

**Prisoners, Prison Executives, and Correctional Officers: Three Explorations  
into the US Prison Experience During the Era of Mass Incarceration**

by

Jay Wallace Borchert

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Doctoral Committee:

Professor Jeffrey D. Morenoff, Co-Chair  
Associate Professor David J. Harding, Co-Chair, University of California Berkeley  
Associate Professor Karyn R. Lacy  
Assistant Professor Reuben Miller  
Professor Jonathan S. Simon, University of California Berkeley

*This dissertation is dedicated to everyone who has suffered at the hands of our broken criminal justice system, to the prisoners who remain behind bars, to the former prisoners trying to build new lives, and to those individuals brave enough to support their efforts with real action. In solidarity and strength, I stand with you. I am you.*

*-And to my Dad -*

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## ABSTRACT

This dissertation attempts to better understand a particularly insular and difficult to reach institution: the contemporary US prison and the prisoners, prison workers, and the prison leadership within. Mass incarceration as our criminal justice policy has pushed issues of who and how we confine human beings into our politics for the first time since the prison reform era of the early 70s. Chapter one introduces the reader to these issues, including their disproportionate effects upon poor, people of color. But chapters two and three take us into new territory and begin to examine the ways LGBT individuals are understood and treated by our contemporary punishment regime. Chapter two, connects prisoner correspondence regarding the hegemonic *sexual misconduct rule*, which bars consensual sex and gender nonconformity among prisoners, to the official institutional record on this rule. Findings show LGBT prisoners may be disparately punished, despite broad progress since Stonewall. Thus enduring what I term a *New Iron Closet* while incarcerated. Chapter three asks correctional leaders across 23 states why this rule exists despite broad socio-legal progress for LGBT citizens. Interview data show that the rule is embedded in a deeply held organizational mythology, rooted in 19th Century religious codes. This organizational habitus incorrectly links consensual sex and gender nonconformity to institutional violence and insecurity and thus makes LGBT prisoners eligible for harsh punishments. Chapter four moves into new terrain and asks why, with the vast problems of mass incarceration, people continue to choose prison work as a viable career choice. First, I reclassify prison work by its pervasive physical, social, moral, and emotional stigma. Then, through interviews with over 70 guards across every prison in Kentucky, I ask how and why individuals

might approach such a dirty job. Findings reveal that individuals engage in tactics to neutralize this pervasive stigma in order to approach prison work, which builds a new temporal understanding of the power of extremely dirty jobs to coerce individual and collective action. Yet while some worry about prison work's stigma, others welcome the opportunity. If jobs are scarce, individuals may forego these neutralizing tactics out of basic economic necessity.

## **CHAPTER 1**

### **Motivating Prison Research During the Era of Mass Incarceration**

In March 2005, the first national prison commission in 30 years, in association with the Vera Institute of Justice, began to examine conditions of confinement in our nation's prisons and jails. Concerned with the 2.2 million prisoners incarcerated on any given day, the 13.5 million citizens incarcerated annually, and the nearly 750,000 Americans employed as correctional staff, at a staggering cost of over sixty billion dollars each year, the commission tapped in to "accumulating doubts about the effectiveness and morality of our country's approach to confinement" (Gibbons and Katzenbach 2006: 8). The commission did not shy away from the vast racial and economic disparities that have deepened during the era of mass incarceration, noting that "many of those who are incarcerated come from, and return to, poor African-American and Latino neighborhoods, and the stability of those communities has an effect on the health and safety of whole cities and states" (Gibbons and Katzenbach 2006: 11).

Sociological findings echo the concerns of the commission, revealing the undeniable social harms that criminal conviction and incarceration produce, and highlighting the exponential damages inflicted upon low-income urban communities of color (Harding, Morenoff and Herbert 2013; Miller 2014; Morenoff and Harding 2014; Petersilia 2003; Travis 2005; Wacquant 2000, 2010; Western and Wildeman 2009). Prison scholars frequently focus on troubling characteristics of U.S. punishment to demonstrate a new system of Jim Crow racism (Alexander 2010), the difficulties men of color face in finding employment post-incarceration (Pager 2007; Patterson and Wildeman 2015), how *hyper-incarceration* constructs prisons as new ghettos or

waste management repositories for underemployed urban Blacks and Latinos (Wacquant 2009), and how prisoner reentry programs are a pernicious hybrid of social welfare and unceasing surveillance of poor citizens of color (Haney 2010; Miller 2015).

Research has also demonstrated the vast inequality between prisoners and the general populace (Western 2006), how criminal convictions disenfranchise millions of citizens, fracturing electoral processes (Uggen and Manza 2002; Manza and Uggen 2006), the horrific maltreatment of LGBT prisoners (Kunzel 2008), and how mass incarceration represents a vast system of economic exploitation at the community level (Gilmore 2007).

In addition, mass incarceration has been identified as a causal factor shaping disadvantages and damages at the family level including childhood homelessness, low birth weights, childhood behavioral problems, reduced home ownership, marriage instability, and on and on (Comfort 2007, 2008; Foster and Hagan 2009; Geller, Garfinkel, and Western 2011; Gowan 2002; Lopoo and Western 2005; Murray and Farrington 2008; Swann and Sylvester 2006; Wakefield and Wildeman 2009, Western and Wildeman 2009; Wildeman 2009, 2012, 2014) The sheer scope of mass incarceration is matched only by these extensive collateral damages.

In 2006, the Vera commission stated, “If there was ever a time when the public consequences of confinement did not matter, that time has gone” (Gibbons and Katzenbach 2006: 11). The commission forcefully claimed,

*What happens inside jails and prisons does not stay inside jails and prisons. It comes home with prisoners after they are released and with corrections officers at the end of each day’s shift. When people live and work in facilities that are unsafe, unhealthy, unproductive, or inhumane, they carry effects home with them. We must create safe and productive conditions of confinement not only because it is the right thing to do, but because it influences the safety, health, and prosperity of us all.* (Gibbons and Katzenbach 2006: 11).

Yet in 2015, the U.S. remains the world's leading incarcerator. Despite the national commission's 2006 report, we still know very little about the variegated conditions of confinement in our nation prisons and jails. The commission notes that,

*There are nearly 5,000 adult prisons and jails in the United States – no two exactly alike. Some of them are unraveling or barely surviving while others are succeeding and working in the public's interest. To succeed, jail and prison administrators everywhere must confront prisoner rape, gang violence, the use of excessive force by officers, contagious diseases, a lack of reliable data, and a host of other problems. (Gibbons and Katzenbach 2006: 11).*

Making matters worse, scholars suggest that prison officials have strongly opposed prisons research during the era of mass incarceration, saying “prison administrations during the era of mass incarceration have become insular and resistant to documentation by journalists, social scientists, [and] human rights experts, making it far more difficult to know beyond anecdote and urban legend how bad things have become inside” (Simon 2014: 5). Together, the durability of mass incarceration and the significant variance in its characteristics and outcomes beg prison scholars to find ways to get inside prisons in order to produce knowledge and advance theory about our megalithic punishment regime. This knowledge may then, with the cooperation of politicians and policy makers, point us toward large-scale *decarceration*, so that society may avoid the continued replication and multiplication of mass incarceration's well-documented damages.

The dissertation focuses on three discrete aspects of the US prison experience during the era of mass incarceration by elevating the voices of three groups of actors who are integral to any prison experience: prisoners, prison executives, and correctional officers, *aka* guards. Chapter two sought to investigate claims of disparate treatment and punishments made by LGBT prisoners within Michigan Department of Corrections' (MDOC) prison facilities. Prisoners had

written letters detailing their treatment to a nonprofit prisoner advocacy organization in Ann Arbor. Using their claims as a starting point, I made freedom of information act requests to the MDOC to discover the institutional habitus of the MDOC toward transgender prisoners, consensual sex among prisoners, as well as basic acts of affection such as massage that are not inherently sexual. What I found is a department where rules on the books barring consensual sex, and the presentation of gender identity that is at odds with the official “gender” of the prison, are rigidly adhered to in action. Discretion among institutional actors could have been found. Instead officials bring a hardline to bear upon prisoners who break these administrative rules, often sending transgender prisoners, and prisoners who engage in acts as seemingly innocuous as a kiss, to administrative segregation, *aka* solitary confinement, for years. Within our prisons a landscape of inequality and disparate punishment exist for LGBT prisoners, which I call *A New Iron Closet*. This landscape of inequality and disparate punishment is at odds with the socio-legal advancements LGBT citizens have achieved since Stonewall. The findings push prison officials and legislators to include prisoners in the decriminalization of consensual same-sex sex, and transgender identity, and at a minimum to reduce the harsh penalties prisoners receive for acts that are no longer worthy of criminal punishment in society.

The second empirical chapter of the dissertation, chapter three, sought to find out why state correctional departments, and the executives that lead them, adhere so strictly to administrative rules barring consensual sexual activity among prisoners. Despite recent legal advances for LGBT citizens, including the Supreme Court’s recognition of a constitutional right to engage in private, consensual, same-sex sex, prisons continue to regulate sex in much the same way they have been doing since the nineteenth century. Nationwide, prisons bar consensual sex among prisoners, and those who violate this policy face severe punishment, including

administrative segregation. Interviews with prison officials from twenty-three states uncover beliefs linking consensual sex with violence that places the overall security of the prison at risk. While supporting LGBT rights and the decriminalization of same-sex sex in society, officials insist that prisons are not suited for similar change. This chapter explains why prison officials have been so committed to this policy and argues that the time has come to reconsider prison regulation of consensual sex.

Finally, the third empirical chapter of the dissertation, chapter five, examines why and how individuals continue to choose prison work as a viable career choice during the era of mass incarceration. This chapter fully accounts for the vast damages of mass incarceration, which have been amply demonstrated in empirical prisons scholarship. Through interviews with over 70 correctional officers in every prison in the state of Kentucky, across all security levels, including men's and women's facilities, this chapter is the first part of a comprehensive, effort to gather qualitative data from every prison in a Southern state in U.S. history. Findings reveal a complex array of tactics that workers use to cleanse prison work of its significant social taint and stigma; a neutralizing and normalizing process which starts at the first thought of submitting an application to do prison work. I am able to make three central claims which transform our theoretical and empirical understandings of dirty work: 1) that prison work during the era of mass incarceration is so foul that it must be categorically relocated, from being simply physically and socially dirty, in order to properly represent the pervasive taint of physical, social, moral, and emotional dirt of prison work during the era of mass incarceration; 2) that extremely dirty jobs, comprising multiple stigmas, in this case prison work during the era of mass incarceration, require conceptual pre-treatment and cleansing for an individual to even begin to consider this type of occupation as a viable career choice; and, 3) that a landscape of economic disadvantage,

including few high quality, stable job opportunities, may force individuals to forego pre-treating due to basic economic necessity. In so doing the dissertation fundamentally challenges traditional understandings in social psychology, labor and management studies, and the sociology of organizations, of the power of dirty occupations to coerce and shape individual and collective action.



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**CHAPTER 2**  
**A New Iron Closet: Failing to Extend the Spirit of *Lawrence v. Texas* to  
Prisons and Prisoners**

**INTRODUCTION**

During the seven years I spent as a prisoner in California, Minnesota, and Illinois, one of the most troubling conditions of my confinement was the re-criminalization of my identity as a gay man. At any given moment, my sexuality could bring about swift and durable punishment from the state. Segregated into Los Angeles County Jail's gay and transgender K6G unit, well documented by Robinson and Dolovich<sup>1</sup>, I witnessed the systematic maltreatment of LGBT prisoners. In all, I was classified, housed, and watched-over in eight additional county jails and 14 prisons. In each, I experienced mistreatment and fear, and watched as other LGBT prisoners – particularly transgender prisoners – were degraded and punished on a daily basis.

Of course, prisons are intended to punish. But what I witnessed was not the ordinary state-sanctioned punishment doled out every day in prisons across America (which has its own set of problems). The mistreatment of LGBT prisoners goes above and beyond the normal degradation meted out by the state, enacting a disparate set of punishments for LGBT people markedly different than prisoners perceived as heterosexual and/or gender conforming. Through my personal experience and the experience of others like me, I came to believe that America's prisons are Iron Closets for LGBT citizens – backwards spaces void of the legal, cultural and social recognition and protections that, outside prison walls, have emerged since Stonewall.

<sup>1</sup> See Dolovich, Sharon. 2010. "Strategic Segregation in the Modern Prison." *American Criminal Law Review*. 48(1) and Robinson, Russel. 2011. "Masculinity as Prison: Sexual Identity, Race and Incarceration." *California Law Review* 99 (1309).

As I show in this chapter, America's prisons and jails regularly police and punish consensual, same-sex sex. These punitive policies have continued unabated in the wake of the Supreme Court's 2003 groundbreaking ruling in *Lawrence v. Texas*, which struck down sodomy statutes nationwide and thus forbid the state from criminalizing private, same-sex sex. But as I show in this essay, the Supreme Court's reach did not permeate prison walls. Beyond sexuality, I also show how prisons regulate gender by policing and punishing prisoners who do not conform to traditional gender roles and presentations.

This essay will explore the current state of what can ostensibly be categorized as LGBT criminalization<sup>2</sup> in state and Federal prisons in the United States. First, I introduce the reader to the characteristics of contemporary prison rules that construct an iron closet for LGBT prisoners, criminalizing both sexual and gender identity as well as same-sex sex. These administrative rules, known as "sexual misconduct rules" are institutionalized in every prison and jail nationwide. Second, I will present cases obtained through Freedom of Information Act requests that can be viewed as typical violations of sexual misconduct rules; the first for engaging in consensual same-sex sex between prisoners and the second for non-conforming gender presentation among prisoners. Third, I discuss the legal and institutional logics that construct these rules as legitimate for prisons and explain how rules remain persistent despite LGBT progress in broader society. Lastly, I will argue for prison officials to reconsider prisons as within (rather than outside of) the expanding landscape of cultural and social acceptance for LGBT citizens. Until officials ameliorate the conditions that make prisons a new Iron Closet,

<sup>2</sup> Hannsens, Catherine et. al. 2014 note that "LGBT people and PLWH are overrepresented in U.S. prisons and jails, and face widespread and pervasive violence, inadequate healthcare, nutritional deprivation, and exclusion from much needed services and programs. LGBT prisoners and prisoners with HIV are more likely to be placed in administrative segregation or solitary confinement [...] and to be denied access to mail, jobs, and programs while in custody. LGBT prisoners have also experienced unanticipated negative impacts from the Prison Rape Elimination Act (PREA), including being punished through new policies purportedly created to comply with PREA that forbid gender non-conforming behavior and punish consensual physical contact."

LGBT prisoners will continue to be forced to time-travel to a place that existed prior to our social movements, to a place that criminalizes our very identities and behaviors.

### **BACKGROUND: CRIMINALIZING LGBT PRISONERS**

LGBT citizens have more legal rights, protections, and social acceptance today than could have been imagined before Stonewall. Yet, this expansion of legal recognition has been slow to reach American prisons and jails and the millions of prisoners incarcerated behind their fences and walls. Outside prison gates, same-sex sex is legal and LGBT couples and transgender citizens enjoy access to an ever-greater number of legal protections. Within our prisons from coast-to-coast, the picture is starkly different, as LGBT identity and same-sex sex remain *criminalized*. Administrative rules barring consensual, same-sex sex between prisoners are a part of each and every prison system across the United States. Plainly speaking, it is against prison rules for prisoners to have any type of intimate physical contact with one another. If prisoners are caught kissing, hugging, hand-holding or found engaging in oral or anal sex, prisoners can be written up for violating sexual misconduct rules.

A sexual misconduct ticket is a serious matter. The Federal Inmate Handbook – the guide for the 215,324 prisoners residing in our Federal Bureau of Prisons facilities – ranks “engaging in sexual acts” and the “proposal of sexual acts” in the “high category of code prohibited acts,” which also includes aggravated assault (FBOP 2014). Only murder, rape, and sexual assault rank as a higher category physical offenses within the Federal prison system’s 116 facilities nationwide. Violations of “high category” acts are punishable by lengthening time to parole, forfeiture of good time, disciplinary transfer, segregation, loss of privileges, removal from program and group activities, loss of job and restriction to quarters (FBOP 2014).

State prisons nationwide, housing over 1,500,000 prisoners, similarly structure

sexual misconduct rules. The Iowa Department of Corrections defines sexual misconduct as follows:

*An offender commits sexual misconduct when the offender proposes a sexual contact or relationship with another person through gestures, such as, kissing, petting, etc., or by written or oral communications, or engages in a consensual sexual contact or relationship. Gestures of a sexual nature designed to cause, or capable of causing, embarrassment or offense to another person shall also be punishable as sexual misconduct. (Iowa Department of Corrections 2006)*

What we see is that the meaning and context of the rule are remarkably subjective. What exactly is a “sexual proposal”? What is a “gesture of a sexual nature”? Who determines when that line-in-the-sand has been breached? Today, after decades of ever-greater acceptance for LGBT citizens, an out and proud individual can be pushed back into an iron closet by a prison system that criminalizes his or her identity.

Contrary to what some of us may logically assume “sexual misconduct” means, this rule category is not applied to violent sexual assault or rape between prisoners; there are separate administrative rules dedicated to prohibiting and punishing violent sexual behaviors.<sup>3</sup> The sexual misconduct rule pertains to two things: consensual sex between prisoners, who are usually of the same gender as prisons are segregated by objective gender assignment at birth; and the active presentation of transgender identity as normatively understood by prison officials.

For instance, a female transgender prisoner housed in a male prison facility may be written a sexual misconduct ticket for wearing make-up or having her hair in a style normatively understood as appropriate for cisgender female prisoners. The Michigan Department of Corrections (MDOC), in their “*Prisoner Discipline Policy Directive*,” details examples of sexual misconduct as “...wearing clothing of the opposite sex; wearing of makeup by male prisoners...”

<sup>3</sup> However, even in cases of violent sexual assault and rape, victims who are disproportionately LGBT identified, are often charged with sexual misconduct as well, indicating that prison officials view LGBT prisoners as sexual instigators who are somehow deserving of the assaultive behavior perpetrated upon them.



as well as “consensual touching of the sexual or other parts of the body of another person for the purpose of gratifying the sexual desire of either party...” (MDOC 2012).

Punishments for infractions can be severe<sup>4</sup> to include relegating the prisoner to non-resourced areas of the prison where education, substance abuse treatment, recreation, religious services, employment, library, and visiting privileges are unavailable or drastically reduced. The Indiana Department of Corrections notes that violating the sexual misconduct rule carries up to 180 days in “administrative segregation.” More commonly known as solitary confinement, this prison within a prison is a punishment with widely known, highly deleterious consequences for the physical, mental, and emotional health of prisoners; many view it as a form of torture that violates basic human rights (AFSC 2003, Mendez 2011).<sup>5</sup>

Prison authorities may also decide to change the security level of a prisoner who violates sexual misconduct rules, which can trigger her relocation to a higher security facility such as a Supermax Prison with isolative housing arrangements mimicking solitary confinement and its associated damages. Rules violations in general, and sexual misconducts specifically, can lengthen time to parole, contaminate parole hearings, and may affect the crucial relationships that released prisoners have with their parole agents by defining these prisoners as rule-breakers as well as sexual and gender deviants.

<sup>4</sup> There is a hearing process for prisoners who are charged with violating prison rules, including sexual misconduct rules. However, the prison rules hearings adjudication process is fraught with procedural hurdles and barriers to the effective representation of facts, including the use of anonymous prison informants, in order to mount an accurate defense against biased claims made by guards in same-sex and LGBT identity cases. See Giovanna, Shay. 2010. AdLaw Incarcerated.

<sup>5</sup> The American Friends Service Committee as well as Juan E. Mendez, the United Nation’s Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment view solitary confinement, otherwise known as administrative segregation, or protective custody as a violation of human rights and extreme form of torture that leads in many cases to extremely deleterious physical, mental and emotional health outcomes for prisoners unfortunate enough to spend even short stays in these conditions of confinement.

Beyond these direct consequences, sexual misconduct rule violations can have simultaneous, collateral consequences for prisoners during incarceration and beyond. The MDOC notes, “a prisoner cannot earn good time or disciplinary credits during any month in which s/he engaged in [rules violations],” that the prisoner “shall accumulate disciplinary time” which is time added that lengthens the original sentence, that “each prisoner... shall be reviewed by the Security Classification Committee” which often results in transfer to disciplinary facilities with fewer resources and opportunities for rehabilitation, and finally that “a prisoner may be reclassified to administrative segregation based solely on a guilty finding without a separate hearing being conducted” thus prefiguring an array of harsh penalties for violating Michigan’s sexual misconduct rule (MDOC 2012). In short, violating the sexual misconduct rule can result in grave consequences for incarcerated citizens.

Readers may be wondering, “But didn’t the Supreme Court in *Lawrence v. Texas* strike down sodomy laws that criminalized same-sex sex?” Technically, this is true. But as many essays in this collection describe, the high court’s 2003 decision has had a rather delimited effect. *Lawrence* stops at the prison gate; prisons and prisoners do not fall under its purview. Legal scholars have criticized *Lawrence* for its vagueness, which has necessarily limited its application to other forms of injustice faced by LGBT people. One of these injustices is the failure to establish liberty interests for prisoners in the *spirit* of the landmark decision, which could allow prison officials to reconsider the validity of these rules in an era of expanding LGBT rights and legal protections.

