THE POLITICAL ECONOMY OF PRISONER VOICE AND COLLECTIVE ACTION IN THE US PRISON SYSTEM

by

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A Dissertation
Submitted to the Graduate Faculty of George Mason University in Partial Fulfillment of The Requirements for the Degree of Doctor of Philosophy Economics

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April 27, 2021

Date: Spring Semester 2021

George Mason University
Fairfax, VA
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DEDICATION

This dissertation is dedicated to the women in my family who model success and ambition in all aspects of their lives. To my mother, Sally Woltz, my aunts, Joan Williams, Diane Schey, Mary Simek, and Debbie Smith, my cousins, Cassie Schey-Wolsink, Lauren Simek, Monica Diamond, and Megan Dunn, and especially my grandmother, Phyllis Dunn, who obtained her master’s degree in education while working full-time and raising six children.
ACKNOWLEDGEMENTS

I would like to thank my partner, Dillon Tauzin, with whom I have grown in my love for economics, passion for teaching, and understanding of what it means to love and support someone. I would like to thank my family, Sally Woltz, Gene Woltz, and Connor Woltz, who have supported me in pursuing my passion for economics. Thank you to my extended family who continuously encourage me and model success and ambition, especially my Aunt Joan Williams and Uncle Bob Williams to whom I can always turn for support.

I would like to thank my chair, Peter J. Boettke, who recognized my potential while I was still an undergraduate student. Thank you for supporting me, challenging me, and giving me space to grow as an economist, colleague, and teacher. Thank you also to Jayme Lemke and Chris Coyne for serving on my committee and providing invaluable feedback regarding the development of these papers and my career.

Thank you also to the faculty and staff at the Mercatus Center and the F.A. Hayek Program for the Advanced Study of Philosophy, Politics, and Economics: Stefanie Haeffele, Virgil Storr, Ginny Choi, Arielle White, Karla Moran, and Giorgio Castiglia. I want to especially thank Bobbi Herzberg for her invaluable advice and feedback regarding my research, teaching, and career.

Thank you to the Mercatus Center for its financial support. Thank you also to the Institute for Humane Studies for its financial support during my graduate degree as well as for the programming I have participated in since I was an undergraduate that has helped affirm my passion for economics and the study of liberty. Thank you also to the Bradley Institute and Weaver Fellowship for their financial support.

Thank you especially to my friends, the strong women in my life who reminded me of my strengths when I had forgotten them: Brittany Schiboula, Annie Ortiz, and Samantha Evelyn.

Finally, thank you to the Fenwick library staff for their help in formatting this dissertation.
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Conclusion

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Introduction

The Role of Association in Democracy

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Associational Life After Incarceration

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ABSTRACT

THE POLITICAL ECONOMY OF PRISONER VOICE AND COLLECTIVE ACTION IN THE US PRISON SYSTEM

Kaitlyn Woltz, Ph.D.
George Mason University, 2021
Dissertation Director: Dr. Peter J. Boettke

This dissertation examines understudied aspects of the criminal justice system in the US: the role of prisoner voice in that system and the impact of the growing system of incarceration on US democracy. It follows the Ostromian tradition of recognizing the ability of those constrained by institutions to change them. As part of this dissertation, I constructed a unique database on prison journalism and conducted archival work to access US prison newspapers. Chapter 1 examines the role of prisoner voice in the process of criminal justice reform. I leverage the economics of bureaucracy and analytical narrative methodology to examine the influence of avenues for prisoner voice on criminal justice reform. I find that prisoner voice—through the avenues of prison journalism and prisoner litigation—serves as an information channel in state criminal justice bureaucracies, holding bureaucrats accountable to their superiors. I conclude that prison journalism is the only avenue for prisoner voice that influences reform in ways
that align with voters’ interests. Chapter 2 examines the function of prison journalism in US prisons. I leverage the economics of bureaucracy and analytical narrative methodology to explain why prison wardens allow prisoners to produce newspapers and circulate them outside the prison. I find that prison newspapers served as information channels that helped wardens to monitor their subordinates and protected them from being used as political scapegoats by their superiors in the criminal justice bureaucracy. Chapter 3 examines the effect of the US system of mass incarceration on democracy. I leverage Tocquevillian political economy along with an Ostromian emphasis on democratic institutions of governance. Through a survey of the literature on the collateral costs of incarceration, I conclude that mass incarceration erodes the associational life of former prisoners, undermining democracy. This dissertation has implications for efforts to reform the US criminal justice system. Any reform efforts need to consider the incentives of those working within the system. They also need to leverage prisoner voice as a source of local knowledge about the incentives of officials and those incarcerated. In this way, prisoner voice may provide a guide for effective reforms. Avenues for prisoner voice may also serve as a possible means to overcome the erosion of associational life that results from incarceration.
THE ROLE OF PRISONER VOICE IN CRIMINAL JUSTICE REFORM

This paper examines the role of prisoner voice in criminal justice reform in the US. Previous research has attributed reform of criminal justice institutions to either political elites or the public. This research has not considered the role of prisoner voice in influencing reform. This paper fills that gap. I argue that prisoner voice—through the avenues of prison journalism and prisoner litigation—serves as an information channel in state criminal justice bureaucracies, holding bureaucrats accountable to their superiors. I conclude that prison journalism is the only avenue for prisoner voice that influences reform in ways that aligns with voters’ interests. Prisoner litigation and prison riots result in reform that drives the growth of state prison systems and loss of prisoner privileges.

Introduction

Following the murder of George Floyd in May 2020, protestors began calling for criminal justice reforms ranging from ending pre-trial jailing to prison abolition (Herndon, 2020). Calls for criminal justice reform are not new. Prison reformers have preached the failure of prisons since the nineteenth century, only a few decades after states began building prisons (Wines, 1870; Wines & Dwight, 1867). More recent efforts at structural criminal justice reform that aimed to reduce the racially based inequities perpetuated by the criminal justice system have instead served to expand carceral institutions and exacerbate racial disparities (Gottschalk, 2006; Murakawa, 2014).
Previous research on criminal justice reform in the US argues that criminal justice reform is driven by political elites who use reform efforts to serve their interests, which include racist preferences, (Alexander, 2012; Fairchild, 1981; Gottschalk, 2006; Murakawa, 2014; Stolz, 2002; Yates & Fording, 2005) or that public opinion drives criminal justice policies (Brown, 2012; Enns, 2016, 2014; Jacobs & Carmichael, 2001; Nicholson et al., 2009). These hypotheses cannot explain the failure of reforms demanded by the public to address racial disparities and reduce discrimination. The history of US prisons has been characterized by unintended consequences of the policies implemented by reformers. Attempts to reduce and humanize the US prison system have led to its growth in both size and severity (Murakawa, 2014). Suggestions for successful future reforms include implementing structural reforms at the state and county level (Pfaff 2016, 2017), utilizing well-designed private prisons (Pfaff, 2017; Tabarrok, 2003), placing unified pressure by special interests and the public on federal policy makers (Gottschalk, 2006), and implementing reforms outside the state apparatus (Murukawa, 2014).

None of these works explore how to align the incentives of criminal justice officials with those of voters. I leverage the economics of bureaucracy to identify the incentives faced by criminal justice bureaucrats with regard to implementing reforms. For criminal justice reforms to be effective, they need to consider the incentives of criminal justice bureaucrats. Effective criminal justice reforms will be those that fit with the interests of individual criminal justice bureaucrats. The interests of criminal justice bureaucrats, however, often conflict with the changes desired by reformers.
Can avenues for prisoner voice serve to align the interests of criminal justice bureaucrats and voters? I argue that prisoner voice—through the avenues of prison journalism and prisoner litigation—serves as an information channel in state criminal justice bureaucracies, holding bureaucrats accountable to their superiors. I contribute to the literature on criminal justice reform by identifying the principal-agent problem as the explanation for the failure of previous reform efforts. I also bridge the gap between the political elite strand of the literature and the public opinion strand of the literature. Insofar as political elites are monitored by the public, public opinion drives criminal justice policies; insofar as political elites are not monitored, they drive criminal justice policies. I also contribute to the economics of bureaucracy literature by applying the theory to the criminal justice context.

The paper proceeds as follows: The next section presents a theory of state criminal justice bureaucracies that identifies prisoner voice avenues as potential information channels. I also generate predictions from my theory of state criminal justice bureaucracies to test whether prisoner voice serves as an information channel and influences effective reforms by aligning the interests of criminal justice bureaucrats and voters. Section three provides evidence to examine if prison journalism, prisoner litigation, and prison riots serve as information channels to hold criminal justice officials accountable and influence reform. This evidence, in part, comes from a unique dataset I compiled on prison newspapers in the US from 1800 to the present along with qualitative data coming from prisoner newspapers. The final section concludes.
Theory of State Criminal Justice Bureaucracy

Bureaucracies consist of a nested set of superior-subordinate relationships along which instructions from the ultimate sovereign are communicated and implemented (Breton & Wintrobe 1975, 1982; Tullock, 1965; Wintrobe 1976). Because state criminal justice systems are situated within democratic governance structures, the voters as a unit are the ultimate sovereign of the criminal justice bureaucracy (Tullock, 1965). The criminal justice bureaucracy serves to facilitate punishments for crimes.

Voters have three direct subordinates in state criminal justice systems: (1) the judges who sentence convicts, (2) the legislators who decide the budget for the state criminal justice bureaucracy and criminal legislation, and (3) the governor who oversees the state criminal justice bureaucracy. The judges and legislators have no direct subordinates within the criminal justice system. The governor, in contrast, oversees the state department of corrections. The governor’s direct subordinates in the department of correction are the parole board members who have no subordinates themselves and the commissioner, all of whom the governor appoints. The commissioner oversees the operation of the state prison system.

Prison wardens serve as the commissioner’s executive officer at each prison. They oversee the operation of the prison according to the standards and policies set by the commissioner and governor. The warden directs the prison officials working under him, from assistant warden to the correctional and treatment officers who constitute the lowest members of the state criminal justice bureaucracy. Correctional and treatment officers manage the daily lives of incarcerated people. The correctional officers oversee the
movement of prisoners within the prison, while the treatment officers facilitate the rehabilitative, vocational, and educational programming. Depending on the prison, correctional officers may also serve as treatment officers. These relationships are shown in the following organizational chart.

Figure 1: Organizational Chart of State Criminal Justice Bureaucracies

Each state criminal justice system is nested within the federal government system.

At the federal level, voters elect the US president and members of congress. The
president then appoints federal judges to any open positions in the federal court circuits. Congress confirms these appointments until all federal judicial seats are filled. The federal judges, then, oversee behavior by federal officials and state officials to ensure that their behavior is constitutional. State criminal justice systems may have to enforce federal criminal laws established by federal legislators. These relationships are shown in the following organizational chart.

![Organizational Chart of Federal Government Oversight of State Criminal Justice Bureaucracies](image)

Criminal justice bureaucrats, like all bureaucrats, are budget maximizers, maximizing their power along with their budgets (Brenton & Wintrobe, 1975, 1982; Holcombe, 2016; Niskanen, 1968). Each oversees her subordinate’s compliance with her interests, her direct superior’s interests, and voters’ interests. At every level in the bureaucracy, a bureaucrat has the choice to either pursue the interests of her sovereign or
her own interests (in conflict with that of the sovereign). A bureaucrat will prefer to pursue her own interests in the absence of monitoring.

The degree to which criminal justice bureaucrats comply with their direct superior’s interests and, ultimately, voters’ interests depend on the degree to which their superior monitors them and voters monitor the operation of the state criminal justice system (Brenton & Wintrobe, 1982; Tullock, 1965; Wintrobe, 1976). For this reason, each relationship in a bureaucracy can be represented by a simple principal-agent game. In the game, there are two participants: a superior and a subordinate. The superior moves first and chooses to monitor her subordinate or not. The subordinate chooses to either comply with his superior’s desires or defect and pursue his own interests. This is represented in the following game tree.
Monitoring by the superior aligns her subordinate’s incentives with her own. When there is perfect monitoring at every level, a bureaucrat’s interests align with those of her superior and her superior’s interests align with those of voters. In the absence of monitoring, her subordinate defects. In other words, when superiors do not monitor their subordinate, subordinates will not pursue the superior’s interests. Similarly, when voters do not monitor the operation of state prison systems, their interests with regard to punishment will not be pursued.
In bureaucracies, the superior’s ability to monitor her subordinates depends on the type of information channels in place. There are two main types of information channels: internal and external. Internal information channels operate within the bureaucratic structure. Subordinates communicate information to their superiors along internal information channels. Subordinates control what information is communicated along these channels, making them less reliable sources of information for the superior. In contrast, external information channels, such as the news media, operate outside of the bureaucracy. They are often outside the influence of subordinates. For this reason, these outside information channels can serve as a check for the information communicated along internal information channels. When external information channels exist, subordinates will communicate more accurate information because superiors will compare the information communicated by internal and external information channels.

Historically, external information channels in state criminal justice systems have been stifled by state governments. Press access to prisons is severely limited. When the press is allowed into prisons, wardens control journalists’ access to prisoners and different areas of the prison. Journalists often only see what the warden wants them to see. Prisoners’ communication with the press is also limited by the censorship of prisoner mail and the threat of punishment. Because of the absence of external information channels, voters receive little to no information about the functioning of their local prisons. Internal information channels are often not set up to communicate with voters. The flow of information from these internal information channels stops with the governor, judges, and legislators.
Because superiors cannot perfectly monitor their subordinates’ behavior, bureaucrats have opportunities to pursue their interests at the expense of their superiors’, especially when they control the information that their sovereign receives about their activities (Breton & Wintrobe, 1975; Tullock, 1965). Superiors want high quality information about the actions of their subordinates to minimize opportunistic behavior by their subordinates. Subordinates, in contrast, want only favorable information about them communicated to their superior (Tullock, 1965). For this reason, establishing good quality information channels is important for superiors because their subordinates are liable to manipulate the information sovereigns receive. A superior may rely on her subordinate’s subordinate to communicate accurate information about her direct subordinate’s behavior. The subordinate in this case will provide information to his superior’s superior because it increases his likelihood for promotion (Tullock, 1965). In the US, avenues for prisoner voice may provide such information channels. Avenues for prisoner voice may hold prison officials accountable to their superiors by increasing the degree to which their superiors monitor them. Because of this, prison officials will want to suppress prisoner voice. This leads to the first prediction about the role of prisoner voice in criminal justice reform.

*Prediction 1: If avenues for prisoner voice serve as internal information channels, then they will provide information about the subordinates of the bureaucrat that formally establishes them.*

Because subordinates only want their superiors to receive positive information about their behavior, we expect prison officials to take steps to gain control of these information
channels. This leads to the second prediction about the role of prisoner voice in the criminal justice reform.

*Prediction 2: If avenues for prisoner voice serve as internal information channels, then subordinates will try to gain control of prisoner voice avenues to control the information they communicate.*

When the superior discovers that her subordinates are defecting, she will engage in institutional reform to improve the rate of compliance by her subordinates. She can either change the rewards for cooperation and sanctions for defecting (Tullock, 1965; Wintrobe, 1976), or she can improve the information channels by which she monitors her subordinates (Breton & Wintrobe, 1975). In short, bureaucrats will undertake institutional reform only to the extent that it furthers their interests. This leads to the third prediction about the role of prisoner voice in criminal justice reform.

