PRISON PRIVATIZATION IN THE UNITED STATES: 
A NEW STRATEGY FOR RACIAL CONTROL 

by 

Gertrudis Mercadal 

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SUPERVISORY COMMITTEE:

Farshad Araghi, Ph.D.
Dissertation Advisor

Susan Loeve Brown, Ph.D.

Simon Glynn, Ph.D.

Michael J. Horswell, Ph.D.
Director, Comparative Studies Program

Heather Coltman, DMA
Dean, Dorothy F. Schmidt College of Arts & Letters

Deborah L. Floyd, Ed.D.
Interim Dean, Graduate College

07/21/2019
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ABSTRACT

Author: Gertrudis Mercadal
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There has been a stunning build-up of prisons and a growing trend in prison privatization in the last 30 years, including the rise of maximum security units. The goal of my dissertation is to understand the ideological, historic, political, and economic processes behind the changes in the criminal justice system of the United States. I analyze this problem from multiple angles—labor and policy history, discourse and public opinion, and race in America. The aim of this analysis is to uncover the reasons why crime legislation became progressively more punitive, reaction to African Americans gains in post-Civil Rights more hostile, and the manifold ways in which these phenomena drive the expansion of the prison system and its increasing privatization. In the process of this expansion, a racial caste system which oppresses young African Americans and people of color has become recast and entrenched. Specifically, I offer the notion that in the last three decades, punitive crime legislation focused on African Americans and served to deal with labor needs and racial conflict with harsher penal legislation; in doing so, it depoliticized race, institutionalized
racial practices, and served the interests of private prison businesses in new ways oppressive ways.

Using interdisciplinary methods which weave together qualitative and quantitative analysis, I find that punitive crime policies in the last thirty years used the concept of crime as political currency by government officials in order to appear tough on crime, and by business representatives interested in exploiting the prison industry. The conflation of business and political interests, and the recasting of crime as a race problem, served to taint public institutions and media dissemination with racist imperatives which stereotyped poor African Americans. The end result is a constant re-positioning of young black males as fodder for economic exploitation. The dissertation also addresses the high cost of imprisonment and the multiple social problems brought from shifting inmates from wards of the State to profit-making opportunities in the hands of private entrepreneurs. The result is high numbers of recidivism, and a growing underclass of people who will always be unemployed or underemployed and return to low income communities that suffer from the endless cycle of poverty and imprisonment.
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INTRODUCTION

The experience of African Americans in the United States reflects the racial caste structure of American society through time. There have always been experiences of success among black people, and Jim Crow laws are officially dead; however, rules concerning racial hierarchies—mass media rhetoric, legal framework, economic systems—have evolved and continue producing the same results: the oppression of African Americas and other people of color. One of the starkest and most emblematic ways in which this has occurred in the last 30 years is the development of a new prison system.

Due to political, social and economic developments occurring in the United States around the 1970s, private companies saw an opportunity to enter the prison system business, until then considered government responsibility, and exploit it. There was a dovetailing of phenomena that made it propitious for private enterprises to profit from the prison system and turn it into an industry. Among these were the collusion between growing Neoconservative imperatives that favored privatizing of state enterprises, the War on Drugs program, and the concretizing of a caste system in America in the wake of the Civil Rights movement.

Quantitative data reflect that a significant percentage of offenders are incarcerated for low-level crimes, for which they need not be locked up. Sentencing practices begun in the 1970s have steadily increased in harshness and length, clogging prisons with young African Americans and Latinos incarcerated mostly for drug-related crimes. An emphasis on drug treatment and rehabilitation has been demonstrated to work more effectively than
incarceration. Many prison systems, however, continue to reject rehabilitative measures in order to embrace austerity measures that only serve the interests of the private businesses managing prison facilities. It is true that state run prisons evidence a great many dysfunctions, among them waste and mismanagement. Yet the cost savings and higher efficiency promised by the private prison industry has not panned out to be true. Meanwhile, war on drug policies increasingly fill prisons with people of color, while they fail to stem drug related crime and consumption.

The resulting mass incarceration is a social disaster. Its human costs are incalculable. To hold millions of citizens behind bars have had widespread social and economic repercussions. The United States counts today with the highest rates of incarceration worldwide and of any developed nation of the world. According to the International Center for Prison Studies (2008), the United States, with less than 5 percent of the world’s population, holds a quarter of the world’s prisoners: 2.3 million people incarcerated in the United States at the time of the study, presenting a 500 percent increase in the past thirty years. China, with four times the population of the United States, followed second with only 1.6 million people in prison.

The median among the world’s nations, according to the ICPS, is 125 inmates per 100,000 inhabitants, a percentage which represents barely a sixth of the United States’ rate. Moreover, the trend of prison privatization has been growing rapidly in the United States, accompanied by serious implications: A built-in incentive to imprison ever more individuals, keep them during longer periods of time, and finally, close rehabilitative programs in order to save money. Criminal justice goals and policies are increasingly fueled by the private industry’s drive to generate profits; as a consequence, conflicts of
interest between government, corporations and community well-being are increasing. This entails a waning sense of accountability in private prisons, as well as society at large, because private prisons are not held to the same humanitarian and accountable standards as publicly-held institutions. Moreover, as inmates are shifted from being wardens of the state to inmates of private facilities, they become simply profit-making opportunities. African Americans are the majority of the population affected by this state of affairs, which highlights starkly the ethical dilemma involved.

In the words of Alexander (2010),

“In the era of colorblindness, it is no longer socially permissible to use race, explicitly, as a justification for discrimination, exclusion and social contempt... Rather than rely on race, we use our criminal justice system to label people of color “criminals” and engage then in all the practices we supposedly left behind. (p. 10)

Indeed, in the United States, blacks and Hispanics are incarcerated at a rate greatly disproportionate to their numbers in the overall population. African American men comprise only 7 percent of the general population, but over 40 percent of the United States’ prison population (Pager, 2007). An increase in incarceration for minor crimes and a relatively recent rush to build vastly expensive prisons of massive proportions has also contributed to the flourishing of prison institutions and inmates. The pervasiveness of racial inequality is one of the most disturbing concerns in the United States criminal justice system, one seldom addressed by the state and private prison industry. When it comes to the correctional system, at every single step—from arrest to release from incarceration—there are racial disparities to be found. This is most notable when looking
at sentencing rates in the criminal justice system (The Sentencing Project, 2005). And while the legal structure may have changed in the past centuries, the framework of the prison and justice system today continues to serve the same purpose it has served since the founding of the nation: To keep a large percent of African Americans from achieving the full rights of citizenship. As Alexander (2010) states, as a result of the disproportionately large number of African Americans in prison

An extraordinary percentage of black men in the United States are legally barred from voting today, just as they have been throughout most of American history. They are also subject to legalized discrimination in employment, housing, education, public benefits, and jury service, just as their parents, grandparents, and great-grandparents once were. (p. 10)

More troubling still is that the already disproportionate gap between the rest of the world’s incarceration rates and those of the United States, as most scholars and The Justice Department concede, is growing. A *The New York Times* editorial dated April 12th, 2008, states:

Close to 1.6 million Americans are in prison, a figure that does not count the more than 700,000 people held in local jails. While 650,000 prisoners are released each year, an estimated two-thirds of them can expect to return to prison within three years. Little help is extended for newly released prisoners making this unpromising transition, particularly compared with society’s mammoth investment in building more prisons (2008, parr 2).
Indeed, the United States has a lower rate of violent crime than other developed countries, including England, Australia and Canada (Liptak, 2008, parr. 23). Moreover, “The United States is … the only advanced country that incarcerates people for minor property crimes like passing bad checks” and gives longer sentences—by about double the time—for petty crime (Liptak, parr. 8). Complicating the issue further, the United States has a long and unique trajectory of penal labor exploitation that, correlated with race, makes the prison system of the United Stated of America one of the most ruthless instruments of systematic oppression against people of color in the developed world.

This appears to be part of a growing trend in the country, which allows the private sector to take care of services which have always been government responsibility. Local government traditionally took care of services such as water treatment, public housing, nuclear waste disposal and others, which have increasingly been turned over to privatized services and part of this trend is the privatization of correctional facilities (Savas 2000; Morris, 2007).

The conflation of a widespread market interests with the development of private prison institutions has devolved into the recent phenomenon known as the supermaximum prisons, or supermax. These institutions are specifically designed to hold prisoners in a virtual state of warehoused solitude, where they remain in isolation and idleness. While such a phenomenon may appear to be a recent development, it is the latest result of specific far-reaching historic and societal currents unique to the United States. In short, racism has penetrated decision-making at all levels of institutions, in this case the legal justice system, with catastrophic consequences. Not only does it serve to perpetuate racial hierarchies, but it also obscures the ways in which these are perpetuated
and normalized. As Alexander (2010) argues, mass incarceration in the United States has “emerged as a stunningly comprehensive and well-disguised system of racialized social control that functions in a manner similar to Jim Crow” (p. 13). As such, it forces much of the African American community into “segregated, second-class citizenship” (p. 13).

How did this occur? Some scholars may argue that the racialization of the criminal system is the effect of institutional neglect (Kennedy, 1998). Others see a systematic recasting of the criminal justice system, with the purpose of perpetuating a racial caste system in which African Americans have been, for all purposes, kept at the bottom of the socio-economic ladder to serve economic interests in the United States (Alexander 2010).

Crucial, as well, is to identify who benefits from systematic racial oppression within the justice system. In the years after the Civil War and up into the 1930s, black prisoners were regularly conscripted or leased into brutal forced labor arrangements. In the last three decades, the prison population has soared as a result of legislation based on presumed realities of the drug market, as well as the enactment of harsh sentencing and parole laws. These laws have often been sponsored by politicians and special interest groups who stand to benefit from them, such as the correctional officers’ union and prison-running corporations. As activist Timothy Ray argues when he addresses “the failed economy of private corrections” (2010), the new laws “cause more people to be locked up and more prisons to be built to house them … while the private corrections corporations are getting rich at our expense” (parr. 10).