The retrograde nature of these rules and punishments in prisons are remarkably similar to the violent legal landscape that existed for LGBT citizens (including those individuals who do not identify as LGBT but yet engage in same-sex sex) prior to *Lawrence*. Dale Carpenter, an

expert in constitutional law, describes the Texas Homosexual Conduct Law that initiated the arrest of the plaintiffs in *Lawrence*, as,

*What was nominally a law criminalizing homosexual conduct in fact was a law criminalizing the status of being homosexual. In Texas, being gay became a crime. As John Lawrence responded when his partner, Jose Garcia asked why they had been charged, "We were arrested for being gay." In a technical sense that was untrue, but in the real world, simply being gay was a crime in Texas. The Homosexual Conduct law was, in practice, a Homosexual Status law. (Carpenter 2012: 109).*

If we read the quote above, substituting “prison” for “Texas,” we instantly see an analog: the “homosexual conduct law” is remarkably similar to the “sexual misconduct” rule in our nation’s prisons as each activates a set of instrumental and symbolic punishments for LGBT citizens and those who engage in same-sex sex.

In prison, just as in Texas before 2003, “If persons engaged in that prohibited conduct, they violated the law – no matter whether they were actually gay or were straight and experimenting or settling for second-best sex” (Carpenter 2012: 106-107). Sexual misconduct rules have both instrumental and symbolic effects upon prisons as state institutions, and the prisoners within their walls. In my own work with state prison officials, a director of a state prison system in the South notes:

*I think that throughout the U.S. you'll find that consensual sexual behavior between prisoners is prohibited. It doesn't mean that the rules do not get violated. Yes, they do get violated, but when they're violated the sanctions, in most jurisdictions, the sanctions are swift and certain. So, we do not accept or acknowledge consensual sexual relationships between offenders.*

In this light, an inescapable iron closet has been constructed for LGBT prisoners and prisoners who engage in same-sex sex; an iron closet that does not recognize broader social progress since Stonewall and the legal protections of our liberty established in *Lawrence*.

## DATA AND METHODS

Prisoner voices were the starting point for the research found in this chapter. Over several years the *American Friends Service Committee Michigan Criminal Justice Office* (AFSC) received over 100 letters from individual prisoners complaining of disparate treatment and unequal punishments meted upon them by MDOC officials for violating the MDOC's sexual misconduct rule. These prisoners, according to their accounts, had been punished, oftentimes by extended terms in administrative segregation, for engaging in consensual sex with another prisoner, for engaging in acts of affection that were not inherently sexual such as hugging or a foot massage, or for wearing make-up or placing a hair tie in their hair, which was viewed by MDOC officials as gender non-conformity. I understood the voices and claims of these prisoners, as expressed in their letters as valid data points. The research process thus sought to invalidate their claims of unequal treatment by conducting an explanatory content analysis of their rules violations write-ups, grievance processes the prisoners may have initiated with the MDOC, as well as any official communication between MDOC officials pertaining to the sexual misconduct rule.

In other words, did these prisoner voices have any validity when claiming that a landscape of inequality exists within the MDOC for LGBT prisoners? I avoided kowtowing to the fact that these prisoners' behaviors actually violated a clearly articulated and well-known administrative rule, which would have legitimized the behavior of the MDOC. I chose to thus place equal weight on the voice of the prisoners, the voice of the MDOC employees in the official record, and the voice of the MDOC as an institution as revealed in emails between MDOC headquarters in Lansing and local prison staff. This technique, of at least attempting to provide equal weight to these various accounts or voices, from offender, to correctional officer,

to the MDOC as an institution serves to reduce any inherent bias in prisons research by not elevating the voice of the powerless (here the prisoners) or reifying the voice of the institution and its official actors (the MDOC and its officers) (Liebling 2001).

I started with a subset (n=10) of letters written to the AFSC, and then linked them to voluminous records kept by the AFSC detailing each prisoner's institutional history. Each record contained correspondence, official communications from MDOC, misconduct reports, administrative hearing documents, requests for appeals within the grievance process, as well as each prisoner's trajectory during their incarceration. Materials in each file were somewhat voluminous, often comprising 200 or more pages. The cases were selected from nearly 100 possible cases in order to meet the research criteria. Three criteria to account for varying length of incarceration, varying location of incarceration within the state, as well as a record of sexual misconduct rules violations over time to examine outcomes. Selected criteria were expected to reveal similarities or variance in the application of the sexual misconduct rule and its punishments over time, within and between facilities, among individuals who had actually been charged with violating the rule.

I then made *Freedom of Information Act* (FOIA) requests to the MDOC for each of these prisoner's official records, including write-ups for rules violations, any grievance procedures initiated by the prisoner to challenge their conditions of confinement. In addition, FOIA requests were submitted to gather official written and electronic communication between MDOC headquarters in Lansing, Michigan and local prison facilities that pertained to the sexual misconduct rule in general or to any specific violation of the sexual misconduct rule. FOIA requests were limited to ten cases due to their high cost as the MDOC charges for not only the reproduction and mailing costs, but for the labor associated with compiling FOIA requests.

Again, the goal here was to examine these data points across the ten cases to discover alternative explanations to prisoner claims. Explanatory content analysis was marshaled across prisoner letters, prisoner write-ups, grievance records, and official MDOC communications. Documents were coded for, 1) discrepancy in accounts between prisoner letters and official accounts; 2) variance in punishments between prisoners which could serve to indicate discretion and a less than rigid adherence to the sexual misconduct rule. The sheer lack of variance in these data across time, individuals, and institutions, revealed that there was little discrepancy between the official account and the narratives within prisoner letters to the AFSC. Findings also revealed that the MDOC exhibited an extremely rigid adherence to the rule as seen in the application of long terms of administrative segregation for violating the sexual misconduct rule across cases. The following cases are not only typical of the ten cases where FOIA requests provided additional data points, but are typical of the additional cases (prisoner accounts) archived at the AFSC. These cases reveal a landscape of inequality and unequal treatment for LGBT prisoners within the MDOC that is at odds with our current landscape of expanded rights for LGBT citizens in US Society.

It should be noted here that the MDOC was selected because of access to data and not as a special, particularly egregious, institutional case to single-out. As noted in this essay, each and every correctional institution across the US maintains similar rules and punishments. However, it is important to point out the politics inherent in this discussion. If we are silent as researchers about the location of our inquiry, the location of the marginalized may well remain on the margins, and in silence. Thus providing anonymity to the powerful is a questionable practice. Imagine the reports on things such as the Tuskegee Experiment had these very real power relationships and identities not been made explicit! All in all, the research done here was a

starting point to reveal the contemporary landscape of inequality within our prisons and to build upon historical accounts as seen primarily in Kunzel (2006).

## FINDINGS

### *Punishing Same-Sex Sex<sup>6</sup>*

As I noted in the beginning of this chapter, same-sex sex is criminalized and punished in prisons nationwide. The following incident reports have been retrieved through Freedom of Information Act (FOIA) requests to the Michigan Department of Corrections in order to detail the types of sexual misconduct rules violations that commonly occur for same-sex sex in Michigan prisons.

The first case involves two prisoners and is a “Notice of Intent to Classify to Segregation.”

*Prisoner Jackson was found guilty of sexual misconduct. Prisoner Jackson was found by unit staff to be in an embrace and kissing Prisoner Munson. Prisoner Jackson was also found guilty of sexual misconduct in 2008 where he was caught with another prisoner in a sexual act. Both of these incidents indicate that prisoner Jackson is sexually active and should not be housed in a general population housing unit. A hearing needs to be held to determine if prisoner Jackson should be classified to administrative segregation because of his sexually active nature.*

Following this “Notice of Intent to Classify to Segregation,” a hearing was held for Prisoner Jackson with the following severe result:

*Prisoner Jackson was classified to Administrative Segregation for two major sexual misconducts. The first incidence took place where Jackson and another prisoner were directly observed in a cell together with erect penises. The second incident took place in 2009 where Jackson and the same prisoner were directly observed standing face-to-face in an embrace, kissing each other on the lips. Prisoner Jackson has been classified to Administrative Segregation for a period of 1 year.*

Despite *Lawrence*, consensual same-sex sex is criminalized in Michigan prisons to the extent that kissing and embracing is regarded as violating the sexual misconduct rule. And, this rules

<sup>6</sup> In the following cases describing the criminalization and punishment of same-sex sex as well as gender non-conformity, pseudonyms are used to protect the identity and confidentiality of prison staff and prisoners alike.

violation clearly brings about severe consequences as Prisoner Jackson is subsequently sent to administrative segregation aka solitary confinement for a period of one year.

Notwithstanding an inability to access important prison resources such as education and substance abuse treatment while in administrative segregation, experts have detailed the potential psychiatric damages of isolation in administrative segregation units, saying “The Courts have recognized that solitary confinement can cause a very specific kind of psychiatric syndrome, which in its worst stages can lead to an agitated, hallucinatory, confusional psychotic state often involving random violence and self-mutilation, suicidal behavior, agitated, fearful and confusional kinds of symptoms” (AFSC 2003).

In another case from 2011, a “MDOC Class 1 Misconduct Hearing Report” presents an additional case of criminalizing same-sex contact, which may be difficult for some to view as same-sex sex or misconduct of any sort. Here from the reporting officer’s report we read, “Prisoner Franzen was kissing Prisoner Johnson’s neck as Johnson rubbed Franzen’s feet. I find that this was consensual touching of each other that was done for the purposes of sexual gratification. The charge is upheld. Prisoner Johnson is being placed in Administrative Segregation.”

To make matters more complicated, in a third case we see that the MDOC uses prisoners as confidential informants, revealing dubious, impossible to verify, instances of same-sex sex between prisoners. Prisoners with bias against LGBT prisoners can thus make confidential reports of same-sex sex between prisoners that can be punished similarly to reports originated by prison staff. Here, Prisoner Davidson who has been accused of having sex, claims that he “had conflicts with [the informants] and now they’re getting back at him by saying they saw him having oral sex with another prisoner [Peterson].” The report goes on to note that, “Based on



confidential statements, Prisoner Peterson was seen with Prisoner Davidson's penis in Prisoner Peterson's mouth. This sexual act is a violation; prisoners are prohibited from having any sexual contact with another prisoner." As in the previous cases, the prisoners were found guilty of violating the sexual misconduct rule - "as confirmed by witnesses, it is found that Davidson had mutual physical contact for sexual gratification." Peterson and Davidson were then sent to administrative segregation with the possibility of irreparable physical and mental harm, for the *crime* of same-sex sex in Michigan's prisons as reported, but not verified by prisoner informants who may have been motivated by LGBT bias.

### ***Misunderstanding Transgender Prisoners Troubles the Equation***

We now know that consensual same-sex sex is a crime in our prisons. To complicate the case, we can again look to Michigan's prisons as but one of numerous states with correctional departments that conflate non-normative gender presentation with heightened sexuality. The following cases demonstrate how transgender prisoners in Michigan can be issued sexual misconduct rule violation tickets for wearing clothing of the "opposite" gender in facilities that are gender segregated and how prison officials target transgender prisoners disproportionately for additional surveillance and security procedures. These cases are illustrative of common trends in how transgender prisoners are treated in prisons nationwide.

I became aware of the case at hand during my time collaborating with the American Friends Service Committee Michigan Criminal Justice Office (AFSC), a leader in the broad-based, collaborative effort to reform policy and practice within the Michigan Department of Corrections and nationwide. Through (FOIA) requests beginning in 2011 and continuing through 2014, AFSC sought to obtain evidence documenting the treatment of transgender prisoners in Michigan's prisons in order to verify prisoner narratives, claims, and anecdotal evidence that

indicated widespread maltreatment of transgender prisoners. The records obtained reveal a normative conflation of sexuality with gender identity on the part of prison officials, from line staff to the executive leadership, which drives disproportionate surveillance and punishment upon the bodies of transgender prisoners.

This systemic maltreatment of transgender prisoners makes an already difficult situation (prison) worse. The records obtained by AFSC reveal extraordinary levels of sexual and identity harassment on the part of prisoners and prison officials alike. One transgender female, Candace (a pseudonym), notes how her fellow male prisoners treat her: “It’s all kids and they are tormenting me daily. I am the only one like myself here and feel very lost.” Within this hostile environment staff also bully and ridicule Candace, reportedly telling her, “You have a wide load. How do you expect to be the prison whore if you can’t bend over and grab your ankles?” She goes on to state “I was so embarrassed I had to leave the chow hall.” In addition to the verbal abuse, Candace has been written up multiple times for violating the sexual misconduct rule, with officer’s claims of “impersonating a female” to justify the ticketing and subsequent punishment:

*CO Tom asked me if I had make-up on. I told him no, that I fill in my eyebrows because they do not grow from tweezing them so long. He inferred that I was impersonating a female. I explained that I am a female - that I lived my entire life as a female. He stated, “Do you want to go in your cell and take care of it or let Major Court decide if you have a gender disorder?” He seemed very upset with the explanation and I did not want to get in a debate with him so I said, I’ll let the court decide.*

In Candace’s case, she was found guilty of sexual misconduct numerous times for her non-conforming gender identity in prison. These violations contaminated the remainder of her prison sentence, including her possibility for parole. All totaled, Candace has spent nearly four years in the iron closet of administrative segregation or solitary confinement for the crime of being transgender.

The following email from the MDOC headquarters in Lansing, Michigan to all MDOC wardens, captains, and lieutenants, details the way sexual misconduct rules are understood and operationalized by prison officials, revealing an environment of abuse, characterized by heightened surveillance and punishment directed toward transgender prisoners:

*They [prisoners] know that we, I will not tolerate the behavior and that it is a policy violation to wear effeminate appearing clothing, et cetera. I am good with sexual misconducts if they are upheld. Just the other day I told Candace to lose the eye liner, Kool-Aid, and scrunchy in his hair. Let's have staff search their cells and confiscate anything that violated policy and we can go from there. If they want attention, we will oblige (MDOC 2011).*

Following up on the executive level directive, a subsequent email from MDOC Headquarters indicates the logics that the MDOC directs upon its transgender prisoners.

*We have been having problems with prisoners wearing homemade make up and wearing their hair like a women [sic]. I have reviewed the policy directive and was unable to find any information that allows them to wear makeup or wear their hair like a women [sic]. They have been warned numerous times by Officer Tom. Today Officer Tom took photographs and wrote Class I Sexual Misconduct tickets. (MDOC 2011)*

We know that sexual misconduct violations can spell trouble for prisoners. In reviewing Candace's file and the files of other transgender female prisoners in Michigan prisons, a pattern of systematic abuse emerges wherein transgender prisoners spend a high proportion of their incarceration spells in administrative segregation or solitary confinement. In fact, prisoners like Candace are criminalized for their identity without engaging in behavior that remotely resembles a normative understanding of "sexual" misconduct.

This treatment makes conditions of confinement particularly harsh for transgender prisoners and is not unusual. In my own experience as a prisoner in over 20 facilities in California, Minnesota, and Illinois, I witnessed countless cases of prison staff treating transgender prisoners with extra administrative hurdles, surveillance, punishment, abuse, and

isolation. In a forthcoming paper, Jenness and Sexton provide additional detail on the environment of abuse transgender prisoners experience in California prisons. One male prisoner reports that, “Most transgenders [sic] on this yard, well, they get called cum buckets. These guys here have no respect for them and they have no respect for themselves.” This lack of respect and understanding is clearly part of the logics of sexual misconduct rules as applied to transgender prisoners such as Candace.

### **Prison Logics and Prison Jurisprudence**

Why do sexual misconduct rules go unquestioned? For the better part of our union, prison officials have been allowed broad latitude and professional expertise to operate prisons as they see fit. In this sense correctional officials can be seen as sovereign in their ability to conceptualize and actualize the ways their prisons operate (Schmitt 1985). From roughly 1871 until the early 1970s, judicial and legislative relationships with corrections were informed by the *Hands-off Doctrine* as delineated in *Ruffin v. Commonwealth* (1871). That doctrine claimed that a prisoner forfeits their liberty and all their personal rights, except which the law in its humanity accords to them, as “he is for the time being a slave of the state” (*Ruffin v. Commonwealth* 1871).

Since that time, there has only been one brief period in which the rights of prisoners were expanded. This short-lived time of change developed as an outgrowth of the Civil Rights movement and, in the field of penology, is referred to as the “rehabilitative turn” in corrections. During this time, a set of Federal and Supreme Court Cases<sup>7</sup> forced prison officials to adopt a new orthodoxy and praxis in order to conform to new rehabilitative frameworks for managing

<sup>7</sup> Prominent prisoner rights cases during the reform era include: *Cooper v. Pate*, 378 U.S. 546 (1964), *Hutto v. Finney*, 437 U.S. 678 (1978), *Pugh v. Locke*, 406 F.2d 318 (M.D. Ala.1976), *Procunier v. Martinez*, 416 U.S. 396 (1976), *Ruiz v. Estelle* 503 F. Supp. 1265 (SD Texas 1980), *Wolff v. McDonnell*, 418 U.S. 539 (1974).

prisoners. These policy directives redefined constitutional protections under the law for prisoners and facilitated their ability to have prisoner voices heard at court (Feeley and Rubin 1999).

At the height of the prison reform era and in line with broader social movements, the Supreme Court articulated that, “prisoners are still persons entitled to all constitutional rights unless their liberty has been constitutionally curtailed by procedures that satisfy all of the requirements of due process” (*Procunier v. Martinez*, 1974: 428). In line with general social trends promising greater equality among and between citizens that led to the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Act of 1968, President Johnson’s War on Poverty, and the introduction of the Equal Rights Amendment in 1972, prisons began generating programming designed to rehabilitate prisoners and help them reenter society.

However, the Supreme Court began to take a dimmer view on prisoners’ rights in the late 1970s, asserting a deferential stance toward the expertise of prison officials. For the court, prisons become special places with special orderings and necessities – so exceptional, in fact, that the court must defer to the specialized knowledge of correctional authorities. By 1987, Justice O’Connor effectively ended prisoner rights expansion, by writing that:

*Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. Prison administration is, moreover, a task that has been committed to the responsibility of those branches, and separation of powers concerns counsel a policy of judicial restraint. Where a state penal system is involved, federal courts have, as we indicated in *Martinez*, additional reason to accord deference to the appropriate prison authorities.*  
(*Turner v. Safley*, 1987)

O’Connor goes on to write that, “when a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.” This reasoning contradicts reform era precedent, which held that a prisoner’s constitutional rights did

not stop at the prison gate (*Procunier v. Martinez* 1974). Steering corrections toward wider autonomy, the Court's opinion in *Turner* is a decisive move away from reform-era standards, and assists in the operation of the punitive turn that ultimately brought about today's system of mass incarceration.

Shortly after the early deference decisions, legal scholars began to claim a retreat toward a "new hands-off" doctrine and a deliberate evasion of judicial responsibility in prison law cases (Berger, Dolovich, Giles, Horwitz). The opinion in *Turner* thus provides wide latitude to correctional officials as experts, capable of answering myriad questions regarding good corrections or the proper shape of confinement, who need not be concerned with strict constitutional review of their orthodoxy and praxis<sup>8</sup>. Deference thus provides state prison officials a legitimate, jurisprudential framework to ignore or dismiss rights expansion for LGBT citizen prisoners.

Building on the instrumental and symbolic barrier to successful prisoner litigation constructed in *Turner*, the Prison Litigation Reform Act of 1996 (PLRA) further incapacitates incarcerated individuals by limiting prisoner access to courts. PLRA codifies a wide-spread belief that prisoners too frequently engage in frivolous litigation, which could perhaps be resolved by prison administration. PLRA requires prisoners to exhaust internal prison due process and grievance procedures in order to access the court. Yet, accessing the court is difficult for prisoners. Previous research has noted that "prisoners who miss a filing deadline or otherwise

<sup>8</sup> The *Turner* decision provided a highly subjective *rational basis test* to be used by the judiciary to affirm or deny claims made by prisoners and the answers provided by prison officials, as defendants, in prison law cases. Known as the *Turner Test*, the decision-making method operates with less scrutiny than the *strict scrutiny* standards applied during the reform era that were spelled out in *Procunier*. With the *Turner Test* a prison practice, rule, or regulation may be ruled as legitimate if it meets 4 discreet, yet highly subjective criteria: (1) if there is a "valid, rational connection between the prison regulation and the legitimate government interest put forward to justify it;" (2) "whether alternative means of exercising the right(s) that remain open to prison inmates" are available; (3) "the impact accommodation of the asserted constitutional right will have on guards and other inmates;" and (4) if there are "ready alternatives" to choose from such that prison officials can achieve their intended goal(s) (*Turner v. Safley* 1987)

fail to comply with a procedural requirement in the prison grievance process might be forever barred from bringing their claim to court,” thus allowing the court to evade answering the tough questions that may be present in their claim through various technicalities. (Shay 2010: 342).

In response, some state departments of corrections have promulgated additional barriers to filing grievances (usually time-based), thus making it increasingly difficult for prisoners to reach the court for relief. The primary method of constructing these barriers is in narrowing the window of time to file internal grievances. Prisoner petitions for relief can thus be thrown out at court on procedural, time-based grounds as opposed to being tossed on the merits of their claims. Since the advent of the PLRA, prison litigation has dropped by nearly 50% (Clear and Frost 2013).

With these legal developments, scholars note that prisons are once again structured as highly autonomous, lacking transparency or accountability in their day-to-day operations (Berger, Dolovich, Horwitz, Shay). Deference and the PLRA operationalize the logics of mass incarceration including sexual misconduct rules that target same-sex sex and gender non-conforming prisoners. For today’s prisoners and their advocates, access to the courts is blocked; their ability to challenge the logics of sexual misconduct rules as within, at minimum, the *spirit* of *Lawrence* in order to escape the iron closet is nearly impossible. Shay goes on to note that,

*Despite its importance, the area of corrections regulation is a kind of ‘no-man’s land.’ In many jurisdictions, and in many subject areas, prison and jail regulations are formulated outside of public view. Because of deference afforded prison officials under prevailing constitutional standards, such regulations are not given extensive judicial attention. Nor do they receive much focus in the scholarly literature (Shay 2010: 331).*

In this light, the prison is purposefully constructed to hide the damages it inflicts upon vulnerable populations behind prison walls and fences, at great social and geographical distance from those who are not incarcerated (Foucault, Garland, Simon).