*Prediction 3: If superiors find that their subordinates are defecting, they will institute reforms to ensure subordinates comply with their directions.*

Whether these reforms serve voters’ interests depends on if voters have access to internal information channels. When avenues for prisoner voice serve as information channels for voters, we expect reforms to align with voters’ interests. This leads to the final prediction about the role of prisoner voice in criminal justice reform.

*Prediction 4: Reforms instituted in response to information communicated by prisoner voice avenues will align with voter interests only when voters have access to those prisoner voice avenues.*
In the next section, I evaluate these predictions according to historical data on prisoner voice avenues in the US. This data comes in part from a database on prison newspapers in the US that I constructed along with qualitative data from prison newspapers.

**Testing the Role of Prisoner Voice**

If the above theory is correct, prisoner voice avenues should conform to the predictions identified above. Three main avenues of prisoner voice have existed in the history of US prisons: prison journalism, prison litigation, and prison riots. I examine these avenues for prisoner voice because they are avenues that prison officials and prisoners establish within the prison. Prison memoirs and other similar avenues for prisoner voice operate outside the criminal justice bureaucracy and are often established only after people have been released. In the remainder of this section, I examine how each avenue adheres to the above predictions. Because each avenue for prisoner voice serves as the primary information channel for different officials in the criminal justice bureaucracy, we expect different reforms to be influenced by each.

**Prison Journalism**

Prison journalism refers to the prisoner-produced newspapers that circulated in prisons across the US. The first prison newspapers were published in 1800 out of debtors’ prisons in Pennsylvania and New York. They operated for a few months before shutting down. The next prison newspaper began in 1880 at Elmira Reformatory in New York. From then on, prison newspaper grew in number until the mid-1960s when over 250 publications circulated. These publications were published out of prisons in every state
(except New Hampshire) and the District of Columbia. The following graph shows the number of prison newspapers from 1880 to 2020.

![Graph: Prison Periodicals in the US, 1880-2020](source: Woltz, 2020)

Wardens began these newspapers and oversaw their operation. They controlled the newspapers’ funding, staff, and published content (Baird, 1967; Morris, 2002; Novek, 2005 a, b). Wardens allocated funding for the prison newspapers out of the prison budget. They also appointed all the staff members. Wardens approved each issue of a publication before it was printed. Editors had to remove any content that the warden disapproved.

**Prison newspapers communicate information about wardens’ subordinates.**

Because wardens establish the newspapers, if they served as information channels, we should see the content of the newspapers reflecting the behavior of the wardens’ subordinates: correctional and treatment officers. Examining the content of prison
newspapers, we see that the publications did indeed communicate information about warden’s subordinates. Baird (1967) found that 50 of the 56 publications he surveyed dedicated over 50 percent of their space to reporting on general prison news. These included reports on prison events and prison programming. Prison journalists routinely documented the performance of prisoners’ sports teams, activities by prisoner clubs, reaction to the previous movie night, any hiccups at mealtime, etc. These activities all required oversight by correctional and treatment officers whose success or failure to facilitate the many aspects of prisoners’ daily life would be apparent in the journalists’ reporting.

In addition to reporting on daily events at the prison, journalists documented sources of tension (or lack thereof) between prisoners and correctional officers. For example, one editor of the *Reflector* called for prisoners and correctional officers to treat each other more respectfully. One editorial by Charles Long suggested that if he were a correctional officer, he would never call a prisoner “Boy,” but, rather, by his name or “Mister” (as cited in Cooney, 1974, 182). Another editor called for prisoners to show gratitude to correctional officers for their help in making the periodical run smoothly (Cooney, 1974). Runyon (1953) documents one man’s comparison of Iowa State Penitentiary to Leavenworth Prison saying,

> There's more tension there in an hour than there is here in a week,’ one man told me. 'I was in Leavenworth for eight years, and I doubt that five officials or guards knew me by name. There's no individual treatment in that place. The difference
between there and here is simple—there you're treated like a number; here you're treated like a man. There's a difference. (p. 279)

From the prisoner’s perspective, guards’ attitudes toward prisoners determined tension in prison and the likelihood of violence or riots.

In the September/October 1979 issue of the *Angolite*, the editor, Wilbert Rideau, published a letter from a prisoner who complained about the practice of mail censors stamping “censor” across the front of letters or cards. The prisoner asked “[w]hy must mail-room censors stamp ugly prison markings on the face of beautiful greeting cards, or blot out words of incoming letters?” (Rideau, 1979f, p. 9). Through this letter to the editor, the prisoner communicated the anger building up in the prisoners due to the mail officials’ behavior. The prisoner signed the letter as “Angry.” The *Jefftown Journal* likewise reported prisoner discontent. They suggested that the prisoners be shown newsreels instead of cartoons since most prisoners found the cartoons boring (Miller, 1959). In 2008, the *San Quentin News* reported officials’ misconduct, detailing the poor conditions of administrative segregation (or solitary confinement). According to Jeff Brooks (2009), “The resounding word that is echoed by prisoners who return from The Hole is how inexcusable the conditions are” (p. 3). The article documents the failure of correctional officers to maintain cells in solitary confinement to constitutionally required standards. Kilmer, a correctional officer at San Quentin, was quoted in the article saying, tier officers are responsible for providing prisoners with supplies and that “[p]rior to placing an inmate in a cell the tier officer signs off on the cell file that the lights, toilet, sink, and mattress are all in good order and the cell is contraband free” (Brooks, 2009, p.
3). This article was approved by the warden but was met with anger by correctional officers.

**Subordinates try to gain control of prison newspapers.** If prison newspapers served as information channels for the warden, we should see correctional officers and treatment officials try to gain control of them. There is little documented evidence about how prison staff reacted to the prison journalists’ documenting day-to-day prison life. This makes sense with my theory because wardens would not want their superiors to know about their subordinates trying to take control of their monitoring tools. Rideau (2010), however, reports some evidence of resistance from correctional officers. When the Angolite staff received a camera to help document prison events, the correctional officers formally complained to the warden, saying that the Angolite staff might “take photos of an officer doing something embarrassing” (Rideau, 2010, p. 137). The correctional officers wanted to restrict the ability of the Angolite staff to document their behavior.

In response to the story on conditions at San Quentin, correctional officers tried to reclaim some control over the information communicated by San Quentin News staff. Correctional officers demanded that their side of the story be told as well (Drummond, 2020, pp. 74-75). San Quentin News staff accommodated the officers, running a follow-up story on the conditions in solitary confinement in the February 2009 issue. In this article, staff writers interviewed correctional officers about their response to the initial January article and the prisoners’ claims therein. One of the officers, Correctional Lt. R. Luna said that the story was “one sided” and that he could not “speak to the inaccuracies
in that it hasn’t been investigated. This was the opinion of four individuals when the unit houses 400” (Brydon, 2009, p. 8). Throughout the article, correctional officers, like Luna, try to discredit the information reported by San Quentin News staff.

**Wardens enact reform to increase subordinate compliance.** If prison newspapers serve as information channels for the warden, we should expect him to enact reforms to increase his subordinates’ compliance. In response to reports by prison journalists, wardens adjust prison policies. In one instance, the mail room supervisor at Louisiana State Penitentiary attested that they adjusted the prisoner mail policy in response to the prisoner complaint published in the Angolite (Rideau, 1979f, p. 9). The largest adjustment occurred at San Quentin. Jeff Brooks’s article about the poor conditions in solitary confinement led to improvements in conditions and officer treatment of prisoners there (Drummond, 2020, pp. 74-75). The San Quentin warden oversaw correctional officer compliance with constitutional mandates regarding prison conditions.

At Missouri State Penitentiary, in contrast, prison officials did nothing in response to the prisoners’ expression of boredom with cartoons (Ayers, 1960, p. 16). This fits with my prediction because the warden is not concerned with the prisoners’ entertainment. He is only concerned that his subordinates are managing the prisoners and facilitating the prison programming. The Jefftown Journal’s documentation of prisoner boredom communicates to the warden that his subordinates are doing their job of bringing prisoners to the movie room and playing the movies provided.

**Reforms align with voter interests when voters have access to prison newspapers.** If the theory developed in section two holds, we should see criminal justice
reform in line with voters’ interests if they learn from prison newspapers that the criminal justice system is operating contrary to their interests. First, this requires that voters have access to the prison newspapers. State voters did have access to many prison newspapers while they circulated. Prison newspapers circulated both inside and outside of prisons. Many offered subscriptions to members of the public. Some even had international subscribers (Baird, 1967; Morris, 2002). From letters to the editor published in prison newspapers, outside subscribers included community members, reporters, lawyers, judges, legislators, etc. The first prison newspaper, the *Summary*, had a subscription list that included “three hundred judges, state officials, attenders of prison congresses, penologists, and others” (Morris, 2002, p. 49). At the time, over two thousand copies of the *Summary* were printed and mailed out (this usually happened “when the state legislature was in session”) (Morris, 2002, p. 49). Figure 5 below shows rough circulation data available for US prison newspapers.
The circulation of prison newspapers outside of prisons follows their prevalence in the US. Circulation is low in the 1930s to the early 1950s. It increases with the number of prison newspapers being published in the 1960s and early 1970s. It then falls as prison newspapers are shut down in the twenty-first century.

Gallup surveys from 1971 to 2020 show a trend to voter preferences regarding criminal justice issues. The figures below document these trends. In figure 6, we see that from 1982 to 2020, the majority of voters tend to think that the criminal justice system is not tough enough.
It is only in the most recent years that the percent of voter who say the criminal justice system is not tough enough drops below 50 percent. Historically, voters prefer that prison conditions are harsher and that sentences are longer. In these survey questions, voters are asked if “In general do you think the criminal justice system in this country is too tough, not tough enough or about right in its handling of crime?” (Crime, 2021, Table 9) and “Generally do you feel that courts have been too easy in dealing with criminals, too severe, or do you think they have treated criminals fairly?” (Louis Harris & Associates, 1982, Question 7). These questions encompass public opinion about prison conditions and the sentences offenders receive.
Figure 7 shows that from 1989 to 2020, a minority of survey responders believe that more money should be spent on the criminal justice system (this includes more spending on police, prisons, and courts).

![Percent of people who support spending more on police, prisons, or courts](image)

**Figure 7: Percent of responders who support spending more on police, prisons, and courts (source: Crime (2021, Table 43))**

In these surveys, respondents were asked if they thought more taxpayer money should be devoted to the criminal justice system (meaning police, prisons, or courts) at the cost of spending less on another state-provided service. For the thirty years this question has been asked, a minority of respondents, said that more money should be spent on “deterring crime by improving law enforcement with more prisons, police and judges” (Crime, 2021, Table 43).

Overall, voters seem to prefer that conditions in the criminal justice system are harsher (meaning worse prison conditions and longer sentences) and that less taxpayer
money be dedicated to the criminal justice system, including prisons. We should expect to see reforms that do not improve prison conditions beyond what is constitutionally required. We should also expect any enacted reforms to reduce taxpayer burdens.

The reforms enacted by wardens in response to prison newspapers fits these expectations. At Louisiana State Penitentiary, the changes in mail room policies addressed a source of tension in the prison that could have contributed to prisoner unrest or riot in the future. It would not have meaningfully improved prison conditions there. At San Quentin, Drummond (2020) documents that conditions in solitary confinement did improve. These improvements, however, were to bring the conditions in solitary confinement to constitutionally mandated standards. The absence of changes at Missouri State Penitentiary in response to prisoner requests for different viewing material fits with the expectations written above. Boredom with the viewing material was not a source of tension in the prison, so the warden did not need to implement changes. Spending taxpayer money to provide new viewing material for bored prisoners might have been perceived by voters as unnecessary spending.

Prisoner Litigation

Prisoner litigation refers to civil rights suits filed by prisoners in federal or state courts. It began in 1964 with the lifting of the “hands-off” doctrine (Fliter, 2001, p. 9; Sigler & Shook, 1995). When federal courts declared that prisoners had a right to sue over violations of their civil rights, the judges created a channel by which the courts could monitor prisons for violations of prisoners’ constitutional rights. Prior to 1964, federal and state courts followed what was known as the “hands-off” doctrine (Fliter,
While there was never any explicit ruling to establish the “hands-off” doctrine by the Supreme Court, most federal courts followed its guidelines to avoid intervening in the operation of state penal systems (with only few exceptions). State judges followed suit. As elected officials, most state judges adhered to their constituents’ preferences and resisted hearing prisoner suits (Fliter, 2001, p. 65).

**Prisoner litigation communicates information about subordinates.** If prison litigation serves as an information channel from prisoners to federal judges, then the litigation should provide information about the behavior of the federal judges’ subordinates: correctional officers, treatment officials, wardens, commissioners, governors, legislators, and state judges. Examining the content of prisoner suits shows that prisoner litigation did serve to provide federal judges with information about their subordinates. Surveying the general topics of prisoner litigation, Schlanger (2003) finds that rights violations by prison officials and the failure of state legislators to provide adequate funding to state prisons, which contributed to those rights violations, constituted the majority of prisoner suits. Prisoner suits often addressed physical assault (by correctional officers and/or prisoners), inadequate medical care, due process violations with regard to disciplinary sanctions and living conditions complaints (i.e., sanitation or nutrition). More specifically, these suits identified “inadequate heating coupled with inadequate clothing (to protect from cold), inadequate toilets, absence of mattresses, the presence of vermin…, inadequate lighting, inadequate ventilation, intrusive surveillance, closed front cells, and crowding” as violations of the Cruel and Unusual Punishment clause of the Eighth Amendment (Sigler & Shook, 1995, p. 250).
Subordinates try to gain control of prisoner litigation. If prisoner litigation serves as an information channel for federal judges, we should see state official try to gain control of the litigation. In fact, many state criminal justice officials were outraged by the intervention of federal judges that were a result of prisoner litigation. Prison systems in several states, including Alabama, Arkansas, Louisiana, Texas, and Florida, had been placed under federal injunction to remedy constitutional violations identified by federal judges. In response to the unwanted monitoring and intervention of federal judges, US senators proposed the Prison Litigation Reform Act (PLRA) to eliminate frivolous prisoner suits and reduce the burden of prison litigation on the federal courts (Fliter, 2001, p. 1; Schlanger, 2003).