In the past, however, criminal justice and penal strategies focused on rehabilitation, most recently during the New Deal Era (1930s to 1960s). During the post-
Revolutionary years of the United States, there was little distinction made between local felons, transported prisoners in indentured servitude, slaves, and captives of war (Christianson 1998). Prisoners basically served to satisfy colonial and nation-building labor needs. As the penal system evolved with the nation, however, it became a massive system of labor control, one with very concrete racial dimensions. These developments become more apparent to the researcher by looking at the ways in which specific economic and historic elements have intersected, shaping the expansion of penal system. Medium security prisons engaged in rehabilitation and education have been more successful at reintegrating inmates and cost several thousands of dollars less per inmate per year to maintain than maximum security prisons which focus on punishment and retributive justice. Nevertheless, the increasingly costly penal system of the United States has become a harshly punitive industry raking in vast profits for specific entities, while inmates are rented out to corporations as modern day slaves. Even more disturbingly, since the late 1980s, inmates have increasingly been warehoused in the mushrooming multi-million dollar supermax facilities. And the numbers keep on growing.

The consequent destruction of lives and lack of rehabilitative opportunities during imprisonment do not benefit the communities to which inmates eventually return. As it turns out, the majority of victims of crime are black. Law-abiding members of African-American communities are at greater risk victimization due to the lack of viable educational and economic opportunities for crime perpetrators; this is compounded by the disproportionate rate of incarceration of and failure to reintegrate young people of color (Kennedy, 1998). It is no surprise, then, that this state of affairs creates new victims in a
continuous cycle of social devastation. A New York Times editorial (April 8, 2008) refers to the Second Chance Act, slated to be signed by President George W. Bush, and explains that

The failure to integrate former prisoners into society is bad for them and for society, since it leads to more crime. The new law offers grants to state and local governments and nonprofit groups specializing in housing, health and employment for ex-prisoners. It emphasizes vocational training, individual mentoring and better drug treatment. And it calls for pilot programs for elderly nonviolent offenders, who cost more than $20,000 a year to keep in prison, as well as alternatives to jail for parents convicted of nonviolent crimes. (parr. 3)

The Second Chance Act, signed into law on April 9, 2008, appeared to signal the beginning of a more enlightened approach to corrections and as such it is a helpful first step. However, in 2011 the Senate eliminated all funding for the Second Chance Act, while providing $35 million in funding for Drug Courts (Porter, 2012). There are, in effect, no viable policy proposals in sight to enable the criminal justice system to transcend the current retributive system. As system of harsh retribution policies that impose extremely expensive and punitive prison sentences, leaves us with a denuded prison system and scant resources to engage in rehabilitative efforts of any sort. Indeed, the punitive ideology and practices of retributive justice that sustain the United States’ penal system are in serious need of an overhaul. It is urgent to pursue more humane and effective alternative philosophies and practices, and work towards finding community-
building solutions that address the healing needs of victims, perpetrators and society at large.

Finally, while some prison expansion advocates argue that the privatization of the prison system decreases taxpayer costs this may not actually be the case. In the words of Ray (2010), “privatization of corrections actually may not save money. This is the conclusion of the U.S. Bureau of Justice Statistics, which has studied crime and punishment over many decades” (parr. 2).

The previously mentioned facts provide the societal framework for this research. However, there is a dearth of theorizing and research in the ways in which a caste system has been perpetuated in the United States by way of the expanding private prison industrial complex. The time and place focus are specific: the period commonly known as late capitalism in the United States. Late capitalism spans the era that begins in the post World War II and continues to this day (Anderson, 1998). This work focuses on the decades following the 1960s. It is important to note that these conflate with the post Civil Rights era, a period spanning the decades after the 1970s. Despite the gains of the Civil Rights movement, racial discrimination has become less obvious though no less pernicious, and research shows that institutional racism still plays a role in U.S. society (Bonilla-Silva, 2001).

In short, this study examines and presents an issue that remains unaddressed. There have been recent publications on a caste system of African Americans in the United States which deal with the role of incarceration (Alexander 2010) and the ways in which the disproportionate rates of incarceration of African Americans are made invisible by the judicial system to the detriment of whole communities (Pettit 2012). Nevertheless, a
specific and sustained focus on the role and dynamics of the private prison system and the varied ways in which power networks have conflated to create, re-constitute and expand a black underclass, has not been published yet. This work seeks to contribute to that body of research in a useful manner.

To recap, the nationwide drive of prison privatization has grown because it has offered allegedly viable and efficient solutions to the unwieldy problems of managing large prison facilities. In a critical financial crisis, states today face growing inmate populations and costs. The private prison sector posits that privatization offers a viable solution because it saves states money, reduces the size and burden of government and by allowing a “tough on crime” stance, ensures safety in the community. Yet these benefits have not been proven true. Second, this research demonstrates that not only have private prison advocates offered questionable evidence and not proven their contentions, but the collusion of state and private sector are cementing a de facto second-class citizenry that amounts to a racial caste system in the United States. Lobbying efforts and back door political collusions by the private prison industry have made a mockery of democracy and ideals of fair and free market competition. This study adds to a necessary public discourse by uncovering the ways in which, as Alexander (2010) and Pettit (2012) have pointed out, the issue of race is erased from the discussion of poverty and incarceration in America. It builds upon their work to highlight how a racial caste system is enforced through political and juridical action—mass incarceration—to benefit a corporate segment of society to the detriment of citizens of color.

Annotated Chapter Outline

This manuscript is developed in the following manner:
Introduction and Theorizing Methodology. This chapter opens by describing the current situation of the private prison system in the United States. It then outlines the basic theoretical framework that guided the research into the private prison industrial complex and its culmination in the supermax system. The development of the private prison system as a system of economic and political oppression of African Americans and other people of color is viewed within a structure of recent social, historical and political information and scholarship. It presents the argument that the privatization of the prison functions as a strategy for race-based caste structure in the United States. The introductory chapter presents, first, a summary of the foundational points of the study, the research questions, theoretical analysis and the ways in which these interrelate, a relation of the organization of this dissertation, and a brief disquisition of the theoretical framework and methodological aspects. The second part theorizes methodology. The section develops formally the theoretical framework and explains the methodology bases and parameters to be used in the dissertation by mapping the themes to be developed and how the research questions are examined. This chapter lays out the theoretical structure needed to understand and find solutions to the research questions. The theoretical framework takes a Marxian multidisciplinary approach that allows the analysis of dynamic interactions of many variables. These interactions—economic, social, historic—adapt to changing conditions; therefore, a multidisciplinary approach offers the flexibility to look at the phenomena from different angles while maintaining a theoretical coherence. The main theoretical approach is incorporated comparisons. Incorporated Comparisons, in the words of McMichael (2000), “considers all objects of inquiry as historical and historically connected”, and cases cannot be abstracted from their time and
space location (p. 672). In other words, the cases examined are considered as related elements of a historical phenomenon. To contextualize the historical phenomena examined, the chapter explains the relevance of material historicism and classical liberal theories. This theoretical strategy problematizes the issues of power and labor in the United States in the late 20th and early 21st centuries, and provides the bedrock for the chapters to follow.

Political History of the U.S. Penal System. The chapter builds upon the theoretical framework presented in the introductory chapter, and explores historical issues of power, prison, race, labor and the development of the privatization of prison and the supermax facilities. There has been relatively little longitudinal and in-depth investigation published up to date on the history of the prison system in the United States. Nevertheless, a significant number of criminal justice scholars have written a serious body of work that are brought together comprehensively for this chapter. For the purposes of this thesis, historical studies are complemented by quantitative data from government and non-government statistical sources. These all correlate, suggesting that the prison institution has long been used as a way to hold and control surplus labor, while different historical and social movements—the Progressive Era, the Civil Rights Act, the War on Drugs—have also had a distorting effect on the development of the prison system. Race was always part of the equation. While Progressive Era and the New Deal policies spurred government investment in public works and a relatively enlightened view of prison and crime, the 1964 Civil Rights Act served as a reactionary catalyst for power elites to engage in a massive media onslaught on crime coverage, linking crime to violent black inner city males.
These would generate, by the 1970s, a growth in the numbers of politicians and social scientists calling for a change in crime policies, to do away with rehabilitation and establish harsh punishment for offenses that had never been penalized with prison before. Notwithstanding that empirical studies did not support the exaggerated claims of a growing “new breed” of extraordinarily violent criminal, the prison system continued to expand disproportionately in the 1980s and 1990s, even though there was no significant increase in violent crime. Indeed, the prison system expanded inordinately despite the fact population and violent crime had actually decreased. Moreover, the increase in drug offenses correlate to biased drug legislation which disproportionately targeted blacks and other minorities, currently expanding to encompass the masses of undocumented aliens in its prison system web.

Case Studies. The use of case studies gives specificity to the theoretical framework and historical analysis explicated in the previous chapters. It is especially useful to illustrate targeted discussion questions with complex variables, which is why case studies are increasingly common in the sciences (social and otherwise). The case studies presented in this manuscript illustrate how prison privatization re-enforces old links between market and race. Privatization relies on the idea—disseminated by private prison businesses—that prison privatization saves states money and run prisons more efficiently. These case studies demonstrate this is seldom the case. Rather, prison privatization benefits a small cadre of businesses and politicians. Often, lawmakers profit from passing laws that allow prison privatization. This may be accomplished by way of campaign contributions, eventual employment with private prison corporations, or directly from the business profits themselves. By taking advantage of the long war on
drugs, and turning into felonious crimes acts that were formerly considered misdemeanors, the justice system and penal institutions have focused on people of color as the human material with which to fill prison beds. Thus, to understand the social and economic dynamics of prison growth, the case studies focus on the states of Florida, Louisiana, Texas and nationwide Supermax prisons. These were selected for their emblematic value, as they reflect the influence and effect of the private prison industry in state policies and population.