Of course, a lot of activities happen behind prison walls that are no longer criminalized in broader society because of *Lawrence*. Many prisoners engage in consensual, same-sex sexual activity, regardless of their self-reported sexual identity, during their incarceration spells. Recent research has found that over 40% of prisoners engaged in consensual sex while incarcerated (Hensley, Tewksbury and Wright) and the Bureau of Justice Statistics found that 7% of prisoners sampled classified themselves as homosexual or bisexual (Bureau of Justice Statistics 2009). A recent report from the U.S. Department of Justice notes that many prisoners (40%) are punished for being victims of rape and sexual assault. Sexual assault victims are often treated as culpable participants. Of the 10,200 respondents to the 2008 National Former Prisoners Survey who reported being victims of sexual assault, 34% reported being placed in segregation or protective custody; 24% reported being confined to their cell; 14% reported being classified to a higher level of custody; and 28.5% reported being given a disciplinary write-up for being the *victim* of sexual assault (U.S. Department of Justice 2008: 31). As such, rules barring consensual same-sex in prisons extend even to victims of rape and assault, punishing them for being victims of violence perpetrated against them.

## CONCLUSION

Deference as well as the PLRA reinforce the independence and autonomy of prison officials by allowing them to construct and maintain rules and punishment frameworks targeting LGBT prisoners and prisoners who engage in consensual same-sex sex. Correctional orthodoxy and practice, regardless of their motivations, are thus prevented from interacting with *Lawrence* to expand the landscape of LGBT rights since Stonewall to prisons and prisoners.

Aside from these legal barriers for prisoner access to the courts, I suggest that there are myriad reasons officials choose to define sexual misconduct rules in prisons as rules rather than



crimes. By defining these violations as “rule breaking,” prison officials are able to draw attention away from the hostile climate faced by LGBT prisoners (as well as non-LGBT identifying prisoners who practice same-sex sex). Thus, the state can claim that same-sex behavior is not *criminalized* – it is merely managed administratively.

In practice, the distinction between a “rule violation” and a “crime” is largely academic. Viewing the prison as its own society – with its own set of rules, regulations, and codes of conduct – helps to explain why this is so. Like the removal of individuals who commit crimes from everyday society, prisoners who violate prison regulations are segregated from the general prison population. They are removed from where they live and taken to an alternate space where heightened restrictions are placed on the prisoner, limiting their freedom and access to resources; in essence, they are taken to a virtual *jail within the prison*. Indeed, during these instances, many prisoners often claim that they are being “taken to jail” as they are hauled in for violating formal behavioral codes. Thus, while authorities maintain that rule infractions do not constitute “crimes” in the conventional sense, the prisoner – whose rights and freedoms are infringed upon in either circumstance – would not be blamed for viewing this distinction as entirely semantic.

By categorizing the arbitrary processes the state employs to punish same-sex sex and gender non-conformity among prisoners as “rule breaking,” the state is able to reframe their unjust treatment of LGBT prisoners in largely bureaucratic terms. “Rule breaking” does not signal the punishments and damages derived by long-lasting periods in isolation and segregation for prisoners that I detail in this chapter. As I have shown, by framing these practices as “rules,” prison officials have helped to seal prisons walls against the expansion of LGBT rights occurring in broader society. I argue that the term “crime” more accurately describes the conditions or

logics that allow these systems to operate by connoting the serious social problems of inequality, marginalization and citizenship.

Yet despite this bleak scenario, there may be an opening for reconsideration. I have interviewed a number of pragmatic correctional directors who have indicated that consensual, same-sex sex is a frequent characteristic of prison life. As such, they believe it requires less attention and less punishment. One long-term state correctional department director from the Southwest asks,

*Are we going to not recognize that there's sex in prisons between inmates? Or are we going to say if we don't recognize it, it's not happening? It's going to happen. It's the nature of the most complex creature, the human being. That drive is there. Inmates will tell you that they're not gay, but the best sex they ever had was in prison and once they get out they go back to being totally heterosexual.*

Bauman (1990) advises us of the danger of bureaucracy “to disguise, or even subsume, profound questions of morality that should detain us all.” Bauman thus provides leverage to examine why prisons have viewed themselves as special places, as places where a disjoint legality, morality or landscape of rights between prison and society as outside the contemporary understanding of human rights makes sense. However, as my interviews with correctional directors suggest (and as the prison reform era proves), shifting cultural attitudes are able to support new ways of managing prisoners. In this light, emerging correctional logics informed by LGBT rights movements could lead to a wider belief that alternative identities and behaviors are unsuitable for punishment.

None of this should be read as diminishing the significance *Lawrence* has had in the landscape of legal and societal changes for LGBT citizens in American society. These structural, cultural, and epistemological changes have fostered greater acceptance and inclusion of LGBT Americans in social institutions and popular culture including the church, television, politics, and

the media. Yet, the ability of *Lawrence* to impact social institutions such as the military, marriage, and prisons, has varied. The inability to extend the spirit of *Lawrence* to the military was remedied in 2012 with the repeal of “Don’t Ask Don’t Tell,” which brought to light a clear and persistent social fact: LGBT citizens are part of our military and have defended our country for decades. In particular, changes in military policy have reshaped concepts of citizenship that have historically reinforced the policing of identity and same-sex sex. Thus, an expansion of the spirit of *Lawrence* to prisons and prisoners could potentially be delivered through a critical interrogation of correctional logics to determine if sexual behavior between prisoners or alternative sexual and gender identity necessarily violate prison rules and norms. If it is determined that behaviors and identities do violate rules and norms, are the current severe responses appropriate to the case at hand? Is the iron closet constructed for these prisoners commensurable with broader societal, legal and cultural acceptance?

These broader cultural changes are signaled by Justice Thomas in his dissent to *Lawrence*. Although he did not agree with the Court’s finding that sodomy laws violated basic constitutional protections, he did nonetheless argue that “punishing someone for expressing his sexual preference through noncommercial consensual conduct with another adult does not appear to be a worthy way to expend valuable law enforcement resources” (*Lawrence v. Texas 2003d*). Justice Thomas goes on to acknowledge that broad-based cultural change can generate institutional change. Given that both Justice Kennedy and Justice Thomas agree that laws criminalizing consensual sexual behavior are at the very least (in the words of Thomas) “uncommonly silly,” why do prisons remain outside this realm of logic? Why do our prisons continue to punish, criminalize, and damage prisoners like Candace, Jackson, Davidson and countless others? Why are our prisons iron closets for LGBT prisoners? The presence of LGBT

prisoners and the reality of consensual same-sex sex in prisons are social facts. By viewing prisons as not outside the contemporary landscape of expanding rights and acceptance for LGBT citizens, we can begin to reform prisons to make them more just and equitable institutions for LGBT people.

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### CHAPTER 3

#### State Correctional Department Leaders and the Persistent Socio-legal Control of Consensual Sex Among Prisoners

Recent years have seen the expansion of legal rights for LGBT citizens to include marriage rights (*Obergefell v. Hodges*, 2015), the end of “Don’t Ask Don’t Tell” in the military, as well as the decriminalization of private, consensual, same-sex sex (*Lawrence v. Texas*, 2003). Despite these transformative developments, every prison at every security level nationwide maintains administrative rules barring consensual sex among prisoners, sex that, due to the gendered ordering of our prisons, is usually same-sex sex.<sup>9</sup>

Prisoners found in violation of the “sexual misconduct” rule may be issued harsh penalties. These include long-term placement in administrative segregation (i.e., solitary confinement), security classification changes, removal from prison employment, required vocational and educational courses and substance abuse programming, as well as the loss of contact visits, telephone communication, community recreation, and access to religious services (Borchert 2016; Hannsens 2014; Kunzel 2008).

The rules’ origin and long history, from the birth of the prison in the 19<sup>th</sup> Century, are rooted in religious-moral panics about sexual perversions, deviance, and the ways homosexuality disorganizes society (Borchert 2016; Kunzel 2008; Sykes 1958). Today, sexual misconduct

<sup>9</sup> Two field-typical iterations of sexual misconduct rules are found in the Georgia Department of Corrections’ rule and the Iowa Department of Corrections’ rule: “Participating in homosexual or any sexual behavior or activity with any person, male or female [is in violation of rules] and such behavior also puts you at risk to contract AIDS” (Georgia Department of Corrections 2012, 25); and, “An offender commits sexual misconduct when the offender proposes a sexual contact or relationship with another person through gestures, such as, kissing, petting, etc., or by written or oral communications, or engages in a consensual sexual contactor relationship. Gestures of a sexual nature designed to cause, or capable of causing, embarrassment or offense to another person shall also be punishable as sexual misconduct” (Iowa Department of Corrections 2006).

rules remain in action, and are by default homosexual status rules with broad implications for LGBT rights and citizenship.<sup>10</sup>

Why have prison officials failed to reconsider the rule and its punishments in light of LGBT progress and the decriminalization of consensual same-sex sex? This article attempts to answer that question. It is the only study ever to marshal interview data with state correctional department directors in order to build broad knowledge about prison policy and practice on consensual prison sex, the sexual misconduct rule, and its harsh punishments. Through twenty-six semi-structured interviews, with twenty-three state-level correctional department directors and commissioners, and a subset of three assistant state directors, conducted during a fifteen-month period, from January 2013 to March 2014, I asked leaders to discuss their understanding of the sexual misconduct rule in light of myriad, socio-legal changes for LGBT citizens, including the decriminalization of consensual same-sex sex.

Findings show that correctional leadership frame prison sex as dangerous for the safety and security of the prison. Prison leaders are in nearly unanimous agreement that prison sex is dangerous, whether that sex is consensual or coercive. Yet, my interviewees reveal that they are unaware of empirical evidence that consensual prison sex produces little violence as opposed to coercive sex (Hensley and Tewksbury 2002, 236). This demonstrates what organizations scholars (Hagan 1989; Crank 1994; Meyer and Rowan 1977) have termed a “tight coupling” between an organizational mythology, or institutional ethos, (here safety and security in a prison

<sup>10</sup> For a review of empirical works estimating consensual sex among prisoners, coercive sex, and the levels of violence associated with each type see “Hensley, Christopher and Richard Tewksbury. 2002. Inmate to Inmate Sexuality: A Review of Empirical Studies. *Trauma, Violence, & Abuse* 3(3): 226-243” which reveals that a) “prison sexuality is a neglected area of research”; b) “Sexual activities among incarcerated persons, both male and female are common”; c) that coercive sex is more frequent among incarcerated men than incarcerated women; and d) that consensual sex rarely results in violence among prisoners (Hensley and Tewksbury 2002).

setting) and its representation in administrative rules and practice (here the bar on consensual sex).

Furthermore, my findings show that prison officials fail to link actual risks of violence to perceived risks of violence in day-to-day prison life. For instance, penalties for gambling do not call for administrative segregation despite gambling's frequent association with violence among prisoners (Beauregard and Brochu 2013; McEvoy and Spirgen 2012; Nixon, Leigh, and Nowatzki 2006). By failing to compare the high levels of risk to institutional safety and security posed by gambling, to the low levels of risk posed by consensual sex, correctional leaders are perpetuating a status regime that disparately punishes LGBT identity, desire, as well as same-sex sex, and continues the legacy of homophobia in American prisons.

Leaders are also unaware of the religious-moral (and thus homophobic) origins of the rule in early prison orthodoxy and praxis (Kunzel 2008; Sykes 1958). They do not see the rule as homophobic but simply as a natural, unremarkable, logical, common sense characteristic of quotidian prison life. The result is that the sexual misconduct rule is a robust field level habitus of the highest order. The rule is a norm, a political technique, and a disposition, with an identifiable history (Bourdieu 1989; Page 2013; Simon 2013). Prison leader's strong, yet narrow, understanding of the sexual misconduct rule and punishments supports its brutal and hegemonic diffusion to every prison in the nation. The *longue-durée* of homophobia and the criminalization of same-sex sex in prison and society may be part of the answer to why our penal regime firmly believes in sexual misconduct rules and remains outside civil society on the issue of LGBT identity and same-sex sex.

This ironclad field-level habitus demonstrates why prison policy has not been moved by the legal revolution in LGBT rights that has taken place in recent decades. Here, findings expose

potential limitations in the culture of organizations literature, by showing that strong, exogenous shocks (here LGBT rights expansion and the decriminalization of consensual same-sex sex) may fail to induce change in total institutions such as prisons (Fligstein and McAdam 2011; Morrill 2008). The sexual misconduct rule in action confirms legal theoretical claims that prisons are powerful institutions, buffeted from exogenous shocks by their politically and judicially structured autonomy and a resilient, steely habitus (Berger 1978; Dolovich 2012; Dunn-Giles 1993; Horwitz 2008; Robertson 2000, 2006; Shay 2010).

The article proceeds with a brief review of the scant social science literature on the frequency or prevalence of consensual same-sex sex in prison facilities and the ways prison workers understand prison sex. I then provide various theoretical foundations that are useful for understanding the sexual misconduct rule and its' punishments, present the data and analytic method, and then the findings. A discussion follows, integrating theoretical findings with current prison law. The article concludes with an admonition for prison leadership, advocates, and the judiciary to consider prison sex as within the scope of recent socio-legal progress.

## **LITERATURE REVIEW**

A vibrant mythology of prison sex is part of our cultural landscape. Yet, scant research exists on the prevalence or frequency of consensual sexual behavior among prisoners. Research conducted in the New Jersey State Prison in the 1950s found that guards identified thirty-five percent of prisoners as having engaged in homosexual acts (Sykes 1958, 72). Consensual sex still occurs in today's prisons, yet contemporary research is troubled by a lack of conformity in measurement across the few empirical studies focusing on consensual prison sex. Findings reveal a wide range, from fourteen to sixty-five percent, of prisoners who have engaged in consensual sex while incarcerated (Hensley and Tewksbury 2002). The Bureau of Justice Statistics found

that seven percent of inmates sampled classified themselves as homosexual or bisexual (BJS 2009). Thus, at a bare minimum, well over one hundred thousand prisoners are at risk of punishment associated with sexual misconduct rules violations. These estimates are almost certainly biased low.

Literature examining prison official's attitudes about prison sex is even more rare. Historical scholarship has revealed an incessant religious-moral objection to same-sex sex throughout American prison history (Kunzel 2008). One study found that white, female wardens provide higher estimates of consensual sexual activity among prisoners than their male counterparts, but also revealed that each group underestimates the prevalence of sexual activity among prisoners (Hensley and Tewksbury 2005). Recent work, following the promulgation of the Prison Rape Elimination Act of 2003 (PREA), has examined sexual violence between prisoners as well as the environment transgender prisoners face (Jenness et al 2007; Sexton et al 2010; Sexton and Jenness 2016). Empirical work has rarely examined sexual misconduct rules, in light of LGBT progress. Yet, through a process of data triangulation between prisoner letters to an advocacy organization, official grievance documents, and electronic communications between Michigan prison officials, research has revealed a carceral environment characterized by harsh punishments for sexual misconduct rules violations, for both LGBT prisoners and those who do not identify as LGBT (Borchert 2016).

Turning toward broader questions of punishment logics, a coterie of California and UK based scholars have marshaled qualitative methods to bring new knowledge about punishment attitudes and the moral-ethical climate of the contemporary prison. Researchers have found that while California parole agents claim support for the rehabilitation and reformation of prisoners, these aims are not provided sufficient resources at the institutional level; a lack of dedicated

funding thus forces individual parolees to fix themselves and to bear subsequently the brunt of failure through re-incarceration (Lynch 2000). Links between correctional policy on the books and its day-to-day on the ground practice are explored in research on California parole agents, which found these agents follow a traditional law enforcement model based in autonomy and “intuitive” methods contrary to the official calculated risk models suggested by parole agent managers and the *new penology* (Lynch 1998).

Calavita and Jenness (2015) have examined how prisoners and prison staff understood citizenship, legal rights and legal consciousness. In interviews, CDCR employees praise the inmate grievance system for giving prisoners a voice within the prison. They simultaneously express “counterthemes of hostility toward prisoners who exercise their rights, the perception that rights have gone too far and the view that the operational realities of running a prison can trump prisoner rights” (Calavita and Jenness 2015, 183). While Calavita and Jenness do not focus on sexual misconduct rules specifically, additional work has noted marginalized LGBT prisoners using the grievance process in sexual misconduct rule violation cases in order to amplify their voice (Borchert 2016).

### **THEORETICAL MOTIVATION**

The projects attempts to attempt to locate the ways that prison officials understand the sexual misconduct rule by marshaling differentiated, yet complementary, theoretical perspectives. *New Institutional theory* suggests that “products, services, techniques, polices and programs function as powerful myths, and many organizations adopt them ceremonially” (Meyer and Rowan 1977, 340). In the case of corrections, policies and programs dedicated to safety and security, as well as prisoner rehabilitation, are the overarching organizational myths that are shared universally across state departments of corrections. These perspectives suggest

that rigid adherence to administrative rules frameworks represents tight-couplings between organizational mythology and practice (Meyer and Rowan, 1977). Thus we can ask, through an ideal-typical heuristic, how the sexual misconduct rule conforms to *new institutionalist* theoretical expectations? In this case, sexual misconduct rules represent “social processes, obligations, or actualities [that] come to take on a rule-like status in social thought and action” (Meyer and Rowan 1977, 341).

In contrast, criminal justice theory has traditionally understood organizational mythologies and behaviors as loosely coupled, revolving around rational calculations toward institutional efficiency (Hagan 1989). That beings said, placing a prisoner in administrative segregation, for a sexual misconduct rules violation, is a costly, inefficient, and irrational economic choice for prison administrators (Johnson and Chappell 2014). Justice Thomas in his *Lawrence* dissent agrees, writing that “punishing someone for expressing his sexual preference through noncommercial consensual conduct with another adult does not appear to be a worthy way to expend valuable law enforcement resources” (*Lawrence v. Texas 2003*). In this light, why do prison officials fail to conform to criminal justice theoretical predictions in the case of prison sex?

Field theoretical perspectives (here the penal field) complement organizations perspectives, and may be the key to understanding the economic irrationality of penal institutions in this case, by understanding sexual misconduct rules as a case of *habitus* constructed upon identifiable historical and cultural contingencies (Page 2013). Thus in sexual misconduct rules we expect to recognize a set of “taken-for-granted assumptions, feelings and opinions about the purpose of imprisonment and related ideological issues” as *habitus* (Lerman and Page 2012, 510). A contribution is made here as penal field research has focused traditionally on prison

workers within states, not on state-level prison leadership, who populate a national-level penal field by their shared job role. In addition, penal field theoretical perspectives have not been applied to question specific understandings of a particular prison rule or regulation such as the sexual misconduct rule.

To clarify, we have a unified national-level penal field, which expands from previous theorizing on state-level penal fields. The field is broadened from the state level to a larger set of state correctional departments nationwide, consisting of shared understandings and dispositions among state correctional department leadership. An expansion of the penal field in this case can help us to make sense of the sexual misconduct rule as a pervasive, irrational punishment logic and political technique. We can then understand the rule's strong across-organizational mythology, wherein a majority of correctional leaders nationwide reveal an extremely tight coupling between organizational mythology and practice in the case of consensual prison sex. Here sexual misconduct rules are so deeply embedded in prisons as organizations, despite their organizational irrationality, that this disposition is able to withstand powerful exogenous social forces, namely the swift momentum for LGBT rights and the expanded legality of consensual same-sex sex in the United States, particularly since *Lawrence*.

Finally, looking to move forward from a national-level penal field overwhelmingly disposed to punish consensual same-sex sex, I marshal a *strategic action field theoretical* (SAF) framework, and its symbolic-interactionist heuristic, to identify slight disagreement among leaders in the ways they discuss, frame, and attempt to redefine prison sex (Fligstein and McAdam 2011). In other words, I dig for variance in the ways prison officials conceptualize prison sex in order to reveal emergent understandings that challenge dominant field-level dispositions and organizational mythologies. A key component of SAF theory is that power rests



in the hands of incumbents (current prison administrators) at the field level with their connections to economic, political, judicial, and cultural resources (Fligstein and McAdam 2011). However, the past decades of LGBT rights expansion may provide forward thinking administrators sufficient ideological strength to redefine the case of prison sex, thus responding in kind to social change as scholars of organizational culture suggest (Fligstein and McAdam 2011; Morrill 2008). If successful, their challenge would create a new field level habitus and organizational mythology, that is markedly less punitive and less homophobic, as well as increasingly rational (Fligstein and McAdam 2011).

### **DATA AND ANALYTIC METHOD**

Over a period of eighteen months in 2013-2014, I recruited state-level correctional executives for semi-structured in-depth interviews. Prison officials are highly insular and reaching these public officials through standard channels such as state or departmental websites is nearly impossible. In addition to security barriers, prison officials articulate a more formidable barrier to participation in sociological research through a generalized apprehension to be interviewed by sociologists, whom they view as inherently biased against their point of view. These barriers may be a factor in correctional officials' lack of visibility across the board, from journalistic projects to empirical social science research.

Crossing these barriers in order to conduct the research was facilitated by my personal familiarity, as a former prisoner, with the criminal justice system. Officials saw me as a correctional insider with perhaps less bias than other academics. I made it a point to ensure potential respondents were aware that I was not interested in broad generalizing regarding the correctional enterprise. In addition, my credentials with an R1 research university, including IRB approval of my research, helped with subject recruitment.

