<sup>1348</sup> The staff at Grafton strove to enforce this level of docility in the inmates sent to the prison, to break them and also deter other prisoners throughout the system. After Simmonds' death, pressure mounted on the Department of Prisons to change its policy regarding how long inmates were held at Grafton. Simmonds and Newcombe, both of whom had committed the two cardinal sins of the penal system—escape and killing a warder—each

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<sup>1346</sup> For accounts of this escape and manhunt see, Newcombe, *Inside Out*; Simmonds and Gollan, *For Simmo*; *Sydney Morning Herald*, October 10, 1959—November 17, 1959; March 16, 19, 1960; May 18, 1960; November 5, 1966.

<sup>1347</sup> Simmonds and Gollan, *For Simmo*, 103-113, 124-161, 167-168.

<sup>1348</sup> Gollan, Anne, "Simmonds, Kevin John (1935–1966)," *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, <http://adb.anu.edu.au/biography/simmonds-kevin-john-11690/text20849>, accessed 1 February 2012; See also Simmonds and Gollan, *For Simmo*, 96-97, 124-161.

spent seven years at Grafton. Thereafter, inmates were transferred to other prisons after serving five years in Grafton's intractable section.<sup>1349</sup>

Some prisoners sent to Grafton, like Darcy Dugan, were never broken the way Simmonds was. However, Dugan suffered greatly at Grafton for over a decade, finally being transferred to Long Bay in 1960.<sup>1350</sup> Dugan, an armed robber, was also a well-known figure, perhaps the most famous inmate of his time. He had escaped custody multiple times in years of imprisonment and garnered a degree of roguish sympathy and celebrity for his skill and audacity while on the run.<sup>1351</sup> Just his release from prison in 1967, after almost 17 years inside, made the front page of the *Sydney Morning Herald*.<sup>1352</sup> Within a few weeks, an article appeared under Dugan's name in which he directly accused the prison system of "sadism" at Grafton.<sup>1353</sup> The publicity generated by Dugan reached its climax when he joined the cast of the American written play, "Fortune and Men's Eyes," playing (ironically) the role of a sadistic prison guard.<sup>1354</sup> The play itself was controversial because it discussed homosexuality and abuse in prisons, neither of which were public topics in Australia in 1968. The play and Dugan's notoriety drew sellout audiences at every performance, culminating in a live television broadcast of a forum debating prison issues after one of the performances.<sup>1355</sup> The Liberal Minister of Justice, John Maddison, who oversaw the prisons portfolio participated in the forum and immediately

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<sup>1349</sup> Newcombe, *Inside Out*, 155.

<sup>1350</sup> Hay, *Catch Me If You Can*, 238-239. Dugan would be sent to Grafton again in the early 1970s while imprisoned for additional crimes.

<sup>1351</sup> In general see, Hay, *Catch Me If You Can*.

<sup>1352</sup> "Dugan Out of Prison—Into Hiding," *Sydney Morning Herald*, (September 15, 1967).

<sup>1353</sup> Darcy Dugan, "Brutality and Sadism at Grafton Jail," *Sunday Telegraph*, (September 24, 1967). This article was written by the *Daily Telegraph* reporter, Mike Tatlow, who interviewed Dugan. Dugan agreed to the use of his name and was compensated for it. See Hay, *Catch Me If You Can*, 270-275 and Testimony of Darcy Dugan, *Proceedings of the Royal Commission*, 3031-3032.

<sup>1354</sup> Hay, *Catch Me If You Can*, 280-281.

<sup>1355</sup> *Ibid.*, 280.

found himself confronted by Dugan and another anonymous ex-prisoner (later identified as Tony Hackett) over the violence at Grafton and the unwillingness of the authorities to do anything about the prevalence of inmate rape.<sup>1356</sup> The publicity generated by this incident reflected poorly on the Department of Prisons.<sup>1357</sup>

Walter McGeechan, who had only recently ascended to the leadership of the Department of Prisons, disliked Grafton's regime and the negative publicity associated with it. He began building a new control unit near Sydney at the Long Bay prison complex to replace it. Once this new unit opened in 1975, Grafton soon ceased functioning as a disciplinary prison. The new unit, called "Katingal," differed substantially from Grafton: physical abuse was curtailed, but inmates were locked in windowless, individual cells for most of the day with few activities to occupy their time.<sup>1358</sup> Much of the new institution operated electronically, eliminating direct contact between guards and inmates. Even though Katingal was intended to replace the role that Grafton occupied for decades, some officers disliked it, arguing that the lack of physical repression reduced its value as a system-wide deterrent.<sup>1359</sup>

Moreover, a number of officers' claimed that discipline in general had been relaxed during McGeechan's tenure. Some argued that Grafton was used less often than it had been in the past and that the treatment inmates received there was not as severe as it had once

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<sup>1356</sup> Ibid., 280-281; "Minister admits young gaoled with homosexuals," *Sydney Morning Herald*, (March 21, 1968); Parliament of New South Wales, Legislative Assembly, *Hansard*, Wednesday, 9 March, 1977: 5016.

<sup>1357</sup> "Minister rejects prison claims," *Sydney Morning Herald* March 22, 1968.

<sup>1358</sup> Ibid., 167-246; Compare Chapter 7: "Grafton: The Intractable" and Chapter 8: "Katingal: Special Security Unit" in Nagle, *Report of the Royal Commission*. Katingal was originally called "S Block" and many inmates referred to it as "the Blockhouse."

<sup>1359</sup> This was notably the position of Eric Frame, the superintendent of Grafton and former long severing officer at the same prison. See, the Statement and Testimony of Eric Cameron Frame, *Proceedings of the Royal Commission*, 3481-3502.

been.<sup>1360</sup> Officers often claimed that the relaxation of discipline accelerated once the Royal Commission began its work in 1976. Officer Neville Griffiths noted of Maitland that “conditions are more lenient now than they were approximately 12 or 15 months ago. Discipline is easier and restrictions have been reduced since the Commission started.”<sup>1361</sup> This view was disputed by many inmates who felt that the regimes were as arbitrary and tight as they were in years past. Other inmates, especially those serving long sentences or with prior prison experience, agreed that the basic structure of authority between keeper and kept remained the same as did the lack of meaningful avenues for the redress of grievances or communication with prison authorities. Yet, as Darcy Dugan told the Royal Commission, “in general, officers’ attitudes have ‘toned down’; they don’t push the rules as much as they used to.”<sup>1362</sup> This extended to the regime at Grafton. He said, “Conditions up there, from probably the middle 60’s—the bashing were not stopped but they were reduced.”<sup>1363</sup>

Most parties acknowledged there were numerous small loosening or openings forming in what had up to that time been extremely rigid prison regimes. Disagreement over whether this was a “cosmetic,” merely rhetorical change or a “lapse in security,” depended on the perspective of the speaker and his experience of prison regimes in the past or elsewhere. It was, however, a topic of disagreement and a noticeable issue in a way that it had not been previously. Often, the openings were piecemeal and inconsistent across the prison system, sometimes more dependent on the attitudes of individual officers or the reputation of a certain

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<sup>1360</sup> Grant, *Prisons: The Continuing Crisis*, 149.

<sup>1361</sup> See the Statement of Neville William Griffiths, *Proceedings of the Royal Commission*, 3726

<sup>1362</sup> Statement of Darcy Dugan, *Proceedings of the Royal Commission*, 3028

<sup>1363</sup> Testimony of Darcy Dugan, *Proceedings of the Royal Commission*, 3048.



prison. Most inmates—but not all—welcomed the alterations on internal movement restrictions inside the prisons, even if they felt the changes were ultimately insufficient or begrudgingly accepted by staff. Some inmates, those more vulnerable to abuse by other prisoners, feared the decreased supervision by guards. This period marked the beginning of an upswing in the number of inmates "on protection," separated from other prisoners for their own safety.<sup>1364</sup>

Once the Royal Commission began to hear evidence, discipline slackened considerably in the eyes of many prison officers. Inmates also noted that the Royal Commission's work forced prison staff and administrators to lighten the oppressiveness of their regimes, if only for the fear they might be prosecuted or otherwise held accountable to the Royal Commission or state government if it decided to substantially alter their longstanding position on prison policy.<sup>1365</sup> The fact that the Royal Commission was even operating constituted a departure from the "hands-off" policy of granting prison administrators and staff wide latitude in running the prisons.<sup>1366</sup> The small inroads on internal movement restrictions also accelerated during the commission's sitting and especially after the Wran government began implementing some of its recommendations in 1978.

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<sup>1364</sup> When Justice Nagle recommended the closure of Katingal, several of its inhabitants petitioned for it to remain open. Despite the sensory deprivation of the unit, these inmates preferred it to being held in a mainstream, secure prison where they would have been assaulted or killed by other prisoners. All of these inmates were either "dogs" (informers), "seckos" (sex offenders), or "rock spiders" (child molesters). See Matthews, *Intractable*, 238. The problem of increasing protection cases would only worsen during the 1980s.

<sup>1365</sup> "Brett Collins, Justice Action: Prisoners and Their Organizations Must Be Part of the Dialogue," in "The Nagle Report--25 Years On Symposium," *Current Issues in Criminal Justice* (July 2004): 105; "TV, no beatings, at Grafton: Big Changes at Former Prison for Intractables," *Sydney Morning Herald* (October 14, 1977).

<sup>1366</sup> Pratt, *Punishment and Civilization*, 161.

As the routines that governed inmate movements within the prisons deteriorated and discipline slackened, prison staff began relying more on lateral transfers to similar institutions and custody levels to deal with inmates they could not manage, did not like, or simply wanted to punish for whatever reason. There had always been some inmates who rebelled against prison staff, but as Bernie Matthews noted, there were increasingly fewer prisoners who were simply willing to abide by the old code of “copping it sweet”<sup>1367</sup> as there had been in the past. Grafton rarely held more than twenty or twenty-five intractables at a time and the new Katingal unit at Long Bay held roughly forty inmates. This meant some of the state’s maximum-security prisons frequently transferred and received inmates on disciplinary charges, but these men were not destined for the system’s terminus control unit. However, within such prisons, like Goulburn, Maitland, Parramatta, the Central Industrial Prison, and Bathurst, isolation units supplemented the normal maximum security custody arrangements of the mainstream prisons. Like Grafton, these units were also referred to as the “tracs,” as well as the “front yards,” “special yards,” “pig pens,” or at Parramatta, “the Circle.”<sup>1368</sup> They constituted a step below the terminus and at times some of these tracs were further differentiated with some considered worse than others.<sup>1369</sup> Depending on the reasons for movement, inmates transferred to other maximum security prisons could end up in the tracs, which meant that they spent most of their time alone in small, open-air pens, or they joined the mainstream maximum security routine.<sup>1370</sup>

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<sup>1367</sup> Australian colloquialism roughly meaning to take what you have coming to you quietly, to accept your fate or the consequences of your actions however unjust they might be.

<sup>1368</sup> For a sampling of these terms and their definitions see, Anderson, *Inside Outlaws*, 144, 147, 158,

<sup>1369</sup> For much of the 1970s, Maitland’s tracs were considered to be especially severe.

<sup>1370</sup> Prison staff had a lot of discretion in making decisions where to hold new arrivals.

While inmates complained of the difficulties of movements in general, they considered these kinds of disciplinary transfers as a violation of their rights, simply intended to punish or segregate them from the general prison population. Known as a “shanghai” in the local prison argot, this kind of movement exceeded all other types of transfers in the amount and intensity of criticism it generated among inmates. Tim Anderson, a prisoner who spent time at several of the state’s maximum security prisons between the late 1970s to the early 1990s, described shanghais as the “sudden, unexpected and often violent abduction of a prisoner from one jail to another.”<sup>1371</sup> Anderson recalled a senior prison officer taking this definition a step further by distinguishing shanghais from “liftings”: shanghais were truly late-night operations, whereas as similar movements occurring in the mid-evening were “liftings.”<sup>1372</sup> Inmates often used the terms interchangeably, along with “tippings” or being “tipped.”<sup>1373</sup> Given the large number of yearly movements cited by McGeechan, shanghais probably represented only a small portion of the overall number of transfers. Nevertheless, the way in which the prison system used them—or the threat of them—as a management and disciplinary tool fostered controversy and resentment among many inmates. Despite their immediate unannounced character, inmates came to expect this kind of transfer as one of the many discretionary punishments prison staff could mete out for certain types of behavior. The inmate accounts of shanghais often came from inmates who were considered to be “heavies,” powerful, respected, feared and often

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<sup>1371</sup> Anderson, *Inside Outlaws*, 155.

<sup>1372</sup> *Ibid.*, 73, 149.

<sup>1373</sup> *Ibid.*, 158.

violent inmates at the apex of the prisoner hierarchy.<sup>1374</sup> This was not always the case,<sup>1375</sup> but more often than not, the inmates testifying to the abuses of shanghais and control units were heavies, prison activists, or both. Their views, while clearly relevant, did not always reflect the opinions and experiences of many other inmates, especially those who were at the lower end of the prisoner hierarchy and custody ratings.<sup>1376</sup>

Throughout the Royal Commission hearings, the description of shanghais as being unannounced transfers occurring late at night, continually resurfaced during questioning.<sup>1377</sup> Peter McNerney, who represented several prisoners at the Royal Commission, asked Commissioner McGeechan if he knew of the term “shanghai” and its meaning among prisoners. McGeechan responded stating he did, but downplayed the characterizations of the process, arguing the secrecy surrounding unannounced transfers was a necessary precaution because escorts could be waylaid by “people in the underworld.”<sup>1378</sup> McGeechan could not produce any evidence to support this rationale and admitted that in many cases it was not possible to keep the movement of high security prisoners secret. He tried to avoid the implication that the movement of prisoners at night without their foreknowledge was a common practice. It was, in his words, a “very extreme case” in which a prisoner might be moved at midnight.<sup>1379</sup> Moreover, he claimed the timing of movements reflected other contingencies, like difficult

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<sup>1374</sup> For a related point about prison status, illicit knowledge, and the practice of informing see, David Brown, “Notes on the Culture of Prison Informing,” *Current Issues in Criminal Justice*, (July 1993), 54-71.

<sup>1375</sup> Tim Anderson, for instance, was a political prisoner and not viewed as part of the criminal underworld by his fellow inmates.

<sup>1376</sup> The threat of transfers could have been more meaningful for those in minimum security because they had more to lose.

<sup>1377</sup> In the *Proceedings of the Royal Commission* see, for instance, the testimony of Walter Richard McGeechan, 317 and John A Cook 3747-3748.

<sup>1378</sup> Testimony of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 317

<sup>1379</sup> *Ibid.*

traffic patterns and poor weather, rather than a deliberate policy of transferring inmates at midnight.<sup>1380</sup> Nevertheless, he maintained his view that secrecy was an essential aspect of how the penal authorities moved certain inmates. Similarly, John A. Cook, a senior prison officer who worked at many different posts in the Long Bay prison complex, argued that it was necessary to move inmates occasionally without their foreknowledge despite the fact that most inmates knew a day before hand if they were to be moved.<sup>1381</sup> Informing them of their pending transfer could jeopardize security or lead certain inmates to harm themselves to stop the transfer or earn one to a different facility, like a hospital.

The testimony of these penal authorities during the Royal Commission, as well as the questioning by counsel, concerning “shanghais” differed markedly from many other instances when “transfers” or “escorts” were discussed.<sup>1382</sup> The administrative assumptions of the latter, with their emphasis on managing the routine flow of inmates, gave way to starker descriptions of movements as conscious, sometimes, blunt methods of control. Nevertheless, witnesses from the Department and the guard force de-emphasized this aspect of transfer policy and practice. For instance, after some lengthy questioning about security precautions and the secretive nature of shanghais, Peter McInerney asked McGeechan about the rationale for moving inmates. Their exchange underscored the unwillingness of McGeechan to be forthright about how transfers were used in this fashion.

5963. It is also done for discipline, is it not?—No, sir.

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<sup>1380</sup> Ibid.

<sup>1381</sup> *Proceedings of the Royal Commission*, 3747-3748.

<sup>1382</sup> Compare for instance: McGeechan testimony at 144-145 and 317 in the *Proceedings of the Royal Commission*.

5964. If a man has not settled down, or misbehaves himself, in one prison, he is moved for disciplinary purposes to another prison?—A prisoner could be removed for disciplinary purposes, sir. He could also be moved for lots of other purposes.

5965. And a lot were removed to Grafton?—There have been some removed, sir.<sup>1383</sup>

Much of McGeechan's hesitancy and the evasiveness of his answers, as well as that of many of senior officials in the Department and the guard force could, of course, be attributed to the circumstances of their statements. Departing from longstanding practice, Nagle sought broad ranging testimony from inmates, indicating a willingness to consider critical views of the Department and not to simply give law enforcement the benefit of the doubt. Compared to the way Corrective Services and the guard force routinely operated, the inquiry blurred the lines of authority and openly questioned who was entitled to speak truthfully. Both the guards and the senior administrators in the Department were concerned about the potential for their words to be used against them in administrative disciplinary action, as cause for dismissal, and even in civil or criminal cases. Such possibilities tempered what they were willing to say during the hearings, and made the testimony by the prison staff on the topic of transfers all the more ambiguous and secretive, inviting more questions.

However, the hesitancy to talk about shanghais also reflected how they figured in the administrative, discretionary power of the penal authorities. Within the broad, and even vague, guidelines set by the Prison Act of 1952, prison superintendents and other senior staff could move prisoners for a variety of infractions, suspicions, routine management priorities, inmates'

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<sup>1383</sup>Testimony of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 317

welfare, medical concerns or simply on a whim.<sup>1384</sup> There was little recourse for inmates to dispute unwanted transfers. Unlike formal charges that could be laid against inmates for disciplinary infractions, movement orders were not subject to any form of hearing where an inmate could contest the charges. In this way, they resembled other routine administrative practices that either had punitive valences or were performed in such a way that made them appear punitive, like cell searches. Prisoners could not dispute these practices in any court.<sup>1385</sup> This lack of recourse to law or any form of review extended outside of the prison in the sense that family, friends, prisoners' rights activists, and other organizations could also not challenge the movement of prisoners. If used punitively, as many inmates asserted they were, transfers formed a punishment outside the law, even in the limited sense at the time of what the law meant in prison.<sup>1386</sup> Despite gaining the opportunity to appeal the decisions of the Visiting Justice who presided over many prison disciplinary hearings in 1977,<sup>1387</sup> the practice of transferring inmates still echoed Mark Finnane and Tony Woodyatt's description of the

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<sup>1384</sup> Prisons Act, No 9, 1952. Part V, Sections 27, 28, 29.

<sup>1385</sup> Mark Finnane and Tony Woodyatt, "'Not the King's Enemies': Prisoners and Their Rights in Australian History," in *Prisoners as Citizens: Human Rights in Australian Prisons* ed. David Brown and Meredith Wilkie (Sydney: Federation Press, 2002), 95-98; Nagle, *Report of the Royal Commission*, 348-359.

<sup>1386</sup> For an overview of the law in prison environment and its limits at the time see Zdenkowski and Brown, *The Prison Struggle*, 112-132; George Zdenkowski, "Judicial Intervention in Prisons," *Monash University Law Review*, (June 1980), 294-330.

<sup>1387</sup> Inmates generally dismissed the Visiting Justice as "the Department's man" because they almost always ruled in favor of prison staff regardless of the evidence and were even required to uphold prison discipline in the statute establishing their authority. "Justice in Jail—Myth or Magic?" in Ex 613 "Original of Submissions of Bernard Thomas Matthews." Royal Commission into New South Wales Prisons, Series 1601: Exhibits, 5/9309. SANSW; Nagle, *Report of the Royal Commission*, 349-356; Fraser [1977] 2 NSWLR 867; Zdenkowski and Brown, *The Prison Struggle*, 100-101; David Brown, "Continuity, Rupture, Or Just More of the 'Volatile and Contradictory'?: Glimpses of New South Wales' Penal Practice Behind and Trough the Discursive" in John Pratt, David Brown, Mark Brown, Simon Hallsworth and Wayne Morrison (eds.), *The New Punitiveness: Trends, Theories, Perspectives* (Cullompton: Willan Publishing, 2005), 27-46; Zdenkowski, "Judicial Intervention in Prisons."

nineteenth century prison as “a world almost unknown to the law.”<sup>1388</sup> At the same time, the power to transfer inmates resided within the administration prerogative established by statute.

When addressing employees of the Department of Corrective Services, the senior leadership of the Department was forthright about using transfers as management tools for maintaining control and enforcing discipline. In the *Manual of General Information*, issued to staff in all prisons 1970,<sup>1389</sup> the Department advised the “prompt removal of key inmates to other institutions or to segregation” as a means of preventing “institutional disturbances” and managing the “influence of inmate agitators.”<sup>1390</sup> Notwithstanding the manual’s caveat that such agitators were not always so easily identified, prison staff in the state’s maximum security prisons regularly employed this tactic to break strikes by inmates, prevent or frustrate contact between inmates and outside supporters or the media and discourage or disrupt legal actions by inmates seeking redress of grievances with outside courts.<sup>1391</sup> The Prisoners Action Group described this same policy more bluntly in its submission to the Royal Commission, noting that, “the penalty of dissent, argument, resistance is movement through this graduated system to progressively heavier environments, and the ever present threat of such movement.”<sup>1392</sup> As such it formed, “one of the most potent control mechanisms available to the Department. And the enormous numbers of movements of N.S.W. prisoners each year testified to the very active use of this weapon.”<sup>1393</sup>

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<sup>1388</sup> Finnane and Woodyatt, “Not the King’s Enemies,” 87.

<sup>1389</sup> But, apparently not followed by all staff. See Nagle, *Report of the Royal Commission* 189-191, 220-221.

<sup>1390</sup> Department of Corrective Services, *Manual of General Information: Custodial Division* (Sydney: Department of Corrective Services, 1970), 50. This point was also made by Zdenkowski and Brown, *The Prison Struggle*, 116.

<sup>1391</sup> Zdenkowski and Brown, *Prison Struggle*, 116.

<sup>1392</sup> Prisoners Action Group, “2nd Submission to the N.S.W. Royal Commission into Prisons,” *Alternative Criminology Journal* (July 1980), 53.

<sup>1393</sup> *Ibid.*



Yet, even when armed with such a weapon, it was, at times, hard to deploy due to divisions within the penal apparatus. These divisions usually formed between guards and senior officers, such as the superintendent and his immediate subordinates, and the central office. Industrial disputes over transfers often developed over the movement and placement of specific inmates. Some inmates, like Ray Denning, could not be moved easily because most local sub-branches of the prison officers' union at various prisons refused to accept him in their institution. Denning was convicted of killing an officer during an escape attempt in 1974, which made him the target of scorn and retribution for many guards.<sup>1394</sup> Through their local union sub-branches, officers effectively nullified the possibility of transferring Denning from several different control units that he occupied during the 1970s.<sup>1395</sup> It is probably safe to say the only reason he was moved between these units was because they were slated to be decommissioned shortly after his transfer.<sup>1396</sup>

This type of activism by guards disrupted prison operations and the plans and policies of senior administrators and other sub-sections of the penal bureaucracy. Prison officers banned Bernie Matthews, an activist inmate who was also known for escape attempts and

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<sup>1394</sup> Bernie Matthews, *A prisoners At Parramatta* at the time of Denning's controversial assault on Officer Willy Faber discusses the incident and its ramifications in detail in *Intractable*, 130-140. Denning became a prison hero and rebel for the prison movement both inside and outside because he claimed that he was innocent of this assault (Faber died of his wounds years later) and convicted on a fabricated confession. He was tortured and held largely in isolation for years afterward. Denning was a frequent subject of activist literature during this period. Matthews argues that Denning was most likely convicted with a false confession and other fabricated evidence, but that he was ultimately guilty of attacking the guard. It appears that fact was common knowledge among many if not most inmates.

<sup>1395</sup> Donald Catchlove, *Ray Denning: My Life and Time, With the Prison Diaries* (Chippendale: Ironbark, 1994), 127-128, 170-171; Michael Bersten, "Notes on Industrial Disputes in NSW Prisons Since 1970," (Sydney: unpublished working paper, 1987), 39-41.

<sup>1396</sup> Grafton's intractable section closed when Katingal opened. Denning moved to Katingal during its first year of operation. Corrective Services held Denning back at Grafton later when Katingal was closed following the Royal Commission.

confrontations with guards, from the Silverwater Work Release Centre despite the parole board's recommendation to place him there in preparation for his upcoming release and his attainment of low security status by the Classification Committee. "When he was taken to Silverwater ... the warders refused to accept him. He was taken back to Parramatta and later transferred to Long Bay Jail."<sup>1397</sup> If pressed to accept an inmate whom they had banned from a particular prison, guards threatened to strike and sometimes followed through on this threat by walking off the job, leaving a prison staffed by senior officers and police.<sup>1398</sup> The worst case of the latter was the prolonged conflict over the placement of Peter Schneidas who killed an officer with a hammer at Long Bay in August 1979.<sup>1399</sup> Despite the desire of the Department's senior administrators to move Schneidas and eventually reintegrate him into the mainstream prison population, the officers' union would not permit him to be moved for years. Schneidas became a custodial anomaly or exception in the immediate post-Royal Commission era because

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<sup>1397</sup> "Prisoner Officers Refuse to Take Inmate," *Sydney Morning Herald*, (September 20, 1979); Zdenkowski and Brown, *Prison Struggle*, 117-118.

<sup>1398</sup> In addition to Denning, prison officers blocked the transfer of inmates Peter Schneidas and Steve Dowd. See Bersten, "Notes on Industrial Disputes in NSW Prisons Since 1970," 39-42, 49. For a similar incident involving an anonymous prisoner see, "Long Bay Strike Could Be Called Off Today," *Sydney Morning Herald*, (March 18, 1981); "Judge Criticises Jail Strike for Delaying Trial," *Sydney Morning Herald*, (March 19, 1981); "End of Jail Strike Expected Today," *Sydney Morning Herald*, (March 20, 1981).

<sup>1399</sup> "Court Hears of Long Bay Killing," *Sydney Morning Herald*, (April 10, 1980); "Prisoner's Court Challenge Fails," *Sydney Morning Herald*, (December 7, 1982); "Jail Fast Man is Tortured: Psychologist," *The Age*, (April 5, 1983); "Prison Hunger-Striker May Be Force-Fed," *Sydney Morning Herald*, (April 6, 1983); "Hunger-Striker Near Death, Sister Claims," *Sydney Morning Herald*, (April 7, 1983); "Schneidas: Court Battle No Answer," *Sydney Morning Herald*, (April 8, 1983); "Warders Prepared to Talk Over Schneidas Transfer," *Sydney Morning Herald*, (April 11, 1983); "Why Money, Not Schneidas, Will Lead to Penal Reform," *Sydney Morning Herald*, (April 12, 1983); "Warders May Stop Over Schneidas," *Sydney Morning Herald*, (June 14, 1983); "Striking Warders to Meet; Jackson Firm on Schneidas," *Sydney Morning Herald*, (June 16, 1983); "Prison Officers to Vote on Plan for Schneidas," *Sydney Morning Herald*, (June 21, 1983); "Warders to Consider Compromise," *Sydney Morning Herald*, (June 24, 1983); "Warders Back," *The Age*, (June 24, 1983); "Schneidas to be Shifted," *Sydney Morning Herald*, (July 8, 1983); Matthews, *Intractable*, 353-357; Vinson, *Wilful Obstruction*, 35-47.

he remained in solitary confinement for years, long after others had been moved in and out of segregation.<sup>1400</sup>

Incidents such as these appear to have escalated during the 1970s.<sup>1401</sup> Surely, a big reason for industrial action by officers over the movements of certain prisoners stemmed from the closure of Grafton and within a few years of the closure of its replacement, Katingal, following the Royal Commission's report. Denning and Matthews both spent long periods in these kinds of control units, as did a number of other specific inmates who became the subject of prison officer enforced bans from specific prisons. In other cases, however, officers targeted groups of inmates with their job walkoffs in an effort to change the general mix of inmates in a prison. For example, officers at the Mannus prison farm walked off the job on Friday, December 29, 1977, demanding the replacement of the facility's superintendent, the posting of more officers, enhanced security, and the transfer of 13 inmates they deemed unsuitable for placement at the minimum security institution.<sup>1402</sup> After the strike ended, the prison farm's

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<sup>1400</sup> For a sampling of the activist literature in the campaign to reintegrate Schneidas see, V.J. Dalton to P. Schneidas, July 19, 1982; "Peter Schneidas Press Release," November 24, 1982; "Open Letter to the Premier," Peter Schneidas to Premier Wran, February 21, 1983; Prisoners' Action Group, "Press Statement—Peter Schneidas," March 28, 1983; "We, the inmates of Bathurst Gaol..." Inmate petition to Minister of Corrective Services Rex Jackson, n.d.; "Peter Schneidas: The Full Picture," pamphlet, n.d.; "3 Years Torture," pamphlet, n.d., Ephemera on crime prevention in New South Wales: including pamphlets, leaflets etc. related to law enforcement, the Police Force, the Department of Corrective Services, individual prisons, remand centres and gaols. Box 1. Mitchell Library, State Library of New South Wales.

<sup>1401</sup> In a diary of industrial actions submitted to the Royal Commission by Walter McGeechan, he listed only a few specific instances of strikes over the transfer of inmates. However, this issue could have also been a part of strikes over general security or inmate discipline. See "Diary of Stoppages in New South Wales Establishments from November, 1968 to June, 1974," "Summary of Illegal Stoppages 1974-76," "Diary of Industrial Disputes 1974-76," incorporated into the Testimony of McGeechan, *Proceedings of the Royal Commission*, 645-648. It would seem that strikes over the placement of specific inmates became more of a problem for McGeechan's successor, Dr. Tony Vinson. On Vinson's difficulties with the officers' union see, Bersten, "Notes on Industrial Disputes in NSW Prisons Since 1970"; Vinson, *Wilful Obstruction*; Grant, *Prisons in Crisis*, 157-165.

<sup>1402</sup> "Officers Quit Duty at Prison Farm," *Sun-Herald*, (January 1, 1977); "Prison Murder Attempt Alleged," *Sydney Morning Herald*, (January 3, 1978). See also the entries in journals of the prison camp's superintendent between December 28, 1977 and January 6, 1978. Series 2068 Superintendent's journals, (14/1037-1039.1). Agency

administration moved 20 inmates to Cooma Prison and the superintendent was replaced shortly thereafter.<sup>1403</sup> In some cases, officer strikes over transfers or the threat to do so were a way for the union to force concessions on other matters, sometimes directly related to security, sometimes not.<sup>1404</sup> In this sense, the guards' union, especially at the local level of specific prisons, used prisoner transfers (whether demanded or opposed) as a negotiation tactic in their power struggle with the central administration of the Department of Corrective Services. Conflict along these lines became especially acute toward the end of the Royal Commission and after the appointment of Dr. Tony Vinson as McGeechan's replacement with a mandate for implementing the reforms suggested by Justice Nagle.<sup>1405</sup>

Transfers also provided penal authorities with a tool to dissuade inmates from pursuing legal action against the prison system or specific staff members as well as blunting their participation in other activities challenging penal authorities, including serving on grievances committees. The ability of prison staff to "dissuade" such actions with transfers clearly reflected the amount of power articulated through penal authorities. However, once the courts, state government, and media demonstrated a willingness to hear prisoner complaints, inmates were able to litigate and publicize claims of abuse and injustice in an unprecedented manner. At the

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number: 2482 Brookfield Afforestation Camp Mannus. Agency number 1 Department of Prisons (1874-1970) Department of Corrective Services (1970-2009). SANSW.

<sup>1403</sup> January 5, 1978. Series 2068 Superintendent's journals, (14/1037-1039.1). Agency number: 2482 Brookfield Afforestation Camp Mannus. Agency number 1 Department of Prisons (1874-1970) Department of Corrective Services (1970-2009). SANSW.

<sup>1404</sup> In general see, Bersten, "Notes on Industrial Disputes in NSW Prisons Since 1970"; Grant, *Prisons in Crisis*; Vinson, *Wilful Obstruction*; Tony Vinson, "Reforming Prisons: A 1970s Experience," Unpublished paper presented at the History of Crime, Policing and Punishment Conference, December 9-10, 1999 (Canberra: Australian Institute of Criminology, December 9-10, 1999), 2; Tim Anderson also mentioned officer initiated mass shanghais and industrial disruption rumored to be related to such large movements of inmates at Parramatta Gaol in the early 1980s, *Inside Outlaws*, 21, 97, 123.

<sup>1405</sup> Vinson headed a five person Corrective Services Commission that replaced the previous post of a single commissioner as head of the penal bureaucracy. In general see, Vinson, *Wilful Obstruction*.

very least, this embarrassed the Department of Corrective Services by focusing political scrutiny and media coverage on them, making reforms and even normal operations difficult and potentially scandalous. On rare occasions, inmate claims resulted in criminal or administrative investigations against prison staff. Penal authorities, whether at the level of a specific prison or higher up in the penal bureaucracy, tried to obstruct legal actions and nullify the disruptive possibilities of prisoner grievance committees by transferring inmates away from prisons located where they had bases of support or in urban areas that facilitated communication with activist supporters, legal counsel, and the media. Frequently, moving such inmates frustrated their attempts to prepare cases, speak with witnesses and collaborators or press claims and organize inmates through other means.

The subterfuge surrounding the removal of inmate Brett Collins from the Parramatta Prisoners Committee exemplified how Corrective Services used the transfers to ward off challenges from politicized inmates. Parramatta's inmates had elected Collins to the Prisoner Committee, where he was an outspoken leader. Collins was a well-known prison activist, having a reputation for "shitstirring and organizing unions."<sup>1406</sup> After an altercation between a prisoner and a guard on September 29, 1977, the Prisoners Committee met with the prison's administration and Commissioner McGeechan to protest extended lockups that affected the entire prison and diffuse a tense situation.<sup>1407</sup> The Prisoners Committee wanted to have members of the Royal Commission and media present at this meeting and any subsequent

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<sup>1406</sup> "Confidential—For the Eyes Only of the Royal Commissioner or David Hunt Q.C.," Brett A. Collins to Royal Commission into NSW Prisons, October 12, 1977. Royal Commission into New South Wales Prisons, Series 1605: Correspondence Files. SANSW.

<sup>1407</sup> Parramatta Prisoners Committee, "Media Publication: Manipulation and Incitement of Parramatta Prisoners," October 4, 1977. Royal Commission into New South Wales Prisons, Series 1605: Correspondence Files. SANSW.

meetings; failing that, they wanted to be able to speak directly to the media to counter what they believed to be misleading reporting based on information provided by the prison administration and guards. McGeechan denied both requests.<sup>1408</sup> According to a letter written by Collins on December 1, 1977, McGeechan “tagged me as the leading proponent of difficult points although we made plain that we acted collectively on group decisions and he made personal attacks on me.”<sup>1409</sup>

During another highly charged meeting on October 5, 1977, prison officials informed the inmates they would transfer any inmate in the prison who was accused of assaulting an officer or was assaulted by a fellow prisoner.<sup>1410</sup> This meeting was recorded and officials permitted the Prisoners Committee to pass a copy of the recording to outside activist groups and the Royal Commission.<sup>1411</sup> Within 24 hours of this meeting, two inmates half-heartedly attacked Collins then ran away, injuring him enough to leave a mark on his face, but not hurting him as much as they could have.<sup>1412</sup> Collins stated he had not had any previous difficulties with the inmates who attacked him, and he later discovered through others that they wished to talk it over the next day over coffee.<sup>1413</sup> The fact that the two inmates ceased their attack when they did and

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<sup>1408</sup> Ibid.; “Invitation to Attend,” Parramatta Prisoners Committee to Secretary of the Royal Commission into Prisons, October 5, 1977. Royal Commission into New South Wales Prisons, Series 1605: Correspondence Files. SANSW.

<sup>1409</sup> “University Education, Shanghai of Representatives,” Brett Collins to the Royal Commission in NSW Prisons, December 1, 1977. Royal Commission into New South Wales Prisons, Series 1605: Correspondence Files. SANSW.

<sup>1410</sup> Ibid.; “Confidential—For the Eyes Only of the Royal Commissioner or David Hunt Q.C.,” Brett A. Collins to Royal Commission into NSW Prisons, October 12, 1977; 1, 1977. Royal Commission into New South Wales Prisons, Series 1605: Correspondence Files. SANSW.

<sup>1411</sup> Ibid.

<sup>1412</sup> “Confidential—For the Eyes Only of the Royal Commissioner or David Hunt Q.C.,” Brett A. Collins to Royal Commission into NSW Prisons, October 12, 1977. Royal Commission into New South Wales Prisons, Series 1605: Correspondence Files. SANSW

<sup>1413</sup> Ibid. The story Collins heard was that the attack was payback for some unspecified affront two years in the past. The fact that the two inmates ceased their attack when they did and did not seriously injured Collins made

that they had not seriously injured Collins made the entire episode appear like an orchestrated attempt by the prison administration and/or the guard force (through the two inmates) to build a “legitimate” pretext for removing Collins from the prison.

Within 15 minutes of being assaulted, the deputy superintendent appeared at Collins’s cell, inquiring about the incident.<sup>1414</sup> Collins, suspicious of the senior officer’s timing and concern, told him it was from a boxing match. After a nurse visited him and he refused to be treated, an officer instructed him to report to the infirmary where he was met by the Harry Duff, Parramatta’s superintendent. According to Collins, Duff told him Commissioner McGeechan wanted a full report on the assault. Collins refused treatment and reiterated his contention that the mark on his face was from a boxing match. As Collins later told the counsel for the Royal Commission, “This was within ½ hour of an incident that would always be ignored. And nobody complained.”<sup>1415</sup> Duff ordered him to make a written statement concerning the boxing match and his refusal to be treated.

Later that night, the S.O.D. appeared at Collins’s cell, physically restrained him, and despite his resistance, dragged him handcuffed and gagged to an awaiting van.<sup>1416</sup> Duff summoned three respected inmates to observe the process to reassure them that Collins was not being beaten, as well as to quell a potential uprising, as inmates in the wing, then the entire half of the prison, banged on their cell doors, demanding that Collins be released and permitted

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the entire episode appear staged, an orchestrated attempt by the prison administration and/or the guard force (through the two inmates) to build a “legitimate” pretext for removing Collins from the prison.

<sup>1414</sup> Ibid.

<sup>1415</sup> Ibid.

<sup>1416</sup> Ibid.; “University Education, Shanghai of Representatives,” Brett Collins to the Royal Commission in NSW Prisons, December 1, 1977. Royal Commission into New South Wales Prisons, Series 1605: Correspondence Files. SANSW.

to stay.<sup>1417</sup> Collins was sent to the Central Industrial Prison (C.I.P.) where he met the Classification Committee the following day who offered to place him nearby in the Malabar Training Centre, but directly asked him if he would be participating in prisoner committees. Despite his assurances and the Classification Committee's recommendation, Collins was slated to go to Bathurst, far away from Sydney and the university education courses he hoped to take while at the urban prisons.<sup>1418</sup> The day after the removal of Collins from Parramatta Gaol, the institution's inmates held a mass meeting to discuss the shanghai and protested the action by refusing to go to work, but to no avail. The penal authorities did not return Collins to Parramatta.<sup>1419</sup> With the unprecedented scrutiny of the Royal Commission, the penal authorities exercised their power to move Collins through the construction of legitimate rationales and the mobilization of some inmates under their control. While the deceit was obvious to Parramatta's inmates, it was also unprovable and officially unreadable. Thus, the penal authorities maneuvered within the prison regulations, manipulating them to transfer Collins, while deflecting critical scrutiny from outside investigators.<sup>1420</sup>

Prison staff also used transfers to disrupt potential lawsuits or investigations by oversight bodies like the state's Ombudsman.<sup>1421</sup> Even though the state's courts, other agencies and Parliament became more receptive to inmates complaints during the 1970, the actions of

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<sup>1417</sup> Ibid.

<sup>1418</sup> "University Education, Shanghai of Representatives," Brett Collins to the Royal Commission in NSW Prisons, December 1, 1977. Royal Commission into New South Wales Prisons, Series 1605: Correspondence Files. SANSW.

<sup>1419</sup> Ibid.; For similar instances of prisoner committees being neutralized see, "Editorial," *Jailprint*, (June 1981), 2; Anderson, *Inside Outlaws*, 55-99.

<sup>1420</sup> Patricia Ewick and Susan Silbey, "Narrating Social Structure: Stories of Resistance to Legal Authority," *American Journal of Sociology*, (May 2003), 1337.

<sup>1421</sup> New South Wales established the office of the Ombudsman in 1975 to investigate administrative wrongdoing. Normal prison routines often mitigated the ability of prisoners to access the Ombudsman. See, Ombudsman Act 1974 No 68; Brett Collins, "Ombudsman: Knights or Knaves," *Legal Services Bulletin*, 4 (August 1979), 130-132; Zdenkowski and Brown, *Prison Struggle*, 105-108.



prison administrators often hindered the ability of inmates to access these channels. In early 1981, Steve Lewis, an escapee on the run, described to a journalist from the *Sydney Morning Herald* an instance of how transfers were used by prison staff to quench his plans to bring a legal suit against warders at the C.I.P. in the Long Bay prison complex.<sup>1422</sup> Lewis's statement contained a number of ambiguous framings, inconsistencies, and intimations of multiple, maybe conflicting motives for his escape, commission of crimes, and even just seeking out the journalist who interviewed him.<sup>1423</sup> It is hard to read it without hearing or otherwise being aware of some of these ambiguities or silent aporia.<sup>1424</sup> Nevertheless, the manner in which he described the use of transfers—mainly as shanghais—echoed many similar accounts from other inmates at this time.<sup>1425</sup> In this sense, Lewis's account provides a description of shanghais and the role they played in the prison system at the time.<sup>1426</sup>

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<sup>1422</sup> "Pros and Cons of Life on the Run from Jail," *Sun-Herald*, (March 22, 1981).

<sup>1423</sup> Lewis appears to have contacted the *Sydney Morning Herald* while he was on the run to recount his tale. It is hard to gauge the balance of motives for his public statement and what the newspaper described as an escape to "crusade for prisoners." Much of the article suggests that his motivations for escape were multiple and often more self-centered, for better or for worse. See "Pros and Cons of Life on the Run from Jail," *Sun-Herald*, (March 22, 1981). Lewis followed in the footsteps of several other prisoners who escaped during the 1970s and 1980s and made headlines with their deliberately provocative statements to the press concerning the prison system while on the run. The most well-known of these was Ray Denning. See, especially Raymond John Denning, *The Ray Denning Diary* (Haymarket: Ray Denning Publications, 1982) and Catchlove, *Ray Denning*. Denning's fame as an escapee also drew on a much longer genealogy of popular sympathy for some flamboyant escapees and arguably harkens back to the history of bushrangers from the founding of the Botany Bay penal colony until the early twentieth century. For immediate predecessors to Denning see works on Darcy Dugan, Les Newcombe, and Kevin Simmonds, Hay, *Catch Me If You Can*; Newcombe, *Inside Out*; Simmonds and Gollan, *For Simmo*. These earlier figures, on the run before prisoners' rights became an object of protest and organizing, did not publically criticize the prison system in the same manner as Denning and Lewis. For an overview of bushranging, see Benjamin Madley, "From Terror to Genocide: Britain's Tasmanian Penal Colony and Australia's History Wars," *Journal of British Studies*, 47 (January 2008), 77-106; John Braithwaite, "Crime in a Convict Republic," *The Modern Law Review*, 64, (January 2001), 11-50; Pat O'Malley, "Class Conflict, Land and Social Banditry: Bushranging in Nineteenth Century Australia," *Social Problems*, 26 (February 1979), 271-283.

<sup>1424</sup> If nothing else, this might point up the too untroubled ease with which I read more "coherent" narratives and their less visible points of closure, apparent seamlessness, and flow.

<sup>1425</sup> For instance, see "Editorial," *Jailprint*, (June 1981).

<sup>1426</sup> I treat Lewis's account as a truthful narrative of events from his position and perspective within the prisons. However, I am aware of the fact that Lewis might have untruthfully constructed the account. It would not be the

Lewis claimed to have witnessed prison officers abusing inmates during a major disturbance at the C.I.P. in 1978.<sup>1427</sup> After the unrest, he tried to organize legal action against the officers and persuaded 12 other inmates to testify about the assaults. However, when the prison authorities learned of his efforts, they shanghaied him to the Goulburn Training Centre, nearly 200km away. Lewis said at the time he had served four years in maximum security prisons and was hoping to be considered for a re-classification and a transfer to a minimum security prison. Instead, he ended up at Goulburn in the special front yards, open-air segregation pens used to punish and isolate prisoners. He claimed that prison authorities did this to compel him to drop his planned legal action against the officers at the C.I.P. After what the journalist described as “a period of bewildering transfers and harassment,” Lewis stated he “did a deal with top prison officers.” He was sent to the medium security Cessnock Corrective Centre, in exchange for ceasing his legal action and persuading the other witnesses to follow suit.<sup>1428</sup>

The 1978 disturbance at the Central Industrial Prison that Lewis mentioned, occurred despite an attempt by warders to avoid such a problem through the extensive use of pre-emptive transfers. The media explained that the mounting unrest at the C.I.P. stemmed from

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first prison yarn spun by an inmate to the media. Even if this was the case, the place of transfers in his account highlights their prominence in the experience of inmates at this time.

<sup>1427</sup> "Pros and Cons of Life on the Run from Jail," *Sun-Herald*, (March 22, 1981).

<sup>1428</sup> One wonders how he persuaded the other witnesses to take the same course of action as he did. It is likely that if the prison authorities knew of the other inmates and their willingness to testify that they would have subjected them to the same treatment Lewis received. It was common practice for the prison authorities to disperse groups of inmates who were thought to be conspiring together to different prisons, making it hard for them to communicate. Even though personal memoirs of prisoners attest to the multiple ways inmates still managed to communicate with each other despite these tactics, it is likely that the other inmate witnesses Lewis referred to were “persuaded” to abandon their legal options by Corrective Services in the same way they dealt with Lewis. Of course, if Lewis was the main organizer of the lawsuit, it may have not taken too much persuading to get the other—possibly less motivated—inmates to drop their plans as well.

multiple frustrations.<sup>1429</sup> Much of the worsening tensions in the C.I.P and the state's other prisons reflected political uncertainty of how prisons were to be managed following the tabling of Justice Nagle's report in the spring of 1978. The guards sought to block the reforms recommended by Nagle and reassert their authority to control prisoners and prisons as they had prior to the Royal Commission and even McGeechan's tenure as head of the penal bureaucracy. The guards' actions frustrated many inmates who expected Nagle's reforms to be implemented immediately. Tensions between the guard force and inmates blossomed over the summer, especially in maximum security prisons like the C.I.P. Justice Nagle recommended abandoning the long standing practice of referring to inmates only by their assigned numbers as soon as possible.<sup>1430</sup> One of the recurrent complaints of prisoners at the C.I.P. leading up to the upheaval was that they were still required to wear such numbers on their uniforms. This issue symbolically articulated many other frustrations and complaints. Many inmates simply refused to wear the numbers until a host of other grievances, such as the lack of industry, overcrowding, a delay in mail, and poor conditions for visitations, were addressed. They were also upset about the recent re-imposition of tighter discipline and an increase in the use of formal misconduct charges at the C.I.P. Sensing an impending showdown, the prison's staff transferred numerous inmates on Monday, August 21, 1978. Conflicting accounts placed this figure between 50 and 53 inmates.<sup>1431</sup> Prison authorities moved the prisoners to other

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<sup>1429</sup> "Govt Firm on Parklea Jail," "Action Pledge Over Long Bay Riot," "Warders Weary Sentinels in the Grim Aftermath," "Protest Meeting that Sparked the Trouble," *Sydney Morning Herald*, (August 23, 1978); "What's Behind the Riot at Long Bay," *Sydney Morning Herald*, (August 24, 1978), which gives a broad overview of the problems at Long Bay and other prisons; *Sydney Morning Herald*, (August 25, 1978).

<sup>1430</sup> Recommendation No. 133, Nagle, *Report of the Royal Commission*, 471.

<sup>1431</sup> "Govt Firm on Parklea Jail," "Action Pledge Over Long Bay Riot," "Warders Weary Sentinels in the Grim Aftermath," "Protest Meeting that Sparked the Trouble," *Sydney Morning Herald*, (August 23, 1978).

maximum security facilities at Maitland and Goulburn, as well as the minimum security farm Glen Innes.<sup>1432</sup>

In hindsight, the transfers obviously failed to prevent the disturbance, which occurred the following morning, Tuesday, August 22<sup>nd</sup>. Speculating on what would have happened had the inmates not been moved does not seem productive. However, it is worth pointing out that the transfers contributed to the unrest at the prison immediately before the disturbance. The inmates remaining at the C.I.P. did not approve of the transfers, which appeared to them as an obvious attempt by prison staff to counter a protest meeting the inmates held on Sunday night. That meeting concerned the increased discipline at the prison, among other grievances, including the fact that one of their leaders had already been shanghaied to Maitland.<sup>1433</sup> According to news reports, the inmates collectively organized their refusal to wear numbers at this meeting and also planned to stage a work-stoppage the following week if their demands were still not addressed. The prison administration replied with the transfers the following day.

The *Sydney Morning Herald* reported on Tuesday that three guards were injured during the transfer; apart from the implied resistance by inmates that was conveyed, there was no mention of any injuries they sustained. However, the newspaper noted when the escort vans stopped at a North Sydney police station "prisoners were heard pounding against the walls and shouting obscenities."<sup>1434</sup> Those prisoners remaining at the C.I.P. protested this action in a similar way. In the newspapers terms: "Last night after the transfers, prisoners at Long Bay

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<sup>1432</sup> "Prisoners Moved to Avert Clash at Long Bay," *Sydney Morning Herald*, (August 22, 1978).

<sup>1433</sup> "What's Behind the Riot at Long Bay," *Sydney Morning Herald*, (August 24, 1978).

<sup>1434</sup> "Prisoners Moved to Avert Clash at Long Bay," *Sydney Morning Herald*, (August 22, 1978).

shouted abuse at prison officers from their cells.”<sup>1435</sup> A spokesman for the Department of Corrective Services commented that, in general, prisoners at the C.I.P. were usually there awaiting transfer to some other prison within the larger system. These particular movements had merely been “accelerated by acts of defiance by prisoners.” He denied the prisoners had mentioned any “specifically stated” grievance.<sup>1436</sup> At least two of the inmates who were transferred to the Maitland Gaol, north of Sydney, protested their removal from the C.I.P. by staging a sit-in protest on the roof of the prison’s chapel. After they agreed to come down, the prison authorities transferred them again, this time to the Parramatta Gaol, which is ironically much closer to the C.I.P.<sup>1437</sup>

These latter movements highlighted the fact that the penal authorities shifted some prisoners from prison to prison at a much higher rate than others. Terry Haley, an inmate with a poor institutional disciplinary record, exemplified this issue. Departmental investigators and the police identified Haley was one of the ringleaders of the Bathurst uprising in February 1974, and he was subsequently moved to Grafton and later Katingal. However, Haley was already a veteran of numerous movements and would be moved again after the Wran government closed Katingal in 1978. His girlfriend, the author Gabrielle Carey, characterized this pattern of movement:

In what could only have been an effort to destabilize Terry, they had transferred him from one gaol to another so he rarely had more than a few months in one place. He never had the time to build up friendships. He always had to be alert in case the screws came in the middle of the night to take him to some other maximum security section of some gaol. It was as if the prison authorities

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<sup>1435</sup> Ibid.

<sup>1436</sup> Ibid.

<sup>1437</sup> "Govt Firm on Parklea Jail," *Sydney Morning Herald*, (August 23, 1978).

thought that by keeping him constantly on edge and harassing him, he must eventually break. Instead, Terry developed a steel resilience.<sup>1438</sup>

Haley himself described this process and its effects:

After ten years in NSW I'd been in every maximum security prison in the state. Not that I care much which gaol I'm in, I just wish they'd leave me in the same one for a while. You just start settling in and then they go and shanghai you. You never get time to think because you're always worrying about when they'll come and get you and where they'll take you. The other part that gives me the shits is that they never tell you why you're going. Like when they sent me to the tracs and the Blockhouse,<sup>1439</sup> do you think I ever found out why I was sent there? No way, I'm the last one they'd tell. I mean, you'd think if they really believed in all this crime and punishment shit that they would tell you—so you'd know when you'd been bad (by their books) and you wouldn't do it again—so the whole system would be put to work the way they reckon it works. But that's far too rational for them. Far too fucking rational.<sup>1440</sup>

In addition to the difficulties described by Haley, inmates complained about awful conditions they endured during the actual movement from prison to prison, a practice referred to by the prison authorities as “escorting.”<sup>1441</sup> Such comments appeared numerous times in inmate submissions to the Royal Commission and were also a frequent topic in inmate journals and diaries. Inmates resented the conditions in the transportation vans used to move prisoners

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<sup>1438</sup> Gabrielle Carey, *Just Us* (Fitzroy: McPhee Gribble, 1984); 9.

<sup>1439</sup> Another name for the Katingal control unit.

<sup>1440</sup> *Ibid.*, 17.

<sup>1441</sup> Up until the early-to-mid 1960s, prison officials often transferred inmates to certain prisons, like Grafton, by train in a converted, secure car reserved for official use. Both Darcy Dugan and later Needy Smith gave accounts of these trips, but it appears that the circumstances of their transfers to Grafton, the way that they were guarded on the trip, and the car's layout itself differed substantially. Both men were sent to Grafton more than once. Smith's description of the separate train car was during his first trip to Grafton in 1964. His next mention of travelling to Grafton in 1969 was by car. Dugan and his associate William Mears, they were greeted, according to Hay, by “something of a media circus” at the Central Railway Station in Sydney when they embarked on their train trip to Grafton in the early 1950s. Hay, *Catch Me If You Can*, 185-186; Smith, *Neddy*, 31, 40. Pratt argues that the movement of prisoners became ever more secretive and hidden as part of a larger decades long shift away from publically displaying inmates and punishment. The highly visible secure penal transport train cars at public railway stations gave way to transfers by automobile as the latter became more prevalent and affordable. Pratt, *Punishment and Civilization*, 57-58. Inmates like Dugan and Smith disappeared from the train platforms as the penal authorities exclusively transported inmates between prisons in secure vans.

to and from various locations. The vans had room to hold 12 prisoners according to the Royal Commission testimony of John F. Barry, the superintendent of Goulburn.<sup>1442</sup> Yet, some prisoners described occasions when more prisoners were loaded onto these vans.<sup>1443</sup> Each van was partitioned down the middle so that inmates could be separated into two groups. As a matter of standard practice, the officers who conducted escorts to prisons with a closed security rating<sup>1444</sup> kept inmates handcuffed during the entire process.<sup>1445</sup> Many inmates complained about being handcuffed and the way this made the trip much more difficult. In his diary, Ray Denning, considered a high risk inmate and a veteran of many transfers, decried Corrective Services' intransigence in making some seemingly minor improvements that would have drastically ameliorated some of the difficulties encountered on these trips:

There is no excuse why the Prisons' Department can't improve our transport facilities by taking our handcuffs off, as we have 3 locks on the back of the door and a car following behind the van. There is no reason why we can't be given rubber cushions to sit on, and there is no reason why water containers can't be put into the vans, after all that's not asking for much. Or then again the Prisons' Department must think it is asking for too much because prisoners have been complaining about the prison vans and S.O.D. squad<sup>1446</sup> for years.<sup>1447</sup>

As Denning's account of several trips indicates, the provision of food and water varied and seemed to depend as much on the attitudes of the particular officers conducting the escort as anything else. On one trip from Grafton down to Sydney, Denning remarked that:

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<sup>1442</sup> Testimony of John Francis Barry, *Proceedings of the Royal Commission*, 824-825.