The PLRA passed in 1996 and served to reduce the amount of prisoner litigation and the number of successful suits (Fliter, 2001, p. 3; Schlanger, 2003). Five years after the passing of the PLRA, prisoner litigation had dropped by 43 percent despite a 23 percent increase in the US prison population during that time (Schlanger, 2003). Schlanger and Shay (2008) find that the filing rate of prisoners continued to fall after 2001. They find that in 2006, the filing rate had fallen to eleven cases per one thousand prisoners—a 60% decline from its 1995 height of twenty-six filings per one thousand prisoners (Schlanger & Shay, 2008, pp. 141-142). The trend of federal civil rights suits filings from 1968 to 2000 is shown in figure 8.
The PLRA largely eliminated an information channel from prisons to the federal courts. PLRA advocates suggested that the act would simply reallocate prisoner litigation from federal courts to state courts (Brill, 2008; Fliter, 2001, p. 2; Schlanger, 2003; Sigler & Shook, 1995). Despite this anticipated diversion of litigation to state courts, prison litigation has been limited in state courts. Brill (2008) demonstrates that state immunity and separation of powers legislation limit prisoners’ ability to successfully sue in state courts. Additionally, several states passed PLRA-type legislation before and after the passing of the PLRA. Historically, state courts rarely provided prisoners relief unless there were constitutional violations.
Federal judges enact reform to increase subordinate compliance. If prisoner litigation served as an information channel for federal judges, we should see those judges enact reforms to increase their subordinates’ compliance. Prisoner litigation led to reform when federal judges found that state prison systems had violated prisoners’ constitutional rights. Prison systems in Alabama, Arkansas, Louisiana, Texas, and Florida all received federal injunctions to improve their prison systems in response to prisoner suits. For example, in Costello v Wainwright (1975), Judge Scott ordered the Florida Department of Corrections to reduce overcrowding and for the Florida legislature to provide the funding necessary to do so (Schoenfeld, 2010). In Ruiz v Estelle (1982), the judge ordered the Texas Department of Corrections to enact a series of reforms to eliminate the brutality, overcrowding, and medical neglect to which prisoners had been subject (Perkinson, 2010). These injunctions included eliminating the building tender system, doubling the number of guards, hiring health-care professionals, upgrading all facilities, and rewriting operating procedures. Similar measures were included in the federal injunctions of the Alabama and Arkansas prison system.

In sum, when state prisons were found to have violated the constitutional rights of prisoners, federal courts intervened. These interventions resulted in federal court mandates for state legislatures to allocate more resources to the prisons and for state criminal justice systems to reduce overcrowding in prisons.

Reforms align with voter interests when voters have access to prisoner litigation. The reforms enacted by federal judges should align with voters’ interests only if they have access to prisoner litigation regarding a state’s compliance with federal
injunctions. State voters did not have access to information about the compliance of their state prison systems with federal injunctions. Often the federal judges who placed the injunction on a state had difficulty obtaining information about compliance. As a result, federal injunctions led to the growth of state prison systems (Schoenfeld, 2010). States DOCs built more and larger prisons to adhere to mandates to reduce overcrowding. This, however, conflicts with voters’ preference for prisons to impose a minimal tax burden. With more prisons, the cost of a state’s prison system rose.

Federal injunctions also explicitly increased the cost of state prison systems by requiring state legislators to allocate more funding to the state prisons. This was done to ensure the provision of adequate medical care and improve living conditions. Improving conditions for prisoners is also in conflict with voters’ preferences (Crime, 2021, Table 9).

**Prison Riots**

Prison riots occur without the authorization of prison officials. Most prison officials see prison riots as chaotic, random outbreaks (Useem & Kimball, 1991, p. 4). Prison riots are attempts by prisoners to establish information channels external to the criminal justice bureaucracy. Prisoners see riots as a way to assert their voice and preferences in systems designed to silence them (Useem & Kimball, 1991, p. 4).

These efforts by prisoners, however, often fail to reach voters. Fox (1956) emphasizes that riots are only officially reported when news of the riot will leak to the press regardless of actions by prison officials. For this reason, riots are probably undercounted in official statistics. Even when prison riots receive media coverage, they
do not serve to communicate the behavior of prison officials beyond the fact of prisoners’ dissatisfaction.

Prison riots tend to fail in their efforts to influence prison reform. Due to the embarrassment that they cause officials throughout the criminal justice bureaucracy, prison officials are loath to reward prisoners for their rebellion (Useem & Kimball 1991, p. 224). When official investigations into the cause of the riot are required, usually by media attention, the official reports serve to “reinforce existing penal policy and practice” rather than explore and recommend avenues for reform (Adams, 1992, p. 186). Overall, riots lead to a worsening of conditions for prisoners in the short run as prison officials institute a lock-down and withdraw many prisoners’ privileges. In the long run, prisoners are often worse off because the riots are followed by a tightening up of security and official control over prisoners (Adams, 1992; Jorgensen, 1974; Useem & Kimball, 1991).

Conclusion

Prisoner voice serves as an accountability mechanism for prison operation. Superiors in the criminal justice bureaucracy can establish formal avenues for prisoner voice to monitor their subordinates’ behavior. When they discover that their subordinates are defecting, they change the bureaucratic institutions to better align their subordinates’ interests with their own. For that reform to align with voters’ interests, voters must have access to the same information channels.

Avenues for prisoner voice can serve as an information channel, and thereby influence reform, only when they are formally established by criminal justice officials. Both prison journalism and prisoner litigation served as information channels and led to
reforms because superiors in the criminal justice bureaucracy established them as such. Prison journalism is the only avenue for prisoner voice that influences reforms that align with voter interests because it is the only avenue voters can directly access. Prisoner litigation likewise influences prison reform. This reform, however, is plagued with unintended consequences that have driven the growth of state prison systems (Schoenfeld 2010; Perkinson 2010). Prison riots, in contrast, occur without the assent of prison officials. As a result, reform rarely occurs due to a prison riot. In fact, changes following a riot usually reduce the information flow out of the prison.

This analysis has implications for prison reform efforts. Efforts to reform the US criminal justice system need to consider the incentives of the actors involved in the criminal justice system. Prison journalism, which has been growing again in recent years, may aid in this task. Prisoners know the realities of prison life and can anticipate unintended results from proposed policies. Those working as prison journalists are already working with prison officials to publish newspapers that speak to the realities of prison life, suggest reforms, and identify areas where the lack of nuance by outside reformers has resulted in the worsening of conditions for prisoners. For example, in 2019, California Supreme Court judges ruled that California state prisons could not use private prisons to house their prisoners. This triggered the return of thousands of California Department of Corrections and Rehabilitation (CDCR) prisoners to already overcrowded California state prisons. This ruling was in response to the perception that private prisons do not adequately provide for prisoners’ well-being. *San Quentin News* staff interviewed some of the prisoners who had newly arrived at San Quentin from out-of-state private
prisons. These prisoners expressed that “those [private] prisons are much better than California institutions, even though they dislike the separation from their families” (Roy, 2019, 1). Aron Kumar Roy—a San Quentin News writer—gives the following account of his interview with one recently returned prisoner as follows:

I was pissed off when I found out I was coming back to the state. Prison out there was much better,” said inmate Michael ‘Kofy’ Taylor. “The overall feeling was better out there. The living quarters were much more comfortable,” Taylor said, in agreement with the general sentiment among the several other San Quentin inmates interviewed, “Those facilities weren’t overcrowded like the ones in state. The cells were so big there. They were actually comfortable for two men to live in. (p. 1)

If the California Supreme Court judges had looked to prisoner evaluations of the private prisons as they relate to the stated goal of the CDCR—the rehabilitation of prisoners—they may have employed a more nuanced approach to ensuring that private prisons adequately provide for prisoners’ needs rather than implementing a total ban on their use by the state prison system. Attitudes of outside reformers saw private prisons as an evil in the US prison system and lobbied for California judges to disallow their use. This, however, ignored the variation in performance between private prisons, which the prison journalists recognized and explored.

Sustainable reforms must come from inside the criminal justice bureaucracy in each state. Forcing reforms from outside the bureaucracy will have unintended consequences that may actually perpetuate aspects of the prison system the reforms
intend to eliminate. The history of reforms from prisoner litigation shows how criminal justice bureaucrats can commandeer reform efforts to serve their interests rather than the intent of the reform. For example, judicially mandated reform of the Florida prison system led to the growth of the prison system there. Federal judges ruled that the prison overcrowding in the state was unconstitutional and established guidelines for what constitutes overcrowding. They placed an injunction on the director of Florida Department of Corrections (FDOC) to eliminate overcrowding according to those guidelines. Rather than reducing the prison population, which was the intent of the judicial ruling, Florida criminal justice bureaucrats built new, larger prisons. Voters in the state were resistant to the idea of releasing large numbers of prisoners to comply with the judicial mandate. Voters saw prisoners as dangerous. To accommodate voter preferences, legislators allocated greater resources to build new, larger, more industrial prisons in the state. These new buildings reduced the prison population at a single prison and addressed the judicial mandate to reduce overcrowding in the state prisons. Rather than reduce the prison population, which was the overall intent of the judicial mandate, the way that the state criminal justice system complied with the order actually facilitated the growth of the system, creating space for the incarceration of more prisoners (Schoenfeld, 2010).

Lastly, greater transparency about the realities of prison life may help to align the interests of criminal justice bureaucrats with sustainable reforms. Ultimately, it is in the interest of bureaucrats at every level of the criminal justice bureaucracy to conform to the demands of voters with regard to the operation of the prison system. Voters demand punishment and rehabilitation from prisons. They want prison to serve as a punishment
for offenders, but also rehabilitate them so that they do not reoffend after release. Greater
transparency about the operation of prison and the way in which the operation of prisons
aligns with these goals will incentivize prison officials to reform the prison institution to
better fit with voter demands. Additionally, greater transparency about how the entirety
of the criminal justice bureaucracy contributes to these dual goals will incentivize reform
throughout state criminal justice systems to better accomplish voter demands. For
example, more discussion of how legislation that raises the costs of re-entry into society
for former prisoners may aid sustainable and effective reform of this legislation.
WARDENS, POLITICAL SCAPEGOATING, AND THE ROLE OF PRISON JOURNALISM

This paper examines the function of prison newspapers in the US criminal justice system. These newspapers are written and produced by prisoners and circulate both inside and outside of prisons. The newspapers began in the 1800s and reached their height in the 1960’s when over 250 prison newspapers circulated in the US. In the 1970s, however, these newspapers shut down en masse. Why did wardens allow prisoners to produce and circulate these newspapers for over a century only to shut them down? I argue that until 1964, these prison newspapers protected prison wardens from being used as a political scapegoat by their superiors in the criminal justice bureaucracy. After 1964, when prisoners gain the right to sue in federal court, these newspapers no longer protect wardens, leading to the mass shutdown of prison newspapers.

Introduction

In the 1960s, over 250 prison newspapers were published by prisoners and circulated both inside and outside of the prisons at which they were produced. These newspapers covered daily life at the prison and, at times, criticized the state criminal justice system in which they were housed. Prison journalism began in the US in the 1800s and reached its height in the early 1960s. From the late 1960s on, however, these newspapers shut down en masse across the US. Why did wardens allow prisoners to produce and circulate these newspapers for over a century only to shut them down? I
argue that until 1964, these prison newspapers protected prison wardens from being used as a scapegoat by their superiors in the criminal justice bureaucracy. To do so, I leverage the economics of bureaucracy to develop a theory of prison bureaucracy.

This paper constitutes the first economic analysis of prison journalism. Previous research on prison journalism comes out of the communications and criminal justice fields. The early literature on prison newspapers consists of descriptive research, acquainting the reader with the phenomenon of prison journalism and, at times, advocating for its further implementation in the criminal justice system (Baird 1967; Barrows 1910; Coulter 1936; Gettinger 1976; Lunden 1952, 1955; Lainson 1955; Time 1959). Overall, research on prison journalism has offered five reasons for why wardens allowed prison newspapers to operate. First, prison newspapers may have served as a release valve in the prisons, reducing tension and the likelihood of violence (Block et al., 2008; Bunker, 1974; Byall, 1955; Caldwell, 2005; Churcher, 2011; Cohen, 1972; Coulter, 1936; Gaucher, 2002; Gettinger, 1976; G. W. M., 1955; Lainson, 1955; Lunden, 1955; Morris, 2002; Richardson, 2019; Runyon, 1955; The Captive Press, 1959; Vonderhide, 1955; Wolfe, 1955). Second, prison newspapers might positively influence prison culture, reducing violence (Block et al., 2008; Churcher, 2008, 2011, 2018; Lainson, 1955; Novek, 2005a, 2005b; Richardson, 2019; Time, 1959). Third, the prison administration uses prison newspapers as a tool for information dissemination (Bedford, 2016; Churcher, 2011, 2018; Drummond, 2019; Gettinger, 1976; Hadeler, 1977; Novek, 2005b; Rideau, 2010). Fourth, these newspapers may have also aided in prisoner rehabilitation (Barrows, 1910, p. 238; Bedford, 2016; Coulter, 1936; Drummond, 2019; Novek, 2005b).
Lastly, the newspapers served as a source of prisoner entertainment (Barrows, 1910; Coulter, 1936; Gettinger, 1976; Morris, 2002).

This research, however, cannot explain why wardens allowed the prison newspapers to circulate outside the prison. The reasons offered for the operation of prison newspapers do not require that the newspapers circulate outside the prisons at which they are produced. By explaining why wardens allowed prison newspapers to circulate outside the prison, I contribute to the literature on prison journalism coming out of communications and criminology. I also contribute to the literature on the economics of bureaucracy by applying this theory to a new context: the criminal justice system.

The paper proceeds as follows. Section two acquaints the reader with the phenomenon of prison journalism in the US. It provides an overview of what prison newspapers are, how they operate, and where they operate. Section three presents a theory of prison bureaucracies, focusing on the warden’s role as an executive officer and potential scapegoat in the bureaucracy. Section three also presents predictions that follow from the theory developed there. Section four provides evidence to test the predictions developed in section three. This evidence comes from a unique dataset I compiled of prison newspapers in the US along with qualitative data from prison newspapers. Section five concludes.

**Prison Journalism in the US**

Prison journalism consists of newspapers and magazines written and produced by prisoners. Prison journalists produce the newspapers using state-supplied resource and rely on the prison print shop to print their publication in between government documents.
These newspapers vary in size and format, ranging from a four-page newspaper to a 100-page magazine. The content, however, is fairly consistent across publications. Most issues include entertainment pieces, updates on prison events, changes in prison policy and legislation, and sports. Many also include a range of critical articles. These range from critiques of prison food to an exposé on the electric chair.

These publications circulate both inside and outside of prisons. Prison populations often receive copies of their home publication free of charge, however, some must buy a subscription. These publications develop a subscriber base outside the prison when allowed by the prison administration. Incarcerated editors routinely trade publications with each other. This practice was at the heart of the Penal Press Association, which was a network of newspapers dedicated to educating the public about the realities of prison life and maintaining high levels of journalistic standards in their work. Members of the Penal Press Association helped to enforce journalistic standards among the newspapers that claimed membership. They would most often call out publications for plagiarism.

Wardens control the staffing of newspapers. If a warden is unhappy with an editor, he can replace the editor with another prisoner—which happened frequently at the Reflector (Cooney, 1974). To be eligible for a position on the newspaper staff, a prisoner has to meet requirements established by the prison administration. Often, these include achieving trusty status in the prison.¹ This requirement excludes prisoners serving short

¹ Achieving trusty status involved having minimal write-ups for disciplinary issues for several years of one’s sentence. Being a trusty granted a prisoner a minimum-security status, meaning he had greater freedom of movement and could hold jobs that were considered greater security risks. For example, a prisoner must be a trusty if he wants to work in the Louisiana State Penitentiary Museum. It is located outside the prison gates and involves interacting with the public.
sentences because becoming a trusty takes several years. Positions on the newspaper staff are highly sought after because they are often one of the few positions that do not include hard labor. They also often come with greater freedom of movement, access to resources, and contact with people outside of prison. It is also often one of the highest paid positions that prisoners can hold. For example, prisoners working in the fields at Louisiana State Penitentiary receive $0.05 per hour whereas prisoner on the Angolite staff earn $0.20 per hour (Davies, 2019, Ch 3).