The real break for the project came in early 2013, when I was asked to attend the bi-annual meetings of the Association of State Correctional Administrators (ASCA) by then Chair of their Research and Best Practices Committee, Bryan Fischer former Commissioner of the New York Department of Corrections. ASCA limits its membership to correctional officials, at the warden level or higher, and includes executives from federal, state, community, and private corrections corporations. A majority of state correctional department executives attend ASCA meetings and find them quite helpful in negotiating the conflict-filled terrain that is corrections. At their Winter 2013 meetings, I was able to introduce myself to correctional leaders, discuss the proposed research, and answer questions about the project. ASCA meetings also provided me a central location where multiple subjects could be interviewed.

Following the meetings my contact information was provided to correctional executives, by former Michigan Department of Corrections Commissioner Patricia Caruso. Shortly thereafter, ASCA made a determination to support the research by sending an email to their membership, asking them to extend all courtesies to me in my research efforts. I contacted fifty state departments of corrections as well as the Federal Bureau of Prisons. Twenty-Seven departments responded to my interview requests. Two departments opted out after initial contact. One department opted out after an internal IRB process. The Director of the Federal Bureau of Prisons (FBOP), Charles Samuels, refused to be interviewed, explaining, “Our policies are our policies and they speak for themselves.”

The data consist of twenty-six interviews conducted in 2013 and 2014 with head executives of twenty-three state departments of corrections nationwide, as well as interviews with three assistant directors/commissioners. Multiple states are represented from each region of the U.S – Northeast (5), South (5), Midwest (5), and West (8). Each interview lasted between

one and two hours, was conducted face-to-face or via telephone, was recorded, transcribed, and de-identified for security and anonymity prior to analysis. Analysis of transcripts was subsequently conducted by hand and by using AtlasTI qualitative data analysis software.

A note on the sample: Correctional officials are predominately white men, thus eliminating any opportunity to meaningfully examine differences based in gender or race. However, every effort was made to ensure that what little demographic variance exists among this population was represented in the data. I am confident that my ability to establish themes in these data (i.e. saturation) (LaMont and White 2005) in itself indicates the validity of these data. Because of the limited frequency of both female executives and executives of color, providing full descriptive statistics of my respondents runs the risk of violating confidentiality and anonymity, perhaps placing them at risk for political retaliation. However, my sample does include individuals from these demographic categories. In addition, specifying state level prison characteristics such as number of prisoners or prison facilities and their security levels poses the same risks to my subjects. Every effort has been made to de-identify these data. Yet, the unique and insular world of corrections may permit easy identification of some respondents. Subjects were advised of this possibility, particularly when detailing state-level events, and each provided both verbal and written consent for the interviews.

Theory abduction, a qualitative methodological tool used to expand existing theory or to induce new theory, structured data analysis. Abduction is designed to situate the research question and possible findings within an array of known theory for constant comparison in order to develop new ideas to explain actions within the field. Here in order to adjudicate prison administrators understanding of prison sex, I filtered interview data through organizations, field theoretical, and criminal justice perspectives and continuously revisited the data through a

sequence of possible theoretical expectations. In so doing, I sought to discover “anomalies, which are inevitably both empirical and theoretical, [which] then require the development of tentative new theories built on inductive conceptualization of this data through intensive coding and other methodological steps” (Timmermans and Tavory 2012, 179).

## FINDINGS

### *The Unknown Origins of the Rule among Correctional Leaders*

As we moved from the gallows to prisons-based punishment, the modern penitentiary emerged in the 19<sup>th</sup> century with a goal of transforming prisoners into productive, godly members of society through hard work and contemplation, enforced with rules prohibiting communication of any sort among prisoners (Kunzel 2008; Foucault 1979). While sexual communication and activity did occur, prisoners and staff alike were “limited by the linguistic and cultural repertoire of their time to describe those acts” (Kunzel 2008, 38). Convicts and prison officials labeled same-sex sex among prisoners during this era primarily as a disgusting violation of Christian mores. *Criminal Intimacy* references a John Reynolds, describing the early Kanas State Penitentiary as chock full of “horrible and revolting practices of the mines” where “men[,] degraded to a plane lower than the brutes, are guilty of the unmentionable crimes referred to by the Apostle Paul in his letter to the Romans, chapter 1, verse 27” (Kunzel 2008, 29). This religious disgust for same-sex sex and non-conforming gender identity continued into the 20<sup>th</sup> century, leading in the late 1930s to the promulgation of official rules barring sex among prisoners, as well as special segregation units such as “fairy wings” and “fag annexes” for homosexual prisoners (Kunzel 2008).

Thus, today’s sexual misconduct rules have a long history, starting in 19<sup>th</sup> century moral-religious prescriptions against sexual perversion, which evolved into a modern 20<sup>th</sup> century

understanding of same-sex sex as a pathological, deviant, and disorganizing force, categorizations that were reflected in the inclusion of homosexuality in the Diagnostic and Statistical Manual of Psychiatric Disorders (DSM) for the better part of the 20<sup>th</sup> Century.

Sexual misconduct rules have not changed much since those early years. However, the early panic surrounding HIV/Aids in the late 20<sup>th</sup> century did lead a number of states to rewrite their rules to focus on controlling same-sex sex in the name of public health, as HIV criminalization research has suggested (Hoppe 2013). In sum, sexual misconduct rules have become habitus, with attendant norms and political techniques dedicated to their enforcement, which are rooted in a profound organizational mythology, however irrational the rule in action may be. (Hagan 1989; Meyer and Rowan 1977; Page 2013; Simon 2013)

Are prison officials aware of the history of sexual misconduct rules? In order to answer this question, I presented leaders with the following prompt:

*All institutions have rules barring sexual misconduct between prisoners – and of course between prisoners and staff - but specifically I'm talking about consensual behaviors between two prisoners. Could you tell me about the way that rule works and what you know about its history?*

Respondents were unaware of its specific history and how it gained such a position of strength and durability in the organizational mythology of U.S. prisons. Perhaps more importantly they expressed concerns with non-consensual sex among prisoners, noting that types of sex are at times tough to differentiate in a prison setting. A respondent from a Southern state said,

*Well, the history of it, just like pretty much the history of any rule well, ok, there is a security issue, there is a safety issue, with the staff and the inmates, and I think, well, ya know you watch any of the old movies that is what drove it, the violence, not so much the consensual sex but what was non-consensual. And ya know, it's hard to tell the difference sometimes. I think years before my time is where that came up.*

And a respondent from a Western state said he did know about the history of the rule.

*We would need to go to our chief of prisons or our deputy director, they are much more intimately involved in the history of unwanted or consensual activity between inmates. It's something we work very closely on, especially since the passage of PREA, particularly aspects of that and the day to day implementation and the carrying out of the disciplinary nature of those cases.*

Similarly, a director from a Northeastern state confessed to no knowledge of the rule's history.

*I've been here for several decades and it's always been in place since I've been here. I can't say exactly how it came to be. I know that from my point of view, one of the reasons that we have it is because it is so difficult to tease out what is consensual and what is coercive in that kind of environment and so it is better for us to draw a bright line.*

Thus, respondent's broad-based lack of knowledge about the rules' origins, or even its mythology, contribute to understanding the rule as a field-level disposition and part of the habitus of the penal field.

### ***The Organizational Mythology of Sexual Misconduct Rules***

Respondents are remarkably committed to the sexual misconduct rule as eighty-one percent believe the rule is necessary to ensure the safe and secure operation of prison facilities. Their conceptualization of the rule illustrates how "institutional rules function as myths which organizations incorporate, gaining legitimacy, resources, stability, and enhanced survival prospects" (Meyer and Rowan 1977, 340). In fact, the 19<sup>th</sup> and 20<sup>th</sup> Century correctional logics that viewed gender non-conformity and same-sex sex as perverted, deviant, disorganizing forces to the prison still live in the contemporary mythologies and dispositions of mass incarceration in 2016.

A commissioner leading a prison system in an Eastern state suggests an enduring prison culture is deeply tied to the long-lasting rule. The commissioner justified the rule by arguing that prisons are unique places with special needs.

*You can hardly compare prison settings and the dynamic of what happens in the prison with what happens in society at large. In prisons, cultures are such that there is a lot of control. Inmates want to control other inmates. Inmates want to coerce other inmates for certain things and so we have to be able to protect offenders. So we do not accept or acknowledge consensual sexual relationships between offenders. You can hardly compare the prison setting with the population at large.*

Prisons may certainly be unique, but the origins of the rule and its continued maintenance remain rooted in a pathology of same-sex sex as unnatural and disruptive, at least in the prison setting, couched in recurring themes or mythologies, which insinuate that prison staff cannot differentiate between coercive and consensual sex.

A director from a Northeastern state concurred, saying, “question[s] of free-will and choice become very complicated when you are living in a small space where you might be assigned a cellmate and you can’t just get up and walk away from that cellmate.” Certainly. But that response is about coercive, not consensual sex. Again, leaders use this distraction to support the mythology of sexual misconduct rules. Officials do not explicitly reveal homosexual animus as in previous decades. However, they do reveal opposition to what homosexuals do, as well as same-sex sexual activities of non-LGB identifying prisoners.

One director from a Northeastern state elaborated: “We aren’t going to give a pass to somebody who is engaging in sexual activity with somebody else.” And a commissioner from a Southern state said, “Professionally it’s not difficult to reconcile because I think it goes to the good order of the institution.”

Some leaders believe the rule in its current form is no longer needed. These are the challengers to incumbent beliefs that SAF theory suggests (Fligstein and McAdam 2011). Nineteen percent of my respondents suggest a looser coupling between the rule on the books and the rule in action. They recognize, and have witnessed, that consensual, same-sex, sex does happen in prisons, and suggest that societal developments on LGBT rights are playing a part in

their understanding. In so doing, leaders suggest that comparisons between prison and society are possible and that parsing consensual from coercive prison sex is possible, despite PREA's emergent mythology that differentiation is impossible.

A director from a Western state discusses this possibility, saying that there is a difference between "drama and trauma" and that "in both our male and female facilities we have to be very mindful of that" suggesting that a spat or a quarrel between individuals who are having sex is not to be equated with sexual violence, rape, and the significant trauma sexual assaults generate.

A Southern director confronted the unfounded notion that the rule is needed to prevent the transmission of STI's (a disorganizing force) saying, "We test people for sexually transmitted coming and going. Coming in the system and going out of the system we don't see any change in the number of HIV. Data would indicate that you don't have any preponderance of increased transmission of sexually transmitted disease."

### ***Illogical On the Books and In Action***

How do prison officials view the rule in relation to another prison rule that is similarly motivated? As I have noted, the guiding organizational mythologies in prisons claim the rule is necessary for the safety and security of the prison – that the sexual misconduct rule prevents prison violence, fights, drama or messiness that disorganize prison life. I therefore wanted prison officials to confront the irrationality of the rule (Hagan 1989) and to consider the sexual misconduct rule alongside a rule designed to advance the same safety goals: the rule against gambling. In so doing, officials directly confront the mythology and habitus of the rule as well.

A director from a Western state explained that gambling among prisoners was not permitted,

*[m]ostly because it leads to fights and to violence.....You can have your own personal standards as to whether gambling is right or wrong. However,*



*what I've seen over my career is that gambling leads to violence inside of our organization and also leads to bullying and what we used to term as "tier bossing." There is nothing positive that can come out of that.*

Researchers have confirmed the director's concerns. If they do not "end up in the infirmary or dead," prisoners with gambling debts sometimes commit another infraction in order to be sent to segregation with the goal of saving his own life or preventing a vicious beating (McEvoy and Spirgen 2012, 74). Scholars estimate at least fifty percent of prisoners are involved in gambling (Beauregard and Brochu 2013; Hensley and Tewksbury 2002; McEvoy and Spirgen 2012; Nixon, Leigh, and Nowatzki 2006).

While the two rules are similarly motivated, they elicit vastly different levels of punishment, with gambling rarely landing a prisoner in extended solitary confinement (Borchert 2016; McEvoy and Spirgen 2012). When a prisoner is ticketed and punished for gambling the "most common outcome [...] is loss of commissary or recreational privileges (McEvoy and Spirgen 2012, 73). Furthermore, despite the risks to institutional safety and security gambling poses, prison officials chronically under-enforce anti-gambling regulations. McEvoy and Spirgen (2012, 73) found that "fifty percent of staff often ignore complaints of gambling."

In contrast, consensual same-sex sex in our prisons is not as prevalent as gambling, nor does consensual sex deliver a commensurable level of risk to the safety and security of the institution, and the life and limb of prisoners, as inmate gambling does. So, I asked my respondents to compare the punishments for each type of rule violation. The response from a director of a Southern state reveals the central tendency among my respondents.

**Author:** So, do you think the rules against gambling have the same motivation?

**Respondent:** That's a great question. Gambling is a learned human behavior. Sex is an innate behavior in my opinion. So, I don't think it has the same motivation.

**Respondent:** How did you come up with that question?

**Author:** The reason is that when I've asked these two questions, the response to the sexual misconduct question is that 'it's messy, it creates a lot of problems - violence, drama' and my understanding is that gambling does the same thing. There are a lot of fights in prison over gambling, over debts from gambling whether its football or pinochle or whatever. But the punishments are very different. So, if somebody engages in something sexual they can get a significant amount of time in Ad Seg (administrative segregation), but with gambling the time in Ad Seg is generally pretty low. So, I'm trying to negotiate an understanding of the discrepancy in punishment if the rules have similar motivations.

**Respondent:** That is a question I will ponder for weeks now.

The differences generated from this comparison between prisoner behaviors that elicit wildly disparate level of prison violence and disorder, continue to make it difficult to separate the contemporary sexual misconduct rule from its original intent; namely to wipe out the unmentionable sin or scourge of same-sex sexual perversion and deviance as its primary motivation. The sexual misconduct rules' strong organizational mythology, durable habitus, and its' irrationality are rooted in historical moral-ethical codes, even if today's administrators fail to reveal that connection in their understanding of the contemporary rule.

This comparison between sexual misconduct rules and gambling rules reveals that certain correctional practices are so tightly wound up in to the organizational mythology of the prison, as prison legend, that they escape anything approaching rational considerations or common-sense comparisons to other rules on the books and in action. Here, similarly motivated rules

(correctional policies and practices) are loosely coupled with each other, presenting an illogical hodge-podge of punishments that seemingly make little sense.

### ***Social Change and the Persistence of the Rule***

So far, I have revealed the deep, illogical mythology of the sexual misconduct rule. I wanted to find out next if changing social and legal tides on LGBT identity and same-sex sex motivated officials to challenge or to reconsider the rule and its punishments (Fligstein and McAdam 2011, Morrill 2008). Has socio-legal progress in this area produced challengers to the sexual misconduct rule as field habitus? I asked,

*So, society has generally moved away from policing sexual behavior between consenting adults as part of wider societal acceptance of LGBT citizens. How do you understand the current rule in that context?*

Directors have difficulty reconciling personal preferences with prison policy. A director of a Midwestern state system noted that LGBT prisoners may have to leave their freedoms at the prison gate. “We're always receiving new offenders who are openly gay or openly lesbian. And they walk into the prison for the first time and go ‘oh, I've got to change my M.O. here, I'm going to be singled out.’”

A commissioner from a second Southern state agreed that times have changed in broader society but notes that prison brings a different set of considerations.

*I agree, that times have changed. Not only is it no longer illegal but it is so much more accepted now than it was. But it's just like anything else. Cigarettes you can smoke outside. Alcohol outside. It's not so much that we're saying that it's such a horrible thing that you take a drink or have a same-sex relationship, we're saying it is not right for people to be victims, for staff and with each other and I think that's probably the biggest issue.*

And a director from a Western state integrates these perspectives in the following response:

*“That's a great question. I think part of it is that although those types of laws are not enforced on the outside it does not necessarily mean that inside a correctional facility*

*that those types of relationships couldn't cause a problem for us. I don't see. I feel torn here because I truly believe that it's a person's complete right to love who they want, that's none of my business. However, when I have to run a correctional facility, my views are not the only ones that I'm concerned with, especially in regards to the safety and security of the facility.*

And to sum it up, a deep desire to not even venture into figuring out what prison sex is about, what prison sex is a case of, is revealed by this Southern director.

*The facility itself and the operations, there's just not room for it. There's just not room for it. We start intertwining things. We all know that sex, whether it's in the facility or in society, that there are so many other things that happen when sex is a part of it; good and bad. It goes both ways. And in the environment we're working in, with the folks were working with, with the offenders getting more violent, sex is used as a tool and that makes it a little bit risky to have that in an institutional setting.*

While the majority of administrators do not reveal an inclination to buck deep-seeded organizational norms and mythologies, a subset indicates that correctional officers sometimes use discretion, and decide not to ticket or write-up prisoners for engaging in consensual sex (perhaps due to the negotiations noted above) which could result in severe punishments such as long term administrative segregation. This tendency is revealed in the following response:

*So, I would say to you at the local level, at the facility level, policy may say one thing, and I doubt if many directors would say that to you, but when you have that local team who works that facility everyday of the week – they know who has a relationship and who doesn't. They know the different lifestyles, who's committed to those lifestyles, who's not, they know if there is a permanent relationship occurring and they don't write em up - because they get it, they understand it and so you don't see a lot of write ups if somebody is in a relationship and it's a healthy relationship. So everybody knows it and they keep it low key.*

So, in the end, can we or can't we differentiate? And what are the qualities of officers, or the characteristics of certain prison facilities that help prison staff to determine if a sexual event is coercive or consensual? A subset of my subjects suggest that if prison workers understand that differentiating between coercive and consensual sex in a prison setting is possible and this new understanding may prevent prisoners from being punished for consensual sex. Again, these new

perspectives may serve to challenge and dislodge antiquated, mythological notions about prison sex.

Yet, despite broad social change, administrators seem to be comfortable reducing LGBT identity or same-sex desire as similar to needing a cigarette or wanting a drink. Their basic understanding is supported by an emergent mythology constructed by PREA, which claims prison staff do not have the capacity to differentiate between coercive and consensual sex. Findings show that upon entering prison an out and proud individual with rights and liberties, will likely be confronted with a durable mythology and habitus of social control based in 19<sup>th</sup> Century moral-religious sexual dogma. These outdated beliefs held by institutional incumbents are provided a strong assist by 21<sup>st</sup> Century confusion between coercive and consensual sex that has been promulgated in PREA.

### ***The Power to Make Change***

Despite this intransigent habitus and organizational mythology, and the emergence of PREA, I needed to find out if it was actually within the power of correctional department executives to align correctional policy and practice with the current landscape of rights for LGBT citizens and the decriminalization of same-sex sex. In this light, administrators can step in as field level challengers to incumbent's orthodoxy and praxis on prison sex (Fligstein and McAdam 2011). One Midwestern Director noted that,

*In general, you have your order and memorandums that are unique to the facility due to the specifics of each institution - for example the physical plant and lay out of each facility is different. We're like most systems, we're fully ACA accredited so you have an annual review and so at the local level, orders are reviewed to see if they are in compliance with the ops and policies at the state level. If there are any major changes then my executive staff sits down to review them with our general counsel.*

A director from an Eastern state confirms this general process, noting that, "We have a policy unit, and it writes policy, each institution has facility specific standard operation

procedures which cannot be inconsistent with policy but they can adapt policy to the unique circumstances of that particular institution.” In addition, each of the directors notes that if the state has a particular statute that guides the prison rule, then the legislative committees that oversee the state corrections department may become involved and in this case a number of states require a notice a comment period for stakeholders and the public to comment on the proposed changes to prison policy and practice.

The short answer here is that it is within the power of state correctional department directors and commissioners to effect change to administrative rules in the prisons they oversee. Whether unilaterally, by executive committee, or by a dedicated committee selected to engage in new rules promulgation or changes to existing rules, executives of state departments of corrections do have the power to effect changes to not only sexual misconduct rules and their associated punishments, but all other prison rules that affect the daily lives of the prisoners under their care and the staff in their employ.

## **DISCUSSION**

### ***Sexual Misconduct Rules and Punishments as Field Habitus***

Findings reveal a steely habitus in the national level penal field which supports the sexual misconduct rule in policy and practice. The organizational mythology, field habitus, and irrationality of the rule are so strong that they avoid logical comparisons to similarly motivated rules such as administrative rules barring gambling among prisoners. The sexual misconduct rule lives within an identifiable carceral history, politics and culture, that has solidified the rule into a hegemonic field-level disposition, representing a nearly flawless archetype of ironclad penal habitus. The rule in action, or the living mythology of the rule, provide the sexual misconduct rule, its punishments, and other prison rules such as the gambling rule, an unremarkable and

nearly uncontested life in the minds of incumbent prison officials and the court which defers to their views.

A director from a Southern State reveals the strength of this field habitus, as well as the strong link between the rule on the books and the rule in action by saying,

*I think that throughout the U.S. you'll find that consensual sexual behavior between prisoners is prohibited. It does not mean that the rules do not get violated. Yes, they do get violated. But, when they're violated the sanctions, in most jurisdictions, the sanctions are swift and certain. So, we do not accept or acknowledge consensual sexual relationships between offenders.*

And there is further support, provided by officials who believe that the rule is culture - and what is habitus if it is not a durable form of culture, with rules, boundaries, norms, beliefs, practices and dispositions? This Western director notes,

*I think it's part of the culture. You've gone to different states, and I don't know which states you've interviewed, but in this state and the neighboring states, prisons are about culture and its hard to change culture over time.*

Perhaps the clearest path to revealing the durable organizational mythology or habitus in prison rules frameworks, is in the contrast between the disparate risks associated with gambling and consensual sex, and their completely illogical and irrational punishments that have been revealed in previous works (Borchert 2016; Hensley and Tewksbury 2012; McEvoy and Spirgen 2012). There really is no other way to account for the variance in punishments than to believe that gambling is not confrontational for prison officials while same-sex sex remains confrontational to the durable religious-moral and homophobic norms and practices that live in our penal field; norms that have recently been buttressed by PREA.