<sup>1443</sup> Statement of Kevin Raymond Boardman, *Proceedings of the Royal Commission*, 3249.

<sup>1444</sup> Maximum security, medium security, control units, and facilities with variable security arrangement normally fell into the category of "closed" as opposed to penal farms, work release centres, and other minimum security prisons, which were considered "open."

<sup>1445</sup> Testimony of Barry, *Proceedings of the Royal Commission*, 824-825.

<sup>1446</sup> Special Operations Division, responsible for among other things, prisoner transport.

<sup>1447</sup> Raymond John Denning, *The Ray Denning Diary* (Haymarket: Ray Denning Publications, 1982), 30.

No water allowed, hard seats that jar your whole body, not getting out of the van at Taree where we stopped for dinner, which was 2 [meat] pies and ½ pint of milk. The van was full of dust and we had to wait 4 hours after leaving Grafton until we got to Taree, by then our throats were that dry that we drank the milk straight down and as a result had nothing to drink for the next 7 hours.<sup>1448</sup>

Yet, on the way back a few days later, Denning wrote:

I came up in the same van I went down in, only this time I was by myself. The boys at Long Bay made up plenty of food and 3 cartons of milk for me to have on the trip up. That made it a lot easier on me, as we only stopped for petrol and I left the Bay at 6:00 am and got into Grafton at 5:00 pm.<sup>1449</sup>

Another prisoner, Warwick Robert James, described his first grueling trip to Grafton in the early 1970s in his submission and testimony before the Royal Commission.<sup>1450</sup> The transfer began at 6:00am, when S.O.D. officers removed James from the Observation Unit, a high security section at the Long Bay prison complex south of Sydney. The officers striped him, performed a full body-cavity search, dressed him in a pair of overalls and slippers, and then handcuffed him to a security belt worn around his waist. Afterward, James claimed the officer in charge, named Osmond, hit him in the face twice and threatened him. Another officer hit him, as well, before forcibly shoving him into the transport van. Four other prisoners, each similarly handcuffed to a security belt, accompanied James on this particular trip. The officers did not feed them during the trip, and James even claimed he had not eaten for well over a full day. However, he said the officers ate in front of them. The inmates were not permitted to use the toilet at any time during the trip, which eventually ended with his arrival at Grafton at

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<sup>1448</sup> Ibid, 29-30.

<sup>1449</sup> Ibid., 33.

<sup>1450</sup> Statement and testimony of Warwick *Proceedings of the Royal Commission*, 2769, 2785-2786 ; "Prisoner Alleges Floggings in Jail," *Sydney Morning Herald*, (February 10, 1977).



4:30pm. At the time of his statement to the Royal Commission, James said he made this particular round trip from Sydney to Grafton and back again five times. In all, James stated he had been transferred 25 times during his six years of continuous imprisonment.<sup>1451</sup> He claimed to have travelled 10 thousand miles with the S.O.D. in the 4 years prior to his testimony before the Royal Commission.<sup>1452</sup>

Like James's account, many other inmates complained they were routinely denied the opportunity to urinate and defecate during the transfer process. The escort vans were not equipped with toilets, but each had a bucket for excretions to share among the inmates being moved. While inmates often complained about having to use a bucket in their cells at some older prisons (the "slopping out" system as it was called), their provision in the vans was further complicated because it was nearly impossible to relieve oneself while handcuffed, whether this binding was just at the wrists, to a security belt, or other prisoners. Trying to do this while the van was in motion added to the ordeal. Inmates routinely stated they could not use the buckets provided in the vans. In some cases, when an inmate was able to use the bucket, it was liable to spill because it was not secured during what were often described as excessively jolting rides at high speeds.<sup>1453</sup>

However, by some accounts, inmates apparently vomited in the buckets during these trips. Inmates described the vans as poorly ventilated and stifling, especially during the summer heat on trips in the northern part of the state.<sup>1454</sup> Inmate Raymond John Moore

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<sup>1451</sup> Statement and testimony of Warwick *Proceedings of the Royal Commission*, 2769, 2785.

<sup>1452</sup> Statement of Warwick *Proceedings of the Royal Commission*, 2782.

<sup>1453</sup> For instance, see the testimony of Michael William Burke *Proceedings of the Royal Commission*, 3369.

<sup>1454</sup> In the *Proceedings of the Royal Commission*, see the statements of Kevin Raymond Boardman, 3249 and Raymond John Moore, 3072, and the testimony of Michael William Burke, 3369.

claimed exhaust fumes frequently entered the inmate compartment of the vans, causing nausea and vomiting:

I have never been on escort in the back of a van when prisoners have not vomited because of the fumes. In the back of each van there are buckets and I recall at one time a bucket being passed up and down the line of prisoners and each vomited into it. I never protested to the Mod Squad<sup>1455</sup> about the fumes because I was frightened of being charged with insolence.<sup>1456</sup>

Even when prison officers removed inmates from the vans during periodic stops, they usually left inmates handcuffed to each other, making use of the toilets difficult and embarrassing. Kevin Raymond Boardman, an inmate in transit from the Goulburn Training Centre to Maitland Gaol stated in his submission to the Royal Commission that he and a group of 21 other inmates had not been able to use the toilet for “about 6 hours” when they stopped temporarily at Parramatta Gaol.<sup>1457</sup> The “Mod Squad” officers placed Boardman and his fellow inmates in a secure yard, provided sandwiches, but, nevertheless, left them handcuffed: “We were all sick in the stomach and some prisoners said they wanted to use their bowel but said they could not with handcuffs.”<sup>1458</sup>

Given the conditions of these movements, it is not surprising that many inmates hoped to avoid transfers as much as possible. The Council of Civil Liberties noted this fact in its final submission to the Royal Commission.<sup>1459</sup> The Council assisted many inmates in their court proceedings after they were charged for the destruction of Bathurst Gaol in the February 1974

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<sup>1455</sup> One of the more common prison slang terms for the Special Operations Division in the 1970s.

<sup>1456</sup> Statement of Raymond John Moore, *Proceedings of the Royal Commission*, 3072.

<sup>1457</sup> Statement of Kevin Raymond Boardman, *Proceedings of the Royal Commission*, 3249.

<sup>1458</sup> *Ibid.*

<sup>1459</sup> “Final Submission on Behalf of the Council for Civil Liberties and the Penal Reform Council” in v.8, supplement, *Report of the Royal Commission into New South Wales Prisons*, 284-285.

disturbance. Almost all of the prisoners held at Bathurst were immediately transferred to various maximum security prisons in the state following the riot. One prison that received many of these inmates was Maitland Gaol, nearly 170km north of Sydney. These inmates were reportedly abused at Maitland, but they nevertheless told the Council they wished to meet with their legal representatives and appear before the court as infrequently as possible because it entailed a long trip to Sydney in “Black Maria” escort vans.<sup>1460</sup> Although, relatively temporary when compared to the long sentences many of these inmates spent in prisons, transfers created periodic episodes of greater control, deprivation, and, ironically, immobility (handcuffed in a small compartment) as prisoners moved from place to place. This experience often pitted the inmates’ bodily cycles, needs, and vulnerabilities against them in humiliating and painful ways that were usually avoidable in mainstream prison routines. Used punitively, transfers (shanghais) reinscribed the penal hierarchy at the level of the body.

Despite the difficulties many inmates experienced during these movements, the possibility of being transferred also afforded inmates with an avenue for escaping certain prisons or undesirable situations. Of course, prisoners were able to request transfers from senior staff and the Programme Review Committees at their institution. This process often did not favor inmates with poor institutional records and also depended on the availability of space elsewhere in the system with suitable custody and program arrangements. Some inmates manipulated<sup>1461</sup> this process and other aspects of prisoner placement protocols to move about

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<sup>1460</sup> Ibid., 284.

<sup>1461</sup> I use the word “manipulation” to denote the agency and resistance in Matthews account. The word is often used pejoratively by correctional staff if they believe acts of self-harm are manifestations of deception and rational choice. Despite Matthews account, this is not always the case. As Hans Toch observes, motivations for self-harm (made by “the self-classifier”) are multiple: “The prevalent view in many mental health and correctional circles is that self-injury is usually a manipulative tactic designed to attain relocation. In a sense, the self-classifier fits this

the varied spaces within the penal apparatus. Bernie Matthews later recounted how he tried to obtain a favorable transfer to a mental hospital with weaker security arrangements in late 1969 by faking a suicide attempt for the sole purpose of escaping from custody.<sup>1462</sup>

The tactic Matthews employed was a well-known prison subterfuge, one he learned from another inmate at Parramatta Gaol, where he was housed at the time. Matthews's account underscored the continual, if unequal, diagnostic process at work in how both the inmates and various penal authorities interacted as they each assessed the situation, its possibilities and constraints, and the motivations and assumptions of other actors.<sup>1463</sup> Stories and informal guidelines about favorable transfers, the various means to acquire them, and the best places to go also circulated within penal space, sometimes with inmates themselves,

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model. In another sense, however, he does not, for his is not a cool, calculated, premeditated gesture, but rather a constrained product of strongly felt needs. Moreover, it is often a precipitate, self-defeating, magical move. Different settings within the system are sufficiently alike to make it possible that any process interrupted by self-injury will be reinstated in the presumably more desirable location. New cells more often than not breed old thoughts." Hans Toch, *Mosaic of Despair: Human Breakdowns in Prison* (Easton: American Psychological Association, 1992 revised), 39-62, quote 56.

<sup>1462</sup> Matthews, *Intractable*, 6-7. It is important to note that not all inmates manipulated the practices surrounding the prevention of inmate self-harm and suicide. Additionally, current psychological thinking about self-harm in prisons is that it is all part of the suicidal process along a continuum of severity regardless of the presence or absence of actual suicidal intent. Psychological pain underlies manifestations of self-harm. Alison Lieblich, *Suicides in Prison* (London: Routledge, 1992); Ronald L. Bonner, "Correctional Suicide Prevention in the Year 2000 and Beyond," *Suicide and Life Threatening Behavior*, (Winter 2000), 370-376; Graham J. Towl, Louisa Snow, and Martin McHugh, *Suicide in Prisons* (Oxford: Wiley-Blackwell, 2002); Greg E. Dear, Donald M. Thomson, Kevin Howells, and Guy J. Hall, "Self-Harm in Western Australian Prisons: Differences Between Prisoners Who Have Self-Harmed and Those Who Have Not," *Australian & New Zealand Journal of Criminology*, (December 2001), 277-292; Greg E. Dear, Donald M. Thomson, Adelma M. Hills, "Self-Harm in Prison: Manipulators can Also Be Suicide Attempters," *Criminal Justice and Behavior: An International Journal*, (August 2003), 459-482; Greg E. Dear, "A Framework for Minimizing the Incidence of Self-Harm in Prison" in Sean O'Toole and Simon Eyland (eds.), *Corrections Criminology* (Sydney: Hawkins Press, 2005), 151-161.

<sup>1463</sup> For similar views see, Ewick and Silbey, "Narrating Social Structure: Stories of Resistance to Legal Authority," 1328-1372; Charles Bright, *The Powers that Punish: Prison and Politics in the Era of the "Big House," 1920-1955* (Ann Arbor: University of Michigan Press, 1996); William Roseberry, "Hegemony and the Language of Contention" in Gilbert M. Joseph and Daniel Nugent (eds.), *Everyday Forms of State Formation: Revolution and the Negotiation of Rule in Modern Mexico* (Durham: Duke University Press, 1994), 355-366. Lila Abu Lughod, "The Romance of Resistance: Tracing Transformations of Power through Bedouin Women," *American Ethnologist*, (February 1990), 41-55; Gavin Smith, *Confronting the Present: Towards a Politically Engaged Anthropology* (Oxford: Berg, 1999); Kate Crehan, *Gramsci, Culture and Anthropology* (Berkeley: University of California Press, 2002).

sometimes through other media. Billy Sutton, the inmate who told Matthews about the psychiatric hospital and how to fake suicidal behavior, had himself just been transferred back to Parramatta from a nearby hospital. It appears Sutton had been there for actual treatment, but he told Matthews that the security he noticed was so loose that one could just walk away. Matthews desired a transfer there, and under the advice of Sutton, swallowed "30 pieces of razor blade" after wrapping them in clear cellophane tape.<sup>1464</sup>

The ruse involved a knowledge of the protocols governing the prevention and treatment of self-harm and ways in which staff assessed and verified such acts.<sup>1465</sup> An x-ray would reveal the razor blades, but not the clear tape, which blunted the sharp edges and prevented or reduced any actual internal damage. Matthews also sliced his tongue to further trick the guards who would see blood flowing from his mouth. After alerting the guards, a nurse evaluated Matthews, and recommended—as expected—that he be transferred for a psychiatric exam. Unfortunately for Matthews, there were limits to his knowledge. The guards moved him to the high security Observation Section at Long Bay instead of the lower security facilities at the Parramatta Psyche Centre or Callan Park, where he wanted to be placed. Although the Observation Section was used for psychiatric assessment, it also served as a punishment unit. Although Matthews did not explicitly acknowledge it, the guards at Parramatta and Long Bay presumably knew his suicide attempt was disingenuous. Aside from sending him to Long Bay, they also beat him on arrival and locked him in a cell for three days until he passed the taped-

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<sup>1464</sup> Ibid, 6.

<sup>1465</sup> It also made use of recent developments in medical and psychiatric treatment for prisoners that did not exist only a few decades prior, highlighting the co-evolution of therapeutic and resistant discourses and practices.

up razor blades.<sup>1466</sup> The faked suicide attempt was a viable tactic because of the way it both drew upon numerous discursive and practical resources within the penal apparatus, and yet still remained hard to definitively decipher as either a stratagem or cry for help. An inmate could, after all, purposely hurt himself to get away from some place or situation and still be profoundly troubled psychologically and in need of treatment. If Matthews's actions appeared hard to place between rational choice and insanity, the varied purposes the Observation Section accommodated the dilemma. Nevertheless, Matthews's case highlights the subversion of the transfer process and its use for ends beyond the officially stated purposes.

A scandal that erupted after the public proceedings of the Royal Commission had ended highlighting the multiple lines of power that flowed from the transfer process. In October 1977, Bruce McDonald, a Liberal member of the Legislative Assembly, asked Bill Haigh, the Minister of Services who oversaw the prison's portfolio in the Labor government, about "a 'practice' whereby a prisoner in a high-security gaol might, for a price, procure a transfer to a low-security gaol."<sup>1467</sup> At the time of McDonald's question, the Royal Commission's staff were

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<sup>1466</sup> Ibid.; Swallowing harmful items that would show up on an X-ray was a widely known method of getting a trip to a hospital, medical and/or psychiatric. Ray Denning mentions that he accompanied an inmate who had swallowed razor blades a day earlier on a transfer to Long Bay. Terry Haley mentions swallowing wire wrapped in bread in the hope of getting a good visit from his parents in the prison hospital. Visitation policies in the hospital were superior to normal discipline in the prison. Haley claimed it was his third and last time swallowing wire. He was not operated on for two months, after the wire had damaged his bowels. Haley believed that prison staff often delayed treatment for these types of incidents in the hopes of deterring future cases of self-harm. See, Denning, *The Ray Denning Diary*, 145; Carey, *Just Us*, 99.

<sup>1467</sup> John F. Nagle, Draft of the *Interim Report of the Royal Commission into New South Wales Prisons*, 1. Royal Commission into New South Wales Prisons, submissions, A1538 unprocessed files in 6 boxes and 3 folders, unnumbered. SANSW; "Prisoners Offered Early Release, Says MLA," *Sydney Morning Herald*, (October 7, 1977); "Jail Bribe Claim: Inquiry is Recalled," *Sydney Morning Herald*, (October 6, 1977); "'Death Threat' Says MLA," *Sydney Morning Herald*, (October 9, 1977); Exhibit 903: "Hansard notes of question asked by Mr McDonald, M.L.A. in Parliament on 5<sup>th</sup> October, 1977."; Exhibit 904: "Transcript of T.V. Interviews with Mr McDonald on 5<sup>th</sup> October, 1977."; Exhibit 907: "Hansard Notes of question by Mr McDonald, M.L.A. in Legislative Assembly on 6<sup>th</sup> October, 1977." Royal Commission into New South Wales Prisons Exhibits 5/9317. SANSW.

drafting the final report. Premier Neville Wran reconvened the Royal Commission to hear evidence on the matter in the hopes of containing a potentially damaging corruption scandal. The Royal Commission heard evidence until late November 1977 and interviewed a number of witnesses, including several currently serving prisoners, senior prison staff, and administrators. The *Interim Report of the Royal Commission into New South Wales Prisons* detailed numerous accusations of illicitly obtained transfers and a host of jailhouses rumors about this practice. Although it was never definitively established when the practice began, it appeared it extended back several years, possibly to the early 1970s.<sup>1468</sup> The rumors and direct favors connected numerous inmates and their family members outside, many of whom did not know each other. These networks all led back to one particular staff member in the central office of the Department of Corrective Services and one ex-inmate who had a reputation as a key player in Sydney's organized crime structure.

The staff member was Paul Genner, a long-serving, but oddly low-ranking administrative clerk who worked in the Prisoner Movement Section of the central office and also served on the central Classification Committee. Genner stood accused of selling favorable transfers for hundreds to thousands of dollars. Arthur Stanley "Neddy" Smith, the ex-inmate, had an extensive institutional record and was widely known to prison staff as a "heavy," a violent inmate leader and "standover" man feared by many other inmates. According to the rumors, Smith acted as an intermediary between Genner and inmates who sought to purchase their

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<sup>1468</sup> There are conflicting dates cited in the report for earliest instance example of transfers being purchased. One actor recalled overhearing a conversation about such a transaction in 1971; another person recalled the same conversation occurring in 1973. Most alleged instances of bribery occurred after 1976. See Draft of the *Interim Report*, 25-26.

placement in a minimum security setting. After a stay at Grafton and several trac sections in other prisons in the early 1970s, Smith improved his institutional record by avoiding further disciplinary infractions and obtaining a job in the infirmary at Parramatta Gaol.<sup>1469</sup> In this capacity, Smith gained the trust of a number of prison staff, especially Genner, after he helped an officer, Willy Faber, who was mortally wounded in an escape attempt by inmate Ray Denning and several others.<sup>1470</sup> At the time, Smith was approaching his earliest parole eligibility date and his assistance with Officer Faber gained him the active support of Genner who hastened Smith's consideration by the parole authorities.<sup>1471</sup> Genner also presented favorable testimony to the Parole Board concerning Smith. While at this junction, there appeared to be nothing untoward about the relationship between Genner and Smith, this changed after Smith was released from prison in March 1975.

During the reconvened inquiry, both men admitted they had met each other several times for lunch in the years following Smith's parole.<sup>1472</sup> While in itself a meeting between an ex-inmate and a staff member of the penal bureaucracy was not illegal or a violation of

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<sup>1469</sup> Smith, *Neddy*, 38-52.

<sup>1470</sup> "Clerk and Parolee Deny Arranging Transfers," *Sydney Morning Herald*, (November 18, 1977); Smith, *Neddy*, 51-56. Denning, who would be sentenced to life for the attack on Faber, claimed that prison authorities and the police used false confessions against him (a practice known as "verbalizing") and would become a prominent prison activist before becoming a major informer in the late 1980s. Considered a falsely convicted rebel by many activists in the prison movement, it appears that many inmates believed that he was guilty regardless of whether a false confession was used against him. For a variety of different views on Denning see, Matthews, *Intractable*, 130-140; Tim Anderson, "On Ray Denning's Death," *Framed: Quarterly Newsmagazine of the Campaign Exposing Frame-ups and Targeting Abuses of Authority*, (August 1993), 4-5; Tim Anderson, *Take Two: The Criminal Justice System Revisited* (Sydney: Bantam Books, 1992); Catchlove, *Ray Denning*, 5-13.

<sup>1471</sup> Smith, *Neddy*, 54-55.

<sup>1472</sup> Nagle, Draft of *Interim Report*, 40-48; "Convicted Men Tell Inquiry of Contacts with Clerk," *Sydney Morning Herald*, (November 17, 1977); "Clerk and Parolee Deny Arranging Transfers," *Sydney Morning Herald*, (November 18, 1977); Smith, *Neddy*, 54, 58.



Department rules, it was highly unusual and suspicious.<sup>1473</sup> The explanations both men gave to the inquiry about the meetings failed to diminish their concerns about its inappropriateness, especially in light of rampant jailhouse rumors that transfers could be purchased from Genner through Smith. Both men shifted their evidence to match each other's testimony during examination, suggesting to the Royal Commission that they had strategized on how best to frame their association once the inquiry began.<sup>1474</sup> In the end, the Royal Commission could not prove that Genner sold transfers. Inmates who apparently benefited from Genner's service recanted any incriminating testimony, if they had even provided any in the first place. However, there was enough evidence of his dishonesty about his dealings with Smith for the inquiry to recommend public service charges against Genner.<sup>1475</sup>

The inquiry into the scandal revealed serious weaknesses in the procedures for transferring inmates and also the haphazard administration of the process that left it vulnerable to abuse. The investigators discovered, for instance, that inmate Kevin Holland moved between the maximum security Parramatta Gaol and the minimum security Berrima Training Centre despite never being seen by the Classification Committee.<sup>1476</sup> In fact, Holland never appeared before any classification board whether at the central Long Bay facility or at any subsequent Programme Review Committees at various prisons. This would have been extremely odd for any prisoner, but more so in Holland's case since he had a prior history of imprisonment in New

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<sup>1473</sup> Ibid., 43, 47-48; Neddy Smith later claimed that while he spoke to Genner about some people still in prison during their lunch meetings, he only asked for favorable treatment for them within the legitimate parameters much like the advocacy he received from Genner after he came to the aid of the injured Willy Faber. He claimed that nothing illicit ever transpired between them. See Smith, *Neddy*, 58.

<sup>1474</sup> Nagle, Draft of *Interim Report*, 46-47.

<sup>1475</sup> Ibid., 56; W.H. Haigh to Hon. N. K. Wran, February 23, 1978. Royal Commission into New South Wales Prison, submissions, A1538 unprocessed files in 6 boxes and 3 folders, unnumbered. SANSW.

<sup>1476</sup> Ibid., 23-24.

South Wales, including time in Grafton's intractable section.<sup>1477</sup> By all accounts, Genner handled Holland's case during the time in question. Holland's most redeeming value to the staff was his prowess at football. The superintendent at Berrima Prison sought Genner's help in getting Holland for the institution's football team.<sup>1478</sup> One can only speculate about how often considerations such as these played in the movement of prisoners, especially since they could have been easily disguised or wrapped within more official rationales for movement. Nevertheless, it indicated that classification criteria beyond penological concerns figured in the transfer of some prisoners.

In the opinion of the Royal Commission investigators, Genner arranged Holland's movement, simply circumventing the routine classification process.<sup>1479</sup> These actions far exceeded Genner's official authority, but obviously not his actual power within the penal apparatus. Even Genner's immediate superior, Executive Officer Blomfield, did not know that Holland had been moved to Berrima for several months and only learned the Classification Committee had not reviewed his case when it was revealed at the inquiry.<sup>1480</sup> While there were no direct indications or even accusations of bribery in this particular case, it nevertheless, revealed that a sub rosa economy of favors and considerations actively competed with official procedures and rationales in the movement of prisoners. It also demonstrated the official procedures themselves permitted such variance.

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<sup>1477</sup> Ibid., 23.

<sup>1478</sup> Ibid., 23-24.

<sup>1479</sup> Ibid., 24

<sup>1480</sup> Ibid.

This vulnerability in the procedures stemmed from the increased use of transfers, in general, and the inadequacy of the prevailing, and somewhat outdated, methods for approving them. According to the Prisons Act of 1952, the Commissioner of Corrective Services (or prior to 1970, the Comptroller-General of Prisons) had to approve every transfer by signing the official movement order.<sup>1481</sup> Prior to McGeechan's tenure as Commissioner, John Morony used to sign every order.<sup>1482</sup> This was also likely the same practice followed by Morony's predecessors who served under the dictates of the Prison Act of 1952. McGeechan could not devote sufficient time to review and sign each movement order; given the increased volume of transfers, he would have had to approve over two hundred orders a day on average. Parliament amended the Prisons Act in September 1977 to permit the Commissioner to delegate his authority over this matter.<sup>1483</sup> However, this amendment basically ratified what had already been practiced in the Department of Corrective Services for some time.<sup>1484</sup>

To relieve the administrative burden, McGeechan had a committee of six senior officers in the Department, including the Deputy Commissioner, review and approve transfers.<sup>1485</sup> This committee evolved to meet the increasingly burdensome task and did not seem to be part of any major reform or planned change. Prior to consideration by these six officers, clerical staff in the Prisoner Movement Section prepared the actual movement order paperwork, which was

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<sup>1481</sup> Prisons Act, No 9, 1952. Part V.

<sup>1482</sup> Nagle, Draft of *Interim Report*, 51; "Signature of prison orders by the Commissioner of Corrective Services," McGeechan to Minister [Bill Haigh], January 25, 1978. Royal Commission into New South Wales Prison, submissions, A1538 unprocessed files in 6 boxes and 3 folders, unnumbered. SANSW.

<sup>1483</sup> Nagle, Draft of *Interim Report*, 51-52.

<sup>1484</sup> "Signature of prison orders by the Commissioner of Corrective Services," McGeechan to Minister [Bill Haigh], January 25, 1978. Royal Commission into New South Wales Prison, submissions, A1538 unprocessed files in 6 boxes and 3 folders, unnumbered. SANSW.

<sup>1485</sup> This paragraph is based on descriptions in the Nagle, Draft of *Interim Report*, 51-53.

then sent to the committee. After granting their approval, the orders returned to the Prisoner Movement Section where the Senior Clerk, Paul Genner, affixed a stamp of McGeechan's signature. The stamp Genner had in his possession was one of two that McGeechan had created by the Government Printer shortly after assumed office.<sup>1486</sup> Originally, both stamps were held by the secretary of the Department, but one of them was issued to Genner during administrative reorganization following the burning of Bathurst Gaol in 1974.<sup>1487</sup> Genner now stamped movement orders, as the secretary of the Department had done earlier. The other stamp passed into the possession of McGeechan's private secretary and presumably out of active use.<sup>1488</sup> Once Genner stamped an approved transfer order, it was issued to the relevant prisons and unit charged with actually moving the prisoner in question. In other words, the order was never re-checked by anyone outranking Genner after he stamped the paperwork. Since Genner knew how to draft movement orders and personally controlled the stamp, he could, and apparently did, use it to issue orders outside of the accepted parameters. The changing nature of prisoner movement, the its ad-hoc central administration, the little tool of authority in the form of the stamp, and the nearly unquestionable nature of movement orders once they were presented to prison staff meant Genner sat at a powerful confluence of knowledge and authority within, yet simultaneously outside of, the penal bureaucracy's regulatory power.

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<sup>1486</sup> "Signature of prison orders by the Commissioner of Corrective Services," McGeechan to Minister [Bill Haigh], January 25, 1978. Royal Commission into New South Wales Prison, submissions, A1538 unprocessed files in 6 boxes and 3 folders, unnumbered. SANSW.

<sup>1487</sup> Ibid.

<sup>1488</sup> Ibid.

This position enabled Genner to commodify transfer orders, exchanging them for money, but just as significantly, to also enhance his status relative to other penal bureaucrats and prison staff. The Programme Review Committee at Parramatta wrote to Commissioner McGeechan about Genner's influence in July 1977, claiming they could not adequately perform their duties because inmates believed the real power in matters of classification and movement rested with Genner even though he was the most junior member of the central Classification Committee.<sup>1489</sup> An inmate could appeal any adverse decision from the Programme Review Committee at Parramatta to Genner through informal channels. Genner's power over these issues made the Programme Review Committee appear "to many inmates to be a mere mockery."<sup>1490</sup> Genner's influence disrupted the normal hierarchy of the Department's paramilitary grade system. That the superintendant of Berrima would seek the favor of a Grade 1 Senior Clerk demonstrated how Genner's control over transfers, shifted the officially recognized lines of institutional authority. The inquiry established that many officials within central office and in the various prisoners were either aware of the power Genner held over transfers, had suspicions about him in this regard, or had heard the many rumors testifying to Genner's position.<sup>1491</sup> Prior to the Royal Commission's inquiry, the Department had opened an internal investigation into transfers involving bribery and Genner's name was also mentioned in

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<sup>1489</sup> Ibid., 39; Exhibit 1002: "Submission dated 13th July, 1977, entitled 'Role of Programme Review Committee in Prisoner Movements' and reply of 2nd August, 1977." Royal Commission into New South Wales Prisons Exhibits 5/9317. SANSW.

<sup>1490</sup> Exhibit 1002: "Submission dated 13th July, 1977, entitled 'Role of Programme Review Committee in Prisoner Movements' and reply of 2nd August, 1977." Royal Commission into New South Wales Prisons Exhibits 5/9317. SANSW; Quote from Nagle, Draft of *Interim Report*, 39.

<sup>1491</sup> Nagle, Draft of *Interim Report*, 28-32, 48-51; Exhibit 998: "Diary entries (typed) of Mr Foxwell (1977)." Royal Commission into New South Wales Prisons Exhibits 5/9317. SANSW.

these proceedings.<sup>1492</sup> These investigators never substantiated the rumors, but it appears that to some degree they believed them. The Royal Commission felt these investigators could have been more diligent in the matter and more willing to acknowledge the veracity and implications of claims originating from inmates, even if prisons were a “hot-bed for gossip.”<sup>1493</sup>

The disruption some staff perceived in Genner’s influence extended to inmates as the above example indicates. However, it empowered many of them. The ability to pursue a different avenue for (semi-)official transfers meant inmates did not need to approach the Programme Review Committees with the respect and deference that the committee members would have normally expected from inmates in such a position. At a time of widespread institutional unrest and major inquiries, this practice only compounded the crisis of legitimacy that was spreading across the penal apparatus in the 1970s. A number of staff members interviewed by the Royal Commission, noted that some inmates mentioned the illicit transfers openly in situations where they could obviously be overheard by guards. One could speculate that this lack of concern in mentioning the practice and even naming some of the people involved worried staff about the erosion of their own authority over inmates. According to the *Interim Report*, on at least one occasion an inmate told an officer in charge of sporting activities at the Milson Island prison camp that he could arrange to get athletic inmates transferred to the island: “I know Ned Smith who drinks with Paul Genner, he can arrange to get these fellows to the island.”<sup>1494</sup> This officer reported the same inmate also told him, “Don’t worry about

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<sup>1492</sup> Exhibit 998: “Diary entries (typed) of Mr Foxwell (1977).” Royal Commission into New South Wales Prisons Exhibits 5/9317. SANSW.

<sup>1493</sup> Nagle, Draft of *Interim Report*, 48-51, quote 50.

<sup>1494</sup> *Ibid.*, 30.

Genner, we have him in our pockets.” The comment suggested that as powerful as Genner was, he may have put himself in a precarious position between the Department and organized crime in New South Wales.<sup>1495</sup>

Officer Alex Patty also reported rumors of transfer-selling and specifically mentioned an inmate, John F. McIntosh, who was widely believed to have purchased his placement at the minimum security Silverwater facility.<sup>1496</sup> McIntosh apparently did little to dispel the rumors and even joked about them with Patty.<sup>1497</sup> This prompted Patty to alert his superiors who interviewed McIntosh in an effort to find out who he bribed in the central office. While never established definitively, additional inferences in the report suggest that Patty tried to obtain McIntosh’s cooperation by telling him it could be worth a work release.<sup>1498</sup> The *Sydney Morning Herald* reported that a senior investigator had also offered prisoners compassionate early releases in exchange for information about who in the Department was selling transfers.<sup>1499</sup>

The latter two implications, while never taken that serious by the Royal Commission, nevertheless added to the rumors circulating in the prisons about the transfer scandal and the possible benefits to be obtained through accusation and negotiation over the matter. The Royal Commission argued that many of the rumored illicit transfers probably lacked any substantial basis. Yet, they recognized the unusual influence wielded by Genner and his association with

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<sup>1495</sup> Ibid.

<sup>1496</sup> Ibid., 10.

<sup>1497</sup> Ibid.

<sup>1498</sup> Ibid.

<sup>1499</sup> “Prisoners Offered Early Release, Says MLA,” *Sydney Morning Herald*, (October 7, 1977).

Neddy Smith left the penal apparatus vulnerable to disruption and defamation caused by rumors that were believable or creditable enough given the circumstances.<sup>1500</sup>

In many instances, the Royal Commission investigators felt some of the inmates they interviewed were trying to achieve their own personal goals or settle scores with other inmates and prison staff by testifying about transfers.<sup>1501</sup> These inmates were, in essence, using the prevailing rumors, the uncertainty over the authority to issue transfers, and the inquiry for seemingly unrelated concerns. The same assemblage of different circumstances and abilities that enabled Genner, could not ultimately be controlled by him or Smith, as the conflicting sets of rules and rumors entwined in the transfer process proliferated across the various prisons, moving ironically with transferred inmates regardless of whether they purchased their passage or not.<sup>1502</sup> Some inmates told the inquiry the names of other prisoners who might have knowledge of the bribery schemes simply because they were known to have been moved often.<sup>1503</sup> The range of benefits some prisoners saw in this subversion of the transfer process will likely never be known. However, it clearly escaped the prisons cellblocks as MP Bruce McDonald and the Liberal Opposition also accrued political benefits from the transfer scandal.

## Conclusion

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<sup>1500</sup> Nagle, Draft of *Interim Report*, 39; "Clerk Named Before Prison Commission: Inquiry Hears of Association," *Sydney Morning Herald*, (November 16, 1977); "Genner Link 'Sinister' Counsel Tells Jail Inquiry," *Sydney Morning Herald*, (November 22, 1977).

<sup>1501</sup> See also, "Clerk Named Before Prison Commission: Inquiry Hears of Association," *Sydney Morning Herald*, (November 16, 1977).

<sup>1502</sup> "Genner Link 'Sinister' Counsel Tells Jail Inquiry," *Sydney Morning Herald*, (November 22, 1977).

<sup>1503</sup> Prisoner Glen McDonald came to the attention of investigators this way. He claimed that he had heard general rumors of such transactions, as did nearly every inmate interviewed, but did not have any personal connection to them. Nagle, Draft of *Interim Report*, 27.



The transfer of people between different prisons has been a longstanding practice in the history of incarceration, but it became much more frequent as the number of prisons expanded and regimes and custody levels diversified. The normal operation of the postwar prison in New South Wales involved the greater movement of prisoners between institutions as they progressed through the custody levels, either on their way down to lower levels prior to release, or further up the scale as punishment. This was a routine part of the way penal authorities envisioned classification and differential treatment. However, the routine qualities of the transfer process enabled prison staff and prisoners to find ways to enact many other purposes and agendas through movement.

Prisoners often tried to move to other institutions for either legitimate or illicit reasons, often both at the same time. They could formally request transfers for things like attending a training course that was only available at one particular prison. Or, they found ways to subvert the transfer process by forcing guards and superintendents into moving them, like faked suicide attempts. Similarly, guards used the transfer process to discipline certain inmates and disrupt the activities of groups of prisoners. They also used it for purely punitive reasons. Officers had a wide latitude when it came to moving prisoners. Unlike the formal disciplinary process, they did not have to bring charges against an inmate to move them. After prisoners gained the right to appeal disciplinary decisions, simply transferring them, instead of charging them, avoided the possibility of an appeal by the inmate all together. As a number of inmates described during the Royal Commission, the actual process of being moved was often grueling and cruel. A great deal of unrecorded, rough justice could be administered on the highway, usually in the form of deliberate, bodily neglect.

The Royal Commission into New South Wales Prisons portrayed the collusion between Paul Genner and Neddy Smith to sell transfers as corruption and the result of poor management. However, it can also be seen as just another extension of some of the ways in which people subverted the formal protocols of prisoner movement. Perhaps the novel thing about Genner's activities was how they eventually became the topic of news stories, accusations in Parliament and a royal commission investigation. Neddy Smith's name would surface again a few years later in connection with another corruption scandal involving the prisons. This time for the illicit purchase of early release approval in a new decarceration program.

Since a well-developed transfer process was an integral part of the postwar reforms, it also appeared in other jurisdictions like Pennsylvania. After the centralization of management functions in the Bureau of Correction in the early 1950s, inter-prison transfers became much more common. Along with the classification system, they helped integrate the state's previously independent penal institutions into a more unified system. Much like in New South Wales, prison officers used the transfer process for disciplinary reasons and to crush the formation of collective organizations among prisoners. Black Muslims were often ensnared in large scale movements for these reasons. SCI Graterford and SCI Pittsburgh periodically exchanged difficult prisoners, as the case of prison activist Sylvester Lockhart demonstrated. However, the politics surrounding transfers was not as visible in Pennsylvania as it was in New South Wales. In the latter state, it became a frequent topic of prison activism and it attracted the attention of Justice Nagle during the Royal Commission. By the late 1970s, it appears that transfers in Pennsylvania, while they still occurred, were not as easy to achieve. More than

anything else, the system-wide lack of cell space created by overcrowding reduced the ability of prison staff to move inmates as freely as they once did.

## **Chapter 6: Classification: Penological Knowledge and Practice in Transition**

Classification systems are no longer attempts to diagnose an illness but, rather, serve various purposes. One reason for this variety may be that we are in a time of change when there is no generally accepted paradigm. Retribution, rehabilitation, deterrence, and incapacitation are now all considered legitimate goals of corrections.

Doris Layton MacKenzie, C. Dale Posey and Karen R. Rapaport<sup>1504</sup>

### **Introduction: Classification, Penal Politics, Circulation**

This chapter is about penal classification as both a practice of sorting inmates and institutional spaces and an exercise in knowledge production, emphasizing comparison, commensuration, differentiation and movement. In both of these aspects, penal classification involved an ever-widening arena of struggle, dispute and collaboration during the 1970s and 1980s. Many contemporary accounts of classification resonated with MacKenzie, Posey and Rapaport's characterization cited above, but they also frequently emphasized the inadequacy or failures of classification practices and rationales. Many contemporary critics portrayed the poverty of existing classification procedures as so severe and poorly integrated into prisoner management practices that they formed more of an institutional vacuum than a necessary part of the correctional system. This disillusionment, part of the more general turn away from

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<sup>1504</sup> Doris Layton MacKenzie, C. Dale Posey and Karen R. Rapaport, "A Theoretical Revolution in Corrections: Varied Purposes for Classification," *Criminal Justice and Behavior*, 15 (March 1988), 126.

rehabilitation, was pervasive, but few prison staff believed they could simply dispense with classification in some form. As MacKenzie, Posey and Rapaport noted, it was too deeply embedded in multiple purposes and projects to be easily abandoned. By the same token, it was also hard to reform.

Classification within prisons is premised on the notion that prisons confine a heterogeneous group of people. Conviction and imprisonment may cluster them into a collective body and set them apart,<sup>1505</sup> but the differences among them are substantial and affect their lives behind bars. Since at least the early nineteenth century, classifying and separating inmates has been a major preoccupation of prison reformers, prison staff, and even inmates themselves. Michel Foucault saw classification as fundamental aspect of techniques like surveillance, enclosure and the partitioning of internal institutional spaces, and through dividing and ranking imprisoned groups of people, it also brought them into relation with each other through their differences.<sup>1506</sup> These activities authorized numerous supplemental interventions into the lives of confined people and different management techniques correspond to specific categories of people and their characteristics.<sup>1507</sup> Classification was not only critical for the daily functioning of prisons, according to Foucault, it actually also constituted them as a novel form of punishment, distinct from both the spectacular physical punishments of the ancien régime and the limited way it used imprisonment as well. The practice facilitated greater differentiation and expansion of the penal apparatus as a whole,

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<sup>1505</sup> Itself a classificatory act, albeit by the judicial system rather than the prison itself.

<sup>1506</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (Vintage: New York, 1977), 135-169.

<sup>1507</sup> Foucault, *Discipline and Punish*, 145-149.

producing new knowledge about offenders, prison staff, and management, which formed dense, interdependent relationships among multiple prisons and similar institutions like asylums. The notion of a complex, integrated “prison system,” which became popular during the mid-twentieth century, owes its existence in part to the classificatory processes unleashed in the modern prison described by Foucault.

While forms of classification are central to all human practice,<sup>1508</sup> it is a much more explicit, specialized practice in recent prison management, accompanied by formal procedures, expertise, tools and specially-trained personnel. These practices grew slowly over the late nineteenth and early twentieth centuries, but blossomed after World War II as an integral part of various prison reform projects, emphasizing differential education, retraining and rehabilitation. In these refashioned prison regimes, the formal classification system became a major nodal point in the daily operation of penal power, coordinating almost all major aspects of prison life. Many sociological assessments, both contemporary and current, viewed the formal classification apparatus as “the core of the prison system.”<sup>1509</sup> The major functions of the classification system were to evaluate all of the people committed to the prisons by the courts, determine their security needs, craft a reformatory plan for new inmates and assign them to a specific prison. Once at the prison of placement, a secondary classification team, often called a program review committee, determined a more detailed plan and cell accommodation.

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<sup>1508</sup> It is widely considered to be fundamental aspect of human cognition. See, for example, William K. Estes, *Classification and Cognition* (Oxford: Oxford University Press, 1994).

<sup>1509</sup> Michael Adler and Brian Longhurst, *Discourse, Power and Justice: Towards a New Sociology of Imprisonment* (London: Routledge, 1994), 51, the quote is the title of their chapter 3. Most histories of classification written by criminologists and psychologists discuss classification at this level. See, for instance, Carl B. Clements, “Offender Classification: Two Decades of Progress,” *Criminal Justice and Behavior*, 23 (March 1996), 121-143.

Beyond these primary functions, classification committees produced a large body of knowledge to serve various management and research projects. The individual prisoner files created during the initial stage of classification followed an incarcerated person throughout their confinement, often literally, as files usually moved with people during transfers. Such files contained a personal history and record of assessments, whether these were formal psychological tests or the opinions of supervising officers. Often times, such files were incomplete or missing required information. In other cases, they could be quite extensive. Results from the initial battery of tests that some jurisdictions administered could occupy large parts of these files. For instance, in the late 1970s and early 1980s, the initial assessment conducted by the Diagnostic and Classification Centers operated by the Pennsylvania Bureau of Correction included the following tests: Revised Beta II (intelligence); the Wechsler Adult Intelligence Scale (WAIS) or WAIS-R (used for people who score below 80 on the Revised Beta); Jastak Wide Range Achievement Test (WRAT); Minnesota Multiphasic Personality Inventory MMPI (short and long version); at least one of the following projection tests - Bender Gestalt, House-Tree-Person, Projective Drawings, Cornell Index, Sentence Completion, Hand Test, Rorschach, Thematic Apperception Test (TAT); and a psychological interview.<sup>1510</sup> The results from these tests were usually in the files, but may have mattered little to the next set of staff members who managed the prisoner and file. These files expanded over time as they accumulated lists of disciplinary infractions and officers' evaluations of a person's disposition, maturity, ability to work and honesty. The power of such files in the lives of confined people

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<sup>1510</sup> If classification staff suspected that a person had brain damage or dysfunction, they would also administer a Memory for Designs test. Pennsylvania Bureau of Correction, Correctional Service Group, *Pennsylvania Classification Plan* (Harrisburg: Pennsylvania Bureau of Correction, 1982), 43-50.

made them highly sought after items. Prison staff developed security procedures specifically to guard against the theft of these files. Classification files also provided researchers with enormous quantities of generalizable data, which became a central feature of the increasing use of standardized criteria and categories in classification. Researchers often designed projects on prisoner management, resource allocation or the effectiveness of therapeutic programs with the evidence in such files in mind.

Yet, as Foucault noted, classificatory activities are deeply embedded in prisons. Most of this work exists beyond the formal, so-named classification system, but it also frequently informs, supplements and challenges it. For instance, a number of times during the 1970s and 1980s, guards segregated certain prisoners and threatened to strike if their superiors freed them. In their view, such prisoners resided at the far end of security-rating system and could not be supervised in normal discipline. In many cases, the formal classification decision to segregate a prisoner in this situation often caught up to the actions of the guard force. Many differently-positioned actors, while not directly employed in the formal classification apparatus, engaged in this kind of work, often adopting and transforming the language and mechanisms of the formal practice. Even though classification committees were often suspicious and unsympathetic toward imprisoned people, they nevertheless provided a forum for the redress of certain grievances, however limited. Prisoners frequently petitioned such committees for a change in work, custody status or accommodation. As Bernie Matthews and Terry Haley demonstrated in the last chapter, many prisoners also identified and exploited vulnerable points in the governing protocols to move to better locations within the penal apparatus. The



classification system's categories, evaluative methods and shifting forms of expertise, therefore, furnished a wide range of options for actors to press claims or suppress challenges.

In this respect, I view the centrality of classification in the operation of penal power not as a monolithic force always acting according to its stated instrumental aims, but as a supple institutional practice, which was always subject to challenge, manipulation, and enlistment in multiple, and at times conflicting, projects and goals.<sup>1511</sup> This meant that actors often identified additional productive possibilities in classification. Just its data collection and creation capacities alone provided an indispensable fulcrum for numerous prison reform projects and a means to experiment with new techniques and evaluate programs. In the U.S. researchers supported by the National Institute of Corrections and the American Correctional Association, relied on the classification infrastructure in state penal agencies as a research engine and laboratory for piloting new objective classification methods and creating a set of national (and international) standards and best practices.<sup>1512</sup>

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<sup>1511</sup> I am influenced here by William Roseberry suggestion that analysts should use Gramsci's concept of hegemony as a means for understanding struggle, not consent: "What hegemony constructs, then, is not a shared ideology but a common material and meaningful framework for living through, talking about, and acting upon social orders characterized by domination." William Roseberry, "Hegemony and the Language of Contention" in Gilbert M. Joseph and Daniel Nugent (eds.), *Everyday Forms of State Formation: Revolution and the Negotiation of Rule in Modern Mexico* (Durham: Duke University Press, 1994), 355-366, quote 361. See also Gramsci's discussion of similar tactics in his proposed analysis subaltern culture: "their active or passive affiliation to the dominant political formations, their attempts to influence the programmes of these formations in order to press claims of their own, and the consequences of these attempts in determining processes of decomposition, renovation or neo-formation." Antonino Gramsci, "Notes on Italian History" in Quintin Hoare and Geoffery Nowell Smith (eds. and trans.), *Selections from the Prison Notebooks of Antonino Gramsci* (New York: International Publishers, 1971), 52-120, quote 52.

<sup>1512</sup> For an expansive analysis of a laboratory, see Bruno Latour and Steve Woolgar, *Laboratory Life: The Construction of Scientific Facts* (Princeton: Princeton University Press, 1986 reprint); Bruno Latour, *Science in Action: How to Follow Scientist and Engineers through Society* (Cambridge: Harvard University Press, 1987), 63-100; Peter Miller and Ted O'Leary, "The Factory as Laboratory," *Science in Context*, 7 (Autumn 1994), 469-496; Karin Knorr Cetina, *Epistemic Cultures: How the Sciences Make Knowledge* (Cambridge: Harvard University Press 1999), 26-45; 216-240.

The formal classification apparatus—or its absence—also became an attractive vehicle for judicial mandates and interventions by independent inquiries, which had become increasingly common. By the 1970s and 1980s, prison systems in numerous jurisdictions experienced a level of scrutiny, investigation and scandal that had not occurred since the mid-nineteenth century.<sup>1513</sup> One of the consequences of this heightened visibility was that for the first time in decades, political leaders and the general public learned much more about variations in prison regimes, different categories of prisoners and the sorting mechanisms that penal authorities used to assign people to such categories. Often, this knowledge became embroiled in highly scandalous events: prison authorities failed to properly screen inmates for lower-security programs leading to escapes or they could not properly handle seriously mentally ill inmates. As in other areas of punishment at this time, a wider group of people, from legislators to the voting public, from prisoners to civil society activist organizations, demanded greater participation in decisions about how to sort, place and deploy inmates and penal spaces. Thus, various constituencies, from within and beyond prison walls, increasingly targeted their interventions on classification procedures, recognizing in them a potent way to reconfigure penal relationships and policies.

For correctional agencies, classification afforded a mechanism for addressing problems like overcrowding, violence, poor living conditions and wayward overtime expenditures – provided that the procedures themselves were practically sound, politically acceptable and properly administered. If functioning in a convincingly effective way, it could also forestall

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<sup>1513</sup> In general, see John Pratt, *Punishment and Civilization: Penal Tolerance and Intolerance in Modern Society* (London: Sage, 2002).

judicial intervention over a number of matters courts found objectionable. Officials in Pennsylvania, for instance, pursued a massive assessment and reform of the Bureau of Correction's classification system precisely to prevent the intrusions of the federal courts. They hoped that despite the problems besetting the state's prisons, evidence of a state-of-the-art classification system would not only create a way to address these problems, but also blunt the urgency of a more drastic mandate from the federal courts. Similarly, the Royal Commission into New South Wales Prisons, believed that a more rationale classification procedure with new custody categories could reduce the state's overreliance on expensive and socially-destructive maximum security accommodations. In both cases, reforming classification entailed marshaling coalitions for change and suppressing dissidence within the penal bureaucracy. Significantly, it also involved drawing on knowledge and expertise from afar, whether in the form of consultants, study tours or published research.

While Foucault, and more recently Stanley Cohen, have clearly demonstrated the fundamental continuity of classification in prison reform projects, the specific forms of social science and medical expertise invested in postwar classification practices rapidly lost credibility during the 1970s.<sup>1514</sup> This shift involved a rejection of clinical reasoning and prediction methods

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<sup>1514</sup> See Foucault highlighted the cyclical restatement of the original disciplinary principles in numerous prison reform projects over many decades: the "reactivation of the penitentiary techniques as the only means of overcoming their perpetual failure." *Discipline and Punish*, 268. See also Stanley Cohen's assessment of the role of classification in the decarceration movement: "Unevenly to be sure, and in some parts of the system much more clearly than others, there has been an intensification, complication and extension of these early nineteenth-century master patterns, not their reversal. Those original patterns—rationalization, centralization, segregation, classification—were not born fully grown. They were trends which are still going on and the more recent changes are also trends yet uncompleted. But it was as if the destructuring impulse revealed how deep were those original structures." Stanley Cohen, *Visions of Social Control: Crime, Punishment and Classification* (Cambridge: Polity Press, 1985), 37. This change paralleled the decline of psychoanalytic approaches in American psychiatry and the development of uniform diagnostic categories. See Stuart A. Kirk and Herb Kutchins, *The Selling of the DSM: The Rhetoric of Science in Psychiatry* (New York: Aldine de Gruyter, 1992); Herb Kutchins and Stuart A. Kirk, *Making Us*

for determining future offending, treatment interventions and appropriate custody levels. In its place, penal researchers substituted a variety of formal, actuarial methods and techniques, primarily designed to curtail discretion or at least channel it into standardized, predictable formats.<sup>1515</sup> Researchers and practitioners created succinct, uniform tools as part of this project, which structured decision-making and enhancing “interrater reliability” – the likelihood that different specialized staff would classify the same prisoner, the same way. This was never a straightforward process, however, as crafting new procedures was often a time-consuming, difficult political task. Numerous prison staff had to be persuaded about the need for change and the value of the new procedures. In Pennsylvania, the Bureau of Correction contracted the services of a private, correctional consultant to evaluate their current system, design a replacement and convince lower level staff of its advantages. Sometimes, scandals involving the prisons cleared away a lot of resistance to new reforms. The New South Wales Department of Corrective Services, for instance, adopted a new classification system after series of escapes, violent crimes and assaults in prisons and corruption scandals implicated the entire classification system.

Concomitant to this shift, the circulation of classification knowledge increased over many parts of the world through a flurry of conferences, publications, study tours, institutional exchanges and evaluations. As the events in New South Wales and Pennsylvania will demonstrate, penal officials, independent investigators and activists canvassed classification

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*Crazy: DSM: the Psychiatric Bible and the Creation of Mental Disorders* (New York: Free Press, 1997); Allan Young, *The Harmony of Illusions: Inventing Post-Traumatic Stress Disorder* (Princeton: Princeton University Press, 1996).<sup>1515</sup> For a good overview and critique of this trend, see Bernard E. Harcourt, *Against Prediction: Profiling, Policing and Punishing in an Actuarial Age* (Chicago: University of Chicago Press, 2007). This desire for uniformity in classification decisions and the reduction of discretion paralleled reforms to sentencing emphasizing the same concerns.

systems and associated prisoner management techniques in other jurisdictions in an effort to address local problems of prison order and to resolve or prevent scandals. This comparative work by actors themselves entailed situating local penal practices in a wider field of international practice and knowledge, which highlighted how modern a jurisdiction's practices were in relation to other states. Just as important as how this knowledge circulated was how actors, whether they were penal officials or prisoners, perceived the field of political conflict in other jurisdictions. Scandals, for instance, were significant not only in how they discredited local practices and set the stage for learning from abroad. They also created points of comparison among jurisdictions. Thus, prison scandals, riots, inquiries and litigation produced knowledge as much as they tarnished it and created opportunities for its circulation.

Nevertheless, the production and flow of classification knowledge was deeply asymmetrical. Unsurprisingly well-funded, research-intensive penal bureaucracies disproportionately influenced trends in many different parts of the world, and knowledge flowed through the well-worn channels of previous interconnections, which spread earlier

generations of penological discourse and practice.<sup>1516</sup> The United States Bureau of Prisons and the National Institute of Corrections (both administratively within the U.S. Department of Justice) and Her Majesty's Prison Service and other sub-agencies within the British Home Office conducted, sponsored, and disseminated the results of a wide array of research projects, pilot programs, and investigations of practices in their own immediate settings and elsewhere.<sup>1517</sup> Experts from these agencies also consulted with practitioners and penal bureaucracies from different jurisdictions and provided outside expert testimony at numerous inquiries. In addition, a growing body of private consultants, often researchers and former employees of correctional agencies, also rose to prominence at this time, selling their services and products to multiple penal agencies. One such private consultant, the Correctional Services Group, figured prominently in the reformation of classification procedures in Pennsylvania, several other American states and in other countries.

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<sup>1516</sup> Martina Henze, "Transnational Cooperation and Criminal Policy: The Prison Reform Movement, 1820s-1950s" in Davide Rodogno, Bernhard Struck and Jakob Vogel (eds.), *Shaping the Transnational Sphere: Experts, Networks and Issues from the 1840s to the 1930s* (New York: Berghahn Books, 2015), 197-217; Nir Shafir, "The International Congress as Scientific and Diplomatic Technology: Global Intellectual Exchange in the International Prison Congress, 1860-90," *Journal of Global History*, 9 (March 2014), 72-93; Emily S. Rosenberg, "Transnational Currents in a Shrinking World" in Emily S. Rosenberg (ed.), *A World Connecting, 1870-1945* (Cambridge: Belknap Press, 2012), 919-959; Xiaoying Qi, "A Case Study of Globalized Knowledge Flows: *Guanxi* in Social Science and Management Theory," *International Sociology*, 27 (November 2012), 707-723; Anna Lowenhaupt Tsing, *Friction: An Ethnography of Global Connection* (Princeton: Princeton University Press, 2011); Ulf Hannerz, "Flows, Boundaries and Hybrids: Keywords in Transnational Anthropology" at Transnational Communities Programme, Working Paper Series. Institute of Social and Cultural Anthropology, University of Oxford. Available at: [www.transcomm.ox.ac.uk/working%20papers/hannerz.pdf](http://www.transcomm.ox.ac.uk/working%20papers/hannerz.pdf) (accessed 17 October 2010); Trevor Jones and Tim Newburn, *Policy Transfer and Criminal Justice: Exploring U.S. Influence Over British Crime Control Policy* (Maidenhead: Open University Press, 2007); Anna Lowenhaupt Tsing, "The Global Situation," *Cultural Anthropology*, 15 (August 2000), 327-360; Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge: Belknap Press, 1998); Arjun Appadurai, *Modernity At Large: Cultural Dimensions of Globalization* (Minneapolis: University of Minnesota Press, 1996).