Most newspapers are funded by the prison budget. If allowances for a newspaper are not included in the prison budget, then they are funded by the prisoner welfare fund or funds produced by the prison canteen (Lunden, 1952; Morris, 2002). Wardens control the funding of newspapers, so they can shut down a newspaper by redirecting its funding. In the twentieth century, few newspapers were able to be self-sustaining. Lunden (1952) found that “[o]nly one or possibly two are self-sustaining” (p. 12). Morris (2002) documents that, in 1887, prisoners in Minnesota State Prison began a trust fund to begin a prisoner-run publication in the penitentiary (p. 156). Today, the San Quentin News is sustained by outside donations (Drummond, 2020, chapter 27).

Newspaper content is subject to censorship by the warden who has to approve each issue before it is published.\(^2\) As a result, prisoner journalists only publish content that is acceptable to the warden. This often means that no criticisms of the prison and its staff are published. Prison administrators argue that those criticisms constitute a security

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\(^2\) The exception is the most recent revival of the San Quentin News (SQN). After its renewal by Warden Robert L. Ayers in 2008, the SQN was brought under the control of the CDCR, removing it from the San Quentin warden’s control. Previously, the SQN had run from 1940 to 1982 when it was shutdown.
threat (Novek, 2005a). However, criticisms of the criminal justice system broadly are allowed (Novek, 2005a). Few newspapers, such as *The Angolite, Shadows, the Lake Shore Outlook*, and the *Reflector* operated with less censorship from the prison administrations. During their operation, they were able to publish more articles critical of the prison at which they were incarcerated.


These prison newspapers began as a part of reform efforts during the Progressive Era. Prison reformers saw these newspapers as a way to morally rehabilitate prisoners and prepare them to rejoin society. Reformers questioned how prisoners could return to society when they did not know what was happening in the world. They suggested that prisoners would better reintegrate into society upon release if they had access to newspapers with carefully cultivated news about what was happening in the outside world. These newspapers would also serve as a vocational tool by which prisoners could
learn how to operate a print shop and develop their writing skills (Wines, 1870). With the growth of state prison systems in the US and emphasis on progressive reforms, prison newspapers became increasingly more common. The number of prison newspapers in the US reached its height in the mid-1960s with over 250 publications in operation at the time. Beginning in the early 1970s, these publications closed en masse. Ten publications are in operation today.

**Economics of Prison Bureaucracy**

Examining the function of prison journalism in US prisons requires understanding the incentives of wardens and other officials as they operate within the criminal justice bureaucracy. In this paper, I focus on state criminal justice system because they drive the criminal justice system in the US. For this reason, the theory of criminal justice bureaucracy that I develop below is a theory of state bureaucracies.³

Bureaucracies consist of a nested set of superior-subordinate relationships along which instructions from the ultimate sovereign are communicated and implemented (Breton & Wintrobe 1975, 1982; Tullock, 1965; Wintrobe, 1976). Each bureaucrat oversees her subordinate’s compliance with the ultimate sovereign’s interest she monitors. Each also serves as the subordinate of another bureaucrat whose direction she follows in pursuing the interests of the ultimate sovereign. This nested relationship is shown in figure 9.

³ It can, however, be generalized to the federal level. The main difference will be the specific organizational hierarchy. The wardens at federal prisons are subordinates to regional directors who report to the deputy director of the Bureau of Prisons.
Figure 9: Bureaucratic Hierarchy

Bureaucrat A oversees subordinates B who each oversee their own set of subordinates C.

For government bureaucracies in democratic societies like the US criminal justice system, the voters are the ultimate sovereigns (Tullock, 1965). In each state, voters elect a governor who oversees the state department of corrections according to the demands of the voters. The governor appoints a commissioner to oversee the operation of the state department of corrections. The commissioner then appoints a warden at each state correctional facility to serve as his executive officer. This bureaucratic organization is represented in figure 10.
Bureaucrats can be modeled as budget maximizers, maximizing their power along with their budgets (Brenton & Wintrobe, 1975, 1982; Holcombe, 2016; Niskanen, 1968). Each bureaucrat has the choice to either pursue the interests of her sovereign or her own interests (in conflict with that of her sovereign). The bureaucrat will prefer to pursue her own interests in the absence of monitoring and sanctions for doing so. When she is monitored, in contrast, she will prefer to pursue her sovereign’s interests so she will be promoted and, thereby, increase her power (Tullock, 1965; Brenton & Wintrobe, 1982).
Wintrobe, 1976). For this reason, each sovereign must dedicate some time to monitoring her subordinates, to align her subordinate’s interests with her own.

As a bureaucracy grows, the sovereign will have to dedicate more resources to monitoring her subordinates than pursuing her interests. To reduce the resources dedicated to monitoring all her subordinates, a sovereign may appoint an executive officer to serve as an intermediary. The executive officer will relay the sovereign’s interests to her subordinates and report to the sovereign about the compliance of her subordinates. The executive officer solves the sovereign’s dual problem of communicating her desires to her subordinates and ensuring her subordinates’ compliance. This relationship is shown graphically in the figure 11.
Because of his intermediary function, the executive officer may also serve as a scapegoat for his superior. If a bureaucratic outcome is in conflict with what is desired by the superior’s superior of the executive officer (in the case of state criminal justice systems: the voter’s desires), his superior can blame the failure on the executive officer and thereby protect herself and maintain her position (Tullock, 1965, p. 158). For this reason, the executive officer wants to establish information channels to communicate to his superior’s superior that he is complying with that higher sovereign’s interests. For example, the executive officer may establish an information channel with the ultimate sovereign who serves as A’s superior. Bureaucrat A cannot blame the executive officer
for any failures that are her responsibility when an information channel documents her executive officer’s compliance with her superior’s interests.

In bureaucracies, this information channel can be internal or external to the bureaucracy (Tullock, 1965, p. 224). Internal information channels operate within the bureaucratic structure and often consist of subordinates communicating information about their performance directly to their superiors. Subordinates control what information is communicated along these channels making them less reliable sources of information for the superior. In contrast, external information channels, such as the news media, operate outside of the bureaucracy. Thus, they are often outside the influence of subordinates. In the US criminal justice system, however, there are no consistent external information channels because the news media have limited access to prison and prisoners’ mail is censored. For this reason, the main information channels in any criminal justice bureaucracy will be internal to the bureaucracy.

For an executive officer to protect himself from being used as a scapegoat, he needs to establish an information channel that he controls to communicate positive information about his performance to his superior’s superior (potentially all the way to the ultimate sovereign). Thus, we expect an executive officer to establish an internal information channel that he controls and that communicates positive information to his superior’s superior. As a sovereign, the executive officer also needs to monitor his subordinates. To do so, he will establish information channels that provide him with information about his subordinates’ behavior. In short, an executive officer will establish
information channels that communicate (1) his subordinates’ behavior to him and (2) communicate good information about his behavior to his superior’s superior.

As the executive officer for the commissioner at each prison, the warden wants to establish information channels that (1) allow him to monitor his subordinates at the prison and (2) protect him from being used as a scapegoat by the commissioner. As discussed above, internal information channels are often controlled by the subordinates. In order to avoid his subordinates manipulating the information, superiors will rely on their subordinates’ subordinates. In the prison context, this would involve wardens relying on prisoners for information about the behavior of correctional officers and treatment officials. In this way, prison journalism may serve as an information channel by which wardens can monitor their subordinates. This leads to the first prediction.

**Prediction 1:** If prison journalism provides an internal information channel for the prison warden, then prison journalists will provide information about the behavior of the warden’s subordinates, namely correctional officers and treatment officials.

Subordinates will always want to control the information that their superior receives about their behavior because they want to ensure that their superior only receives positive information. If their superior receives negative information about their behavior, their chances for promotion are jeopardized. This leads to the second prediction.

**Prediction 2:** If prison journalism provides an internal information channel to monitor the warden’s subordinates, then the warden’s subordinates will try to gain control of prison newspapers so that prison journalists only communicate positive information about their behavior.

As discussed above, the warden will also want to establish an information channel to protect himself from being used as a scapegoat by the commissioner. In order to
protect his position and ensure his chances for future promotion, he will want to communicate positive information about his performance to his superior’s superior, which, in state criminal justice systems, includes the state governor and voters. Prison journalism may serve as the channel by which wardens communicate positive information to their superior’s superior. This leads to the third prediction.

*Prediction 3: If prison journalism serves to protect the warden from being used as a scapegoat, then his superior’s superior should receive the prison newspapers.*

The warden will also want to place the blame for any failures in the prison on bureaucrats other than himself, his subordinates (for whom he is responsible), or his superiors. Prison journalism may serve as a means to deflect blame from the warden or his superiors. This leads to the fourth prediction.

*Prediction 4: If prison journalism protects the warden from being used as a scapegoat, then it should direct blame for any failures in the prison at the parole board, judges, or legislators in the state.*

If prison newspapers serve to protect wardens from being used as scapegoats by their superiors, then why does prison journalism largely end in the US in the early 1970s? As the above discussion suggests, wardens would shut down their prison newspapers when they no longer serve to either (1) monitor their subordinates or (2) communicate positive information to their superiors. This leads to the fifth and final prediction.

*Prediction 5: Wardens shut down prison newspapers when they no longer serve as effective channels to either (1) monitor their subordinates or (2) communicate positive information about their superiors.*

The following section will test these five predictions against historical evidence. This evidence comes, in part, from a unique dataset I compiled of prison newspapers in the US along with qualitative data from prison newspapers.
Evidence

My theory of criminal justice bureaucracy generates five predictions about the function of prison newspapers in state criminal justice systems that historical evidence allows me to test. The evidence supports these predictions.

**Prison newspapers provide information about wardens’ subordinates.**

If these newspapers served as information channels, we should see the content of the newspapers reflecting the behavior of the wardens’ subordinates: correctional and treatment officers. Examining the content of prison newspapers, we see that the publications did communicate information about warden’s subordinates. Baird (1967) found that 50 of the 56 publications he surveyed dedicated over 50 percent of their space to reporting on general prison news. These included reports on prison events and prison programming. Prison journalists routinely documented the performance of prisoners’ sports teams, activities by prisoner clubs, reaction to the previous movie night, any hiccups at mealtime, etc. These activities all required oversight by correctional and treatment officers whose success or failure to facilitate the many aspects of prisoners’ daily life would be apparent in the journalists’ reporting.

In addition to reporting on daily events at the prison, journalists documented sources of tension (or lack thereof) between prisoners and correctional officers. For example, editors of the *Reflector* called for prisoners and correctional officers to treat each other more respectfully. One editorial by Charles Long suggested that if he were a correctional officer, he would never call a prisoner “Boy,” but, rather, by his name or “Mister” (as cited in Cooney, 1974, p. 182). Another editor called for prisoners to show
gratitude to correctional officers for their help in making the periodical run smoothly (Cooney, 1974). Runyon (1953) documents one man’s comparison of Iowa State Penitentiary to Leavenworth Prison saying,

There's more tension there in an hour than there is here in a week,' one man told me. 'I was in Leavenworth for eight years, and I doubt that five officials or guards knew me by name. There's no individual treatment in that place. The difference between there and here is simple—there you're treated like a number; here you're treated like a man. There's a difference. (p. 279)

From the prisoner’s perspective, guards’ attitudes toward prisoners determined tension in prison and the likelihood of violence or riots.

In the September/October 1979 issue of the Angolite, Wilbert Rideau (the editor) published a letter from a prisoner who complained about the practice of mail censors stamping “censor” across the front of letters or cards. The prisoner asked “[w]hy must mail-room censors stamp ugly prison markings on the face of beautiful greeting cards, or blot out words of incoming letters?” (Rideau, 1979f, p. 9). Through this letter to the editor, the prisoner communicated the anger building up in the prisoners due to the mail officials’ behavior. The prisoner signed the letter as “Angry.” The Jefftown Journal likewise reported prisoner discontent. They suggested that the prisoners be shown newsreels instead of cartoons since most prisoners found the cartoons boring (Miller, 1959, p. 4). In 2008, the San Quentin News reported officials’ misconduct, detailing the poor conditions of administrative segregation (or solitary confinement). According to Jeff Brooks (the writer of the article), “The resounding word that is echoed by prisoners who
return from The Hole is how inexcusable the conditions are” (Brooks, 2009, p. 3). The article documents the failure of correctional officers to maintain cells in solitary confinement to constitutionally required standards. Kilmer, a correctional officer at San Quentin, was quoted in the article saying, tier officers are responsible for providing prisoners with supplies and that “[p]rior to placing an inmate in a cell the tier officer signs off on the cell file that the lights, toilet, sink, and mattress are all in good order and the cell is contraband free” (Brydon, 2009, p. 3). This article was approved by the warden but was met with anger by correctional officers.

**Warden’s subordinates try to gain control of prison newspapers.**

If prison newspapers served as information channels for the warden, we should see correctional officers and treatment officials try to gain control of them. There is little documented evidence about how prison staff reacted to the prison journalists’ documenting day-to-day prison life. This makes sense with my theory because wardens would not want their superiors to know that their subordinates are trying to evade oversight. Rideau (2010), however, reports some evidence of resistance from correctional officers. When the *Angolite* staff received a camera to help document prison events, the correctional officers formally complained to the warden, saying that the *Angolite* staff might “take photos of an officer doing something embarrassing” (Rideau, 2010, p. 137). The correctional officers wanted to restrict the ability of the *Angolite* staff to document their behavior.

In response to the story on conditions at San Quentin, correctional officers tried to control the information communicated by *San Quentin News* staff. Correctional officers
demand that their side of the story be told as well (Drummond, 2020, p. 74-75). San Quentin News staff accommodated the officers, running a follow-up story on the conditions in solitary confinement in the February 2009 issue. In this article, staff writers interviewed correctional officers about their response to the initial January article and the prisoners’ claims therein. One of the officers, Correctional Lt. R. Luna said that the story was “one sided” and that he could not “speak to the inaccuracies in that it hasn’t been investigated. This was the opinion of four individuals when the unit houses 400” (Brydon, 2009, p. 8). Throughout the article, correctional officers, like Luna, try to discredit the information reported by San Quentin News staff.

**The superior of the warden’s superior receives positive information about the warden’s behavior via prison newspapers.**

As an executive officer overseeing the operation of state prisons for the commissioner and governor, the warden is at risk of being used as a political scapegoat by the commissioner and governor. To protect himself from being used as a scapegoat, the warden would need to communicate positive information about his behavior to his superior’s superior (in this case, the governor and voters). Examining the audience of the prison newspapers, we see that the warden’s superiors routinely received the publication (Baird, 1967; Morris, 2002). For example, the *Summary* had a subscription list that included “three hundred judges, state officials, attenders of prison congresses, penologists, and others” (Morris, 2002, p. 49). At the time, over two thousand copies of the *Summary* were printed and mailed out (this usually happened “when the state
The legislature was in session”) (Morris, 2002, p. 49). During the 1970s and 1980s, the *Angolite* had 1,700 outside subscribers including politicians (Morris, 2002, p. 163).

The circulation of prison newspapers has not been studied extensively, but some rough data does exist. Figure 12 below shows the outside circulation of prison newspapers from 1936 to 2018 over time.