### ***Deference and the Life of the Rule***

In the case of sexual misconduct rules and their punishments, current prison law in the form of deference reifies this outdated, illogical, organizational mythology and habitus. The rules

are rooted in the best thinking of 19<sup>th</sup> and 20<sup>th</sup> Century prison leadership, people who viewed same-sex sex as a perversion of the highest order and similarly believed that simply being homosexual (a word yet to be invented in the early days of the rule) made a prisoner eligible for long term solitary confinement across the entirety of their prison sentence (Kunzel 2008).

Legal scholars have called for research to interrogate the utility of deference on the ground, in correctional practice, and to theorize the ways in which it operates to include how deference shapes conditions of confinement (Berger 1978; Dolovich 2012; Dunn-Giles 1993; Horwitz 2008; Robertson 2000, 2006; Shay 2010). Deference allows rules such as the sexual misconduct rule and its punishments to go without question in the mind of prison officials, at court, and in the imagination of our citizenry who know little about the daily life of the prison and its sexual orderings.

## **CONCLUSION**

This project has demonstrated that prison leaders during the era of mass incarceration maintain strong beliefs about the meaning of consensual same-sex sex in American prisons. None of my respondents were able to detail the origin of the sexual misconduct rule, where it started, its original meanings or how the rule has survived since the birth of the American prison. These strong beliefs are illustrative of a profound field-level habitus, and a nearly unbreakable, super-tight coupling between the organizational mythology and organizational practice of safety and security and the sexual misconduct rule. This mythology, and the emergent mythology of PREA, tell prison leadership that consensual sex is a highly dangerous activity for prisoners with the strong potential to disorganize prison life and that consensual sex is worthy of harsh punishment.



Findings also show, at least in the case of similarly motivated rules, that prison officials are not marshaling data to motivate prison practice. Sexual misconduct rules seem to defy the trend toward evidence-based practices in our prisons. If prison leaders had marshaled data, perhaps the punishments for gambling – which produces much more institutional disorder and risk would be at least commensurable with the punishments for something as seeming harmless as a kiss or oral sex. This comparison reveals the illogic and irrationality between similarly motivated rules on the books and the ways they operate in action, which runs contrary to criminal justice perspectives’ predictions (Hagan 1989). The conclusion here is that there is really no plausible alternative, but to understand the rule as rooted in a deep set of norms (*Habitus*) bearing the mark of the rules’ early history, with its attendant political techniques to prevent sexual perversions, pathology, and sin. Together, this mythology, this history, this irrationality, make the rule a robust, field level habitus of the highest order during the era of mass incarceration.

The toughest finding to grab is how the emergent mythology of PREA serves to reinforce prison sex as pathological and disorganizing, by its suggestion that differentiating between coercive and consensual sex among prisoners is nearly impossible, and for that reason alone the rule must remain. PREA’s emergent mythology links well to the durable habitus of punishing prison sex. Yet, over twenty percent of leaders interviewed claim that differentiating between consensual and coercive sex is common in the daily life of the prison. Unfortunately, consensual sex is not possible within PREA standards. In every prison facility I have visited from 2014-2016 (well over thirty, I have seen PREA brochures, booklets, and inmate painted murals on prison walls notifying prisoners that “No mean no. And Yes is Not Allowed.” Clearly the sexual misconduct rule lives on with the Prison Rape Elimination as its new partner.

The homogeneity, diffusion, and hegemony of the sexual misconduct rule cannot be debated. However, even in conservative Southern states, prison officials are finding the rule difficult to reconcile within the realm of expanding rights. These prison officials, following SAF theoretical predictions could form a powerful block to dislodge the mythology surrounding prison sex in order to challenge the beliefs of correctional and judicial incumbents. This dissonance, common among respondents is represented well by this Southern Commissioner who says, “I feel torn here, because I truly believe that it’s a person’s right to love who they want, that’s none of my business.” Certainly, love does not always involve sex, but we can get the meaning of what he is conveying in this remark. This dissonance, between a changing society and a static prison environment, may be why a subset of respondents seems ready challenge from the decades old meanings associated with sexual misconduct rules and their associated harsh punishments.

The case at hand provides leverage to show how complementary theoretical perspectives can go beyond competition to form a fuller understand of the punishment orthodoxy and praxis. In the case of the sexual misconduct rule new institutionalist theory (Crank 1994; Hagan 1989; Meyer and Rowan 1977); criminal justice perspectives (Hagan 1989) as well as field theoretical perspectives (Bourdieu 1989; Lerman and Page 2012; Page 2013) have been marshaled in a complementary fashion to demonstrate that the rule is clearly a homosexual status rule. The rule created by religious moral codes of the 19<sup>th</sup> century, extended by the mid-20<sup>th</sup> century’s focus on homosexuality as psychiatric and medical pathology, as well as a strong disorganizing force for prisons and society, is penal field habitus, an potent organizational myth, and is increasingly irrational if we consider broad societal progress since Stonewall and *Lawrence*.

Today, the rule lives in the minds of the majority of prison officials as a viable, unremarkable and un-troubling, common-sense aspect daily prison life. Couched in PREA's emergent mythology, which holds that consensual sex is never allowed, prisons nationwide continue to punish prisoners for something as seemingly minor as a kiss (Borchert 2016). This is ridiculous.

Now is the time for the courts to step away from the Prison Litigation Reform Act's "jurisprudence of evasion" (Dolovich 2011) and to grant broader prisoner access to our courts, in order to forcefully interrogate conditions of confinement, including sexual misconduct rules and their punishments. The court, taking the advice of myriad legal scholars would do well to compare rules to rules, to see how they work in action and to determine their origin. In this way the court can avoid being considered pro-mass incarceration, with all of its attendant issues, of which sexual misconduct rules are just one. It is time to bring evidence to bear that demonstrates the very minimal risk to institutional safety and security posed by consensual sex in a prison setting in order to reveal the disparate punishment of LGBT prisoners and those who engage in consensual same-sex sex. In so doing, U.S. prisons could then end their run as institutions that actively criminalize and punish same-sex sex (a part of LGBT identity and desire) among consenting adults.

A respondent from an Eastern state claims, "We are change agents. That's what we do. We have to continually look at things and decide if we need to change in some way.....Ya know, things have to change. We can't be sitting here stagnant and thinking that we're still doing a great job." It is time to move beyond the PLRA and deference as our guiding jurisprudence in prison law cases. Without substantive review, which allows prisoner voices to be heard at court, U.S. prisons will continue to remain disproportionately punitive for those who engage in same-

sex sex, and particularly LGBT prisoners. If we view prisons as a collective, democratic project, we must challenge, renegotiate, and redefine the case of consensual prison sex between same-gender individuals. Prisoners must be understood as a part of broader socio-legal change for LGBT citizens that we have seen since Stonewall and *Lawrence*. The sexual misconduct rule is mythology. It is an archaic homosexual status rule. It must be reconsidered in this light, to reshape conditions of confinement, and to eradicate its damages to prisoners and society.

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## **CHAPTER 4**

### **Extremely Dirty, Like Prison Work, Requires Pretreatment**

Everett Hughes (1962) invoked the term dirty work in reference to jobs and tasks that contaminate, pollute, spoil and stigmatize the workers who perform them. Society understands the necessity of many dirty jobs. For example, we recognize that garbage needs to be taken away by garbage haulers, dead bodies need to be buried or cremated by undertakers, and tumors need to be removed by surgeons. Yet, despite needing workers to perform these tasks, society tends to label these jobs as dirty, which stigmatizes and taints both individual workers, and broader occupational categories alike. This labeling, stigmatizing, and social degradation markedly affects the identity, self-worth, and occupational prestige of the individuals who perform these jobs, including the ways they understand both their place in and value to society.

Prison work is of this type. The work of front-line correctional officers, during the era of mass incarceration, with its abundance of empirically demonstrated damages to individuals, families, communities, and society, is an extremely dirty occupational category. Thus, prison work needs to be reclassified within existing dirty work categories as an occupation that is tainted by each categorical form of dirt in dirty work scholarship: social, physical, moral, and emotional (Hughes 1962; Ashforth and Kreiner 1999, 2014; Kreiner, et al 2006; McMurray and Ward 2014).

Literature in Social Psychology, inclusive of Labor, Organizations, and Management studies, addresses dirty occupations by theorizing upon and empirically demonstrating the various methods that workers in tainted occupations use to construct imaginaries, which help

them to counter identity threats posed by the pervasive social stigma and taint of dirty occupations (Ashforth and Humphrey 1995; Ashforth and Kreiner 1999, 2002, 2014; Goffman 1963; Hughes 1962; Kreiner 2007; Kreiner, et al 2006; Moberg and Seabright 2000; Mo 2010). Yet, while this broad literature discusses the ways that dirty work is imagined and reconfigured by workers in the midst of their dirty careers, it fails to recognize that certain occupational categories may be so tainted and stigmatized that the occupation requires conceptual pre-treating before the first day on the job ever happens. This is essentially how workers *approach* a dirty job.

In ways similar to the way we pre-treat a stain on a garment prior to putting it in the washer, potential employees need to figure out how and why they might apply for employment and take a job in such a dirty, stigmatized, and tainted occupation in the first place. We know that some people could care less about a stained (not necessarily ruined garment) than others. Some individuals don't care if their shirt has a stain, some try to hide the stain under a jacket, some will only wear the shirt if the stain comes out, and some (think perhaps dudes in a punk band) actually want to wear ruined, stained clothes, and finally, some must wear the stained shirt because it is the only shirt available to them. And so it goes with considering prison work as a career choice. When individuals consider putting in an application to work in a prison my data reveal similar conceptual categories that guide their decision-making processes as they approach the job.

While some of this chapter elaborates upon existing techniques workers use to reduce the taint and stigma of dirty jobs, the contribution is a result of adding an new temporal element to these cleansing processes. Previous work has uniformly understood that the cleansing of taint and stigma from dirty jobs is performed whilst in the midst of the dirty career (Ashforth and

Humphrey 1995; Ashforth and Kreiner 1999, 2002, 2014; Goffman 1963; Hughes 1962; Kreiner 2007; Kreiner, et al 2006; Moberg and Seabright 2000; Mo 2010). Here, the chapter provides evidence that pervasively tainted occupations, such as correctional officer in the US context of mass incarceration, require individual and collective action for people to even consider making an application for this type of employment. In essence my findings help us understand how, why, and under what conditions individuals might approach an extremely dirty job, even when apprehensive about working in a stigmatized occupation, for a tainted institution.

Thus, examining the ways that prison guards, *aka* correctional officers, approach highly stigmatized work has the power to build new knowledge about similar techniques used to approach similarly foul jobs. Extending this claim to other dirty occupations such as joining the military, becoming a bounty-hunter or a cop, a sex-worker, stripper, or a drug-dealer, seem to be logical, extensions of the claims made in this essay, with strong face validity. Future work could serve to provide empirical verification of the broader sociological account and to build the theory that I am insinuating with the case of contemporary US prison work.

This article addresses these primary conceptual and theoretical gaps in the dirty work literature by accounting for the vast damages of mass incarceration, which have been amply demonstrated in empirical prisons scholarship, and by conducting seventy-two, face-to-face, interviews with front-line correctional officers, in every prison in the state of Kentucky, at every security level, and across men's and women's facilities, I am able to make three central claims which transform our theoretical and empirical understandings of dirty work: 1) that prison work during the era of mass incarceration is so foul that it must be categorically relocated, from being simply physically and socially dirty, in order to properly represent the pervasive taint of physical, social, moral, and emotional dirt of prison work during the era of mass incarceration; 2) that

extremely dirty jobs, comprising multiple stigmas, in this case prison work during the era of mass incarceration, require conceptual pre-treatment and cleansing for an individual to even begin to consider this type of occupation as a viable career choice; and, 3) that a landscape of economic disadvantage, including few high quality, stable job opportunities, may force individuals to forego pre-treating due to basic economic necessity.

Expanding these primary claims, my empirical data support the following theoretical propositions:

***Proposition 1)*** Extant theorizing on the nature of dirty work occupations, in dialog with empirical work demonstrating the vast damages of mass incarceration, forces a reclassification of prison work in the US context, into an extremely dirty occupation, characterized by pervasive physical, social, moral, and emotional stigma and taint.

***Proposition 2)*** The extreme moral taint and stigma of US prison work compels the work to be cleansed or pre-treated for individuals to choose a career in corrections.

***Proposition 2a)*** Pre-treating will be done at the individual level through negotiations with the self, friends, and family in order to neutralize the threat of prison work.

***Proposition 2b)*** Pre-treating may also be done by friends and family who have worked, or who currently work, in corrections, as they present a clean, neutralized version of prison work to the potential employee.

***Proposition 3)*** A landscape of poor economic and employment opportunity may allow potential applicants to forego the pre-employment cleansing process detailed in proposition 2a and 2b.

Respondents fall into three primary categories which help us to understand the ways they approach prison work: 1) They individually engage in cleansing and neutralizing tactics in order to assuage the apprehension and fear of prison work among family and friends; 2) Individuals are the recipients of a neutralized version of prison work presented by family and friends who work in corrections that allows them to approach the job; and, 3) Individuals living in a landscape of economic inequality and a poor labor market may forego any moral considerations and approach

prison work out of economic necessity. Two additional minor groups of individuals also appear in the data comprising roughly twelve percent of my respondents. These are individual applicants who are completely apathetic about the contemporary prison enterprise and their opposite: individuals who see prison work as life goal. This second group seems to be split into two altruistic subgroups: those who want to protect society from deviant criminals; and those who want to be of rehabilitative service to the incarcerated. Again, while these respondents did not comprise a large group, their responses have face validity and warrant further exploration in other locales and time-points.

The chapter will proceed with a review of the categorical typologies of dirty work occupations in the social psychology as well as labor and management studies literatures as they provide a less than critical classification of prison work in the contemporary social context of mass incarceration. The review will continue by revealing an additional gap in the dirty work scholarship as it incorrectly limits efforts to cleanse occupational stigma and taint to actions performed in the midst of a dirty career, and does not provide a broader temporal account of the power of pervasive stigma and extreme dirt to coerce individual and collective action before embarking on a dirty career. I will next present my data, analytic method, and my findings, which include my reclassification of prison work as a case of extremely dirty work. The article will engage a discussion to include the implications of reclassifying prison work in the context of mass incarceration, to include emerging alternatives to incarceration such as restorative justice. The article will conclude by pushing theoretical, case-wise extensions of my findings to other extremely dirty occupations such as police work, drug dealing, sex work, and military careers in order to demonstrate the work's broader contribution to the sociological enterprise.

## LITERATURE REVIEW

Everett Hughes labeled the Holocaust as *dirty work*, those working in concentration camps as *dirty workers*, and asked “How and where could there be found in a modern, civilized country the several hundred thousand men and women capable of such work?” (Hughes 1962: 4). Hughes revealed that the dirty work machinery of the Holocaust was put in motion by the social construction of clear, categorical distinctions between social groups *qua* status groups. Aryan Germans were construed as good, worthy citizens while Jews, Gays, and others were constructed as different, less than human, dirty or foul, as well as socially and culturally distant, thus making them eligible for the harsh punishments they received in the concentration camps. Iron-clad, binary distinctions in social status paved the way for the “good” people of Germany, to not only build and staff the camps, but to brutally imprison and kill the outsiders in their midst.

It is important to note here that these binary distinctions between good and bad people amplified social and cultural distances between insiders and outsiders, and that this distancing had a specific social utility for the Nazis. Because not only did the Nazi regime need a willing workforce for the death-camps, they also needed popular support (or at least minimal opposition) for the harassment, rounding up, and removal of the set of others who were previously seen as friends and neighbors. Hughes describes the collective psyche of the work-a-day German citizen as “having dissociated himself clearly from these people, and having declared them a problem, he apparently was willing to let someone else do to them the dirty work which he himself would not do, and for which he expressed shame” (Hughes 1962: 7). Thus the Nazi regime by insinuating physical, social, and moral status differences, and amplifying social and cultural distances between Aryan Germans and an array of others, created ontological leverage to quiet

the broader populace and attract workers to the machinery of death, when these good people may have otherwise resisted the Holocaust's horrors.

Everett Hughes' revelations that we collectively construct categories of social worth (status) with identifiable characteristics, that these status categories create and amplify social and cultural distances, that group solidarity is the building block for social institutions and their daily operations or machinery (i.e. the holocaust and the concentration camps), and that social status and social distances work together to determine group eligibility for sanctions and rewards meted out by these social institutions, has led to decades of research and theorizing across the social sciences. Hughes' lasting sociological power is demonstrated by a contemporary proof to his theorizing, which reveals how the Bush Administration embedded human rights violations *aka* "torture in mundane organizational practices" making "enhanced interrogation seem normal" and demonstrating "how the legal system as well as commonplace aspects of organizations can be employed by political elites to attempt to manage controversy around extreme policies by making them appear normal" (Chwastiak 2015: 493).

Apart from providing a contemporary illustration of Hughes' ideas, the post-Hughes dirty work literature performs three theoretical tasks. Dirty work scholars, a) build typologies which identify categories of taint in dirty work occupations, and link specific occupations to these categories; b) develop a more nuanced understanding of the types of stigma across dirty occupations and job types; c) identify and operationalize individual, occupational, and organizational level efforts to cleanse stigma and taint from the work, thus minimizing any



identity threat posed by outsiders, to make these jobs doable and to “seek social affirmation;” and (Ashforth and Kreiner 1999: 413).<sup>11</sup>

### **TYPES OF DIRTY WORK**

The post-Hughes dirty work literature classifies dirty work into four distinct, yet often overlapping types and parses these types by levels of occupational status and prestige (Ashforth and Kreiner 1999, 2014; Kreiner, Ashforth, and Sluss 2006; Kreiner 2007; McMurray and Ward 2014; Rivera and Tracy 2014). Occupations may be seen as physically, socially, morally, and/or emotionally dirty and these categories often overlap within a single occupational type.<sup>12</sup>

Work as diverse as emergency medical technician, ditch digger, garbage collector, or even surgeon can be considered physically dirty since each job requires workers to regularly come into contact with “garbage, death, effluent and noxious conditions” (Ashforth and Kreiner 1999: 414). Socially dirty work generally involves working with a socially undesirable population, prisoners or those with mental illness are good examples. Both physically dirty work and socially dirty work are understood by researchers and society as dirty, but socially necessary. These tasks are socially necessary by definition as civil society constructs a collective response (social control) to the social problems presented by “undesirable groups” such as criminals and those with poor health. For example, garbage hauling might be a nasty job filled with smells,

<sup>11</sup> For a thorough review of the characteristics of dirty work occupations, as well as individual, collective, and organizational efforts to minimize the threats associated with occupational stigma and taint, to include how these classifications and subsequent actions vary by occupational prestige and status, see Glen E. Kreiner’s (2007) entry “Dirty Work” in the *Encyclopedia of Industrial and Organizational Psychology*.

<sup>12</sup> Research has responded to society insinuating stigma and taint across a wide array of occupations by investigating people who work in abortion clinics (Harris et al 2011; O’Donnell et al 2011), animal shelters (Baran et al 2012), as bail bondsmen (Davis 1984), in blue collar professions (Lucas 2011), as border patrol agents (Rivera 2014), butchers (Simpson 2014), in casinos (Lai 2013), community mental health nursing (Godin 2000), as garbage collectors and street cleaners (Slutskaya et al 2016), itinerant frackers (Filteau 2015), janitors (Urvashi and Yates 2013), meat inspectors (McCabe and Hamilton 2015), Mexican police officers (Gonzalez and Perez-Floriano 2015), probation officers (Worrall and Mawby 2013), and researchers (Southgate and Shying 2014) among other dirty occupations.

oozes, and rotten things, but it is absolutely necessary to maintain public health. Therefore we need a workforce dedicated to this task.

Morally dirty work, a third type of dirty work, is characterized by pervasive stigma and taint because it is understood as a set of immoral tasks, perhaps buttressed by an evil ideology, which transgresses widely held social mores and deeply held values (Ashforth and Kreiner 1999, 2002, 2014; Goffman 1963; Hughes 1958, 1962; Kreiner, et al 2006). Work that is morally dirty is socially complex in comparison to physically and socially dirty work. In morally dirty work, we can see variance in the ways that identifiable subgroups understand, support, or oppose these controversial occupational types.

For example, one group may view abortion providers as morally bankrupt baby killers. Another group may see abortion providers as fierce advocates for the reproductive justice, women's health, and human rights. Some may view front line troops or Central Intelligence Agency operatives as doing the morally dirty work of state violence and sewing the seeds of war. Other segments of society may understand these same individuals as brave patriots and freedom fighters. Clearly then, certain occupations such as abortion provider, soldier, and correctional officer, are subjectively classified within dirty work typologies. And, these classifications are linked to our location in time, culture, politics, economics, and so on.

Emotionally dirty work (McMurray and Ward 2014; Rivera and Tracy 2014), the fourth category of dirty work, represents the most recent push to expand conceptual categories of dirty work. Emotionally dirty work can stand on its own or work in tandem with the three traditional types. For example, people can stigmatize social work as being replete with high levels of emotion, which arise amidst myriad troubling social conditions such as poverty, rape, or domestic abuse. Thus the raw emotion and stress inherent in clinical social work allows scholars

to define the occupation as emotionally dirty. Working in mental health facilities, fighting on war's front line, as well as front-line prison work and police work may be understood similarly due to the plethora of ways workers in these occupations regularly confront and interact with difficult, emotional, socially troubling conditions, as well as risky or violent human behaviors.