<sup>1517</sup> A good example was the Classification Instrument Dissemination Project of the National Institute of Corrections, which surveyed the state of security and custody classification practices in many state and county corrections agencies to build an empirical basis for the creation of guidelines and standards. See National Institute of Corrections, *Institutional Custody Sourcebook, Classification Instruments for Criminal Justice Decisions vol. 3* (Washington, D.C.: National Institute of Corrections, 1979).

Beyond the larger political conflicts in state governing that structured these interactions, the new classification knowledge itself had certain qualities that facilitated its movement. Classification was, of course, an inherently comparative practice; people engaged in it articulated similarities and differences among people and penal spaces. Researchers and practitioners were well aware of the difficulties in comparison and sorting, nevertheless, they invested heavily in the intellectual assumptions of this work and were quite accustomed to the practice of finding similarities, weighing differences, translating seemingly incommensurate qualities and deciding when differences undermined homogenous groupings.<sup>1518</sup> Much of the literature on inmate classification and criminal types assumed an audience attuned to this kind of reasoning. If classification deployed such reasoning in institutional forms and tools, these practices themselves could be compared, translated and grouped. The classificatory vision was broad in this sense; its advocates sought large fields of objects if only to better organize them into relationships among smaller units.

Yet, penal classification was also narrow in another sense. It recognized, measured, and sorted a narrow range of relevant attributes. In practice, there were always far more characteristics of individual offenders that classification personnel simply ignored or did not formally factor into their decisions—at least most of time. Likewise, since almost all the relevant classification attributes were individual personal characteristics (or framed as such), prison staff left questions about contexts, situations and cultural variations largely

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<sup>1518</sup>Ibid.; Wendy Nelson Espeland and Mitchell L. Stevens, “Commensuration as a Social Process,” *Annual Review of Sociology*, 24 (August 1998), 313-343.

unexplored.<sup>1519</sup> This manifestation of methodological individualism meant that classification knowledge could plausibly be applied to many different offenders in different contexts without raising many vexing questions, at least at first.<sup>1520</sup> These practices could also hide such questions if they presented potential legal liabilities as they would have for clear instances of racial discrimination in the United States.<sup>1521</sup> As scholars Geoffrey Bowker and Susan Star have argued, political or legal vulnerabilities often fundamentally affect the manner in which people select and retain information in classification systems, but this history is also often obscured in the way classification works.<sup>1522</sup> If only a narrow range of information is relevant for a classification system to be useful, then these systems and their practitioners must also erase much of their own history of production. Since the developers of such practices intended them as a general method, not necessarily tied to any specific location, they created less (obvious)

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<sup>1519</sup> Espeland and Stevens, "Commensuration as a Social Process." In many respects, classification practices also resemble Theodore Porter's description of the process of "making things quantitative" in his analysis of the history of statistical and accounting knowledge. See Theodore M. Porter, "Making Things Quantitative," *Science in Context*, 7 (1994), 389-407; Theodore M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton: Princeton University Press, 1995).

<sup>1520</sup> For a good discussion of methodological individualism in postwar sociology, see George Steinmetz, "Scientific Authority and the Transition to Post-Fordism: The Plausibility of Positivism in U.S. Sociology since 1945" in George Steinmetz (ed.), *The Politics of Method in the Human Sciences*, (Durham: Duke University Press, 2005), 275-323.

<sup>1521</sup> Murakawa and Katherine Beckett argue that since the 1970s, U.S. federal courts have developed a very restrictive notion of racial discrimination which requires explicit evidence of biased intent in case involving patterns of racial discrimination. Such a standard means that manifestations of structural racism, common in criminal justice, are not considered worthy of court intervention on constitutional grounds, such as equal protection. See Naomi Murakawa and Katherine Beckett, "The Penology of Racial Innocence: The Erasure of Racism in the Study and Practice of Punishment," *Law & Society Review*, 44 (September-December 2010), 695-730.

<sup>1522</sup> Geoffrey C. Bowker and Susan Leigh Star, *Sorting Things Out: Classification and Its Consequences* (Cambridge: MIT Press, 1999), 275-282.



friction when they moved from jurisdiction to jurisdiction within the “transnational epistemic community” of penologists.<sup>1523</sup>

Nevertheless, these techniques did not always fit in acceptable ways. They were often flexible enough to accommodate local needs. Actors adapted general templates derived from elsewhere to fit their needs, which themselves expanded over time. Once in place, new classification systems addressed a range of more particular problems unique to certain locations and junctures.<sup>1524</sup> In other cases, the fit or lack of it was more controversial. The friction that appeared when the field of actors interested in classification expanded to include non-specialists in many ways pointed to the significance of the (productive) silences in the production of classification that underwrote the normal operation of these practices. This was not just because the rationale for certain classification schemes or categories were confusing or unknown to a wider field of actors. Considering only the formal classification systems distracts from the authority and social role of penal experts in the reconfiguration of penal relations. In Bruce Lincoln’s words, it:

obscures the fact that all knowers are themselves objects of knowledge as well as subjects insofar as they cannot and do not stand apart from the world that they seek to know. One consequence of this (and far from the least important) is that categorizers come to be categorized according to their own categories. Taxonomy is thus not only a means for organizing information, but also—as it

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<sup>1523</sup> I borrow the phrase from Emily S. Rosenberg, “Transnational Currents in a Shrinking World.” See also Aihwa Ong and Stephen J. Collier, “Global Assemblages, Anthropological Problems” in Ong and Collier (eds.), *Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems* (Oxford: Wiley-Blackwell, 2004), 3-21; Andrew Lakoff, *Pharmaceutical Reason: Knowledge and Value in Global Psychiatry* (Cambridge: Cambridge University Press, 2005); Andrew Lakoff, “Diagnostic Liquidity: Mental Illness and the Global Trade in DNA,” *Theory and Society*, 34 (February 2005), 63-92; Thomas Hylland Eriksen, “Trust and Reciprocity in Transnational Flows” in Marianne Elisabeth Lien and Marit Melhuus, *Holding Worlds Together: Ethnographies of Knowing and Belonging* (New York: Berghahn Books, 2007), 1-16; Penny Harvey, “Arresting Mobility or Locating Expertise: ‘Globalisation’ and the ‘Knowledge Society’” in Lien and Melhuus, *Holding Worlds Together*, 163-183; Knorr Cetina, *Epistemic Cultures*.

<sup>1524</sup> David Kaiser, *Drawing Theories Apart: The Dispersion of Feynman Diagrams in Postwar Physics* (Chicago: University of Chicago Press, 2005); Bowker and Star, *Sorting Things Out*, 135-161.

comes to organize the organizers—an instrument for the classification and manipulation of society, something that is particularly facilitated by the fashion in which taxonomic trees and binary oppositions can conveniently recode social hierarchies.<sup>1525</sup>

These social hierarchies included those organized around penal authority, expertise and citizenship. The specialization of inmate classification, which accelerated in the mid-twentieth century, created ever more cohesive networks of specialists—penologists, researchers and administrators—who produced and exchanged knowledge. These networks facilitated comparisons of practices across jurisdictions, but also created difficulties for those who thought they could easily adapted certain practices from elsewhere to their own situation. By the mid-1970s, the increasingly public and contentious nature of prison issues propelled the reform and circulation of penal classification knowledge, but simultaneously brought the penal expertise it relied on into question as more people began to engage with these practices and challenge many of its assumptions.

### **The Development of Twentieth-Century Inmate Classification and the Therapeutic Model of Rehabilitation**

The classification practices that fell into crisis in the 1970s formed a central part of the therapeutic model of imprisonment that held sway within penology during much of the postwar period, but they direct antecedents stretching back decades. Many of the programs and innovations created during these earlier decades left institutional arrangements and techniques that remained central to subsequent periods even if their initial justifications and

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<sup>1525</sup> Bruce Lincoln, *Discourse and the Construction of Society: Comparative Studies of Myth, Ritual, and Classification* (New York: Oxford University Press, 1989), 137.

rationales had faded. This sediment of carceral practices and tools both enabled the development of therapeutic rehabilitation and at times inhibited its growth in different directions. In this section, I trace the development of these practices in New South Wales and Pennsylvania over a long period of time, highlighting the concretion of classification practices in successive instances of implementation and transformation.

However, I first need to qualify the term “classification” for these purposes. As I am using it here, classification refers broadly to the practice of productively arranging, dividing and sorting penal space and groups of prisoners and staff as a means of control, management and knowledge production. It is necessary to establish how I am using classification since the term is currently invested with psychological reasoning that was not as salient in earlier iterations of these practices. Prison reformers in the early nineteenth century rarely used this term to describe their methods of sorting and control, preferring instead the term “separation.” Since my goal is to establish the historical and epistemological depth of penal classification, I have chosen to paint with a rather broad brush in exploring these various iterations. Many of the examples I describe occasioned disputes and resistance within the penal bureaucracies. Many – perhaps most – prison staff (like guards) rejected the claims of some of the experts who engaged in this kind of work, preferring instead their own assessments of who a particular prisoner was and how they should be managed.

As a number of historians have argued, a form of classification figured prominently in the first few generations of penal reform in Europe and the early America republic. This was especially apparent in Pennsylvania, where a group of reformers, led by Quakers, developed a theory of penal redemption based initially on the premise that certain groups, like young

impressionable offenders and women, needed to be sequestered from hardened, adult, male criminals.<sup>1526</sup> The Quakers' position eventually evolved into a preference for complete separation of all prisoners into individual cells. Historian Michael Meranze argues that the solitary confinement regime at the Eastern State Penitentiary demonstrated the most extreme statement of this penal philosophy of containing the power of "mimetic corruption."<sup>1527</sup> Some politicians and influential people in Pennsylvania opposed this regime, but its main challenge came from reformers in New York who established a system of cellular separation of prisoners at night with congregate labor and meals during the day at Auburn Penitentiary.<sup>1528</sup> While this disagreement was heated at the time, both practices rested on a notion of the most appropriate way to separate offenders for the purposes of control and redemption.

By the mid-nineteenth century, most prisons in the United States adopted the Auburn model, but the Pennsylvania became much more influential abroad, along with Britain's Millbank Penitentiary and later Pentonville Penitentiary.<sup>1529</sup> While retaining these forms of separation, prison reformers began using the term "classification" to describe an incentive method of managing prisoners based on progressively granting them more privileges. From the mid-nineteenth century to the early twentieth century, prison staff used systems like this to

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<sup>1526</sup> Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835* (Chapel Hill: University of North Carolina Press, 1996), 178-180, 200-202, 224-225.

<sup>1527</sup> Meranze also notes that the terror of isolation provided a general deterrent and precluded the need for corporal punishments, like whipping, to control prisoners. *Ibid.*, 259-265, 291.

<sup>1528</sup> *Ibid.*, 254-265; Rothman, *Discovery of the Asylum*, 57-108.

<sup>1529</sup> George Rusche and Otto Kirchheimer famously argued that a labor shortage in the United States and the greater financial and industrial possibilities afforded by the Auburn model, led state governments adopt it over the Pennsylvania model. In Europe, however, a labor surplus and the desire among rulers to make prison conditions worse than life outside made the Pennsylvania model more appealing. European governments saw prisons more as punitive institutions than their American counterparts who believed prisons should also be financially productive factories. Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New Brunswick: Transaction Publishers, 2005, orig. 1939), 127-137.

encourage good behavior, punish deviance and, for some, facilitate reform. Zebulon Brockway, an innovative prison governor who served in Michigan and New York, was the foremost advocate of the this system in the United States, but he derived his reformatory model from similar practices in Ireland and Alexander Machonochie's use of the "marks system" at Norfolk Island, a small penal colony administered by New South Wales.<sup>1530</sup>

By the 1890s, prison administrators began placing greater emphasis on differentiating inmates into various custody or treatment groups upon arrival based more on the innate or unique characteristics of the inmate. Many prisons still used some system of progressive stages for managing inmates, which prison reformers referred to as "vertical classification," but they invested more effort in refining new "horizontal classification" techniques for the initial process of separating new prisoners.<sup>1531</sup> In the subsequent three decades, both New South Wales and Pennsylvania constructed several new prisons and a series of penal farms and afforestation camps at this time, which penal bureaucracies in each state intended to serve specific categories of inmates, such as youthful adult offenders, women, reformable non-recidivists, or inmates close to the expiration of their sentence. The establishment of these new prisons

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<sup>1530</sup> The chief national advocate for this type of prison management system was Zebulon Brockway who experimented with it during his time as Detroit House of Correction and later at the Elmira Reformatory in New York. See Zebulon R. Brockway, *Fifty Years of Prison Service: An Autobiography* (New York: Charities Publication Committee, 1912); David J. Rothman, *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America* (Boston: Little, Brown, 1980), 31-36; Edgardo Rotman, "The Failure of Reform: United States, 1865-1965," in *The Oxford History of the Prison: The Practice of Punishment in Western Society*, Norval Morris and David J. Rothman, eds. (New York: Oxford University Press, 1995), 173; John Hirst, "The Australian Experience: The Convict Colony," in *The Oxford History of the Prison: The Practice of Punishment in Western Society*, Norval Morris and David J. Rothman, eds. (New York: Oxford University Press, 1995), 290-292; Alexander W. Pisciotta, *Benevolent Repression: Social Control and the American Reformatory-Prison Movement* (New York: New York University Press, 1996).

<sup>1531</sup> Max Grünhut, *Penal Reform: A Comparative Study* (London: Clarendon Press, 1948), 179-191.

permitted penal authorities in each state to further concentrate male adult inmates, especially recidivists or those convicted of serious violent crime, into the older, secure prisons.

After taking a long study tour of penal systems in other parts of the world, Frederick Neitenstein, the reformist Comptroller-General of Prisons in New South Wales, oversaw a project that further refined a loose classification all of the state's prisons according to the type of inmate to be held.<sup>1532</sup> Neitenstein and his associates derived the categories in this project from a number of sources, including earlier principles of separation and the penal code. Goulburn Gaol, for instance, exclusively housed first offenders after this reorganization.<sup>1533</sup> They cohered as a group based largely on police detection, judicial conviction and their first sentence of imprisonment. However, Neitenstein's reforms also included classification criteria based more on the individual, deviant qualities of the offender. In this, one can begin to see the influence of the burgeoning social and psychological sciences as penal authorities attempted to describe and theorize the innate characteristics of some inmates.<sup>1534</sup> Parramatta Gaol held confirmed habitual criminals and there were also attempts to identify "alcoholics" and "feeble minded" inmates, which also included "sexual perverts."<sup>1535</sup> Neitenstein hoped to remove some of these categories of offenders to other institutions, like hospitals and asylums, but he was also interested in further differentiating the populations within individual prisons. The

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<sup>1532</sup> Frederick W Neitenstein, New South Wales, Department of Prisons, *Report by the Comptroller-General of Prisons, on Prisons, Reformatories, Asylums, and Other Institutions Recently Visited by Him in Europe and America: With Some Suggestions and Recommendations Upon the Subject of the Prevention and Treatment of Crime* (Sydney: Government Printer, 1904). Stephen Garton, "Crime, Prisons and Psychiatry in Australia" in Peter Becker and Richard F. Wetzell (eds.), *Criminals and their Scientists: The History of Criminology in International Perspective* (Cambridge: Cambridge University Press, 2006), 245.

<sup>1533</sup> Nagle, *Report of the Royal Commission*, 557.

<sup>1534</sup> Garton, "Crime, Prisons and Psychiatry in Australia," 233-246.

<sup>1535</sup> Mark Finnane, *Punishment in Australian Society* (Oxford: Oxford University Press, 1997); 82-83.

categories for this latter practice, such as disposition, were more ambiguous and subject to variations in practice among the institutions.<sup>1536</sup>

Regardless of the different bases of these categories, the primary rationales unifying them was security and good management; reform came a distant third. Custodial concerns, like the availability of cell space, transportation costs, staffing levels, preventing possible disorder, or simply dislike of a particular inmate, often determined inmate placement. Even when prison authorities differentiated inmates according to psychological criteria, they did so less for the purposes of treatment and more often as a way to contain inmates with difficult behavior or to uncover deception by others trying to avoid prison discipline and labor.<sup>1537</sup> At this point, the state did not have a standard centralized body for making such decisions. The deputy-governor of a prison was often charged with making inmate placement and work assignments for incoming prisoners. However, since most inmates came from the Sydney area, the prisons at the Long Bay complex served as a de facto reception and classification center.

As in New South Wales, inmate classification in Pennsylvania mainly involved the practice of grading the various prisons to accommodate broad groupings of inmates based on criteria such as age, sex, institutional behavior, and the place of conviction. The new prison built at Huntington in 1889, for example, held youthful adult offenders and was modeled on Zebulon

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<sup>1536</sup> Garton, "Crime, Prisons and Psychiatry in Australia," 233-246. In general, see Benedict Taylor, "Prisons Without Walls: Prison Camps and Penal Change in Australia, c.1913-c.1975," (Ph.D. Diss. University of New South Wales, 2010), 39-115.

<sup>1537</sup> Historian Stephen Garton described the creation of observation cells at Darlinghurst and Long Bay Gaols, which prison staff used to difficult inmates suspected of insanity. See Garton, "The Rise of the Therapeutic State: Psychiatry and the System of Criminal Justice in New South Wales. 1890-1940," *Australian Journal of Politics and History*, 32 (January 1986), 382-383. Found an account of abuse by staff against real or suspected malingering see, *Report of the Royal Commission regarding treatment of prisoner Joseph Henry Denmead and certain representations made by Thomas Love* (Sydney: William Applegate Gullick, Government Printer, 1911).

Brockway's Elmira Reformatory regime in New York.<sup>1538</sup> The State Industrial Home for Women at Muncy opened in 1920 and remained the state's only prison for female offenders for decades.<sup>1539</sup> In general, adult male inmates were either held in the Western Penitentiary in Pittsburgh or the Eastern Penitentiary in Philadelphia based on where they were tried and convicted. After 1915, the Western Penitentiary also operated a satellite institution, Rockview Penitentiary, for medium security inmates, and Graterford Penitentiary performed a similar function for the Eastern Penitentiary after 1929.<sup>1540</sup>

Gradually, new methods of differentiating inmates began to appear within the prisons in the early twentieth century that relied more on psychology and psychiatry. Some prison reformers sought to use these new forms of expertise to identify insanity among prisoners and eventually remove them from the prisons. The insane offender was not new to penal authorities, but most officials believed that insane offenders simply could not be reformed and that their presence within prisons hindered the development of new regimes and practices designed to transform the behavior of otherwise normal offenders. Historian Stephen Garton noted that Comptroller-General Neitenstein's plans for penal reform and prison grading hinged on the removal of numerous different classes of mentally ill inmates from prisons.<sup>1541</sup> By the 1930, state hospitals in New South Wales held many offenders who would have been in the state's prisons a few decades earlier.<sup>1542</sup> The 1912 opening of the Farview State Hospital for the

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<sup>1538</sup> Harry Elmer Barnes, *The Evolution of Penology on Pennsylvania: A Study in American Social History* (Montclair: Patterson Smith, 1968 reprint, 1927), 396-402

<sup>1539</sup> *Ibid.*, 324, 402; John C. McWilliams, *Two Centuries of Corrections in Pennsylvania: A Commemorative History* (Harrisburg: Commonwealth of Pennsylvania, 2002), 27-29.

<sup>1540</sup> McWilliams, *Two Centuries of Corrections in Pennsylvania*, 21-22, 29-31.

<sup>1541</sup> Garton, "Crime, Prisons and Psychiatry in Australia," 233-246.

<sup>1542</sup> Garton, "The Rise of the Therapeutic State"; Garton, "Crime, Prisons and Psychiatry in Australia."



Criminally Insane in Pennsylvania also provided authorities in that state with a new option for dealing with mentally ill inmates.<sup>1543</sup> While agencies other than the penal bureaucracy administered hospitals for insane convicts, small observation units at some prisons monitored inmates behaving erratically, often holding them until they could be transferred to state hospitals.<sup>1544</sup>

Prison authorities in both states created psychiatric or psychological clinics in some of the larger state prisons in the 1920s and 1930s. These units often dealt with inmates who either could not adapt to prison routines or those who ran afoul of prison staff who suspected them of having psychological problems that could not be resolved through normal disciplinary practices. In some cases, these units aided nascent parole authorities in screening prisoners for release. Courts also often consulted with professional staff at these clinics to aid in sentencing specific offenders. Prison authorities usually hired professional staff for these units under part-time contracts. This relationship stabilized over the course of the 1920s and 1930s, but penal authorities rarely employed full-time professionals of this kind.<sup>1545</sup> The Western State Penitentiary in Pittsburgh was likely an exception to this general practice. The Osborne Society, which surveyed all the prisons in the United States for several editions of its *Handbook of American Prisons and Reformatories*, stated that the psychiatric clinic at the Western State Penitentiary was “one of the few large prisons in the country in which the facilities for case

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<sup>1543</sup> Barnes, *Evolution of Penology on Pennsylvania*, 344.

<sup>1544</sup> See the description of Rockview’s psychopathic unit in National Society of Penal Information, *Handbook of American Prisons and Reformatories*, vol.1 (New York: The Osborne Association, Inc., 1933), 905-906. 888-889, 905-906; Nagle, *Report of the Royal Commission*, 554.

<sup>1545</sup> Finnane, *Punishment in Australian Society*, 101; Nagle, *Report of the Royal Commission*, 565; Garton, “Crime, Prisons and Psychiatry in Australia,” 245-246.

work have been developed.”<sup>1546</sup> In addition to aiding in practical management decisions concerning disturbed or difficult inmates, this clinic also conducted research on offender typologies for the state’s parole board.<sup>1547</sup>

These small social science inroads into the prisons laid the basis for more ambitious efforts to establish this form of expertise in prison regimes in subsequent decades. The advocates of these reforms, well-educated, middle class, professional social scientists and prison administrators, believed that the success of their prison reform project also depended on wide-spread intellectual exchange and experimentation. Much like other areas of social policy at this time, the prison reform movement developed transnationally around the shared problems of industrialization and rapid social change.<sup>1548</sup> Historians Martina Henze and Nir Shafir have both argued that this movement, which dated to the late-eighteenth century, stabilized and professionalized during the late nineteenth and early twentieth-centuries with national and global connections through numerous organizations, conferences, publications and correspondence relationships overlapping and thickening.<sup>1549</sup> National organizations, like the National Prison Association (forerunner to the American Correctional Association), and international organizations, like the International Penitentiary Commission, facilitated the diffusion of ideas, problem constructions and practices and established professional connections among prison staff from different jurisdictions.<sup>1550</sup>

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<sup>1546</sup> National Society of Penal Information, *Handbook of American Prisons and Reformatories*, 888.

<sup>1547</sup> A.C. Carter and G. I. Giardini, “Reliability of Psychological Prognosis in the Western Penitentiary of Pennsylvania,” *Journal of Criminal Law & Criminology*, 26 (Winter 1935), 556-560.

<sup>1548</sup> Rodgers, *Atlantic Crossings*; Rosenberg, “Transnational Currents in a Shrinking World.”

<sup>1549</sup> Henze, “Transnational Cooperation and Criminal Policy: The Prison Reform Movement, 1820s-1950s”; Shafir, “The International Congress as Scientific and Diplomatic Technology.”

<sup>1550</sup> See especially, Jan Simon van der Aa, *Proceedings of the IXth International Penitentiary Congress held in London, August 1925* (Bern: Bureau of the International Prison Commission, 1927); Jan Simon van der Aa,

While many participants in these networks lamented the inadequacy of current methods for reforming inmates, the lack of resources, or implementation failures, they rarely questioned the value of developing classification procedures, which they saw as a crucial pivot for numerous other reforms and plans. The knowledge about offenders, how to classify them and control them, produced in the nascent clinics of some prisons, found audiences in many parts of the world through these professional networks and their publications. Participants in these networks hoped that the initial social science excursions into prisons would become an entry point for expanding classification to all inmates. In addition to aiding prison management, the diagnostic procedures used to identify serious mental illness could, if expanded and applied to all incoming inmates, become the vehicle for building a much greater knowledge base about criminal offenders and how best to deal with them in custody.

Actually instituting such plans proved far more difficult. Most wardens, their deputies and lower level prison staff, especially guards, often resented the presence of educated, middle-class reformers who usually had less direct experience interacting and managing prisoners. Many of these prison workers also simply opposed the views of these reformers and felt they were better able to discern relevant differences among inmates. During the early-twentieth century, however, this conflict remained relatively muted; classification and the few social science experts who worked in prisons usually prioritized security concerns, which other staff shared, and their actual presence and influence in prison operations was meager at best.

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*Proceedings of the XIth International Penal and Penitentiary congress held in Berlin, August, 1935* (Bern: Bureau of International Penal and Penitentiary Commission, 1937); Frank Loveland, "International Concern with Crime and Corrections," in *The Task of Penology: A Symposium on Prisons and Correctional Law*, Harvey S. Perlman and Thomas B. Allington, eds. (Lincoln: University of Nebraska Press, 1969), 124-134.

Even in institutions like Western Penitentiary with its well-developed clinic, the deputy-warden made assignment decisions based almost exclusively on security needs and the ability to work. The United States Bureau of Prisons, which was far smaller than many state systems in the 1930s, became a leader in developing classification procedures as well as finding ways to incorporate prison staff in the process in an effort to mitigate the power struggles these reforms often entailed.<sup>1551</sup>

Advocates of classification also envisioned their reforms as being comprehensive, affecting and integrating all prisons within a specific jurisdiction. While such reforms could have provided a centripetal force within penal agencies, the reformers' plans also presumed a significant degree of prior, institutional centralization that did not exist in most jurisdictions. This was especially the case in Pennsylvania. Unlike its neighbors, New Jersey and New York, Pennsylvania's penal apparatus had a reputation in penology circles for being deeply fragmented.<sup>1552</sup> In most respects, the prisons were largely independent and isolated from each other and its ineffectual central office. This arrangement even made it difficult to transfer inmates between institutions, with widely divergent practices and policies. Although, this practice did occur with particularly difficult prisoners.<sup>1553</sup>

After Pennsylvania's Eastern State Penitentiary experienced several disturbances in 1933 and 1934, an investigating commission recommended conducting a classification study of

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<sup>1551</sup> Frank Loveland, "The Classification Program in the Federal Prison System: 1934-1960," *Federal Probation*, 24 (June 1960), 7-12

<sup>1552</sup> "Editorial," *The Prison Journal*, 17 (February 1937), 330; "Editorial," *The Prison Journal*, 17 (October 1937), 384-388; Louis N. Robinson, T. Henry Walnut and Lynn G. Adams, "Report to Governor Pinchot of the Committee to Investigate the Causes of the Riots at the Eastern State Penitentiary in September and November, 1933," *The Prison Journal*, 14 (April 1934), 46-58.

<sup>1553</sup> Robinson, Walnut and Adams, "Report to Governor Pinchot," 47.

all inmates in the state, starting with Eastern State and its newly-opened, satellite institution to the north, Graterford Penitentiary.<sup>1554</sup> The commission members believed that this would enhance the ability of prison authorities to isolate troublesome prisoners in the eastern part of Pennsylvania at Eastern State and use Graterford as a medium security prison for less difficult inmates. In general, this arrangement already existed, but the commission felt that it could be improved significantly by a thorough classification program. However, they claimed that such a project could only be undertaken by a new, cabinet-level Department of Corrections, which would ensure a greater uniformity throughout the state's prisons.<sup>1555</sup> In addition to new authorizing legislation, the commission members believed uniform classification practices would provide an excellent vehicle for achieving bureaucratic integration. The General Assembly did not pass such legislation, but system-wide classification gradually developed over the next ten years.

The prisons in New South Wales were already more functionally integrated than their counterparts in Pennsylvania in the 1930s. This was in part due to New South Wales's particular history as a penal colony. The colony's authorities originally developed a far more centralized state bureaucracy to control and manage convicts, which effected the entire state in general, but it was especially apparent in the clear hierarchy of the police and penal apparatus.<sup>1556</sup>

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<sup>1554</sup> "It is recommended that greater attention be given to the classification of inmates in order that the policies and programs may be more readily carried out." "Report of the Pennsylvania Commission On Penal Institutions," *The Prison Journal*, 11 (July 1931), 11; See, Robinson, Walnut and Adams, "Report to Governor Pinchot," 51, 56.

<sup>1555</sup> Although Pennsylvania's prisons were nominally under the authority of the Department of Welfare after 1921, supervising boards controlled much of the policy decisions for specific prisons including the hiring of staff. These supervising boards were created in the late eighteenth and early nineteenth centuries. See, Barnes, *Evolution of Penology in Pennsylvania*, 122-134, 194-200.

<sup>1556</sup> David J. Neal, *The Rule of Law in a Penal Colony: Law and Power in Early New South Wales* (Sydney: Cambridge University Press, 1991); Alastair Davidson, *The Invisible State: The Formation of the Australian State, 1788-1901* (Cambridge: Cambridge University Press, 1991); Lyn Spillman, *Nation and Commemoration: Creating National Identities in the United States and Australia* (New York: Cambridge University Press, 1997), 19-33.

Nevertheless, the governors of each prison had wide latitude in enforcing discipline and developing local policies. Despite this, the state's prison classification program remained largely based on the reforms of Comptroller-General Neitenstein and his immediate successors. Certain institutions further developed classification procedures. Long Bay Gaol, for example, began operating a psychological laboratory similar to the one in Pennsylvania's Western Penitentiary in 1929 and had already instituted some psychological testing after its use on military recruits during World War I.<sup>1557</sup>

As a number of scholars have noted, the Great Depression and World War II fundamentally disrupted established prison practices in numerous parts of world, but these events also created further openings for the social sciences and their experts.<sup>1558</sup> It was apparent to many correctional officials by the mid-1930s, that ambitious plans for a self-sufficient prison industry were doomed. Prison industries had always generated enormous resistance from free workers and organized labor, but this became critical during the massive unemployment of the 1930s.<sup>1559</sup> Many jurisdictions passed legislation severely restricting the

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<sup>1557</sup> Garton, "The Rise of the Therapeutic State," 382-383; Garton, "Crime, Prisons and Psychiatry in Australia," 245-246.

<sup>1558</sup> Ethan Blue, *Doing Time in the Depression: Everyday Life in Texas and California Prisons* (New York: New York University Press, 2012); Kerry Wimshurst, "Punishment, Welfare and Gender Ordering in Queensland, 1920-1940," *Australian & New Zealand Journal of Criminology*, 35 (December 2002), 308-329; David M. Oshinsky, "Worse Than Slavery": *Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1996), 223-229; Charles Bright, *The Powers that Punish: Prison and Politics in the Era of the "Big House," 1920-1955* (University of Michigan Press, 1996), 107-191, 246-258; John Ramsland, *With Just But Relentless Discipline: A Social History of Corrective Services in New South Wales* (Kenthurst: Kangaroo Press, 1996), 248-267, 296-304; Jonathan Simon, *Poor Discipline: Parole and the Social Control of the Underclass, 1890-1990* (Chicago: University of Chicago Press, 1993), 39-67; James B. Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977), 15-51; John Morony, *The More Things Change: A History of Corrections in New South Wales* (Sydney: J. Morony, 1988), 520-529.

<sup>1559</sup> For an overview of the history of American prison and convict labor, see Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941* (Cambridge: Cambridge University Press, 2008). Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (London: Verso, 1996); Harry Elmer Barnes and Negley K. Teeters, *New Horizons in Criminology: The American Crime Problem* (New York: Prentice-Hall, Inc., 1946), 685-716.

use of prison labor and prison-made products.<sup>1560</sup> In addition, most prison industries involved low-value added, basic manufacturing or agriculture that increasingly could not compete with most free world equivalents. The skill sets taught to inmates in prison industries and those required in the private market diverged significantly as prison labor became increasingly less relevant to the nature of work outside.<sup>1561</sup> Few governments could afford to subsidize industries or provide additional work for prisoners during the Depression.

Consequently, prison regimes organized around the availability of labor fell into crisis with most prisoners idled as work disappeared. A national survey of prisons conducted by the U.S. Attorney-General in 1939 and 1940 concluded that:

From a place of domination in prison programs, prison industries have gone to the other extreme where idleness due to their absence is the outstanding feature of prison life in sixty-six prisons and a major problem in all but six. The industrial prison as such exists in only a few places. In its stead is developing a prison in which industry will play only one part, although an important one, in the daily program.<sup>1562</sup>

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<sup>1560</sup> The U.S. Congress legislation during the Great Depression, which severely restricted competition between free workers and prison labor. These acts relegated prison industry to a “state-use” market, which mandated that all prison-produced goods had to be sold only to public agencies. See Hawes-Cooper Act, 49 U.S.C. 60 (1929); *Ashurst-Sumners Act/Sumners-Ashurst Act*, 18 U.S.C. 1761 (1935/1940); Walsh-Healey Public Contracts Act (1936, as amended 41 U.S.C. 35-45); J.A.C. Grant, “Interstate Traffic in Convict-Made Goods,” *Journal of Criminal Law and Criminology*, 28 (March-April 1938), 854-860; Daniel Glaser, *The Effectiveness of a Prison and Parole System* abridged ed. (Indianapolis: Bobbs-Merrill Co., Inc.), 156-172. For Australian perspectives, see Taylor, “Prison Without Walls,” 128-135; Fiori Rinaldi, *Prison Labour in Australia* (Canberra: Australian National University, 1973). Taylor argues that opposition to prison labor was more “extreme” in the United States, but this might partly be because the strength of the labor movement in Australia made policy makers less ambitious in their inmate labor proposals. Rinaldi noted that prison labor in both the United States and Australia followed a state-use system, with few goods made for the private market.

<sup>1561</sup> Comptroller-General Leslie Nott commented on his overseas study of prison in 1947 that production machinery in New South Wales prison was not keeping pace with either market changes in factories in American and British prisons. He felt that workshops in New South Wales prison could be modernized if “machinery becomes available,” which indicated that this was not as critical a need as other areas. Nott, however endorsed vocational education—“employment for instruction and not for production”—as an area needing more practical improvement New South Wales prisons. Leslie C. J. Nott, *Report of Investigation of Prison Systems of United Kingdom and the United States of America, April-July, 1947* (Sydney: Government Printer, 1947), 23-26.

<sup>1562</sup> United States, Department of Justice, *Attorney General’s Survey of Release Procedures*, v. 5 (Washington, D.C.: United States Government Printing Office, 1939-1940), 225.

In the absence of work, prison staff often accommodated the growth of illicit economies run by groups of powerful prisoners, who in turn colluded with the authorities in maintaining institutional order.<sup>1563</sup> Many administrators considered these types of arrangements, which appear to have been widespread, as temporary adjustments, needed to maintain order, but they actively worked against the interference of the rival source of authority represented by social science experts and their methods. Many of these latter reformers, who were active in organizations like the American Prison Association and the International Penal and Penitentiary Commission, promoted even greater departures from previous prison regimes. They advocated the greater use of education and individualized case work, believing that industry would never return to its pre-depression levels. Work would become more of a supplement to these other programs focused much less on producing a profit or self-sufficiency and more on trade training or simply teaching industrious habits.<sup>1564</sup>

Classification was a central aspect in many of these new plans. The reconstitution of prison order after World War II and the renewal of rehabilitation rested not only on the new array of services and programs, like education, but crucially on properly identifying and sorting inmates to match them with the programs and variable custody levels. Classification and the

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<sup>1563</sup> Charles Bright, *The Powers that Punish*; Donald Clemmer, *The Prison Community* (Boston: Christopher Publishing House, 1940); John Irwin, *Prisons In Turmoil* (Boston: Little, Brown and Company, 1980); Gresham M. Sykes, *The Society of Captives: A Study of a Maximum Security Prison* (Princeton: Princeton University Press, 1958). For an example that departed from this pattern to some degree see, Jacobs, *Stateville*.

<sup>1564</sup> Bright, *The Powers that Punish*, 246-258. For an overview of international perspectives on the state of prison labor after the war, see the discussions of juvenile delinquency and young offenders in the *Proceedings of the Twelfth International Penal and Penitentiary Congress* (The Hague, August 14-19, 1950) vol. 2 *Record of the Meetings*, 330-409, 448-450; vol. 6 *General and National Reports of Section IV* (Bern: International Penal and Penitentiary Commission, 1951).



case histories it produced also provided a way to further integrate parole and other forms of discretionary release and earned time reductions into prison regimes. Many reformers also saw in enhanced classification a means to contain the influence of truly dangerous prisoners and reduce the influence of pervasive, anti-institutional, prison subcultures.

In the 1940s and early 1950s, prison authorities in several American and Australian jurisdictions began hiring or contracting more professional social scientists and academics to evaluate prisoners concerning their behavior, prospects for reform or parole consideration, possible work assignments, education, and transfer to different institutions.<sup>1565</sup> This phenomenon paralleled the broader growth and increased legitimacy of social science expertise after World War II, apparent in both the United States and Australia.<sup>1566</sup> Yet, these reforms did not appear in many jurisdictions until after a series of investigations, unrest, and riots as well as more protracted attempts by prison staff to reassert custodial authority over powerful groups

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<sup>1565</sup> Harry E. Barnes, *Prisons in Wartime: Report on the Progress of the State Prison War Program Under the Government Division of the War Production Board* (Washington, D.C.: War Production Board, 1944); Jessica Mitford, *Kind and Usual Punishment: The Prison Business* (New York: Vintage, 1974), 107-118; John Irwin, *Prisons in Turmoil* (Boston: Little, Brown and Company, 1980); Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford: Stanford University Press, 1994); Bright, *The Powers that Punish*; Theodore Hamm, *Rebel and a Cause: Caryl Chessman and the Politics of the Death Penalty in Postwar California, 1948-1974* (Berkeley: University of California Press, 2001); Rotman, "The Failure of Reform: United States, 1865-1965"; Ramsland, *With Just But Relentless Discipline*, 268-269, 286-293, 299-309; Sean O'Toole, *The History of Australian Corrections* (Sydney: University of New South Wales, 2006), 158-162; Leo Carroll, *Lawful Order: A Case Study of Correctional Crisis and Reform* (New York: Taylor Francis, 1999) This shift also appeared in parole systems. See, Simon, *Poor Discipline*.

<sup>1566</sup> In general, see Alfred K. Mann, *For Better or For Worse: The Marriage of Science and Government in the United States* (New York: Columbia University Press, 2000); Ellen Herman, *The Romance of American Psychology: Political Culture in the Age of Experts, 1940-1970* (Berkeley: University of California Press, 1996); Walter A. Jackson, *Gunnar Myrdal and America's Conscience: Social Engineering and Racial Liberalism, 1938-1987* (Chapel Hill: University of North Carolina Press, 1994); Nicholas Brown, *Governing Prosperity: Social Change and Social Analysis in Australia in the 1950s* (Cambridge: Cambridge University Press, 1995); Stuart Macintyre, *The Poor Relation: A History of the Social Sciences in Australia* (Melbourne: Melbourne University Press, 2010); Mark Solovey and Hamilton Cravens (eds.), *Cold War Social Science: Knowledge Production, Liberal Democracy, and Human Nature* (New York: Palgrave Macmillan, 2012); Jamie Cohen-Cole, *The Open Mind: Cold War Politics and the Sciences of Human Nature* (Chicago: University of Chicago Press, 2014); Joy Rohde, *Armed with Expertise: The Militarization of American Social Research during the Cold War* (Ithaca: Cornell University Press, 2013); Steinmetz, "Scientific Authority and the Transition to Post-Fordism."

of prisoners. In the 1950s, penal authorities in many jurisdiction began investing heavily in the promise of a reconstituted reform project based on work, classification and individual treatment plans. Even the many jurisdictions that never bought into the claims of therapeutic rehabilitation, nevertheless, adopted classification procedures.<sup>1567</sup>

Classification in these projects was always multivalent, serving several different purposes at the same time. Early forms of classification had largely prioritized custodial and management concerns. This continued to be the primary concern in classificatory practices after World War II. However, the emerging therapeutic model of rehabilitation, which of course, had numerous different permutations across jurisdictions and time, also began to make deep inroads on the classification practices. This articulation of classification with treatment was ascendant in prison reform circles and provided a coherent penal philosophy for bureaucratic reorganization and consolidation, which affected both the Bureau of Correction in Pennsylvania and the Department of Prisons in New South Wales.<sup>1568</sup> Yet, as with many other aspects of imprisonment during this period, the competition between treatment and custody personnel ran throughout classification practices.

In the early 1950s, prison bureaucracies in both New South Wales and Pennsylvania created formal classification committees which became an institutional meeting point for treatment and custodial staff. The similarity of these reforms and their timing was, of course,

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<sup>1567</sup> See, for instance the relationship of practices in Arizona, Montana and Texas in relation to this movement. Mona Lynch, *Sunbelt Justice: Arizona and the Transformation of American Punishment* (Stanford University Press, 2010); Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire* (New York: Metropolitan Books, 2010); Keith Edgerton, *Montana Justice: Power, Punishment and the Penitentiary* (Seattle: University of Washington Press, 2004)

<sup>1568</sup> Ramsland, *With Just But Relentless Discipline*, 296-309; McWilliams, *Two Centuries of Corrections in Pennsylvania*, 38-41.

not isolated to these two jurisdictions. Numerous jurisdictions (national and subnational) adopted analogous practices as well with many experts and practitioners engaging in study tours of other jurisdictions, obtaining research material from elsewhere, and attending international and regional penology and related social science conferences. Leslie Nott, the New South Wales Comptroller-General of Prisons, travelled to the United States and the United Kingdom in 1947 for the expressed purpose of inspecting foreign penal systems to aid in the overhaul of prison operations in New South Wales.<sup>1569</sup> After Nott's overseas study tours, the Department of Prisons established the first classification committee in 1950, which included social scientists among others. It was to evaluate all newly admitted prisoners at a reception prison in the Long Bay complex, near Sydney.<sup>1570</sup> A major riot at the Western Penitentiary in Pittsburgh in 1952 led to an investigation, which included two penologists from different states (Illinois and Wisconsin), that recommended the reorganization of the prison system and the establishment of formal classification committees at two reception centers in Philadelphia and Pittsburgh.<sup>1571</sup>

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<sup>1569</sup> Leslie C. J. Nott, *Report of Investigation of Prison Systems of United Kingdom and the United States of America, April-July, 1947* (Sydney: Government Printer, 1947).

<sup>1570</sup> Nagle, *Report of the Royal Commission*, 567-568.

<sup>1571</sup> "Clinics for Crime: New Penal System to Speed Rehabilitation of Convicts," *Philadelphia Inquirer*, (December 28, 1953), newsclipping; "Governor Approves Revamp of Prisons," (December 29, 1953), newsclipping; "Clinics to 'Cure' Criminals: Chaplains Offer a Helping Hand to Prisoners In Their Climb to Normal Honest Lives," *Philadelphia Inquirer*, (December 31, 1953), newsclipping; "Clinics to 'Cure' Criminals: Sutton, Tame Inside Prison and Outlaw Outside, Called Personality Immune to Reform Pleas," *Philadelphia Inquirer*, (December 31, 1953), newsclipping; "Sex Offenders To Be Isolated," (December 31, 1953), newsclipping; "Rehabilitation Chief Goal: New State Prison Reforms Under Way," *Sun-Telegraph*, (January 10, 1954), newsclipping; "Convicts Are Classified: Grouping Vital In Prison Plan," *Sun-Telegraph*, (January 11, 1954), newsclipping in NEWSPAPER CLIPPINGS, 1953-1987, September 1953-September 1954, 14-1555 box 1, RG-58: Records of the Department of Corrections Press Office. Pennsylvania State Archives, Harrisburg (hereafter PSA); Committee to Investigate the Peno-Correctional System (Jacob L Devers), *Report of the Committee Appointed by Honorable John S. Fine, Governor: To Investigate the Peno-Correctional System of the Commonwealth of Pennsylvania* (Harrisburg: Committee to Investigate the Peno-Correctional System, 1953); Committee to Investigate the Peno-Correctional System (Jacob L Devers), *Follow-Up Report of the Devers Committee* (Harrisburg: Committee to Investigate the Peno-Correctional System, 1954).

Many of the specific aspects and rituals of the postwar classification process appeared in many different jurisdictions.<sup>1572</sup> The administration of standardized tests (intelligence, psychological, educational, and vocational) and the collection of criminal, institutional and work histories, for instance, was standard protocol in Pennsylvania, New South Wales and a host of other places. A classification committee composed of representatives of different areas of correctional employment (psychologists, industries officer, custodial officer, chaplain, senior officer/deputy superintendent) evaluated the resultant data and presented their views of an inmate's case. They then solicited further information from an inmate during a formal interview before the committee.<sup>1573</sup> This process, thus, drew on both standardized testing and the accumulated experience of a variety of different correctional workers. This was time consuming process and there were no clear guidelines to follow. Nor was there a way to ensure that the relevant classification criteria would be weighed the same for each inmate. In practice, the primary determinate of placement and treatment plans was still security; inmates who the committee determined to be the riskiest, usually based on their criminal history, often could not access the new programs and training opportunities because of their placement in high security institutions.

During the 1960s, the American federal judiciary began to intervene in prison matters, reversing decades of deference to prison authorities on issues that the courts previously

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<sup>1572</sup> The industry standard was established in American Prison Association, *Handbook on Classification in Correctional Institutions* (New York: American Prison Association, 1947).

<sup>1573</sup> This format followed the structure recommended in *ibid.* See also National Institute of Corrections, *Prison Classification: A Model Systems Approach* (Washington, D.C.: U.S. Dept. of Justice, National Institute of Corrections, 1982), 3-4; Tim Brennan, "Classification: An Overview of Selected Methodological Issues" in Don M. Gottfredson and Michael Tonry (eds.), *Prediction and Classification: Criminal Justice Decision Making Crime and Justice: A Review of Research*, vol. 9 (Chicago: University of Chicago Press, 1987), 208-211; John Irwin, *The Felon* (Englewood Cliffs Prentice-Hall, 1970 ), 36-50; John Irwin, *Prisons in Turmoil* (Boston: Little, Brown, 1980), 37-65.

considered to be internal administrative prerogatives.<sup>1574</sup> Many of the early cases came at the behest of imprisoned members of the Nation of Islam, who argued that prison authorities violated their religious freedom and free speech.<sup>1575</sup> By the late 1960s, however, cases involving the violations of due process and equal protection under the Fifth and Fourteenth Amendment touched upon whether inmates had certain due process rights attendant to formal decision-making by prison staff, which directly affected a prisoner's life and well-being. Imprisoned people challenged their captors on decisions to segregate them, exclude them from certain programs, transfer them and how they adjudicated internal disciplinary hearings.<sup>1576</sup> Decisions such as these always involved classification or program review committees and prisoners soon challenged the basic evaluations these committee produced, which dramatically affected how a person would be treated in prison and where they would be placed. The courts largely granted prison authorities wide latitude in classification decisions and denied that inmates had due process rights in this process.

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<sup>1574</sup> For a sympathetic assessment of this change see, Malcolm M. Feeley and Roger A. Hanson, "The Impact of Judicial Intervention on Prisons and Jails: A Framework for Analysis and a Review of the Literature," in John J. Dilulio, Jr. (ed.), *Courts, Corrections, and the Constitution: The Impact of Judicial Intervention on Prisons and Jails* (New York: Oxford University Press, 1990), 12-46; Malcolm M. Feeley and Edward L. Rubin, *Judicial Policy Making and the Modern State: How the Courts Reformed America's Prisons* (New York: Cambridge University Press, 1998). For a less sympathetic and less convincing view see, John J. Dilulio, Jr., *Governing Prisons: A Comparative Study of Correctional Management* (New York: Free Press, 1987) and Robert Wood, *Remedial Law: When Courts Become Administrators* (Amherst: University of Massachusetts Press, 1990). For an assessment about how this trend related to professionalization in a large state prison see, James B. Jacobs, *Stateville*, especially chapter 4-7. For a wider discussion of the increased visibility and porousness of the prison see, Pratt, *Punishment and Civilization*, 145-193.

<sup>1575</sup> Jacobs, *Stateville*, 58-69; Christopher E. Smith, "Black Muslims and the Development of Prisoners' Rights," *Journal of Black Studies*, 24 (1993), 131-46; Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford: Stanford University Press, 1994), 63-92; Darlene J. Conley and Julius Debro, "Black Muslims in California Prisons: The Beginning of a Social Movement for Black Prisoners in the United States," in *Race, Class, Gender, and Justice in the United States*, Charles E. Reasons, Darlene J. Conley and Julius Debro, eds. (Boston: Allyn & Bacon, 2002), 278-91; John A. Fliter, *Prisoners' Rights: The Supreme Court and Evolving Standards of Decency* (Westport: Greenwood Press, 2001).

<sup>1576</sup> National Association of Attorneys General/Committee on the Office of Attorney General, *Administrative Segregation of Prisoners: Due Process Issues* (Raleigh: Committee on the Office of Attorney General, January 1979).

However, the willingness of courts to also hear cases alleging “cruel and unusual punishment,” according to the Eighth Amendment, meant that a multitude of routine prison practices and conditions came under direct scrutiny. These cases, often referred to as “totality of conditions” cases, indicted the practices and living conditions of entire prison systems as tantamount to cruel and unusual punishment.<sup>1577</sup> These cases came in two waves. The first occurred at the very end of the 1960s and lasted through the first few years of the 1970s.<sup>1578</sup> These cases challenged the constitutionality of entire state prison systems based on widespread overcrowding, lack of meaningful opportunities for rehabilitation, education, and recreational, violence between inmates and between inmates and guards, arbitrary discipline, and arbitrary work and housing assignments. The resolutions of these cases often led to the judicial appointment of special masters, persons or committees charged with making sure that prison officials carried out court ordered reform. In this sense, the judiciary, though nominally outside of normal prison operations, began to exert a great deal of influence in the direct, daily routines of prison life.

While classification per se was rarely the subject of “totality of conditions” litigation, the courts argued that comprehensive classification systems were the best vehicle for reforming poor prison conditions because they provided a systematic way to separate violent predatory inmates from the vulnerable, provide programs, education, and medical and mental health services to those in need, and reduce overcrowding and the excessive use of maximum security

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<sup>1577</sup> The first case fitting this description was *Holt v. Sarver*, 300 F. Supp. 825 (1969). Although it did not specifically mention or consider classification, the court determined that imprisonment in Arkansas state prisons constituted cruel and unusual punishment.

<sup>1578</sup> Phillip J. Cooper, *Hard Judicial Choices: Federal District Court Judges and State and Local Officials* (New York: Oxford University Press, 1988), 212-216, 233-270.

placements.<sup>1579</sup> In some instances, the courts felt that the lack of such a comprehensive classification system contributed to the problems that were the basis of the suits. As a result, those tasked with carrying out the courts' orders, whether state prison authorities or special masters, spent a considerable amount of resources creating or drastically refashioning classification systems, a process which also became fraught with political disagreements.<sup>1580</sup>

The second wave picked up in the late 1970s and largely involved new prisons experiencing overcrowding.<sup>1581</sup> Many of the earlier totality of conditions cases concerned much older prisons, including some nineteenth-century facilities. These latter cases became more frequent as overcrowding reached unprecedented levels in the late 1970s and early 1980s. While courts, legislators and prison officials considered numerous methods to address overcrowding by diverting convicted offenders away from prisons, once they decided to confine a person, formal classification systems were the only available mechanism for allocating scarce prison space, and they played a central role in evaluating candidates for early release schemes. This meant that courts scrutinized classification procedures and often found them wanting. Even latter cases that did not involve direct orders to implement new classification systems,

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<sup>1579</sup> Another case from Arkansas—*Holt v. Sarver*, 309 F. Supp. 362 (1970)—stated that the prison authorities could reduce violence in the state prisons by developing a systematic way to making housing placement decisions. However, they stopped short of explicitly calling this “classification.” Subsequent court decisions were more explicit. See, *Morris v. Travisono*, 310 F. Supp. 857 (1970); *Pugh v. Locke*, 406 F. Supp. 318 (1976); *Laaman v. Helgemoe*, 347 F. Supp. 269, 275 (1977); *Pamagiano v. Garrahy*, 443 F. Supp. 956 (1977). See also, National Institute of Corrections, *Prison Classification: A Model Systems Approach*, 4-7; National Association of Attorneys General/Committee on the Office of Attorney General, *Prison Conditions: An Outline of Cases* (Raleigh: Committee on the Office of Attorney General, March 1979); Fliter, *Prisoners' Rights*, 113-114;

<sup>1580</sup> For the extensive discussion of the problems implementing the classification system order in the *Pugh v. Locke* decision, see Larry W. Yackle, *Reform and Regret: The Story of Federal Judicial Involvement in the Alabama Prison System* (New York: Oxford University Press, 1989); especially 137-167.

<sup>1581</sup> Cooper, *Hard Judicial Choices*, 215, 233-270.

nevertheless involved remedies that presupposed the managerial capacity provided by comprehensive classification systems.<sup>1582</sup>

At the beginning of the 1980s, a little over a decade's worth of court rulings highlighted classification as a major area of judicial concern. Its systematic nature, which touched upon nearly all facets of prison organization and routines, meant that court intervention over other matters would often end up considering classification decision-making and related practices, like segregation. Several rulings that declared some states' entire prison systems unconstitutional focused on how a revised or newly created classification system could provide the primary way to eventually bring the prison system back into constitutional compliance.<sup>1583</sup>

The passage of the federal Civil Rights of Institutionalized Persons Act (CRIPA) in 1980 added additional weight to these ruling. Prior to this law, the Department of Justice could only join cases that had been filed by others. In most cases, the original petitioner in such cases were impoverished prisoners who occasionally gained assistance from activist lawyers and organizations like the NAACP and ACLU. Even in the best of circumstances, these litigation projects lacked adequate resources. After the passage of CRIPA, the federal Department of Justice could initiate actions against prison systems for unconstitutional conditions on its

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<sup>1582</sup> In *Rhodes v. Chapman*, 624 F.2d 1099 (1980) and *Rhodes v. Chapman*, 452 U.S. 337 (1981), the courts ordered the Ohio Department of Corrections to develop a plan to ease double-celling at one of its newest prisons, Lucasville. The plans proposed the Department of Corrections involved moving inmates to new cells, finding suitable inmates to remain double-celled, creating a dormitory-style accommodation in open space, converting a treatment facility to house inmates, building a new cell block, and building more prisons. The court rejected these specific plans, but ordered the defendants to reduce the population at Lucasville by 25 a month in any way they saw fit. All of the options involved choosing which inmates to move and planning that could only be achieved through classification practices. See, Cooper, *Hard Judicial Choices*, 233-270.

<sup>1583</sup> See, for instance, *Holt v. Sarver*, 300 F. Supp. 825 (1969); *Holt v. Sarver*, 309 F. Supp. 362 (1970), aff'd 442 F.2d 304 9<sup>th</sup> Cir. 1971); *Morris v. Travisono*, 310 F. Supp. 857 (1970); *Pugh v Locke*, 406 F. Supp. 318 (1976); *Laaman v. Helgemoe*, 437 F. Supp. 269, 275 (1977); *Palmagiano v. Garrahy*, 443 F. Supp. 956 (1977).



own.<sup>1584</sup> This meant that meritorious cases that might have never been brought to court due to lack of funds or other resources by prisoners and their allies could now be initiated and funded by the Department of Justice.<sup>1585</sup> This provided the federal government with a powerful legal tool for using the courts to develop and enforce compliance with a new set of national standards for prison conditions. With the prospect of greater outside scrutiny by the federal judiciary and attorneys-general, prison systems had an enormous incentive to revisit how they classified inmates and how they could alleviate unconstitutional practices through the classification system.