Transformative Justice and Conclusions. Explores theories and cases of restorative and transformative justice in order to provide new models for social justice, social change and reintegration of inmates back into their communities. These models are largely exploratory and serve to raise questions and possibilities, rather than offer specific solutions. Issues for community empowerment and ways in which these practices can be implemented to fight back and reverse the trend of imprisonment are explored, with the understanding that they are to serve to bring issues to the table for a dialog to begin. It will also strive to summarize the main points and the ways in which the dissertation has answered the research questions, as well as raised other questions to be solved. It will end with an overview of limitations, possible solutions and suggestions for further research.

Research Questions

Scholars and social scientists, ideally, want to produce work that results in an improved quality of life. To this end, they produce research that contributes to the elimination of social injustice, in particular racial, gender, economic, and class oppression. Such research is of value to the extent that it provides a clear understanding
of how specific social configurations affect and perpetuate structures of domination in society. This, in turn, allows scholars and activists to build upon such body of knowledge and create roadmaps. Thus, historical and social research is of value as a way to create models of praxis that may contribute to strengthen democracy and transformation in society.

Because this dissertation seeks to contribute to the body of work that examines the penal system, historically and in context, with the goal of creating change and undoing the current paradigm of the privatized penal system, it is indispensable to seek the support of progressive sociological theories and philosophies of transformative justice. Radical theories have been developed by scholars informed by political struggles, and these seek to make theories useful to communities by putting them into practice. Rather than being isolated from practice in the realms of academia, philosophies of restorative and transformative justice are rooted in the community and seek to bring about change. Thus, by examining the questions through a lens of radical and transformative theories and philosophies I will erect the scaffolding upon which the dissertation shall be sustained.

In order to examine the possible effects of racism and the privatization of the prison industry in the United States, a series of questions have served as a guiding point to construct the main research questions. What kind of ideological systems are at work? What organizational forms do they assume? How are they expressed in practice? To what extent do these practices have a social, economic and political influence? How do they conflate with race? What conflicts arise from these phenomena? These questions drive us to the main research questions, which we must assume with clarity and specificity:
What are the strategies formed by the collusion of criminal justice system and private prison corporations to create and expand a racial caste system of underprivileged African Americans? Does the private prison system offer a better system than the public option? What are the consequences of having masses of underclass citizens of color run cyclically through the penal system and who will remain unemployed/underemployed for most of their adult lives?

These questions should are examined in detail and methodologically, for they are part of very urgent problems faced today from a sociological, anthropological and economic point of view, in the arena of human rights. Thus, I propose that the following theoretical methodology will help answer the abovementioned questions.

Methodology

It is important that the methodology retrace the concept of knowledge-construction from a starting point of historicity demands. The methodology consisted of reading social-historic studies of the prison system from the colonization to the 21st century, mainly in England and the United States, in order to analyze the evolution of the prison institution and industry in the United States. Several important modern historical studies were examined for this study, which include quantitative information and statistical data from The National Correction Reporting Program, the National Department of Corrections, The Bureau of Justice Statistics, The Sentencing Project, Human Rights Watch, The Commission on Safety and Abuse in America’s Prisons and other government and watchdog organizations. Examined in this study, as well, is the viability of progressive, community-based alternatives to incarceration, especially for non-violent crimes, and the social and economic benefits to be derived from such measures.
Other studies consulted have traced the economic imperatives that have affected said evolution, and the ways in which the prison system responds to economic, market, racial and cultural imperatives. The dissertation did not involve primary statistical analysis, but has relied on quantitative and qualitative studies in order to provide a numerical framework to structure the dissertation and qualitative studies in order to contextualize it. The majority of these studies report that African American males tend to be at greatest risk for imprisonment and recidivism. The reasons for this involve complex economic, historic and institutional intersections. This dissertation seeks to illuminate connections.

Theorizing Methodology: A Literature Review

One of the central ideas driving this study is the lack of publications that deal deeply and specifically with the ways in which the privatization of the prison system plays a role in cementing a racial caste system in the United States. This lack of published analysis perpetuates an underestimation of how this affects human rights in the United States, as well as the character, role and perspectives of race and labor in conflation with the expansion of the private prison industry. The purpose of theorizing methodology is to present an analysis of social organization, labor and the prison system in the United States, focusing specifically on the last decades of the 20th century and the economic ideologies that have shaped its development.

Theorization is fundamentally practical: the realization of coherent and global concepts that guide us to concrete ways in which the process of action and reflection can enact transformative changes in our communities. It brings abstract perspectives into a conceptual map, that in turn direct us to concrete and explicit actions. According to
Thiebaut (1998), theorization in the social sciences allows us to systematize information and comprehend social practices by finding logic to the relationships between elements. In an interdisciplinary work, theorizing serves to provide the analytical framework by which one analyzes the qualitative and quantitative information, in order to discover concepts and relationships comparatively. It is not enough, of course, to define something. It is necessary to give it a context, a meaning and find its value, so that the concepts that guide practice and action are as clear and illuminated as possible. McMichael’s (1990) theory of incorporated comparisons, previously explained, presupposes a “whole” that governs its parts, not with the objective of building monolithic through an analysis of more or less uniform cases. It intends to substantiate a historical process through a comparison of its parts.

The parts to be examined are the theoretical elements of power, labor, and economics in the wider conceptual framework that occupies this work: The historical disenfranchisement of African Americans and other people of color in the United States. Some scholars argue that comparative systems have been relatively ignored in intellectual research, in favor of formal or positivist analytical systems which, in his view, often leave the depth of historical and sociological analysis at a very superficial level (McMichael, 1990; Pereyra 1989). One of the problems with current intellectual culture, in this view, is the lack of attention given by social scientists to comparative systems which look not only at juxtapositions of events, data and statistics, but also at their underpinnings in time and space.

Busino (1990) adds that comparative procedures are giving their first steps in scientific literature, but are already creating a strong impact. In other words, hard science
researchers are beginning to discover the importance of juxtaposition and comparative procedures. As pertains to the social sciences, Busino claims that engaging in the practice of a sociology that “has operated in instrumentalist reduction of the knowledge-action relationship” risks a “cognitive impotence” (p. 198). He recommends, rather than searching for and providing formal solutions, the engagement in a “transhistorical and intercultural science of social practices” in order to “clarify … cultural preconstructions” (p. 202). Moreover, Busino (1990) advises the “art of connecting and recording” and reminds scholars that

the conceptual framework of sociology derives from a particular historic situation, from the fact that in sociology there is no discrete unity and that primary elements are organized and fabricated entities, whose components are governed by bonds of interdependence and have no meaning except in their belonging to these constructed entities. (p. 202)

In other words, a system of incorporated comparisons in this model, a reflective sociology, is an effective instrument that could very well allow one to truly shed light and obtain a better understanding the cultural, economic and societal underpinnings of the dynamics to be studied, as well as to visualize viable alternatives to present dysfunctional dilemmas.

Reconsidering Power

When referring to social organization, one refers to the relatively stable social and material networks that function to extend interactions beyond local or regional communities; the purpose of this examination is to illuminate the deeper and wider structure (or structures) of power, beyond what is merely visible at first glance. Such
interactions and power structures may be analyzed as smaller functional units within a geographical and social space, as when presented in case studies. They may also be analyzed in a more macro level, by looking at them through theoretical and historical frameworks. The concept of power in a social organization is considered particularly in terms of social mechanisms and control strategies exerted by organizations and individuals situated at the top of the social structure. Nevertheless, to explain the interactions occurring within and outside a given power structure, it is equally important to look at the elements that power strategies nourish.

The power aspect of a social organization can be analyzed in terms of power domains or ownership of power (Adams, 1966). In this view, power is neither monolithic, strictly vertical nor the province of one group or organization. This concept of power encompasses the totality of relations in which one structure of power is preeminent, and is able to exert dominance and control over others. Adams suggests two “ideal types” of power domains, which are (1) Independent, those in which the dominant factions have its own sources of power, and (2) Derived, in which the control of one faction over the other derives from the support granted by an individual or organization in a superior position. These types of dominance, controlled by different parties, can extend, compete, combine and/or aggregate with a higher dominant party. It is actually unlikely that any power domain in a complex society such as the United States may exist purely as one type or the other, without combining elements of both. In other words, power is highly dynamic and flexible, constantly adapting to and recreating new societal movements and trends in order to perpetuate itself.
Michel Foucault also explores power, especially in relation to the prison system. It is pertinent, then, to look to his writings on power and the prison system to help lay out the theoretical foundation of this work. Foucault studied in the first years of his career the mechanisms of power, in particular the ways in which power is expressed through the discursive fields, and the consequences of centralizing powers related to scientific discourse. Foucault argues in The Order of Things (1994) that what is important when analyzing power is to determine its mechanisms, that is, its relationships, its implications, the distinctive instruments of power used in different levels of society. He finds two historical concepts of power: the judicial concept of power and Marxist concept of power. Power, for Foucault, is the guarantor of social order. It has other social functions as well: to dominate, to frighten, to immobilize, to control the bodies of human beings and their behavior, all of which serve the main purpose of maintaining order and the status quo.

When we analyze power, then, the questions we ask are, which are the mechanisms of power its, relationships and its consequences? What instruments are used? Can such analysis be deducted from economic actions? Power considered in the light of its economic function can be examined looking at its role in maintaining the means of production and constitute a sort of class domination made possible by way of the means of production. In the case of political power, Foucault argues that it finds its purpose in the economy. In this sense, power is dynamic; it circulates, it can be acquired and ceded, it can be used to coerce and alienate, it is productive. It is also exercised and exists in the act of being executed or performed.
In *Discipline and Punish, The Birth of the Prison* (1977), Foucault argues that it is in the penal system how power takes form in an open manner, without subterfuge: “To put somebody in prison, to keep him imprisoned, denying him food, warmth, the ability to leave … here we have the most insane manifestation of power that one can imagine” (p. 28). It is in prisons, then, that power discards its mask and becomes manifest in the most blatant fashion. It is a manifestation of strength used against specific others.