If we examine US prison work during the era of mass incarceration we can understand it as a dirty job combo-pack wherein the workday, and the career type or occupation, can be understood as physically, socially, morally, and/or emotionally dirty. Yet existing dirty work typologies categorize prison work as simply physically and socially dirty (Ashforth and Kreiner 1999, 2002, 2014; Goffman 1963; Hughes 1958, 1962; Kreiner, et al 2006). This limited understanding of the profound dirt of prison work in the US, during the era of mass incarceration significantly limits our understanding of its pervasive stigma and taint. We can thus view the correctional officer in the US context, as a nearly perfect example of pervasive taint as she regularly comes into contact with bodily fluids, has emotional and violent interactions with prisoners, is morally troubled by the disparate punishment of the poor, people of color, and LGBT citizens in the contemporary context of mass incarceration. In this light, a reclassification of US prison work during the era of mass incarceration, within existing dirty work typologies is required to address this ontological gap. This chapter marshals previous research findings on mass incarcerations many problems, as well as empirical data points from this project, to appropriately reclassify US prison work as not simply physically and socially dirty, but morally and emotionally dirty too.

### **DIRTY WORK STIGMAS**

Contemporary dirty work scholarship understands dirty work's stigma and taint as diffuse; part of many different occupational categories and job types, and not simply limited to

extremely or thoroughly dirty jobs (Kreiner 2007; Kreiner, et al 2006). This variance is defined as the “breadth of taint” by job type (Kreiner 2007: 153). It is important to note here that dirt and taint are exchangeable terms in the dirty work literature. For example, garbage haulers confront physical dirt *aka* physical taint in their workday activities. To follow, dirty occupations are variously classified by the “proportion of the job that is actually dirty,” the “centrality of dirt to the occupational identity,” as well as the contextual “intensity of dirtiness” in their jobs, and the extent to which the work role, within a dirty organizational type, is associated with dirty tasks (Kreiner 2007: 154). For example, a worker may spend one hour of eight on a dirty task, thus classifying the job as not particularly dirty. Or she may spend all day hauling toxic waste, making the job intensely tainted. In addition, embalming bodies all day could be understood as intensely dirty. Yet, within funeral home occupation we can differentiate between the levels of dirt tainting the receptionist, as compared to the lead embalmer, or the preparer of the corpse.

Scholars have also signaled that high levels of occupational prestige may serve to buffer both the individual worker, and the overall occupational category, from taint and social stigma. Surgeons and correctional workers, who each come into contact with bodily fluids, are certainly understood differently by society. We might understand these status differences as a product of the variance in education required for each job, as well as the variance in compensation between these occupations, among other status or prestige indicators (Kreiner, et al 2006; Kreiner 2007).

Scholars have worked to parse the various types of taint into categories rooted in the levels of taint salience. The salience of taint in dirty occupations can be understood as *idiosyncratic* if the job is not “routinely or strongly stigmatized,” as *diluted* if the job is characterized by a “predominant but mild” form of taint, as *compartmentalized* if some aspects

of the job are highly stigmatized while other aspects are less troubling, and as *pervasively* tainted if the job is widely labeled as dirty (Kreiner, et al 2006: 622).

It is important to note that while previous classification schemes identify prison work as physically and socially tainted (Ashforth and Kreiner 1999, 2002, 2014) that prison work is also understood as being pervasively stigmatized (Kreiner, et al 2006: 622). This presents a bit of a cognitive disjuncture in the dirty work literature. If one were to label prison work as simply physically or socially dirty, as in prior typologies (Hughes 1962; Ashforth and Kreiner 1999, 2002, 2014; Kreiner, et al 2006) one might easily classify prison work within compartmentalized or diluted stigma categories. To elaborate, the literature assumes clear linkages between dirty work typologies and stigma salience categories that do not account for the wide variance in prison orthodoxy and practice worldwide (Ashforth and Kreiner 2014). And certainly, dirty work occupational categories do not accurately locate or understand prison work within our current context of mass incarceration. Again, a categorical relocation of the type of stigma associated with prison work in the US context of mass incarceration is required.

### **INDIVIDUAL AND ORGANIZATIONAL LEVEL CLEANSING EFFORTS**

Empirical and theoretical work sets out to illustrate how individual, organizational, and cultural processes allow workers (and the broader occupational category) to cleanse themselves of (and thus neutralize) the varying taints and stigmas associated with their dirty jobs (Ashforth and Kreiner 1999; Ashforth and Kreiner 2002; Ashforth, Kreiner and Sluss 2006; Roca 2010). The literature pays particular attention to the ways individuals and organizations reframe and transform dirty work from tainted and stigmatized into clean, socially necessary, work of high utility *and* moral value to society.

These maneuvers, *aka* defense tactics, designed to reduce stigma's identity threat to both individuals and organizations have particular utility in ensuring that: a) the individual worker can continue to stomach her dirty job and thus avoid unemployment and a difficult job search or career change; and b) that the organization or institution can remain economically and socially viable by avoiding the disaster of macro-level, social condemnation that could lead to absenteeism, turnover, resistance to organizational goals and mission, and ultimately organizational transformation or extinction (Filteau 2015; Godin 2000; Gonzalez and Perez-Floriano 2015; Harris, et al 2011; Lai, et al 2013; Lucas 2011; McCabe and Hamilton 2015; O'Donnell, et al 2011; Simpson 2014; Slutskaya, et al 2016; Tracy and Scott 2006; Urvashi and Yates 2013; Worrall and Mawby 2013).

Regarding these cleansing efforts, scholars demonstrate that defenses can be analyzed and operationalized by examining individual level as well as group level efforts. Researchers have found that tactics that work for individuals may be assumed by their co-workers, and thus become a normative defense tactic, and that these may be imparted to new employees through socialization processes in the workplace. These are seen as "resources upon which occupational members can draw (Kreiner, et al 2006: 626).

And to iterate, these are reciprocal efforts, among workers and organizations, which cleanse the dirty occupation in order to make both the job and the institution viable. Kreiner (2007) suggests that people in extremely dirty occupations such as corrections build strong occupational cultures as well as strong internal organizational subcultures, "that create an us-versus-them mentality and reinforce positive evaluations of themselves" allowing dirty workers and the organization alike to cope with the identity threat posed by pervasive stigma and taint (Kreiner 2007: 155).

Workers and organizations also employ comparative “weighting” techniques designed to “change the importance of various social perceptions of them” held by outsiders (Kreiner 2007: 155). Together they condemn their condemners, support their supporters, and to make selective comparisons with other jobs that they perceive as dirtier than their own (Kreiner 2007: 155).

In addition, dirty workers engage in “ideological tactics” to reframe their work in a positive light, to recalibrate oppositional understandings, and to refocus the outsiders gaze upon cleaner parts of the dirty occupation (Kreiner 2007: 155-156). For example, a prison worker or a department of corrections may focus on their mission to keep society, as well as the prisoners in their care, both safe and secure. Prison workers may also calibrate their perceptions of the job through selective comparisons to more controversial punishment regimes such as those in China, Iran, or Saudi Arabia for example. Finally correctional workers may shift society’s gaze from controversial institutional behaviors such solitary confinement and the death penalty, to more humanistic, institutional practices such as providing education and substance abuse treatment to prisoners.

However, humanitarian points of view may have limited utility in certain dirty occupations such as prison work or police work, where it is important to maintain an oppositional culture. In these cases, we can understand both individuals and organizations as engaging efforts to normalize the human-relational aspects of the job by “diffusing unwanted emotions.” These tactics help make traumatic, violent, or controversial events seem normal. Through a process of “adaptation,” performing bizarre tasks such as sorting through prisoner excrement for drugs, or dealing with suicide and violence, builds ritual into their daily work (Kreiner 2007: 155). This ritualism is achieved by strict, uncritical following of organizational orthodoxy and praxis. In the case of the KYDOC, ritualism is seen in mantras that insist officers

need to be “firm, fair, and consistent” and that “inmates are students of our behavior.” In addition, correctional workers distance themselves from contact with the moral-ethical components of the job through a standard “these are the rules, we just follow ‘em” justification much like the “because I said so” that parents invoke with their children.

Finally, an additional line of theorizing understands these tactics as the product of the “moral imagination” that is required, by both individual and organizations, to challenge the identity threat posed by dirty work stigmas and taints (Roca 2010). While some perhaps less controversial jobs may have some clean characteristics, social value, and thus not require much moral imagination for cleansing, extremely dirty jobs may require a deft imagination to cleanse them of powerful taints and stigmas. In this case, “moral imaginations” are useful for workers to confront moral dilemmas in their work-worlds. Previous research also suggests that organizations engage efforts to cultivate and expand the moral imagination of their employees in order to ensure the viability of the organization itself (Roca 2010: 135).

Yet there is one clear gap in the literature here: all of these cleansing techniques, whether they are performed at the individual or group level, are all performed by workers in the midst of a dirty career. Extremely dirty jobs such as correctional or police officer or soldier or drug dealer are not, at face, jobs that one enters into without significant consideration of the stigma, taint, as well as the risk inherent in these types of jobs. Thus, these jobs must be negotiated or pre-treated in order to make them viable employment options. Potential employees may need to “deal” with the risk, the taint, and the stigma of extremely dirty jobs before the job even begins. In this light, the cleansing process shifts from tactics engaged while on the job to tactics performed before an application for the job has even been made. This paper examines both the collective and individual level pre-treating efforts that cleanse or neutralize the taint and stigma of the job, as



well local economic conditions as a contextual factor which may limit the necessity of this type of pretreatment. Addressing this conceptual gap provides a new understanding of the power of taint and stigma of dirty jobs to coerce collective and individual beyond the work-world itself. In so doing, these findings have the power to expand knowledge in social psychology, labor and management studies, the sociology of organizations, and the study of prisons and corrections more broadly.

### **DATA AND ANALYTIC METHOD**

Semi-structured interviews and ethnographic observations were conducted at every prison facility, across all regions of Kentucky, across all security levels, and include men's and women's prisons, producing data from the population of KYDOC facilities. Correctional officer interviews varied by gender, age, race, and tenure with the KYDOC in order to produce as much representativeness as possible. Due to facility level security and staffing needs, constructing a purely random sampling technique is not feasible at most prison facilities. Finally, administrators at KYDOC headquarters will also be interviewed in order to introduce additional stratification into the sample. 72 correctional officers were interviewed.

It is important here to note that these data are retrospective, wherein respondents are asked to bring their present day understanding of past events to bear in response to my questions and prompts. While there is always the potential for recall bias, and narrative reconstruction, in retrospective data, there is also the potential for response bias when subjects respond to current events. After all, individual understandings are subjective, experiential, and certainly relative to not only the context when the events in question occurred, but are also relative to the social context of the interview period as well. In this case, life course events since the application

period may have changed respondent's original understanding of that process. What factors might mitigate or reduce the suspicion of recall bias in retrospective data?

In this case, there are two factors that serve to relieve me of suspicion of recall bias in these retrospective data: 1) among my subjects there is variance in job tenure (i.e. that some are recalling their job application process from many years ago, some from a few years ago, and some in between) and their responses fall into an identifiable set of stable, unchanging categories across my sample; and, 2) that the process of applying for prison work is an important time-point in my subject's lives, which serves to protect the data from recall bias. An analog might be seen in announcing, to friends and family, a college choice, a move to another state, or the choice of a spouse. An *a priori* assumption here is that people have generally good recall regarding significant decision or time points that have affected their life course trajectory. I suggest that choosing to apply for prison work is one of these important time points, and that the importance of this decision to the life course serves to protect these interview data from recall bias.

Theory abduction, a qualitative methodological tool used to expand existing theory or to induce new theory structured data analysis. Abduction is designed to situate the research question and possible findings within an array of known theory for constant comparison in order to develop new ideas to explain actions within the field. Here the researcher engages theory by continuously revisiting the data through a sequence of possible explanations, each time de-familiarizing the data in order to consider alternative hypotheses (Timmermans and Tavory 2012). The researcher seeks to discover "anomalies, which are inevitably both empirical and theoretical, [which] then require the development of tentative new theories built on inductive conceptualization of this data through intensive coding and other methodological steps" (Timmermans and Tavory 2012: 179). This process also allows the researcher to contemplate

how the data fits into existing theory, knowledge, and epistemology to develop possible extensions of existing theory into differentiated fields: from medical sociology into punishment and society for example.

Constant checking and rechecking both within and between each component of my analysis is complemented with detailed field notes and memos during the data-gathering and analytic process. This method advises that, “researchers should think through different conceptual and theoretical frameworks in both coding and memo writing. They should force themselves to take a relatively small data excerpt and work through it in detail in light of their theoretical expertise, trying to find as many possible ways to understand the data as can be found” (Timmermans and Tavory 2012: 177).

Vaughan provides additional detail to supplement the methodology described above by directing the researcher to “begin by using a theory, model or concept in a very loose fashion [and] treat each case independently of others, respecting its uniqueness so that the idiosyncratic details can maximize our theoretical insight. As the analysis proceeds, the guiding theoretical notions are assessed in the light of the findings” (Vaughan 1992, 175). Thus, “the methodological process can be seen as a contrivance for re-experiencing when taking advantage of the ways the same observation changes as it is perceived in different points of time, from different theoretical vantage points” (Timmermans and Tavory 2012: 176).

## **FINDINGS**

### ***Reclassifying Prison Work***

By placing contemporary dirty-work typologies in dialog with a vast body of research demonstrating the epic damages of US mass incarceration, and with my own empirical findings, I am able to accurately reclassify prison work during the era of mass incarceration into an

extremely dirty occupational category. Epic damages, resulting from decades of failed prisons policy and practice are well-documented across journalistic, social science, activist, and policy driven sources, and have also been well-documented in major prison law cases over the past forty years.<sup>13</sup> This reclassification provides a theoretical and empirical foundation upon which to empirically examine the propositions made in the chapter's introduction: primarily that prison work is so dirty that it requires conceptual pre-treating before an individual can consider applying for a prison job.

Prison work in the US is replete with each type of dirt laid out in dirty work scholarship. Prison work is physically dirty and noxious as front-line prison workers, regularly come into contact with blood, feces, and other biological hazards (Ashforth and Kreiner 1999, 2014; Kreiner, et al 2006). To illustrate this point, I point to one of the most hated tasks for correctional officers: dry cell duty. A dry cell is similar to any other cell, except the toilet and the sink do not flush or drain. This feature keeps bodily waste from escaping searches, as workers can literally sift through feces for contraband such as drugs and tobacco. A correctional officer says,

*Yeah, there's things that's bothered me over the years. We have to go through inmates crap. We dry cell quite a few. We have about 80 inmates go out into the community every day and work. We're tobacco-free and they cram stuff up their rear end.*

Prison work is not only physically dirty, but it is social dirty, as correctional officers by definition work with convicted criminals including those with mental illness; groups that many people would consider undesirable (Ashforth and Kreiner 1999, 2014; Baran, et al 2012; Godin 2000; Kreiner, et al 2006). When correctional officers reveal to outsiders that they work in a

<sup>13</sup> For a thorough review of the damages of mass incarceration in the U.S. context, see Christopher Wildeman's (2012) entry on *Mass Incarceration* in the *Oxford Bibliographies*, which pays particular attention to the context of inequality in mass incarceration's policy and practice. Wildeman looks to Pattillo, et al 2004; Wakefield and Uggen 2010; Western 2006. Additional leverage demonstrating the damages of mass incarceration is put forth in Borchert 2016a, 2016b; Comfort 2007; Gilmore 2007; Harding, Morenoff and Herbert 2013; Manza and Uggen 2006; Morenoff and Harding 2014; Simon 2007, 2015; Western 2006.

prison, society's response is often surprise.

*I tell them I work in a prison. Most of them are shocked at first. They're like, "Really? What's that like?" I can tell them stories about stuff that's happened in psychiatric treatments units with some of the guys. They're amazed. There's stories that we can tell working here that people would not believe on the outside. They would think you're making it up. I can sit there for hours on end and tell stories and a lot of times, they're just enthralled with it. They can't believe some of the stories that you're telling. It's usually, at first, it's a, 'Really? You work at a prison?' It's kind of a shock.*

While prison work is tainted by physical and social dirt, front-line prison work also exposes officers to emotional dirt. COs confront drama and trauma regularly, as prison work is replete human tragedies that society might well expect when we separate human beings from friends and family, cage them, and mistreat them (Crawley 2004; Crewe, et al 2015; Godin 2000; McMurray and Ward 2014; Mendez 2011; Nylander, et al 2014; Rivera and Tracy 2014; Tracy 2004). A correctional officer from Western Kentucky reveals intense emotions by discussing a particularly poignant staff-prisoner experience.

*Yeah. I was on third shift. I had been here about a year, year and a half at the time. Woke up one of my kitchen workers. I was letting him out in the day room waiting for the yard to call for him. He comes out of his cell. He's just bawling. I mean, tears are rolling down his face. He's got the snot coming. I looked at him. I was like, "Sir, what's wrong?" He was an older guy, and he looked at me. He was like, "My wife of 40 years passed away." I was like, "Wow." That was one of the biggest moments that I realized they're people too.*

And he goes on to share how these emotional aspects of prison work have shaped the ways that he and his colleagues understand prisoners.

*We are human beings. All of us are here. We're people. We have feelings. We have emotions. They have family issues the same as I do. You come in one day and one dude's mad at the world because you might find out that his wife or something died. I could come in one day and get a phone call, "Hey, your loved one died." There is a lot of similarities between us, because we're all people.*

There is little remaining doubt that prison work and the broader enterprise of mass incarceration is morally dirty, plagued with corruption, violence, graft, smuggling, sexual abuse, the torture of solitary confinement, widespread mistreatment of juvenile and LGBT prisoners,

subpar healthcare and food, the application of the death penalty, issues of life without parole (LWOP), the geographical location of prisons often placing prisoners at great distance from positive social ties, *ad infinitum* (Borchert 2016a, 2016b; Combessie 2002; Godin 2000; Konda, et al 2012; Lai 2013; Liebling 2011, 2014; Mendez 2011).

Yet, each of these problematic aspects of mass incarceration's moral dirt is compounded by the ways that prison is disproportionately applied to our nation's poor, and in particular to marginalized, men and women of color from coast to coast (Alexander 2010; Western 2006; Wildeman 2012). Subjects revealed the various and lethal ways that LGBT, racial, and religious, prejudice can taint prison work in the US. The following response to an inquiry about the treatment of LGBT prisoners demonstrates just how far LGBT prejudice can go in our current context of mass incarceration, and it affirms what I have demonstrated in previous scholarship (Borchert 2016a, 2016b).

*The one individual that came in, and I don't know his name. I really don't. He was actually more of a ... I think hermaphrodite is the right word. He actually had the breasts ... well we have one here now. He is homosexual. He is very open about his homosexuality. But he has breasts, he has to wear a bra. There are people around here that specifically go after him to antagonize him. I'm sure you've heard the famous quote already, "put him on paper." They want to write him up, put him on paper, get him in trouble. There have been multiple ... and they are still here. I don't know how far up this is going so I don't really want to say names.*

Another response suggests that correctional officers may also target prisoners with intersecting, marginalized identities, in this case Black-Muslim prisoners.

**Subject:** *In the towers they have rifles and shotguns out there. This guy in particular did not like the Muslims. He said that he was going to take their kufi, the little thing they wear.*

**Researcher:** *The hat, yeah.*

**Subject:** *He was going to paint a bulls-eye target [on the kufi] and then he was going to call all of the towers and give them permission to shoot at the bulls-eye target. The Muslim guys primarily were African American. He was going to give the tower*

*permission to open fire on all bulls-eye targets. He went on to reference Hitler and this and that.*

**Researcher:** *So race is a big issue.*

**Subject:** *It's never spoken about, but there are very strong undercurrents.....very strong.*

**Researcher:** *There's no clear way that you can*

**Subject:** *You're never going to... it's never going to be done*

**Researcher:** *You can't really prove it, but it's clearly*

**Subject:** *Exactly. It happens, but you'll never be able to prove it. It's always, 'well it's a he said, she said situation.' Anybody with half sense and one eye, and half blind in that one eye, can see it.*

While some examples of prejudice and disparate punishment in our prisons may be seen in threats of real violence, racial discrimination may also be symbolic in form, as it shapes opportunities within prisons (Bourdieu 1989). I asked subjects the following question about race: “How do you see race playing out for inmates in programming and other opportunities?” Many provided substantial examples of the ways they view race as interacting with punishment in Kentucky. The following response reveals one of numerous ways that correctional officers understand race as interacting with our system of punishment.

*Everybody here, all the inmates here, are 48 months to go to the parole board. Now, I do know this, the facility holds almost 600. I would say, there are more whites here than there are blacks, so there are more whites going up for parole than there are blacks. I'm seeing it as if they're allowing more of the whites more of a possibility of going home and not blacks.*

While these identifiable forms of social, physical, moral, and emotional dirt taint and stigmatize mass incarceration, our criminal justice might perhaps be less problematic if alternatives to it did not exist. Yet, alternatives to incarceration are plentiful and do not exist in theory alone. Community based alternatives to incarceration, such as outpatient substance abuse treatment, anger management, parenting classes, financial literacy, as well as restorative,

procedural, and distributive justice solutions to law breaking are used in jurisdictions from coast-to-coast. While these solutions have not begun to make a significant dent in our prison population, they are being increasingly relied upon. Alternatives to mass incarceration make the dirt of mass incarceration even more difficult to tolerate.