Ironically, the expert knowledge and deliberative decision-making that animated the postwar reform of classification became several decades later its main source of vulnerability to judicial intervention. Courts acknowledged that prison authorities had the right to classify prisoners, and they did not extend due process rights to inmates for classification decisions. However, classification practices often appeared arbitrary; classification committees gave little or no justification for their decisions and often failed to apply criteria equally across all cases. The subjective aspects of expert decision-making—once touted at this practice’s best feature—now appeared too loose, biased and arbitrary. Classification practices also lacked any accountability mechanisms. The unchecked discretion enjoyed by both custodial staff and positivistic social scientists on classification committees worried the judiciary.

Penological experts were also concerned about classification, but for them it was only a minor part of much more pervasive doubts about the purposes and effectiveness of the entire

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<sup>1584</sup> Civil Rights of Institutionalized Persons Act, Public Law 96-247 (1980).

<sup>1585</sup> Karen E. Holt, *When Officials Clash: Implementation of the Civil Rights of Institutionalized Persons Act* (Westport: Praeger, 1998), 13-19.

postwar project of therapeutic rehabilitation. While much of the growing rejection of rehabilitation centered on specific programs and interventions, like group counseling programs, some practitioners also targeted classification practices because they were the basis of treatment plans and the mechanism for allocating people and resources toward or away from specific programs. Even with the other purposes served by classification, the current practices could not escape association with the therapeutic discourse and assumptions nurtured over several decades.

Despite the decline of rehabilitation during the 1970s, classification practices underwent a renewal with many of its other functions becoming more salient. The main title of a 1982 volume published by the American Correctional Association summarized this shift: *Classification as a Management Tool*.<sup>1586</sup> The lead essay in the volume, by Larry Solomon and S. Christopher Baird, emphasized that previous classification practices were often too esoteric or useless for most correctional staff.<sup>1587</sup> The classification process generated increasingly complex research data about offenders, but such findings were either not utilized or became more like social science window-dressing for what were security-based decisions, usually made by senior custodial officers serving on classification committees.<sup>1588</sup> This reality meant, according to the authors, that many prison systems underutilized classification systems and thereby ignored how beneficial they could be, especially if they were revised. Solomon and Baird were unequivocal in their view: "Corrections must recognize that classification is first and foremost a management tool."<sup>1589</sup>

Whether the area of concern was security, budgeting, resource allocation, judicial and constitutional compliance or treatment, the major function of classification was to properly sort inmates in the most efficient, optimal way in relation to institutional capacities. This had

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<sup>1586</sup> American Correctional Association, *Classification As a Management Tool: Theories and Models for Decision-Makers* (College Park: American Correctional Association, 1982)

<sup>1587</sup> Larry Solomon and S. Christopher Baird, "Classification: Past Failures, Future Potential" in *ibid.*, 5-9.

<sup>1588</sup> *Ibid.*, 6-8.

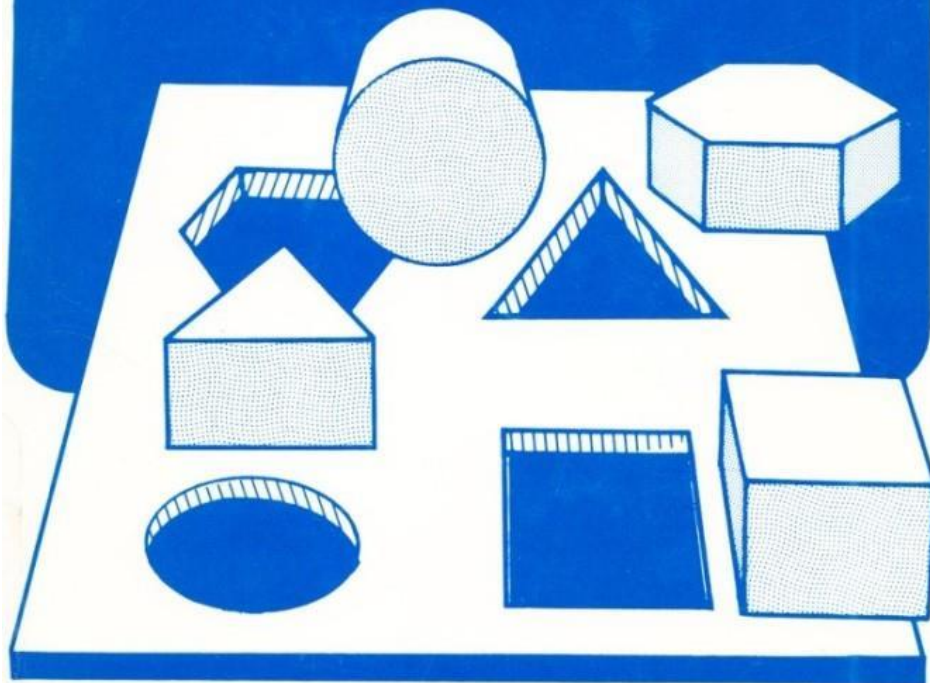
<sup>1589</sup> *Ibid.*, 6.

arguably always been a major aspect of classification, but researchers and practitioners explicitly stated it now and relegated treatment effectiveness to a secondary concern.<sup>1590</sup> As Solomon and Baird indicated, this meant that classification needed to be simplified to better serve the complex array of different needs and areas of concern in prisons. The cover of the *Classification as a Management Tool* volume reflected this new orientation as a return to a basic sorting exercise (See Figure 14 below).

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<sup>1590</sup> For similar statements, see James Austin, "Assessing the New Generation of Prison Classification Models," *Crime and Delinquency*, 29 (October 1983), 561-576; Harriet B. Braiker, *Policy Implications, Limitations, and Ethical Considerations of Criminal Offender Classification Models* (Santa Monica: Rand Corporation, 1979); Martin J. Bohn, Jr., "Management Classification for Young Adult Inmates," *Federal Probation*, 43 (December 1979), 53-59; Carl B. Clements, "The Relationship of Offender Classification to Problems of Prison Overcrowding," *Crime and Delinquency*, 28 (January 1982), 72-81; Carl B. Clements, "The Future of Offender Classification: Some Cautions and Prospects," *Criminal Justice and Behavior*, 8 (March 1981), 15-38; Carl B. Clements, "Offender Classification: Problems and Prospects for Correctional Management," *Prison Law Monitor*, 2 (1980), 237-242; Edwin I. Megargee and Martin J. Bohn, Jr., *Classifying Criminal Offenders: A New System Based on the MMPI* (Beverly Hills: Sage, 1979); Robert B. Levinson, "A Clarification of Classification," *Criminal Justice and Behavior*, 9 (June 1982) 133-142; Robert B. Levinson and J.D. Williams, "Inmate Classification: Security/Custody Considerations," *Federal Probation*, 43 (March 1979), 37-43; National Institute of Corrections, *Prison Classification: A Model Systems Approach* (Washington, D.C.: U.S. Department of Justice, 1981); Herbert C. Quay, *Managing Adult Inmates: Classification for Housing and Program Assignments* (College Park: American Correctional Association, 1984).

# Classification As A Management Tool: Theories And Models For Decision-Makers



*Figure 14: Classification as basic sorting*

Figure 14. Image of basic sorting on the cover of American Correctional Association Classification as a Management Tool: Theories and Models for Decision-Makers (College Park: American Correctional Association, 1982).

This new managerial orientation in penal classification held out the hope that some of the longstanding tools of reformative imprisonment could be transformed to address contemporary problems of overcrowding, resource scarcity, judicial scrutiny and violence among prisoners. As such, it became a recurrent item on lists of reform recommendations produced by courts, independent inquires, internal assessments and expert consultants.

### **The Construction of Objective Classification in Pennsylvania**

The creation of a new classification system in Pennsylvania between 1981 and 1983 must be understood in relation to these broader political trends, but also in how they related to specific changes and scandals affecting criminal justice in Pennsylvania. While the U.S. federal courts had not explicitly objected to clinical methods of prediction and classification, with their emphasis on professional judgment and deliberation, they reigned in similar reasoning in other institutional settings, especially in relation to institutionalization for mental illness. This critique of professional discretion was much broader, however, and was not the exclusive purview of the federal courts. It encompassed other areas of criminal justice, especially in the areas of sentencing and judicial discretion.<sup>1591</sup> In the late 1970s, Pennsylvania's General Assembly passed legislation creating a sentencing commission to craft sentencing guidelines designed to reign in the wide range of judicial sentencing patterns.<sup>1592</sup> The state's major dailies often

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<sup>1591</sup> An often unspoken problem in the treatments of judicial discretion was the concurrent rise in prosecutorial discretion. The decision of when to press charges and under which offense categories rested ultimately with prosecutors. A number of commentaries from the time noted that this explained in part the growing prominence of plea bargaining and the decline of trials. See, for instance, Kenneth Culp David, *Discretionary Justice: A Preliminary Inquiry* (Urbana: University of Illinois Press, 1971); Marvin E. Frankel, *Criminal Sentences: Law without Order* (New York: Hill and Wang, 1973); Paul E. Dow, *Discretionary Justice: A Critical Inquiry* (Cambridge: Ballinger Pub. Co., 1981); Lawrence M. Friedman, "History, Social Policy, and Criminal Justice," in *Social History and Social Policy*, David J. Rothman and Stanton Wheeler, eds. (New York: Academic Press, 1981), 203-235

<sup>1592</sup> Susan E. Martin, "Interests and Politics in Sentencing Reform: The Development of Sentencing Guidelines in

published articles highlighting sentencing discrepancies between different judges and courts involving ostensibly the same types of crimes.<sup>1593</sup> It appeared from these critiques that sentencing differences could be explained by where a person was convicted and sentenced; the notion of a geography of sentence severity and leniency sat uneasily with an expectation of uniform law enforcement. Between 1978 and 1982, the Pennsylvania Commission on Sentencing drafted two different sets of guidelines in an attempt to create more sentencing uniformity before gaining legislative approval.<sup>1594</sup> Gov. Dick Thornburgh's mandatory minimum sentencing bill addressed this issue as well, but in a more focused and punitive manner.<sup>1595</sup>

Discretionary authority in the state's parole system also came under fire from legislators and Thornburgh. The governor repeatedly attempted to abolish the entire parole board, citing its inconsistent decision-making, reclusiveness, and unaccountability before the public. He wanted to retain post-release supervision and establish a "good time" incentive system for prisoners to earn much smaller sentence reductions.<sup>1596</sup> Although, the parole board survived

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Minnesota and Pennsylvania," *Villanova Law Review*, 29 (February 1984), 21-113; John H. Kramer and Robin L. Lubitz, "Pennsylvania's Sentencing Reform: The Impact of Commission-Established Guidelines," *Crime and Delinquency*, 31 (October 1985), 481-500. John H. Kramer and Anthony J. Scirica, "Complex Policy Choices: The Pennsylvania Commission on Sentencing" *Federal Probation*, 50 (September 1986), 15-20; John H. Kramer and Jeffery T. Ulmer, *Sentencing Guidelines: Lessons from Pennsylvania* (Boulder: Lynne Rienner, 2009). On the political significance of sentencing guidelines as governing devices see Jonathan Simon, *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford, 2007), 102, 128-130, 165-168.

<sup>1593</sup> For instance, see "Odds Favor Criminals in This Area," *Bulletin*, (April 13, 1975), newsclipping, Bulletin Clippings -Criminals-Bulletin Articles 1975. TUUA; "Sloppy Justice: Lawbreakers Get a Break," *Bulletin*, (April 4, 1976) and "Long Trial Delays Blamed for Justice System Breakdown," *Bulletin*, (April 5, 1976), newsclippings, Bulletin Clippings (loose) -Criminal Justice System-Phila-Bulletin Feature-Robert Kotbauer. TUUA.

<sup>1594</sup> Kramer and Ulmer, *Sentencing Guidelines*, 34-35, 38.

<sup>1595</sup> General Assembly of Pennsylvania, Mar. 8, 1982, P.L.169, No.54.

<sup>1596</sup> Richard H. Glanton to Harold Miller, April 25, 1980 and Agenda, Dick Thornburgh Papers, box 264, folder 26; Information on Governor Thornburgh's Crime Package and Information Parole reform and Mandatory Sentencing Proposals, Harold Miller to Governor Thornburgh/Jim Seif, May 27, 1981, Dick Thornburgh Papers, box 264, folder 29; Impact on State Prison Populations of Parole Abolition and Mandatory Sentencing Bills, Dick Thornburgh Papers, box 264, folder 30; Confidential: Crime Paper, Dick Thornburgh Papers, box 264, folder 31; Summary of the Thornburgh Administration Parole Reform Proposal, Dick Thornburgh Papers, box 264, folder 35; Section: Parole

Thornburgh's campaign, the issue of discretion and accountability framed the debate and parole eligibility was tightened.<sup>1597</sup> Gov. Thornburgh also publicly highlighted his decision to restrict his use of the governor's pardoning and commutation power, which was a substantial departure from past governors.<sup>1598</sup> Thornburgh's immediate predecessor, Milton Shapp, granted 525 pardon requests for sentences of life or lesser terms. Thornburgh in contrast only granted fifteen by the end of his time in office.<sup>1599</sup> Again, the governor's public reasoning was that the exercise of this authority directly conflicted with the court's decisions.

While many life-sentenced prisoners and some progressive penal reformers objected to Thornburgh's position on pardons and commutations, they and many other prisoners welcomed the curtailment of parole. For decades prisoners had complained about the seemingly arbitrary, capricious decisions of parole authorities who never explained the reasoning behind their decisions. Prisoners, with enormous amount of time on their hands, routinely swapped and compared stories success and failure before the parole board. The frustration this exercise of discretionary power engendered among prisoners was palpable to

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Reform Proposal (H.B. 1803), Dick Thornburgh Papers, box 267, folders 1-22. UPASC; Press release, March 25, [1980?], MG-404 Thornburgh Papers, box 109, folder 25. PSA; "Governor Asks End to Parole," *Pittsburgh Post-Gazette* (April 29, 1981).

<sup>1597</sup> "Governor Asks Many Reforms: Tough Penal Code, Welfare Head List," *Pittsburgh Press*, (October 2, 1979); "Thornburgh: Reform Welfare, End Parole," *Pittsburgh Post-Gazette*, (October 3, 1979); "Judges, DA: Don't Abolish Parole," *Pittsburgh Press*, (October 7, 1979); "Twilight for Parole?" *Pittsburgh Press*, (October 10, 1979); "Reasons Behind Ending Parle," *Beaver County Times*, (October 19, 1979); "End to Parole Sought," *Beaver County Times*, (March 25, 1980); "Parole End, Long Terms Key Jail Reform Plan," *Beaver County Times*, (April 29, 1981); "State House Turns Down Prison, Parole Reforms," *Pittsburgh Post-Gazette*, (November 24, 1982); "Parole Reform Proposed," *Observer-Reporter*, (November 15, 1982).

<sup>1598</sup> "Thornburgh Gets Tough on Lifers," *Bulletin*, (August 17, 1980); "Clemency's Not to Be Taken for Granted," *Philadelphia Daily News*, (June 23, 1982); "Pardons Cuts Sharply Under Thornburgh," *Pittsburgh Post-Gazette* (September 13, 1982); Dick Thornburgh Papers, box 267, folders 13-15: Section: Board of Pardons' Executive Clemency Policies. UPASC.

<sup>1599</sup> Gov. Shapp used executive clemency more than his predecessor, Gov. Raymond Shafer, who nevertheless pardoned 137 inmates during his one four year term. Both Shapp and Thornburgh served two four year terms. Board of Pardons Clemency Statistics, RE: Requests for Commutation of Life or Minimum Sentence. Box 1, Folder 4. K. LeRoy Irvis Papers\Add 1995.

anyone who investigated the nature of prisoner grievances.<sup>1600</sup> Reform or the complete elimination of parole was, therefore, a shared position in the governor's office and the prison cell. It animated conservative and radical critiques of the prisons, if for widely different reasons: conservatives believed parole was too lenient and radicals felt it was authoritarian.

Even if it was not as visible as other major political issues of the day, the problems with structured decision-making, discretionary authority and the efforts to eliminate them or became a broad political theme and reform program that permeated various others areas of public administration as well.<sup>1601</sup> In some ways, this widespread effort to tame discretion constituted an attack on the form of regulatory power invested in numerous public agencies since the 1930s, prior to the more explicit efforts to deregulate the economy and rollback public services in the 1980s. In many instances, these efforts overlapped and involved many of the same public figures, notably in this case, Dick Thornburgh. However, in the 1970s, assaults on discretionary authority also became a way to attack other practices, some of which long predated the administrative governance strategies of mid-century liberalism. In Pennsylvania, this took the form of multiple efforts to eliminate patronage appointments from state and local government.

Pennsylvania was unusual in the 1970s compared to many other states in the country on the issue of political patronage. Much of the postwar period witnessed the steady decline of such appointment power, but the state's governor controlled over 22,000 positions as late as

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<sup>1600</sup> See for instance the resentment voiced by prisoners during a personal visit by Gov. Milton Shapp to SCI Pittsburgh in 1972. MG-309 Milton J. Shapp Papers, General File, 1971-1979, box 328, folder 29-32. PSA.

<sup>1601</sup> See, for instance, Gary C. Bryner, *Bureaucratic Discretion: Law and Policy in Federal Regulatory Agencies* (New York: Pergamon Press, 1987).



the mid-1960s.<sup>1602</sup> The passage of collective bargaining rights to public employees severely curtailed the number of patronage jobs, but Gov. Milton Shapp still controlled about 4,000 appointments in 1972. Despite this decline, the leaders of the state's Democratic and Republican Parties were slow to adapt and replace patronage with regard to how they managed their parties, built coalitions and governed the state. Many party loyalists still believed that governors had access to more positions than was the case after the mid-1970s, and they wrote to incoming executives, asking for employment. Newspapers accounts of patronage politics during the Shapp (1971-1979) and Thornburgh administrations (1979-1987) are interesting partly for their silence about the shifting nature of politics and governing in the state.<sup>1603</sup> Invective denunciations of machine-style politics, which were commonplace in state political coverage, often failed to fully appreciate the significance of how the rapid decline in patronage was actually undermining this very governing strategy, making it a far less effective political tool by the mid-1970s.

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<sup>1602</sup> In 1956, Pennsylvania's governor commanded 52,959 patronage appointments, which far surpassed every other state in the country. The next closest was New Jersey with 10,463, New York with 7,433, California with 7,232, followed by Connecticut, Massachusetts, Maryland, and Michigan all with under 3,500. Pennsylvania's total fell by about 4,000 positions by 1958. See, Reed M. Smith, *State Government in Transition: Reforms of the Leader Administration, 1955-1959* (Philadelphia: University of Pennsylvania Press, 1963), 80-91. The next governor, William Scranton, was able to extend civic service designation to an additional 22,000 during the early 1960s, and Governor Raymond Shafer further reduced patronage positions by signing a collective bargaining law, permitting many state employees to unionize. By the time Milton Shapp became governor in 1972, only 4,000 patronage positions remained. Gov. Thornburgh assumed office with fewer still, 3,600 officially, but many of which were shielded by a federal court ruling banning politically motivated termination. See, Sidney Wise, *The Legislative Process in Pennsylvania*, 2<sup>nd</sup> ed., (Harrisburg: Commonwealth of Pennsylvania, 1984,), 34-35.

<sup>1603</sup> For a similar account of confusion changing political orders at a national level see, Byron E. Shafer, "The Two Majorities and the Puzzle of Modern Politics, 1955-2000" in Byron E. Shafer and Anthony J. Badger (eds.), *Contesting Democracy: Substance and Structure in American Political History, 1775-2000* (Lawrence: University Press of Kansas, 2001), 225-249.

As patronage declined, however, accounts and incidents of “corruption” became much more visible and widely covered in the press.<sup>1604</sup> This is a crucial background for understanding the appeal of state and local efforts to eliminate discretionary authority in numerous public agencies from the mid-1970s onward. This, of course, resonated with some notable national precedents as well. Revelations of abuse and war crimes by American forces in Vietnam, for instance, and the Watergate scandal already pushed notions of corruption, malfeasance and the abuse of power into wide circulation. These themes were particularly pronounced in Pennsylvania in the 1970s, however. While covering scandals, the media frequently reminded its audience that Pennsylvania had one of the country’s most corrupt state governments. David Runkel, a reporter for the Philadelphia *Bulletin*, claimed that “238 Pennsylvania public officials from 1970 to May 1978 were convicted of, admitted to, or plead no contest to charges of corruption.”<sup>1605</sup>

After the publicity of scandals and corruption, both political parties, but especially the Republicans, championed a series of legislative initiatives in the late 1970s and early 1980s designed to restore integrity to government.<sup>1606</sup> Since Democrats controlled the General Assembly and governor’s office for much of the 1970s, most of the taint of corruption fell on them. Although Gov. Milton Shapp was never implicated in any wrong doing, administration

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<sup>1604</sup> It was suggested at the time that new practices appeared to absorb some of the loss of these political tools, such as the increase in budgets for hiring outside consultants and advisors who were technically not state employees. See, Paul B. Beers, *Pennsylvania Politics Today and Yesterday: The Tolerable Accommodation* (University Park: Pennsylvania State University Press, 1980), 350, 366-367, 402-409; Philip S. Klein and Ari Hoogenbom, *A History of Pennsylvania*, 2<sup>nd</sup> ed. (University Park: Pennsylvania State University Press, 1980), 524-27, 532-536; Philip Jenkins, “The C.T.A. Case: A Study in Political Corruption,” *Crime, Law and Social Change*, 19 (June 1993), 329-351.

<sup>1605</sup> Klein and Hoogenbom, *A History of Pennsylvania*, 533.

<sup>1606</sup> The quote was a common campaign phrase in the 1978 gubernatorial election. Klein and Hoogenbom, *A History of Pennsylvania*, 533-536.

critics, from both parties, blamed him for tolerating corruption in the executive branch and not setting a higher ethical standard for public employee and officeholder conduct. Dick Thornburgh, who had been appointed the U.S. Attorney for Western Pittsburgh by Richard Nixon and later became assistant attorney general and head of the Criminal Division in the U.S. Department of Justice, built his crime fighting reputation by prosecuting organized crime and official corruption in Pennsylvania.<sup>1607</sup> He carried this reputation over to his gubernatorial campaign, claiming repeatedly that the state suffered from an “integrity crisis” and “an epidemic of corruption.”<sup>1608</sup> Directly significant for Pennsylvania’s prison system, the General Assembly passed legislation in 1980 that made the Attorney-General, who oversaw the Bureau of Correction, an elective position rather than a gubernatorial appointment after accusations of corruption surrounded the position for years.<sup>1609</sup> The legislature temporarily moved the Bureau of Correction to the Department of General Services to keep it within the governor’s control, but most observers expected that the Bureau would soon become a full-fledged department in its own right.

All of these trends commingled in the formation of a complex, layered discourse of public authority that stressed classical liberal and libertarian themes on the restraint of certain

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<sup>1607</sup> Most of the cases Thornburgh initiated involved state leaders and powerful business interests. Inevitably, this led to suggestions that he selectively targeted political opponents in his corruption crusades. See Jenkins, “The C.T.A. Case,” 340-342.

<sup>1608</sup> “Crisis in integrity in PA,” news release on speech before Mt. Lebanon Republican Committee and Council of Republican Women, March 31, 1977, quote. See also “The Stake of Business in Government Integrity,” news release on speech before Erie Rotary Club, May 18, 1977; Attack on Shapp’s nomination of Begler to PA Turnpike Commission, PA Association of Personnel Services, June 23, 1977, news release; Called on Shapp to dismiss patronage secretary Sam Begler, Pittsburgh, PA, July 21, 1978, news release. News Releases from the Dick Thornburgh Papers, (hereafter UPASC), searchable at <http://www.library.pitt.edu/thornburgh/search.html>. Last viewed on August 28, 2015.

<sup>1609</sup> Attorney-General Robert P. Kane was at the center of several different scandals during his time in the Shapp administration. See, “Kane on the Line: Will Pennsylvania Get New Attorney General?” *Observer-Reporter*, (May 20, 1978); Commonwealth Attorneys Act, Act of October 15, 1980, P.L.950, No.164.

types of discretion, the provision of accountability mechanisms and a reconfigured relationship between the state and citizens. As many people have pointed out, this political rationale often merely transferred such power to other sites, which were more politically amenable to advocates of these reforms.<sup>1610</sup> Much like the disparate sources of this discourse, its political valences varied considerably depending on who adopted it and the specific contexts in which they deployed it. A facet of this discourse focused on restraining aspects of penal authority, which became a central concern of many people across the political spectrum in the 1970s.

In many instances, these assaults upon penal authority touched upon the work of classification committees, whether the main bodies at diagnostic and reception centers or the smaller program review committees at each institution. Mistakes or abuse in classification could lead to scandalous negative publicity, whether this involved decisions to segregate a person, admit them to a mental hospital or transfer them to a minimum security facility or community corrections program from where they could escape,. This was especially the case with programs located at the porous border of the penal apparatus, where prisoners supposedly learned to transition to freedom, however limited. Such sites became highly visible in media discourse about punishment and had in fact increased in the last decade as the Bureau made more of a commitment to alternatives to imprisonment. Community correction programs developed into ambiguous, but sensitive penal spaces – ethically, professionally and politically. Assignment mistakes at these points could easily lead to escapes or violence and were hard for anyone to overlook in the penal apparatus, state government or the media. They were

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<sup>1610</sup> This notably the case with sentencing reform, which empowers prosecutors as much as its restrains judges. See Simon, *Governing Through Crime*, 34-37.

flashpoints for scandals and one such eruption, albeit in a different jurisdiction, became the vector through which a specific form of classification knowledge and expertise entered the Pennsylvania Bureau of Correction.

In early 1981, Bureau staff in the central office obtained a report produced by the Correctional Service Group (CSG), a private correctional consulting group that evaluated the classification system used by Maryland's Division of Correction.<sup>1611</sup> The report followed a major investigation of Maryland's classification procedures by the Governor's Commission on Law Enforcement and the Administration of Justice with the support of both the governor and the Maryland General Assembly.<sup>1612</sup> At the time, Maryland's prison bureaucracy and Governor Harry Hughes were embroiled in a major scandal over several high profile prisoner escapes, especially from community corrections centers.<sup>1613</sup> Investigations by the Governor's Commission and a grand jury attributed the escapes to major weaknesses in the current

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<sup>1611</sup> Correctional Service Group, *Pennsylvania Classification Plan*, 1.

<sup>1612</sup> Maryland, Governor's Commission on Law Enforcement and the Administration of Justice and Correctional Services Group, *A Study of the Maryland Division of Correction Classification System: Final Report* (Kansas City: Correctional Services Group, 1981); Maryland, Governor's Commission on Law Enforcement and the Administration of Justice and Correctional Services Group, *Ten Year Prison Facility Plan for the State of Maryland* (Kansas City: Correctional Services Group, 1980).

<sup>1613</sup> "Highlights of the 1980 General Assembly," *Washington Post*, (April 17, 1980); "Many Md. Prisoners Should Be in Stricter Custody, Report Says: Security Held Inadequate for Many Inmates," *Washington Post*, (January 17, 1981); "Consultant Disputed on Prison Needs: Md. Officials Deny \$311 Million in New Facilities Justified," *Washington Post*, (February 10, 1981); "Md. Work-Release Prisoners Wandered at Will, Probe Says: Work-Release Prisoners Seen in Bars, Dope Deans, Driving Cars, Probe Shows," *Washington Post*, (March 28, 1981); "Maryland's Latest Prison Mess," *Washington Post*, (Mar 30, 1981); "Two Top Maryland Prison Officials Resign in Controversy: 2 Top Md. Prison Officials Resign in Controversy," *Washington Post*, (March 31, 1981); "Combative Manner: Both Hughes and Prison Chief Sought Right Time to Part Ways Hughes, Prison Chief Sought Right Time to Part Ways," *The Washington Post*, (Apr 1, 1981); "Six More Md. Convicts Flee From Hagerstown; 3rd Escape in 3 Weeks," *Washington Post*, (Apr 6, 1981); "Prisoner Transfers Set in Md.: Hughes Prepared To Defy U.S. Order On Overcrowding Hughes Orders Sweeping Change in Md. Prisons," *Washington Post*, (April 7, 1981); "Corrections of Corrections Policies," *The Washington Post*, (Apr 11, 1981); "U.S. Judge Overrules Hughes' Attempt to Relieve Prison Crowding," *Washington Post*, (April 24, 1981). "Breakouts at Maryland Corrections Center 'Routine' in Method, Reaction, Reasoning," *Washington Post*, (August 10, 1981). See also Maryland, Governor's Commission on Law Enforcement and the Administration of Justice and Correctional Services Group, *A Study of the Maryland Division of Correction Classification System*, vi-vii, 1.

classification system, specifically how it failed to screen out numerous prisoners with records of serious violent crime for minimum security facilities, community corrections centers and the state's work-release program. Media accounts of the escapes blamed well-intentioned, but naïve, prison authorities for undermining public safety with incompetent or reckless classification decisions that placed dangerous offenders in low security settings.<sup>1614</sup> Many newspaper articles even profiled some of the prisoners involved in the scandal, highlighting their poor records and dangerousness. While such accounts clearly discredited Maryland's Division of Correction, they nevertheless, framed the problem in such a way that tightened security and changes in classification could be offered up as immediate solutions.

The Governor's Commission contracted the Correctional Service Group to further study the issues and recommend improvements. The CSG not only provided knowledgeable advice, but their expertise and outsider status helped depoliticize a contentious topic, framing it instead as a matter of technical evaluation and reform. During the late 1970s and early 1980s, numerous states hired the Kansas City-based CSG to perform similar evaluations and quell the political turmoil created by prison scandals. Robert Buchanan, the leading figure in this firm, previously worked in the Illinois Department of Corrections and the Federal Bureau of Prisons, and he subsequently authored numerous evaluations of classification models and security procedures for the National Institute of Corrections.<sup>1615</sup> The firm specialized in inmate

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<sup>1614</sup> "Many Md. Prisoners Should Be in Stricter Custody, Report Says: Security Held Inadequate for Many Inmates," *Washington Post*, (January 17, 1981); "Md. Work-Release Prisoners Wandered at Will, Probe Says: Work-Release Prisoners Seen in Bars, Dope Deans, Driving Cars, Probe Shows," *Washington Post*, (March 28, 1981); "Six More Md. Convicts Flee From Hagerstown; 3rd Escape in 3 Weeks," *Washington Post*, (Apr 6, 1981).

<sup>1615</sup> Buchanan served as a warden of two different prisons in Illinois before becoming the state's Director of Classification and Assignment. See Buchanan short biographical statement in the section "The Contributors to This Issue," *Journal of Crime and Justice*, 13:1 (1990), v.

classification and prison management, which made them obviously well-positioned to review Maryland's problems. The poor, sometimes publicly hostile, relationship between the current leadership of the Maryland Division of Correction and the General Assembly also made it imperative to have a set of outside experts perform this work. Despite this, the secretary of corrections publicly disputed many of the report's findings and resigned under pressure within a few weeks.<sup>1616</sup>

The evaluation team from the CSG believed that Maryland's classification system needed to be drastically changed. Because of pervasive problems they noticed, the CSG boasted, not unreasonably, that their report represented "the most comprehensive study of a state's total classification system as of that date."<sup>1617</sup> As such, the report generated a lot of interest among academic researchers and practitioners in other jurisdictions, including Pennsylvania. One of the areas addressed by the CSG in the Maryland study was population management, dealing with an unprecedented influx of prisoners and limited inmate bed capacity at varying levels of custody. This aspect of the study alone was ample reason for Pennsylvania officials to show interest in the CSG's work.

In addition, an emerging trend in judicial intervention into prison operations by the early 1980s centered on either problems with poorly functioning classification systems or substandard prison conditions that the courts felt could be ameliorated through state-of-the-art classification systems. Pennsylvania was one of the few well-populated states in the country

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<sup>1616</sup> "Consultant Disputed on Prison Needs: Md. Officials Deny \$311 Million in New Facilities Justified," *Washington Post*, (February 10, 1981); "Two Top Maryland Prison Officials Resign in Controversy: 2 Top Md. Prison Officials Resign in Controversy," *Washington Post*, (March 31, 1981).

<sup>1617</sup> Correctional Service Group, *Pennsylvania Classification Plan*, 1.

that had a large increase in its prison population, which had not yet attracted additional judicial attention over problems like this. Despite entering into a consent decree over many aspects of prison operations, senior officials in the Thornburgh administration believed that the state's mounting overcrowding problem was likely to invite further federal attention soon.<sup>1618</sup> They closely monitored developments in the federal judiciary, the Department of Justice and other jurisdictions. Since federal judges had ordered other states to implement new classification systems, having a state-of-the-art system already in place would possibly avert costly judicial intervention in the state's prison operations.

The leadership of the Pennsylvania Bureau of Correction had been pursuing this strategy for several years already. During the 1970s, the Bureau of Correction standardized certain aspects of their classification practice, which made the reforms of the early 1980s comparatively less extensive than the experience of other states, like Maryland. The Bureau published a system-wide classification manual for the first time in 1973 that was used by every diagnostic and classification center.<sup>1619</sup> At the time, the state operated six such centers. The standard manual was an attempt to bring the practices of all these centers into alignment.<sup>1620</sup> While it appears that Pennsylvania staff considered this a temporary improvement, designed to

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<sup>1618</sup> Strategies for Mandatory Sentencing, Harold Miller to Rick Stafford, March 24, 1981, box 264, folder 30; Crime Announcement on April 28, Rick Stafford to Governor, Jay Waldman, Paul Critchlow, Bob Wilburn and attached Confidential Crime Paper, box 264, folder 31; Alfred Blumstein to Richard L. Thornburgh, March 24, 1981, box 264, folder 41; Fact Sheet on the Proposed New Prison in Montgomery County, box 265, folder 2. Dick Thornburgh Papers; Sam McClea to John White, House Bill 1645, P.N. 1924, June 23, 1981, box 265, folder 17. Dick Thornburgh Papers, UPASC. Fear of judicial intervention and trying to pre-empt it was a common concerns of prison administrators across the United States by the early 1980s. For a study of this phenomenon as it was emerging see James B. Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1978). The 1978 consent decree Pennsylvania entered into grew out of litigation by the Imprisoned Citizens Union. This is discussed in further detail in Chapter 2.

<sup>1619</sup> Correctional Service Group, *Pennsylvania Classification Plan*, 6.

<sup>1620</sup> *Ibid.*, 6, 25; Bureau of Correction, *30<sup>th</sup> Anniversary Commemorative History: The Bureau of Correction and Its History* (Harrisburg: Commonwealth of Pennsylvania, 1983), 13.



make way for a more thoroughly objective system, certain aspects of the federal model remained influential in the reforms later proposed by the CSG.<sup>1621</sup> In 1980, the Pennsylvania Bureau of Correction implemented a classification system developed by the federal Bureau of Prisons during the late 1970s, which constrained discretionary decision-making with an additive checklist system that produced a series of numerical scores for the security risks presented by new inmates. These scores corresponded to a scale of ascending security requirements.<sup>1622</sup> Corrections officials were not very satisfied with this method and considered it more of a stop-gap, more a way to forestall judicial intervention and negative media attention than to properly manage prisoners.<sup>1623</sup>

The Pennsylvania Bureau of Correction may have avoided judicial attention during the 1970s partly because of these changes. Additionally, the size of the state's inmate population remained within the prison system's official rated capacity. However, between 1980 and 1981, the crowding situation in the state's prisons deteriorated and finally exceeded its system-wide capacity. Projections produced by the Pennsylvania Commission of Crime and Delinquency (PCCD) and the Bureau of Correction indicated that persistent overcrowding was likely worsen and last into the 1990s.<sup>1624</sup> While the PCCD sought to address this issue by locating the origin cites of the prisoner influx in the multiple agencies and branches of government, officials within

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<sup>1621</sup> Ibid., 7.

<sup>1622</sup> Ibid.; Robert B. Levinson and J.D. Williams, "Inmate Classification: Security/Custody Considerations," *Federal Probation*, 43 (March 1979), 37-43.

<sup>1623</sup> Ibid.; The Bureau of Correction's relationship with the media was very negative at this time. During a work stoppage by inmates at SCI Graterford in 1980, the Bureau of Correction was the target of several highly critical news articles. The minutes of a conference call between Commissioner of Correction William Robinson and the superintendents of all the major prisons indicate that they believed much of the unrest was fomented by a collusion between radical inmates and irresponsible journalists.

<sup>1624</sup> Alfred Blumstein, Jacqueline Cohen and Harold Miller, "Demographically Disaggregated Projections of Prison Populations," *Journal of Criminal Justice*, 8:1 (1980), 1-26; Harold D. Miller, "Projecting the Impact of New Sentencing Laws on Prison Populations," *Policy Sciences*, 13 (February 1981), 51-73.

the Bureau of Correction believed that improved classification procedures would enable them to better manage the consequent difficulties. The General Assembly and Gov. Thornburgh were also likely to pass several pieces of new sentencing legislation that would actually worsen overcrowding even further. The Bureau of Correction staff and senior policy advisers in the governor's office were already planning new prison construction for most of 1981.<sup>1625</sup> In such a situation, the desire to efficiently manage classification's custody assignment process and its related staffing aspects exceeded treatment concerns in classification reform.

Prison officials saw an opportunity to improve classification practice after obtaining the Maryland classification study in the spring of 1981. In March, Harry Smith, the Director of Programs for the Pennsylvania Bureau of Correction, contacted the CSG and applied for a grant from the National Institute of Corrections to fund a study similar to the one completed for the Maryland Division of Correction.<sup>1626</sup> Once the funds were approved, Buchanan and several other researchers from the CSG met with senior staff in the Program Division and the Central Office in Harrisburg to develop a research plan. The subsequent project entailed a major research effort into the current classification system and the state of the prisons. The project included: a workshop with classification staff; extensive interviews with senior officials, classification staff at both the state's reception prisons (the diagnostic and classification centers) and the major placement prisons; the distribution of surveys to these staff plus custodial staff and a sampling of inmates; direct observation of the classification process; and a review of relevant documents and inmate files. This process also involved tours of most of the

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<sup>1625</sup> See the numerous drafts and planning documents in box 265, folder 14. Dick Thornburgh Papers, UPASC.

<sup>1626</sup> Correctional Service Group, *Pennsylvania Classification Plan*, ii, 1.

state's prisons to assess their security, custody, and program capacities. Donald Stoughton, a former prison official in New York, conducted the security and custody assessments, which formed a separate report.<sup>1627</sup> The entire project commenced in the September 1981, with the final report appearing in late February 1982.

The CSG staff noted early in their final report that they considered the current practices in Pennsylvania to be superior to most of the jurisdictions they had worked with in the past. Pennsylvania already had a comprehensive, standardized classification system, based on considerations, and supported by data, which the CSG deemed essential for the proper classification of inmates. Thus, the consultants recommended a “fine tuning” of what it felt was an already sophisticated classification practice.<sup>1628</sup> Despite being tainted with crisis through their association with rehabilitation, the well-established presence of these classification practices and their dedicated spaces in the prisons enabled the CSG's research project, providing them with the tools and language to complete their research. The shared methods, assumptions, and technical language between the CSG and Bureau personnel shaped the process of negotiating and creating a set of new practices.

While some social theorists have argued that comparison and commensuration are deeply, if implicitly, interwoven into all social scientific methods, the research methods used by the CSG explicitly foregrounded comparison in a number of different ways, which is perhaps

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<sup>1627</sup> The report was titled, “Pennsylvania Correctional Facility Analysis.” Correctional Service Group, *Pennsylvania Classification Plan*, ii, 203.

<sup>1628</sup> Correctional Service Group, *Pennsylvania Classification Plan*, vii-viii, 1; Pennsylvania Bureau of Classification, *Philosophy of Classification: Past-Current-Future*. Ronald J. Marks to Harold Miller, April 1, 1982. Dick Thornburgh Papers, box 265, folder 19. UPASC.

unsurprising given the deeply comparative nature of inmate classification itself.<sup>1629</sup> This was especially apparent in the final report's frequent citation of the practices and experiences of classification staff in other jurisdictions within the United States. In addition to Maryland, the CSG had also performed consulting work for the states of Arkansas, Missouri, Georgia, and Oklahoma. From the text, it was also evident that the consulting group's researchers were well-informed on the practices elsewhere in the country, especially in Alabama, California, New York, and the U.S. Bureau of Prisons, as well as research produced by organizations like the National Institute of Corrections and American Correctional Association. Much of the appeal of the CSG's expertise was their familiarity with this diversity of examples and practices throughout the nation.

More significantly, however, these jurisdictional boundaries - as fulcrums of penal policy and knowledge development - underwrote the formation of CSG's expertise and their comparative perspective. They provided them with multiple venues to research and experiment with new classification practices and eventually to develop one of their own, integrating aspects of several different systems. As a private consulting group, they had professional connections and experience that transcended state boundaries in a way that most prison administrators did not, including even those senior staff members who took jobs in several

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<sup>1629</sup> Aside from methods stressing comparability and quantification, some theorists argue that otherwise idiographic methods often rely on implicit comparisons or commensuration. See reviews of some of these issues see Sally Falk Moore, "Comparisons: Possible and Impossible," *Annual Review of Anthropology*, 34 (October 2005), 1-11; Elizabeth A. Povinelli, "Radical Worlds: The Anthropology of Incommensurability and Inconceivability," *Annual Review of Anthropology*, 30 (October 2001), 319-34; Michael Herzfeld, "Performing Comparisons: Ethnography, Globetrotting, and the Spaces of Social Knowledge," *Journal of Anthropological Research*, 57 (Autumn 2001), 259-276; Wendy Nelson Espeland and Mitchell L. Stevens, "Commensuration as a Social Process," *Annual Review of Sociology*, 24 (August 1998), 313-343.

states over their careers.<sup>1630</sup> By producing knowledge about strengths and weaknesses of different classification models and offering reform advice,<sup>1631</sup> the CSG also deeply affected the practices they studied, catalyzing an integration process as local actors incorporated this knowledge and sometimes even adopted the model developed by the CSG.<sup>1632</sup>

Based on this knowledge base, the CSG outlined several basic methodical models that informed numerous iterations of classification practices across the country.<sup>1633</sup> The report's authors felt that some classification models, especially those that relied largely or exclusively on the clinical evaluation and structured psychological tests (like the Minnesota Multiphasic Personality Test—MMPI) were too costly and possibly vulnerable to judicial challenge.<sup>1634</sup> Other models they surveyed were far more uniform in their procedures. The additive model that Pennsylvania experimented with prior to contacting the CSG was a good example of type. This model consisted of a uniform checklist of questions about all prisoners, which were to be answered by choosing a numerical value on a limited scale. For example, a question might ask for prior convictions or imprisonments: none would be scored 0; one to two priors would be scored 1; three or more would be scored 3. At the end of the inventory, all these numerical

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<sup>1630</sup> The National Institute of Corrections also did much to reform classification practices across the country.

<sup>1631</sup> There was a recursive quality to this comparative work and how it was used: prison administrators compared their own practices to the inventories of classification practices produced by the CSG.

<sup>1632</sup> The model developed by the CSG was called the Correctional Classification Profile.

<sup>1633</sup> Correctional Service Group, *Pennsylvania Classification Plan*, 10-14, 117-123. This base resemblance was at times difficult to establish between models because states experimented with combining them, just as the CSG would in the model they recommended to Pennsylvania. There was nevertheless, enough similarity between many different classification models that they could be grouped into these broad categories. This in some ways resembles the work of “recovery” that Bowker and Star discerned in the efforts of the World Health Organization to manage the modifications to the International Classification of Diseases (ICD) by distributing guidelines for modifications and an algorithm for translating between variations. See, Geoffery C. Bowker and Susan Leigh Star, *Sorting Things Out: Classification and Its Consequences* (Cambridge: MIT Press, 1999), 151-152.

<sup>1634</sup> Ironically, the CSG also felt that some jurisdictions favored the use of the MMPI because the esoteric nature of the test and the expertise needed to interpret it made it appear more scientific and hence provided a “shield” in court. Correctional Service Group, *Pennsylvania Classification Plan*, 121.

values would be tallied, then compared to a range of custody levels demarcated by numerical cutoff points.<sup>1635</sup> Another basic model was referred to as a “decision tree” whereby “the response to an initial question or factor determined the next question to be asked.”<sup>1636</sup> This method would channel subjects into different custody paths by how they answered a standardized list of questions. A consequence of this procedure, however, was that many prisoners would not be asked the same questions depending on the trajectory of prior answers. The report’s authors suggested using a procedure they developed, which combined the best qualities of the additive and decision tree models (explained more below).<sup>1637</sup>

The fine tuning of the Bureau’s existing classification practice envisioned by the CSG, involved explicating the knowledge of staff (and to a lesser extent prisoners), learning how they evaluated cases and arrived at their classification decisions. The project’s goal was to recommend a path toward greater standardization, which would check the exercise of discretionary decision-making, increase uniformity, and as a result enhance the efficacy and productivity of the classification process. These were all qualities that the Bureau’s leadership identified as crucial for managing the rapidly expanding penal apparatus and avoiding or mitigating the damage of lawsuits. The CSG’s work in Pennsylvania exemplifies an unfolding shift in penology in the late 1970s and 1980s toward a greater emphasis on “objective” classification methods in lieu of the previously dominate “subjective” practices. These were the actual terms advocates used to describe (and classify) classification practices. The consultants from CSG readily admitted that no classification system was truly objective, but they employed

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<sup>1635</sup> So, for instance scoring one through ten would indicate placement in the lowest security level.

<sup>1636</sup> Correctional Service Group, *Pennsylvania Classification Plan*, 120-122, quote 122.

<sup>1637</sup> *Ibid.*, 10-14, 112-181.

the distinction to highlight their difference from previous practices.<sup>1638</sup> Subjective in this sense referred almost exclusively to clinical reasoning and judgment associated most clearly with psychological interview and unstructured professional assessment of test results, which were hallmarks of the postwar, therapeutic rehabilitation model. Objective models, like the additive and decision-tree, were objective because they set forth explicit, invariant criteria that could be applied to all prisoners. This constrained and structured professional judgement, rather than eliminating it, a prospect that the consultant knew was an impossibility. The key to accomplishing this, according to the CSG, rested on developing a standard classification tool that incorporated some of the classification knowledge of staff in Pennsylvania.

To build such a tool, the CSG used a series of comparative social science methods to analyze how classification worked in the Bureau of Correction. In one of their first interventions, they tried to determine the capacities of each state prison. The consultants interviewed staff and prisoners, asking each to rank institutions according their ability to handle inmates of certain security and custody ratings or people with certain types of medical, addiction, or mental health problems. The CSG researchers then conducted their own analysis. They looked especially for discrepancies between, on the one hand, how different groups of staff and prisoners viewed the capacities of certain prisons, and on the other, how their evaluations aligned with the analysis produced by CSG researchers. Classification staff, especially those working in diagnostic and classification centers, were also asked to evaluate

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<sup>1638</sup> It should be noted that the CSG accepted that no classification system was perfectly objective and that inter-rater consistency in decision-making was always going to be less than one hundred percent. *Ibid.*, vii-ix.

anonymous, but actual, inmate files and assign the prisoners to appropriate prisons.<sup>1639</sup> These surveys and exercises, thus, incorporated the comparative vision of prison staff and incarcerated people based on their practiced working knowledge. While the eventual classification instrument incorporated many of the results of this work, some of them worried the CSG researchers because they indicated an unacceptable degree of inconsistency between different interview subjects.

The best example of this problem emerged in the initial assignment exercises that asked Bureau classification staff to evaluate anonymous inmate files and recommend placement prisons for them. The CSG reported overall rates of agreement in this exercise in the 75 to 80 percent range, but noted that the variation was exceptional for some inmate files.<sup>1640</sup> The CSG speculated that these discrepancies reflected philosophical differences among staff members, probably indicating that some staff were more treatment-oriented than others who placed greater emphasis on security.<sup>1641</sup> The files used in these specific instances contained information and concerns about prisoners that was a somewhat ambiguous guide for placement. Multiple, uncontroversial, assignment options were not just possible, but likely. The authors did not elaborate on the specific content of most of these cases. They did, however,

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<sup>1639</sup> Even though *Pennsylvania Classification Plan* contained a chapter on female prisoners, there was only one prison for women at the time. This meant that much of the classification work, especially assignment, became deeply skewed toward sorting different kinds of male inmates. The assignment exercises only used the files of male prisoners. Correctional Service Group, *Pennsylvania Classification Plan*, 141-148, 199-216.

<sup>1640</sup> Pennsylvania appears to have been unique in the country in its use of “program levels,” which combined custody level (degree of supervision an inmate required) and the appropriate level of activities and work assignments for the inmate. Moreover, Pennsylvania tried as much as possible to structure regimes and spaces at each of its major prisons to accommodate all program levels. Most other prison system in the country usually had uniform custody levels at every institution. Correctional Service Group, *Pennsylvania Classification Plan*, 113-116, 147. See also Ronald J. Marks to Harold Miller, January 18, 1982 and April 1, 1982, Dick Thornburgh Papers, box 256, folder 19. UPASC.

<sup>1641</sup> Correctional Service Group, *Pennsylvania Classification Plan*, 145.



highlight one because they felt that some of the placement decisions were absolutely unacceptable. A few staff members assigned a person with a record of institutional adjustment problems, drug use, and serious violence to a couple of low security prisons that the CSG believed were completely incapable of handling such a person.<sup>1642</sup> Beyond this exception, the CSG researchers did not explicitly advocate any penological position (e.g. rehabilitation, security, etc.) as the basis for the decision-making process. They were also not interested in whether their exercises revealed pre-existing or differing penological values among staff members or even whether these values were enacted in the research process. Inconsistency troubled them more than anything; as long as decisions were consistent enough and considered the same set of explicit criteria for each inmate, the actual penological philosophy informing them was less concerning.<sup>1643</sup> The actual diversity of opinion the exercise revealed concerned the CSG researchers because, unless checked in some way, it would lead to inconsistent placement decisions based on divergent and implicit criteria.

These assignment exercises accentuated the comparative work of staff in the course of routine duties, but they also provided a way for the consultants to evaluate the staff's assessment and decision-making knowledge by comparing their answers, and implicitly, the staff as well. The CSG was apparently untroubled by methodological questions about whether these survey and exercise answers actually reflected the staff's work dispositions. The simulations were treated simply as adequate representations of what the staff did or would do in the process of making initial assignment decisions. The exercises provided scenarios for the

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<sup>1642</sup> Ibid., 145, 147-148.

<sup>1643</sup> Ibid., vii-ix.

deployment of acquired classification skills that were real enough for the researchers' purposes. While the report mentions at the beginning that the CSG observed actual classification decisions, the substantive chapters relied on surveys, interviews, and exercises. Whatever evidence direct observation produced, its absence in the analysis and the heavy reliance on other these other methods highlighted the preference for this form of knowledge production by the CSG and the major audiences of the report—the Bureau of Correction, senior policy-makers in the Thornburgh administration, state legislators, the large correctional research community, and similar bureaucratic personal in other jurisdictions. The results from surveys and exercises were quantifiable and easily compared to other sets of similar data. Statistical rates of agreement across such data sets could be the basis for disciplining practices, potentially even across multiple jurisdictions.<sup>1644</sup>

Central administrative staff, initial classification staff (diagnostic and classification centers), institutional classification staff (placement prisons), and security staff completed additional questionnaires, explicitly asking them about which criteria they felt were crucial for classification and how they would rank them in order of importance.<sup>1645</sup> Unsurprisingly, variation appeared across these groups as it did in the placement exercises. Since the consultants were designing a tool that would control this type of variation, they were more interested in determining the primary criteria staff currently used in this process. After they identified the ten most important criteria for each personnel grouping, they then arranged these items in order of importance by statistically weighting the survey answers (regression

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<sup>1644</sup> The report compared results between the various Pennsylvania prisons and between state prison systems as a whole.

<sup>1645</sup> Correctional Service Group, *Pennsylvania Classification Plan*, 128-137.

analysis). In this way, they produced a checklist of the most relevant criteria for classifying inmates according to the assembled views of the various groups of prison staff. Of course, since the CSG demarcated the most frequent answers as the *only* criteria to be used in future classification decisions, many of the criteria they discovered disappeared in the production of the checklists.

These criteria were subsequently divided into two categories: one reflecting risk to the public, the other risk to the institution:

**PUBLIC RISK FACTORS:**

1. Extent of Violence in Current Offense
2. Weapon Used in Current Offense
3. Escape History
4. Prior Commitments
5. Violence History
6. Holds or Detainers
7. Time to Expected Release
8. Community Stability

**INSTITUTIONAL RISK FACTORS:**

1. Community Stability
2. Prior Institutional Adjustment
3. Protection Considerations
4. Psychological Stability
5. Adjustment While on Probation/Parole
6. Alcohol/Drug Use

Each item had a sublist of numerical options that a classification staff member would select to score that particular item. An example of these options for the first item looked like this:

**PUBLIC RISK FACTORS:**

1. Extent of Violence in Current Offense: Enter one of the following scores:

Sex Offenses

- 1 = None
- 2 = Minor Sexual Offense
- 3 = Attempted Rape
- 4 = Forcible Rape
- 5 = Forcible Rape Where Death or Injury Resulted

Violence

- 1 = None
- 2 = Threat or Minor Injury
- 3 = Serious Injury or Death - Provoked
- 4 = Serious Injury or Death - Unprovoked

After tabulating scores for each item, the classification staff member would then produce an “overall custody score,” which would be the highest score on any of the items on each lists.<sup>1646</sup> This score was then located in a matrix of the custody levels used in the state’s prisons, which would determine the necessary level of security needed for a particular prisoner. Higher end scores automatically ruled out some institutions for certain inmates. At the time, Pennsylvania used a five-tiered custody system:

- I. Maximum (Restricted Housing Unit)
- II. Close (Restricted Housing Unit or Diagnostic and Classification Center)
- III. Medium (Inside enclosure)
- IV. Minimum (Outside enclosure)
- V. Pre-Release (Community)<sup>1647</sup>

Once staff determined the custody requirements, a series of other considerations would come into play to determine the exact placement prison. These included Medical Needs, Mental Health Needs, Educational Needs, Vocational Needs, Work Skills and Drug and Alcohol Needs. Again, based on the capabilities of each prison to address these needs, the range of placement options was further narrowed based on a similar process of scoring each prisoner according to

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<sup>1646</sup> Ibid., 124-140, Appendix C, 238-250.

<sup>1647</sup> Ibid., 149-158.

the listed items. Staff determined the scores for some of these items, like Mental Health for instance, based on more extensive testing than they used for scoring custody factors.

The CSG recommended created an entirely new summary sheet that contained the basic scores for each item as a way to centralized all the information produced about a newly-admitted person. The new form replaced a similar standard document, the Classification Summary (JBC-1A or JBC-1B), which the CSG disliked because they felt it contained far too much space for narrative commentary.<sup>1648</sup> This was simply an entry point for subject evaluations and needed to be removed. Classification staff in the diagnostic and classification centers, who conducted the initial classification, and custodial staff in the prison system generally agreed with this assessment. The older form also required access to a lot of prior information about the prisoner, which was often unavailable.