![Figure 12: Outside Circulation of Prison Newspapers](image)

The circulation of these publications over the twentieth century fluctuated with the number of publications in the US. In 1936, when prison newspapers were still fewer in number, the outside circulation of prison newspapers ranged from 45,000 to 64,000 subscribers (Coulter, 1936). By 1966, when the number of prison newspapers was at its height, the outside circulation of had increased to 80,000 subscribers (Baird, 1967;
Rogers & Alexander, 1970). The outside circulation of prison newspapers fell with their numbers to 25,000 subscribers in 2018 (Wolffe, 2018).\(^4\)

**Prison newspapers deflect the blame for failures in prison operation from the warden.**

We should also see this effort of the warden to protect himself in the content of the publication. The prison newspapers should include positive information about the warden and the operation of the prison while identifying any problems as being due to other branches of the criminal justice system (excluding those who directly oversee his position). Because the content of the publications was subject to the warden’s censorship, he could ensure that the publications included positive information about his behavior.

Consistent with my prediction that prison newspapers serve to protect wardens from being used as scapegoats, most of the criticism published by the prison journalists critiqued the parole board, the courts, and the legislature. In these criticisms, prison journalists attribute the burgeoning prison population and failures of the prison system to the (1) failure of the parole board to release rehabilitated prisoners and provide them with adequate resources, (2) long sentences to which judges sentenced convicts, and (3) the inadequate resources allocated to the prisons by the legislature. Attributing prison problems to failures by the parole board, courts, and legislature diverted blame for prison issues from the warden, potentially protecting him from being used as a political scapegoat by the commissioner or governor. The prison journalists, notably, do not criticize the governor or commissioner directly. Both have direct control over the

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\(^4\) The 2018 circulation numbers only reflect the subscribers of the *San Quentin News*. 
warden’s position. The warden wants to divert blame from himself and his direct superiors (the governor and commissioner) to maintain his position and potential for promotion.

One way prison journalists documented mistakes by the parole board was to spotlight reformed prisoners who the parole board had passed over. From 1948 to 1951, the *Presidio*, published out of Iowa State Penitentiary, printed articles critical of the state parole board. These articles spotlighted prisoners who had served over twenty years of their sentence. In 1948, these articles resulted in the governor, Robert D. Blue, commuting the sentence of fourteen prisoners serving life sentences (Runyon, 1953, p. 261). In December 1949, another *Presidio* article spotlighted Ole Lindquist who had served forty years and was “a forgotten man” (Runyon, 1953, p. 266). This article caused the governor, William S. Beardsley to request that the parole board review the cases of all lifers in Iowa and recommend those that deserved clemency (Runyon, 1953, p. 268). The following December, Governor Beardsley commuted the sentences of twenty-one lifers, including Ole. The *Angolite*, published out of Louisiana State Penitentiary, similarly wrote articles spotlighting forgotten prisoners. In 1980, the newsmagazine won the release of Frank Moore through such an article, which gained so much publicity that “the Board of Pardons requested his prison record and shortly thereafter voted to release him” (Morris, 2002, p. 163).

Prison journalists also wrote articles criticizing the resources that the parole board provided prisoners upon their release. In 1951, the *Presidio* published an article on how the limited resources given to prisoners upon their release led to their reoffending.
because they would need to steal to survive. The policy at the time was that a person received “fifteen dollars ($152.67 in 2021), a suit of clothes, and a ticket to place of conviction” at their discharge (Runyon, 1953, pp. 283-284). Following the article, the Iowa parole board increased the turnout money to twenty dollars ($203.57 in 2021). In the 1950s, Dave Saunders, editor of the *Menard Times* (which was published out of Menard State Penitentiary in Illinois) published an editorial on the discrepancies in parole and the resources prisoners received upon their release. At the time, prisoners who had a support network and a job waiting for them after release received parole and supervisory assistance, while prisoners who had neither were not released until the end of their sentence and were only given a new suit and twenty-five dollars ($254.46 in 2021). In response to Saundes’s article, Illinois state senator Paul Simon pushed a bill through the Illinois legislature that established a system of conditional release to replace previous parole procedures (Morris, 2002, p. 149).

In another editorial, Tom Runyon (editor of the *Presidio* during the 1940s and 1950s) criticized detainers as cruel in that they were often filed on suspicion that the prisoner had committed other crimes. Having a detainer prevented prisoners from being eligible for parole for crimes for which they were actually convicted. His article was picked up by Iowa papers, resulting in the parole board letting men be paroled to other prisons where they had a detainer (Runyon, 1953, p. 166).

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5 Current dollar value calculated using the CPI Inflation Calculator available through the US Bureau of Labor Statistics.
Prison journalists also identified failures by state judges and courts. In the September/October 1979 issue, the *Angolite* criticized the representation that poor, black prisoners received in Louisiana. The staff highlighted the case of two brothers who killed a man in self-defense. They received a public defender who advised them to plead guilty, saying that they would be out in a few years. They followed their lawyer’s advice and were given long sentences. Contrary to the lawyer’s advice both were still in prison after having served over 10 years of their sentence (Rideau, 1979h). In the 1940s, the *Presidio* similarly criticized the insufficient representation that many poor defendants received, leading to most poor defendants being convicted (Runyon, 1953, p. 260).

These publications also criticized the sentencing practices of the state courts. In the 1940s, the *Presidio* criticized the inconsistency of sentencing in the state. Tom Runyon (1953), the editor at the time, described these inconsistencies as follows:

> For robbing a bank with a vial of colored water a woman received a life term, and if a fifteen-year-old boy had tried it with a water pistol his fate would have been the same. At the same time a professional criminal could rob the filing station across the street and beat the attendant half to death and receive at most thirty years for attempted murder. (p. 259)

In the May/June 1979 issue, the *Angolite* published an article criticizing the enforcement of drug laws in the state. The article argues that the enforcement of drug laws is ineffective and harmful because those who are arrested are low-level users and they receive life sentences while big-time drug dealers remain free (Rideau, 1979c). In the same issue, editors published a poem titled “Too Much Time” that criticized sentencing
trends in the state. In the September/October 1979 issue, editors published an article “Young Men Behind Bars” that criticized the practice of state courts sending offenders under the age of 18 to the maximum-security adult prison in the state, Louisiana State Penitentiary. At the time, it was known as the most violent prison in the country (Rideau, 1979g). The article blames the state legislature as well because it had amended the Louisiana constitution to allow minors to be sent to Louisiana State Penitentiary.

Prison journalists also criticized state legislators. Some of these criticisms focused on the lack of funding and resources allocated to the prisons. In the May/June 1979 issue of the Angolite, an article “Packing ‘Em On In” criticized the Louisiana state legislature for policies that incentivize increased incarceration of offenders, leading to overcrowding in the state prisons. In the July/August issue that same year, the Angolite published an article called “For a Few Inches More” that documents the botched construction of a new building at Louisiana State Penitentiary and the anger of the warden and state corrections secretary over it. The article quotes a correctional officer who describes the anger of the prisoners and other correctional officers as follows: “the anger is not directed so much at the contractor or the designer, but at that invisible state or corrections official who accepted the design and the equipment as being adequate” (Rideau 1979b, p. 15). He places the blame for the botched job with the higher up state officials who approved the build plans. The Angolite staff describes the gain of the build as follows: “the only ‘real’ benefit to anyone are [sic] the few extra inches of living space—but for $2,133,250? There should be more benefits” (Rideau 1979b, p. 15). In the September/October 1979 issue of the Angolite, the editor published an article documenting the lack of resources
dedicated to the Louisiana State Penitentiary print shop, which supported the growing state bureaucracy without getting an increase in resources or upgraded facilities. Rideau (1979e) describes the situation as follows:

The huge bureaucracy that has blossomed as a result of the federal court-ordered expansion of facilities and services over the past couple of years apparently forgot what is the backbone of every bureaucracy—the printing facilities. With that increase in the size of the bureaucracy automatically came an increase in paperwork, forms and etc., all of which must be printed by the Print Shop. (p. 5)

**Wardens shut down prison newspapers when they no longer protect them from being scapegoats.**

Prison newspapers have existed since 1800 and have been published out of prisons in every state (except New Hampshire) and the District of Columbia. These publications reached their height in the 1960s with over 200 publications being published in the US. From the early 1970s onward, however, the number of these publications began to decline. This is shown in figure 13.
The decline of the publications should indicate that they no longer served the interests of the warden. Either they no longer served as useful channels for information about the behavior of correctional and treatment officers, or the warden could no longer guarantee that the publications would communicate positive information about their behavior to their superiors (i.e., the commissioner, governor, and voters), or would not protect them from being scapegoats. With prisoners gaining access to the courts and prison journalists winning first amendment protections in 1974, it would seem that wardens could no longer rely on the newspaper as channels of positive information about their behavior to their superiors (Cooper v. Pate, 1964; Drummond, 2020; Morris, 2002; Procuñier v. Martinez, 1974). Prison journalists had begun challenging wardens’ censorship orders in court and guiding other prisoners on how to sue the prison (Drummond, 2020; Morris, 2002; see for
example Johnston 1979a, 1979b; Hogan, 1974a, 1974b). Drummond (2020) quotes a California Department of Corrections spokesman in 1984 who describes the administration’s loss of control over the prison newspapers in the 1980s: “We were losing control of the content of the newspapers by virtue of the court cases. Inmates wanted to play investigative journalist in what was essentially a house organ” (p. 71). During the 1970s, the Angolite and La Roca (published out of Arizona State Penitentiary) published articles that documented prisoners’ efforts to sue the state prison systems and offered advice for doing so.

Legal suits involving prison newspaper fall into five broad categories: (1) First Amendment suits challenging prison censorship, (2) suits by prison journalists disputing disciplinary actions, (3) suits that use the prison newspaper as evidence, (4) suits in which the prison newspaper is cast as a tool for information dissemination, and (5) suits in which participation on the prison newspaper is used as evidence of a prisoner’s rehabilitation. The first three of these suit categories affirms my prediction that the prison newspapers became a threat to wardens when prisoners have the right to sue in court. Figure 14 shows the breakdown of these suits categories among suits involving a prison newspaper or prison journalist from 1969 to 2020.
Of these suits, 52% constitute threats to wardens. They involve either First Amendment protection claims by prisoners, challenges to disciplinary action by prison journalists, or the use of a prison newspaper as evidence against the prison administration.

From 1969 to 2020, prisoners have filed eleven First Amendment suits challenging prison administrators’ restrictions of prison newspapers. These suits and their outcomes are summarized in Table 1.
<table>
<thead>
<tr>
<th>Year, Month</th>
<th>State/Federal</th>
<th>Suit</th>
<th>Outcome (violation of 1st Amendment or not)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974, September</td>
<td>Vermont</td>
<td>The Luparar v. Stoneman</td>
<td>Violation</td>
</tr>
<tr>
<td>1978, February</td>
<td>Virginia</td>
<td>Pittman v. Hutto</td>
<td>No Violation</td>
</tr>
<tr>
<td>1979, March</td>
<td>Virginia</td>
<td>Pittman v. Hutto</td>
<td>No Violation</td>
</tr>
<tr>
<td>1979, June</td>
<td>California</td>
<td>Bailey v. Loggins</td>
<td>Violation</td>
</tr>
<tr>
<td>1982, December</td>
<td>California</td>
<td>Bailey v. Loggins</td>
<td>Violation</td>
</tr>
<tr>
<td>1982, January</td>
<td>California</td>
<td>Huston v. Pulley</td>
<td>Violation</td>
</tr>
<tr>
<td>1982, November</td>
<td>Federal</td>
<td>Dutcher v. Smith</td>
<td>Violation</td>
</tr>
<tr>
<td>1983, October</td>
<td>California</td>
<td>Huston v. Pulley</td>
<td>Violation</td>
</tr>
<tr>
<td>1983, August</td>
<td>Colorado</td>
<td>Raymer v. Henderson</td>
<td>No violation</td>
</tr>
<tr>
<td>1984, August</td>
<td>California</td>
<td>In re Williams</td>
<td>No violation</td>
</tr>
<tr>
<td>1987, January</td>
<td>California</td>
<td>Diaz v. Watts</td>
<td>No violation</td>
</tr>
<tr>
<td>2008, March</td>
<td>California</td>
<td>Myron v. Terhune</td>
<td>No violation</td>
</tr>
<tr>
<td>2012, September</td>
<td>California</td>
<td>Myron v. Terhune</td>
<td>No violation</td>
</tr>
</tbody>
</table>
Six of the thirteen suits were decided in favor of the prisoner plaintiffs, affirming that the prison administration had violated the prisoners’ First Amendment rights through their restriction of the prison newspaper. The other seven were decided in favor of the prison administration, declaring that the prison administration had not violated prisoners’ rights.

The first suit by prison journalists for First Amendment protections occurred in 1974. Prison journalists at Vermont State Prison at Windsor sued over official censorship of their publication, *The Luparar*. The judge ruled that the

1. distribution of a prison newspaper within the prison was entitled to the same protections and subject to the same limitations as distribution outside of the prison;
2. once the state had sanctioned publication of a newspaper, it could not terminate publication even when financially supported by the state, nor could it suppress circulation in a manner inconsistent with the freedom of expression guaranteed by U.S. Const. amend. I;
3. prison officials could not unilaterally enact regulations pertaining to publication of the newspaper, but such regulations could be no broader than was necessary to protect legitimate governmental interests; and
4. prison authorities had the burden of demonstrating a permissible basis for interference with prisoner publications. (*The Luparar v. Stoneman*, 1974).

This resulted in the first speech protections for prison journalists. Prison officials had to establish guidelines for censorship rather than having unrestricted discretion over the publication’s content. Similar challenges to prison officials’ ability to censor their prison newspapers occurred across the country. In 1978, prison journalists at Richmond State
Penitentiary challenged prison officials’ censorship of *Facts You Should Know (FYSK)*. The judge ultimately ruled that the censorship was valid (*Pittman v. Hutto*, 1978). This decision was affirmed in appeal (*Pittman v. Hutto*, 1979). In 1983, prison journalists at Colorado’s Centennial Correctional Facility challenged the warden’s censorship of two items in the prison’s newspaper. Their suit was ultimately dismissed (*Raymer v. Henderson*, 1983).

Eight of the thirteen suits occurred in California. The first of these occurred in 1979 when prison journalists at the Soledad Training Facility, which published the *Soledad Star News*, sued the warden for censoring the publication. In *Bailey v. Loggins* (1979), the court ruled that the warden’s “guidelines for publication were overly broad because they conferred too much discretion on prison officials to suppress criticism and controversial views which presented no threat to the security interests of the prison.” (p. 6) The judge ruled that the warden had to establish new guidelines for censorship that were more specific about what kind of language constituted a security threat. In an appeal trial, a judge affirmed the lower court’s ruling and further ruled that the *Soledad Star News* was “constitutionally protected under U.S. Const. amend. I, and regulations for the newspaper had to be framed and applied uniformly with due regard for rights of free expression, with expeditious review of grievances, and censorship no broader than necessary to protect the legitimate governmental interests of prison security, prison order and prisoner rehabilitation” (*Bailey v. Loggins*, 1982). In 1982, prison journalists at Soledad filed another suit challenging the censorship of a cartoon by the warden. In this suit, the court ruled that “the censorship of the prison newspaper was unconstitutional
because it unjustifiably imposed limitations on legitimate rights of prisoners. The material at issue did not threaten prison discipline or other legitimate prison interests (Huston v. Pulley, 1982). This ruling was held up in an appeal trial in 1983 (Huston v. Pulley, 1983). In 1982, the dismal of a prison journalist’s First Amendment suit was overturned in appeal (Dutcher v. Smith, 1982).