Foucault’s work buttress the view of Alexander (2010) who states that the prison system is one of the most obvious ways in which a caste system of an underclass of blacks is maintained through a combination of political power and market forces. The role of political power in this scenario is to maintain the power relationship over African Americans as long as possible. The strategies for this include a stealth war entrenched in public and private institutions and reflected in the economic disparities between black and white. If one subtracts economics and economic behavior from this equation, it is clear that the mechanism of power is repression. Under the guise of the judicial system—the system that determines what is legitimate or illegitimate—one finds a relationship of oppression based on controlling the bodies of a specific segment of American society.

Of course, there are many forms of repression. These repressive mechanisms find their expression through the media, schools and universities, courts and authority bodies, and myriad other forms that perpetuate the mechanisms of power in an often coherent manner born of interrelations. They support the structures of power that perpetuate a caste system by replicating ideologies and prejudices that serve ulterior interests. It is important to bear in mind that for Foucault, power is not something that a dominant elite possesses. It cannot be a property: It is a strategy or set of strategies. As such, in order
to exist, power must be constantly exerted. An unbearable injustice occurs, then, when power is hoarded by a dominant minority through a series of strategies and used against a specific group of people in order to keep them marginalized.

Prior to Foucault, Marx had already examined the concept of power. Indeed, the question of power in Marxian thought is one of the most debated today among all his body of work. Power, to Marx (1963), is a property of neither object nor subject. It exists solely in relation to what is exterior to it; that is, social conditions, historical circumstances, infra- and super-structures, and other determinants. What makes Marx’s idea of power so nuanced and clarifying is that he argues that it exists not only in the relationship but is also the relationship. Power is not part of the superstructure, existing outside of the means of production. Power inhabits, so to speak, the elements of the superstructure—that is, for example, the political and educational institutions and the culture of a society. Relationships of power do not occur in human reality alone, in the economic, political and ideological spheres. They are located in the State, as well; and beyond that, these relationships trickle down and disseminate in the myriad ways that Foucault spent a lifetime elucidating. For example, Foucault follows a historic line in the evolution of Western ideas and finds that scientific knowledge disseminates and re-appears in philosophical concepts, literary works and political discourses. History itself is the discourse by which order is insured, and human actions such as rites, myths, policies, etc., work to reify power. Marx (1976) laid it out more clearly and specifically, when he argued that power is born, in a certain way, from the element of labor in the Absolute Power of Capital. In other words, it is the owner of capital who exerts power over others, and said power becomes disseminated through society overall.
For Marx (1963), then, political power is important, yet it is only one of the ways in which power is expressed. As Foucault would later argue, political power may be subservient to other forms of power, such as economic power. Political power is subservient to Capital, Marx argued; Capital is not a rigidly immanent product, nor the same thing as Wealth, for capital exists in the action of economic exchange. As such, and even though Marx never did address racism in great depth, his notion of power can be understood as dynamic, something that can be deployed in order to repress a specific group of people to create and upkeep for profit or gain. Thus, power can be deployed through the political system to marginalize African Americans and other people of color, for the profit of a specific group or corporation.

In order to describe a structural model for the purposes of this study, it is necessary, then, to explore the relations of power throughout and identify which interactive elements persist across a variety of events and situations, to ensure the continuity of the overall structure. For example, as Adams (1966) and Mills (1956) have convincingly argued, some dominant groups or organizations in a given industry may work through other elite groups in the same or differing industries, in order to extend their power domain, and it is more likely that they will operate through establishing and articulating networks of power rather than struggling against other elite groups more solidly established in a different sphere of power, such as industry or politics. These views of the ways in which power work through different social groups, most of them elite, fits in with the models of power relationships as laid out by Foucault (1977) and Marx (1963, 1976), and as such, are appropriate as a methodological framework for this research project.
The theoretical arguments framing this study take place through a Marxian approach to the state and labor, as opposed to Classical liberal and Neoclassical approaches. Classical liberal tenets maintain that the state is formed by people placed into free competition with each other for the achievement of their own goals. The state is created for the interests of the society as a whole and resolves or negotiates the conflicts produced by the nature of competition in relatively small groups. The power of the state, however, must be limited and rest in the hands of many. Its role is to keep order in society and mediate between parties in conflict. Nevertheless, Marx stated that inasmuch as it must protect and defend the rights of private property owners and owners of the means of production, it is clear whose interests it values more. In other words, the state is not truly vested in the interests of property-free workers.

It is important, as well, to understand the Marxian concept of the state in a capitalist society. Engels (2008) observed that in primitive societies, a system similar to a modern day state originated for the protection of common interests. These early systems established the inception of the state and were meant to mediate in the settlement of disputes, territorial encroachments, supervision of food and water supply, etc. Engels notes that until the advent of private property, the nature of early communities remained similar. Once private property and the division of labor appeared, however, society devolved into “ruling and ruled classes; and the State” (Engels, 1935, p. 182). The role of the state in modernity is to protect the capitalist mode of production. It appears to be a structure in the service of the public interest but is also, a mechanism in the service of the bourgeoisie. According to Marx, the state holds the power to impede some political actions and to maintain the status quo, by policy or if necessary, by force. However, the
power exerted by the state has limitations. The appearance of neutrality in the state is a façade enabled by the actions and interests of capital relations. The state is not truly neutral, as it is immersed in the discourses of power and the network of interests of the powerful. Finally, all social relations are conditioned by the modes of production of that society (Mandel, 1973).

Moishe Postone’s *Time, Labor and Social Domination: A Reinterpretation of Marx’s Critical Theory* (1996), is a helpful re-interpretation of Marx which stays close to the original spirit of Marxian theory. Postone (1996), writing about the capitalism system, maintains that Marx focused specifically on the character of labor and social structures of production. Postone explains Marx and Engels view of primitive societies arguing that in pre-capitalist societies, social relations were more immediate and open, whereas in a capitalist system, society is organized by a form of production in which relations in society are mediated by “things”—commodities—characterized by their surplus value. The concept of surplus value refers to the value extracted from the labor of workers over and above their own labor cost, for the benefit of capital owners. Because the wages paid to laborers do not reflect the full value of their labor, the surplus value of labor turns into the basis for the accumulation of capital. This situation commodifies labor and, by extension, the workers who produce commodities. It is important to bear in mind that the significance of the conditions under which these relations occur, that is, what these conditions denote or mean, change over time. Thus, the concept of surplus value also changes and adapts. This constant re-adaptation reflects, in Marx’s view, a dialectical relationship, which always reflects an unequal exchange in favor of the capitalist. In Postone’s explanation of Marx, then, capitalism is particularly destructive
because of its abstraction of labor, which produces a destructive system of social relations in which humans are controlled by capital in the form of abstract, seemingly omniscient institutions, such as “the market” (Postone, 1996, p. 259). This theoretical framework is relevant to examine the ways in which power works through the private penal industry to exploit inmates.

Classical and Neoclassical Views of Wealth and Labor

Adam Smith’s *An Inquiry into the Nature and Causes of the Wealth of Nations* (2003)—originally published in 1776—is one of the cornerstones of Classical economic theory. In his work, Smith concentrates on advising government to stay away from guiding the economy into any direction, and proposes that nations should produce that which provides the most value. Every individual should be left free to pursue his or her own economic interest because this would maximize well-being overall. Thus, firms should also be left to pursue their economic interest (Smith, 2003). Both Smith and Marx understand that in a capitalist system, capital must provide workers with wages enough to subsist, if only to subsist enough to reproduce labor: “Masters cannot reduce wages below a certain rate, namely, subsistence for a man and something over for a family” (Smith, 2003, p. 96).

Adam Smith (2005) developed a theory for the process of creation and accumulation of wealth. Smith’s philosophy has been seminal to both Classical and Neo-Classical theorists. While Classical Liberal economists focus on the first part of Adams’ book, in which he lays out his system for creating the wealth of nations, Neoclassical theorists focus on the second half of his theory, in which he uses the concept of the invisible hand. Smith’s theory posits that free trade works as an invisible hand that
selects businesses and traders. The invisible hand of the market would favor those traders producing what the people want and at a better price than the competition, whereas government intervention in the markets restricted freedom and caused inefficiency and a lower quality of life. Free trade was, in the end, the result of individuals pursuing their self-interests, and it all devolves in the common good. Both camps, however, Classical and Neo-classical thinkers, view Smith’s work as not only an economic theory, but also a moral theory because it results in the common good. In Smith’s words:

It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages (p. 19, 2005).

David Ricardo took Smith’s concepts further. In his theories, Ricardo systematized the field of economics and also spoke of the advantages of free exchange, especially international trade. Both Smith and Ricardo posited that workers could survive on wages low enough to cover their most basic necessities. Ricardo’s emphasis was on the benefit of free internal and international trade, which he followed Smith in believing that the specialization of production was the key to increasing wealth. Ricardo, building upon Smith’s views of increasing the wealth of nations, argued that each nation should specialize or play to its strengths, and work with other nations for the common good (Spengler, 2003). These became core tenets of Classical Liberalism.

Individual liberty is of the utmost importance in Classical Liberalism, and Neoliberal thinkers argued for the greatest individual liberty and, consequently, a reduced form of government. In his seminal work *On Liberty* (2002), originally published in
1859, John Stuart Mill argued that freedom included placing limitations on the power of rulers so that these cannot misuse it by taking actions harmful to the common good. Nevertheless, in Mill’s view, as long as the ruler has the common good as a goal, autocratic forms of government are allowed for underdeveloped or primitive societies. Mill's ideas on economics were based, as were those of Smith, Ricardo, and other Classical Liberal theorists, on the concept of free markets. However, he argued that under specific conditions some forms of taxation were acceptable, as well as legislation that promoted some forms of social welfare, as long as they served a utilitarian purpose (Mill, 1987).