The classification personnel in the placement prisons, who served on the Program Review Committees and spent more time learning about the prisoners in detail, disagreed with the CSG's objective methods, which they felt were far too rigid. They argued that such methods undervalued their professional competence and judgment, which they claimed produced a more nuanced appreciation of inmates and their personal circumstances based on interviews and direct interactions with them over extensive periods of time. The brevity and efficiency demanded by diagnostic and classification center staff and the straightforward designations demanded by the guard force conflicted with the more therapeutic penological views of classification staff at the placement prisons who often also conducted and supervised various treatment, educational, and vocational programs for inmates. The objective classification

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<sup>1648</sup> Ibid., 53.

procedures, not only de-emphasized clinical reasoning in the initial classification process, but also made deep inroads in the routines of program staff in the placement prisons, refashioning the already limited rehabilitation options and infusing them with uniformity and risk management priorities. If the views of these staff members were already in decline, the new objective classification practices only furthered that process.

The new document that the Bureau eventually adopted incorporated most of the CSG's suggestions (See Figure 6:1). Of all the items on the Initial Classification Score Sheet (BC-45A), the central grid—the Correctional Classification Profile, stood out as both the most important device for trying to enforce this desired level of consistency. Developed by the CSG and John Irion, a staff member with Georgia Department of Offender Rehabilitation, the Correctional Classification Profile was the most original contribution of the CSG.<sup>1649</sup> By the mid-1980s several different states, all of whom contracted the services of the CSG, had adopted it in their classification procedures. It became one of the most influential classification tools in the country during the 1980s and circulated abroad as well.<sup>1650</sup> The CSG's report repeatedly championed the advantages of their tool and recommended its adoption.<sup>1651</sup>

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<sup>1649</sup> Ibid., 200.

<sup>1650</sup> For an overview of classification systems prevalent in the United States in the early 1980s see, Carl B. Clements, National Institute of Corrections, *Offender Needs and Assessment: Models and Approaches* (Washington, D.C.: U.S. Dept. of Justice, National Institute of Corrections, 1984), 24-68.

<sup>1651</sup> Correctional Service Group, *Pennsylvania Classification Plan*, 46, 49, 53, 200-201, 215-229,

3C-45A Rev. 5/82		INITIAL CLASSIFICATION SCORE SHEET				Commonwealth Of Pennsylvania Bureau Of Correction			
BC NUMBER	COMMITMENT NAME	INSTITUTION	DATE						
<i>Correctional Classification Profile</i>									
<b>MEDICAL PROFILE</b> <b>PULHEST</b>	FACTOR	Medical Needs	Public Risk Needs	Institutional Risk Needs	Mental Health Needs	Educational Needs	Vocational Needs	Work Skills	Drug and Alcohol Needs
	CODE	M	P	I	MH	E	V	W	D
	COR SCORE	5	5	5	5	5	5	5	5
		4	4	4	4	4	4	4	4
		3	3	3	3	3	3	3	3
		2	2	2	2	2	2	2	2
1		1	1	1	1	1	1	1	
CODE									
<b>PUBLIC RISK SCORE</b>					<b>INSTITUTIONAL RISK SCORE</b>				
1. Extent of Violence in Current Offense: _____ 2. Use of Weapon in Current Offense: _____ 3. Escape History: _____ 4. Prior Commitments: _____ 5. Violence History: _____ 6. Desires: _____ 7. Time to Expected Release: _____ 8. Community Stability: _____					1. Community Stability: _____ 2. Prior Institutional Adjustment: _____ 3. Protection Considerations: _____ 4. Psychological Stability: _____ 5. Adjustment while on Probation/Parole: _____ 6. Alcohol/Drug Use: _____				
Public Risk Level: _____		Institutional Risk Level: _____			Overall Custody Score: _____				
<b>COMMUNITY SENSITIVITY</b>									
<b>Other Considerations:</b> Necessity of Crime(s) or Criminal: _____ Sophistication of Crime(s) or Criminal: _____ Gang Affiliation: _____ Separations: _____ Suicidal: _____ Other: _____					<b>Prison Preference Profile:</b> Privacy: _____ Emotional Feedback: _____ Safety: _____ Social Stimulation: _____ Structure: _____ Activity: _____ Support: _____ Freedom: _____  <b>Need Scores</b> - = Low    0 = Average    + = High				
<b>INITIAL CLASSIFICATION STAFF ACTION</b>									

Figure 15: BC-45A - Initial Classification Score Sheet

Figure 15. The Initial Classification Score Sheet (BC-45A), circa 1984. Source: adapted from Rehabilitation Research Foundation (Carl B. Clements), *Offender Needs and Assessment: Models and Approaches* (Washington, D.C.: National Institute of Corrections, 1984), 55.

The Correctional Classification Profile consisted of eight columns each containing the numbers 1 through 5, with 1 being at the bottom of each column and 5 at the top. From left to right the columns were labeled: Medical Needs, Public Risk Needs, Institutional Risk Needs, Mental Health Needs, Educational Needs, Vocational Needs, Work Skills, Drug and Alcohol Needs. If used as intended by the CSG, a classification decision could not be *formally* finalized until all the items in the Correctional Classification Profile were scored and doing so entailed scoring some—but not all—of the items in other boxes on the Initial Classification Score Sheet. Thus, the Correctional Classification Profile acted as a checklist of necessary considerations that had to be completed to properly classify any inmate. Yet, each item in the profile was not of equal value; its criteria ran left to right in order of consideration and, to some degree, of declining importance as well. The structure drew from decision-tree models whereby the first item, in this case Medical Needs, had to be considered before any other item; the resulting answer could drastically limit options and channeled the decision-making process down specific paths. A high score severely delimited placement options regardless of the scores on the rest of the following items.<sup>1652</sup>

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<sup>1652</sup> Ibid., 208-210.



Factor	Medical Needs	Public Risk Needs	Institutional Risk Needs	Mental Health Needs	Educational Needs	Vocational Needs	Work Skills	Drugs and Alcohol Needs
Code	M	P	I	MH	E	V	W	D
CCP Score	5	5	5	5	5	5	5	5
	4	4	4	4	4	4	4	4
	3	3	3	3	3	3	3	3
	2	2	2	2	2	2	2	2
	1	1	1	1	1	1	1	1

Figure 16: How to complete the Correctional Classification Profile

Figure 16. How to complete the Correctional Classification Profile. Source: Correctional Service Group, *Pennsylvania Classification Plan*, 218.

A classification officer scored each item in the Correctional Classification Profile by circling the appropriate number. After all the items were scored a line was drawn between each one, from left to right, creating a segmented curve, which varied between inmates (See Figure 6:2). A completed curve indicated that the entire set of items and their sub-criteria had been addressed - or at least gave the appearance that all of these things had been considered. The technique visually resembled children's connect-the-dots drawings, and like them, it also exercised an intense, micro-level discipline, which guided the classification process as much as the hand of the officer completing the form. The curve also graphically represented the classification testing and scoring in a manner that could be read at a glance by someone who worked with these materials. It was an abstraction of an already abstract scoring system, which of course, was also based on a much larger set of high specialized evaluations that also created

abstractions for the purposes of comparison. The Correctional Classification Profile created a certain aesthetics of segmented risk and needs curves, with broadly similar curves indicating either the presence of troublesome characteristics and histories or conversely less worrisome information. Of course, there were many ambiguous curves that could be read in different ways, but these still tended to cluster around a limited set of placement options for the inmate. Beyond the picture of an inmate, which was affixed to this form, these segmented curves would have been the most visually striking standardized aspect of any particular dossier.

There were a few seemingly anomalous items in Correctional Classification Profile. The Work Skills column was inverted in the sense that higher scores indicated a high skill level rather than a serious deficiency or problem like high scores on the other items.<sup>1653</sup> Perhaps, most perplexing, Drug and Alcohol Needs was the last item, despite the serious suffering these problems caused and the difficulty some inmates had with these problems in prison. The seemingly odd choice to place drug and alcohol abuse last on the profile stemmed partly from the fact that these issues were already included as one of the major sub-criteria for determining Institutional Risk scores. It would also appear that treatment for these issues was not as specialized as other problems. Mental health workers usually provided services in this area.<sup>1654</sup> To acclimate staff to the use of the new forms, the CSG recommended a broad training initiative, which would further emphasize the need for decision-making based on objective

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<sup>1653</sup> Ibid., 218-219.

<sup>1654</sup> By the time the CSG began their Pennsylvania study, many of the treatment staff did not have professional counseling degrees (or equivalents) or the necessary professional licenses. Jay C. Waldman to Clarence D. Bell, October 13, 1981; Harold Miller to Rick Stafford, October 2, 1981; Jay Waldman to Clarence D. Bell, annotated draft, October 5, 1981(?); Clarence D. Bell to Bureau of Correction, August 27, 1981; Legislative Bill Analysis. Session of 1981-1982. SB 602, PN 617, Licensing of Counselors, September 30, 1981; Harry E. Smith to Judy Smith, September 30, 1981. Dick Thornburgh Papers, box 371, folder 5. UPASC.

criteria and methods. Even before the CSG finalized its report, Commissioner of Corrections Ronald Marks indicated to Harold Miller, the director of Gov. Thornburgh's Office of Planning and Policy, that the Bureau planned to adopt many of the report's recommendations, which he felt would "nicely compliment" existing practices.<sup>1655</sup> The new classification system was declared operational on January 1, 1983.<sup>1656</sup>

Of all the things the CSG study produced, it may be that the refashioning of consensus through the renewal of classification rituals and the displacement of discretionary authority were the most important. These two things are deeply interwoven. However, I must add an immediate clarification: by "consensus" I do not mean that everyone involved in the classification study agreed with the assessment of existing practices by the CSG or their final recommendations. On the contrary, there was plenty of evidence of substantial disagreement in the survey results. By highlighting the role of consensus, I mean to draw attention to two ways this figured in the project and classification in general. First, as I discussed in the last section, the history of psycho-social science classification involved an ever-greater level of negotiation and conflict with other penal workers and sources of penal authority. The classification committees that appeared in numerous jurisdictions after World War II became contact zones for these different sources of authority and their personnel. In many jurisdictions, the deliberations were so tilted toward custodial concerns that it's hard to describe these committees as part of anything approaching a therapeutic model.<sup>1657</sup>

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<sup>1655</sup> Ronald J. Marks to Harold Miller, January 18, 1982; Philosophy of Classification, January 7, 1982. Dick Thornburgh Papers, box 265, folder 19. UPASC.

<sup>1656</sup> Sherree L. Sturgis to Charles Schneider, July 6, 1983. Jay C. Waldman Papers, box 20, folder 3: Issue, Graterford, correspondence, 1983. UPASC.

<sup>1657</sup> Cite Lynch, *Sunbelt Justice*; Perkinson, *Texas Tough*; Edgerton, *Montana Justice*.

In many other jurisdictions, members of classification committees reached their decisions by consensus. In Pennsylvania, committee members evaluated a prisoner's standardized test results, criminal and institutional history, court documents and along with numerous other sources of information and often interviewed the subject as a group. They then conferred before reaching a unanimous decision, which of course, included varying degrees of disagreement and misgivings. Senior members of the committee settled deadlocked positions and the deputy commissioner of the Bureau of Correction could override all decisions if he disagreed with them.<sup>1658</sup> The CSG felt that these clinical committee deliberations were far too time consuming, which became more of a problem with the greater influx of prisoners in the 1980s. They were also subjective, according to the consultants, because they lacked any mechanism to ensure that all the relevant classification criteria were considered for each inmate. There was not even any formal agreement on what the relevant criteria should be for all prisoners. This opened a space, the CSG feared, for too great a role for "bias" by committee members who might react negatively to any particular inmate in ways that were never made explicit.<sup>1659</sup> The CSG hoped to pre-empt these lengthy deliberations, disruptions produced by disagreements, and the effects of bias as much as possible through the introduction of a standardized, objective classification tool.

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<sup>1658</sup> Beginning in 1973 and until his retirement in 1990 Erskind DeRamus held the position of deputy commissioner in Pennsylvania. His tenure spanned several different administrations, both Democratic and Republican, and at least five commissioners.

<sup>1659</sup> In this context, "bias" was conceived of as a deeply personal or self-centered viewpoint that was also privately held to varying degrees. A common concern was that certain committee members would already know and dislike a particular (usually recidivist) inmate or might be repulsed by the particular crimes committed by an inmate and make decisions based more of punitive or vengeful feelings that they did not publicly share with other committee members. Reasons such as these were not considered to be relevant classification criteria.

Secondly, the CSG could not simply dispense with the benefits of this consensus-building. Multiple areas of authority and their personnel remained in the penal system and attended to the classification process. Whatever their shortcomings or illusory qualities, committee deliberations managed these competing factions within prisons, especially among the more elite staff members who participated in these committees. The CSG was well aware of this. So, they tried to retain some of the qualities of this representative forum and its conflict management functions by shifting where consensus would be located in the new classification process. The research process that the CSG used to create the structured assessment device mobilized the penological values and favored criteria from a diverse body of employees, many of whom disagreed. They even drew upon the views of prisoners, who helped rate the capacities of the state's various prisons. This resembled a number of the other classification models discussed in the report, including the one developed by the federal Bureau of Prisons in 1977, which was widely considered the gold standard for consensus-building techniques of classification reform and tool-construction.<sup>1660</sup> The CSG had also previously used this technique in evaluations they completed for Arkansas, Maryland, and Missouri.<sup>1661</sup> The CSG intended the device they created to be an artifact of correctional pluralism in Pennsylvania at the time, hopefully representing the assembled views of staff enough to gain legitimacy in their eyes.

It is unknown if staff members actually agreed with this particular political theory of inclusion embedded in the social scientific methodology. There was undoubtedly some disagreement and resentment on the part of some staff members. The CSG noted early in the

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<sup>1660</sup> Correctional Service Group, *Pennsylvania Classification Plan*, 11, 120-123.

<sup>1661</sup> Robert B. Levinson and J.D. Williams, "Inmate Classification: Security/Custody Considerations," 37-38; Correctional Service Group, *Pennsylvania Classification Plan*, 129.

report that “some of our findings and recommendations are contrary to the beliefs and opinions of some Bureau staff. Indeed, some of the major recommendations will be seen by many staff as radical departures from current practices.”<sup>1662</sup> Many staff members, especially those on the program review committees in all the prisons, did not hold objective methods in high esteem. Even among personnel who worked in custody, central administration, and the diagnostic and classification centers, the CSG still encountered a substantial minority who did not want classification to be more objective and felt there was still much wisdom in the longstanding procedures.<sup>1663</sup> Consensus, in other words, concealed a lot of disagreement and simply ruled out competing views as illegitimate in the emerging political environment of prison overcrowding, judicial oversight and scandal avoidance.

The resulting consensus might be more productively thought of along the lines of what sociologist Saul Halfon has called a “structured disunity.”<sup>1664</sup> Halfon examined the highly contentious process of developing international population agreements. Consensus emerged in this field primarily through commitments to a socio-technical network in which widely shared epistemic assumptions were tied deeply to knowledge-making practices, like social science survey techniques, common data sources, bureaucratic formations, and sources of funding. This socio-technical network was highly elastic and permitted substantial disagreement among members with competing interests and agendas. Halfon argues that the knowledge practices of this epistemic community created a “constrained space of contestation.”<sup>1665</sup> Viewed in this

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<sup>1662</sup> Correctional Service Group, *Pennsylvania Classification Plan*, 19.

<sup>1663</sup> *Ibid.*, 118-119.

<sup>1664</sup> Saul Halfon, “The Disunity of Consensus: International Population Policy Coordination as Socio-Technical Practice,” *Social Studies of Science*, 36 (October 2006), 783-807.

<sup>1665</sup> Halfon sees epistemic communities as similar to the disciplines, but his discussion suggests that they may be thought of as broader and more diffuse. Halfon, “Disunity of Consensus,” 795-796. See also Knorr Cetina, *Epistemic*

light, the conflicting views of Bureau of Correction staff members about the usefulness of creating new classification practices remained enmeshed in a network of classification and knowledge practices that both enabled and limited the range of disagreement. Even taking into consideration the enforced nature of the reform program and the risk of reprimand (or worse) that awaited employees who disagreed too much, no one questioned the need to classify prisoners upon reception and throughout their stay.

The CSG transferred much of the subjective evaluation and consensus-building work that routinely took place in the existing practices to newly crafted tool—the objective classification instrument. Once deployed in classification routines, these tools could be revised at a later date if needed without drastically affecting the refashioned decision-making rituals. This tool had numerous time-saving qualities over the current practices and eliminated the need for extensive deliberations.<sup>1666</sup> Decisions could always be overridden by the Deputy Commissioner who had the final say in all classification matters. If the knowledge practices and penal arrangements sustaining classification created a structured disunity during the CSG study,

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*Cultures*. In some respects this resembles how William Roseberry and Kate Crehan have discussed Gramsci's notion of hegemony: "This is what hegemony means in practice; the power to determine the structuring rules within which struggles are to be fought out." Kate Crehan, *Gramsci, Culture and Anthropology* (Berkeley: University of California Press, 2002), quote 204; William Roseberry, "Hegemony and the Language of Contention," in Gilbert M. Joseph and Daniel Nugent (eds.), *Everyday Forms of State Formation: Revolution and the Negotiation of Rule in Modern Mexico* (Durham: Duke University Press, 1994); 355-366. It also resembles Pierre Bourdieu's discussion of the forms of capital and rules that adhere to fields of social action, which all participants must respect if they are to operate within the field. Pierre Bourdieu, *The State Nobility: Elite Schools in the Field of Power* (Stanford: Stanford University Press, 1998); Bourdieu, "Rethinking the State: Genesis and Structure of the Bureaucratic Field" in George Steinmetz (ed.), *State/Culture: State-Formation after the Cultural Turn* (Ithaca: Cornell University Press, 1999), 53-75; Bourdieu, *The Field of Cultural Production* (Cambridge: Polity Press, 1993).

<sup>1666</sup> It must be added that the CSG assumed that the Pennsylvania General Assembly would pass legislation that would require criminal justice agencies and the courts to report all necessary information about inmates at the time of their commitment. The lack of this information was a persistent problem that staff in diagnostic and classification centers complained about. Correctional Service Group, *Pennsylvania Classification Plan*, 39, 46, 49-52

then the final product incorporated the disputes and views developed in the constrained space of contestation into the objective numerical scoring mechanisms and graphics.

The difficulty in seeing these disagreements was, of course, very useful. Aside from whatever practical benefits the Bureau of Correction accrued from the new classification system, the minimization of political and legal risk was one of the primary reasons the Bureau of Correction pursued this project. As the CSG advised in its final report, “the lack of an objective means of classifying inmates has been shown to be, and is likely to remain, the seminal aspect of an unconstitutional prison system.”<sup>1667</sup> The disagreements and differing penological views among staff remained embedded in the new objective tools in a way, resembling how Geoffrey Bowker and Susan Leigh Star describe information technologies as embodying the “arguments, decisions, uncertainties, and processual nature of decision making” like Marx’s much older characterization of technology as frozen labor.<sup>1668</sup>

The disputes would periodically re-emerge and become more visible, especially during disagreements over specific cases or in conflicts between differently positioned classification staff, like those in the diagnostic and reception centers and members of the program review committees. Yet, as long as this was suspended in the formal process and quietly frozen, if unresolved, in the objective tool, it would have been hard to challenge or question. This made the entire process (and by extension the Bureau) less vulnerable to judicial intervention, adverse media attention, political attacks from opponents, and public scandals surrounding

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<sup>1667</sup> Correctional Service Group, *Pennsylvania Classification Plan*, 10. Classification systems based on objective techniques withstood judicial review in ways that classification practices based on unstructured professional judgment did not. In fact, some specific rulings during the 1970s advocated the creation of new comprehensive systems. See *Pugh v. Locke* 406 F. Supp. 318 (1976). See also Carl B. Clements, “The Future of Offender Classification: Some Cautions and Prospects,” *Criminal Justice and Behavior*, 8 (March 1981), 15-38.

<sup>1668</sup> Bowker and Star, *Sorting Things Out*, 135.



unchecked authority and arbitrary decision-making. The Correctional Classification Profile, provided a “legally supportable” practice that appeared, not only comprehensive and non-arbitrary, but also uniform.<sup>1669</sup> The lack of obvious indicators of subjective reasoning, especially an over-reliance on narrative presentation, meant that individual classification staff and decisions receded behind objective visuals and numerical scoring.

The first big political test for the new system developed during the research for the project, before the Bureau had a chance to fully evaluate the consultant’s work. A day after the CSG held a workshop for 25 classification staff,<sup>1670</sup> a botched escape attempt at SCI Graterford, the state’s largest maximum security prison, turned into a highly publicized, week long standoff in which a group of armed inmates held several hostages in a barricaded kitchen. The standoff eventually ended peacefully, and the prison authorities transferred the people involved to other prisons, including some to the federal system. The subsequent media coverage as well as investigations by the police, the Bureau and an independent inquiry appointed by Gov. Thornburgh all highlighted the problem of inadequate classification and custody for particular inmates. The escape attempt occurred in the evening of October 28, 1981, but some of the prisoners had clearly planned it for at least several weeks with some accounts even suggesting that the preparation among a few may have extended back three years.<sup>1671</sup> Kenneth Robinson, the Bureau of Correction’s press spokesman, identified one inmate in particular as the ringleader early in the standoff, and this man’s institutional life became both a central theme of

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<sup>1669</sup> Correctional Service Group, *Pennsylvania Classification Plan*, viii.

<sup>1670</sup> Correctional Service Group, *Pennsylvania Classification Plan*, 17.

<sup>1671</sup> Pennsylvania, Governor's Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution, *The Report of the Governor’s Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution to Investigate the Recent Hostage Incident at Graterford State Correctional Institution* (Harrisburg: Commonwealth of Pennsylvania, August 1982), 1.

the event's narrative and a reminder of the immediate danger and discrediting scandal that poor classification decisions could unleash.<sup>1672</sup> The CSG's preliminary report, intended for specialized classification staff in the Bureau's headquarters, was soon before an independent investigation, trying to determine the cause of the Graterford hostage crisis.

The man that Robinson named as the ringleader was a notorious central figure in the security crackdowns of the mid-1970s. Joseph "Jo-Jo" Bowen had been convicted in the death of a Philadelphia policeman in 1971 and later the 1973 killings of the warden and deputy-warden of Holmesburg Prison, Philadelphia's largest county prison.<sup>1673</sup> His first term of imprisonment at Graterford occurred in the mid-1960s.<sup>1674</sup> By the time Bowen, and his associate Fred Burton, were accused of killing Warden Patrick Curran and Deputy Warden Robert Fromhold at Holmesburg, they were both powerful inmate leaders and members of a Sunni Muslim organization, which had splintered away from the Nation of Islam group within Philadelphia's county prison system.<sup>1675</sup> After the 1973 killings, Philadelphia County transferred Bowen and Burton to state custody and after their convictions each were in turn sent to different prisons and held in indefinite administrative segregation, i.e. solitary confinement. Bowen, who was in held in the Restricted Housing Unit at Graterford, claimed that guards

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<sup>1672</sup> "In Cold Blood: Portrait of Ringleader," *Philadelphia Inquirer*, (October 30, 1981); "A Different View of a Killer" *Philadelphia Inquirer*, (November 1, 1981); "Deep Down at Graterford: Jo-Jo Bowen and 'The Hole,'" *Philadelphia Inquirer*, (November 8, 1981); "Bowen's Own Story of Graterford Siege," *Philadelphia Inquirer*, (November 17, 1981); "The Hostage Taker: How and Why He Did It," *Philadelphia Daily News*, (November 19, 1981).

<sup>1673</sup> "Bowen Guilty in Jail Killings," "Slayings Changed Holmesburg," "Hazards at Holmesburg: What Memos Say," and "Suspect Told Muslim Aide of Complaints," Bulletin Mounted Clippings Box 100 Clips Bulletin Holmesburg Prison--Prisoners 1973 to 1975. Temple University, Urban Archives (hereafter TUUA)

<sup>1674</sup> Pennsylvania, Governor's Panel, *The Report of the Governor's Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution*, 20-21; "Killer Bowen, 35: In Prison 17 Years, Out for 3 or 4 Days," *Bulletin*, (November 1, 1981).

<sup>1675</sup> "Warden Was Killed by Chance," *Bulletin*, (June 1, 1973), newsclipping. Bulletin Mounted Clippings Box 100 Clips Bulletin Holmesburg Prison--Stabbings, Deaths. TUUA; Allen M. Hornblum, *Sentenced to Science: One Black Man's Story of Imprisonment in America* (University Park: Penn State University Press, 2007), 149-157.

severely beat him by on several occasions following his transfer.<sup>1676</sup> Bowen's history easily made him the centerpiece of renewed calls to reinstate the death penalty.<sup>1677</sup>

During their years in segregation, both Bowen and Burton were convicted of the Holmesburg murders and sentenced to additional life terms.<sup>1678</sup> If Pennsylvania had still used capital punishment at the time each of them would certainly have been sentenced to die in the state's electric chair at SCI Rockview.<sup>1679</sup> Both men pressed for their release from segregation through the federal courts, claiming that their continued isolation status was unconstitutional. The courts eventually agreed, noting that the Bureau of Correction either did not periodically review these prisoners' classification status or did so in an inconsistent and subjective manner. In Burton's case, the U.S. District Court for Western Pennsylvania held that the Commissioner of Corrections William Robinson, Superintendent James Howard, and the Program Review Committee at SCI Pittsburgh, where Burton was being held in the Behavioral Adjustment Unit, had simply failed to provide Burton with any criteria for returning to the general population.<sup>1680</sup> The court ordered the classification staff at SCI Pittsburgh, and by extension the entire Bureau,

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<sup>1676</sup> "Inmates Give Up," *Philadelphia Inquirer*, (November 3, 1981).

<sup>1677</sup> "Legislators See Killings at Prison As Spur to New Death-Penalty Bill," Bulletin Mounted Clippings Box 100 Clips Bulletin Holmesburg Prison--Prisoners 1973 to1975; "Hangman's Noose Is Not the Answer" and "Stabbed Prison Guard Calls For Return of Death Penalty," Bulletin Mounted Clippings Box 100 Clips Bulletin Holmesburg Prison--Stabbings, Deaths. TUUA; "Two Faces of Jo-Jo Bowen 'Time Bomb' or Prison's Product?" *Philadelphia Daily News*, (November 3, 1981)

<sup>1678</sup> Burton was also serving a life term for killing a Philadelphia police officer in 1970. See *Commonwealth v. Burton*, 330 A.2d 833, 834-36 (Pa. 1975).

<sup>1679</sup> Each man had been convicted of killing three law enforcement officers, which had been, and would soon be again, a capital crime. Pennsylvania, like other states, suspended the use of capital punishment between the mid-1960s and late 1970s because of its ambiguous constitutional status. After the U.S. Supreme Court's decision to permit the restricted use of the death penalty in the *Gregg* case, Pennsylvania revised its capital punishment statute. Gov. Thornburgh signed it into law in 1978. See *Gregg v. Georgia*, *Proffitt v. Florida*, *Jurek v. Texas*, *Woodson v. North Carolina*, and *Roberts v. Louisiana*, 428 U.S. 153 (1976); Act of 1978, September 13, P.L. 756, No. 141.

<sup>1680</sup> *Mims v. Shapp*, 457 F. Supp. 247 (1978).

to develop consistent regulations with objective criteria for governing the use of segregation units. In the court's reasoning, Burton's case accorded with an earlier ruling of the same year regarding Stanley B. Hoss, a prisoner who also killed a senior corrections officer in 1973. In Hoss's case, the court ordered the Bureau and the Program Review Committee at SCI Graterford, where Hoss was isolated, to produce objective evaluation criteria for reviewing the status of people held in segregation.<sup>1681</sup> In Bowen's case, the state Attorney-General (and the governor's office) agreed to enter a consent decree, releasing Bowen from isolation after the Philadelphia Community Legal Services challenged Bowen's prolonged confinement in federal court.<sup>1682</sup> Commissioner of Correction William Robinson repeatedly objected to this decision, claiming that Bowen posed an extreme security risk, but he ultimately complied with his superior's order.

The Bureau of Correction's Planning and Research Division began the process of developing the objective criteria ordered by the courts and disseminating it to all the Program Review Committees.<sup>1683</sup> While these orders only addressed the criteria for continued segregation and involved only specific prisoners, they nevertheless demonstrated that the courts viewed subjective reasoning or inconsistent practices on the part of classification staff with great suspicion. These rulings may not have targeted the Bureau's entire classification system, but their legal reasoning could have easily been applied to it. Long before the Bureau

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<sup>1681</sup> *United States, ex rel. Hoss v. Cuyler*, 452 F. Supp. 256 (1978).

<sup>1682</sup> "Governor Blames Legal Agency," unknown newspaper, (November 3, 1981), newsclipping, The Bulletin Clippings Eastern Penitentiary Graterford Prisons Prisoners Hostage 1981, Oct; "Behind a Release From Solitary," *Bulletin*, (November 6, 1981) in The Bulletin Clippings Eastern Penitentiary Graterford Prisons Prisoners Hostage 1981, Oct. TUUA; Pennsylvania, Governor's Panel, *The Report of the Governor's Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution*, 21-23.

<sup>1683</sup> Pennsylvania Bureau of Correction, *Annual Report 1978* (Camp Hill: Bureau of Correction, 1979), 17.

contacted the Correctional Service Group, in other words, the legal, political and security liabilities of the current classification system were becoming apparent.

Once released into SCI Graterford's close security general population, Bowen began planning to escape.<sup>1684</sup> Graterford's superintendent, Julius Cuyler, attempted to have Bowen transferred several times, citing four incidents of escape preparation, his "propensity for instigating others" to join such conspiracies, and his reputation for confrontation with staff members.<sup>1685</sup> However, the Bureau's central office denied these requests, arguing that they did not believe Bowen's behavior would improve elsewhere and that Graterford's staff, who knew him well, was the best suited to manage him.<sup>1686</sup> Despite these concerns, the Program Review Committee granted Bowen permission to work in the institution's kitchen, which lacked sufficient supervision and provided him with an opportunity to gather contraband items, including firearms that were smuggled into the prison. While accumulating these items, Bowen and several other inmates crafted an elaborate plan to scale Graterford's high walls at dusk when the light was poor and just before the guard towers had been manned.

The investigating panel appointed by Gov. Thornburgh believed that the escape attempt was prematurely executed by the inmates who feared that an institution-wide search was

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<sup>1684</sup> Pennsylvania, Governor's Panel, *The Report of the Governor's Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution*, 23. I follow the narrative of the Panel's report for much of this paragraph. In interviews after the hostage incident Bowen did not contradict many of the broad descriptions leading up to the incident. See, "Bowen's Own Story of Graterford Siege," *Philadelphia Inquirer*, (November 17, 1981); "Deep Down at Graterford: Jo-Jo Bowen and 'The Hole,'" *Philadelphia Inquirer*, (November 8, 1981); "The Hostage Taker: How and Why He Did It," *Philadelphia Daily News*, (November 19, 1981).

<sup>1685</sup> Pennsylvania, Governor's Panel, *The Report of the Governor's Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution*, 23.

<sup>1686</sup> Bowen had been caught in August 1978 and August 1979 with such items as maps, a travel brochure, a weapon, 70 feet of rope and material for fashioning rope ladder steps. Pennsylvania, Governor's Panel, *The Report of the Governor's Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution*, 23.

imminent based on increased escape rumors circulating in the prison.<sup>1687</sup> On the evening of October 28, 1981, Bowen and his associates subdued several staff members in the kitchen and locked them in an adjacent storage room. They then drove a truck across the prison's grounds to the wall and began scaling it. Unfortunately for them, they miscalculated when the guard towers would be manned due to the change in daylight saving time.<sup>1688</sup> Guards in Towers 6, 7 and 8 spotted the inmates and alerted the control center, which dispatched teams of guards batons inside the walls to intercept the escapees and another team armed with firearms to the outside of the wall in case they prisoners succeeded in scaling it. After Bowen and several other prisoners fell while trying to scale the wall, they exchanged gunfire with the tower and approaching teams of guards. The escape party then retreated from wall with most heading back to the kitchen, where they proceeded to hold six staff members and possibly up to 31 inmates as hostage.<sup>1689</sup> After a tense standoff lasting five days, Chuck Stone, a Philadelphia journalist respected in the city's African-American community, helped negotiate a peaceful surrender on November 2, 1981. Bowen and six other inmates were immediately transferred to the custody of the U.S. Bureau of Prisons at Lewisburg Penitentiary in central Pennsylvania.

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<sup>1687</sup> Ibid., 2.

<sup>1688</sup> Ibid., 3.

<sup>1689</sup> There was widespread disagreement about how many inmates were actually hostages and how many were either part of the original escape attempt or decide to join once it was in progress. Bowen later claimed that when the escape attempt failed many other inmate participants "faded away like ants." Additionally, it is possible that some of the inmates presumed that they were being held hostage. Bowen later let them go without the state's foreknowledge. Curiously, three inmates who were not part of the initial escape attempt decided to remain behind with the captors until the end of the siege. *The Report of the Governor's Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution*, 3, 12, 64-67; "Bowen's Own Story of Graterford Siege," *Philadelphia Inquirer*, (November 17, 1981).

Graterford remained on lockdown for over a week while guards conducted a massive cell search.<sup>1690</sup>

Gov. Thornburgh appointed a panel to investigate the hostage incident within a few weeks.<sup>1691</sup> The panel held public hearings, toured Graterford, and interviewed numerous people involved, hostages and captors included. The final report, submitted to the governor in August 1982, praised the peaceful resolution of the incident and the leadership of Graterford's staff and the governor's office. However, the panel was highly critical of classification decisions regarding Bowen. First, they pointed out that the Attorney-General willingly agreed to the consent decree releasing Bowen from segregation.<sup>1692</sup> The court did not order them to release Bowen and it was clear that correctional officials objected to the decision. Second, they criticized the decision to let Bowen work in the prison's kitchen, citing both the area's loose supervision and Bowen's long record of participation in violence, prison conspiracies and escape plots as sufficient reason to have denied his request.<sup>1693</sup>

The panel reviewed the Bureau's classification system as well as the CSG's report. The panel also interviewed the consultants, who told them that Pennsylvania's classification practices compared favorably with seven other state systems they had observed. The panel respected the consultant's views and also stated that the Bureau's overall system of initial classification was sound and only needed small recommended refinements. However, they

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<sup>1690</sup> "After Siege, Looking for Answers: 7 Inmates Transferred to Lewisburg," *Philadelphia Inquirer*, (November 4, 1981); "Prison Probe Fails to Uncover Clue of Weapons in Siege," *Bulletin*, (November 6, 1981); "Graterford Inmate's Lawsuit Claims His Rights Were Violated in Lockup," *Bulletin Clippings Eastern Penitentiary Graterford Prisoners 1981*. TUUA; "Getting Back to Normal at Graterford," *Philadelphia Inquirer*, (November 10, 1981).

<sup>1691</sup> "Governor Picks 7 to Review Siege at Graterford Prison," *Philadelphia Inquirer*, (November 21, 1981).

<sup>1692</sup> Pennsylvania, Governor's Panel, *The Report of the Governor's Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution*, 21-23.

<sup>1693</sup> *Ibid.*, 23, 42.

believed that the subsequent classification process, conducted by the Graterford's Program Review Committee was inadequate and contributed to Bowen's ability to plan the escape attempt. In some cases, it appeared that decisions pertaining to Bowen's custody status, like work assignments, were not properly communicated to the committee or Bowen's case worker. The panel noted that even if a prisoner had not acted aggressively in the immediate past and warranted placement in some form of segregation, a person with Bowen's criminal and institutional history, nevertheless, should not have been placed in the prison's general population. The recommended creating "a special secure facility(ties) for the housing of this type of inmate."<sup>1694</sup>

The hostage crisis highlighted several series lapses in classification, but the investigating panel determined these to not be reflective of the Bureau of Correction's overall practice. Moreover, the presence of the Correctional Service Group, which the panel described as "a consulting firm nationally recognized for its expertise in the area of inmate classification systems," provided a reassuring and authoritative assessment of the state's practice. In addition to highlighting the failures on the part of the previous administration in releasing Bowen into the general population and the unwarranted risk of permitting him to work in the kitchen, the panel noted that Bowen spent only a minimal amount of time in segregation after he was discovered with escape materials in 1978 and 1979. The main reason for this was that Graterford did not have many segregation cells and they were needed for more serious cases, especially containing the growing number of mentally ill prisoners at Graterford.

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<sup>1694</sup> Ibid., 23.



## **“It’s a Heavy Thing These Farview Cases”: The Mentally Ill Prisoner in the Late 1970s and 1980s**

While much of the public discussion and administrative deliberation during the Graterford standoff and subsequent investigation centered on Bowen’s status, the growing presence of severely mentally ill inmates within the state’s prisons and the problems this posed for classification and placement was a major subtext of the investigation and the journalism surrounding the hostage incident. The mentally ill prisoner emerged as one of the most vexing categories of inmates in prison management discourse during the late 1970s and 1980s. The subject of numerous administrative plans, legislative investigations, classification refinements and newspaper stories, incarcerated people suffering from mental illness posed unique difficulties for other people working or living in prison who were ill-equipped to deal with these prisoners and often unsympathetic to their plight. It was often an open and unresolved question whether someone or some behavior actually fit this description. At times, these ambiguous cases raised uncomfortable questions about the nature of mental illness and sanity itself. On a more practical level, prison staff, and even other prisoners, tried to develop better ways to identify mental illness among prisoners and create a set of practices and designated places to better manage the problems created by mental illness given the inadequacy of existing practices.

As will become clear, there was a broad spectrum of people and behaviors that fell under this rubric, but most of the contemporary commentary dealt with severe cases of mental illness. Most of the people identified as mentally ill in these representations rarely spoke for themselves. Even then, it was more to confirm their insanity. Often considered simply

irrational, many such people behaved in ways that made communication difficult. While the relationship between prisoners and staff was extremely tense and conflictual at Graterford in the late 1970s and early 1980s, the problems presented by mentally ill prisoners pointed to the often unacknowledged degree of mutual understandings shared by most staff and inmates concerning prison order and routines. Mentally ill prisoners often behaved in ways that departed from this implicit knowledge. Prison officers faced great difficulties in managing these inmates who were also often the object of fear, ostracism and abuse by other prisoners.

The inability to survive in prison, to know the many informal customs needed to navigate life in a maximum-security facility, often meant that mentally ill inmates became the center of disputes, victimization and disruptive outbursts. Often described by other inmates and staff as wearing soiled clothing and muttering to themselves, inmates suffering from different forms of mental illness usually lived solitary lives inside prison as other prisoners simply avoided them. Leroy Gause, an inmate at SCI-Pittsburgh, behaved in just this fashion. A fellow prisoner, Robert Allen Ray told a reporter from the *Philadelphia Inquirer* that, "Inmates were afraid to approach Leroy, although he was not known to be violent...In his sad mental state he had to help himself as best he could. He walked alone, ate alone and generally stayed in his cell."<sup>1695</sup> Such behavior marked Gause as irrational, separate from more emotionally-reserved, rational prisoners and staff members. May 7, 1979, Gause jumped from the highest tier of the prison cell block to his death.<sup>1696</sup>

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<sup>1695</sup> "Mentally Ill and Forsaken in PA. Prisons," *Philadelphia Inquirer*, (August 2, 1982).

<sup>1696</sup> *Ibid.*

Media interviews with some of the hostage-takers at Graterford revealed that they were deeply aggrieved by the presence of mental ill inmates. Jo-Jo Bowen and Calvin “Pepper” Williams, another one of the inmate conspirators, both mentioned that the increasing numbers of mentally ill inmates at Graterford, and how prison staff handled them, caused a lot of strain for other inmates. Williams described the prison as more of a “mental institution” full of “screamers.”<sup>1697</sup> Bowen also complained to Chuck Stone during the negotiations about the disruption and tension caused by the presence of mentally ill inmates at Graterford. Recalling these conversations with Stone a few weeks later, Bowen told a journalist that the presence of mentally ill inmates created a serious, intolerable crisis of order within the prison: “I told him [Stone] the state is disintegrating.” Bowen claimed that “There is a deep Farview thing” affecting the social order of the prison, referring to Farview State Hospital, which as Pennsylvania’s only maximum-security forensic hospital, usually held inmates suffering from the severest psychological disturbances. Bowen claimed that:

They won’t take people at Farview, so they bring them to Graterford. When I made that move [the escape attempt], there were maybe 40 to 50 dudes on my block. They don’t let them out. They stand in front of cells and mumble all day. They’d fall out from medication. It’s a heavy thing these Farview cases.<sup>1698</sup>

These “Farview cases” became increasingly evident in state prisons and county jails during the late 1970s, much to the displeasure of many people living and working in prison. Victor Hassine, who began serving a life sentence at Graterford shortly before Bowen’s escape attempt, noted that many older or experienced inmates disliked the influx of “nuts” into the prison because

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<sup>1697</sup> “Inmates Give Up,” *Philadelphia Inquirer*, (November 3, 1981).

<sup>1698</sup> “Bowen’s Own Story of Graterford Siege,” *Philadelphia Inquirer*, (November 17, 1981).

“their special needs and peculiar behavior destroyed the stability of the prison system.”<sup>1699</sup>

Since the topic of mental illness formed only a small part of state’s training curriculum for guards, most staff were not adept at identifying mental illness until it became acute or a disruptive incident occurred.<sup>1700</sup>

However, even if staff felt that an inmate was suffering from mental illness, they had few options for dealing with the situation. Often unable to control or simply communicate with disturbed inmates, guards locked them in their general-population cells, or in more severe cases, placed them in the various control units at the state’s higher security prisons. The latter practice became so common that it appears that staff at some prisons attempted to informally subdivide these control units by grouping mentally ill inmates in adjacent cells or on the same cell block, leaving the other isolation cells for difficult or protection prisoners who were not psychologically disturbed. Psychiatrist Frank Rundle described such an arrangement in Graterford’s U-shaped Behavioral Adjustment Unit during a consultation visit and interview with a particular prisoner.<sup>1701</sup> Staff reserved the east wing (“Siberia”) for mentally ill inmates and housed non-mentally ill segregated inmates on the west wing (“Death Row”<sup>1702</sup>). Dr. Rundle noted the lack of shouting and comparative peacefulness of the west wing: “Clearly the difference was that there were no psychotic inmates housed on this side.”<sup>1703</sup>

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<sup>1699</sup> Victor Hassine, *Life Without Parole: Living in Prison Today*, 4<sup>th</sup> ed. (New York: Oxford University Press, 2009), 34.

<sup>1700</sup> “Mentally Ill and Forsaken in PA. Prisons,” *Philadelphia Inquirer*, (August 2, 1982).

<sup>1701</sup> “Report of Psychiatric Evaluation of Stanley Hoss,” Papers of the Prisoners’ Rights Council, box 24, folder 15: Graterford Task Force 1982. TUUA.

<sup>1702</sup> The name “Death Row” did not indicate that this unit only housed condemned inmates. Until November 1982, inmates sentenced to death could be housed in the general population. See “PA. Inmates Facing Death Penalty Are All Moved To Secluded Quarters,” *Philadelphia Inquirer*, (November 25, 1982); “Editorial,” *The Prison Journal*, 64 (October 1984), 2-3.

<sup>1703</sup> “Report of Psychiatric Evaluation of Stanley Hoss,” Papers of the Prisoners’ Rights Council, box 24, folder 15: Graterford Task Force 1982. TUUA.

Jo-Jo Bowen spent much of his time at Graterford in the institution's Behavioral Adjustment Unit, but would have also encountered mentally ill inmates in other sections of the prison. The final report of the Graterford hostage panel noted that the prison's treatment staff claimed that there were forty-one "seriously mentally-ill" prisoners at Graterford who posed "severe management problems to prison administrators."<sup>1704</sup> Additionally, the panel members learned that there were over 150 inmates in the general population who suffered from mental illness, but whose symptoms were less serious.<sup>1705</sup> Graterford's staff housed these inmates in multiple places within the prison: the psychiatric infirmary ("D Ward" or "D Rear"), the Restricted Housing Unit,<sup>1706</sup> the classification center ("E Gallery"), and simply general population. Dr. Melvin Heller, a psychiatrist who worked with both the Bureau of Correction and the Department of Public Welfare, told the *Philadelphia Inquirer* that beyond the many severely mentally ill prisoners in control units, "Others are getting along marginally on tightly controlled cell blocks. Others are just drifting through the prisons, waiting to explode."<sup>1707</sup> Graterford's superintendent, Julius Cuyler, acknowledged in his testimony before the inquiry investigating the hostage-taking that the integration of disturbed inmates in the general prison population had led to "a great deal of problems."<sup>1708</sup>

Pennsylvania's House of Representatives and the administrations of Gov. Milton Shapp (1971-1979) and Gov. Dick Thornburgh (1979-1987) each conducted large inquiries into the

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<sup>1704</sup> Pennsylvania, Governor's Panel, *The Report of the Governor's Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution*, 43.

<sup>1705</sup> Pennsylvania, Governor's Panel, *The Report of the Governor's Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution*, 43-44.

<sup>1706</sup> This was the new title given to the Behavioral Adjustment Unit, suggesting a less ambitious purpose.

<sup>1707</sup> "Mentally Ill and Forsaken in PA. Prisons," *Philadelphia Inquirer*, (August 2, 1982).

<sup>1708</sup> "Graterford Panel Hears Both Praise, Warnings on Siege," *Philadelphia Inquirer*, (February 11, 1982).

issue of mentally inmates in state and county correctional and mental health systems between 1977 and 1981, all of which concluded that such inmates were not receiving adequate care or management.<sup>1709</sup> Ronald Marks, the new Commissioner of Correction, admitted as much to the Graterford hostage inquiry, telling them that such mentally ill inmates “require better treatment than I’m able to offer them now” and that they needed to be hospitalized rather than imprisoned.<sup>1710</sup> The Correctional/Mental Health Task Force, created in September 1980, summarized many of the findings of these inquiries, noting that despite being a relatively small proportion of the total inmate population, many mentally ill prisoners had “problems which substantially disrupt residents and correctional staff. No correctional programs now exist for this population.”<sup>1711</sup> These inquiries confirmed that the default management strategy for dealing with such inmates involved segregation in various units and cells and sedation with psychotropic medications.<sup>1712</sup> The Bureau of Correction used to transfer disturbed inmates to the custody of the Department of Welfare, which operated the state hospital system, including

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<sup>1709</sup> See Governor’s Task Force on Maximum Security Psychiatric Care, *A Plan for Forensic Mental Health Services in Pennsylvania* (Harrisburg: Governor’s Task Force on Maximum Security Psychiatric Care, 1977); Pennsylvania General Assembly, House of Representatives, *Joint Staff Task Force Report on Mental Health Services and Facilities in State Correctional Institutions* (Harrisburg Committee on the Judiciary. Subcommittee on Crime and Corrections, 1980); Correctional Mental Health Task Force, *The Care and Treatment of Mentally Ill Inmates: A Study of Mentally Ill Adult Inmates in Pennsylvania, 1980-1981* (Harrisburg: Correctional Mental Health Task Force, August 1981). Robert Fishman, executive director of the 1977 inquiry stately bluntly: “...presently there is no forensic mental health system in the Commonwealth. What exists is a series of uncoordinated, non-directed services and facilities generally poorly staffed and operated. Treatment is virtually non-existent in State correctional institutions, and generally less so in county prisons.” Robert M. Fishman, “What Lies Ahead for Forensic Services in Pennsylvania,” *The Prison Journal*, 58 (April 1978), 27-36, 27 quote.

<sup>1710</sup> “Graterford Panel Hears Both Praise, Warnings on Siege,” *Philadelphia Inquirer*, (February 11, 1982). Governor’s Task Force on Maximum Security Psychiatric Care, *A Plan for Forensic Mental Health Services*, 5; Ronald J. Marks to Richard H. Glanton, February 24, 1981. Dick Thornburgh Papers, box 127, folder 1. UPASC.

<sup>1711</sup> Correctional Mental Health Task Force, *The Care and Treatment of Mentally Ill Inmates*, 21.

<sup>1712</sup> Governor’s Task Force on Maximum Security Psychiatric Care, *A Plan for Forensic Mental Health Services*, 2-10; Pennsylvania, Governor’s Panel, *The Report of the Governor’s Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution*, 43; Citizens Crime Commission of Philadelphia, *Security Issues in Pennsylvania State Prisons* (Philadelphia: Citizens Crime Commission of Philadelphia, March 1980), 15-21.

Farview. However, a series of lawsuits, scandals and reforms to the state's legal code curtailed this practiced by 1977.

Farview State Hospital, located in the far northeast corner of the state, received the vast majority of such inmates prior to the mid-1970s. Often feared as a place of last resort for both severely disturbed civil state hospital patients and criminal offenders,<sup>1713</sup> Farview gained an exceedingly bad reputation during the 1970s from several adverse court cases and a major scandal involving the suspicious deaths of patients. Part of this reputation stemmed from the fact that people sent to Farview often never left or did so decades later.<sup>1714</sup> The criteria for improvement, and hence transfer to a different hospital, to the prison system or to court to stand trial were often arbitrary and never explained to inmates.<sup>1715</sup> During the 1960s, when courts demonstrated a greater willingness to consider claims by inmates in state institutions, practices like those at Farview became susceptible to litigation. In 1971, former patients succeeded in challenging parts of Pennsylvania's involuntary commitment statute that had led to their prolonged confinement at Farview. While this case was still being litigated, the state undertook a review of Farview's patients with the aim of releasing as many as possible. After the court's ruling, Farview's population dropped dramatically throughout the 1970s.<sup>1716</sup> The

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<sup>1713</sup> Thornberry and Jacoby claim that Farview achieved this status as a carceral terminus by the mid-1960s. *The Criminally Insane*, 4-5.

<sup>1714</sup> Thornberry and Jacoby note that "the most common discharge disposition" for much of Farview's existence "was death." *The Criminally Insane*, 3.

<sup>1715</sup> Comment, "Commitment to Farview: Incompetency to Stand Trial in Pennsylvania," *University of Pennsylvania Law Review*, 117 (June 1969), 1164-1196; Thornberry and Jacoby, *The Criminally Insane*, 3-8.

<sup>1716</sup> *Dixon v. Attorney General of Com. of Pa.*, 325 F.Supp. 966 (1971); Thornberry and Jacoby, *The Criminally Insane* 16-37, 216-217.

hospital held over 1400 patients in 1962 and as many as 1,170 patients as late as 1969, but its population fell to 477 by 1972.<sup>1717</sup>

Farview was also the subject of several well-publicized inquiries, scathing media coverage, several critical books and personal memoirs and a NBC made-for-television film about the institution's arbitrariness, brutality and lack of therapeutic programming.<sup>1718</sup> Much of this publicity centered on the revelations of severe abuse of inmates by staff and other inmates, including several murders and a decades-long conspiracy by Farview's staff to hide these incidents from public view.<sup>1719</sup> After hearings by a Select Committee of the State Senate and several investigations by the state police and Wayne County Coroner, a grand jury indicted numerous current and past Farview staff members in relation to the abuse allegations between 1977 and 1978.<sup>1720</sup> In 1976, the state's General Assembly also passed the Pennsylvania Mental Health Procedures Act (Act 143), which limited the ability of courts, psychiatrists, physicians and other professionals to involuntarily commitment people to the state mental hospital system. Significantly, these restrictions also hindered the ability of prison officials to transfer

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<sup>1717</sup> "Mentally Ill and Forsaken in PA. Prisons," *Philadelphia Inquirer*, (August 2, 1982); Notes on Visit to Farview State Hospital on July 31, 1969, August 21, 1969. Series I. 1971 Original Deposit, 1951-1971. K. Leroy Irvis Papers, box 17, folder 251: State Mental Institutions, Farview. UPASC; Thornberry and Jacoby, *The Criminally Insane*, 216-217.

<sup>1718</sup> Joseph E. Jacoby, "The Endurance of Failing Correctional Institutions: A Worst Case Study," *The Prison Journal* 82 (June 2002):168-188; Terence Thornberry and Joseph E. Jacoby, *The Criminally Insane: A Community Follow-Up of Mentally Ill Offenders* (Chicago: University of Chicago Press, 1979); Wendell Rawls, Jr., *Cold Storage* (New York: Simon and Schuster, 1980); William Thomas, *The Shoe Leather Treatment* (Los Angeles: J. P. Tarcher, 1980); *The Other Side of Hell* directed by Ján Kadár (1978, TV Movie, Aubrey-Lyon Productions); Donald G. Myers, *Psychotherapy Behind a Razor Wire Fence: Memories of a Forensic Psychologist* (Victoria: Trafford Publishing, 2006).

<sup>1719</sup> The inquiries considered at least nineteen inmate deaths between 1960 and 1969 to be suspicious. See "Farview Workers Killed Six Patients—Prober," *Pittsburgh Press*, (December 1, 1976).

<sup>1720</sup> "Panel Asks 3 Indictments in Farview Patient Killing," *Pittsburgh Post-Gazette*, (November 1, 1977); "Grand Jury Indicts 3 Guards for 1963 Murder at Farview," *Observer-Reporter*, (November 1, 1977); "7 Indicted in Farview Case," *Pittsburgh Press*, (October 5, 1978); "Grand Jury Recommends Indictment of 9 Guards," *Gettysburg Times*, (October 11, 1978).



inmates from the prison system to Farview or smaller forensic units in other mental hospitals.<sup>1721</sup>

These changes affected Farview's operations, but the hospital still functioned as a bridging institution, spanning the state mental health and prison systems.<sup>1722</sup> This ambiguous position often led to bureaucratic infighting between the welfare and corrections agencies, but at a deeper level it also reflected the blurred and unresolved boundaries separating the two institutional forms—the hospital and the prison—and their respective wards—the mad and the bad. As the revisionist social histories of incarceration from the 1970s illustrated, these broad distinctions are longstanding, having informed the creation of prison and hospitals in the eighteenth and nineteenth centuries.<sup>1723</sup> Yet, it was often later, in the late-nineteenth and early-twentieth centuries that political and professional groups settled, if not completely resolved, this broad classification problem of how to manage these two seemingly separate groups.<sup>1724</sup> One can see the intensity of this debate in the *Prison Journal*, the official

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<sup>1721</sup> Pennsylvania Mental Health Procedures Act of July 9, 1976, P.L. 817, No. 143. Mayview State Hospital (near Pittsburgh), Warren State Hospital (near Erie), Norristown State Hospital (in Bucks County, near Philadelphia) and Philadelphia State Hospital operated forensic units, but these were much smaller and less secure than Farview. Additionally, Holmesburg Prison, in the Philadelphia County prison system, operated a forensic unit. See Governor's Task Force on Maximum Security Psychiatric Care, *A Plan for Forensic Mental Health Services*, 4-6, 29.

<sup>1722</sup> While Farview was the state's designated "forensic" hospital, the rest of the public mental institutions were considered to be "civil" hospitals. For a description of this distinction and Farview's place in the state hospitals system see Thornberry and Jacoby, *The Criminally Insane*, 1-5. It should be noted that the degree of distance and difference between the Farview and the prison system was in some respect seen as less distinct in the late nineteenth century and early twentieth century by penologists and those dedicated to social reform. See for instance the discussion of the creation of separate facilities for several different offender categories, including the criminal insane, in Barnes, *The Evolution of Penology on Pennsylvania*, 310-374.

<sup>1723</sup> Foucault, *Discipline and Punish*; Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (New York: Pantheon Books, 1978); Dario Melossi and Massimo Pavarini, *The Prison and the Factory: Origins of the Penitentiary System* (London: Macmillan, 1981); Rothman, *Discovery of the Asylum*; Rothman, *Conscience and Convenience*.