In 1984, the San Quentin News editor likewise filed a suit that objected to the warden’s censorship of the publication. The judge ruled that the censorship fell within the guidelines set by the institution and that it was “for the reasonable security of the institution as well as reasonable protection of the public and served valid penological objectives” (In re Williams, 1984, p. 600). In 1987, the editor of the Vacavalley Star published out of Vacaville Medical Facility in California filed a similar suit challenging the censorship of the publication. The judge affirmed that the warden had the right to censor the publication (Diaz v. Watts, 1987).

Most recently in 2008, prisoners at Salinas Valley State Prison challenged the prison administration’s prohibition on their beginning a prison newspaper. The court affirmed the prison administration’s decision to restrict the prisoners from publishing a newspaper (Myron v. Terhune, 2008). This decision was affirmed in appeal (Myron v. Terhune, 2012).

From 1969 to 2020, prison journalists have filed eight suits challenging prison administrators’ disciplinary action that resulted in their removal from the newspaper staff. These suits and their outcomes are summarized in Table 2.
<table>
<thead>
<tr>
<th>Year, Month</th>
<th>State/Federal</th>
<th>Suit</th>
<th>Outcome (violation of due process or not)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976, March</td>
<td>Virginia</td>
<td>Smith v. Winston</td>
<td>No violation</td>
</tr>
<tr>
<td>1980, February</td>
<td>California</td>
<td>In re Westfall</td>
<td>Violation</td>
</tr>
<tr>
<td>1985, April</td>
<td>Illinois</td>
<td>Smith v. Rowe</td>
<td>Violation</td>
</tr>
<tr>
<td>1992, July</td>
<td>Illinois</td>
<td>De Tomaso v. McGinnis</td>
<td>No Violation</td>
</tr>
<tr>
<td>1996, November</td>
<td>Louisiana</td>
<td>Eure v. Miller</td>
<td>No Violation</td>
</tr>
<tr>
<td>2013, September</td>
<td>California</td>
<td>Woodard v. Haviland</td>
<td>No Violation</td>
</tr>
</tbody>
</table>
Three of the eight suits were decided in favor of the prisoner plaintiffs, affirming that the prison administration had violated the prisoners’ due process rights through their restriction of the prisoner’s privilege to work on the newspaper. The other five were decided in favor of the prison administration, declaring that the prison administration had not violated prisoners’ rights and that the removal of the prisoner from the newspaper staff was authorized.

From 1969 to 2020, prisoners have filed eight suits in which prison newspapers were used as evidence against the prison administration. These suits and their outcomes are summarized in Table 3.

<table>
<thead>
<tr>
<th>Year, Month</th>
<th>State/Federal</th>
<th>Suit</th>
<th>Outcome (In favor of prisoner, prison administration, or court)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969, April</td>
<td>Federal</td>
<td>Durham v. Blackwell</td>
<td>Prisoner</td>
</tr>
<tr>
<td>1979, July</td>
<td>Maryland</td>
<td>Bailey v. Lally</td>
<td>Prison administration</td>
</tr>
<tr>
<td>1991, September</td>
<td>Illinois</td>
<td>People v. Seuffer</td>
<td>Prisoner</td>
</tr>
<tr>
<td>1992, November</td>
<td>Montana</td>
<td>Radi v. McCormick</td>
<td>Prison administration</td>
</tr>
<tr>
<td>Year, Month</td>
<td>State</td>
<td>Case Name</td>
<td>Decision</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
<td>------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>1994, October</td>
<td>California</td>
<td>Galliano v. United States INS</td>
<td>Court</td>
</tr>
<tr>
<td>2007, July</td>
<td>California</td>
<td>Berryman v. Ayers</td>
<td>Court</td>
</tr>
<tr>
<td>2010, December</td>
<td>Texas</td>
<td>In re Biddie</td>
<td>Court</td>
</tr>
<tr>
<td>2012, March</td>
<td>Louisiana</td>
<td>Johnson v. Cain</td>
<td>No resolution</td>
</tr>
</tbody>
</table>

Of the eight suits, only two were decided in the prisoners’ favor. Five were decided in favor of the prison administration or lower state courts. Only one ended without resolution. In this final case, the court ruled that there was insufficient evidence to rule.

**Conclusion**

In this paper, I explore the role of prison journalism in the US criminal justice system. I find that prison newspapers served as internal information channels established by wardens to (1) monitor their subordinates and (2) protect themselves from being used as a political scapegoat. These newspapers provided wardens with information about the behavior of correctional officers and treatment officials. They also provided the governor and voters with positive information about wardens’ behavior to prevent the commissioner from using the warden as a political scapegoat. As part of this protection, prison newspapers placed the blame for failures in prison operation on the state parole
board, judges, and legislators. When prisoners gain the right to sue in court, the newspapers become a threat rather than protection to wardens, prompting wardens to shut them down.

This paper has implications for future research. The operation of prison programming (namely prison journalism) that served the warden’s interests resulted in marginal criminal justice reform. The operation of prison newspapers and their circulation outside the prison led to the positive unintended consequence of instigating marginal prison reforms in states across the US. As documented in this paper, these reforms included the increased release of long-term prisoners and an increase in resources given to release prisoners to decrease the likelihood of their recidivism. Future research on criminal justice reform needs to take criminal justice bureaucrats’ interests into account. Reforms that align with their interests are more likely to succeed than reforms that conflict with their interests. Criminal justice researchers, especially those in economics, need to leverage qualitative data more. Qualitative data such as prison newspapers, interviews, memoirs, and journals provide insight into the perspective of prison officials and prisoners. Only through leveraging these materials can we access the perspective and incentives of prison officials and prisoners as they see them (Skarbek, 2020). With regard to institutional structures and reform, the perspectives of the actors within the situation are the only ones that matter for analyses (Ostrom, 2005).
DEMOCRACY IN THE AGE OF MASS INCARCERATION

Introduction

The country that served as Tocqueville’s model for democracy and freedom is now the world’s largest captor. Since 1980, a situation of mass incarceration has persisted in the US. The growth of the US prison population took off in 1980 and continues to grow at the highest rate in the world: 830 people per 100,000 of US adult residents (Kaeble and Cowhig, 2018, p. 4). It also continues to lead the world in its total prison population of 2,121,600 (International Centre for Prison Studies, 2018). The population of people under the authority of the US criminal justice system extends beyond those currently incarcerated in prison. In 2016, the number of adults under the supervision of the US correctional system (which includes those in prison, jail, probation, and parole) in 2016 was estimated to be 6,613,500 people (Kaeble and Cowhig, 2018, p. 1). This translates to 1 in 38 adults currently being under correctional supervision in the US (Kaeble and Cowhig, 2018, p. 1).

Although the population under the supervision of the US criminal justice system is a small proportion of the total US population, it “represents a high percentage of residents in many neighborhoods” (Burch, 2013, p. 4). The effects of being involved in

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6 In this chapter, I use “mass incarceration” to refer to the high rate of incarceration, large prison population, expansive prison facilities, and legislation affecting the lives of former prisoners and their families post-incarceration.
the US system of mass incarceration extend beyond the individual who is incarcerated to their family and larger community. This is particularly concerning when one recognizes that the US also has a large racial disparity in its prison population. Relative to the overall population, a disproportionate amount of those incarcerated are African Americans. In 2016, 41.3 percent of federal inmates and 34.9 percent of state inmates reported themselves as black, despite the fact that African Americans make up only 13.4 percent of the US population (Carson, 2018, p. 7; United States Census Bureau, 2018). In 2016, black adults were incarcerated at a rate of 1609 per 10,000 US residents—almost eight times that of whites (Carson, 2018, p. 8). Hispanic adults were likewise incarcerated at a disproportionate rate of 857 per 100,000 residents—which was almost four times that of white adults (Carson, 2018, p. 8). As a result, those communities that are affected by mass incarceration are uniquely poor, minority communities.

Despite its extensiveness, the US prison system fails to rehabilitate its prisoners. Eighty-three percent of released prisoners are re-arrested within nine years of their release, meaning almost all the current correctional population will return to a situation of being surveilled by the US government (Alper et al., 2018, p.1). Due to the racial disparity of US prison populations, African Americans constitute a disproportionate amount of those who return to the custody of the US criminal justice system.
Literature on the carceral state has explored how the ever-expanding US criminal justice system affects American democracy. Lerman and Weaver (2014) argue that contact with the criminal justice system provides citizens with an impression of the US government as their keeper. Contact with the criminal justice system dissuades citizens from engaging in political processes and makes them feel as though their voice does not matter. These “custodial citizens” come to view government as a keeper rather than an entity which they can influence (Lerman & Weaver, 2014). Gottschalk (2014) draws on Beaumont and Tocqueville’s insight that prisons in the US embodied situations of despotism. She argues that the prison system is growing into a central institution in the US and has begun to define the main character of life in the US. As a result, the integration of the prison system into every aspect of society has begun to undermine American democracy and transform it into a situation of despotism. She, like Lerman and Weaver (2014), identifies the causal mechanism as citizens’ conception of their relationship with the state—namely one of ward and warden. Avramenko and Gingerich (2014) argue that because the penitentiary system in the US explicitly seeks to isolate inmates and undermine their voluntary association, it fosters an equality of servitude, leading to the despotism that Tocqueville feared. Additionally, there is a large literature on the collateral consequences of incarceration (Burch, 2013; Genty, 2003; McGinnis, 2018; Pettit and Lyons, 2007; Uggen et al., 2004), to which these authors contribute, that

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7 Gottschalk (2006) specifies three characteristics that define the US carceral state: “the sheer size of its prison and jail population; its reliance on harsh, degrading sanctions; and the persistence and centrality of the death penalty” (p. 1).
documents and tries to explain what has reduced civil and political participation by former prisoners.

Much of the carceral state and collateral consequences of incarceration literatures conclude that the criminal justice system in the US pushes those who have come into contact with it into a position where they are no longer equal citizens in the US, undermining democracy. For Tocqueville, the primary character of democracy was equality. What character that equality takes, however, depends on the associations that citizens form. Tocqueville’s challenge to readers in *Democracy in America* was identifying what sort of associational life facilitates the maintenance of equality in liberty. Equality in liberty meant that citizens had equal economic opportunities as well as equal political opportunities (Tocqueville, [1835] 2010, p. 306n.e). His fear was that Americans’ love of material well-being would cause them to give up their liberty and accept equality in servitude, that is, despotism, in order to preserve that material well-being.

Taking up Tocqueville’s challenge from *Democracy in America*, Vincent Ostrom (1997) argues that associations are the key to the maintenance of democracy. It is through participation in associations that individuals learn how to be self-governing, meaning they know how and have the language necessary to engage in the formation, reformation, and maintenance of constitutional rules. His and Elinor Ostrom’s work in constitutional political economy explores, through a Tocquevillian lens, what type of participation in

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8 For Tocqueville, equality did not refer to actual equality in wealth or ability, but an absence of class structures that prevent a group of people from having an opportunity to participate in the political or economic spheres.

I contribute to these literatures by exploring how mass incarceration affects democracy in the US through a political economy lens. I argue that mass incarceration undermines American democracy and creates a situation of despotism in the US by eroding the associational life of those incarcerated by the US criminal justice system. After their release, former prisoners have reduced engagement in civil and political associations due to the increased costs of participating in associational life. As a result, a growing portion of the US population is becoming increasingly isolated and disengaged from political life. This population is disproportionately drawn from poor and minority communities. A skewed proportion of the population forms, maintains, and enforces the laws in the US and, thus, they have become the keepers of those negatively affected by the criminal justice system, creating a situation of despotism.

The chapter proceeds as follows: The next section outlines what role Tocqueville attributes to associations in a democracy. The third section compares Tocqueville’s evaluation of the US prison system in the nineteenth century to the US prison system today. The fourth section presents empirical evidence of mass incarceration’s effect on former prisoners’ associational life. The final section concludes.
The Role of Association in Democracy

For Tocqueville, democracy in America is defined by the presence of equality of conditions and political equality that its citizens enjoy. Equality of conditions involves the removal of class hierarchies that prohibit some groups from improving their material well-being. With the movement away from hierarchy, economic opportunities became available to all. It was no longer just the elites who could grow their wealth. This equality of conditions included more than just equality in wealth; in fact, Tocqueville saw inequality of wealth as inescapable. Rather, “[w]hat is important for democracy, is not that there are no great fortunes; it is that great fortunes do not rest in the same hands. In this way, there are the rich, but they do not form a class” (Tocqueville, [1835] 2010, p. 306n.e). In Tocqueville’s view, the key in the American experience was that all citizens had equal access to “all that contributes to happiness: personal consideration, political rights, easy justice, intellectual enjoyments, and many other indirect sources of contentment” (Tocqueville, [1835] 2010, p. 286). Primary to equality of conditions is the inclusion of all citizens in the affairs of government. Equality in material conditions coincided with equality in political power. As material wealth across society grew, so did the influence of the average citizen in government. No longer were the laws singularly decided by the elite. This is what Tocqueville referred to as “sovereignty of the people” (Tocqueville, [1835] 2010, p. 76). Through engagement in the constitutional level of decision making, people govern themselves (Ostrom, 1990; Ostrom, 1997).

Tocqueville suggests that the tendencies that allowed Americans to achieve a democratic state may lead them into despotism. He feared that their achievement of
equality of conditions and the shared level of well-being that accompanied equality of conditions would lead Americans to love equality more than liberty. Thus, he saw them easily chasing a state of despotism for the ends of maintaining equality of conditions and the situations of well-being to which they had become accustomed, even if it meant giving up their liberty. For Tocqueville, despotism refers to equality of conditions in a situation of servitude; whereas democracy refers to that equality of conditions in a situation of liberty. This distinction between equality of conditions in a situation of servitude versus a situation of liberty refers primarily to the degree of political agency that citizens have. In a democratic state, every citizen is able to influence the laws of their state. In a despotic state, however, citizens are no longer citizens. Instead, they would be more properly called wards of the state. In a despotic state, there is one person—a dictator—or group that has full and sole control over the laws of a state. Citizens have abdicated their rights to influence the political sphere of society.

Tocqueville identifies participation in associations as the mechanism through which democracy is maintained. Associations—civil and political—teach individuals how to interact and communicate with each other. Through engagement in associations, they learn the knowledge and language necessary to be engaged in the political sphere (Ostrom, 1997). It is through constant engagement with and refinement of constitutional rules that people maintain and further develop their self-governing abilities. To maintain democracy and avoid despotism, citizens need to be engaged in constant reformation and maintenance of constitutional rules (Ostrom, 1997, p. 141). The associations necessary for the maintenance of democracy are the political associations through which individuals
actively vie to influence the constitutional rules of their community and their enforcement of those rules.