The modern Neo-liberal school of thought was founded in Austria by Friedrich Hayek, Ludwig Mises and Karl Popper. Hayek considered that the term liberalism was too confusing, because it had different meanings in Victorian England, modern Europe, and the United States under Roosevelt. Others have said that neoliberals could be labeled as neoconservatives at least in domestic affairs. The economist Milton Friedman, one of the founders of the School Chicago in the 1950s, preferred the word “neoliberal” (Jones, 2012). Friedman called for a new kind of liberalism, inspired by the work of Adam Smith. However, whereas Smith advocated that the building of infrastructure (such as bridges and roads) was the government’s job, as well as forging of institutions that would fail if left to the market (such as schools). Friedman, instead, advocated that all of these should be the province of the private sector (Jones, 2012).

Neoliberal economists built upon classical liberal theories and developed a theory of general equilibrium that interconnected the different markets—labor, capital and commodities—into a single market system that predicted harmony in the economy (and
society), and prevented the possibility of unemployment other than the transient kind (Seligman, 1962). Their ideas eventually became mainstream ideology in the United States. Think-tanks, economists, journalists and politicians disseminated the ideas. Margaret Thatcher and Ronald Reagan created policy based on their tenets.

Neoliberal Ideology and Labor Today

Zygmunt Bauman (2000) argues that governments have removed strictures placed on the accumulation and solidity of capital, turning capital fluid and enabling its liquid transnational mobility. This arrived hand-in-hand with the deregulation of corporations in the name of free markets; meanwhile social policies, such as an enlightened and rehabilitative penal system, have morphed in ways that constrain access of individuals to the means of labor. Since the late 1970s and early 1980s, most social policies have been designed in ways that support market interests. The restructuring of socially-oriented policies to reflect pro-market fiscal discipline, has resulted in a move toward the privatization of state enterprises, a cornerstone of which is the privatized correctional system. Such policies have enabled the movement of capital and production in order to exploit inexpensive labor and advantageous regulations. An example of this is the ways in which prisons are built in disadvantaged communities in order to promote jobs in the poorest neighborhoods, which keeps wages low. While pro-market policies are not in itself the root of the problem, their promotion at a time when there have been drastic cuts to social spending in underserved communities, and the increase of harsh legislative practices, have contributed to foster a situation in which poor people of color are targeted as fodder for the privatized prison system.
Manufacturing jobs began to be sent offshore in the late 1960s. A majority of these jobs, those which have not moved offshore, are prison jobs. Among the corporations who profit from prison labor are McDonalds, Victoria’s Secret, Eddie Bauer, Kmart, Dell, Honda, and even the U.S. Army. In the words of journalist Bobbi Clemons (2011), “Where else in America can you legally pay workers $0.23-$1.15 per hour? … Even now because the factories are located in prisons OSHA can’t just pop by for surprise inspections.” (parr. 3).

Private prisons garner revenues not only from brokering prison labor, but also from filling prison beds. In private prisons occupancy rates determine profits and as Corrections Corporation of America published in its 2012 annual report, “Filling… available beds would provide substantial growth in revenues, cash flow and earnings per share” (parr. 2, Bennet, 2012). Indeed, as will be seen in detail in other chapters, the prison industry has convinced some state governments to sign contracts which stipulate that the government must comply with quotas for filling prison beds.

Freeing the markets arguably allows for big cost savings, such as by employing fewer guards at non-union wages, but these savings to the taxpayers have not materialized; they are actually riddled with hidden costs for tax payers and the communities which host the prisons. Whatever cost savings may have been achieved are allocated as profits for the prison companies. This is not so say that government-managed prisons do not have serious management dysfunctions, for they do. But state prison management and expenditures are relatively transparent, which is not the case with privatized prisons. Moreover, most of the companies that own private prisons, such as Corrections Corporation of America and GEO, do not engage in any real competition in
the free market, since they live from government contracts acquired through heavy lobbying and back room deals. For example, Corrections Corporation of America spent more than $1 million dollars in lobbying activities for the year of 2011 while Geo Group, another private prisons corporation, spent $220,000 lobbying in Washington (Bennett, 2012).

Indeed, “freeing the markets” via privatization of government institutions, although arguably opens access to cheaper products and services, incurs in the side effect of leaving unprotected the local dimensions of state and market. This occurs for two reasons: First, because of the tendency towards centralization and economies of scale which are the norm in transnational corporations; and second, because their capacity for implementing transactional speed, lobbying and financial strategies result prohibitive for state and smaller private organizations. What results is not the disappearance of government, as much as a minimization of government and of regional/local development incentives, while enforcing global imperatives on local social, cultural and economic dynamics (Coraggio, 1999). One of the consequences of this has been the depression of wages for correctional staff and a high turnover rate.

This brings about a fundamental problem. The most important role of the State is to ground and promote the institutionalization—the rules of the game, so to speak—that encourages and makes possible participation in the economy by all of the citizenry. The State is formed by a set of agreements, roles and institutions organized in such a way that they are always evolving. One of the main roles of the State should be to ensure the provision of collective goods necessary for a society to survive—understanding the prison system as part of the collective goods—which should not be allocated to the market or
which cannot be provided by the market. In other words, state reform does not necessarily imply its reduction to the lowest common denominator, as much as its restructuration so that it can perform its functions in a most satisfactory manner in relation to both society and market. The latter includes the labor market as well, for the private prison industrial complex seems to have reduced rather than improved working conditions for correctional staff. Moreover, close to one third of young African Americans enter the prison system and with little in the way of rehabilitation, education and training in the prison system, they are not well-prepared for the labor market upon release. Added to this are very real issues of discrimination because of their ethnicity and correctional antecedents, and it is clear to see that the prison system has a very crucial role in the perpetuation of a permanent underclass of young black males.

Private prisons engage in exploitative and manipulative practices and are not more efficiently or cheaply run than state prisons; this belies the claim that privatization solves the problems that burden State prisons. State prisons have long suffered problems of overcrowding, human rights violations, and inefficient financial practices. However, as stated before, state run prisons are much more accountable than private prisons, and the public can demand oversight and more efficient practices from public prisons than is possible from privately run ones. Moreover, the main goal for a private prison is the maximization for profits, which places their wards in danger of neglect and exploitation, and offers little incentive for the prison system to rehabilitate inmates. The main goal for a state prison is, at least in theory, the rehabilitation and housing of inmates in conditions that do not run afoul of sanitation, health and humanitarian concerns. This implies the
rehabilitation procedures necessary to ensure that an inmate can return to his or her community able to reintegrate into society.

To balance social and market needs efficiently is, admittedly, a most difficult endeavor. This study does not propose to offer solutions which are outside its scope. It is necessary to consider deep transformation, the creation of new production and distribution systems that benefit all segments of society, most particularly those that have been left on the margins due to institutionalized racist and impoverishing measures. A viable and sustainable economy must include the participation of all, so that citizens at all levels have access to dignified work and living conditions. Communities with the odds stacked against them, living in perpetual conditions of marginalization cannot flourish and are condemned to deteriorate. In the latter decades, most poverty-alleviation measures developed within a framework of conservative imperatives have concentrated mostly on alleviation of extreme poverty rather than the eradication of poverty in general. While any measure that helps is better than nothing, such measures have done nothing to do away with institutionalized racist practices; indeed, Neoliberal strategies have proven endlessly agile in adapting and reformulating these conditions.

Labor and Race in Contemporary United States

In the United States, the neoliberal economic phenomena described previously have conflated with old racist structures at societal and institutional levels, which ensure that African Americans and other individuals of color form a permanent socio-economic underclass in the nation. This is not new. What is different is the consistent renewal and re-adaptation of the ways in which economic and market imperatives come together to
perpetuate exploitative practices against African Americans through an unequal justice system and increasingly privatized correctional system (Alexander, 2010; Pettit, 2012).

Since the inception of the colonies and the development of capitalism as a globally expanding economic system, ideologies of race have fueled the enslavement of others for economic exploitation. I will start by making clear however, that as stated by Williams (1944) and Roedinger (2008) racism was born out of slavery rather than the other way around. Furthermore, slavery as it was known in the modern era came hand in hand with capitalist expansion. In other words, racism has served a very real economic purpose since the last decades of the 15th century.

Other scholars, such as Audrey Smedley (2011), argue that the ideology of racism was born before the concepts of race and the slavery system as practiced in America emerged. It had come into practice around the Middle Ages, when the British needed to justify their incursions against the Irish. With this purpose, they created and disseminated the seeds of the modern idea of race. Furthermore, Smedley posits the concept of race is an opportunistic cultural construct that has been used in North America since around the eighteenth century. In North America, race was re-conceptualized from its old meaning, in order to cement and rationalize new forms of class stratification and exploitation. Smedley states that the concept of race has been since then a system meant to impose order in a complex society with a medley of cultures prior unknown to Europeans. It became a useful concept by which Europeans justified their dominance over others; in the case of North America, these “others” were Native Americans and eventually, enslaved Africans. Thus, race was conceived by Europeans in the Seventeenth and Eighteenth Centuries as an ordering system to rank individuals according to their perceived
differences. Prior to this time, historic records show no evidence for a concept of race that reflected to that currently being used as such by the time of European expansion into other continents. Eventually in the United States, racism against African Americans was shaped by the slave states of the South, where there was a special need for an ideology that supported the slave system. In effect, the slave system worked against the concept of free labor propagated by Enlightenment ideals, so concepts of race had to appear natural and entrenched. Today, Smedley argues, scientists agree that race is basically a socio-cultural construct with no real biological meaning. Its meaning today is wholly cultural.