<sup>1724</sup> For more on this trend and similar classification changes in the late nineteenth century, see Rothman, *Conscience and Convenience*; David Garland, *Punishment and Welfare: A History of Penal Strategies* (Aldershot: Gower, 1985).

professional publication of the Pennsylvania Prison Society, which featured numerous articles about the insane offender at the end of the nineteenth century. Most articles and editorials advocated the creation of a separate facility for the criminally insane and their removal from prisons.<sup>1725</sup> This publication trend subsided, however, after the Pennsylvania General Assembly passed legislation authorizing the establishment of Farview in 1905 (the hospital opened in 1912).<sup>1726</sup>

This arrangement consequently affected how the norms and routines of prisons developed in subsequent decades because prison officials, staff and researchers oriented their regimes, programs and knowledge production toward presumptively sane inmates.<sup>1727</sup> Sub rosa prison subcultures, the kinds that that attracted the attention of sociologists, also lacked well-defined categories or argot roles for the insane offender.<sup>1728</sup> The legislation not only created a

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<sup>1725</sup> "Insane," *Journal of Prison Discipline and Philanthropy*, 4 (January 1865), 40-47; "The Insane," *Journal of Prison Discipline and Philanthropy*, 5 (January 1866), 240-245; "Proposed Matters: House of Correction," *Journal of Prison Discipline and Philanthropy*, 6 (January 1867), 68-71; "Criminal Lunatics," *Journal of Prison Discipline and Philanthropy*, 9 (January 1870), 68-69; "Insane Criminals," *Journal of Prison Discipline and Philanthropy*, 11 (January 1872), 118-120; "The Insane," *Journal of Prison Discipline and Philanthropy*, 14 (January 1875), 50-51; "Insanity," *Journal of Prison Discipline and Philanthropy*, 15 (January 1876), 41-44; "Insanity: Criminal Insane," *Journal of Prison Discipline and Philanthropy*, 16 (January 1877), 98-105; "Ninety-Eighth Annual Report of the Philadelphia Society for Alleviating the Miseries of Public Prisons," *Journal of Prison Discipline and Philanthropy*, 24 (January 1885), 9-58; "Separate Institutions for Insane Criminals," *Journal of Prison Discipline and Philanthropy*, 26 (January 1887), 50-51; R. M. Bucke, "How to Regard Insane and Criminal," *Journal of Prison Discipline and Philanthropy*, 31 (January 1892), 74-77; H. E. Allison, "Criminal Insane: Remarks Upon Insanity and Crime," *Journal of Prison Discipline and Philanthropy*, (January 1899), 12-20; Morel, Julius, "The System of Separate Imprisonment: Insanity," *Journal of Prison Discipline and Philanthropy*, 38 (January 1899), 20-27; "One Hundred and Thirteenth Annual Report of the Pennsylvania Prison Society," *Journal of Prison Discipline and Philanthropy*, 39 (January 1900): 7-28; Oluf Thesen, "Classification of Criminal," *Journal of Prison Discipline and Philanthropy*, 55 (March 1916), 41-43.

<sup>1726</sup> Barnes, *Evolution of Penology in Pennsylvania*, 344.

<sup>1727</sup> Of course, this same point could probably be made to some degree about then norms and routines of certain hospitals.

<sup>1728</sup> My point is not that mid-century prisoners, participants in these subcultures, would not have labelled a seriously psychotic prisoner as insane or crazy, but that the typologies of the different argot roles (Sykes) or criminal identities (Irwin), which to some degree oriented social behavior among prisoners, did not include the disturbed offender. This person often resided beyond these patterns of inmate sociality. See Sykes, *Society of Captives*, 84-108; John Irwin, *The Felon* (Englewood Cliffs: Prentice-Hall, Inc., 1970), 7-35. It is perhaps not a coincidence that the return of the insane prisoner came at roughly the same time that inmate subcultures, or the society of captives, receded as an object of sociological interest. For more on this displacement of inmate social

separate facility, but administratively placed it under the direct authority of the mental health bureau in the state's public welfare bureaucracy, thus, keeping it separate from the prisons.<sup>1729</sup> While some inmates passed back and forth between the penal and welfare systems under this arrangement, this phenomenon was far less common prior to the 1960s than it would become later. Pennsylvania's involuntary commitment laws permitted the long-term, indeed indefinite, hospitalization of criminal offenders determined to be insane by several psychiatrists.<sup>1730</sup> Because of this institutional arrangement, the state's prisons did not often deal with insane inmates or did so for only a short time before they transferred them to a small forensic unit in a state hospital or Farview.

This arrangement deteriorated in the late-1960s and early-1970s, and with it, the category of the insane offender returned as a problem of prison order. As a history of the Pennsylvania Prison Society noted in 1987, "For a number of decades, there was little in the *Journal* about the insane in our prisons. Once again, in the 1960's, attention [was] focused on this topic."<sup>1731</sup> The first single topic issue of the *Prison Journal* concerning the mentally ill was the Spring-Summer 1969 issue: "Law and Psychiatry: Systematically Identifying and Providing for the Mentally Disturbed Offender."<sup>1732</sup> The initial classification process usually diverted seriously mentally ill prisoners away from the prison system, but after problems arose at

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relations in prison research, see Jonathan Simon, "The 'Society of Captives' in the Era of Hyper-Incarceration," *Theoretical Criminology*, 4 (August 2000), 285-308.

<sup>1729</sup> For many years the Department of Public Welfare managed both the state hospitals and the prisons under different bureaus. After riots at the Western Penitentiary and Rockview Penitentiary in 1953, an inquiry recommended the creation of the Bureau of Correction within the Department of Justice. See Barnes, *Evolution of Penology in Pennsylvania*, 196-200.

<sup>1730</sup> Pennsylvania Mental Health Act of 1923 and Pennsylvania Mental Health Act of 1953.

<sup>1731</sup> Alexine L. Atherton, "Preface," *The Prison Journal*, 67 (April 1987), 1-37, especially 20-23, quote 21.

<sup>1732</sup> *Ibid.*; Special issue on mentally disturbed offenders, *The Prison Journal*, 49 (April 1969).

Farview and the state began reducing its population, the threshold of diversion began to tighten. Once the state's involuntary commitment procedures changed in 1976, this shift changed abruptly. Thereafter, candidates for commitment had to be considered both dangerous to themselves and others and exhibiting clear signs of mental illness or strange behavior.<sup>1733</sup>

The revised regulations also usually limited an inmate's stay at Farview or other forensic units to ninety days; committing an inmate for longer periods required meeting a higher legal and medical threshold.<sup>1734</sup> After ninety days elapsed for most commitments, the hospital returned inmates to prison.<sup>1735</sup> These changes meant that the category of legally-committable mental illness shrank, covering fewer inmates who previously would have been diverted to hospitals. These inmates, many suffering from serious psychological disturbances, ended up in prisons and were simply not disturbed or violent enough in most cases to warrant costly involuntary commitment. Treatment staff attempted to stabilize mentally ill inmates who could not meet this new medico-legal requirement, usually with a combination of first generation antipsychotic drugs and segregation. "The irony of this," according to Dr. Ray Belford, a Bureau of Correction psychiatrist, was "that if we do a good job protecting a mentally ill inmate from hurting himself or others, then we can't transfer him under Act 143 to a mental facility."<sup>1736</sup>

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<sup>1733</sup> Section 301 and 302 of Act 143. The criteria for determining dangerousness included whether a person inflicting serious bodily harm (or attempting to) in the last 30 days and whether they had attempted suicide, mutilated themselves, or behaved in a manner indicating that they would not be able to protect themselves from serious harm or death.

<sup>1734</sup> Section 304 and 305 of Act 143. Inmates could also be committed under Section 302, but this could not exceed 120 hours, making it somewhat impractical for sending a prisoner to Farview considering the hospital's distance from most of the state's prisons.

<sup>1735</sup> Ibid.

<sup>1736</sup> Citizens Crime Commission of Philadelphia, *Security Issues in Pennsylvania State Prisons*, 16.

Nevertheless, staff often mentioned that some people, whose symptoms had been controlled through medications, became increasingly difficult and psychotic once they began refusing treatment.<sup>1737</sup> Many prisoners, both mentally ill and not, saw these medications simply as control devices that required little effort on the part of staff and forestalled the development of a better way to deal with severe mental illness in prisons. For many inmates, this disciplinary use of medications had little to do with treatment: the “brake-fluid” or “chemical shackles” was simply part of the “medicate-and-forget-them” system of modern prison management.<sup>1738</sup> Inmates, like Bowen, wanted the state to reassert the older classification system and have this class of offender sent to forensic hospitals. Moreover, the accounts of some inmates indicate that psychotropic medications provided a far more flexible tool for staff; they could be prescribed—sometimes forcibly—to any particular inmate, especially those the staff deemed troublesome, regardless of whether that inmate had a history of mental illness or not.

The increased use of these kinds of medications also provided some prisoners with an additional option for dealing with life behind bars. Although, it was not always entirely clear whether many prisoners consented to using these drugs. As psychologist Hans Toch has noted, prisoners deal with the emotional stress and turmoil of imprisonment in very different ways,

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<sup>1737</sup> “Mentally Ill and Forsaken in PA. Prisons,” *Philadelphia Inquirer* (August 2, 1982).

<sup>1738</sup> Hassine, *Life Without Parole*, 4<sup>th</sup> ed., 81-87, quote 82-83, 86; Based on his experience serving a life sentence in several Pennsylvania prisons, inmate James Paluch characterizes the dilemma of prisoners taking psychotropic drugs: “Unable to control their mental conditions, they are advised by both prison officials and psychiatric personnel that they need mind-altering drugs to stabilize the chemical imbalances in their brains. The prison system is all too willing to oblige anyone with a weakness for these drugs as a control mechanism disguised as a management tool. When I see them, shuffling around the yard like zombies, I know who they are. To inure themselves to the horrors of imprisonment, they inevitably become dependent on these drugs, until their human spirits are broken down in a mindless haze. Their minds ultimately become their own prisons. Each milligram of prescribed dosage becomes a razor-wire fence that coils around their brains like the slow, crushing grip of a python.” James A. Paluch, Jr., *A Life for A Life, Life Imprisonment: America's Other Death Penalty* (Los Angeles: Roxbury Publishing Company, 2004), 105-106.

usually deploying long-standing, idiosyncratic, coping patterns that in many cases are ill-suited for institutional life.<sup>1739</sup> Those who could not easily adapt often turned to psychiatric help and medications or such was imposed on them with varying degrees of persuasion and force. The report of the Graterford hostage investigation noted that in addition to the severely mentally ill, Graterford contained a much larger group of inmates who could not adapt well to prison, were prone to more serious behavior breakdowns, and were buttressed by the prison's psychopharmacological management regimen.<sup>1740</sup> In some cases, stressful breakdowns occurred without warning to those appearing well-adapted to life inside. Victor Hassine described with disbelief meeting a friend of his in Graterford's Special Needs Unit while working as a nurse's aide distributing psychotropic medicines.<sup>1741</sup> The man, Hassine claimed, was a jailhouse lawyer, well-adapted to prison life to whom he had spoken to earlier that morning in the prison's general population, but he sat motionless before him, drooling and deeply sedated. The nurse informed Hassine that she responded to reports about him earlier, finding him "mumbling gibberish and repeating that he couldn't do the time."<sup>1742</sup> She told Hassine that this was in fact a common occurrence and that most inmates recovered, but often remained on some sort of medicine.

While some prisoners were sympathetic to people suffering from psychological problems, many others had little patience for their bizarre behavior and outbursts. Numerous commentators, from politicians to inmates, noted that mentally ill inmates were especially

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<sup>1739</sup> In general, see Hans Toch, *Living in Prison: The Ecology of Survival* (New York: The Free Press, 1977); Hans Toch, *Mosaic of Despair: Human Breakdowns in Prison* (Washington, D.C.: American Psychological Association, 1992).

<sup>1740</sup> Pennsylvania, Governor's Panel, *The Report of the Governor's Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution*, 43-44.

<sup>1741</sup> Hassine, *Life Without Parole*, 4<sup>th</sup> ed., 122-125.

<sup>1742</sup> *Ibid.*, 124.

vulnerable to predation and retribution from other prisoners.<sup>1743</sup> These concerns about the victimization of mentally ill prisoners pointed out clearly some of the ways that gender infused this issue, but also the larger prison order as well. For many prisoners, the mere fact of having psychological or emotional difficulty in adjusting to prison was unmanly and a sign of weakness. While most other prisoners avoided or ostracized the mentally ill people as best they could, seriously troubled inmates also presented opportunities for others to distinguish themselves as normal, stable, tough and formidable. The performance of masculinity in this way has long been a feature of descriptions of inmate subcultures in the highly stressful and competitive context of maximum security prisons.<sup>1744</sup> As many people noted at the time, the inmate subcultures of the mid-century prisons transformed rapidly in the 1970s, as racial divisions, violence, drug

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<sup>1743</sup> Joseph F. Mazurkiewicz, "Problems of the Mentally Ill Offender in a Correctional Institution," *The Prison Journal* 49 (April 1969), 34-37; "Mentally Ill/Retarded Jails Inmates," *Corrections Today*, (July/August 1981), newsclipping, Dick Thornburgh Papers, box 268, folder 10. UPASC; *Tillery v. Owens*, 719 F.Supp. 1256 (1989); Hassine, *Life Without Parole*, 4<sup>th</sup> ed., 34, 125-126. See also Rob Wilson, "Who Will Care for the "Mad and Bad,"" *Corrections Magazine*, 6 (February 1980), 5-9, 12-17; Paul J. Wiehn, "Mentally Ill Offenders: Prison's First Casualties" in Robert Johnson and Hans Toch (eds.), *The Pains of Imprisonment* (Beverly Hills: Sage, 1982), 221-237, especially 227-228; D. Reveron, "Mentally Ill and Behind Bars," *APA Monitor*, (March 1982), 10-11.

<sup>1744</sup> See for instance, Sykes, *Society of Captives*, 84-108. Although, many mid-twentieth century sociologies of prison tended to only explore gender (a word the often did not use) in relation to argot roles in the inmate collective. For a critique and reinterpretation of the mid-twentieth century sociologies of prisons that broaden and emphasize the gendered aspects of prison life and order see, Carolyn Newton, "Gender Theory and Prison Sociology: Using Theories of Masculinities to Interpret the Sociology of prisons for Men," *Howard Journal of Criminal Justice*, 33 (August 1994), 193-202; Eamonn Carrabine and Brian Longhurst, "Gender and Prison Organisation: Some Comments on Masculinities and Prison Management," *Howard Journal of Criminal Justice*, 37 (May 1998), 161-176; Hsu Hua-Fu, "The Patterns of Masculinity in Prison Sociology: A Case Study in One Taiwanese Prison," *Critical Criminology*, 13 (January 2005), 1-16; Faith E. Lutze and Courtney A. Bell, "Boot Camp Prisons as Masculine Organizations: Rethinking Recidivism and Program Design," *Journal of Offender Rehabilitation*, 40 (January 2005), 133-152; Kerry Wimshurst, "Punishment, Welfare and Gender Ordering in Queensland, 1920-1940," *Australian & New Zealand Journal of Criminology*, 35 (December 2002), 308-329; Don Sabo, Terry A. Kupers, and Willie London (eds.), *Prison Masculinities* (Philadelphia: Temple University Press, 2001); Regina Kunzel, *Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality* (Chicago: University of Chicago Press, 2008). For foundational work on the crime and the performance of masculinity see James W. Messerschmidt, *Masculinities and Crime: Critique and Reconceptualization of Theory* (Lanham: Rowman & Littlefield, 1993); Jack Katz, *Seductions of Crime: Moral and Sensual Attractions in Doing Evil* (New York: Basic Books, 1988).

abuse and gang formation among prisoners increased.<sup>1745</sup> As these changes reshaped inmate social relationships, more mentally ill prisoners also began appearing behind bars more frequently. Many, if not all of, these prisoners settled to the bottom of these new hierarchies. In some cases, describing them as being outside of these relationships may in fact be more fitting.

In addition to the gendered aspects of interactions among inmates, sociologists Eamonn Carrabine and Brian Longhurst have argued that gender distinctions inform the production of prison order and management practices.<sup>1746</sup> An obvious example was how the Bureau of Correction used psychotropic medication. While they extensively administered these medications in men's prisons, they did so to a much greater degree in Pennsylvania's only prison for women, SCI Muncy.<sup>1747</sup> It appears that at least a fourth of the inmate population at Muncy was on a psychotropic medication regimen in the late 1970s and 1980s.<sup>1748</sup> During hearings on overcrowding held by the Pennsylvania House of Representatives in 1983, Carol Gray of the Pennsylvania Prison Society Women's Program accused the Bureau of Correction of

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<sup>1745</sup> See, for instance, Irwin, *Prisons in Turmoil*.

<sup>1746</sup> Carrabine and Longhurst, "Gender and Prison Organisation."

<sup>1747</sup> Glen R. Jeffes to David W. Sweet, December 2, 1983; The Prescription and Use of Medically Dispensed Psychotropic Medication at the State Correctional Institution at Muncy (SCIM), Glen R. Jeffes to All Concerned, December 2, 1983; Carol H Gray, PA Prison Society Remarks to the Legislative Commission on Prison Overcrowding. Public Hearing- 9-28-83 Harrisburg, Prison Overcrowding Report-subfolder, Judiciary Committee (part 2 of transfile), 83-84. Pennsylvania House of Representatives Cs, Harrisburg (hereafter PHRA). "Some Muncy Inmates Drugged Prison Society Officials Says," *Williamsport Sun Gazette*, (September 28, 1983), newsclipping; "State's Prisons Short of Guards, House Panel Told," *Pittsburgh Press*, (September 29, 1983), newsclipping; David W. Sweet, press conference statement ("Sweet Statement"), February 22, 1984, Crime and Corrections Subcommittee Report; House of Representatives press release February 22, 1983. House Resolution 80, Prison Overcrowding Report-subfolder, Judiciary Committee (part 2 of transfile), 83-84. PHRA; Pennsylvania General Assembly, House of Representatives, Subcommittee on Crime and Corrections, *Report of the House Judiciary Committee Subcommittee on Crime and Corrections Prison Overcrowding House Resolution 80* (Harrisburg: House of Representatives, February 22, 1984), 43; Reports, memoranda and correspondence regarding Muncy State Correctional Institution June 20, 1983-March 29, 1985. Dick Thornburgh Papers, box 268, folder 14. UPASC; "Probe Gives Bad Marks to Jails' Medical Care," *Beaver County Times*, (November 19, 1980).

<sup>1748</sup> "Mentally Ill and Forsaken in PA. Prisons," *Philadelphia Inquirer*, (August 2, 1982).



deliberately overmedicating women as a management strategy.<sup>1749</sup> Acting Commissioner of Corrections Glen Jeffes responded to this charge by pointing out that women had greater rates of psychotropic drug use in the community, were more likely to seek out this type of help than men, and suffered more anxiety than men due to familial separation while in prison.<sup>1750</sup> The House committee rejected Commissioner Jeffes's explanation in their final report but failed to clarify their reasons for doing so.<sup>1751</sup>

Jeffes comments, however, resonate with the findings of historians and sociologists who have noted that penal authorities have often considered female offenders to be intrinsically more reformable than their male counterparts and often attribute criminal acts to mental illness rather than deviance.<sup>1752</sup> Ironically, this gendered discourse of crime, criminality and the malleability of the female criminal's "soul"<sup>1753</sup> often authorized drastic paternalistic, reformative interventions that were more controlling than practices directed at male prisoners.

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<sup>1749</sup> Carol H Gray, PA Prison Society Remarks to the Legislative Commission on Prison Overcrowding. Public Hearing- 9-28-83 Harrisburg, Prison Overcrowding Report-subfolder, Judiciary Committee (part 2 of transfile), 83-84. PHRA.

<sup>1750</sup> Glen R. Jeffes to David w. Sweet, December 2, 1983; The Prescription and Use of Medically Dispensed Psychotropic Medication at the State Correctional Institution at Muncy (SCIM), Glen R. Jeffes to All Concerned, December 2, 1983. Public Hearing- 9-28-83 Harrisburg, Prison Overcrowding Report-subfolder, Judiciary Committee (part 2 of transfile), 83-84. PHRA.

<sup>1751</sup> House of Representatives, *Report of the House Judiciary Committee Subcommittee on Crime and Corrections Prison Overcrowding House Resolution 80*, 43.

<sup>1752</sup> Estelle B. Freedman, *Their Sisters' Keepers: Women's Prison Reform in America, 1830-1930* (Ann Arbor: University of Michigan Press, 1981); Estelle B. Freedman, *Maternal Justice: Miriam Van Waters and the Female Reform Tradition* (Chicago: University of Chicago Press, 1996); Pat Carlen, *Women's Imprisonment: A Study in Social Control* (Boston: Routledge & Keegan, 1983); G. Hunt, J. Mellor and J. Turner, "Wretched, Hatless and Miserably Clad: Women and the Inebriate Reformatories from 1900-1913," *British Journal of Sociology*, 40 (June 1989), 244-270; John M. Sloop, *The Cultural Prison: Discourse, Prisoners, And Punishment* (Tuscaloosa: University of Alabama Press, 1996).

<sup>1753</sup> I refer to Michel Foucault's characterization of the "soul" of the criminal as object of modern penalty and criminological knowledge. Punishment aims to transform this soul rather than destroy the body of the criminal as the earlier forms punishment once did, according to Foucault. However, this soul "is not born in sin and subject to punishment" like the soul of Christian theology, "but is born rather out of methods of punishment, supervision and constraint." *Discipline and Punish*, 29-30, quote 29.

Jeffes also clearly believed the incidence of medication use was justified because women were more vulnerable to the emotional pain of family separation than their male counterparts. In other words, the pains of imprisonment<sup>1754</sup> for female prisoners negated their normative social role and emotional commitments in a way that exceeded the pain inflicted on men. Prison, even a women's prison, was in essence a masculine space that hurt women in specific ways that elicited mental health problems, which according to Jeffes, explained SCI Muncy's mental health treatment practices. My point here is not to dispute Jeffes's contention, but to highlight the point that views like his informed how prison authorities differentially constructed management regimes. The distinction between sanity and insanity in prison and the methods used to address it ran through gendered assumptions for both inmates and staff that often did not explicitly register in the formal inmate classification system and mental illness screening tools.

Another noteworthy aspect of the gendered distinctions in this area was that Farview did not accept women. Thus, the discussion about how to best manage the criminally insane almost always implied male prisoners and patients. Even if mental illness in some of its manifestations feminized certain prisoners in the penal system, the forensic hospitals where many of them ended up, if for briefer periods, was nevertheless a masculine treatment or control intervention, off limits for female prisoners with similar mental health problems. The

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<sup>1754</sup> This phrase – the pains of imprisonment – from Chapter Four of Gresham Sykes's *Society of Captives*, has become a theoretical shorthand for numerous deprivations inmates experience as prisoners and how these are crucial in explaining the development and persistence of inmate subcultures, underground economies, and ultimately, prison order and prison disturbances ("the deprivation model"). It is notable for the present discussion that the classic description of this phenomenon was based on the pains male prisoners experienced.

lack of forensic units in both the prison and state hospital system for women was acute.<sup>1755</sup>

Female inmates needing treatment either received it at SCI Muncy the state's only secure women's prison or at Danville State Hospital. However, the latter facility did not have a secure forensic unit for women.

While extremely serious cases of insanity still met the new legal threshold, disputes nevertheless arose over whether some prisoners would be better managed or treated in hospitals or prisons. The relatively short periods of involuntary commitment at Farview created difficulties for inmates returning to prison. As numerous investigations discovered, most of the state's prisons could not ensure that returning inmates would follow treatment regimens that stabilized them at Farview.<sup>1756</sup> Once returned to the more restrictive and hostile prison environment, these inmates deteriorated, often resulting in severe mental breakdowns, crisis intervention and re-commitment to Farview, thus, restarting the cycle of what became known nationally as a problem of "bus therapy" in reference to the amount of time certain prisoners spent in transit.<sup>1757</sup> With neither hospital nor prison staff wanting to deal with particularly troubled-troublesome inmates, they began transferring them back and forth between prison and the forensic units with increased frequency. Some descriptions of practice referred to it as

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<sup>1755</sup> Governor's Task Force on Maximum Security Psychiatric Care, *A Plan for Forensic Mental Health Services*, 10; House of Representatives, *Report of the House Judiciary Committee Subcommittee on Crime and Corrections Prison Overcrowding House Resolution 80*, 40.

<sup>1756</sup> Correctional Mental Health Task Force, *The Care and Treatment of Mentally Ill Inmates*, 35; "Mentally Ill and Forsaken in PA. Prisons," *Philadelphia Inquirer*, (August 2, 1982).

<sup>1757</sup> This term became commonplace to describe the prison-hospital circuit throughout the country. For instance, see Hans Toch, "The Disturbed-Disruptive Inmate: Where Does the Bus Stop?" *Journal of Psychiatry and Law*, 10 (Fall 1982), 327-349; Wilson, "Who Will Care for the "Mad and Bad.""

a circuit or “revolving door” that existed between Farview and several maximum-security prisons.<sup>1758</sup>

Bus therapy condensed many of the disputes between these two state agencies, highlighting divergent institutional philosophies, disparate classification procedures and the practical frustrations of staff in each bureaucracy. The struggle rested on whose account of these prisoners would prevail and where these people would ultimately be placed. Significantly, these divergent classificatory accounts did not aim to incorporate or lay claim to these people. Rather, they sought to exclude them and maintain the institutional boundary-marking functions of their respective classification systems. The Bureau of Correction and the Office of Mental Health within the Department of Welfare each argued that the certain kinds of mentally ill inmates were inappropriate for their respective institutions. Correctional officials claimed that they were not equipped to adequately treat or manage any mentally ill inmates, while the Office of Mental Health argued that most mentally ill inmates should be treated within prisons rather than transferred. Thus, mental health diagnosis and classification focused on identifying problems, determining their legal status and if possible, immediately excluding those exhibiting these characteristics.

At the center of all of this was, of course, the man on the bus, in transit between control units, one operated by mental health authorities, the other by penal authorities. This person rarely spoke in the public representations of this problem. Even when scandals erupted at Farview earlier in the 1970s, most of the patients who made public statements were not these men, the subjects of bus therapy. The reasons for this are no doubt multiple and surely simple

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<sup>1758</sup> *Tillery v. Owens*, 719 F.Supp. 1256 at 1288 (1989); Toch, “The Disturbed-Disruptive Inmate,” 332.

repression would be one. The difficulty some of these men had in communicating would be another, whether from illness or its pharmacological treatment. However, the effects of the discourse of social control and the deep historical legacies of classification also rendered these men inscrutable in many ways, a conundrum of representation as much as of discipline. They were both serious mentally ill and willfully difficult and violent, in the often-used shorthand, both mad and bad, but not clearly more one than the other. Writing in the early 1980s, Hans Toch argued that these prisoners, whom he referred to as “disturbed-disruptive inmates,” revealed the inadequacies of classification systems in prisons and forensic hospitals and their attendant management practices. Each system structured regimes and routines to deal exclusively with either a disturbed (irrational) patient or a disruptive (rational) inmate, but not with both categories, especially when certain people appeared to embody both categories and when the authorities could not determine whether a prisoner was one or the other.<sup>1759</sup> In terms of classification, management and treatment, these inmates had “no theoretical standing,” according to Toch; the disturbed-disruptive inmate was a discursive and practical blind spot, “a non-concept.”<sup>1760</sup>

It appears, given the wide latitude of mental health authorities earlier in the century, that these people would have been considered more “disturbed” than “disruptive” and would have been incarcerated at Farview. Forensic psychologists Terrence Thornberry and Joseph Jacoby, who studied and participated in the deinstitutionalization process at Farview, noted that until the legal changes in 1970s the state’s involuntary commitment statute “provided the

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<sup>1759</sup> Toch, “The Disturbed-Disruptive Inmate,” 331.

<sup>1760</sup> Ibid.

broadest possible selection criteria. It did not designate Farview as the place of confinement for any particular class of persons.”<sup>1761</sup> Commitments came directly from the court, other civil mental hospitals, and the prison system. By the mid-1960s, Thornberry and Jacoby argue that Farview constituted, “an institution of last resort, where individuals who could not be handled in other state institutions were sent.”<sup>1762</sup>

Farview’s reputation as a disciplinary terminus, albeit for the broadly-conceived irrational, informed other control strategies pursued by the state’s prison authorities.<sup>1763</sup> Following the killing of three prison employees in 1973, Gov. Milton Shapp and the Bureau of Correction proposed the creation of a “maxi-maxi” control unit at the hospital to deal with assaultive prison inmates considered to be too dangerous to safely house in any of the state prisons.<sup>1764</sup> The unit was to be operated by the Bureau of Correction rather than the Office of Mental Health, and Bureau officials acknowledged that the inmates they wished to transfer to this unit were not mentally ill, but simply disruptive and violent. However, its planned location in a wing of Farview signified the growing proximity of the categories and subjects of penal and mental health control. Prisoner advocacy organizations, like Philadelphia’s Prisoners’ Rights Council, opposed this plan, decrying, among other things, the lack of selection criteria for identifying the target group of prisoners.<sup>1765</sup> They feared that this unit would expand and

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<sup>1761</sup> Thornberry and Jacoby, *The Criminally Insane*, 5.

<sup>1762</sup> *Ibid.*

<sup>1763</sup> I take the notion of a prison systems’ terminus from Richard Sparks, “Out of the ‘Digger’: The Warrior’s Honour and the Guilty Observer,” *Ethnography*, 3 (December 2002), 556–581.

<sup>1764</sup> “Shapp Works on Plan For Legislature: Special Prison Urged for Hard Core,” *Pittsburgh Post-Gazette*, (December 22, 1973), newsclipping; “Shapp Will Meet Group Pushing Convicts’ Rights,” *Pittsburgh Post-Gazette*, (December 20, 1973), newsclipping; “Shapp Agrees to Jail Parley,” *Pittsburgh Press*, (December 19, 1973), newsclipping; Charles O. Rice to Governor Milton Shapp, December 18, 1973, telegram. Charles Owen Rice Papers box 17, folder 9: Prisons, Reform, Meeting with Governor Shapp, 1973. UPASC.

<sup>1765</sup> Intensive Care Unit for Disruptive Prisoners at Waymart, Prisoner’s Defense Coalition to Pennsylvania’s prisoner, their Families, Relatives and Friends, July 30, 1974; Margery Velimesis to Spencer Cox, Allan Lawson, Al

become a way to isolate politicalized prisoners.<sup>1766</sup> Although the administration scuttled this plan after rumors of wrongdoing at Farview began to surface in late 1974 and 1975, the facility retained its reputation for control in the penal imaginaries of state officials, who periodically revisited the idea of locating a new penal institution or unit there.<sup>1767</sup> The hospital's remote location in the sparsely-populated, mountainous area of northeastern Pennsylvania no doubt enhanced this reputation for isolation.

During the 1970s, the range of mental illness categories that Farview accepted and treated shrank and its reputation as a terminus also withered. In addition to the higher degree of disturbance and dangerousness needed for involuntary commitment, staff at Farview also rejected many patients they deemed to have personality disorders. Farview staff thought such people were not mentally ill in a medical sense, but rather expressed "character defects." People diagnosed with personality disorders accounted for the vast majority of mentally disturbed prisoners. One court, reviewing the conditions of SCI Pittsburgh in the late 1980s, claimed that the prison's staff diagnosed nearly 80 percent of the institution's mentally disturbed inmates with personality disorders.<sup>1768</sup> However, the court noted that, "Although these inmates appear to be mentally ill, they are in reality extremely immature."<sup>1769</sup> SCI

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Gilbert, Ren Davis, Stan Schmulker, Leodus Jones, August 9, 1974; RE: Meeting, August 16, 1974 – 9:00 A. M., Graterford Prison, Margery Velimesis et al. to Residents of Graterford Prison, August 9, 1974; Bureau of Corrections Maximum-Maximum Security Facility at Waymart, Pa., Coalition to Reduce Prison Violence to Governor Milton J. Shapp, August 28, 1974; Meeting with Stewart Werner et al., Coalition to Reduce Prison Violence to Members of Coalition to Reduce Prison Violence, n.d.; Margery Velimesis to Members of Coalition, September 3, 1974; [report on interviews with 15 Graterford inmates], Coalition to Reduce Prison Violence, September 3, 1974; Meeting of Coalition – 9 September 1974, minutes. Papers of the Prisoners' Rights Council, box 11, folder 7: Behavior Modification Project, Farview. TUUA.

<sup>1766</sup> See all documents cited in last note.

<sup>1767</sup> "Kane Scoffs At Farview Deaths Story," *Pittsburgh Post-Gazette*, (April 17, 1975); "Farview Prison Held Up By 'Suspicious Deaths,'" *Pittsburgh Press*, (January 12, 1975).

<sup>1768</sup> *Tillery v. Owens*, 719 F.Supp. 1256 at 1286 (1989).

<sup>1769</sup> *Ibid.*

Pittsburgh's chief psychiatrist, Dr. Herbert E. Thomas, said that his staff nevertheless struggled at times to determine "who requires limiting and restricting and who requires nurturing and care."<sup>1770</sup> When an inmate committed a seriously violent act and behaved in what appeared to prison staff to be an abnormal manner, disagreement often arose over whether this indicated a treatable, if incurable, mental illness such as schizophrenia, which could best be dealt with through medical means, like anti-psychotic drugs; or if instead, such behavior emanated from a personality disorder. The latter condition implied rationality, albeit from a person who staff also believed was immature, manipulative or simply wicked. Staff at Farview drew a sharper distinction between those they considered mentally ill and those considered to have personality disorders, in other words mad and bad. This, of course, made it far easier to reject many transfer requests or return people to prison as soon as possible.

Farview and other state hospitals used security classification systems and diagnostic schemes which differed from the corresponding systems in prisons. In 1977, the Governor's Task Force on Maximum Security Psychiatric Care noted the "urgent need for the creation of a common language or set of standards" to be used by both agencies in an effort to minimize conflicts over inmate placement.<sup>1771</sup> These differences extended to stated purposes of each system.<sup>1772</sup> This even occurred in situations where the classification system was nominally the same. Numerous studies in the late 1970s and early 1980s noted that psychiatrists and psychologists working in prisons diagnosed inmates primarily for identification and referral, not

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<sup>1770</sup> Ibid.

<sup>1771</sup> Governor's Task Force on Maximum Security Psychiatric Care, *A Plan for Forensic Mental Health Services*, 6-10, quote 10.

<sup>1772</sup> Ibid.



treatment, which was more common in mental hospitals.<sup>1773</sup> Yet, they used the same diagnostic manuals for the identification of disease entities and disorders.<sup>1774</sup> Correctional and welfare personnel referred to these “rival diagnostic efforts” as “ping ponging,” with staff from each agency proposing the best label, and hence place, for the inmate.<sup>1775</sup> As Dr. Thomas stated, it was often hard to determine if some inmates were either mentally ill, deviant or both. These were the people on caged buses. Staff in both the prison and the hospital had a managerial interest in classifying an inmate for placement in the other’s custody.

Even after the new commitment law came into effect, the Office of Mental Health further restricted Farview’s role. Citing overcrowding at Farview and inappropriate admissions from the prison system, Dr. Scott H. Nelson, the Deputy Secretary for Mental Health, place a moratorium on all new admissions in February 1980 until the facility’s population fell below 225 inmates, a figure which would also be the new legal capacity ceiling.<sup>1776</sup> Dr. Nelson also stated that the hospital would not accept transfers without accompanying psychiatric histories or

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<sup>1773</sup> Toch, “The Disturbed-Disruptive Inmate,” 333; Wilson, “Who Will Care for the “Mad and Bad,”” 13-14; Reveron, “Mentally Ill and Behind Bars,” 10-11.

<sup>1774</sup> The most common classification manual was the second edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-II), which was subsequently replaced by the publication of the drastically revised DSM-III in 1980. For a history of the development of this manual, see Rick Mayes and Allan V. Horwitz, “DSM-III and the Revolution in the Classification of Mental Illness,” *Journal of the History of the Behavioral Sciences*, 41 (Summer 2005), 249–267; Herb Kutchins and Stuart A. Kirk, *Making Us Crazy: DSM: The Psychiatric Bible and the Creation of Mental Disorders* (New York: Free Press, 2003); Allan Young, *The Harmony of Illusions: Inventing Post-Traumatic Stress Disorder* (Princeton: Princeton University Press, 1995); Mitchel Wilson, “DSM-III and the Transformation of American Psychiatry: A History,” *The American Journal of Psychiatry*, 150 (March 1993), 399-410; Stuart A. Kirk and Herb Kutchins, *The Selling of DSM: The Rhetoric of Science in Psychiatry* (New York: Aldine de Gruyter, 1992).

<sup>1775</sup> *Ibid.*, 332.

<sup>1776</sup> Scott H. Nelson, M.D., form letter to judges, February 20, 1980. MG-404: Dick Thornburgh Papers, Wilburn, Robert. 4-2784 box 44, folder 8: Public Welfare, Department of, Farview State Hospital, 1979-1980. PSA; Citizens Crime Commission of Philadelphia, *Security Issues in Pennsylvania State Prisons*, 15.

inmates from prisons if they were committed under Section 302 of Act 143, which had the lowest criteria threshold.<sup>1777</sup>

This policy shift effectively suspended the actual physical transfer of prisoners regardless of their legal commitment status. Within a year, there were numerous inmates legally committed to Farview who were still residing in prison, often in control units.<sup>1778</sup> Even when space opened up at Farview, only the most serious cases could be transferred. During the meetings of the Correctional/Mental Health Task Force in 1980, senior officials from the welfare and corrections agencies negotiated how to provide for mentally ill inmates, eventually reconciling their difference on the transfer process, but without altering Farview's strict capacity limit. Both agencies crafted a plan to enhance short-term treatment in prisons with extra staffing and capital expenditures for the construction of better mental health units. Senior staff members in the Bureau of Correction were not very pleased with this option, hoping that more mentally ill inmates would be removed from the state's prisons.<sup>1779</sup> However, one of Gov. Thornburgh's clear priorities upon assuming office in 1979 was to drastically reduce the size and scope of the Department of Welfare and its programs.<sup>1780</sup> This included closing as many

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<sup>1777</sup> Ibid. Section 302 was one of three involuntary commitment categories in Act 143 and had the lowest involuntary commitment threshold, but confinement could not exceed 120 hours. Pennsylvania Mental Health Procedures Act (Act 143).

<sup>1778</sup> "Mentally Ill and Forsaken in PA. Prisons," *Philadelphia Inquirer*, (August 2, 1982).

<sup>1779</sup> Mental Health Corrections Task Force, Walt Plosila to Governor Thornburgh, November 17, 1980. Dick Thornburgh Papers, box 268, folder 9; Position on Mental Health Service in State Correctional Institutions. Dick Thornburgh Papers, box 268, folder 10. UPASC.

<sup>1780</sup> For Thornburgh's general assistance reforms, dubbed by critics as "Thornfare," see "What the Welfare Cuts Have Wrought," *Philadelphia Inquirer*, (June 17, 1984); "Life After 'Thornfare' Is Found Grim," *Philadelphia Inquirer*, (November 11, 1988); Michael Katz, "Gov. Casey's Welfare Reform Fails State's Walking Wounded," *The Morning Call*, (February 25, 1994); [http://articles.mcall.com/1994-02-25/news/2961270\\_1\\_general-assistance-assistance-recipients-welfare](http://articles.mcall.com/1994-02-25/news/2961270_1_general-assistance-assistance-recipients-welfare). Last checked on November 5, 2012. For an example of cost cutting and rationalization in state hospitals, see Kathryn S. McKenna, *C. Howard Marcy State Center: A Report to the Secretary of Public Welfare* (Western Region, Department of Public Welfare, March 17, 1981) in Dick Thornburgh Papers, box 265, folder 15: Conversion of the Marcy State Hospital into a correctional prison facility April-November, 1981. UPASC.

state hospitals as possible and reducing the operations of the remaining ones. However, Thornburgh opted to keep Farview open, but with a much reduced role than it had only a decade before.<sup>1781</sup>

The dramatic increase in mentally ill inmates was not unique to Pennsylvania. Numerous states in the country also reported large influxes of mentally ill prisoners along with similar difficulties in providing for them. The most common explanation was summed up succinctly by Alfred Blumstein, the Chairman of the Pennsylvania Commission on Crime and Delinquency: “We’ve really emptied the mental institutions, and a lot of those people are winding up in prison.”<sup>1782</sup> This phenomenon, occurred with greater frequency in the 1970s, even though the populations in state hospitals had been declining since the late 1950s. It also occurred in many other countries around the world, although there is evidence to suggest that happened at different times.<sup>1783</sup> Since state mental hospitals usually held people who were not likely to end up in prisons, it is likely that the deinstitutionalization of the mentally ill only became a prominent issue for state prison systems after state hospitals began releasing more seriously mentally ill, young, male patients who could not be easily managed beyond direct institutional controls. As a number of critics of deinstitutionalization have argued, plans for community mental health treatment were never adequately developed to deal with many of the severely mentally ill people whom the state simply abandoned during the 1970s and early 1980s.<sup>1784</sup> As

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<sup>1781</sup> Thornburgh’s predecessor, Milton Shapp, had actually endorsed closing Farview at one point, but balked after resistance to this idea emerged in the economically depressed area around the hospital.

<sup>1782</sup> Citizens Crime Commission of Philadelphia, *Security Issues in Pennsylvania State Prisons*, 17.

<sup>1783</sup> Simon Goodwin, *Comparative Mental Health Policy: From Institutional to Community Care* (London: Sage, 1997).

<sup>1784</sup> For a good overview of some of the dilemmas posed by deinstitutionalization in regards to the reform civil commitment laws see, Andrew Scull, *Social Order/Mental Disorder: Anglo-American Psychiatry in Historical Perspective* (Berkeley: University of California Press, 1989), 280-329. Also relevant are: Paul S. Appelbaum, *Almost*

restrictions on involuntary mental health commitment grew, minor offenders with mental health problems were also not absorbed by the state hospital system as they would have been a few years earlier.<sup>1785</sup> These minor offenders not only did not receive treatment that may have prevented or controlled their illness, but they also accumulated lengthier criminal records, which made them more susceptible to incarceration in state prisons later.

Despite the attention that Pennsylvania's General Assembly and the administrations of Gov. Thornburgh and later Gov. Robert Casey directed at the mental health services during the 1980s, many mentally ill inmates remained in the state's prisons, suffering unnecessarily and precipitating numerous difficulties for staff and other prisoners. Nearly a decade after the Graterford hostage crisis and the inquiries into forensic mental health services in the late 1970s and early 1980s, numerous investigations and exposes of the prison system and specific institutions—from court opinions, riot inquiries, journalistic accounts--noted that there were still many mentally ill inmates in the state's prisons, that their numbers were increasing and the concomitant management problems remained unresolved.<sup>1786</sup>

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*a Revolution: Mental Health Law and the Limits of Change* (New York: Oxford University Press, 1994), 3-70; Ann Braden Johnson, *Out of Bedlam: The Truth About Deinstitutionalization* (New York: Basic Books, 1990); Peter Sedgwick, *Psycho Politics: Laing, Foucault, Goffman, Szasz, and the Future of Mass Psychiatry* (New York: Harper & Row, 1982); Carol A.B. Warren (with contributions by Stephen J. Morse, Jack Zusman), *The Court of Last Resort: Mental Illness and the Law* (Chicago: University of Chicago Press, 1982); E. Fuller Torrey, *Out of the Shadows: Confronting America's Mental Illness Crisis* (New York: John Wiley & Sons, Inc., 1997), 25-42. More empirically based, but theoretically flawed Gerald N. Grob, *From Asylum to Community: Mental Health Policy in Modern America* (Princeton: Princeton University Press, 1991).

<sup>1785</sup> Citizens Crime Commission of Philadelphia, *Security Issues in Pennsylvania State Prisons*, 16.

<sup>1786</sup> Governor's Interdepartmental Task Force on Corrections, *The Report of the Governor's Interdepartmental Task Force on Corrections* (Harrisburg: October 21, 1987), 24-28; Governor's Interdepartmental Task Force on Corrections, *The Report of the Governor's Interdepartmental Task Force on Corrections, Department of Corrections, Progress Report* (Harrisburg: October 2, 1990), 13-15; Testimony of Donald Vaughn, Pennsylvania General Assembly, Senate, Judiciary Committee, "Public Hearing to Receive Testimony from Individuals Regarding the State Correctional Institution at Graterford, April 26, 1990, Norristown, PA," unpublished transcript, 41-43; Pennsylvania Governor's Commission to Investigate Disturbances at Camp Hill Correctional Institution, *The Final Report of the Governor's Commission to Investigate Disturbances at Camp Hill Correctional Institution* (Harrisburg, December 21, 1989), 9, Exhibit F; *Tillery v. Owens*, 719 F.Supp. 1256 (1989); "Pennsylvania Prisons Have 3rd-Worst Death Rate in

Although care for these people improved in some areas, the Bureau of Correction, and its successor agency the Department of Corrections, did not follow through on the construction of many of the planned special units for the mentally ill or sufficiently increase psychological support staff.<sup>1787</sup> The onslaught of new prisoners entering the prison system consumed resources and cell space to the detriment of the mentally ill as well as other inmates who had certain problems or attributes that distinguished them from the normative, general-population prisoner. Such “special needs” prisoners, as they were often referred to at the time, included the elderly, physically disabled, developmentally or intellectually disabled, the young (late teens or early twenties), and non-English speakers. Discussions of the dilemmas of special needs prisoners sometimes included women as well, but more often reports on the need for differential programs or units dealt with women separately. Nevertheless, Pennsylvania’s prison population began to register greater diversity among the inmates during the 1980s and this was reflected in many publications and media representations of prison issues.<sup>1788</sup>

Accompanying the growing visibility of such diversity was the awareness that Pennsylvania

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U.S.,” *Pittsburgh Post-Gazette*, (December 18, 1989); Mentally Ill Inmate Starved Self to Death,” *Pittsburgh Post-Gazette*, (December 21, 1989). This trend also occurred in many county prisons. See the testimony of Joseph Carnazzo and Michael Hohnhey, Pennsylvania General Assembly, Senate, Judiciary Committee, “Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, April 9, 1990, Harrisburg, PA,” unpublished transcript, 153-170; “Officials: More Mentally Ill Held in Prisons,” *Philadelphia Inquirer*, (November 21, 1989); and in general Freda Adler, “Jails as a Repository for Former Mental Patients,” *International Journal of Offender Therapy and Comparative Criminology*, 30 (November 1986), 225-236; George B. Palermo, Maurice B. Smith and Frank J. Liska, “Jails versus Mental Hospitals: A Social Dilemma,” *International Journal of Offender Therapy and Comparative Criminology*, 35 (Summer 1991), 97-106.

<sup>1787</sup> Governor’s Interdepartmental Task Force on Corrections, *The Report of the Governor’s Interdepartmental Task Force on Corrections* (Harrisburg: The Task Force, October 21, 1987), 24-228; Governor’s Interdepartmental Task Force on Corrections, *The Report of the Governor’s Interdepartmental Task Force on Corrections, Department of Corrections, Progress Report* (Harrisburg: The Task Force, October 2, 1990), 13-15.

<sup>1788</sup> At times, the the Department of Corrections was slow to officially recognize such diversity. It was not until 1992, for instance, that the annual statistical report finally abandoned the category of “non-white” and instead using both “Black” and “Hispanic.” See Pennsylvania Department of Corrections, *1992 Annual Statistical Report* (Camp Hill: Department of Corrections, 1992), 8.

prisons often did not alter practices to accommodate such people. This became a focal point of penal politics during the 1980s and 1990s as the prison system developed programs or units to address this diversity.

Charles Goldblum, an inmate at SCI Huntington, wrote to prominent state politicians in November 1989 in the wake of a series of major disturbances in several prisons across the state.<sup>1789</sup> He included a lengthy analysis of the prison system that he and another inmate, Charles Busbee, wrote, offering explanations of the violence and recommended reforms. Among the issues they mentioned was the persistent disruptive presence of mentally ill inmates who they felt should not be in the prison system but could not be transferred to Farview. They decried the state's inaction on this issue by pointing out that "Other states have alternative housing for prisoners who are mentally ill. Pennsylvania needs to come into the twentieth century."<sup>1790</sup>

Although, as the twentieth century neared an end, the prison system created more dedicated mental health spaces within prisons, Pennsylvania moved further away from the policy it adopted at the beginning of the twentieth century, which hinged on a greater distinction between the categories of criminal and insane. A critic of deinstitutionalization, author Ann Braden Johnson argued in 1990 that closing state hospitals disrupted certain distinctions, adhering to certain people and institutions:

One thing deinstitutionalization has done is to deprive us of a handy device for sorting out deviants. In the old days, crazy people went to the hospital, while bad

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<sup>1789</sup> Charles J. Goldblum to K. Leroy Irvis, November 18, 1989. K. Leroy Irvis Papers, box 1, folder 4. Series I. VI. 1995 Addition, 1936-1994.. UPASC; Charles J. Goldblum to Thomas Caltagirone, November 18, 1989, Box 13 Judiciary 1989-90, Subject Files, Ca-Do , [Folder 4] PA House of Representatives, Records of the Committee on Judiciary, Subject Files, Camp Hill, SCI. Committee on Judiciary. PHRA.

<sup>1790</sup> Ibid.

people went to jail. By the same token, people driving by a mental hospital could be pretty sure it housed crazy people; if they chanced to see a jail or prison, they could safely assume bad people were inside. Now, though, it's a lot less clear who is crazy and who is bad, which is making the rest of us more than a little anxious.<sup>1791</sup>

In the aftermath of the disturbances of 1989, the administration of Gov. Robert Casey accelerated a plan they had proposed earlier for creating a drug treatment unit for the Department of Corrections in some of the buildings at Farview.<sup>1792</sup> By 1995, the entire facility, renamed as the State Correctional Institution at Waymart, came under the control of the penal bureaucracy.<sup>1793</sup> The Pennsylvania State Hospital for the Criminally Insane,<sup>1794</sup> later called Farview State Hospital, became another prison within the Department of Corrections, albeit one with specialized programs for the mentally ill and drug dependent

### **Penal Classification and the Royal Commission into New South Wales Prisons**

By the mid-1970s, the prisons of New South Wales were in deep turmoil. Several large disturbances had occurred since the late 1960s and there were plenty of indications to the public that prison staff had used extreme force in subduing prisoners after these events and to

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<sup>1791</sup> Ann Braden Johnson, *Out of Bedlam: The Truth about Deinstitutionalization* (New York: Basic Books, 1990), 159.

<sup>1792</sup> "Farview Eyed as Site for State Prison," *The Sunday Times*, (April 2, 1989), newsclipping. Box 12 Judiciary 1989-90, Subject Files, A-Bo: [Folder labeled] PA House of Representatives, Records of the Committee on Judiciary, Subject Files, Alternative Facilities (1989-1990). Committee on Judiciary. PHRA; Utilization of Unused Buildings at Farview for Minimum/Medium Security Prison. Box 22, Folder 15 and Pennfree: The Pennsylvania Drug-Free Community Thrust Fund. Box 22, Folder 10. Robert P. Casey Papers. Special Collections Library, Pennsylvania State University; "Anti-Drug Plan Detailed by Casey," *Philadelphia Inquirer*, (June 16, 1989).

<sup>1793</sup> Jacoby, "The Endurance of Failing Correctional Institutions, 186; Pennsylvania Department of Corrections, "Past & Present," (Camp Hill: Department of Corrections Press Office, June 2010), 10.

<sup>1794</sup> Farview's original official name.

maintain order more generally. Yet officially, the state's penal agency proclaimed that educating, training and rehabilitating prisoners was its primary mission, symbolized perhaps most clearly by the decision in 1970 to change the Department of Prisons' longstanding name to the Department of Corrective Services. The incongruence of these accounts and the mounting confusion and tensions among prisoners and within the ranks of prison staff, was equally apparent in the operation of the classification system and the categories it used. The senior management of the Department wished to change numerous aspects of the classification system, but their plans were poorly conceived and implemented in a haphazard fashion at best. They also encountered resistance from the unionized guard force, which was heavily invested in how the existing classification system supported their security concerns. The crisis in the states' prison system culminated in a massive riot and fire that destroyed most of Bathurst Gaol in February 1974. The destruction prompted numerous calls for an extensive investigation, which could only be effected by a royal commission with wide-ranging terms of reference. After stalling for nearly two years, the sitting Liberal-Country coalition government formed a royal commission in 1976, just prior to their defeat at the polls. The new Labor government, led by Premier Neville Wran reduced the number of Royal Commissioners from three to one, but otherwise retained the very broad terms of reference, which required the Royal Commission to examine the entirety of the Department of Corrective Services and its operations. Supreme Court Justice John F. Nagle, the sole Royal Commissioner, convened the first sitting of the Royal Commission into New South Wales Prisons on April 14, 1976.

After discussing how the investigation would proceed and who would have standing to appear before it, Nagle and his staff inspected eleven different prisons, camps and penal



complexes and received a statement from Walter McGeechan, the Commissioner of Correctives Services, which summarized the Department's current operations. McGeechan's statement described the workings of the classification system at length, but he repeatedly qualified it with explanations of how Department personnel departed from stated policy and failed to meet the standards he hoped were possible.<sup>1795</sup> The prison regulations established under the Prisons Act of 1952 mandated Inmate classification in Regulation 10, which listed ten broad categories governing the sorting of all people committed to penal institutions:

- (a) Unconvicted.
- (b) Appellants.
- (c) Debtors.
- (d) Maintenance confinees.
- (e) Short-sentenced.
- (f) Remediable.
- (g) Recidivist.
- (h) Intractable.
- (i) Homo-sexual.
- (j) Unclassified.<sup>1796</sup>

After this initial sorting by a reception officer, a new prisoner spent weeks, often months, at a reception center during the second phase of classification, which involved interviews, a medical screening, psychological testing and an evaluation of an inmate's educational and vocational aptitude. The central Classification Committee reviewed all prisoners serving sentences over twelve months before deciding where to place them. Despite the accumulation of information

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<sup>1795</sup> Statement of Walter Richard McGeechan, Commissioner of Corrective Service and Supplementary Statement of Walter Richard McGeechan Commissioner of Corrective Service reprinted in *Proceedings of the Royal Commission*, 28-108, 109-126.

<sup>1796</sup> Regulations under the Prisons Act, 1952 no. 10. Published in the *NSW Government Gazette* No. 32 (13 February 1953). Historian Mark Finnane notes a similar eleven category scheme adopted by Queensland in 1959. Unlike New South Wales's practice, maintenance confinees and debtors formed one class. Queensland's prison regulations also had two additional categories: youthful offenders and psychopaths. *Punishment in Australian Society* (Melbourne: Oxford University Press, 1997), 83-84.

about prisoners during the second phase of classification, McGeehan conceded that the primary considerations for most placements were the availability of space and security.<sup>1797</sup>

Penal authorities in New South Wales had always deployed some form of inmate sorting,<sup>1798</sup> however the classification scheme elaborated in the Regulation 10 and the workings of the Classification Committee formed part of a postwar prison reform project undertaken by the then head of the Department of Prisons, Comptroller-General Leslie Nott. According to John Morony, who served as Comptroller-General of Prisons from 1960 to 1968, Nott was especially influenced by American penological thinking and practice, particularly the work of Frank Loveland, the Assistant Director of Federal Bureau of Prisons and author of an authoritative manual on classification.<sup>1799</sup> Between April and July 1947, Nott travelled extensively in the United Kingdom and United States, speaking with penal administrators and observing practices in numerous prisons.<sup>1800</sup> Nott also forged new collaborative relationships with representatives of the International Penal and Penitentiary Commission and the American Prison Association.<sup>1801</sup> Nott's research on institutional practices overseas underscores the

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<sup>1797</sup> Statement of Walter Richard McGeehan, Commissioner of Corrective Service and Supplementary Statement of Walter Richard McGeehan Commissioner of Corrective Service reprinted in Nagle transcripts vol9, part 1, 33-34

<sup>1798</sup> See for instance the description of convict sorting in the work assignment system and the use of secondary discipline outposts in Robert Hughes, *The Fatal Shore: The Epic of Australia's Founding* (New York: Vintage, 1986), 282-322, 425-459.