Together, these characteristics force its reclassification into the extremely dirty, pervasively stigmatized, and thoroughly tainted occupations. Extremely dirty occupations such as prison work thus require, myriad individual, occupational, and organizational level cleansing efforts to neutralize its combined physical, social, moral, and emotional dirt (Ashforth and Kreiner 1999, 2002, 2014; Goffman 1963; Kreiner 2007; Kreiner, et al 2006; McMurray and Adam 2014; Rivera and Tracy 2014; Roca 2010). Table 2.1 thus represents an evidence-based, theoretical reclassification of the work of mass incarceration within existing dirty work typologies



**Table 4.1 A Reclassification of Prison Work**

<b>An evidence-based reclassification of prison work as an extremely dirty occupation in the U.S. context of mass incarceration</b>	
<b>Demonstrated Problem</b>	<b>Type of Taint</b>
Unhealthy/Rotten Food	Physical, Moral
Distance from Loved Ones	Moral, Emotional
Poor Educational Programming	Moral
Inability to Earn Money for Reentry	Moral
Plagued by Violence	Physical, Social, Moral, Emotional
Solitary Confinement	Physical, Social, Moral, Emotional
Poor and Uneven Healthcare	Physical, Moral, Emotional
Mistreatment of Juveniles	Moral, Emotional
Mistreatment of LGBT Prisoners	Social, Moral, Emotional
Prison Sexual Assault	Physical, Social, Moral, Emotional
Life Without Parole	Social, Moral, Emotional
Death Penalty	Social, Moral, Emotional
Difficult to Access Courts	Moral
Correctional Corruption/Graft	Social, Moral
Underpaid Staff	Moral
Subpar Mental Healthcare	Social, Moral, Emotional
Low-level and Elderly Prisoners	Moral
Racial Disparities in Punishment	Moral
Economic Disparities in Punishment	Moral
Overcrowding	Physical, Moral
Heat, Cold, and other Building Issues	Physical, Moral

The following proposition is thus empirically and theoretically supported:

***Proposition 1)** Extant theorizing on the nature of dirty work occupations, in dialog with empirical work on the vast damages of mass incarceration, places prison work in the US context, among the morally dirty occupations, with the highest level of stigma and taint.*

## **PRETREATING THE DIRTY CAREER**

### ***Individual Level Cleansing***

Now that I have accurately reclassified prison work among dirty occupations, I can examine the various ways that occupational taint and stigma affect applicant’s pre-employment behaviors. Proposition two suggests that individuals considering prison work engage a set of

imaginaries, which pre-treat the dirty job. Pre-treatment neutralizes the threat of prison work and transforms it from a job they may well not consider, into a viable career choice. As part of this process, potential employees may engage tactics that shift the outsider's gaze from negative aspects of the job to work activities that have a positive social value.

***Proposition 2)** The high moral taint and stigma of US prison work compels the work to be cleansed or pre-treated for individuals to consider a correctional career.*

While making a career or a job choice rarely occurs without a good deal of consideration, the need to pre-treat a potential employment opportunity can be understood as an individual or collective activity additional to the basic considerations job seekers make when looking for work such as pay, vacation time, overtime, benefits, length of commute, and so on.

Subjects revealed that pre-treating occurs at the individual level, as they address the concerns of family, friends, and perhaps romantic partners who view prison work as dangerous and violent, posing unnecessary risks for their loved one. I asked, “were your family and friends concerned when you told them that you were going to put in an application at the prison?” And almost uniformly correctional officers revealed that people around them were concerned, particularly about prisons being morally and socially dirty.

*My mother and my grandmother were both like [Andrew], I can't imagine you doing that because I don't see you hurting a fly. Why would you even think about doing such a rough type of job like that?*

In this first case the correctional officer neutralized the threat of correctional work by linking it to previous work that he had done at another total institution, a mental hospital. The officer replied saying,

*Well you know, I've dealt with people at state hospitals and well after I really started knowing what it was I was getting into I started seeing similar responsibilities. It really wasn't that hard for me to even try to consider still staying with it.*

And another officer neutralizes the ways his family stigmatized prison work by reframing

the work in a positive light, as a form of service to society that is driven by his faith. I again asked if family and friends had been concerned.

*Particularly my kids. I have 3 adult kids. They are still puzzled about how and why I made this decision, and how I ended up here where I am. Some of them think it's dangerous and some just don't agree with it. Basically for me, I'm a people person. I'm a Christian man. The less fortunate and needy of our society appeals to me in terms of being able to give something back.*

While some neutralize the threat and suggest that their friends and family are less concerned now that they have been in the job for a while, much like his peers, suggests that these concerns do not necessarily lessen over time. Here the officer engages an ideological tactic which again attempts to shift the focus to a cleaner aspect of prison work, here public safety.

*Family and friends, it hasn't changed much. When you talk about penitentiary and the prison, those are downers for them. My close family, my immediate family, they have anxiety about my safety. I have to talk about that at family gatherings. Of course I listen and talk, but in my mind, I turn around and say, "It's your safety that's ...If some of these folks get out on the street, it's your safety that's going to be in jeopardy. It's important to you that I do my job to keep you safe.*

In addition, some correctional officers are confronted with mass incarceration's disparate application to the poor and people of color, which represents the system's moral dirtiness.

This Black correctional officer reveals a scenario she experienced when she revealed that she was applying for prison work.

*In my circles, that is discussed. It seems that the general attitude of my circle is something's wrong there. Something is just basically wrong, inherently wrong, with the system that has let that happen to society.*

She goes on to tell me that,

*There have been some pretty heavy discussions and very few solutions. That's kind of how it goes for me. I didn't defend the system, but I didn't praise it either.*

Thus in the case of individual-level pre-treating, current correctional employees reveal how they confronted the concerns of friends and family during the application process. COs

discussed how their loved ones understood prisons as violent places and thus physically dirty. Family and friends, by correctional officer accounts, also revealed their understanding of prisons as morally dirty, due to the ways our system of justice is disparately applied to the poor and people of color. In order to assuage the concerns shared by the people they care about, this group of correctional workers attempted to neutralize the threat posed by prison work's pervasive taint and stigma by engaging defense tactics such as reframing the work in a positive light, as necessary for public safety, and in some cases as a spiritual, or faith-based calling to be of service to prisoners as a marginalized population. In addition, many workers simply attempt to normalize the work, representing it as work that is pretty much like other jobs they have had. My respondents thus provide evidence for Proposition 2a,

***Proposition 2a)** Pre-treating will be done at the individual level through negotiations with the self, friends, and family in order to neutralize the threat of prison work.*

that prison work in the context of mass incarceration is so dirty that it requires pre-treating to neutralize the job and make the prison career a viable one for themselves and the people who care about them.

### ***Cleansing Performed by Others***

A second group of my subjects revealed that friends and/or family helped to convince them jump on board and apply for a position as a correctional officer. People familiar to the potential employee and familiar with corrections, can step in to present a pre-treated, neutralized, reframed, and recalibrated version of prison work to potential employees. Essentially, in the case of proposition 2b, current or former prison employees do the work that potential applicants have to engage at the individual level in proposition 2a.

***Proposition 2b)** Pre-treating may also be done by friends and family who have worked, or who currently work, in corrections, in order to presents a clean, neutralized version of prison work to the potential employee.*

Again I asked each of my subjects “were your family and friends concerned when you told them that you were going to put in an application at the prison?” And I received a variety of responses indicating that the dirt of prison work was pre-treated, and neutralized by familiars. For example, one CO said “Growing up, I grew up around it. My mom, my dad, my step-dad, they worked in here. It’s like a family business.” And another talked about how their mom enjoyed prison work, and while she was not necessarily a stage mom for corrections, she certainly did not dissuade.

*My mom kind of like pushed me toward it because she liked it. The only reason why she left was because she moved out of state. She moved to Georgia. They both enjoyed it. They dealt with juveniles, but they were all sex offenders. She was dealing with 18 and under children that were sex offenders. She didn't push me to go into that, but she was just like, "You know, you want something different, try corrections." I ended up liking it.*

Here we see that even the social dirt of working with juvenile sex offenders can be mediated through active cleansing efforts by a trusted familiar, here a mom. And this next case also demonstrates how familiar others may pre-treat the correctional career for the potential correctional employee.

*I had a good idea of what it was going to be cause my step-dad was in corrections in a boys' school in Indiana. So I had an idea of what it was going to be. People behind a door, in a cell, or something like that. You were doing a head count, and trying to keep the peace. That's about what I thought it was.*

In this case my respondent’s step-dad reframed, recalibrated, and normalized prison work into a scenario where physically and socially dirty interactions with prisoners were minimized (“they were behind a door, in a cell, or something”) and transformed into simply counting heads and keeping the peace.

In one unique case, a correctional career was made viable because the applicant had an

identical twin who had worked as a CO. Apparently, his twin had such positive relationships with prisoners that former prisoners would mistake him for his brother on the street, and approach him with good feelings.

*My twin brother has the same kind of personality that I did, that I have, obviously, and he enjoyed corrections. It was kind of odd that he worked in Oldham County and I lived in Oldham County. I lived in Oldham County and worked in the city of Louisville. I saw a lot of inmates that came through KSR with [Phil] and interacted with him. I saw them in the city. They're convicted felons but every single one of them was a positive experience for me, meeting those people, because they thought I was Don. They thought I was my brother.*

So in this case with the twins, we can see that the former correctional officer clearly had engaged methods to reconfigure correctional work into a viable, people-centered, service career and that his actions carried over into powerful street-level encounters with his identical twin. This case represents a perhaps rare, yet powerful way that prison work can be neutralized by familiars who are engaging the work.

Evidence of familiars pre-treating work shows that family and friends not only normalize the work for potential employees, but that they neutralize the social and physical dirt that is part and parcel of prison work. These pretreatment efforts can be powerful for the potential employee as we see that those in corrections can normalize prison work devoted to juvenile sex offenders, and present this type of prison work as enjoyable. These transformations of prison work by familiars thus make it easier for potential employees to consider prison work as a viable career choice.

### ***When Pre-treating is Less Necessary: Economic Hardship***

Evidence of familiars pre-treating work shows that family and friends not only normalize the work for potential employees, but that they neutralize the social and physical dirt that is part and parcel of prison work. These pretreatment efforts can be powerful for the potential

employee as we see that those in corrections can normalize prison work devoted to juvenile sex offenders, and present this type of prison work as enjoyable. These transformations of prison work by familiars thus make it easier for potential employees to consider prison work as a viable career choice.

***Proposition 3)** A landscape of poor economic and employment opportunity may allow potential applicants to forego the pre-employment cleansing process detailed in propositions 2a and 2b.*

I asked current COs what motivated them to choose a career in corrections. I asked, “What did you think about when you were putting in the application? What was your thought process at the time?” Uniformly, responses sounded like this one, which was extremely typical among my subjects,

*Basically, I worked in a factory over in [name of town] for 20 years. They went bankrupt, and shifted doors. Jobs were hard to come by at the time. I just lost mine after 20years. They offered me a chance to come try this job, and I thought I had family at home that needs taken care of, bills to pay. I thought, “You know what, I better try it.*

And this response also suggests that economic necessity may supersede negative views of extremely dirty jobs such as prison work.

*The reason I decided to come to work for the DOC is better employment. I had a fiend of mine what was a judge that got me an interview. He asked me did I want to be a correctional officer? I didn't know what it was so I was like, 'what's that?' He said, 'prison guard.' I said, 'okay, I'll try anything!'*

The poor jobs outlook in rural Kentucky, one of the most poverty-ridden areas in the U.S., makes work as a correctional officer attractive as a stable form of work with good benefits. Respondents told me many stories about how the labor market is poor across Kentucky, and in so doing iterated how hard it was for individuals without a lot of education to get good jobs in Kentucky.

One correctional officer said,

*I was working at [store X] before I came here and I had a kid in 2007 and it just wasn't financially stable enough to provideso I came here.*

And another noted that she had never thought about working in a prison.

*I never really thought about, in my life, I wanted to be a correctional officer, but it's close to home, good benefits, and a place where you can retire.*

And putting it bluntly, a third subject was blunt about local economic conditions, saying simply “There’s no jobs around here.”

While the two previous groups of correctional workers indicated ways that stigma and taint of correctional work were cleansed either at the individual level or by familiars in order to make the job doable, this third group transformed prison work in to a viable career choice simply by reframing the job as well-paid, with benefits they can retire on, and remain in their community. It is important to note here that conditions which make this transformation possible are quite poor as compared to other states. Kentucky, with high levels of rural unemployment, ranks 49<sup>th</sup> out of the 50 states in correctional officer compensation. So, while economic necessity minimizes the need to transform prison work into a clean, stable job prospective applicants still minimize the negative aspects of the job and concentrate on those characteristics of the job, that make it doable, such as its stability and state benefits, including retirement.

#### ***When Pre-treating is Less Necessary: Prison Work as a Career Goal***

The smallest identifiable category of my subjects build narratives suggesting that they have not only always wanted to be a correctional officer, but that it is somehow *in their blood* or their destiny to work in a prison. If we remember the outlier case of the man who had a twin who worked as a CO, we can see that individuals may be motivated by altruism to corrections as a career in order to serve prisoners and lead them back to a better way of life.

However, other forms of altruistic service are present in the data as well. These individuals suggest that their work is a noble form of community service wherein they act as the



only real line of defense between dangerous prisoners and our communities. The following response is typical of this subset of correctional officers,

*In Oklahoma with the CCA. That's where it all started. I've always wanted to wear a uniform. I thought they were always neat. I was destined to wear somebody's uniform, whether it was the military or law enforcement, but I was going to end up wearing somebody's uniform. My dream, as I said, was always to be a police officer in my own home town because as you go about your life in your own home town you pretty much know where all the bad spots were. I'm an individual who doesn't take too fairly to crime and the little vices that happen on the streets, so I wanted to do something about it. I wanted to contribute to my community and take some of these bad guys off the street.*

However, it is important to point out here that this group also falls into the category whereby prison work is pre-treated by others and in so doing, this clean, now altruistic understanding of prison work leads each group to community service, but from varying ideological standpoints regarding the prisoners under their care and supervision.

#### ***When Pre-treating is Less Necessary: Apathetic about Prison Work***

While some individuals clearly have a desire to serve and protect society, and to proudly wear a uniform, the final group seems to pay little heed to this form of altruism. This small subgroup of my respondents have simply paid little attention to anything really about corrections, politics, race, or prisons. In fact none of them had ever heard the term mass incarceration. They see working in a prison as a job just like any other, no big deal, a way to make a paycheck, and unremarkable in any way. That being said, this smaller group of subjects seemed uncomfortable in the interview setting and particularly uncomfortable talking about the details of the job as I proceeded with the interview. This, to me, reveals that they are uncomfortable about their jobs and that this claim to normalcy, may simply be a performance to cover their troubles about the job. This respondent from a prison in Western Kentucky, demonstrates this apathetic attitude, and perhaps ruse, quite clearly. Our discussion reveals no real concerns about the correctional enterprise at all. In fact, the job is good because it is “exciting.”

**Researcher:** Was there any kind of moral or spiritual debate that you had with yourself before you decided to come work at the prison or was it more about getting a paycheck and having a good reliable job?

**Subject:** Just a good job that was exciting and not boring.

**Author:** The whole kind of, I guess morality around it, that didn't come into the equation at all?

**Subject:** Nuh-uh

**Table 4.2 Pre-treatment or Not?**

<b>Categorical Responses for Pre-treatment Need and Individual's Perception of Prison Work</b>		
<b>Response Categories</b>	<b>Pre-Treatment?</b>	<b>Perception of Prison Work</b>
Pre-Treating Done By Applicant	Yes	Dirty
Pre-Treating Performed by Others	Yes	Clean
Economic Hardship Limits Pre-treating	Limited	Varied
Gung-ho for Prison Work	No	Clean
Just a Job	No	None

## **DISCUSSION and CONCLUSION**

The theoretical moves in this chapter, which recognize that extremely dirty work begs pre-treatment, much like a stained garment does before it is put in the washer, may help us to understand the ways pervasive stigma and taint in extremely dirty occupations shape the behaviors of job applicants. My data reveal that individuals are generally cautious about considering a career as a correctional officer. Why? Because prison work in the era of mass incarceration in the US has a bad reputation and is significantly tainted by physical, social, moral, and emotional dirt.

The chapter does not develop additional methods, besides the unique story of one officer's twin having good relationships with prisoners, which has apparently done some of the heavy lifting required to make choosing prison work a suitable opportunity. The chapter instead elaborates on the ways that individuals, families and friends pretreat the taint of prison work with existing cleansing methods such as "ideological tactics," and "moral imaginations," which help all involved in reframing, recalibrating, and normalizing correctional work (Ashforth and Kreiner 1999, 2002, 2014; Roca 2010). Some potential employees normalize the work by comparing it to other jobs that they have had. Others elevate and transform the job, choosing to focus on the humanistic, service-oriented aspects of the job, whether those services are to the public safety, or in faith-driven behaviors to help prisoners find a path to a better life.

An additional set of potential employees makes use of the tactics and imagination crafted by their friends and family who work in corrections. Potential employees, through familiar help, are thus eased into correctional work. This easing represents the efforts of people working in corrections to minimize or even hide the problematic portions of prison work and instead elevate what they understand as prison work's more noble and practical qualities.

My claims about economic necessity obviating the need for pre-treatment might be generalized to other risky or dirty occupations in much the same way. Thus, when an individual's education level is low and when he or she is confronted by a horrendous jobs outlook, adjudicating the moral character of an occupation may take a back seat to getting a paycheck, particularly a stable paycheck, with benefits, in the employ of the state. Thus prison work here may have something in common categorically with joining the military and becoming a cop, both highly tainted, risky jobs where strong organizational subcultures uplift the noble aspects of the job over the immoral, and also elevate the job as necessary for public safety,

despite their physical, social, moral, and emotional taint. Finally, a group of altruists are seen among the subjects, claiming to be dedicated to community service through either securing prisoners and protecting community safety, or conversely dedicated to prisoner rehabilitation. And another small group of respondents simply did not have any qualms with correctional work at all in the application process.

With my empirical findings, I am thus able to make an additional proposition that is not within the scope of this work, but can certainly be explored in future work. I urge additional to take up this task.

***Future Proposition:** Other highly stigmatized and tainted types of work, such as joining the military, drug dealing, sex work, or becoming a police officer, may also require similar pre-treating for prospective employees to fully consider these types of jobs.*

Perhaps more important than these theoretical moves which have been borne out in my data, is the significant reclassification of prison work during the era of US mass incarceration as something much more than physically or socially dirty. When I began to look into the ways we understand prison work, because mass incarceration simply is not doable without a willing workforce, I was shocked to see what I understand as a blatant disregard for the reams of data on the damages of mass incarceration or the volumes written on alternatives to mass incarceration.

The dirty work literature simply did not grasp the vast human toll that our criminal justice practice has had on our American landscape. Millions upon millions of people suffering, many wrongly convicted, erroneous executions, brutal beatings, starvations, suicides, sexual assaults, horrific instances of prisoners losing their mental health due to decades of solitary confinement. How with these damages, can prison work during the era of mass incarceration be simply physically and socially dirty? It is clearly much worse. Prison work in the US, despite all the heavy cleansing efforts of the institutions dedicated to its survival, is a human rights disaster,

inflicting vast and profound harms from coast-to-coast. This is an undeniable social fact.

While I am pleased that the empirical data support my theoretical contribution to the dirty-work literature, I am more sure of the need to reclassify prison work during the era of mass incarceration into the extremely dirty occupations. Earlier typologies presented a neutral, less-than-critical understanding of mass incarceration that did not even begin to speak to the empirical data on its' damages. These damages must be accounted for in any representation of contemporary prison work.

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## CHAPTER 5

### Conclusion

To say that our current system of punishment in the United States, accompanied by its horrific system of mass incarceration, which places our country as the world's leader in the sheer numbers we incarcerate as well as the percentage of our residents that we choose to put behind bars is an understatement of epic proportions. The introduction to this dissertation, made note of at least some of the seemingly never-ending issues that we confront as members of civil society when we look at mass incarceration, everything from the ways incarceration is disparately applied to the poor, to people of color, to the mentally ill, and to transgender citizens, to certainly life without parole and the death penalty applications, solitary confinement *aka* administrative segregation, and the ways LGBT prisoners are treated and completely dehumanized over and above the everyday dehumanization we usually see in our prison. To top it off we have a court that has almost completely evaded hearing prison law cases since the 1980s by following deference doctrine as our current form of prison jurisprudence (*Turner v. Safley*, 1987). Deference, as we know, has lowered the voices of prisoners to a whisper at court and has basically allowed our 50 state departments of corrections to operate as stand-alone fiefdoms establishing their own rules and guidelines along the way. Some states may choose to provide a legitimate path to parole, release, and rehabilitation for prisoners while others choose to keep as many prisoners locked up for as long as they possible can. As the court has structured the autonomy of these state correctional departments, very few of them have been open to outside

researchers attempting to not only find out more about prison practice, but to dig into some of the clearly identified problems that have been presented in the research.

The dissertation has attempted to address some of the very significant issues in our prison policy and practice, and its viability in three separate, but linked empirical efforts. Each chapter was part of a unique data collection that I conducted during my tenure as a graduate student at the University of Michigan, Department of Sociology. The chapters in order clearly represent, chronologically, my growth as a scholar by showing the various tactics that I employed to investigate our carceral state.

The first chapter, the earliest work in my grad school career, sought to reveal a landscape of inequality for LGBT prisoners and prisoners who engage in consensual sex with other prisoners within the MDOC. As chapter two shows, prison officials are remarkably committed to the logic of difference between prison and society, a logic that prevents them from understanding prisons as within a landscape of LGBT rights expansion to include the decriminalization of consensual same-sex sex. Yet, I needed to find a way to demonstrate that this landscape of inequality exists, to demonstrate that prisoners were being forced into environments that are considered a form of torture, for a kiss, or for wearing a hair tie in their hair. Today, our prisons continue to torture LGBT prisoners for these activities that are part of our liberty in broader society.