In short, racism was born out of slavery at the inception of capitalism as a way to justify the mass enslavement and exploitation of others at a time when notions of free labor were already at work in Western society. Deeply ingrained ideological tropes are hard to eradicate from cultural schemas and continue to adapt to new mores, and play a role in the practices of institutions. Thus, it is very likely that the conflation of race, institutionalized racist practices and economics continues to play a crucial role in the marginalization and overwhelming incarceration of African Americans.

A growing body of literature that focuses on exploitative labor practices in today proposes that labor relations take place between free individuals in a free market. These theories often fail to take into account the historical repercussions and the racial dimensions of coerced labor, in the past as well as today. In other words, it fails to comprehend that ways in which race is historically constructed, the contexts in which it is constructed, and the ways in which it is related to exploitation—and more specifically, labor exploitation. That is, utilizing the work of another without providing appropriate
compensation. This can be done at the individual level, or by manipulating market forces to de facto position workers to accept inadequate compensation for their labor.

Solutions offered by experts who look to the market as a source of answers tend to endorse specific actions at the state and the individual level, such as better regulation and legislation. In the framework of a free market vision, this means the less State regulation, the better. Nevertheless, the quandary of race and labor in the United States is a systemic problem rather than a problem merely at the individual or even state level. For example, despite the surge in studies published by international institutions—such as the United Nations and the International Labour Organization, to cite a few—which show that coerced labor practices continue to proliferate even in a less regulated environment, scholars such as Bales (2004) argue that it is actions at the individual level (finding victims of forced labor and freeing them) what is needed in order to solve the problem of coerced labor. While this may serve to liberate some, it will hardly work to solve the problem the majority. Coerced labor can take many forms, and these include trafficking, debt bondage, sweatshop and migrant work in which workers are kept by illegal means or inadequately compensated and, of course, the use of prison inmate labor under exploitative conditions (International Labour Organization, 2013). When an individual is not in a position to exchange his or her labor freely, it is important to examine the situation in order to unmask coercive practices.

Without doubt individual or community initiatives might be powerful ways to fight coerced labor through raised awareness and political action. Nevertheless, given the vast and long term dimensions of the problem, it is highly doubtful that individual initiatives might be viable means to eradicate the problem of coerced labor as well as its
connections to race. Moreover, such an angle never questions the fundamental economic and ideological underpinnings of the system in which these exploitative and often coercive labor practices occur.

We know, then, that the capitalist system as we know it has been built upon the forced labor of enslaved people, which usually amounts to the poor and people of color. Accounting for labor in ways that fail to fully acknowledge the implications of race (and gender) cannot give a full account of the relationships between economic, social and political factors which shape the ideological basis of the Capitalist system. It is important to acknowledge that race is not the only dynamic at work. As William Julius Wilson (1997) argues, the high rates of unemployment in the inner cities are fueled by the disappearance of skilled and unskilled job opportunities in the cities, such as factories and meat packing plants, which used to provide steady work and decent wages. The jobs that have been left behind do not pay a living wage. Wilson stresses that "If inner-city black workers are experiencing the greatest problems of joblessness, it is a more extreme form of economic marginality that has affected most Americans since 1980" (p. xx).

Prolonged unemployment and poverty concentrated in urban areas is afflicting young African American males, but it also afflicts the rest of the community. A look at these traditional urban areas in the 1950s and at what they are today, as Wilson argues, clearly demonstrates the deleterious effects of unemployment. Even more than poverty, long term unemployment becomes a deeply disabling condition for communities and this has not been adequately addressed by government at the state and federal levels (Wilson, 1997).
Wilson’s insights provide an analysis that parallels in many ways to the Marxian framework established for this study. A Marxian framework offers the ability to examine the concepts of race and labor dialectically, as elements that are created and recreated in relation to labor in the United States rather than as essential cases.

Summary and Conclusions

A theoretical framework lays out the foundation for the methodology and parameters used in a research project. It provides the roadmap by which the themes be developed and research questions will be answered. This chapter has examined the concepts of power and labor from a historical materialist perspective as well as its counterarguments from the point of view of several pertinent economic theories, in order to find specific definitions and an appropriate theoretical foundation for issues of labor and racism in the United States under conditions of capitalism. Because Marxist theory looks at the production, reproduction and commodification of labor in daily life, it has proven to be the most adequate as a framework for this study. Under this lens, coerced labor has been examined and it is suggested that, rather than an exception to the rule, it’s a cornerstone of the Capitalist system from its inception. Moreover, the private industrial prison complex has proven instrumental in cementing the impoverishment and disenfranchisement of African Americans and other people of color in the United States.

In this chapter, as well, a comparative system known as incorporated comparisons is briefly discussed and used as an instrument to examine concepts of power, labor, and economics in the wider historical framework of today’s disenfranchisement and exploitation of African Americans and other people of color in the United States. This marginalization occurs within the global and economic imperatives of late capitalism, yet
serves to re-conceptualize and entrench an old racial caste system in the United States as fodder for a growing and profitable private prison system.

By relying on radical sociology and incorporated comparisons, which seeks to find all the hidden but very real connections between societal and economic phenomena, it is possible to find deeper explanations to the coerced labor, race and the prison system than those offered by purely Marxist approaches. In other words, the incorporated comparisons approach expands and adds nuance and flexibility to the Marxist framework, and for these reasons they are appropriately suited for the development of this study.

A high percentage of young black males go to prison at some point, and jail is today more common than employment. This occurs because race in American society matters greatly. Kennedy (1998) argues that the law is not inherently racist. Rather, the core concepts of criminal law are rooted on the precepts of legal equality. Nevertheless, the application of the law has consistently been affected by anti-black discrimination and enforcement based on racial selection. Thus, an underclass—the unemployed, underemployed and unemployable (Myrdal, 1963)—composed of young African Americans has been carved out in the United States, in ways unique to American society, and the privatized prison system has only served to exacerbate and entrench it. Capitalism in the country also evolved in ways that proved ideal to cinch the economic nature of American capitalism, with politics, race, and the historical foundations for the development of the prison industrial complex in the United States. Thus, the role of this particular institution in perpetuating an economic black underclass, and its explosive exacerbation of imprisonment in the last decades of the 20th Century and beginnings of the 21st could only occur in America.
A POLITICAL HISTORY OF THE U.S. PENAL SYSTEM

THE PROGRESSIVE ERA

To understand the historical underpinnings of the social and economic developments, it is necessary to comprehend the history of convicts in the United State, in particular in the Southern states of the nation. The historical overview that follows describes the antecedents of the supermax prison phenomenon in the United States. Despite differences between the interests of industrialists and planters, the prison system’s “postbellum modernization and industrialization depended on the extension of labor-repressive social relations” (Lichtenstein, 1996). It offers an overview of the historical research that informs on penal history prior to the 19th century, an in-depth account of the conflations of labor and prison in the context of post-Civil War to contemporary United States, and a specific look at the prison system in the Post-civil rights era. Scholarly works consulted are instrumental at quantifying the prison population and examining the data that provide the underpinning for historical and sociological theories.

Up until the 18th century, prisons in Europe and America served the purpose of holding people until the execution of corporal punishment or death, or as coercion on debtors until they could pay their debts. The early history of prisoners of the United States begins with the practice of “banishment,” in which felons were shipped to colonial settlements to serve out their sentences in forced servitude (Ireland 1968, Sellin 1965,
Christianson 1998, Grubb 2000, Riveland, 1999). This was most likely due to the fact that in Europe Enlightenment ideals fueled a growing rejection for the brutality involved in public performance of corporeal punishment and executions of prisoners (Mintz 1979, Rusch and Kircheimer 1939).

Correspondingly, the number of crimes punishable by transportation to the colonies grew in direct proportion to the need for labor in the settlements, foreshadowing a time in the United States, non-criminal acts would be legislated as felonious when the growing private prison system required the need to fill up beds. There were also those that sought to reform the prison system in the colonies. Sellin (1931) finds that Quakers in the North American colonies experimented with, and to this day continue to advocate for, more enlightened prison systems. Starting with William Penn’s abolishment of the death penalty (barring the most exceptional cases), colonists tried different incarceration systems, eventually coming up with the Auburn Prison System. Yet even with the advent of reform movements at the time, forced labor became a core factor of the developing prison system. Nevertheless, progressive ideals did have an impact on the penal system in the United States, often running concurrently with more punitive practices, or followed by a retrenchment of harsher penal practices, such as forced labor. Thus the punishment reform movement in early United States—altogether with the indentured servitude system—coincided with an era of great labor demand in the United States.

Following the War of 1812-1814, “Because the criminal population was not regarded as a serious threat, prison policy stressed the importance of reforming criminals” (Adamson, 1984, p. 440). This coincided with “a growing demand for, and persistency scarcity of, labor” in post-Revolutionary United States, which explains why
“reformers thought it desirable to establish trades within prisons” (Adamson, p. 440). Hence, the penal system in the United States was shaped by concurring ideological currents of penal reform and conservative retrenchment, which coincided, in turn, with the rising and waning tides of labor demand and supply.