<sup>1799</sup> Morony, *The More Things Change*, 292; For work by Frank Loveland, Jr., see his "A Criminological Laboratory in the Massachusetts Correctional System," *Journal of Criminal Law and Criminology* 23 (November - December, 1932), 620-630 and "The Classification Program in the Federal Prison System: 1934-1960," *Federal Probation*, 24 (June 1960), 7-12; Loveland was the co-chairman of the American Prison Association's Committee on Classification and Case Work that produced the *Handbook on Classification in Correctional Institutions* (New York: American Prison Association, 1947); For a current reapplication of the 1947 Handbook's insight, see Curtis R. Blakely, "Countering the "Contagion" of Inmate Nonamenability: Prison Specialization and Recidivism," *Professional Issues in Criminal Justice* 3 (February 2008), 77-89.

<sup>1800</sup> Leslie C. J. Nott, *Report of Investigation of Prison Systems of United Kingdom and the United States of America, April-July, 1947* (Sydney: Government Printer, 1947).

<sup>1801</sup> *Ibid.*, 32-33.

multijurisdictional and transnational aspects of postwar penal change. Previous administrations had avoided similar studies for nearly 50 years, since the time of Frederick Neitenstein study tour.<sup>1802</sup> Based on the wealth of literature and information from interviews and observations, Nott ordered the creation of a centralized Classification Committee in 1950, which included an education officer, a psychologist, industries officer and a medical officer in addition to custodial staff and the Deputy Comptroller.<sup>1803</sup> With minor changes, this structure remained in place until the 1970s.

Nott and his staff drew heavily upon the therapeutic language and expertise in vogue immediately after World War II, which emphasized the individualized assessment and separation of prisoners into homogenous groups as well as training and if possible, treatment. Nevertheless, Nott's reforms retained significant custodial aspects in practice. Security was the primary concern of the Classification Committee. He also significantly translated some overseas models to fit prevailing regimes in New South Wales. Certain aspects of therapeutic practices

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<sup>1802</sup> For the reviews under Premier McKell see Nagle, Report of the Royal Commission, 566-567; Peter Quinn, "The 'Penal Reformatory' that Never Was: Proposals to Establish Borstal Training in New South Wales, 1900-48," *Journal of the Royal Australian Historical Society*, 88 (December 2002), 124-125; Finnane, *Punishment in Australian Society*, 143-144. On McKell's administration see, Christopher Cunneen, *William John McKell: Boilermaker, Premier, Governor-General* (Sydney: University of New South Wales Press, 2000). Comptroller-General Frederick Neitenstein (1896-1909) was keenly interested in penological trends elsewhere. He corresponded extensively with experts abroad and traveled professionally to Europe and North America. Prior to Nott 1947 trip, Neitenstein's 1904 study tour was the last time the director of New South Wales prison system observed practices elsewhere. See Stephen Garton, "Crime, Prisons, Psychiatry: Reconsidering Problem Populations in Australia, 1890-1930" in Peter Becker and Richard F. Wetzell (eds.), *Criminals and Their Scientists: The History of Criminology in International Perspective* (Cambridge: Cambridge University Press 2009), 231-251; Garton, "Frederick William Neitenstein: Juvenile Reformatory and Prison Reform in New South Wales, 1878-1909," *Journal of the Royal Australian Historical Society*, 75 (June 1989), 51-64; Ramsland, *With Just But Relentless Discipline*, 140-75; Finnane, *Punishment in Australian Society*, 68-76, 87-91; Merrilyn Lee Sernack-Cruise, "Penal Reform in NSW: Frederick William Neitenstein, 1896-1909," Ph.D. diss., University of Sydney, (1980); Frederick W. Neitenstein, *Report by the Comptroller-General of Prisons, on Prisons, Reformatories, Asylums, and Other Institutions Recently Visited by Him in Europe and America : With Some Suggestions and Recommendations upon the Subject of the Prevention and Treatment of Crime* (Sydney: Government Printer, 1904).

<sup>1803</sup> Ramsland, *With Just But Relentless Discipline*, 306-308.

more prominent overseas, like various forms of group or individual counseling and artistic programs, were not as prominent in New South Wales, although they started to gain inroads at certain prisons in the Sydney area by the mid-to-late 1960s.<sup>1804</sup> Training in industrial or agricultural work retained a greater presence in postwar prison regimes to the degree that certain prisons, set aside specifically for “remediable” prisoners were rebranded as Training Centres.

### **Categorical Adequacy and (In)Flexibility: The Classification Process in Transition**

Walter McGeechan, admitted that during his time as the Commissioner of Correctives Services (since 1968), classification staff had abandoned several classification categories from Nott’s scheme that he felt were either obsolete, unworkable or ironically worked too well as description of certain people. McGeechan, in fact, introduced the section on classification by mentioning these significant departures from established regulations:

It might be stated however that the classifications of “intractable” and “homosexual” are no longer used by the department.

The reasons are that in the case of “intractables” the classification is archaic and tends to impose upon the prisoner a title which will become an irreversible description.

With regard to “homosexual”, the position has arisen where the tests for ascertaining whether a person is homosexual have proved to be unsatisfactory. Again this classification tends to impose an irreversible description upon a prisoner.

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<sup>1804</sup> See, for instance, “An Experiment in Group Counseling,” *Sydney Morning Herald* April 20, 1966.

Maintenance confinees have almost ceased to exist because of the provisions of the Family Law Act.

Since the abolition of imprisonment for debt, "debtors" are a rare classification, but the position can occasionally arise when a person is committed for contempt of court for disobedience of civil process.<sup>1805</sup>

McGeechan claimed that the usefulness of the categories under Regulation 10 had either declined over the decades or became highly controversial and were now more of a hindrance than a useful tool for prison management. Some categories were clearly attached to sentencing practices, like imprisonment for failing to pay maintenance support for ex-spouses and children, which no longer existed.<sup>1806</sup>

During testimony, Justice Nagle and David Hunt, counselor for the Royal Commission, both pressed McGeechan to clarify why he abandoned the categories of intractable and homosexual and asked him about two new, semi-formal categories, which appeared to be their replacements. McGeechan claimed that the categories of intractable and homosexual each carried profound labeling effects, which adhered to prisoners more than other categories, permanently affecting how prison staff treated them and limiting their opportunities for program participation and placement. Ideally, a person could progress through different categories and custody levels during their imprisonment. In practice, the categories of Intractable and homosexual were far less flexible and tended to remain affixed to a person regardless of their behavior and security status.

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<sup>1805</sup> Statement of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 32.

<sup>1806</sup> Imprisonment for this crime ended with the passage of the Family Law Act No. 53 of 1975.

Intractable prisoners were always held in very secure institutions or units. Many of the segregation sections in the state's prisons were known among prisoners and staff as "trac sections," "trac cells" or simply "the tracs" in reference to this classification status. The term "trac" became a description of a person so classified as well. Prison authorities reserved the state's most severe and physically brutal regime, at Grafton Gaol, only for prisoners classified as intractable, although, intractable prisoners were placed in other prisons as well. By the 1970s, the category had become highly controversial because staff used it to contain and punish prison activists who, as McGeechan correctly assessed, could never fully shed the distinction in their remaining time in prison. On occasion, prison guards blocked some formerly intractable prisoners from participating in programs against the wishes of the Department's administration. For instance, prison staff refused to accept Bernie Matthews into the work release program at Silverwater because of his past status as a trac and previous confinement at Grafton and Katingal.<sup>1807</sup> Activists often charged that prison staff applied the status in an arbitrary and capricious manner that had far more to do with squashing criticism by certain prisoners and repressing their political organizing efforts.<sup>1808</sup> During the Royal Commission, prisoners and activists repeatedly aired these criticisms in formal submissions and public testimony, propelling the intractable status and the process of dispensing it into a very public, political forum. As prisons became a more contentious topic, the status also began to confer additional meanings to a wider audience. The term always denoted a certain level of respect

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<sup>1807</sup> Bernie Matthews, *Intractable: Hell Has a Name, Katingal: Life Inside Australia's First Super-Max Prison* (Sydney: Pan Macmillan Australia Pty, Limited, 2006), 310-317.

<sup>1808</sup> For instance, see "Brett Now at the Bay," and "Grafton Thugs Back in Business," *Jail News*, (September 16, 1978); Bob Jewson, "Brett Wins Appeal," *Jail News*, (October 28, 1978).

and fear for those who had it among the prison population, but this reputation grew during the 1970s as the Royal Commission's work publicized the abusive way prison authorities used the designation and treated people who had it. Thirty years after many of these events, Bernie Matthews titled his well-received memoir *Intractable*, about his experiences in prisons and units set aside for intractable prisoners.<sup>1809</sup>

McGeechan told the Royal Commission that he had abandoned the use of the intractable classification category. Prisoners who would have had this title were now held in administrative segregation under the provision of Section 22 of the Prisons Act of 1952. As the Royal Commission pointed out, this latter status was temporary and needed government approval if prison authorities wanted to keep the inmate in isolation for extended periods. It did not exactly correspond to intractable as a formal classification category in their view. McGeechan agreed, stating that he had "abolish[ed] a class of prisoner" and that designation for administrative segregation was not tantamount to the old category.<sup>1810</sup> David Hunt questioned whether this new policy actually changed much; inmates held in isolation in the name of "administrative segregation" often remained there indefinitely, and they still carried a similar negative reputation as those previously labeled intractable. In fact, many inmates would have earned both labels during their time in prison. McGeechan disagreed with Hunt's suggestion, citing how difficult it had been:

...to persuade the system generally that a prisoner with a classification of intractable could be other than intractable; it is a branding or a labeling effect which tends to continue. I think there is a great deal of difference between an

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<sup>1809</sup> Matthews, *Intractable*; "Charged Again after Eight Years on Outside," *Sydney Morning Herald*, (April 24, 2008).

<sup>1810</sup> Testimony of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 181.

administrative segregation prisoner who may have an ordinary discipline classification and one whose papers are stamped intractable.<sup>1811</sup>

Whether Hunt was correct or not about the continuity of exclusion and dangerousness in the two categories, this issue pointed up the fact that the power of penal classification could easily escape the control of the specialized classification staff and senior management of the Department. Members of the guard force and their union exercised as much and perhaps more authority in the enforcement of classification decisions. Moreover, their definitions of intractable (among other categories) and the criteria of inclusion departed from the formal classification system despite utilizing its language and some of its procedures and psychological spaces of confinement.

McGeechan also insisted that “homosexual” was no longer a useful category for prison management because of the difficulty in establishing a prisoner’s sexual orientation.<sup>1812</sup> Yet, McGeechan admitted after questioning that a new category of “non-associates,” or “N.A.s,” covered people who would have fallen under the old category of homosexual.<sup>1813</sup> Although McGeechan tried to convince the Royal Commission that heterosexual inmates could also potentially be considered non-associates and that the category was more for “aggressive homosexuals,” he agreed that all current non-associates were homosexual and they were kept in specially dedicated wings or at Cooma Gaol, a prison set aside for non-associates, some others convicted of sexual crimes and those needing protection.<sup>1814</sup> McGeechan insisted,

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<sup>1811</sup> Ibid., 181.

<sup>1812</sup> Ibid.

<sup>1813</sup> Ibid., 183

<sup>1814</sup> Cooma’s status as a prison for homosexual inmates pre-dated McGeechan’s tenure. Les Newcombe mentioned that prison authorities immediately transferred a homosexual inmate, Alan Ayres, to Cooma upon “recognize[ing]



however, that this status was an “internal classification” category at the disposal of prison superintendents and not formally part of the classification system.<sup>1815</sup> Much like the fate of the intractable category, McGeechan claimed that the non-associate category did not replace homosexual in the list of available categories in Regulation 10. The task of determining who was homosexual/non-associate no longer rested with the reception officer or even the centralized Classification Committee. Rather, it fell largely to the superintendent of the prison where the inmate in question was placed. A superintendent designated inmates as non-associates based on the inmate’s reputation or accusations by prison staff or other inmates.<sup>1816</sup>

During subsequent testimony, McGeechan also indicated that there were problems with some of the other categories in Regulation 10. The line separating remediable and recidivist, for instance, was basically “arbitrary,” according to McGeechan.<sup>1817</sup> The main criterion for determining who was a recidivist was evidence of past imprisonment, except if the time served in the previous episode was less than three months. Finding a record of a short sentence, near this mark, a reception officer was left with a choice: was this prisoner best classified as remediable or a recidivist? The reception officer based his decision mainly on his professional judgment and impressions of the specific offender.<sup>1818</sup> Much like the decision to label someone as intractable, this decision had profound implications for the prisoner because there were many more program opportunities available for remediable inmates and the greater possibility of being placed in a lower security prison. Recidivist, it seemed, was likely to become as much

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his deviation.” Les Newcombe, *Inside Out: The True Story of the Simmonds-Newcombe Gaol Escape* (Sydney: Angus and Robertson Publishers, 1979), 66.

<sup>1815</sup> Testimony of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 183.

<sup>1816</sup> Ibid.

<sup>1817</sup> Ibid., 184

<sup>1818</sup> Ibid.

an irreversible description as intractable or homosexual, conferring with it the presumption of habitual criminality.

Throughout the section on classification, McGeechan noted the numerous difficulties and obstacles hindering what he termed the more “ideal” goal of addressing the individual needs of inmates through classification.<sup>1819</sup> This was in fact how the Department’s official publications presented classification. The Department’s annual report for 1971-1972, for instance, stated that the Classification Committee evaluated inmates’ “natural abilities and aptitudes, and capacity to benefit from trade training or educational opportunities,” then assigned them to appropriate establishments. Only after these rationales, did the report mention that officials also considered security concerns.<sup>1820</sup> The department’s descriptions of classification in other annual reports leading up to the Royal Commission in 1976 echoed similar therapeutic and reformatory purposes of classification and concerns with a “prisoner’s progress and well being.”<sup>1821</sup> However, during questioning before the Royal Commission, McGeechan admitted that the decisions of the Classification Committee hinged largely on available space and resources at state’s various prisons and that the department unnecessarily held far too many people in maximum-security institutions. He also conceded that the lack of facilities for

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<sup>1819</sup> Statement of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 34.

<sup>1820</sup> Department of Corrective Services, *Report of the Department of Corrective Services for the year ended 30 June, 1972* (Sydney: Department of Corrective Services, 1972), 14. For similar descriptions of the Classification Committee’s work, see Department of Corrective Services, *Report of the Department of Corrective Services for the year ended 30 June, 1973* (Sydney: Department of Corrective Services, 1974), 17; Department of Corrective Services, *Report of the Department of Corrective Services for the year ended 30 June, 1974* (Sydney: Department of Corrective Services, 1974), 17; Department of Corrective Services, *Report of the Department of Corrective Services for the year ended 30 June, 1975* (Sydney: Department of Corrective Services, 1975), 20.

<sup>1821</sup> See, for instance, Department of Corrective Services, *Report of the Department of Corrective Services for the year ended 30 June, 1973* (Sydney: Department of Corrective Services, 1974), 17; Department of Corrective Services, *Report of the Department of Corrective Services for the year ended 30 June, 1974* (Sydney: Department of Corrective Services, 1974), 17, quote; Department of Corrective Services, *Report of the Department of Corrective Services for the year ended 30 June, 1975* (Sydney: Department of Corrective Services, 1975), 20.

women meant that classifying female inmates was virtually impossible. There was not enough space for adequate differentiation.<sup>1822</sup> McGeechan stated that these problems were hardly unique to New South Wales: “Presently, I doubt whether any penal system in the world has a completely effective functional system for the classification of convicted offenders, ideals notwithstanding.”<sup>1823</sup>

The Royal Commission’s final report noted the difficulty they had in understanding the Department’s classification system, which they finally attributed to the confusion and inconsistency that marked the system in actual practice.<sup>1824</sup> Official submissions by the Department and many of its officers, as well as direct questioning, left Justice Nagle and his staff perplexed about how the Department’s classification actually worked and what procedures they followed. McGeechan’s admission that in practice he did not follow all of the provisions of Regulation 10 only exacerbated the mysterious nature of the process. As a result, the Royal Commission examined over 100 inmates files, checking for evidence of consistent procedures and trying to understand what type of work went into the routine assessment of inmates.<sup>1825</sup>

The picture that emerged from this investigation revealed inconsistently followed rules, the duplication of work among different committees all performing classification work, the ad-hoc nature of membership on these various committees, serious deficiencies in the quality of evaluations especially in regards to scoring for various standardized tests and written

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<sup>1822</sup> Statement of Walter Richard McGeechan, *Proceedings of the Royal Commission*, 34.

<sup>1823</sup> *Ibid.*

<sup>1824</sup> Nagle, *Report of the Royal Commission*, 252-253.

<sup>1825</sup> Chapter 18: Classification of Prisoners of the Royal Commission’s final report explained their methods and findings. Nagle, *Report of the Royal Commission*, 248-259.

assessments, which were often simply absent from the files.<sup>1826</sup> The final report stated bluntly that, “Whatever the procedures, they can only be effective if they are carried out.”<sup>1827</sup> The Royal Commission agreed that reforms introduced in mid-1975 were an improvement over past practice, especially in regard to the composition of the Classification Committee and how its recommendations were carried out. However, they still concluded that “no consistent and regular procedure was followed for the classification of prisoners.”<sup>1828</sup> The Department’s classification system had “many merits in theory,” but was ultimately “unsatisfactory” because many policies were never actually implemented.<sup>1829</sup>

Beyond this criticism, which echoed their overall assessment of McGeechan’s leadership, the Royal Commission also lamented the current state of classification knowledge in general. While acknowledging the merits of separating certain groups of prisoners, they nevertheless, held a dim view of its record in practice. The Royal Commission drew this conclusion after evaluating past classification practices and current systems in other Australian states and several foreign countries. Like Leslie Nott thirty years before, their research effort involved extensive study tours and interviews with experts and practitioners from different jurisdictions. David Hunt, the Royal Commission’s chief counsel, visited numerous reception and diagnostic centers in the United Kingdom and the United States, and the full Commission

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<sup>1826</sup> The department used several different psychological, personality and intelligence tests in addition to tests to determine literacy, educational and vocational levels. See the range of items in New South Wales Department of Prisons, *Guide to the Use of Classification Committee Summary Sheets* (Sydney: Department of Prisons, 1960).

<sup>1827</sup> Nagle, *Report of the Royal Commission*, 257.

<sup>1828</sup> *Ibid.*, 252, 256-257.

<sup>1829</sup> *Ibid.*, 257, 259.

reviewed professional literature and historical documents, especially reports from past inquiries, some dating to the nineteenth century.<sup>1830</sup>

In the final report's chapter devoted to classification, Justice Nagle drew upon this comparative knowledge while evaluating practices in New South Wales. Despite laudable reasons for separating inmates into different groupings, Justice Nagle surmised that the best method for actually accomplishing this task remained unclear. His description of the inadequacies and unmet expectations of numerous expensive "reception and diagnostic centres" abroad complimented the disillusionment evident in penological literature about classification.<sup>1831</sup> Nagle quoted the prominent University of Chicago criminologist Norval Morris, who argued that many experienced prison staff could make classification decisions on par with highly specialized classification personnel without the need of extended periods of quarantine following reception or the armature of social scientific testing.<sup>1832</sup>

Despite such dismal prospects, Nagle readily conceded that classification was a necessary aspect of prison management. Yet, he cautioned that no reforms would provide a solution to all the inherent problems of classification. To enhance the simplicity and efficiency of the process, Nagle recommended that the primary purpose of any classification system should be security; all other concerns had to be secondary. He recommended a new series of categories drawn from an earlier inquiry in New South Wales, which in turn adapted them from

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<sup>1830</sup> For instance, Justice Nagle quotes approvingly from comments in the British Gladstone Report of 1895 on the difficulties of classification [Herbert John Gladstone, Departmental Committee on Prisons. *Report from the Departmental Committee on Prisons* (London: H.M.S.O., 1895)]. Nagle, *Report of the Royal Commission*, 250-252.

<sup>1831</sup> Professional opinion common in the United States during the 1970s also declared such centers as failures. See National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (Washington, D.C.; U. S. Government Printing Office, 1973), 206-207.

<sup>1832</sup> Nagle, *Report of the Royal Commission*, 252.

British practice. In 1973, a working party investigating the state's prison operations had criticized the existing ten category system. The working party's chairman, Justice John McClemens recommended adopting a three-tiered system, which they adapted from the report of a recent prison inquiry led by Lord Mountbatten in the United Kingdom.<sup>1833</sup> The inquiry, which followed the escape of several high security prisoners, recommended a simple security-based, four-tiered system running from category (a) for highest risk category to category (d) for low-risk, open institutions. McClemens and Nagle both believed that the size of New South Wales' prison system necessitated reducing this system to three security-based categories:<sup>1834</sup>

*Category A*—Prisoners whose escape would be highly dangerous to members of the public or to the security of the State.

*Category B*—Prisoners who cannot be trusted in conditions where there is no barrier to their escape.

*Category C*—Prisoners who can be trusted in open institutions.<sup>1835</sup>

The main benefit of the proposed reform, according to the final report, was its simplicity in comparison to the previous system. In addition to using fewer categories, Nagle hoped that the centralization of the process in a permanent Classification Committee with dedicated staff would create clearer lines of decision-making authority and eliminate the unnecessary duplication of classification work among various committees. Nagle argued that classification

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<sup>1833</sup> J. H. McClemens, *Report of the Working Party on the Prisons Act, 1952, and the Regulations and Prison Rules* (Sydney: D. West, Government Printer, 1974), 27.

<sup>1834</sup> Both justices combined the two highest security categories of the British scheme (a and b) into one category for New South Wales – Category A. See Nagle, *Report of the Royal Commission*, 258.

<sup>1835</sup> Nagle, *Report of the Royal Commission*, 258.

would “have a better chance of working efficiently” if the Department adopted these changes.<sup>1836</sup>

### **Who Decides and Why?: The Politics and Dispersal of Classification**

While classification in prisons is as old as the institution itself, the fluctuation of the practice in the 1970s demonstrated that in certain periods the process becomes a major point of contention between different groups and individuals. Nagle’s criticism of the Department’s classification practice highlighted many problems, but because he framed these issues in largely administrative terms or as examples of implementation failure, a lot of the discord surrounding the system was episodic at best or remained obscured. These disputes and the breakdown in certain aspects of classification related to the overall changes in the status and activities of inmates and guards in New South Wales during the 1960s and 1970s. As McGeechan indicated, some of the classification categories no longer aligned with new sentencing laws or prison regimes, which rendered them meaningless, like the archaic category of debtor.

More significant, however, was the changing status of prisoners and guards in relation to one another and the senior management of the Department. Over the course of the 1960s, the Department of Prisons introduced a number of variations in prison routines, programs and amenities for inmates framed in therapeutic language, that were intended to make the conditions and opportunities in prison more closely resemble life beyond the institution’s walls.<sup>1837</sup> The extent of such changes can be easily overstated, but they nevertheless laid the

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<sup>1836</sup> Ibid.

<sup>1837</sup> John Pratt, *Punishment and Civilization: Penal Tolerance and Intolerance in Modern Society* (London: Sage, 2002), 153-156. Pratt argues that this phenomenon occurred across a number of different countries. He provides

basis for greater changes and expectations among many prisoners for better treatment. Many imprisoned people became much more willing to protest discrepancies they saw between reformative policy statements and actual practices in the prisons as well as differences between various institutions, especially concerning varying degrees of strictness and laxity. Criminologist John Pratt has argued that the amelioration of prison conditions after World War II often made regimes more conducive to self-expression, self-respect and assertiveness among prisoners.<sup>1838</sup> In some cases, this enabled the construction of solidarity among prisoners over common grievances in forums like writing classes and theater programs.

The state's guard force resented these changes, especially in the way that it both closed some of the social distance between them and prisoners and the concomitant changes this meant for their work duties. During the successive administrations of John Morony (1960-1968) and Walter McGeechan (1968-1978), the Department tried to craft a new role for guards that brought them into a closer relationship with the people in their custody.<sup>1839</sup> In retrospect, the degree of actual change in this regard might appear relatively minor, but at the time, guards worried that it heralded even greater change and the demise of the unchallenged authoritarian rule that they used to maintain institutional discipline. While the Department still maintained harsh discipline at several maximum security prisons and a brutal punitive regime at Grafton Gaol, they also loosened routines and discipline at some of the lower security facilities.

Cessnock Corrective Centre, a medium-minimum security facility opened in 1972, experimented

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similar accounts from New York, the United Kingdom, Canada, and New Zealand, in addition to New South Wales and Victoria.

<sup>1838</sup> Ibid.

<sup>1839</sup> For an overview, see Statement by Mr. D. Grant, Deputy Chairman, Corrective Services Commission, in Relation to an Inquiry Concerning Prison Officers, Pursuant to Section 35(1)(o) of the Industrial Arbitration Act 1940 vol. 1 (Sydney: New South Wales. Department of Corrective Services, 1987), especially 1-41.



with a new prisoner management regime based on greater interaction between staff and inmates and increased work opportunities and time out of cells.<sup>1840</sup> Coupled with other new programs, like work release, the growing variation in conditions and amenities meant that for prisoners and guards alike ever more rested on classification and assignment decisions as well as periodic reclassification decisions by Programme Review Committees at each institution.

Reforms by Morony and McGeechan gradually placed less emphasis on the authoritarian disciplinary duties that defined the role of a prison officer up to that point.<sup>1841</sup> Their reforms created confusion in the status and expectations for guards, and this soon developed a major organizing issue for their union, which became much more active and militant at this time.<sup>1842</sup> In 1971, the union petitioned the Industrial Commission for a reassessment of established pay rates arguing that the job duties of their members had changed considerably since the last award in 1951. The Industrial Commission agreed, noting that:

Through the policy of the Department of Corrective Services ...various aspects of change have occurred in the work of Prison Officers. It is difficult to pinpoint when this change really began to occur but it is apparent from the evidence that the emphasis is now placed on the need to rehabilitate prisoners, a lessening of the formerly strict standards of discipline, and the need to have an individual approach and act as a counsellor to prisoners.<sup>1843</sup>

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<sup>1840</sup> Exhibit 28: "Two documents produced by witness Mr. N. S. Day relating to quarter horse stud breeding at Cessnock Corrective Centre." Royal Commission into New South Wales Prisons, Series 1601: Exhibits 5/9305. SANSW; Exhibit 34: "Pamphlet entitled 'Cessnock an Experiment. Its Goals.'" Royal Commission into New South Wales Prisons, Series 1601: Exhibits 5/9306. SANSW.

<sup>1841</sup> Michael Bersten, "Notes on Industrial Disputes in NSW Prisons Since 1970," (Sydney: unpublished working paper, 1987), 8-14; David Grant, "Twenty Years of Prison History" in David Biles (ed.), *Current Australian Trends in Corrections* (Sydney: Federation Press, 1988), 1-7.

<sup>1842</sup> Personal interview with former Acting Commissioner of Corrective Services Noel Day, 2009.

<sup>1843</sup> *Ibid.*, 11-12.

As the Royal Commission later revealed, the Department's commitment to rehabilitation was ill-informed and poorly implemented at best. McGeechan's incoherent rehabilitative policy statements often confused staff and prisoners alike. According to David Grant, a senior corrections official in the 1980s, a fundamental change in the status of prisoners occurred between the late 1950s and 1980s, but there was not a clear corresponding transformation of the role of prisoner officer.<sup>1844</sup> Instead, their new duties often developed in a contradictory and piecemeal fashion; guards retained all their custodial duties, which emphasized their distance from inmates, but their superiors gradually expected them to develop more supportive, counseling roles with inmates.<sup>1845</sup> The guards' union objected to almost all attempts to reduce their direct authority over prisoner management and staged numerous walkouts over the course of the 1970s.<sup>1846</sup> Michael Berstern has estimated that there were at least 38 strikes between 1968 and 1984, in addition to many more industrial disputes that never escalated into actual strikes.<sup>1847</sup>

Disputes often erupted over the security classifications of specific inmates, particularly when prison officers were concerned about inmates they believed were potentially violent or prison activists. The officers' union organized strikes over the reclassification of certain prisoners and changes in their placement. Such job actions were usually local, targeting specific

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<sup>1844</sup> In general, see David Grant, *Prisons: The Continuing Crisis in NSW* (Sydney: Federation Press, 1992), especially 77-204.

<sup>1845</sup> Statement by Mr. D. Grant, Deputy Chairman, Corrective Services Commission, in Relation to an Inquiry Concerning Prison Officers, Pursuant to Section 35(1)(o) of the Industrial Arbitration Act 1940 vol. 1; Statement by Dr. Glenice Hancock, Commissioner, Corrective Services Commission, in Relation to an Inquiry Concerning Prison Officers, Pursuant to Section 35(1)(o) of the Industrial Arbitration Act 1940 vol. 1 (Sydney: New South Wales. Department of Corrective Services, 1987).

<sup>1846</sup> Personal interview with former Acting Commissioner of Corrective Services Noel Day, 2009.

<sup>1847</sup> Ibid., Table J. See also Jennifer David and Paul Ward, "Effect of the Five Week Prison Officers' Strike in New South Wales in 1984," Criminology Research Council report, (Sydney: University of Sydney, 1986).

prisons, but sometimes triggered sympathy strikes by guards at other institutions. Just the threat of drastic actions like these influenced the willingness of the Classification Committee to make certain placements. Commissioner McGeechan also occasionally overruled the decisions of the Classification Committee to avoid a confrontation with the guards' union. While some of the guards' anger was certainly directed at McGeechan personally, industrial strife over classification decisions continued during the administrations of subsequent Commissioners of Corrective Services.

In his prison journal, Ray Denning recounted several instances of guards considering strike action because his classification status was about to change.<sup>1848</sup> Denning had been convicted of maliciously wounding a prison officer, Willy Faber, at Parramatta Prison in a 1974 escape attempt. Faber died of his injuries four years later. Denning spent years in control units after the 1974 attack, but protested his innocence and became a cause célèbre among prison activist groups outside the walls who tried to expose his mistreatment.<sup>1849</sup> When the senior

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<sup>1848</sup> Ray Denning and Donald Catchlove, *Ray Denning: My Life and Times, with the Prison Diaries* (Chippendale: Ironbark, 1994), 159-160. The Department of Corrective Services also considered Denning a radical prisoner activist. However, prisoner Bernie Matthews claims in his recent memoir that Denning's status as prison rebel and his innocence of the attack on Faber were both mythical, the product of romantic activism by outsiders. Matthews, who was a prisoner activist and prolific writer, believes that Denning actually assaulted and killed Faber, and planned to do so, based on accounts from other prisoners who were at Parramatta at the time. See Bernie Matthews, *Intractable: Hell Has a Name, Katingal: Life Inside Australia's First Super-Max Prison* (Sydney: Pan Macmillan Australia Pty, Limited, 2006), 30-140. Denning later became a police informant, concocting false statements incriminating many of his former associates in exchange for favorable parole consideration. The prison movement widely considers him to be a traitor to their cause. Matthews's comments, however, suggest that Denning may never have been that committed to their cause in the first place. Like many other prisoners, he was worried more about his own immediate situation and the prospects of spending the rest of his life in prison. Denning made parole after informing on his past friends, but died of a drug overdose soon after being released.

<sup>1849</sup> The Prisoners Action Group published Denning's prison journal, which was smuggled out of prison. The also produced numerous pamphlets and articles about his status and the fight for a new trial on the Faber charges. See, for instance, Raymond John Denning, *The Ray Denning Diary* (Haymarket: Ray Denning Publications, 1982); "Ray Denning – Framed-Jailed-Bashed-Hunted...Killed?", "Give My Brother a Go", "Wanted: NSW Police – Magistrates – Judges – Politicians – Prison Officers For..." in *Ephemera on crime prevention in New South Wales: including pamphlets, leaflets etc. related to law enforcement, the Police Force, the Department of Corrective Services, individual prisons, remand centres and gaols*, Mitchell Library, State Library of New South Wales, Sydney.

leadership of the Department tried to reclassify Denning and move him to normal discipline or a new prison, prison officers threatened to block the changes. Denning recalled in his diaries that the superintendent of Grafton Gaol personally told him that officers at Parramatta Prison would strike immediately if he was ever assigned to that prison.<sup>1850</sup>

The Sydney press reported a similar week-long event in March 1981. Guards refused to permit the reclassification of a particular inmate (who remained anonymous in media accounts) for normal discipline at the maximum security Metropolitan Reception Prison within the Long Bay complex. Nearly 500 prison officers at Long Bay Prison Complex south of Sydney walked off the job, leaving executive officers and police to staff the prison's critical posts while inmates remained locked in their cells.<sup>1851</sup> The inmate in question had been classified as intractable in the early 1970s and sent to the disciplinary section of Grafton Gaol. He later testified to the Royal Commission about the beatings he endured at Grafton.<sup>1852</sup> As part of the concessions that eventually ended the strike, Tony Vinson, the Chairman of the Corrective Services Commission,<sup>1853</sup> proposed to have a panel of three psychiatrists re-examine the prisoner to

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<sup>1850</sup> Ibid., 168, 176.

<sup>1851</sup> "Truce in Jail Strike," *Sun Herald*, (March 15, 1981); "Jails in Chaos as Talks Fail," *Sydney Morning Herald*, (March 17, 1981); "Long Bay Strike Could Be Called Off Today," *Sydney Morning Herald*, (March 18, 1981); "Judge Criticises Jail Strike for Delaying Trial," *Sydney Morning Herald*, (March 19, 1981); "End of Jail Strike Expected Today," *Sydney Morning Herald*, (March 20, 1981).

<sup>1852</sup> "Long Bay Strike Could Be Called Off Today," *Sydney Morning Herald*, (March 18, 1981).

<sup>1853</sup> After the Royal Commission, the Wran government abolished the one-person position of Commissioner of Corrective Service, which McGeechan had held, and in its place created a five member Commission of Corrective Service. Tony Vinson, a professor of social work and former parole agent, was the new body's first Chairman and leader of the department. For Vinson's account of his time as Chairman see his *Wilful Obstruction: The Frustration of Prison Reform* (North Ryde: Methuen Australia, 1982).

determine his placement, in effect offering the guards the reassurance of an unusual and intensive form of classification.<sup>1854</sup>

Both Denning's writings and the March 1981 industrial dispute highlight the controversy surrounding the high end of the security-based classification categories. Whether considered "intractable" or on "administrative segregation," the official result was solitary confinement, which also often included physical punishments, from exposure to extreme temperatures to beatings. Most guards believed that people assigned to such categories were unchangeable and always posed a threat to their safety. If many prisoners could progress (or regress) through different classification categories and security levels, these people, at the terminus of the classification system, could not. Many guards were either willing to defy their superiors to enforce their classification views concerning intractable prisoners or unwilling to defy their union and more vocal colleagues.<sup>1855</sup> The majority of classification decisions were uncontroversial, but these examples illustrate that most guards believed they had a vested interest in classification decisions, especially those that directly endangered their safety or threatened their occupational privileges and purview. Decades earlier, the formal classification process respected their interests more, but this influence waned during the 1960s and 1970s - at the same time that the administrations of Morony, McGeechan and Vinson expected (in

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<sup>1854</sup> "Judge Criticises Jail Strike for Delaying Trial," *Sydney Morning Herald*, (March 19, 1981); "End of Jail Strike Expected Today," *Sydney Morning Herald*, (March 20, 1981); "Long Bay Men Go Back," *Sydney Morning Herald*, (March 22, 1981).

<sup>1855</sup> During the Royal Commission it became apparent that there were many prison guards who objected to the inflexible, hardline position that defined the public image of the "screws" and their union. A group of conservative guards at Long Bay, known as "the Maggots," physically abused and threatened some of their colleagues and their families who supported the Nagle reform project. See George Zdenkowski and David Brown, *The Prison Struggle: Changing Australia's Penal System* (Ringwood: Penguin, 1982), 211-215, 252; Vinson, *Wilful Obstruction*, 185-188; Ann Aungles, "The Home and the Prison" (PhD. diss, Wollongong: University of Wollongong 1990), 241.

different ways) a more supportive, if paternalistic, role for guards towards the people in their custody. Conceding their prerogatives regarding how certain, high-risk or politicized prisoners were classified and managed risked losing more power vis-à-vis the administration over their occupational duties and direct authority over prisoners. Guards were fighting, in effect, their own reclassification into a different form of penal employee.<sup>1856</sup>

In the 1970s and 1980s, therefore, classification became a much more contentious practice reflecting the contemporary divisive politics within the penal bureaucracy itself. It became increasingly difficult for the Classification Committee or the central administration to impose its view of the security risks associated with a particular prisoner or to plan their time and activities while incarcerated. This should be seen not so much as the failure of classification, but rather an indication that the power to classify and the resources flowing from it became less subordinated to the established formal procedures. Increasingly from 1970 onward, it circulated within the penal bureaucracy in highly antagonistic ways, both animating and reflecting disputes between and among guards, their union, specialized professional staff, the central administration and, of course, prisoners themselves. The people subjected to this form of classification and placement were often lost in such struggles even though they sat at the center of them. Much like the prisoner in the March 1981 struggle between the staff at Long Bay and the Corrective Services Commission (which replaced the single Commissioner of

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<sup>1856</sup> At times, this involved a very explicit reclassification of some guards – in the early 1980s, the administration of Vern Dalton elevated senior members of the guard force to management, thereby removing them from the Prison Officers' Vocational Branch. The administration believed, correctly, that this would strip the union of some of its most capable, knowledgeable members who now could not walk off the job during strikes without risking severe discipline or termination. See "Prison Officers Likely to End Strike After 32 Days," *Sydney Morning Herald*, (March 9, 1984); "Reforming Prisons After the Strike," *Sydney Morning Herald*, (March 12, 1984); Bersten, "Notes on Industrial Disputes in NSW Prisons Since 1970," 41-47.

Corrective Services), these people often remained nameless or voiceless in these disputes. Even when public forums named such people, they portrayed them as notorious, dangerous, intractable prisoners.

In activist publications, memoirs and their testimony before the Royal Commission or the Ombudsman, prisoners often claimed to be perplexed by the decision to classify them as intractable. Certain acts of violence or a history of such behavior clearly invited such a designation by either centralized Classification Committee, one of the many institutional Programme Review Committees, or the head of the Department. Yet, prisoners complained about many instances where the decision to classify a prisoner as intractable or the isolate under administrative segregation appeared questionable or confusing. Staff usually did not explain classification decisions, or did so in very general terms. For instance, the state's Ombudsman investigated numerous complaints by inmate Barrie Levy who claimed that he never understood why he was placed at the intractable section of Grafton Gaol prior to its closing and why the authorities subsequently sent him to the Katingal unit. Ian Sanders, the Director of Special Security Units, did little to clear up this confusion when he explained Levy's classification and placement in Katingal to the Ombudsman:

The reason why Levy was classified to Katingal S. S. U., was that when he was reclassified for ordinary discipline in maximum security from being an "intractable prisoner" the Commissioner [McGeechan], after due consultation, considered that Levy would not have fitted into any prison community in any other maximum security establishment at that point in time. Levy has been told this on a number of occasions.<sup>1857</sup>

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<sup>1857</sup> New South Wales Office of the Ombudsman, *Report Under Section 31 of the Ombudsman Act 1974, Concerning the Investigation of Certain Complaints Made by Prisoners to the Royal Commission Into New South Wales Prisons* (Sydney: Government Printer, 1970), 44.

Levy disagreed with Sanders's statement, telling to Ombudsman that he never received an answer to why he was held at Katingal.<sup>1858</sup>

Levy's experience also pointed up the fact that he sat between categories, which were also in transition: previously considered intractable, Levy was now classified for normal maximum security discipline (potentially as either remediable or recidivist, according to Regulation 10). However, McGeechan still held Levy in isolation, presumably under administrative segregation, which in part replaced some of the functions of the previous intractable category, but as McGeechan insisted, did not constitute an official classification category on par with the remaining operable categories of Regulation 10. What was the "due consultation" that McGeechan sought in making his decision about Levy? Did he confer informally with the superintendents of the various maximum security prisons, canvassing the possibility of Levy being accepted by the guard force and other prisoners? If a formal classification committee cleared Levy for ordinary discipline, another classification process, centered on McGeechan, but presumably including others, intervened to keep Levy at Katingal after gauging the suitability and tolerance of the receiving institution.

Such negotiations normally occurred within the formal Classification Committee and Programme Review Committees as well. It would be a mistake to see such negotiations as deviations from the classification system or as simply manipulations of an otherwise consistent, valid procedure. Disagreement, negotiation and consensus building were at the very heart of the process, and classification also provided a bargaining tool that could be deployed in

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<sup>1858</sup> Ibid., 53.



numerous situations. In his memoir, Clyde Paton, a prison chaplain at Long Bay, described Classification Committee meetings during the 1960s as contests over professional competence, expertise, masculinity, and appearing realistic or pessimistic about the possibilities of inmate rehabilitation.<sup>1859</sup> Paton noted that committee members often knew one of the inmates, whose case was before them, and would often make special pleadings on their behalf.<sup>1860</sup> This was not a procedural departure, but an expected part of the format. Each committee member presented a short summary of their assessment of an inmate based on their particular field of experience.<sup>1861</sup> This summary provided the opportunity for personal testimonies about a well-known inmate, which of course, could range from good to bad. Paton noted that presenting a case favorably risked one's reputation; poor subsequent behavior by an inmate reflected back on the committee member, proving them wrong, naïve or soft on crime.<sup>1862</sup>

The American prison official, Frank Loveland, whose work greatly influenced practices in New South Wales, noted that the approval of prison superintendents and the inclusion and active participation of different prison staff with varied expertise was crucial to the eventual success of mid-twentieth-century inmate classification procedures.<sup>1863</sup> The competition described by Paton tempered such success. An inmate's behavior in prison and criminal record usually outweighed all other sources of information in classification decisions, according to Paton. Psychologists also often carefully framed their case assessments in ways that minimized

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<sup>1859</sup> Clyde Paton, *I Was a Prison Parson* (Dee Why West: Tempo Books, 1974), 80-88.

<sup>1860</sup> *Ibid.*, 83.

<sup>1861</sup> New South Wales Department of Prisons, *Manual for Staff Instruction and Guidance* (Sydney: Department of Prisons, July 1956), 35-44; New South Wales Department of Prisons, *Guide to the Use of Classification Committee Summary Sheets* (Sydney: Department of Prisons, 1960). This format followed the guidelines laid down by the American Prison Association. See their 1947 *Handbook on Classification in Correctional Institutions*, 47-59.

<sup>1862</sup> *Ibid.*, 83-86; Morony, *The More Things Change*, 293-310.

<sup>1863</sup> Loveland, "The Classification Program in the Federal Prison System: 1934-1960," 7-12.

risk to themselves and their expertise: “Another secret to a good report, from the psychologist’s viewpoint, was to make sure you had it both ways, to cover yourself in the event of the prisoner rehabilitating himself or returning as a recidivist.”<sup>1864</sup> Such behavior, also common among some psychiatrists Paton knew, indicated the tenuous status of psychology and psychiatry in Classification Committee meetings and the postwar prison in New South Wales in general.<sup>1865</sup>

If such expertise seemed defensive to Paton and came across as ineffective to Nagle, it appeared quixotic, arbitrary and authoritarian to many incarcerated people. Inmate Bernie Matthews, who spent the much of his time in prison in segregation, was struck with disbelief upon seeing the assessments in his prison file. With the help of other inmates, Matthews managed to steal his file and copy it following a parole hearing. He returned the file in a few hours without being detected. Matthews noticed that the first entry, his initial classification, followed a pattern resembling Patton’s description of having it both ways. The psychologist wrote that Matthews was: “Inclined to be hostile and with a big chip on his shoulder” and “He has quite good potential and with a bit of guidance could definitely make something of his life.”<sup>1866</sup> An escape early in his sentence channeled him toward higher security classification and similar institutions and units upon his recapture. Matthews soon gained a reputation as a notorious prisoner during these years, building a greater density of intractable attributes and descriptions in later entries in his file.<sup>1867</sup> Initial assessments of his potential disappeared.

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<sup>1864</sup> Paton, *I Was a Prison Parson*, 85.

<sup>1865</sup> *Ibid.*, 87-88.

<sup>1866</sup> Matthews, *Intractable*, 307.

<sup>1867</sup> *Ibid.*, 305-310.

By the end of the Royal Commission in 1978, the Department of Corrective Services closed both Grafton and Katingal and transferred inmates like Matthews to normal discipline in maximum security prisons, like Parramatta.<sup>1868</sup> Matthews's behavior improved and the views of his classification status shifted. The Classification Committee eventually assigned him to the minimum security work release program at Silverwater. Yet, the prison officers there disagreed with his classification and placement and refused to accept him.<sup>1869</sup> The Department shifted Matthews to a different minimum-security facility until the dispute was resolved. Matthews admitted to often being difficult with prison staff, but also claimed they treated him worse. His behavior, intractable or otherwise, may have had as much to do with where he was imprisoned at any given time than any consistent disposition he displayed.

At times, various classification committees used the available sorting and placement options to achieve ends other than those formally acknowledged in official statements. Yet, these too should be seen as part of the normal functioning of classification. Prison staff sometimes pried information from inmates, ensured compliance with certain agreements, bought silence or simply punished inmates with favorable or negative classification decisions. Such instances, of course, easily slid into illegal or corrupt activities. For instance, Ray Denning recounted in his prison diary how Grafton's deputy-superintendent, Clyde Piggott, told him that he could possibly have his security classification lowered enough for assignment to a prison farm if he dropped assault charges against several Grafton guards who attacked him.<sup>1870</sup> Likewise, inmate Stephen Lewis, who claimed to have witnessed guards at Long Bay severely

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<sup>1868</sup> For Bernie Matthews's account of readjusting to normal discipline, see his *Ibid.*, 247-264.

<sup>1869</sup> *Ibid.*, 293-319.

<sup>1870</sup> Denning and Catchlove, *Ray Denning*, 161.

beating another inmate in 1978, told a *Sun Herald* reporter that prison staff harassed him for months because he was threatening a lawsuit about the beating and had secured twelve witnesses.<sup>1871</sup> Lewis claimed that “a senior officer” approached him at Long Bay and, after indicating that he was in fact being targeted by staff, said that if he agreed to drop his planned case against the officers he would speak favorably about him to the committee regarding his pending classification review and reassignment.<sup>1872</sup>

Perhaps the most glaring examples of this abuse of the classification system became the subject of the Royal Commission’s interim report (covered in more detail in Chapter 5). The report detailed the activities of Paul Genner, a veteran, low-ranking administrative clerk who served on the central Classification Committee and oversaw prisoner movements, and Arthur Stanley “Neddy” Smith, a widely-feared and respected professional criminal. After Smith was released from prison in 1975, he contacted Genner, who had supported his parole case, and eventually conspired with him to sell minimum-security assignments to other prisoners. Genner, who was at the center of the bureaucratic machinery that actually authorized placements, began accepting bribes and performed the work of classification by often completely bypassing his superiors on the committees. It appears that some senior prison officers checking on the classification of certain prisoners stumbled upon evidence of the illicit arrangement at about the same time that accusations from former prisoners and their families

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<sup>1871</sup> “Escaper’s Charge of Bashings,” *Sun Herald*, (March 15, 1981).

<sup>1872</sup> *Ibid.*

began to surface. The scandal eventually led to greater controls being placed on the procedures for authorizing prisoner movements and reviewing the classification status of prisoners.<sup>1873</sup>

The Royal Commission, the prison warder strikes and the pervasive publicity surrounding the state's prisons, thrust more knowledge about the internal operations of the penal apparatus into public view in a way that it had not been since the nineteenth century. This included the formal classification process, which became the target for a number of claims by residents living near penal institutions that had relatively porous boundaries, like the minimum-security penal farms. For example, some residents who lived near the Mannus and Leslie Nott Afforestation Camps opposed their expansion because they claimed that recent changes in classification, sentencing and community corrections programs resulted in more serious offenders being held at – and escaping from – the penal farms. New sentencing options, like periodic detention, and programs, like the state's two work release schemes, had altered the profile of the prisoners who were now being sent to the camps.<sup>1874</sup> People who had previously spent time at the camps were now redirected to these alternatives instead. This meant, according to a press account, that a greater percentage of the new prisoners "tended to be 'hard core'" offenders who had spent a lot of time in maximum-security before being sent to Mannus and Leslie Nott.<sup>1875</sup> These prisoners would not have been sent to the camps before.

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<sup>1873</sup> Although a more removed from classification, a similar scandal in 1983 enveloped the prison system after police recorded Rex Jackson, the Minister for Corrective Services in the Labor government, accepting bribes for the early release of prisoners in a new release on license scheme that bypassed the normal parole system. For an overview of the release on license program and the subsequent arrest and imprisonment of Rex Jackson, see Janet B.L. Chan, *Doing Less Time: Penal Reform in Crisis* (Sydney: University of Sydney Press, 1992).

<sup>1874</sup> Exhibit 767: Submission by Tumbarumba Residents (Mrs McEachern) on Mannus Camp. Royal Commission into New South Wales Prisons Exhibits 9/9315. SANSW; "Abandon Mannus: Women Terrorized," newsclipping. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

<sup>1875</sup> "Abandon Mannus: Women Terrorized," newsclipping. Exhibit 822: Departmental Files 77/019 (Parts I and 2) re acquisition of land at Tumbarumba. Royal Commission into New South Wales Prisons Exhibits 9/9316. SANSW.

The change in the penalty and custody options realigned the classification status of the camps and the increase in the number of escapes represented the presence of more dangerous, desperate men in the camps.

Several escapes from the Kirkconnell Afforestation Camp, near Bathurst, New South Wales, in 1981 and 1982 also occasioned the formation of an oppositional community group, which demanded changes in the prison farm's operation. Two of the demands presented by the Meadow Flat and District Prison Action Committee echoed similar complaints by residents living near other prison farms in the state. First, the group wanted the Department of Corrective Services to compensate property owners for any damaged caused by escapes; and second, they wanted the Department and prison farm administrators to tighten security and establish a better warning system to alert the community in the event of an escape. Interestingly, however, they also wanted to directly participate in decisions determining which prisoners would be sent to Kirkconnell in the future. As the *Western Advocate* reported on Monday, January 4, 1982:

The State Member for Bathurst, Mr. Mick Clough, said yesterday that the Minister for Corrective Services (Mr. Rex Jackson) had now agreed to have talks with him on the possibility of Meadow Flat people being represented on the selection panel deciding who should go to the nearby Kirkconnell Prison Farm.<sup>1876</sup>

During the February 17, 1982 meeting, members of the group asked for representation on the Classification Committee. As one of the group's leaders, Alec Deutscher, explained to the *Western Advocate* a few days prior to the meeting, having a voice in the selection process was

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<sup>1876</sup> "Agrees to Talks on Prison Farm," *Western Advocate*, (January 4, 1982).

“the only acceptable long-term guarantee that prisoners with a record of violence will not be placed in low security institutions in the region.”<sup>1877</sup> Rex Jackson listened to the deputation’s concerns, but informed them that the current prisons act did not permit their inclusion on the Classification Committee.<sup>1878</sup> He also told them that Corrective Services was reviewing prison operations in general as part of a reorganization project and that the future of the state’s prison farms was in question, including Kirkconnell.<sup>1879</sup> MP Mick Clough lamented the fact that, with the possibility of participating in classification eliminated, the next public meeting on March 19<sup>th</sup> was only about a third of the size of the previous meeting. Less than fifty people showed up, according to the *Western Advocate*.<sup>1880</sup>

In many respects, the concerns of residents living near these three afforestation camps resemble those frequently raised in literature about NIMBYism and prison siting.<sup>1881</sup> Unlike most cases explored in that literature, however, the Kirkconnell, Mannus and Leslie Nott Camps were not facilities that altered the community in some defining way, but had in fact existed for decades. Most residents near these penal farms, including the activists, realized that they provided local benefits; very few people favored their closure. Instead, residents worried about the increase in escapes and many expressed fears about possibilities of riots and guard strikes, like those they saw elsewhere in the state. They believed that the best way to prevent

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<sup>1877</sup> “Prison Action Group Gets Hearing,” *Western Advocate*, (February 15, 1982).

<sup>1878</sup> “Prison Meeting,” *Western Advocate*, (February 18, 1982).

<sup>1879</sup> *Ibid.*; “Prison Closure is Talks Theme,” *Western Advocate*, (March 3, 1982).

<sup>1880</sup> “Future of Kirkconnell Prison Farm,” *Western Advocate*, (March 22, 1982).

<sup>1881</sup> NIMBY is the acronym for Not In My Back Yard, a sentiment the captures of many people living near undesirable land uses, like prisons, waste incinerators, garbage dumps, among others. For a recent example, see Deborah Che, “Constructing a Prison in the Forest: Conflicts Over Nature, Paradise, and Identity,” *Annals of the Association of American Geographers*, 95 (December 2005), 809-831; Anne Bonds, “Economic Development, Racialization, and

Privilege: ‘Yes in My Backyard’ Prison Politics and the Reinvention of Madras, Oregon,” *Annals of the Association of American Geographers*, 103 (November 2013), 1389-1405.

problems coming from the camps was for the administration to communicate more with the local community or to permit local people to have a greater role in how the camps operated. Since both activist groups claimed that the problems stemmed from the type of prisoners the camps received, they wanted the administration to revisit the classification process. In the case of Kirkconnell, the locals actually wanted to partake in the decision-making. They saw the power to evaluate and screen inmates, to decide which of them would be sent to Kirkconnell or similar establishments and which of them would be sent to more secure confinement, as the best way of redressing their grievances with the penal bureaucracy while also maintain their support for the Kirkconnell farm.

It is unlikely that many of Kirkconnell's neighbors knew how the Classification Committee performed its tasks in detail. Yet, it clearly presented a symbolically powerful nodal point, a pivot in the flow of penal power that affected numerous activities, risks, and potentialities. It appeared as a deliberative forum, functioning in some ways like a town council, court, or other form of public authority and therefore open to the claims and rights of liberal representative democracy. A previously internal, technocratic tool directed by certain senior, prison staff became the target of community resistance to the management of a penal farm, a means for their enfranchisement as penal decision-makers on par with existing members of the Classification Committee.

### **Unit Management, Classification and Carceral Citizenship**

During the Royal Commission, David Hunt, the inquiry's chief counsel, led a study tour to California, New Jersey, the U.S. federal prison system, Ontario, the federal Canadian prison



system, the U.K., Sweden, Denmark, the Netherlands, and Switzerland between June and August 1977. The study group observed routine operations in dozens of prisons and control units, trying to gauge common trends shared across these jurisdictions and how they compared with practices in New South Wales. The construction of this comparative vision and knowledge aided the inquiry's evaluation of the Department of Corrective Services and the formulation of their recommendations. In many cases, the study tour revealed remarkable similarities, which were the product of previous connections and many shared beliefs about punishment.