As Tocqueville lays out, there are many different associations in which individuals take part in democracies. The only permanent associations that are created by law, for Tocqueville, are townships (Tocqueville, [1835] 2010, p. 302). Otherwise, civil and political associations are created only by people voluntarily coming together to pursue a shared interest. Civil associations constitute broader forms of organizing than political association. Tocqueville ([1835] 2010) lays out the range of civil associations in American society saying,

[n]ot only do [Americans] have commercial and industrial associations in which they all take part, but also they have a thousand other kinds; religious, moral, [intellectual,] serious one, useless ones, very general and very particular ones, immense and very small ones; Americans associate to celebrate holidays, establish seminaries, build inns, erect churches, distribute books, send missionaries to the Antipodes; in this way they create hospitals, prisons, schools. (p. 896)

Civil associations, in Tocqueville’s view, include charitable organizations, local assemblies, juries, religious organizations, the work place, and so on (Drolet, 2003, p. 190; Estlund, 2003, p. 193). Political associations consist of political parties and interest groups that engage directly with law makers and organize people to facilitate the election representatives (Tocqueville, [1835] 2010, pp. 303–304, 306).
Civil and political associations replace the interpersonal obligations that are laid out in an aristocracy. In aristocracy, individuals had obligations to each other that were defined and enforced by the social structure. In democracy, however, those obligations fall away. Individuals have no obligations to each other or the commons except those they construct for themselves through associations. “Associations, among democratic peoples, must take the place of the powerful individuals that equality of conditions has made disappear” (Tocqueville, [1835] 2010, p. 901). Associations are at the heart of individuals’ ability to self-govern and solve collective action problems.

Tocqueville refers to political associations as the “great free schools where all citizens come to learn the general theory of association” (Tocqueville, [1835] 2010, p. 109). Citizens can associate in civil life without forming associations in the political sphere, but these associations will be weaker and less common. It is politics that “brings about the desire to unite and teaches the art of associating to a host of men who would have always lived alone” (Tocqueville, [1835] 2010, p. 109). Through the persistence of political associations and the engagement in political associations by all members of society, democracy persists. If, however, groups of people fail to engage in political associations, the “power with” relationships that characterize democracy transform into “power over” relationships (Ostrom, 1997). As people fall out of political engagement through political associations, constitutional rules are created and maintained by fewer interest groups unrepresentative of the overall population who become the keepers of everyone else. They are responsible for structuring and enforcing how people may interact with each other. Without being active in the political sphere, people become
increasingly distant in their private lives as well. If they are not engaged in the political sphere, the tendency of individualism to isolate those in a democracy institutes for them a warden (Tocqueville, [1835] 2010). Democracy turns into despotism.

**Prisons Shape Associations**

In *On the Penitentiary System in the United States and its Application to France*, Beaumont and Tocqueville (1833) see the penitentiary system in the US as revolutionizing the role of the prison in society. Rather than simply containing criminals, the penitentiary system sought to fundamentally reform them so that they could be integrated into society. Tocqueville saw the success of prisons in reforming criminals as deriving from the pairing of two seemingly contradictory elements: isolation and laboring. Isolation kept inmates free from the corrupting influence of other inmates and gave them time to reflect on their crimes and commune with the Lord. “As for us, as much as we believe that the system founded on isolation and silence, is favourable to the reformation of criminals, we are equally inclined to believe that the reformation of convicts who communicate with each other is impossible” (Beaumont & Tocqueville, 1833, p. 89). Labor provided the relief from isolation that kept inmates from dying or going insane, while also teaching inmates useful skills and love for work that would allow them to easily integrate into civil society upon their release. Thus, the penitentiary system, in Tocqueville’s judgment, provided an effective way to transform the wicked into engaged citizens. In this way, the penitentiary system was essential for maintaining those social mores that undergird the democratic spirit in the US. Having developed those social mores and experienced the withering away of criminal inclinations and association,
individuals would be ready to engage in the civil and political associations integral for democratic society.

US prisons were formed by voluntary associations that directly monitored the rehabilitation of prisoners.

Each city or town with a prison had its own prison association. Membership of these voluntary organisations [sic] included local businessmen, notables, administrators, teachers and members of the clergy. Through these associations local communities became wedded to the success of their prison. The young magistrates believed the best American prisons involved the whole of the community in the administration and efforts to reform inmates, for businessmen furnished prisoners with work and instruction in a trade. (Drolet, 2003, p. 124) Most prisons were small and had a small population of prisoners.

Beaumont and Tocqueville saw the management of prisons by town associations and their small size as contributing fundamentally to their success: “It is the small number of the prisoners in Wethersfield which forms one of the greatest advantages of that penitentiary, there the superintendent and the chaplain are thoroughly acquainted with the moral state of each individual, and after having studied his evil, they endeavor to cure it” (Beaumont & Tocqueville, 1833, p. 102). By the early twentieth century, however, prison operation in the US had changed dramatically. Practices of isolation and enforced silence had fallen away. Prisoners were allowed to interact. Additionally, prisons are not the “total institutions” that Goffman (1961) suggests and that Beaumont and Tocqueville (1833) present. Prison officials assert less influence over inmates’ lives.
than these presentations of prisons would have us believe. Instead, prison gangs assert immense influence over the daily lives of inmates (Skarbek, 2014, p. 9). Due to the presence of prison gangs, prisons now serve as schools of crime where being incarcerated serves as a “badge of honor” and a “career maker” in that prisoners meet the established gang members who are serving longer sentences (Skarbek, 2014, p. 141).

Prison gangs arose to serve the governance needs of inmates that arose with the immense increase in the prison population. With the influx of new inmates and ever-expanding prison system, the previous system of governance—the convict code—no longer served to govern inmate behavior. Inmates began forming informal groups for protection and resource acquisition rather than relying on the informal norms of interaction that the convict code had provided. With the large influx of new inmates, the percent of the prison population that knew the convict code fell rapidly. The informal groups that inmates had previously formed for protection eventually formalized into prison gangs with direct connections to street gangs. Now, in order to survive prison, inmates have to join a prison gang—and that membership is for life. Leaving the gang results in “an automatic death sentence” (Skarbek, 2014, p. 113). In 1985, gang membership was approximately 13,000 and prison gangs were active in 49 different states (Skarbek, 2014, p. 9). In 1992, gang membership had increased to 46,000 (Skarbek, 2014, p. 9). In 2002, gang membership in California alone was between 40,000 and 60,000 members (Skarbek, 2014, p. 9). This means that post-release, a growing number

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9 The convict code was a spontaneous order development in which prisoners adhered to norms of interaction (Skarbek 2014: 27). Those prisoners who had experience serving time knew the code well, having learned it during their previous sentences. They taught it to first-time prisoners.
of former prisoners have obligations to those gangs despite no longer being incarcerated (Skarbek, 2014, p. 113).

This change in internal prison structure occurred when the size of the prison population sky-rocketed and the prison system was expanded. These changes directly contradict what Tocqueville saw as one of the virtues of the US prison system: small prisons with few inmates. In fact, the spike in incarceration rates may actually increase crime. Liedka, Piehl, and Useem (2006) find that incarceration rates above 325 of 100,000 residents may lead to more crime rather than less. This implies that the high level of incarceration in the US is actually working against the deterrent effect prisons are intended to have. Several explanations for this have to do with the changing composition of an inmate’s social capital when he goes to prison. For one, prisons today have the opposite effect on inmates’ network ties than what Tocqueville postulated. Serving time in prison is associated with a deterioration of an inmate’s community and family ties and a strengthening of their criminal ties. This effect is exacerbated by the presence of prison gangs (Skarbek, 2014, p. 166). Additionally, Hutcherson (2012) suggests that being incarcerated increases future earnings in the illegal sectors. This, in addition to incarceration being destigmatized in communities leads to a greater participation in criminal activity after release by former prisoners (Burch, 2013, p. 4; Skarbek, 2014).

Applying the theory of democratic maintenance developed in the previous section to the US today, we see the perversion of associational life by mass incarceration. Prisons no longer serve the rehabilitative role that Beaumont and Tocqueville (1833) outlined. Rather than shape inmates so that they are able to participate in associational life, the US
prison system undermines the associational life necessary for the maintenance of democracy by raising the costs of participating in civil and political associations for current and former prisoners. Those who serve time in prison develop social capital in the criminal sphere and face legal barriers to rejoining free society. They are unable to participate in civil and political associations and instead participate in extra-legal ones. As a result, they never learn the knowledge and tools of self-governance necessary for the maintenance of democracy (Ostrom, 1997). Additionally, legal barriers are erected that bar them from even the most basic political engagement, such as voting. As a result, when they rejoin society, they are unable to engage in the political process and remain isolated from society despite their freedom from imprisonment. Mass incarceration is shifting American society away from democracy and toward a situation of despotism.

**Associational Life After Incarceration**

The system of mass incarceration in the US raises the costs to rejoining associational life after incarceration. As a result, former prisoners participate less in the civil and political associations that Tocqueville saw as core to democratic life. Former prisoners have reduced participation in family life, religious communities, industry, juries, political offices, and voting. Because of this, mass incarceration has created a permanent outgroup in American society, transforming American democracy into despotism. Despite the number of those incarcerated being small relative to the US population overall, those incarcerated disproportionately come from poor and minority communities. Those pushed out of the political sphere will not affect interest groups in the US proportionately. Additionally, as Burch (2013) shows, incarceration has an effect
beyond those who serve time in prison. The withering of the social and human capital of former prisoners leads to the withering of social and human capital in their communities (Burch, 2013, p. 4). Former prisoner’s reduced access to resources leads to their communities having fewer resources with which to support their local civil and political associations (Burch, 2013, p. 37). As a result, incarceration reduces political participation by members of communities from which a higher percentage of people are incarcerated (Burch, 2013, p. 37). The result is that poor and minority communities are increasingly removed from the political sphere.

Mass Incarceration Reduces Participation in Civil Association by Former Prisoners

Mass Incarceration Reduces Participation in Family Life by Former Prisoners

Participation in family life defends against the individualism that Tocqueville ([1835] 2010) sees as threatening democracy. Individualism causes “each man forget his ancestors, but it hides his descendants from him and separates him from his contemporaries” (Tocqueville, [1835] 2010, p. 884). Through individualism, Tocqueville sees a tendency in democracy for people to become wholly focused on themselves and their economic well-being, removing themselves from the political sphere.

Family structure and formation are most impacted by the perverse effects of incarceration (Genty, 2003). Incarceration leads to reduced parental involvement, pushes children of incarcerated parents into the foster care system, and reduces marriage rates in prisoners’ communities. Those looking at the effect of incarceration on families suggest that incarceration may reduce crime in the short run, but that the negative effects on children may ultimately cause an increase in crime (Lynch & Sabol, 2004).
The separation of prisoners from their families leads to reduced parental involvement by both the incarcerated parent and the remaining parent. Most prisoners in the US are parents. Glaze and Maruschak (2008) find that over half of state prisoners and over 60 percent of federal prisoners are parents. Just under a quarter of prisoners in the US have at least three children (Glaze & Maruschak, 2008). Of children in the US, 2.2 million have at least one incarcerated parent (Western, 2006; Wildeman, 2010). Parents are often incarcerated in prisons that are over 100 miles away from their family’s place of residence, making visitation prohibitively costly (Genty, 2003). This is especially the case for mothers because of the limited number of women’s prisons in the US (Genty, 2003). Because of this distance, over half of incarcerated parents never get a visit from their children while they are incarcerated (Genty, 2003, p. 1674). Even when parents maintain contact with their family while incarcerated, “‘parenting from a distance’ places serious undeniable limitations on the parent-child relationship” (Genty, 2003, p. 1673). This separation has become longer as sentencing laws have increased in severity. Parents are often separated from their children for a significant portion of their children’s lives. On average, fathers would be incarcerated between seven and nine years while mothers would be incarcerated from four to five and a half years (Genty, 2003, p. 1672). Due to the absence of one parent, they experience less involvement with their remaining parent as more of the economic burden of the family falls on the remaining parent (Comfort, 2008).

Many parents lose custody of their children once incarcerated, leading to reduced involvement with their children after their release. Some parents have no relatives who
can care for their children forcing those children into foster care (Edin et al., 2004). According to the federal Adoption and Safe Families Act (ASFA) of 1997, relatives of those incarcerated may not care for children if they have been convicted of a crime in the past (Samuels & Mukamal, 2004). As incarceration tends to affect poor and minority neighborhoods disproportionately, there is a higher probability that children from poor and minority families will be put into foster care due to a parent being incarcerated (Lynch & Sabol, 2004; Samuels & Mukamal, 2004). More than 7 percent of African American children in the US (1 in 14) have at least one currently incarcerated parent (Uggen et al., 2006, p. 299). The ASFA places a time limit of 22 months on when a child is put into foster care due to parent incarceration and when parents lose their parental rights (Rauber, 2001, p. 7; Hort, 2001). Since minorities tend to receive longer sentences than their white counterparts, minority parents lose their parental rights at a higher rate (Burch 2013: 28).

High rates of incarceration and recidivism have led to two-parent families being less common, especially among minorities (Charles & Luoh, 2010; Wakefield & Uggen, 2010; Western, 2006). Comfort (2008) finds that incarceration puts a unique strain on partners trying to maintain a relationship, leading to a high rate of divorce for parents who have been incarcerated (Lopoo & Western, 2005, p. 721). Incarceration is grounds for divorce in 29 states (Uggen et al., 2006, p. 297). Spouses of those incarcerated may choose to file for divorce and remove the incarcerated parent’s parental rights (Weaver & Lerman, 2010, p. 820). This leaves the incarcerated person without a family post-release.
This struggle to maintain an intact family uniquely plagues African American communities (Pettit & Western, 2004; Western, 2006; Wildeman, 2010).

High rates of incarceration in a community also reduce the rate at which families are formed. As adult men are the main population incarcerated in the US, the high rates of incarceration reduce the supply of eligible men. When the men being incarcerated disproportionately come from poor and minority communities, then the rate of family formation is especially affected there (Lynch & Sabol, 2004, p. 280). Charles and Luoh (2010) find that as the rate of incarceration of black adult males increases, the rate of marriage of black adult females falls (p. 624). “Whereas 50% of white and Latinos are married by the age of 25, only 25% of African American women are married” (Wakefield & Uggen, 2010, p. 397).

Mass Incarceration Reduces Participation in Religious Associations by Former Prisoners

For Tocqueville ([1835] 2010) religious associations are a key factor underlying American democracy. He argues that the values and social institutions of the Puritan were a main contributor the success of the democratic experiment in the US (Tocqueville, [1835] 2010). Continued participation in religious life is central to the maintenance of the social mores that undergird democracy. For this reason, priests had an important role in molding prisoners to rejoin society in early US prisons (Beaumont & Tocqueville, 1833).

There is little research on the rate of religious participation by former prisoners. Most (DiIuio, 2009; Dodson et al., 2011; Johnson, 2004, 2008, 2014; O’Connor et al., 1998; Leary, 2018; Kaufman, 2018; Mowen et al., 2018; Roberts & Stacer, 2016; Stansfield et al., 2018) focus on the success of religious programs in preventing former
prisoners from recidivating. Because of this, the percent of former inmates participating in these programs and religious organizations broadly is ignored. Research by Ulrich and Cold (2011) and Visher et al. (2004), however, suggests that participation in religious organizations by former prisoners is low when compared to their nonincarcerated counterparts.