Geographical variations had an effect on the racial composition of the inmate population of the nation. Southern states, whose plantation economy depended upon the enslaved labor of African Americans, were traditionally less lenient in their treatment of inmates and forced labor requirements, a bias that persists to this day. This is a reflection of how the ideology of race required as a justification to exploit African Americans has become institutionalized and worked its way into the prison system to this day (Smedley 2011). While the Auburn system, created under a reformist agenda, experimented for a short time with chained inmates working in rough labor in northern cities, the custom became so abhorrent to citizens that it was soon eliminated (Sellin, 1965). Thus, incarceration has played a central role in the history of the nation, the operations of penal institutions reflecting and fostering the aims of socio-economic and political interests. In this view, the prison system has served to create and oppress “dangerous classes,” such as Native Americans, free blacks, slaves, recent immigrants and other minorities (Christianson, 1998). After the last quarter of the 18th century, Northern prisons focused their efforts on immigrant waves of German, Irish and Italian origins, creating, in turn, new criminal classes until said immigrants assimilated into the general population. Today, Hispanic immigrants appear to be the new wave of immigrants to be thus demonized and are currently filling prisons in numbers disproportionate to their representation in the general population.
The south took a different trajectory to that of the north. Several historians have written of the convict lease system, one of the most deleterious forms of forced labor instituted during the Reconstruction Era (Christianson 1998, Cunningham 1886, Hawkins 1983, Lichtenstein 1996, Worger 2004). Officially known as the convict lease system, the chain gang was an outgrowth of the slave system in the south. Inmates were hired out to private corporations and individuals, recreating, de facto, the recently abolished slave system. In fact, practically all of the inmates so leased were southern African Americans. The racial composition of prison today still shows a majority of people of color, as a quick overview of prison rosters available online will demonstrate. Worger (2004) found that most of the studies of southern prisons have stressed the economic bases of coerced labor, the primacy of industrialists rather than planters in the development of the system, and its racially discriminatory character (with African Americans accounting for 90 per cent of convict populations). (p. 67)

Since most of the imprisoned whites tended to be poor and were seldom punished with the convict lease system, it is suggested that a gentler treatment was meted according to ethnicity rather than economic status, even though poverty was one of the reasons why they were all incarcerated in the first place.

Coerced labor in the south was utilized primarily in the coal mining, steel, and iron industries, “upon which rested the industrialization of the New South” (Lichtenstein, 1996, p. 77). Furthermore, leasing convicts to industry “saved local governments the costs of erecting new [prison] institutions and also brought in considerable revenue”
The growth of industry in the south required constant, expensive technological innovation, adding a heavy burden to production costs. This meant that African-American prisoners “were slaves without the restraints that were thrown around the slave-owner association, by society and by interest” (Cunningham, p. 10).

The history of southern imprisonment in the decades after the Civil War correlates with the idea that penal servitude was used to fuel industrial growth in the south (Christianson, 1998; Worger, 2004). The lack of reliable and inexpensive labor in the southern states was compounded by the unwillingness of whites to perform brutal labor for a very little pay, which may account for the preference for convict labor in southern private and public industry circles. Both the private sector and public authorities “considered the labor of convicted felons disciplined, inexpensive, productive and compatible with free labor in skilled enterprises” (Myers and Massey, 1991, p. 270). The coerced labor of inmates, in the post Civil War decades, was also considered a necessary factor for to agrarian production. Indeed, scholars argue that the demand for agrarian labor actually stimulated the growing demand for black convicts, which in turn generated all sorts of corruption and wrongful practices by government and judicial institutions in order to imprison black citizens (Cohen, 1976; McMillen, 1989).

While there were regional differences in punishment application and although opposition to the lease by free labor was strong in the southern states, the differences between northern and southern prison systems reflect differences in labor dynamics. Northern convicts worked for the private sector, but within centralized institutions. Indeed, some prisons became prosperous factories. Prison labor in these institutions, though coerced, took different forms, “was more consistently and vigorously opposed,
and ultimately was short-lived” (Myers and Massey, 1991, p. 281). The attacks against prison labor were also strongly supported by trade unions and by small manufacturers adversely affected by the labor and material output of these prison factories and who saw them as unfair competition. Eventually, it made more economic sense in the northern states to train independent craftsmen and skilled labor for docks and shipyards rather than use prison labor (Hawkins, 1983; Myers and Massey, 1991). The convict lease system, then, is a clear example of the collusion of state and market in favor of property owners. The system arose as southern industry sought to replace slave labor. Inmates were driven harder and treated more cruelly than in any other, as historical records have made appallingly clear.

The matter of labor, however, does not completely explain the virtual enslavement of thousands of blacks during the post-Civil War decades. Economic imperatives do not account fully for the development of penal policies. Even during times of growing unemployment in the United States, the demand for convict labor persisted in the south (Christianson, 1998: Myers and Massey, 1991). On the other hand, the construction of canal and railroad projects, the shipyard industry, and the preference of merchants for building factories in seaboard towns, maintained a more constant demand for labor in the northern states, yet these did not develop the harsh brutality of the southern prison system.

Although pockets of conservatism remained, the Progressive Era (1880-1920) brought about a more systematic study and understanding of the population from which most of the incarcerated came. There was a greater emphasis on developing the moral character of the individual through incarcerated labor. Writing in 1930, a chronicler
wrote “These prisoners come from the poor and the uneducated, from broken families … from the mentally defective” (Brown, p. 593). The 1930s witnessed many instances of reform legislation that curtailed the exploitation of prison labor, and the New Deal’s good roads movement was instrumental in bringing about the demise of the convict lease system.

Following the tradition of race ideology in America, views of the populations from where most inmates were taken shifted from considering them as morally defective, to pathologic views based on class and race. Progressive views co-existed with a series of theoretical trends—often fads—which sought to reform inmates, often in a profoundly paternalist way. By the 1930s, however, the progressive era had so encouraged prison reform to the extent that Sellin, writing in 1931, felt justified in forecasting the following:

> It is significant that in many states, here and in Europe, the prison population has been steadily declining due to the increased role of probation, fines, and other non-institutional forms of treatment. It is not inconceivable that in a new penology the prison may play but a very restricted role. (p. 1)

Many scholars have demonstrated that punitive measures become harsher when there is a surplus of free labor. However, the issue of prison labor during the Depression is complicated by the fact that the Depression saw massive unemployment co-exist with progressive reforms for prison labor. In fact, forced by new legislation, most prisons curtailed prison labor to the extent that many prisons held prisoners inertly warehoused, where they would do nothing at all. In this case, competition to free labor would
apparently be forestalled while allowing for elements of moral concern among the public to shape penal policy along more humanitarian lines (Hawkins, 1983).

Studying the link between education and rehabilitation, Justice (2000) explored the increased value placed on schooling for prisoners during the progressive era, as crucial for prisoner rehabilitation. This was the direct result of an increase in value given to education by the middle classes of the United States. Justice (2000) states that “schooling took a central place in middle class identity, as well as in the progressive vision of social reform” (p. 301). This economic imperative was accompanied by public policy espousing the view that “an upright man was not only employed, he was educated” (Justice, 2000, p. 301). Therefore, with social and historic trends converging upon a movement shift, corrective institutions such as prisons were ideally situated to put into effect a social reform agenda. The decline in incarceration during these years might also reflect post-World War II prosperity; hence a reduction in unemployment and a greater need for free labor. Examining the post-World War II years, Leonard (1983), Hochstetler and Shover (1997), and Pepinsky (1983) support and build upon the nexus of prison labor and economy studied by scholars previously mentioned in this chapter:

When the economy is strong and unemployment low … use of punishment is relaxed, inclusionary crime-control approaches gain support from elected officials and state managers … This explanation for the changing use of punishment is consistent with the growth of rehabilitative ideologies and strategies in the United States during the years of post-World War II prosperity (Hochstetler and Shover, p. 360).
Thus, the Progressive Era, The New Deal, and its aftermath saw a rise in prison rights, in prison rehabilitation reforms, and diminished coerced labor. There was a rise in public consensus stressing education of inmates—as well as some seeking to find “ingrained” reasons for criminality, such as inbred pathologies. None of this was new, but as a policy-informing ideology it appeared to gain the upper hand and shape penal policy along progressive trends. There remained, however, vast differences in prison systems across the country, and southern prisons continued to visit the harshest penalties on its inmates. Nevertheless, in general, during the aftermath of the Progressive Era, views on incarceration associated the dynamics of advanced industrialization and affluence with a reduction in crime. During this period, as well, there was a prevalent belief, that the state “was responsible not just for the punishment and control of offenders but also for their care and rehabilitation” (Gottschalk, 2006, p. 35). The government, following progressive policies, invested in programs of prison rehabilitation or in alternatives to incarceration for the treatment of offenders. Though such reforms did not occur smoothly, a general philosophy in favor of improving the prison system persisted. The Warren Supreme Court rulings ameliorated some of the direst aspects of incarceration, and the 1960s saw a rise in prison rights movement Christianson (1998).

The Civil Rights Era

Notwithstanding the rise of a culture of political correctness, which proscribes the use of explicit racial epithets in the public sphere, and despite the success of notable African Americans, some of whom, as President Barack Obama, have achieved fame and economic success, racial progress in the United States has suffered a strong backlash beginning in the post-Civil Rights Era (Alexander, 2010). The Civil Rights Era,
established by most historians during the years of 1954, with the landmark case Brown v. Board of Education, until the death of Martin Luther King Jr. in 1968, marks the beginning of the Prisoner’s Rights Movement. In postwar America, most workers who held stable jobs, both union and non-union, enjoyed rising incomes and job benefits (Rubin, 1996). It was during the postwar years, as well, that African Americans organized to begin the Civil Rights Movement.

The Civil Rights Movement achieved the derogation of the Jim Crow segregation laws in the South. However, racial segregationist strategies established during the Jim Crow era have adapted and continued, maintaining a de facto system of racial segregation today (Alexander, 2010). The mass imprisonment of African Americans is part and parcel of this state of affairs. Records that strive to make invisible the racial rates of imprisonment, in effect obscure the ways in which the judicial system participates in the creation and perpetuation of a black underclass (Pettit, 2012). For example, the Supreme Court case McCleskey v. Kemp (1987) holds that “racially disproportionate impact” in the justice system may not be used to overturn a sentence without showing a specific intent to discriminate on purpose. In other words, overt policies of mass incarceration of African Americans may not be used to prove institutionalized racism, despite modern civil rights legislation. Thus, the Court takes on the role of protecting the status quo in the face of ample evidence of institutional racism at all levels of the judicial system.