Revealing this horrific system of punishment, directed at LGBT prisoners, in my mind was a key first step in being able to interrogate the institutional memory, as well as the institutional and organizational logics behind the sexual misconduct rule which today remains in both orthodoxy and practice in each of the fifty states' departments of corrections. I did find out through this process that state correctional department leaders are quite eager to talk to

researchers and share their opinions about their policies and practices. So, this next project developed a research plan and funding to traverse the country in order to hear from the executives who run our state departments of corrections. I wanted to find out why prison officials firmly believe that people like Prisoner Jackson from Chapter Two deserve long terms of administrative segregation for a kiss - a punishment that is widely understood as torture. We can see through my research in chapter three that prison officials really believe that gay sex and transgender identity can truly put the safety and security of the prison at risk. Thus, these beliefs are not only written into rules on the books in our nation's prisons, but are in everyday action from coast-to-coast. Because they seem so logical, the rules avoid any type of regular policy review that might put them in dialog with broader socio-legal change for LGBT citizens. Sexual misconduct rules, their logics, and their torturous punishments go without any significant challenge at court. The judiciary keep prisons at a distance and all prisoners continue to suffer on multiple fronts.

The dissertation attempts to listen to three core prison groups: prisoners, prison executives, and correctional workers. In so doing, it demonstrates three pathways to producing new knowledge in prisons research. Chapter two demonstrates empirically that a landscape of inequality exists for LGBT prisoners in MDOC prison facilities. Chapter three, looks to twenty six prison officials, across twenty three states to help understand the persistence of the sexual misconduct rule as a symptom of inequality for LGBT prisoners in US Prisons. Using complementary perspectives from the sociology of punishment, the sociology of organizations, and field theoretical perspectives, to find out why the sexual misconduct rule is so durable and active in the life of the prison and the minds of prison officials I find that the rule is an

unremarkable, quotidian aspect of daily prison life that has gone without question, all the while causing great harm to prisoners nationwide.

Finally, by looking to a heretofore unexamined aspect of mass incarceration, the prison workforce, chapter five attempts to understand why and how prison work remains a viable career choice during an era when the vast troubles of mass incarceration have come to the fore. The vast damages of prison are well known, woven tightly into our media, television, film, and books. In general, people believe that our prisons are unpleasant, foul places, filled with dangerous people, including the mentally ill, emotionally troubled individuals, violence, and a whole set of unpleasant scenarios that most of us would not want to experience. My experience as a prisoner and as a prisoner can confirm that prisons are less than pleasant places. Through travelling to every prison in Kentucky, I was able to see myriad unpleasant things, and to hear many more unpleasant stories. My respondents revealed that they and their families had heard these stories too. When they thought about applying to work at a prison, they remembered having to find a way to actually go through with filling out the application. Prison work was contaminated, tainted, stigmatized, scary. In this light, they needed to pre-treat the stain, taint, and stigma of prison work in order to make it a viable career choice. The only thing that truly mitigated this pre-treatment process for these potential employees was living where there were very few opportunities for stable employment with benefits. In that case, these employees needed a job more than they need to consider the moral implications of prison work during the era of mass incarceration.



## **Appendix A**

### **Motivating the Kentucky Case**

Simply put, we could not do mass incarceration without a willing prison workforce. While mass incarceration logically implies a rise in the prison workforce (although it could imply a reduction in the worker to prisoner ratio as well), prison workers have not been clearly inserted into the larger definition of mass incarceration, either by academics or advocacy and research groups. This failure to include prison workers in any definition results in a partial picture of our contemporary punishment regime. As the 2006 Vera report noted, the effects of incarceration reverberate through society not only by its effects upon prisoners but also by its impacts on prison workers (Gibbons and Katzenbach 2006). Moreover, prison workers are front-line workers (Maynard-Moody and Musheno 2000) and street-level bureaucrats (Lipsky 1969) who have extraordinary levels of discretion to affect the experience of incarceration for prisoners and enact the U.S. punishment regime on the ground.<sup>14</sup>

Moving us toward these goals, the Kentucky case marshals a new definition of mass incarceration to motivate new empirical investigations and theoretical interrogations of U.S. prisons and punishment. Previous works have understood the phenomena as simply an unprecedented rise in the number of individuals we incarcerate (Clear and Frost 2013; Gottschalk 2006; Petersilia 2003; Pew Research Center; Travis 2000; Visher 2007; Western

<sup>14</sup> “Street-level bureaucrats are identified as people employed by government who: are constantly called upon to interact with citizens in the regular course of their jobs; have significant independence in job decision-making; and potentially have extensive impact on the lives of their clients.” In addition, street-level bureaucrats are “relatively strongly affected by three conditions: relative unavailability of resources, both personal and organizational; existence of clear physical and/or psychological threat; and ambiguous, contradictory and in some ways unattainable role expectations.” (Lipsky 1969: 4).

2006) and/or a prison-building boom (Garland 2000; Gilmore 2007; Simon 2000, 2007). Yet, mass incarceration also represents an unprecedented rise in our prison workforce. Over a twenty-one year period, from 1984 to 2005, the U.S. saw a *three-hundred-fifteen percent* increase in prison workers (Bureau of Justice Statistics 2006). With this statistic, I propose a critical redefinition of mass incarceration as not only a building boom and a heretofore unseen rise in prisoners to world-leading levels but also as an equally sharp rise in the number of individuals willing to do prison work.

Understanding prison workers as an absolutely integral, yet highly understudied, component of mass incarceration motivates the dissertation's primary research question: How do prison workers understand their work? Or to bring a bit more nuance, how do these individuals understand and negotiate prison work, the prison environment, prisoners, and their part in "punishment" and "rehabilitation" during this era of mass incarceration? How do they explain their understandings? Following, what kind of negotiations and ways of thinking are required to motivate and legitimize the work, from early thoughts about applying for a prison job to later thoughts about solidifying the work into a long-term career? The responses to these central questions may help us to better understand (a) individual and group decisions to enter the work world of prisons; (b) workers' perspectives that refute or support the legitimacy of incarceration as a form of punishment; and (c) workers' decisions to commit to or turn away from prison work as a long-term career, as well as how rational, moral-ethical, emotional, and membership-driven reasonings contour these attitudes and decisions.

Through over one-hundred semi-structured interviews with Kentucky Correctional Department (KYDOC) workers conducted near the height of mass incarceration<sup>15</sup>, this project

seeks to reach beyond anecdote, popular culture, and dominant research trends to understand the varied meanings of prison work among state-level correctional workers, as representatives of correctional policy and practice on the ground. These workers include state-level administrators, prison wardens, and correctional officers, commonly known as guards, in all twelve of Kentucky's prisons, at all security levels, across men's and women's prisons, in each region of the state.

Why Kentucky? During the first decade of the 21<sup>st</sup> century, Kentucky's prison population rose faster than that of any other state, jumping by fifty percent to over 22,000 prisoners (West and Sabol 2008). Research found that this steep rise in the prisoner population resulted from a "series of tough on crime measures that began in 1974 with passage of the first version of the state's 'persistent felon law,'" essentially a *three-strikes* law which was "cut to two in 1976" and supplemented by moves in the 1990s that "elevated misdemeanors to felonies, reclassified offenses as higher level felonies and enhanced the penalties for a variety of crimes" (Pew 2009: 15). Pew goes on to note that "From 1987 to 2007, the state's imprisonment rate grew nearly 250 percent, from well below the national average...to slightly above the national average," but more importantly that while Kentucky was leading the pack in putting people behind bars, it failed to keep up with aggregate national decreases in crime rates (Pew 2009: 15). Quite simply, locking up more people in Kentucky was doing little to reduce crime.

This rise in Kentucky's prison population was seen as a failure to turn to cheaper community-based alternatives to address crime as well as technical probation and parole rules

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<sup>15</sup> See *Prisoners in 2013*, U.S. Department of Justice, Bureau of Justice Statistics, which notes that the total number of prisoners held in state and federal prisons peaked at 1,615,500 in 2009. While prisoner counts decreased from 2010 to 2012, 2013 represents the first increase in prisoners since that time. Accordingly, BJS in a September 2014 report notes that the U.S. had a total of 1,574,700 prisoners in state and federal prisons at the end of 2013, a 2.5% decrease in total prisoners since the peak of mass incarceration in 2009.

violations. As a “jailer” quoted in the Pew Study notes, “Nobody’s willing to change the laws because everybody wants zero tolerance on everything. But, there’s something [that’s] going to have to give” (Pew 2009: 15). An unwillingness to change correctional policy and practice in the 2000s, contributed to a \$1.3 billion revenue shortfall in the commonwealth as the correctional budget grew by 338 percent over the last twenty years (Pew 2009: 16).

Highly punitive punishment regimes were nothing new in Kentucky.<sup>16</sup> However, extreme budget shortfalls as a result of prison spending, which threatened a broad range of state departments and programs, coupled with the fact that incarceration was not significantly reducing the crime rate, compelled the state to reconsider their traditionally punitive correctional policy and practice<sup>17</sup>. In 2011, a bi-partisan coalition of prison reformers came together to pass House Bill 463, which turned the commonwealth, including the Kentucky Department of Corrections (KYDOC), toward a new way of doing corrections. Focused on treating the root or fundamental cause of criminal behaviors among Kentucky’s citizens through programs both within prisons as well as in the community, the KYDOC changed direction and refocused on their core mission<sup>18</sup> to not only protect the public, but also to follow its legislative mandate, here HB463, to furnish prisoners with the tools they need to successfully reenter society and desist from criminal behavior.

For instance, the number of spots for inmate substance abuse treatment “jumped from 1,430 in 2007 to 6,000” in 2013 (Tilley 2013). Interestingly, the KYDOC has simultaneously

<sup>16</sup> Kentucky has a long history of extreme state violence. For decades the Kentucky State Penitentiary (KSP) at Eddyville was one of the most violent prisons in the United States. Legend claims that its’ walls oozed with blood. KSP executed the most people in one day in U.S. history with 7 executed on July 13, 1928. In addition Kentucky was the site of the last public execution in the U.S. on August 14, 1936, when nearly 20,000 people attended the hanging of Rainey Bethea in Owensboro (DeathPenaltyInfo.Org).

<sup>17</sup> “Punitive prisons which treat prisoners, and possibly prison staff, unfairly and with little or no respect add to human suffering and do not address either the problem of crime or the problem of public fear” (Liebling 2006: 422).

<sup>18</sup> The Mission of the KYDOC is “To protect the citizens of the Commonwealth and to provide a safe, secure and humane environment for staff and offenders in carrying out the mandates of the legislative and judicial processes; and, to provide opportunities for offenders to acquire skills which facilitate non-criminal behavior.”

recommitted the department to serving the educational, psycho-social, and recreational needs of prisoners through progressive (state-funded) rather than neoliberal (volunteer based) models of prison programming. An additional house bill (HB 164) passed in 2009 put all educational and vocational programs under the purview of the KYDOC. A portion of this legislative measure shifted educational costs from prisoners to the KYDOC, and the results have been dramatic. From 2010 to 2013, general education diplomas (GEDs) awarded increased by 171 percent, employability certificates in over 46 trades increased by 232 percent, and industry recognized certificates increased by 330 percent. In addition, the commonwealth's recidivism rate dropped to its lowest rate in over ten years, and the prison population has dropped by over ten percent since implementation of the HB463. Together, even with the increased spending on programs and education, the commonwealth is expected to save more than \$400 million by 2020 (Tilley 2013).

These new laws and policies represent collective renegotiations of mass incarceration and as such are significant political, social, economic, and cultural interventions that attempt to alter our collective consciousness about prisons and punishment during the era of mass incarceration. In Kentucky, these changes illustrate both institutional and moral entrepreneurship designed to dislodge old notions of public safety that provided scant social utility (Becker 1963; Fligstein and McAdam 2011). Through the inclusion of common sense prison statistics in society's definition of public safety, primarily that the vast majority of prisoners will all come back home and that a successful return is difficult for former prisoners to achieve (Harding, Morenoff and Herbert 2013; Morenoff and Harding 2014; Petersilia 2003; Travis 2005; Visher 2007), we move society away from the assumption that there is a real benefit in locking people up and throwing away the key and show (despite the political distaste in doing so) that investing in those

who have trespassed current social norms and values by breaking our criminal law is a worthy investment of our collective resources and effort.

While the commonwealth will save money with these changes to correctional policy and practice, it is also important to recognize these changes as a form collective resistance<sup>19</sup> and social movement against the punitive logics of mass incarceration that brought Kentucky to the brink of social and economic hard times. This ontological shift in orthodoxy and praxis away from zero-tolerance policies, with their focus upon warehousing prisoners without adequate programming resources and without realistic hopes to somehow and some way return successfully to society, represents not only an instrumental shift driven by budget concerns but also a fundamental reconfiguration of societal views on crime and punishment. Together, the passage and implementation of these bills suggest a qualitative regression discontinuity model, or social experiment, that allows researchers interested in the translation of policy into practice, and the ways organizational and institutional ideology translates on the ground to attitudes and beliefs to ask, (a) Who are these people we call criminals and prisoners? (b) What are our collective responsibilities to them? (c) Who are the people we ask to work in prisons and what are their goals? and, (d) what are the individual and/or collective characteristics that are correlated with answers to questions a, b, and c.

<sup>19</sup> “Education in prison creates social change. It does so through sharing knowledge. It works on the identity, dignity, possibility, humanity, history and individuality of the prisoners living their hours and days behind walls and bars. What kind of social change does it generate? Sure, recidivism rates are affected; poverty rates and job opportunities, too. Self-worth is transformed, as well as civic identity. But the real social change [...] occurring is one of resistance to injustice. It is resistance to the idea that human beings who break laws deserve to live behind bars and walls and barbed wire for a fifth, fourth, third, half or all of their lives. It is resistance to the idea that human beings who break laws are forever blemished and unworthy of the benefits society offers, like work, education, and political activity. It is resistance to the idea human beings who break laws can never again be trusted to live completely free of observation. Probation, parole and the "employment box" should follow them wherever they go. It is resistance to the racialization of mass incarceration, providing education to populations deprived of resources in the free world. It is resistance to a culture of mass incarceration and the prison industrial complex that has so lucratively developed from it.” (Watts 2015).

Despite these collective movements toward a new shape of punishment in U.S. society, as seen in the Kentucky case, not all is rosy in the Commonwealth. While the KYDOC has invested significant resources to improve outcomes and reduce spending in the long-term, its correctional officers, those who have daily, high-risk interactions with prisoners are not paid according to industry standards. Kentucky ranks 49<sup>th</sup> out of 50 states in correctional officer compensation in both mean hourly wage and annual salary. Only Mississippi correctional officers earn less than Kentucky correctional officers (CorrectionalOfficerEdu.Org).

Preliminary interviews with KYDOC workers reveal significant frustration and anger with KYDOC officials, politicians, and the public alike for the continued devaluation of their work. KYDOC staff members see low compensation as representative of the stigma and taint associated with front-line prison work. They also understand their salary to be in direct conversation, and perhaps competition, with resources devoted to prisoners, with some KYDOC workers claiming too big a slice of the pie goes to deviant law-breakers. The context of conflict between prisoners and prison workers creates an abrasion between the KYDOC mission and its application on the ground. Finally, the continued low pay of KYDOC workers has resulted in large workforce shortfalls, high turnover rates, increased mandatory overtime, and what many workers view as dangerous working conditions. Together, the conditions of confinement for KYDOC prison workers vs. the conditions of confinement for KYDOC prisoners present a context of organizational and institutional anomie that is not so quietly affecting the ways prison workers negotiate their value to society, their role in the organizational mission of the KYDOC, and who they are in comparison to other individuals and groups both inside and outside prison walls.

## RESEARCH ON PRISON STAFF

Quantitative survey methodology has attempted to identify, parse and order the social forces and characteristics that shape correctional workers' understandings of prisons, prisoners, and punishment. Studies have examined how workers' attitudes and meanings are correlated with individual level characteristics such as race and gender, finding that correctional officers from racial minority groups are more positive and understanding of prisoners than their white peers (Jurik 1985) and that gender plays less of a role than local culture and organizational disposition (in the manner of field theory) in correctional attitudes (Hussemann and Page 2011).

Research has also examined the ways experiential employment factors shape attitudes. Farkas (1999) finds that front-line correctional officers do not generally share the punitive attitudes associated with the politics of mass incarceration. Other work builds on this finding by examining attitudes of state correctional executives, finding that leaders who work their way up through entry-level jobs have less punitive attitudes than leaders who start correctional careers as managers who experience less contact than their peer who have performed front-line work (Borchert 2015c). In order to identify how local contextual factors interact with attitudes within shared job roles, here as correctional officers, comparative analysis between California and Minnesota COs has been conducted. Findings indicate that attitudes are shared at the state-level, within job roles, which reflect embedded state-level characteristics, and show that California officers have more punitive attitudes than those in Minnesota. Yet underlying these differences each group supports "basic" prisoner rehabilitation as long as it does not interfere with workplace efficiency (Lerman and Page 2012).

Qualitative researchers have attempted to negotiate the difference between organizational mission on the books and organizational mission in action, finding that while California parole



agents support the rehabilitation and reformation of prisoners, these aims are not provided sufficient resources, thus putting the onus on individual parolees to fix themselves and to bear the brunt of their failures through re-incarceration (Lynch 1998; 2000). Findings, from a UK study found that prisons which warehouse or simply incapacitate inmates, without rehabilitation, treat both prisoners and prison employees poorly and “do not address the problem of crime or public fear” thus departing from their organizational commitments to serve the public and to rehabilitate prisoners (Liebling 2006: 422).

This path of inquiry has set out to empirically test the primary theoretical frameworks of mass incarceration’s development and persistence. In particular, work has set out to identify and measure *cultures of control* (Garland 2001) and *the new penology* (Feeley and Simon 1992) at the case level.<sup>20</sup> Analytic frames here suggest that theories of mass incarceration represent ideal-typical heuristics to be used for comparative examinations to uncover variance, similarity, as well as emerging trends in correctional orthodoxy and praxis among and between sets of prisons. Garland (2004) amplifies this understanding in other works, saying that the *culture of control* represents mass incarceration as an outcome, and does less to explain emergent themes and ongoing processes of contestation in correctional orthodoxy and praxis that inhabit the penal field.

<sup>20</sup> The Culture of Control (Garland 2001) represents the guiding logics of mass incarceration. Developing from the wars on crime and drugs, it set out to order, classify, manage, warehouse, and incapacitate law-breakers in prisons. Turning away from rehabilitation, and its varied forms, the culture of control is pure punishment and helps to explain how we became the world’s leading incarcerator. The New Penology (Feeley and Simon 1992), although it precedes Garland, operationalizes the culture of control, by revealing the actuarial risk models and scoring mechanisms that have been, and continue to be, understood as true, objective and impartial indicators of who individual prisoners are and what we can logically expect from them. Thus, these scores place prisoners into “punishment and surveillance” tracks that shape the types of rehabilitative resources, if any, they receive during their incarceration. It is these risk and classification models that have resulted in prisoners spending decades in administrative segregation and solitary confinement, a widely recognized form of torture. Finally, *hyper-incarceration* a theoretical frame developed by Loic Wacquant frame mass incarceration as a set of institutions as “ghettos and waste management repositories” for poor, men of color, clearly goes untested with the release of Bureau of Justice Statistics yearly reports. However, it has been extended and operationalized at the community level, most recently in Miller 2015.

Research has set out to operationalize the ways that prisoner classification through actuarial risk and hazard modeling designed to classify, score, and control the treatment of individual prisoners and parolees, are used in actual correctional practice (Feeley and Simon 1992; Garland 2001; Hannah-Moffat 1999; Lynch 1998, 2000; Simon 1988). This work also examines traditional questions of structure *versus* agency, by trying to find out if workers are taking top-down instruction or developing independent, autonomous strategies to do their work. Research has found that California parole agents follow a traditional law enforcement model based in autonomy and “intuitive” methods to monitor individual parolees and buck the official calculated risk models suggested by parole agent managers, the state, and the *new penology* (Lynch 1998).

An important line of work asks how front-line workers “construct” meanings about rehabilitation in a carceral environment where prisoners are tasked with crucial community-level responsibilities. Research here has determined, by looking at California Prison Fire Camps, that punishment practice is “messy” and does not always easily conform to dominant themes of punishment and rehabilitation, that individuals can be simultaneously labeled prisoners and heroes (firefighters), and that rehabilitation can be shaped by through neoliberal tendencies to reduce government spending by relying on ever lower wages, such as using prisoners to perform what would otherwise be highly remunerated work (Goodman 2012).

Building upon this demonstrated variance in correctional orthodoxy and praxis, punishment theorists have suggested an “agonistic model of penal development” of ongoing struggles among state and institutional actors, and advocacy to promote punitive or rehabilitative frameworks for corrections. It is these major ideological undercurrents, which regularly

challenge the supposedly linear development of penal practices and result in emergent correctional forms (Goodman, Page, and Phelps 2015).

An additional line of qualitative inquiry, based primarily in the UK, has used the tools of cultural sociology to better understand the prison as a total institution, with unique meanings and understandings. Researchers found that relationships between correctional officers and prisoners are framed in demonstrable binary oppositions that shape the “prison’s moral and social climate” (Liebling 2011: 484) and that “prison is a special and complex moral environment [wherein] multiple populations are subject to immoral practices as well as authors of them” (Liebling, Elliot and Arnold 2011: 176).

Lastly, research has attempted to understand how prison workers’ understand due process and prisoners’ rights, in order to examine the ways citizenship, constitutional rights and legal consciousness are understood among prisoners. Interviews with California prisons employees reveal an appreciation for due process as seen in the inmate grievance system. Staff claim that due process gives prisoners, as people who matter, a voice within the prison while simultaneously revealing “counter-themes of hostility toward prisoners who exercise their rights, the perception that rights have gone too far and the view that the operational realities of running a prison can trump prisoner rights” (Calavita and Jenness 2015: 183).

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