Ulrich & Cold (2011) followed 800 former prisoners after their release to see what factors were important for preventing them from behaving violently. Of 800, only 44 (or 7.9 percent) participated in religious activities—including church attendance and other religious services after release (p. 386). Similarly, Visher et al. (2004) found that only 6.9 percent of former prisoners in Maryland found religious participation useful for their reentry into society (p. 4). These studies suggest that former prisoners tend to participate in religious communities at a lower rate than their nonincarcerated counterparts. This rate of participation is low when compared to national rates of religious involvement. According to the Pew Research Center (2018), 36 percent of the US adult population attends religious services weekly and 30 percent of the US adult population attends religious services weekly. The low rate of religious participation by former prisoners is less striking when compared to the percent of the US black adult population’s rate of religious participation. The Pew Research Center (2018) found that 15 percent of black Americans attend religious services once a week and 12 percent of black Americans attend religious services once a month.

Mass Incarceration Reduces Participation in Industry by Former Prisoners
In addition to family and religious communities, industry, or participation in the workplace, is integral for the maintenance of democracy (Estlund, 2003; Tocqueville,
By industry, Tocqueville means participation in business life (Estlund, 2003). While Tocqueville warns that narrow focus on the economic sphere at the cost of political involvement could lead the US into despotism, he acknowledges industry as an important space for individuals to develop their self-governing capacity.

The literature on the collateral consequences of incarceration outlines the severe effects that incarceration has on current and former prisoners’ ability to participate in the economic sphere of life. Chief among these is the low rate of employment of former prisoners (Pager, 2009). Barriers to obtaining occupational licenses and state laws that allow employers to consider arrests in hiring and firing decisions are the main contributors to the low rates of employment among former prisoners. Additionally, the human capital and social capital of those incarcerated erode during their sentence, making it more difficult for them to find a job upon release.

Jobs available to former prisoners are severely limited due to legislative barriers. Former prisoners are barred from holding jobs that require professional and occupational licenses, such as hazardous waste transporters, real estate brokers, recreational vehicle sales people, and airplane pilots (McGinnis, 2018, pp. 70, 71). Former prisoners are similarly prohibited from holding jobs that involve contact with children or health or security services (Uggen et al., 2006, p. 298).

Former prisoners will have a harder time finding jobs in the legal sphere due to their experiencing greater discrimination from potential employers than those without prior convictions (Pager, 2003, 2009). This increases the likelihood that former prisoners will return to crime as their returns from illegal work far exceed the returns they can
expect from working in the legal employment (Hutcherson, 2012; Skarbek, 2014, p. 166). In their study of the legal barriers faced by ex-convicts, Samuels and Mukamal (2004) find that most states allow employers to make hiring and firing decisions based on someone’s criminal record (p. 10). Thirty-eight states allow employers to use arrest records in hiring and firing decisions even if the arrest did not lead to conviction of any crime (Legal Action Center, 2009, p. 10).

The human and social capital for work in the legal sphere that prisoners had prior to being incarcerated erodes during their sentence, making finding a job post-release difficult. Uggen, Manza, and Behrens (2004, p. 269) note that former prisoners usually have few of the “weak ties” that are necessary for accessing better paying, better quality jobs (Granovetter, 1973). Loury (2007) highlights that many poor blacks have few connections outside their neighborhood communities already. When a high percentage of residents from that community are incarcerated, it further reduces the ability of black former prisoners to find well-paying legal work post-release. If they find a legal job, they receive fewer work hours and lower wages than their peers. Former prisoners tend to receive lower paying and lower-status jobs due to their spotty work histories and the stigma that accompanies incarceration (Samuels & Mukamal, 2004, p. 8).

Instead of developing connections that will facilitate legal work, prisoners develop social capital and skills that make earning income in illegal endeavors easier (Hagan, 1993; Hutcherson, 2012; Skarbek, 2014). For this reason, many former prisoners find that their earning potential in illegal endeavors far exceeds their earning potential in the legal sector (Bourgois, 1995; Hagan, 1993; Sullivan, 1989). In fact, those who were
previously incarcerated may experience a wage penalty in legal work ranging from 10 to 30 percent as a result of their being previously incarcerated (Pettit & Lyons, 2007; Pettit & Western, 2004; Waldfogel, 1994; Western, 2002).

African Americans bear a larger wage penalty than other ethnic groups. Western (2006) finds that African American males experience a 4 percent wage penalty from incarceration, compared to the 1 percent wage penalty experienced by white men, and the 2.4 percent wage penalty experienced by Latino men (127). The wage penalty also endures longer for African American men than for other ethnic groups (Pettit and Lyons 2007). This finding comports with Loury’s (2007) discussion of the lack of social capital that African Americans have outside their communities being a main contributor to the divergence in economic performance across racial groups.

Adding to the costs of finding and maintaining a job, many states restrict or revoke offenders’ driver’s licenses. In some cities, finding and maintaining a job without the use of a car further impedes the success of former prisoners in legitimate employment (Alexander, 2012, pp. 150–151). Twenty-seven states suspend licenses automatically for drug offenses. Twenty-three states suspend offenders’ licenses only for driving related offenses (Samuels & Mukamal, 2004, p. 17).

Mass Incarceration Reduces Participation in Political Associations by Former Prisoners

Tocqueville ([1835] 2010) identifies political associations as the main bulwark against despotism and tyranny of the majority. In discussing political associations, he says that “freedom of association has become a necessary guarantee against the tyranny
of the majority” ([1835] 2010, pp. 306–7). Through participation in political parties, office holding, and juries, citizens ensure that those operating in the political sphere of society do actually represent them. With regard to juries, Tocqueville ([1835] 2010) writes that “the man who judges in a criminal court is really the master of society…the institution of the jury, therefore, really puts the leadership of society into the hands of the people” ([1835] 2010, p. 445). The ubiquity of political associations and widespread participation ensures that those elected to public office are representative of the majority ([1835] 2010, p. 310).

In the current system of mass incarceration, however, legislative restrictions on former prisoners’ ability to engage in the political sphere “deny felons the full rights of citizenship. This denial, in turn, makes performing the duties of citizenship difficult” (Uggen et al., 2006, p. 283). Former prisoners are barred from serving on juries and running for office (McGinnis, 2018, p. 67; Weaver & Lerman, 2010, p. 824). Overall, former prisoners, and those in the communities in which they live, engage in political activities at a lower rate than those in communities unaffected by incarceration (Burch, 2013).

Thirty-one states and the federal courts prohibit ex-felons from serving on juries (Alexander, 2012, p. 240; Lerman & Weaver, 2014). Even those incarcerated for as little as six months are barred from jury service in Maryland (McGinnis, 2018, p. 66). Due to the racial disparity of those incarcerated, 37 percent of black adult men are excluded from serving on juries (Lerman & Weaver, 2014, p. 85). Compared to only 6.5 percent of all adults being excluded from jury duty due to felony conviction, the African American
population is significantly underrepresented in jury service (Lerman & Weaver, 2014, p. 85; Kalt, 2003). Among those who are not prohibited from serving on juries, there is still reduced participation in jury service by former prisoners (Weaver & Lerman, 2010, p. 824).

Former prisoners are also barred from holding public office at all levels—from the state legislature to their local schools (Morenoff & Harding, 2014, p. 414). This prohibition extends beyond positions such as mayor and governor. Former prisoners are prohibited from holding elected positions such as school board members, as well as other low-level offices such as local water district administrators, public notaries, or registrars of deeds (McGinnis, 2018, pp. 66, 67).

Due to the barriers to political participation, former prisoners exclude themselves from less formal forms of political participation. Former prisoners have a lower rate of participation in civic and political groups (Weaver & Lerman, 2010, p. 827; Burch, 2013, p. 105). They also engage less in political activities like protests and signing petitions (Burch, 2013, p. 75). The result is the creation of a class of “custodial citizens” (Weaver & Lerman, 2010, p. 819). These citizens have no voice in the political sphere of their communities. Rather, their situation embodies that of despotism. Their involvement in the political sphere consists of “one way transactions” (Soss, 1999, p. 366). Weaver and Lerman (2010, p. 819) describe the relationship between custodial citizens and political authorities: “decisions are made about them, not in response to their claims; where their input in decision making is minimal.” Instead of being equal participants in the political process, they are “objectified and dependent” (Farrington, 1977, p. 296).
Mass Incarceration Reduces Participation in Voting by Former Prisoners

For Tocqueville, universal suffrage is necessary to avoid the tyranny of the majority and despotism. He says that,

In countries where universal suffrage is accepted, the majority is never in doubt, because no party can reasonably set itself up as the representative of those who have not voted. So, the associations know, and everyone knows, that they do not represent the majority. This results from the very fact of their existence; for, if they represented the majority, they would change the law themselves instead of asking for its reform. (Tocqueville, [1835] 2010, p. 311)

When groups of people are denied a vote, they potentially fall into a situation of despotism as elected leaders can claim to represent that excluded group. In situations of universal suffrage, “the purpose of associations is to convince and not to compel” since no association has the majority ([1835] 2010, p. 309). Through universal suffrage, a situation of despotism—in which associations would impose their will—is avoided.

Mass incarceration has eroded universal suffrage in the US today. By raising legal barriers and reducing expected benefits, mass incarceration increases the cost of voting for current and former prisoners. In the US, felon disenfranchisement laws constitute the main legal barrier to voting for those currently and formerly incarcerated. In all but two states (Maine and Vermont), felons lose their voting rights while they are incarcerated (National Conference of State Legislatures, 2018).

In most states, prisoners’ voting rights are restored after they are released from prison. In 14 states and the District of Columbia, voting rights are restored automatically upon release (National Conference of State Legislatures, 2018). In 22 states, voting rights are restored upon the completion of a person’s sentence—which includes the probation or parole period after release and the payment of fees associated with their sentencing.
(National Conference of State Legislatures, 2018). In 12 states, those convicted of a felony must first complete their full sentence and then request a governor’s pardon in order to restore their voting rights (National Conference of State Legislatures, 2018).

Due to disenfranchisement laws, as of the November 2016 elections, 6.1 million people were unable to vote (Uggen et al., 2016, p. 3). Twenty-three percent of those who are disenfranchised are currently incarcerated (or 1.4 million people). The rest (77 percent or 4.7 million people) have been released and are working and paying taxes, and still cannot vote (Uggen et al., 2016, pp. 6, 14). A substantial enough portion of the population is barred from voting that if they had been allowed to vote, they would have likely affected the results of US Senate races from 1970 to 1998 and the 2000 presidential election (Uggen & Manza, 2002).

African Americans make up a disproportionate number of those unable to vote due to felony convictions. In 2016, one in thirteen black adults was barred from voting (Chung, 2018, p. 6). African Americans are disenfranchised at a rate four times that of non-African Americans, despite African Americans making up only 13.4 percent of the national population (Uggen et al., 2012, p. 2; United States Census Bureau, 2018). The degree of disenfranchisement of African Americans is also striking when you compare the percent of the disenfranchised African American population (7.7 percent) to that of non-African American population (1.8 percent) (Uggen et al., 2012, p. 2). The disparity is especially striking in states like Florida, Kentucky, Tennessee, and Virginia where more than one in five black adults was barred from voting due to felony convictions (Chung, 2018, p. 6).
Those who had previously lost their right to vote due to a felony conviction but have had their voting rights restored also tend to vote at a lower rate exacerbating the degree to which former prisoners are unrepresented by those in political offices. Meredith and Morse (2014) suggest that the low turnout for voting by former prisoners may be due to misinformation. Many who were previously incarcerated for felony offenses are misinformed about the status of their voting rights. They believe that they are unable to vote when, in fact, their voting rights have been restored. Drucker and Barreras (2005) found that about half of the incarcerated population they surveyed in Connecticut, New York, and Ohio, were ignorant of whether their felony conviction permanently disenfranchised them. Part of their being misinformed is that criminal justice officials are misinformed themselves about whether and when ex-felons regain their voting rights (Meredith & Morse, 2014, p. 223). Additionally, Allen (2011) found that some New York election boards were requiring ex-felons to provide additional documentation that was not legally required before allowing them to vote, increasing the cost of voting for former prisoners beyond what is legally required. Those who have been incarcerated, but retain their right to vote, turnout at a lower rate than those in the population with similar characteristics who had not been convicted of any criminal offense (Hjalmarsson & Lopez, 2010). Lerman and Weaver (2014, p. 222) find that any contact with the criminal justice system reduces voter turnout—controlling for other factors that correlate with lower voter turnout. For those with a history of being arrested—but not convicted—the probability that they would turn out to vote fell by 16 percent. Those who had been convicted of a crime had an 18 percent lower probability of
turning out to vote. Those who had served time in jail or prison had a 22 percent lower probability of turning out to vote. Those who had been incarcerated for a year or more had the lowest probability of coming out to vote with a 26 percent fall in the probability that they would vote.

Consistent with Tocqueville’s claim that participation in civil and political associations feed into and reinforce each other, Sugie (2015) finds that decreased participation in civil associations—family, religious organizations, and employment—leads to reduced participation in political associations—voting, political groups, and so on.

**Conclusion**

In contrast to Tocqueville’s view of prison in his time, prisons today transform power relationships in society from “power with” relationships to “power over” relationships. Mass incarceration has perverted people’s associational lives such that they are systematically disengaged from civil associations and the political sphere. Those who are disengaged from associational life in this way lack the tools and knowledge Tocqueville says is necessary for the maintenance of democracy. They have become “custodial citizens,” managed by political authorities rather than being engaged with the political process. The system of mass incarceration in the US is transforming American democracy into despotism.

Several implications follow from my analysis for anyone interested in the maintenance of democracy in the US. First, laws that raise the costs for former prisoners to rejoin civil society may contribute to a permanent criminal group—a permanent
political outgroup. Such laws undermine democracy and should be reformed or abolished. For example, federal laws that prohibit ex-felons from obtaining certain occupational licenses raise the cost to obtaining legal work, increasing the likelihood that ex-felons return to crime. Laws that require former prisoners to file for the restoration of their voting rights from governors should be amended to allow for automatic restoration of voting rights upon release. Adding costs to voting for former prisoners further reduces their participation in the political sphere, undermining democracy. Laws barring former prisoners from holding certain elected positions (especially low-level ones like school board positions) should be amended to allow for increased participation of former prisoners in the political life of their community.

Second, incarceration may not serve its intended purpose. Imprisonment, while intended to be a punishment in itself, is also accompanied by goals of rehabilitation. With the undermining of association life, however, this rehabilitation cannot completely occur. As demonstrated by O’Connor et al. (1998), Johnson (2004, 2008, 2014), and Sugie (2015), aftercare of released prisoners is integral for ensuring successful reentry of former prisoners into society. By imposing high costs to participating in civil and political associations for offenders, we increase the likelihood of their recidivating. As suggested by Cowen (2018), we should consider alternative forms of punishment, such as increased use of home arrest. The more that the offenders can be kept in their home communities, the lower the likelihood that they will become part of a permanent criminal group. If offenders can maintain their involvement in civil associations, it will bolster their participation in political associations, and, thus, democracy.
Lastly, programs that provide occupational licensing to current inmates should be expanded. Currently, participation in such programs is restricted to those serving life sentences and those who have gained trusty status in the prison (Federal Bureau of Prisons, 2017). If these programs were made available to those serving shorter sentences, we may see a reduction in recidivism and less of a decrease in former prisoners’ participation in associational life.
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BIOGRAPHY

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