For instance, the team noted repeatedly how the U.S. federal prison at Marion resembled maximum-security prisons in New South Wales. Marion's control unit had in fact greatly influenced the design of Katingal. Other prisons, like the maximum-security Ringe State Prison in Denmark, were so different as to defy easy comparisons. Ringe permitted male and female inmates to cohabit, purchase groceries and cook their own meals in separate apartment-style units. Even minimum-security camps in New South Wales appeared harsh by comparison. Such comparisons showed the limits of the penal imaginary informing the inquiry. The Prisoners' Action Group noted a similar experience in the way the Royal Commission addressed their submissions on prison abolition. Justice Nagle rejected their arguments without much engagement or commentary. It became apparent during the study tour that many of the penal policies practices in continental Europe differed so significantly from those in New South Wales that the majority of information the Royal Commission found useful came from the U.K. and the U.S.

Hunt's team devoted a lot of time to assessing a practice that originated in the U.S. called unit management, which they believed was worth emulation. This practice began in

juvenile institutions in the American federal system in the 1950s and gradually spread to most federal prisons by the late 1970s. It involved breaking down large groups of prisoners and mass institutions into small, self-contained living units, with a dedicated interdisciplinary staff assigned to them on a permanent basis. In theory, this provided greater attention to inmate concerns and fostered more personal relationships between staff and prisoners, both of which enhanced overall security and safety. Most administrative authority in prisons operating with unit management devolved from the superintendent and senior officers to the lower level unit managers. Senior officers oversaw institution-wide policies, budgets and major areas of security. This type of prison order required guards to interact with prisoners in a far more direct way than had traditionally been the case. Since unit management stressed dispersing larger groups of prisoners, guards now managed far fewer people with whom they also became more familiar with since they were permanently assigned to a unit. Advocates of this approach claimed that it reduced the friction and hostility between staff and prisoners by eroding the harsh barriers separating the two belligerent groups.

At the time of the Royal Commission, the relationship between staff and prisoners was probably at its worse in many decades. Prison officer strikes and prisoner rebellions had become increasingly common. Guards used firearms with live ammunition on prisoners several times during the 1970s and 1980s, and prisoners were far more politicized and confrontational than they had been since at least the 1940s. Katingal, the newly-designed high security unit that the Department opened in 1975, perhaps symbolized this state of affairs the most. The new unit operated with almost no contact between staff and prisoners; guards controlled cell doors

and various access gates electronically from behind secure barriers. Few opportunities existed for any direct contact.

Justice Nagle's final report condemned the abuses by prison guards and the mismanagement of McGeechan. The Royal Commission's report included 252 specific reform recommendations, many of which focused on prisoners' rights, disciplinary procedures, prisoner management, the relationship between the Department and the officers' union and the overall management structure.<sup>1882</sup> Nagle noted that unit management provided one way of addressing a number of problems with the routine operation of secure prisons.<sup>1883</sup> It could reduce the endemic low morale among officers by making their jobs more meaningful and professional. Nagle also argued that the benefits seen overseas in terms of reducing tension, distrust, misconduct and violence could also be expected if the Department made a major commitment to the unit management concept going forward.

The reform of penal space was a key aspect of unit management. The examples of the management system that David Hunt and his team observed were based in small, self-contained units not the much larger wings, which had long corridors and multiple tiers of cells. This smaller space, often arranged in a semi-circular or triangular pod structure, meant that staff could observe all the cells from a central point with much greater ease. In other words, unit management renewed the spatial component of Bentham's panopticism, albeit in a much different design than envisioned by Bentham himself. During the Royal Commission the Department revealed that they envisioned building at least one new prison in the near future in

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<sup>1882</sup> See the list of recommendations in Nagle, *Report of the Royal Commission*, 462-479.

<sup>1883</sup> *Ibid.*, 226-227, 452, 464.

the Sydney area. Justice Nagle suggested that this new facility, referred to as the M90 maximum-security prison, be designed with unit management principles in mind. He also recommended that the reconstruction of Bathurst, which had been destroyed by fire in the 1974 riot, also employ unit management designs in the new cell blocks.

Shortly after the completion of the Royal Commission, the Department of Corrective Services conducted its own study tour of the United States, Canada, the United Kingdom and Denmark and Sweden to collect more detailed information on unit management and prison design.<sup>1884</sup> Unit management or similar decentralized management practices were apparent in many of these places, but most fully articulated in the U.S.<sup>1885</sup> The level of security in the American prisons they visited impressed the team, led by Superintendent A.N. Cerinich, especially at the federal penitentiary at Marion, which Cerinich saw as “operat[ing] on lines not dissimilar to those used in N.S.W.”<sup>1886</sup> Cerinich noted that unit management appeared to be very costly because of the personnel it required compared with contemporary practices in New South Wales. Despite this, he argued that “a modified form should be considered that would not be so costly in terms of staff and at the same time, would facilitate more control and security.”<sup>1887</sup> When the Department finally began construction on both the M90 project (later renamed Parklea Prison) and the new Bathurst Correctional Centre in the early 1980s, they abandoned the use of long wings in favor of smaller partitioned units, which accommodated

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<sup>1884</sup> Superintendent A.N. Cerinich, *Study Tour Overseas Prisons* (Sydney: Department of Corrective Services, May 1979), 1-3.

<sup>1885</sup> *Ibid.*, 1.

<sup>1886</sup> *Ibid.*, 1-2, 10.

<sup>1887</sup> *Ibid.*, 10.

roughly 20 prisoners.<sup>1888</sup> At Bathurst, construction workers installed huge barriers in several (but not all) of the existing wings, breaking them up into eight separate three-tiered units holding up to 20 prisoners with the ground floor consisting of a community room.<sup>1889</sup>

The Department planned to hold prisoners of a similar classification status in these new units, but they also envisioned an entirely new pattern of interaction between prisoners and officers, which necessitated additional screening for both groups. By 1982, this emphasis on developing a new prisoner management model shifted solely to Bathurst, with the relationships between staff and inmates at Parklea operating more like existing prisons, such as Cessnock, albeit in smaller units rather than wings. All of the prisoners who were included in the new management experiment held a classification status of “B” or what in many other systems would be considered a “medium” security risk. The Department decided that the rebuilt Bathurst would no longer hold prisoners in need of high security.<sup>1890</sup> In other words, the Classification Committee placed those classified as “A” elsewhere.

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<sup>1888</sup> Arthur Bruncker and Keith Sawdy, “New Directions in Correctional Architecture: Parklea Prison” in Bill Cullen, Michael Dowding and John Griffin (eds.), *Corrective Services in New South Wales* (North Ryde: The Law Book Company, 1988), 69-103, especially 88-103; Peter Creighton, “Postscript: The Operation of Parklea Prison” in Cullen, Dowding and Griffin (eds.), *Corrective Services in New South Wales*, 104-105; Grant, *Prisons: The Continuing Crisis*, 64-67; Mauela Crouch, Angela Gorta, Kerry Mahony, Kathy McLennan, Don Porritt, Diana Simmons, New South Wales, Department of Corrective Services, *Bathurst Gaol Evaluation Study, Implementation of the Bathurst Gaol Management Plan: Research Findings, January 1983 - January 1986*, Research Publication no. 12 (Sydney: Research and Statistics Division, Dept. of Corrective Services, 1987), 4. Even though the architects planning Bathurst’s reconstruction did not explicitly refer to unit management, they envisioned breaking down the prison into smaller units. See, New South Wales. Public Works Department, *Task Force Report on Redevelopment of Bathurst Gaol* (Sydney: Dept. of Public Works, 1977).

<sup>1889</sup> Mauela Crouch et al., *Bathurst Gaol Evaluation Study, Implementation of the Bathurst Gaol Management Plan*, 4.

<sup>1890</sup> New South Wales, Department of Corrective Services, *Annual Report, 1984* (Sydney: Government Printer, 1984), 14.

The new Bathurst Management Plan resembled the Justice Model of prison management, which had become increasingly common in many American states.<sup>1891</sup> Superintendent Gerry Hay, who led Bathurst's management team, developed the plan based on observing similar prison management practices at facilities operated by the U.S. Bureau of Prisons in North Carolina.<sup>1892</sup> Like other iterations of the Justice Model, Bathurst's plan disavowed rehabilitation and identified punishment as the sole purpose of imprisonment.<sup>1893</sup> Moreover, this punishment only involved the loss of liberty. In all other aspects, Bathurst was to resemble outside conditions as much as possible. The plan emphasized that the prisoners were rational like any other person, capable of responsible decision-making and needed to be treated with dignity and respect. Accordingly, the management plan also called for the participation of prisoners in much of the operation of the units, usually through community meetings and voting membership on committees. This last feature of the plan proved to be contentious in many instances, and revealed the continuous operation and power of the classification work performed by prisoners themselves.

Shortly after the reopening of Bathurst, the officers assigned to one of the new units, called C4, selected the first four prisoners to be housed in the experimental units. The officers

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<sup>1891</sup> For a sympathetic overview of the Justice Model, see David Fogel, *We Are the Living Proof: The Justice Model for Corrections* (Cincinnati: W.H. Anderson, 1975). For an unsympathetic treatment of a version of the Justice Model referred to as the "responsibility model," see Dilulio, Jr., *Governing Prisons*, especially 118-127, 159-164, 180-184.

<sup>1892</sup> "Suburban' Experiment for Jail," *Western Advocate*, (February 18, 1982); "Prison Super has Law Grant," *Western Advocate*, (March 4, 1982).

<sup>1893</sup> Mauela Crouch et al., *Bathurst Gaol Evaluation Study, Implementation of the Bathurst Gaol Management Plan*, 3-5; Kathy Mclennan, Angela Gorta, Diana Simmons, New South Wales, Department of Corrective Services, *Intergaol Comparison Study: Attitudes of Prison Officers to their work at Bathurst, Cessnock and Parklea*, Research Publication no. 15 (Sydney: Research and Statistics Division, Dept. of Corrective Services, 1987), 5-6; Angela Gorta, New South Wales, Department of Corrective Services, *Unit Prisoner Accommodation - The Bathurst Gaol Experience, 1983-1987*, Research Publication no. 16 (Sydney: Research and Statistics Division, Dept. of Corrective Services, 1988), 4-7; Vinson, *Wilful Obstruction*, 221; Aungles, "The Home and the Prison," 244-245

selected these first four people because they were “fairly stable” and provided a good basis for new unit. These new members then joined the officers in interviewing other prisoners for inclusion into the unit. Some broad parameters soon emerged.<sup>1894</sup> For instance, unit members had to be serving at least six months or have six months left to serve to be admitted. This would ensure greater stability and investment in the unit community by the new members.<sup>1895</sup> The prisoners on the committee voiced their opinions on the compatibility of new applicants and “selected prisoners of about the same age and having similar interests.”<sup>1896</sup> Soon after unit C4 was established, another unit C3 began recruitment following a similar procedure.

Before both units attained a full complement of residents, disagreement arose between the unit officers and prisoners participating on the selection committees because the latter rejected certain potential candidates they identified as either “dogs” or “rock spiders.”<sup>1897</sup> In the local prison argot, a “dog” was an informer and to be “put on the dog” was to be labelled such by other prisoners. Persons convicted of sexual crimes against children were known as “rock spiders.” Both groups were detested by most prisoners and extremely vulnerable when housed in the general population. Such categorization, especially in regards to dogs, was also potentially polluting; other prisoners associating with these marginalized inmate status groups ran the risk of also being labeled as such. The prisoners participating on the selection committees refused to admit people they perceived to be either dogs or rock spiders. When it became clear that either management team might force the inclusion of people with these

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<sup>1894</sup> Angela Gorta, *Unit Prisoner Accommodation - The Bathurst Gaol Experience*, 10.

<sup>1895</sup> Ibid.

<sup>1896</sup> Ibid.

<sup>1897</sup> Ibid., 11.

labels, existing members of the unit threatened to leave. The existing unit prisoners also worried about potential problems flowing from their participation in selection decision-making. They could unknowingly admit dogs and rock spiders who might be well-known as such to others. This could suggest that they also knew and preferred to live with such people. Prisoners also worried about creating enemies among other applicants who were turned down for other reasons. Perhaps frightening for all the people in the new units, there were signs that the larger prison population at Bathurst was beginning to perceive the new units as protection units for dogs and rock spiders. Rumors such as these were potentially deadly. Several prisoners left the units rather than take this risk, and some applicants withdrew their candidacy after these issues were raised.

The structure of the units also created other situations where these categories surfaced. The designers of the Bathurst Management Plan hoped that participatory decision-making and conflict resolution through the use of community meetings along with community decisions on things like unit decorating and recreation would foster a “unit identity” among the residents (and staff) that would become a model for responsible citizenship.<sup>1898</sup> Senior staff encouraged the use of community meetings, but these became less frequent as the units stabilized. Researchers suggested that in many cases, after the initial conflicts and uncertainties were resolved, there was less need for formal meetings.<sup>1899</sup> However, the inmate code also appeared to reassert itself over time, making many prisoners less willing to interact as much with unit guards in meetings. Some prisoners worried that the meetings were simply new manifestations

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<sup>1898</sup> Ibid., 7.

<sup>1899</sup> Ibid., 15.



of the rehabilitative group therapy or soon could become such. Others feared the label of “screw lover” for wanting to call meetings.<sup>1900</sup> Such perceptions could easily lead to becoming known as a dog. In some cases, certain factions developed among prisoners in the units around these pressures even though the officers tried to prevent the formation of such groups. In unit C2, this pattern appeared after the unit filled up quickly due to transfers from elsewhere in the prison system. The level of screening in C2 fell short of the process in C4 and C3. The result was that half of the unit’s members avoided the communal areas because they feared the “Parramatta Gaol heavies” who gathered there.<sup>1901</sup> These “heavies” were intimidating prisoners who had recently arrived from the maximum-security Parramatta Prison after reclassification. They brought with them a more traditional view of the lines separating guards and inmates and remained distant from staff. Other members avoiding interacting with these intimidating prisoners and surely worried about the consequences of appearing friendly with staff members as well.

After the longest prison officers’ strike in the state’s history occurred between February and March 1984, the Bathurst unit management system deteriorated.<sup>1902</sup> The 35-day walkout left many prisoners locked in their cells for extended periods of time. The meager rapport established between guards assigned to the new units and the prisoners evaporated. The morale of officers was close to its nadir after the government refused to concede to their demands. The primary cause of the strike was the guards’ objection to the state’s decision to

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<sup>1900</sup> Ibid., 17.

<sup>1901</sup> Ibid., 12.

<sup>1902</sup> Angela Gorta, a Department research officer, noted in 1988 that the walkout disrupted the units partly because the senior staff who replaced the usual unit officers in day-to-day operations had far less experience with unknit management and did not know the prisoners that well. Ibid., 13-14.

reclassify Principal Prison Officers as Assistant Superintendents, which made them Executive Officers by fiat and removed them from the ranks of the guard's powerful union, the Prison Officers' Vocation Branch of the Public Service Association.<sup>1903</sup> In the aftermath of their defeat, many officers left the services, most retreated professionally. At Bathurst, this meant far less engagement with prisoners and a de facto withdrawal of support for the new management plan by many, if not most, officers.

While the system remained in place for many years afterward, it never met the expectations of reformers in the Department of Corrective Services. Although intended as a pilot program, the Bathurst model never spread to other institutions and was superseded by later plans.<sup>1904</sup> The published research evaluations of the unit management experiment stopped short of calling the practice a failure. In fact, much of the interview data collected demonstrated that most prisoners in the new units preferred them to traditional wings. Nevertheless, the problems encountered were significant enough to make implementing the plan more broadly difficult at best. It is clear from the research and the manner in which both officers and prisoners were selected for the experiment that they were far more open to the project than most of their peers would have been. This was in fact a key part of the additional classification criteria that the designers established at the outset. In addition to selecting many

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<sup>1903</sup> Bersten, "Notes on Industrial Disputes in NSW Prisons Since 1970," 41-47; David and Ward, "Effect of the Five Week Prison Officers' Strike in New South Wales in 1984," 1-3.

<sup>1904</sup> In the ensuing years, the Department would try to incorporate some aspects of the unit management into Case Management and Area Management programs that also tried to devolve authority to lower-level managers and further professionalize officer role. For examples, see New South Wales, Department of Corrective Services, *Area Management* (Sydney: Dept. of Corrective Services, 1993); New South Wales, Department of Corrective Services, *Organisational Development Training Plan Including Evaluation of Area Management Trainings* (Sydney: Dept. of Corrective Services, 1993); New South Wales, Department of Corrective Services, *Area and Case Management* (Sydney: Dept. of Corrective Services, 1994); New South Wales, Department of Corrective Services, *Update on Change: A Message to All Staff of the Department presented by the Commissioner, Major-General Neville Smethurst*, videorecording, produced by Alison Shearer Sydney: Dept. of Corrective Services, 1994).

prisoners who were more stable and mature, the fact that the entire institution only accepted prisoners with a B security classification meant that the Department did not trust piloting this sort of experiment in a maximum-security setting. Perhaps most significantly, the project designers' focus on finding ways to counter the hostility of the normal prison-guard relationship seemed to overlook the problems the prison code presented for relationships among prisoners when unit residents were empowered to make decisions about their peers. The confluence of these rival classification systems severely limited this novel approach to prisoner management.

## **Conclusion**

“Classification is a word, which has come, like democracy, to mean very much what the user wants it to mean.”

Sir Lionel W. Fox<sup>1905</sup>

“In prisons, the magic wand of classification has long been held out as the key to a successful system. If only those who mess up the regime could be weeded out (sent to special prisons, units or isolation centres), the system could go ahead with its business. All that has changed over the last century is the basis of the binary classification. It used to be ‘moral character’, sometimes it was ‘treatability’ or ‘security risk’, now it appears to be ‘dangerousness’.”

Stanley Cohen<sup>1906</sup>

As rehabilitation deteriorated during the 1970s and early 1980s, the prison systems of New South Wales and Pennsylvania entered a period of rapid transition and instability.

Numerous commentators in each state and broader criminal justice circles noted the lack of

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<sup>1905</sup> Lionel W. Fox, *The English Prison and Borstal Systems* (London: Routledge, 1952), 140.

<sup>1906</sup> Cohen, *Visions of Social Control*, 194-195.

direction, purpose and even competency that appeared to characterize much of the penal bureaucracy and their public statements. Classification systems registered this crisis in a particular stark form because unlike many other practices, they were explicitly oriented to the future of prisoners, how to treat them and how to securely manage them. Classification had always placed a major emphasis on security concerns, but the postwar reforms coupled with it also sought to individualize treatment plans for prisoners and follow their lives behind bars. Penal authorities periodically reevaluated such plans, changing them to suit new circumstances. This entire process involved articulating a clear statement of goals, spelling out the kinds of interventions that would take place and their rationales. In this sense, classification systems continuously produced normative statements about the ideal law-abiding citizen-subject that prisoners should become by evaluating their normative deficits and proscribing interventions to close this gap. Thus, these plans, and the differentiated programs supporting them, had to be flexible enough to accommodate a wide variation in the prisoner population and the numerous changes that might occur in any particular prisoner's time in custody.

More importantly, the claims, actions and forms of address embedded in rehabilitative classification practices managed to speak to multiple audiences and provide them with an adequate guide or map to the carceral environment, how to live and work in it, and ultimately, how to leave it. Classification played a crucial part in crafting these accounts. It provided staff with a way to differentiate and operationalize various penal spaces and interventions and gave them a guiding purpose in general and individualize plans in particular. It also communicated to prisoners what they had to do to, not just to avoid trouble behind bars, but also to get out. Parole boards often looked favorably on people who engaged with their treatment plans and

fulfilled obligations. In this respect, classification resembled a sort of contract, heavily weighted against prisoners, but one that, nevertheless, involved them in a conversation about their future. Of course, prisoners often complained that treatment plans were ambiguous or that the programs were useless. They also frequently criticized the seemingly arbitrary, opaque and discriminatory decisions of parole boards. By the late 1960s and early 1970s, many prisoners and activists argued that the language of rehabilitation masked an enormity of abusive practices, including forms of torture. At the same time, many penologists and prison officers, some of whom never accepted rehabilitation wholeheartedly in the first place, also rejected its claims and prognoses. Nevertheless, during the first few decades after World War II, rehabilitation created a much broader conversation between the keepers and the kept and furnished prison regimes with a range of new programs and activities that, to some degree, ameliorated the prewar, spartan prison conditions.

Rehabilitation lost credibility by the mid-1970s, but, classification has always been a supple practice, deeply implicated in the enterprise of imprisonment since its inception.<sup>1907</sup> It may have been central to the postwar rehabilitation reforms, but it did not originate with them and it survived their downfall, albeit in a different form and in service of different ends. As the events in New South Wales and Pennsylvania indicate, penal authorities gradually departed the conversation with prisoners that had been a central aspects of classification in the treatment era. This was not necessarily always done deliberately, although in some cases it certainly was. Rather, it reflected the emergence of other concerns that classification addressed. In Pennsylvania, for instance, the need to reduce discretion, increase uniformity and accelerate

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<sup>1907</sup> Ibid., 187-196.

decision-making in the classification process clearly responded to the growing presence of the federal judiciary in regulating penal policy and practice. Likewise, the reforms suggested by Justice Nagle in New South Wales were intended to simplify classification and increase its utility for management. Nagle believed that rehabilitation was both ineffective and harmful and stated that classification should prioritize security above everything else. Prisoners could certainly benefit from such reforms. A vulnerable prisoner, for instance, might have been much better protected when security became paramount. However, the changes in classification in both New South Wales and Pennsylvania deemphasized the conversation with prisoners about their future. As the authorities used classification to address immediate management problems, like resource allocation, legal liability and security, they became less likely to proscribe normative goals for prisoners, what they were supposed to do reform their lives, favorably impress the parole board and earn their way out. Rehabilitation programs still existed, but their funding and availability did not keep pace with increases in prison populations. By the 1980s, prison authorities had largely decoupled classification from rehabilitation even if evaluating prisoners' needs and deficits still remained as one of its tasks.

Over the course of the 1980s, classification in both states underwent multiple changes. Revisions to the classification system became both more frequent and more fundamental. Pennsylvania further refined the work of the Correctional Service Group, but by the late 1980s it was clear that overcrowding had become so severe that available space became the unspoken, but major, determinate for inmate placement. The sheer number of people committed to the prisons overwhelmed other purposes served by the classification system. With huge waiting lists for an ever-shrinking range of treatment programs, there was little point

in prioritizing anything other than available space and security. Even the latter concern became secondary in many cases. After a massive uprising at SCI Camp Hill in late 1989, investigators and legislators found numerous deficiencies in the existing classification procedures and recommended a complete overhaul of the system.<sup>1908</sup> Regardless of the merit of their criticisms, it is hard to imagine that the classification system would have ever been able escape criticism. It had become the central mechanism in population management and resource allocation. Thus, a major disturbance like Camp Hill, in which overcrowding and staffing levels clearly played a large role, soon implicated the classification system.

In New South Wales, the three tiered classification system suggested by Justice Nagle was adopted, but soon expanded, with subdivided categories. Thus the simple A, B, C ranking of security needs later included subdivisions A1, A2, B, C1, C2, and C3, which corresponded to graduated security levels in isolation units to work release programs.<sup>1909</sup> Arguably this process corresponded somewhat better to the fine gradation in program and institutional security, but it began to reintroduce some of the unnecessary complexity that Nagle worried about. By the mid-1980s, some officials within the Department of Corrective Services began producing extensive evaluations of the current classification system and reviews of systems in other jurisdictions, especially those in the United States.<sup>1910</sup> Classification in New South Wales

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<sup>1908</sup> Pennsylvania General Assembly, Senate Judiciary Committee, *Corrections in Pennsylvania After Camp Hill: The Keys to Ending Crisis* (Harrisburg: The Committee, 1991), 2, 32-34.

<sup>1909</sup> New South Wales, *Inquiry into the Prisoner Classification System in the Department of Corrective Services*, (T.J. Martin), *Inquiry into Prisoner Security Classification in the Department of Corrective Services: Interim Report* (Sydney: Government Printer, 1986), 5; New South Wales, *Inquiry into the Prisoner Classification System in the Department of Corrective Services*, (T.J. Martin), *Inquiry into Prisoner Security Classification in the Department of Corrective Services: Final Report* (Sydney: Government Printer, 1987), 21.

<sup>1910</sup> New South Wales Department of Corrective Services, *The Classification of Prisoners* (Sydney: Policy Unit Discussion Paper, June 1986); New South Wales Department of Corrective Services, R. G. Woodham and I.T. Allpass, *The Key to Prison Management: An Effective Prisoner Classification System*, New South Wales 11th Senior Executive Officers course, 12 February - 23 March 1990 (Sydney: Australian Police Staff College, 1990).

retained its use of clinical or subjective methods much longer than Pennsylvania did. I believe that two major differences between the events in each jurisdiction account for this. First, New South Wales did not experience the same looming presence of federal judicial intervention that motivated prison officials in Pennsylvania to reform their practice. Since the federal courts in the U.S. specifically targeted areas of unchecked discretionary power, an obvious solution for states like Pennsylvania was to abandon an overreliance on clinical classification models. The absence of this outside legal threat in New South Wales meant that prison officials did not need to move as abruptly concerning this form of correctional expertise. In fact, one of the main differences between the two states was the greater centralization and use of discretionary authority in many aspects of routine governance in New South Wales. Its presence in prison classification, therefore, was not as unusual as it was in the Pennsylvania.

Secondly, the use of psychiatric and psychological evaluations in classification was more extensive and longstanding in places like Pennsylvania. These forms of expertise were especially attached to the clinical model of evaluation and decision-making. By comparison, penal authorities in New South Wales implemented the use of such psychological knowledge much later. It was not as extensive in classification decision-making in New South Wales and did not require the same level of reform. Nevertheless, prison officials evaluated the utility of incorporating greater objective criteria and decision-making models into New South Wales.

Since 1990, both states have revised their classification procedures several times, including several major conversions. The short-life span of these systems, and the constant revision of them while they are in place, are indicative of a more basic problem besetting prisons in both New South Wales and Pennsylvania since the 1970s. Classification is no longer



harnessed to a flexible narrative of prison reform that can address many audiences at once and coordinate their actions. For all their fundamental problems, the postwar rehabilitation reforms were able to do this for about two or three decades. Since then, classification, has become a crucial, pragmatic, management tool in prison operations. Constantly subject to revisions, it seems unlikely now that it will be linked any time soon to a penological account capable of marshalling the attention of as many audiences as rehabilitation did in its heyday.

### **Postscript: Incapacitation, a New Carceral Narrative?**

On Wednesday, October 25, 1989 an inmate at the State Correctional Institution at Camp Hill in central Pennsylvania assaulted a guard while prisoners were being moved back into the cell blocks after a recreation period. As the assault occurred, hundreds of inmates surrounded the other guards in the yard, and stormed several cellblocks, overpowering the staff inside. Inmates set kitchens on fire and destroyed building fixtures for the next several hours, until the prison staff and the state police forced them back to their cells shortly after midnight. The institution remained on indefinite lockdown. However, during the disturbance earlier in the day, several prisoners discovered a way to automatically disengage all of the cell locks in the institution from within their cells by reaching between the bars and stripping off a metal panel covering the locking mechanism above the cell doors.

The following day, several prisoners simultaneously unlocked all the cells in what investigators later determined to be a planned uprising. Superintendent Robert Freeman told David Owens, the Commissioner for Corrections, that, "Inmates exiting the blocks in Group II and III were heard to scream, "This is another Attica. Last night we gave you a riot. This night we're giving you a war!"<sup>1911</sup> The inmates destroyed several buildings before the state police quelled the uprising with force. By the end of the day, 123 people were injured. Miraculously,

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<sup>1911</sup> Status Report, Freeman to Owens 10/30/1989. RG-10 Office of Gen-Counsel Litigation Files 8-4319, box 1 Camp Hill. PSA.

no one was killed. Staff morale plummeted, as Superintendent Freeman warned Commissioner Owens, "Problems with staff are increasing. There are staff who are becoming rebellious and creating problems as the Deputies attempt to coordinate the institutional operation."<sup>1912</sup> The administration transferred most of the institution's inmates to other prisons since SCI Camp Hill was no longer secure.

Less than a year later, on September 13, 1990, prisoners at the Parklea Correctional Centre in New South Wales destroyed toilets and sinks in cells and began pelting the staff with debris. A few days after that, prisoners overpowered guards and seized several cell blocks, torching eight kitchens and smashing electronic surveillance equipment throughout the prison.<sup>1913</sup> The damage was so extensive that after order was restored, the staff had to hold inmates four to a cell designed for one occupant. Many inmates, guards and administrators believed the peace following the retaking of prison was exceedingly fragile. The Chairman of the Prison Officers' Association, Dick Palmer, said that inmates were being issued buckets lined with plastic bags in the absence of working toilets, "but the prisoners are throwing used plastic bags out of their cell windows, which is becoming a major hazard."<sup>1914</sup> He accused the state administration of pursuing policy changes that directly jeopardized the safety of staff without consulting them beforehand. By mid-October, the Department of Corrective Services downgraded Parklea's security classification from maximum to medium because of the damage.

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<sup>1912</sup> Status Report, Freeman to Owens 10/31/1989. RG-10 Office of Gen-Counsel Litigation Files 8-4319, box 1 Camp Hill. PSA.

<sup>1913</sup> "Cells Smashed in Jail Rampage," *Sydney Morning Herald*, (September 13, 1990); "Prisoners Burn Jail's Kitchens," *Sydney Morning Herald*, (September 23, 1990); "Rioters Didn't Spare the Goldfish," *Sydney Morning Herald*, (September 25, 1990).

<sup>1914</sup> "Inmates Squeezed into Cells after Riot," *Sydney Morning Herald*, (September 25, 1990).

They dispersed many of the institution's prisoners to other maximum security prisons in the state.

Several months before the major riots at Camp Hill and Parklea, many other minor disturbances occurred at prisons in each state. However, they did not initially receive the same level of publicity. In Pennsylvania, small uprisings occurred at the Rockview, Huntington, and Graterford state prisons, as well as Holmesburg Prison in the Philadelphia Prison System.

Violence at all state institutions had increased throughout the year. A similar pattern occurred in New South Wales. In addition to Parklea, violence erupted at Bathurst, Long Bay, Cessnock, Emu Plains, Maitland, and Parramatta. These smaller uprisings took on greater significance as indicators of a general problem in the prison system after the larger riots at Camp Hill and Parklea a few months later. These events led to several inquiries and public assessments of each the state's prison system and the dramatic changes that had occurred in each of them over the previous twenty years. Similar themes emerged in these assessments: unprecedented levels of overcrowding, harsher sentencing and discretionary release procedures, increased violence and drug trafficking, deteriorating living conditions, obsolete physical structures, low staff morale, changing inmate demographics, long waiting lists for underfunded programming and confusion about the overall purpose of imprisonment.

Each state's prison system underwent massive changes in the preceding twenty years. Both systems had records levels of new commitments to prison by the time of the Camp Hill and Parklea riots that had resulted in serious overcrowding problems. Each state also built at least one new prison before 1989 to try to cope with the influx. However, a decade or two earlier there were signs that pointed in the opposite direction. Many corrections practitioners

and judicial officials believed then that incarceration damaged people. The therapeutic model of rehabilitation, with its emphasis on reforming inmates under expert guidance, came under attack by people from across the political spectrum. The only place where rehabilitation programs had a chance at succeeding, many officials believed, was “in the community.” Even at a time of rising crime, judges sentenced many offenders to non-custodial punishments and penal authorities used parole liberally to reduce actual time spent behind bars. Each state recorded large declines in their postwar prison population during this same twenty year period. Pennsylvania's prison population fell in the late 1960s and early 1970s. In New South Wales, the prison population dropped drastically about a decade later in the mid-1970s and again in early 1980s. There were indications that these declines might be more significant and long-lasting than the periodic fluctuations in prison populations that occurred throughout most of the postwar period. Many penologists hoped to shift most of the population under their control to community-based programs and leave incarceration for only the few dangerous offenders who, they argued, required greater control. They hoped that they could then “normalize” prison conditions, making them resemble the outside world as much as possible.

By the mid-1980s, however, prison had become anything but the penalty of last resort. After a decade of failure, prison re-emerged as the central focus of an effective response to crime. Many public officials admitted that prisons could not convincingly rehabilitate offenders. Instead, they argued, prisons should only be used to quarantine threats to the social order and punish lawbreakers. This view paralleled shifts in party politics and political contention in each state. As the older political appeals of class and social provision welfare waned, politicians in both liberal and conservative parties seized upon the possibilities of crime, corruption and

harsh punishment as elements for a reformulated political message that straddled party lines. Such messages said little about the internal order of prisons other than that they should be harsh and unforgiving.

More importantly, however, the issues of crime and punishment and the way they mobilized constituencies established, or accentuated, lines clearly demarcating criminals and prisoners from the rest of society.<sup>1915</sup> Almost a decade before this became commonplace in campaigns for public office, it had begun to appear in depictions of prisoners, especially in stories about changing prison regimes and prisoners' rights. Law and order framings emerging from the cellblocks, often from officers and their unions, positioned the revolutionary prisoner, the black nationalist and the incorrigibly violent prisoner on the wrong side of this demarcation. These forms of social othering and exclusion were stark and precluded a way back for the wayward. Prolonged isolation in control units appeared to be the only recourse for dealing with the prisoners in these representations.<sup>1916</sup> Of course, prisoners who would have fit these descriptions were not representative of most people behind bars, and many guards would have readily conceded this point. Nevertheless, as Jonathan Simon has argued, images of incorrigible prisoners and serial killers played a large role in the constitution of a new "penal imaginary" conducive to prolonged incapacitation.<sup>1917</sup> It helped guard unions obtain concessions from

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<sup>1915</sup> My thinking in this section is informed by Ernesto Laclau's discussion of the political mobilization in *On Populist Reason* (London: Verso, 2005), 73-75, 229-231.

<sup>1916</sup> Deborah Drake, "The 'Dangerous Other' in Maximum-Security Prisons," *Criminology & Criminal Justice*, 11 (September 2011), 367-382.

<sup>1917</sup> Simon's comments are about a specific instance of extreme incapacitation in California, which he refers to as "total incapacitation." I agree with Simon's suggestion that we should think about incapacitation occurring in multiple forms or plural "incapacitations." Nevertheless, I believe certain similarities can be observed in the processes shaping different instances. Moreover, many cases are not as separate as they might initially seem, but rather, are instances of fundamentally interrelated and

administrations on security and posting matters and it blocked or reversed the loosening of some routines that reformers like Allyn Sielaff or Tony Vinson proposed in the name of prisoners' rights.

In most, if not all, crime control proposals of the 1980s, leaders in each state did not offer publics a narrative of how penologists could reform their wards. Nor, did they reflect on how offenders could redeem themselves in prison. It was almost as if political leaders and senior penal officials felt that after the claims of rehabilitation had been discredited, there was little reason to eschew explicit exclusion as a penological goal. For most offenders, assimilationist or inclusive policies resembling rehabilitation seemed politically toxic or naïve. In some respects, this paralleled other areas of social policy. Gov. Thornburgh's assault on welfare in Pennsylvania, for instance, occurred at the same time that he proposed mandatory minimum sentencing. If public officials repositioned prison as an effective response to crime, then it was mainly through its default incapacitation functions.

Prison populations and incarceration rates in both New South Wales and Pennsylvania grew steadily from the mid-1980s onward. This increase was much more pronounced in Pennsylvania (and the U.S. in general) than in was in New South Wales and began about a decade earlier. Nevertheless, current levels of imprisonment in New South Wales far exceed the norms of the 1970s. The demographic profile of the inmate population became racially "less white" in both states as the proportion of racial minorities and immigrants grew in each prison system. After the riots of 1989 and 1990, a number of critics called for a greater use of

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interconnected histories. See Jonathan Simon, "Total Incapacitation: The Penal Imaginary and the Rise of an Extreme Penal Rationale in California in the 1970s" in Marijke Malsch and Marius J. A. Duker (eds.), *Incapacitation: Trends and New Perspectives* (Farnham: Ashgate, 2012), 15-35.

alternatives to imprisonment as a way to limit this population growth. Alternatives, like parole, work release, drug treatment, community service orders, still existed, but they rarely functioned as true alternatives. Instead, they had become adjuncts to the prison, integrated into a wider system of sanctions that often cycled the same people through several levels of penalties. For both inmates and prison staff, the purpose of punishment and how it related to the organization of prison regimes remained ambiguous at best after rehabilitation declined. The incapacitation of criminal offenders reigned as the primary justification for imprisonment. A large volume of criminological research in the 1980s focused on trying to ascertain the best way to use the state's incapacitation capabilities and figure out who was most in need of prolonged confinement. Such policies were politically popular outside and among many prison officers, but they offered little direction on how to organize prison regimes other than to continuously emphasize risk and security. According to Jonathan Simon, this new prison, which he refers to as the waste management prison, is one that simply "lacks an internal regime, whether based on penitence, labor, or therapy (or something else), and increasingly relies on technological controls on movement and violent repression of resistance."<sup>1918</sup>

The riots of 1989 and 1990 marked a turning point in this crisis. The authorities did not resolve the problems besetting the prisons since the 1970s. Instead, much like the earlier decarceration movement, they displaced them.<sup>1919</sup> After the riots, leaders from all major

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<sup>1918</sup> Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2006), 152-153.

<sup>1919</sup> In this sense, incapacitation pursues spatial fixes to the problems it faces, and in many cases, creates. Like David Harvey's diagnosis of capitalism, incapacitation moves its crises around to different prisons, different units within prisons, different community corrections programs. For Harvey's comments, see David Harvey, *The Enigma of Capital: And the Crises of Capitalism* (New York: Oxford



political parties committed each state to unprecedented prison building programs. If incapacitation had become the primary purpose of “corrections”<sup>1920</sup> during the 1980s, then its implementation emphasized creating ever more space to contain subject populations. Multiple investigations into the riots all recommended new prison construction, but this was in fact already the direction the penal agencies were pursuing prior to the riots.

The prison building industry itself had undergone a major revolution in the 1980s as prison populations grew. New prison designs proliferated, many of which were based on the unit management concept. Smaller “pods” with enhanced visibility replaced the older tiered cellblock with poor sightlines. These new prisons would be easier to control in the event of a riot as the effected pods could easily be cordoned off from the rest of the prison. Prison building firms also developed numerous time and cost-saving innovations, including a standardized set of different prison layouts, which linked pods that were in many cases indistinguishable among the different prison plans.<sup>1921</sup> The standardization of prison design in this manner also meant that it circulated easily. The New South Wales Department of Corrective Services sent a group of senior officers to the U.S. to investigate prison construction innovations, especially in California.<sup>1922</sup>

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University Press, 2010). One could say the same thing about the problems with rehabilitation by the late 1960s: penal authorities moved rehabilitation to the community once it failed in prison.

<sup>1920</sup> I place the word in quotes because it was, and still is, used by penal bureaucracies, but it holds little of its original meaning.

<sup>1921</sup> New South Wales Department of Corrective Services, *Report on Prison Management, Design and Construction* (Sydney: Dept. of Corrective Services, November 1989).

<sup>1922</sup> California Department of Corrections, *The California Prison Construction Program: A Presentation to the Delegation from the New South Wales Department of Corrective Services* (California Dept. of Corrections, June 26, 1990).

The leadership of both states also explored the possibility of contracting private companies to operate existing prisons or build and operate new ones. This policy began to gain more adherents in the United States in the 1980s and soon several major private prison operators, like Wackenhut and the Corrections Corporation of America, dominated the industry. This policy met with an enormous amount of resistance in Pennsylvania, which eventually only privately contracted minimum-security facilities offering drug and alcohol treatment.<sup>1923</sup> New South Wales, however, opted to contract Australasian Correctional Management, a subsidiary of the American company Wackenhut (now called the GEO Group), to build and operate a medium-security prison, the Junee Correctional Centre. Junee's first superintendent was a retired American who had previously been a prison superintendent in Massachusetts. Within the first year of operation, Junee experienced several incidents of disorder, culminating in a major riot in November 1994.<sup>1924</sup> Since then, the state has renewed its contract with the GEO Group for the operation of Junee. Prison privatization has received a lot of attention, both critical and positive, but the debate has had very little to say about the vacuum of purpose left in the wake of rehabilitation's decline. It has become yet another example of the managerialism of prison professionals that has grown in recent decades.

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<sup>1923</sup> Pennsylvania General Assembly, Joint Legislative Budget and Finance Committee, *Report on a Study of Issues Related to the Potential Operation of Private Prisons in Pennsylvania* (Harrisburg: Pennsylvania General Assembly, (October 1985).

<sup>1924</sup> "Riot at Prison Leaves 4 Hurt," *Sydney Morning Herald*, (November 29, 1994); Tear Gas Used to Quell Riots in Two Prisons," *Sydney Morning Herald*, (June 10, 1994); "Prison Review Sought," *Sydney Morning Herald*, (June 11, 1994); "Keeping It in the Can," *Sydney Morning Herald*, (August 13, 1994); Eileen Baldry, "Prison Privateers: Neo-Colonialists in NSW," *The Howard Journal of Criminal Justice*, 35 (May 1996), 161-174.

## From Opening to Closure: Can the Prisoner Speak?

In April 2009, I attended a large demonstration held by prison officers in front of the New South Wales Parliament House in Sydney. Over a thousand officers had walked off the job in protest over the Labor government's plan to privatize several prisons and curtail overtime wages. For several weeks leading up to this protest, a standing committee of the state's Legislative Council held often raucous hearings, collecting evidence about privatization and the state's prison operations from a broad spectrum of witnesses, including officers and other correctional staff, a few former prisoners, activists, citizens who lived near prisons and academic researchers. The hearings were frequently acrimonious, especially after the press ran a series of scandalous stories about prison officers manipulating overtime wages. Such disputes provided plenty of interesting material for journalists, but they often overshadowed deeper, unresolved conflicts, lingering since the 1970s, about who would control the normal, everyday practices in the state's prisons. Whose version of order would prevail and what exactly constituted this order?

In many respects, the strike and the hearings only displayed the views of the Department of Corrective Services' leadership and the prison officers' union, the Prison Officers Vocational Branch. Several prison activists testified at the hearings, including Brett Collins, a veteran in the prison movement who had spent time at Bathurst, Grafton and many other prisons during the 1970s and later joined the Prisoners' Action Group. The committee conducting the hearing did not make arrangements for currently-serving prisoners to testify. Their views, which are varied on the issue of prison privatization, were mainly absent from the proceedings, although former prisoners, Brett Collins, and other members of Justice Action (a

descendant of the Prisoners' Action Group) discussed some of the concerns prisoners had communicated to them. Even though their views were not featured prominently and they could not attend the hearings, the question of how best to manage and discipline them was at the heart of the dispute. Officers accused the Department of risking their safety by streamlining their working routines and refusing to post a personnel complement large enough to maintain control. The administration insisted that the prisons were properly staffed and that many officers, emboldened by their union, were simply abusing overtime wages and refusing practical reforms to prisoner management. Perhaps surprisingly, the ex-prisoners among the activists who appeared at the hearings unanimously agreed with the officers. They stated that the lack of supervision, which accompanied reductions in personnel, jeopardized the safety of many prisoners.

The Department cited global examples in stating their case to the legislators, drawing especially on the experience of prison privatization in in the United States, the United Kingdom and several other Australian jurisdictions. Yet, the targets of this strategy were especially local; the Department only threatened to privatize prison operations at two prisons, which had the strongest, most vocal union locals. Many witnesses supporting the Department argued that privatization was cost-efficient and would enable other reforms designed to ameliorate living conditions and promote less conflictual relationships between staff and prisoners. Other witnesses, however, decried what they saw as profit-driven exploitation of Australian public services by American private prison corporations, or as some succinctly put it, "American imperialism."

Recurrent questions about the appropriateness of comparisons with overseas models emerged during the hearings. For instance, the Department argued that certain prisoner management models were universally valid and were easily transferrable. Their opponents retorted that the local situation was simply incommensurate with overseas models. The participants often switched their positions on the significance of the local and universal depending on the specific comparison or topic being discussed. American examples dominated the discussion, being either state-of-the-art or dystopian. Many people opposed to the Department's plan raised Pennsylvania's "Kids for Cash Scandal" as evidence of the dangers of corruption and profiteering inherent to privatized corrections. The scandal, which erupted in 2008, involved two Pennsylvania judges who accepted kickback payments from a private juvenile prison operator in exchange for sentencing hundreds of children to confinement in a private facility. Attendees at the hearings repeatedly mentioned this scandal when I introduced myself as a researcher studying prisons in both Pennsylvania and New South Wales.

These hearings demonstrated the interwoven nature of the global and the local, how local knowledge, problems and disputes were at the same time connected to transnational penological trends and practices. Much of the dispute involved work practices in the prison wings at Cessnock Correctional Centre and Parklea Correctional Centre and during specific shifts. For instance, the Department and the union spent hours discussing the best way to release prisoners from their cells in the morning, how best to supervise them and what the ideal number of officers should be for this task. The Department contended that global experience demonstrated that this could be accomplished safely with fewer officers.

In many ways, it demonstrated how far the parameters of penal debate had changed since the 1950s. Not only did it showcase the power of the officers' union and difficulties the administration had in managing the prisons, it also took place in a public hearing in Parliament with a full audience and news media in attendance. The participants spent hours debating the merits and pitfalls of importing penological practices from other jurisdictions, including some from overseas. Yet, an attendee might not be aware that several decades ago, an inquiry like this might have made more of an effort to gauge the views of the people who would ultimately be subject to the policies in question, namely the prisoners. One of the main merits of the Royal Commission into New South Wales Prisons was the inclusion of testimony from prisoners and the credence Justice Nagle gave to prisoners' views. He did not dismiss their views by imputing that prisoners, by their very status, could not speak truthfully. The prisoners were missing from the prison privatization inquiry in 2009 even though all the participants repeatedly mentioned them and often tried to represent their collective views. Did the technocratic nature of the discussion simply preclude their participation?

This difference was also apparent in the eclipse of rehabilitation and the waning of the prisoners' rights movement during the 1970s and 1980s, albeit in different ways. Rehabilitation and the prisoners' rights movement were distinct, each arising from separate concerns and constituencies. Yet, at certain points they converged on some issues in jurisdictions like New South Wales and Pennsylvania. Rehabilitation, and the much older notion of prisoner reform, often authorized abusive interventions. At times, however, it also provided a space for prisoners to engage more directly with their own reform or at least to frame their own activities and concerns within the language of reform. Practices like counseling, education, literary or

drama clubs and prison newspaper production allowed prisoners to voice their concerns even if they had to do so within very restrictive parameters. Of course, a lot of prisoners participated in these practices in disingenuous or subversive ways. They learned how to narrate their lives and attitudes in the language of reform, even if this meant trying to “con” the parole board. Nevertheless, these practices “worked” precisely because they were flexible enough to accommodate the range of different concerns and motivations among prisoners and staff members. They articulated a claim that offenders could rejoin society, that they could be productive citizens once again or for the first time, if they “bought in” to the programing and the normative ideals that sustained them. This is the kind of regime that Jonathan Simon refers to as missing in the current moment, one that can incorporate multiple groups through penal rituals and sustain itself even when faced with evidence of its failure.

In this respect, rehabilitation partly influenced the emergence of the prisoners’ rights movement during the 1960s, although the latter had other sources as well. Many prisoners used the practices of the rehabilitation regimes, like inmate education and publishing, to criticize their captors and advocate radical change. Many of the people who became prisoners’ rights activists in New South Wales and Pennsylvania participated in debate societies and newsletter production. They wrote articles for activist newspapers and corresponded with radical and reformist groups beyond prison walls. Prisoners, like Bernie Matthews and Sylvester Lockhart, turned the affordances of rehabilitation back on the institution. This proved to be one of the sources of rehabilitation’s instability.

Of course, the prisoners’ rights movement also originated within a more general democratization phenomenon that swept over many parts of the globe in the latter half of the

twentieth century. It shared many aspects of the civil rights movements in both Australia and the United States and drew upon examples from decolonization conflicts from Kenya to Vietnam to Northern Ireland. It often overlapped with similar movements advocating the rights of other confined people, like mental health patients. It was a highly plural movement in that prisoners often pursued multiple strategies in the name of prisoners' rights, from filing petitions with courts to open rebellion. The activism of prisoners compelled greater attention and intervention by outside authorities, like courts and inquiries, which led to many improvements in prison conditions. Beyond subverting some programs, prisoner resistance also directly contributed to the demise of rehabilitation. By 1970s, many prisoners openly criticized the hollow promises and abuses of rehabilitation practices and demanded greater respect as citizens with rights that were not extinguished by the act of incarceration.

As rehabilitation waned, it became increasingly unable to address multiple audiences, and the penal estate fragmented. It became abundantly clear after the violence in 1989 and 1990 that the innovations in classification and the partitioning of penal space did little to address the effects of large increases in penal populations and the disappearance of a hegemonic carceral narrative orienting accounts of penal life. Without a flexible, yet coherent, way of organizing the social relations of prisons, the task of getting imprisoned people to "buy in," to go along, and to find a place for their concerns and desires within the regime was all the more difficult. In its absence, prison administrators and staff fell back on custodial solutions, like prolonged isolation, new prison construction and in many cases, ceding ever greater authority over to inmate gangs.



The conversation between the public, penal authorities, officers and prisoners, once sustained by rehabilitation, now shrank and transformed, as the voices of prisoners once again disappeared. Unlike earlier periods of crisis, however, it seemed to many people that the two hundred year project of prison reform itself may have reached a point of exhaustion. The rituals of control remained, morbid symptoms of an institution dedicated more to containment than anything else. Perhaps this transformation says as much about broader social trends since the 1970s, especially concerning declining public confidence in social science expertise and a growing unwillingness to recognize and address the wayward as people. Such beliefs underwrote the postwar reforms, while the prisoner's rights movement drew more on the latter notion. "Skepticism and despair seem to have outstripped hope."<sup>1925</sup> This is fertile ground for policies stressing incapacitation.

Gresham Sykes famously described prisons as authoritarian communities, resembling mid-twentieth-century dictatorships.<sup>1926</sup> He counseled reformers that this was unlikely to change in the near future, but he added, "There are...many possible authoritarian communities and some are preferable to others."<sup>1927</sup> As he conducted his research, penal systems in many parts of the world instituted a set of practices that attempted to mitigate many of the destructive aspects of these dictatorships. The convergence of these reforms with democratizing forces, emanating from within and without the prisons over the next two to three decades, took this even further, turning prisons into highly contentious places in many

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<sup>1925</sup> Nikolas Kompridis, *Critique and Disclosure: Critical Theory between Past and Future* (Cambridge: MIT Press, 2006), 247.

<sup>1926</sup> Sykes, *The Society of Captives*, xiv-xv, 130-134.

<sup>1927</sup> *Ibid.*, 133.

parts of the world. The terrain of the prison, and punishment, transformed into contested ground in a way that it had not been in more than a century. In this respect, it registered many of the contemporary struggles for civil rights, racial equality, greater participation and recognition. It also became a site for construction of new comparative projects and transnational connections.

Since the 1970s, the visibility that these earlier movements brought to the penal estate has remained. Prisons and punishment have a greater public presence now than they did fifty years ago, but the regime of visibility surrounding it, much like the internal prison regime, transformed in such a way that it is now hard to see or hear prisoners, whether on their own terms or expressed in the language of reform.<sup>1928</sup> Prisoners are often portrayed solely as threats and racially black, images that both rose to prominence in the 1970s. By the 1980s, penal authorities no longer addressed the people sent to prison in forums, practices and accounts that allowed these people to buy in or talk back. Prisoners were rarely granted the same access to more public venues, like the media. While penological and media accounts were almost always skewed against them, imprisoned people lacked even the ability to participate in these rituals of representation. This denial of what David Brown has called “discursive citizenship” reduced their status even more and played a prominent role in the growth of the penal estate since then.<sup>1929</sup>

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<sup>1928</sup> Andrea Brighenti, “Visibility: A Category for the Social Sciences,” *Current Sociology*, 55 (May 2007), 323-342.

<sup>1929</sup> David Brown, “Giving Voice: The Prisoner and Discursive Citizenship” in Thalia Anthony and Chris Cunneen (eds.), *The Critical Criminology Companion* (Leichhardt: Hawkins Press, 2008), 228–239.

# IN JAIL PRINT NEWS



"Jailprint" is a combined issue of "Jail News" and "Inprint" produced in response to the increasingly repressive measures taken by the prison administration of NSW and its Minister to once again put a gag on the collective prisoner voice. Recent steps taken by the Commission and the Minister for Corrective Services show a hardening attitude towards prisoner communication both within the Department itself and between prisoners and the outside world. For example:

- \* "Jail News", the publication of Prisoners' Action Group and Women Behind Bars, is still banned from NSW jails despite the ostensible adoption by the Commission of Nagle's recommendation that prisoners be allowed to receive any material legally available in the community.
- \* "Inprint", the Departmentally funded paper for prisoners, is now in limbo and its editor suspended from duty under the pressure of prison officer hostility towards the idea of prisoners having their own official medium of communication, and for using it so successfully.
- \* "Contact", the internal prisoner journal of Parramatta Jail, recently became defunct when funds were cut. It was the best known of the internal jail publications because of its outspoken nature.

- \* Media visits to, and contact with, prisons and prisoners were once encouraged by Dr Tony Vinson, chairperson of the Corrective Services Commission, in an effort to improve the public image of the prisons' department. They were recently curtailed by the Minister, obviously to suit his own political purposes in an election year.

While many of Justice Nagle's recommendations have been implemented literally, such as the one relating to the formation of prisoner grievance committees, they are undermined in practice by prison officers who are implicitly condoned by a Commission which, at best, turns a blind eye to such practices as the shangai-ing of active committee members to remote jails on the strength of little, if any, evidence beyond the say-so of a particular screw.

Such repressive measures destroy the credibility of the reformist chairperson, who undertook to "open up" the jails for public scrutiny, and can only result in increased tension as prisoners are once again deprived of the opportunity to present their case, to expose injustice within jails, to communicate with the outside world, and simply to be heard.

This issue is prepared in open defiance of the censorship and banning of prisoner publications and marks a step towards open communication between prisoners and the rest of the community.

**RAY DENNING... GEORGIA HILL...  
BLACKS IN JAIL... CHILD VERBALS etc.**

Figure 17: Minister Haigh casts out newspapers

Figure 17. Minister of Justice Bill Haigh bans *Inprint* and the *Jail News*. Source: *Jailprint*, (June 1981).

If the regimes of the postwar, treatment era were able to bring multiple constituencies and audiences to order, the current prison cannot. Its order is predicated on security and excluding certain audiences that the penal authorities no longer wish to address. As this trend emerged in the 1980s, some people were keenly aware of its consequences for how the larger public would know about and understand prisons and punishment. In June 1981, a prison activist writing an editorial for the newsletter, *Jailprint*, lamented the recent banning of several publications by the New South Wales Department of Corrective Services. This decision directly contradicted Justice Nagle's recommendation that prisoners be allowed to have publications available in the wider community. The anonymous writer also criticized the Department's decision to place further restrictions on prisoners' ability to contact outside media organizations. The writer knew that prisoners faced hurdles in getting people beyond prison walls to listen to them. Yet, it was the disappearance of the ability to even begin this conversation that worried the author. "Not that the media treat prisoners fairly, but at least a greater contact between prisoners and the media would allow more versions of the story to be told."<sup>1930</sup>

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<sup>1930</sup> "Editorial," *Jailprint*, (June 1981).

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Records of the Department of Prisons/Corrective Services

State Library of New South Wales, Mitchell Library, Sydney

John Clarkson Maddison Papers

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*Pittsburgh Press*  
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*Pottstown Mercury*  
*Pottsville Republican*  
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*The Saturday Evening Post*  
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