How did this come to pass, when the Civil Rights Era promised so much? Encouraged by the 1964 Supreme Court ruling allowing prisoners to sue state officials for denial of their Constitutional rights (Cooper vs. Plate, 1964), the late 1960s and early 1970s witnessed the growth of a political and legal movement aimed at protecting the
rights of the incarcerated (Leonard, 1983). Nevertheless, mitigating aspects seeking to humanize the lot of prisoners coexisted with the rise of technological surveillance, such as cameras and other security innovations (Christianson, 1998).

Despite the 1964 ruling in favor of inmate rights, the same year saw the beginning of a greatly disturbing trend backwards. In *Frontlash: Race and the Politics of Punishment* (2007), Vesla Mae Weaver provides a broad historical exploration which examines a database of close to 700 *Time* articles from 1955 to 1985. She found that after the 1950s, coverage of crime changed. The discourse of crime representation in the media moved from it being positioned as an “aberration,” towards crime as “an endemic problem” (p. 160). One of the ways in which white leaders and the media lashed back at the Civil Rights movement for its achievements was by engaging in demagogic fear-mongering, which in turn caused that the legal and judicial systems would treat African Americans differently for decades to come. This would have deep repercussions, when the Reagan administration proved the catalyst for enacting a series of penal legislation reforms that sought to stem the alleged rising criminalization of “dangerous” African Americans. The Civil Rights Movement’s ideal of achieving its democratic goal transformed the United States deeply. Still, the dream of full-fledged equality remains unfinished.

The Post-Civil Rights Era

The post-Civil Rights years, which began in the early 1970s, overlap with the period of years known as Late Capitalism, which started in right after World War II. The American economy expanded in the post-war period, between 1945 and 1970. These decades witnessed the rise and victory of the Civil Rights movement and a rise in
prosperity and consumerism in general. Scholars focusing on economic issues from a Marxist and Neo-Marxist perspective, tend to call the postwar years Late Capitalism. For the purposes of this section, the term post-civil rights era will be used. This concept encompasses the social history of what has happened to the achievements of the movement and young African Americans, especially male, in the late twentieth century and the early twenty-first. During the aftermath of Progressive Era, prevalent views on crime deemed that advanced industrialization and affluence arrived hand-in-hand with an overall reduction in crime. There was a prevalent belief during this era, as well, that the state “was responsible not just for the punishment and control of offenders but also for their care and rehabilitation” (Gottschalk, 2006, p. 35). This has changed in the last decades. Up until the 1970s, the prevailing ideology had focused on viewing offenders as individuals who were victims of societal conditions and who, with adequate treatment, could change for the better. However, Robert Martinson’s influential 1974 essay, which gave way to the theory later known as “Nothing Works” (1974), was taken to indicate that rehabilitation was a wasted effort, there was a shift towards a “just desserts” or retributive criminal justice philosophy. In this view, greater weight was given to deterrence and retributive justice; offenders were seen as simply deserving of punishment and their circumstances were seen as of little account (Pizarro et al, 2006). Finally, they added, “penal policy became less concerned with achieving crime reduction through individualized sentencing and focused increasingly on fitting punishment” (Pizarro et al, 2006, p. 9).

Even though, as stated before, population in the United States declined in the 1960s and 1970s (Gottschalk p. 4), national incarceration rates expanded dramatically in
this period and more than tenfold in the last three decades, according to Bureau of Justice statistics (2006). This was the direct result of an increase in sentencing rates, with the overcrowding of prisons as a consequence. These demographic shifts brought a new style in corrections’ management: the “new penology.” Rather than concerned with blame and personal responsibility, the new penology is more corporate and scientifically-oriented; it is concerned with efficiency and “techniques to identify, classify and manage groups sorted by levels of perceived dangerousness” (Pizarro et al, 2006, p. 9). In spite of lower population rates, the 1980s witnessed further increase in prison population accompanied by a growing public perception of prison overcrowding as an unmanageable trend—both of these phenomena partially fueled by a rise in sentencing and incarceration for minor crimes. An escalation in prison violence led to media and political representations of the criminal element in urban communities as significantly more violent and dangerous than ever (Kupers, 2008; Kurski and Morris, 2001). The increase in supermax facilities followed, regardless of its cost.

The Reagan Years

After the Great Depression of the 1930s, the United States enjoyed several decades of prosperity, from World War II into the 1960s. In the 1970s, however, the economy began to decline due to new challenges, including expenses from the years of the Vietnam War, increased competition from other nations and the entering of the “baby boom” generation en masse into the labor market. These years witnessed a progressive view towards the role of prisons and a focus on rehabilitative policies. The Reagan administration, however, enacted drastic changes in anti-crime policy and legislation, such as the penal legislation reform acts of 1984, which would result in a rigid
inflexibility that fueled prison crowding and eventually, expansion. The public was receptive to these reforms, having been primed by an anti-black rhetoric as a backlash from the Civil Rights gains. This is a situation that persists to this day. Indeed, a survey and correlational analysis showed that belief in racial stereotypes—such as that blacks are violent and lazy—are an important source of support for punitive penal policies among survey participants (Hurwitz and Peffey, 2002).

There were some steps taken in the direction of improvement. In the mid 70s, a series of trials involving the Alabama penal system, known as the Alabama prison litigations, sought to change prison standards in relation to segregation, overcrowding, and mental health care issues. The Alabama prison system did change markedly during the seventies, serving as a positive benchmark for other prison systems. In the words of Rhodes (1992), however, “The doubling of the prison population between 1976 and 1986, the persistent threat that improvements … would not be maintained” had a deleterious effect on the philosophy underlying prison reform (p. 197).

These changes occurred gradually. In the 1980s, Ronald Reagan inherited a sagging economy. Seeking to improve the economy, Reagan pushed policies of deregulation, cuts in public expenditures, and taxation policies that in the end, did little to decrease taxes but redistributed them significantly (for example, the tax rate of the wealthiest fell by over 14%) (Congressional Budget Office, 1990). These measures included cuts in prison spending, such as most educational opportunities, despite many studies that showed strong correlations between educating inmates and decreased rates of recidivism. There was a boom as the economy bounced from the recession of the 1970s, but it did not last very long, and “by the late 1980s, middle-class incomes were barely
Studies show that real wages have declined since the early 1980s; economic growth overall stagnated after the 1970s, and the distribution of income has shifted significantly toward the wealthy (Galbraith, 2008; Minsky, 1985). Households with the highest incomes experienced the most economic growth after the early 1980s, while the middle income classes experienced only modest income growth during the period, and the lowest income brackets experienced a decline in income. This mixture of economic stagnation with areas of economic growth ended in 2008, when the nation suffered the effects of the financial economic crisis.

It is important to remember the ideology that fueled these developments. Neoconservative ideology considers that a great many government functions should be in the hands of business and commerce. Neo-conservative leaders, according to Galbraith, “are not actually interested in free markets. Their goal is to use the government to build monopolies, to control resources, to block regulation, to crush unions, to divert as much as possible from taxpayers into private pockets” (2008, p. 41). Meurs (2000) explains it in more detail, stating that one of the main tenets of neoliberal programs is “an attempt to radically reduce the jurisdiction of the state. This is based on the belief that shrinking the state will create an organizational vacuum, into which markets and private property may expand” (pp. 465-466). Meurs (2000) argues that

If markets and property are freed from their role as neo-liberal ideals, and examined instead as specific, historic outcomes, a whole new set of policy questions emerges. We can analyze whether and what kind of markets are
likely to emerge if state organization is withdrawn … Possible reductions in state activity can be considered in terms of what organizational forms are likely to replace it, and in terms of what state or other collective actions are needed to improve outcomes from market development or property rights change. (p. 467)

Thus, when it became apparent that the government was not doing a stellar job of managing the prison system, market-oriented advocates pushed for privatization.

During the Reagan administration years, the issue of prison violence and overcrowding was at the forefront of prison expansion. These were one of the main arguments for legislation change. The Bail Reform Act and the Sentencing Reform Act of 1984 were a policy hallmark of the Reagan administration, and today prisons are filled with pretrial and sentenced inmates because of those policies. The Bail Reform Act allows the incarceration of an individual solely on a judicial consideration that the defendant is dangerous. This gave way to authorities to unjustifiably harass and arrest people in poor neighborhoods, an abuse that continues practically unchecked to this day. The Sentencing Reform Act circumscribes judges to impose sentencing from a narrow matrix of formulas, resulting all too often in overly harsh sentences which the judge is unable to mitigate (Shargel, 2004).

In all fairness, government at the federal and state levels continued to harden punishment for offenders in subsequent administrations, both Republican and Democrat, including for white collar crime. Nevertheless, it was President Reagan’s initiative in the 1980s that served as the catalyst for sentencing legislation and guidelines that have
proven disastrous. Somehow, it has always been petty drug crimes and minorities who bear the brunt of punishment.

Race and Criminalization in Public Representation

The extent to which detrimental racial stereotypes are perpetuated by the media cannot be sufficiently stressed; unfortunately, public perceptions have real consequences for those who are stereotyped negatively, as laws are created and enabled by people who live in a social environment which perpetuates these representations. It is no coincidence that African Americans and Hispanics are represented in numbers so vastly out of proportion in prison populations. Moreover, it is clear that long-held racial stereotypes among the population also affect public policy, as those who hold stereotypes are likely to vote or hold office informed by such mind-frames, or else sit in a courtroom as judge or jury.

The importance of examining a quantitative and qualitative study on the media’s effect on public perception of crime to the development of this dissertation can be summarized in Weaver’s words: “Because most Americans receive information about crime through the media and not via personal experience, racially biased coverage is likely to have deep impacts” (p. 140). Her study traces the ways in which “attention to riots and black unrest turned to attention to black crime and lawlessness” (p. 168). The re-articulation of the caste system in the late 20th century and early 21st was jump-started in many ways as an adverse reaction to the Civil Rights movement (Alexander, 2010, 2012). Federal involvement in crime was quite limited prior to the 1960s and crime was rarely linked to race in the media or public discourse (Weaver 2007). The 1964 Civil
Rights Act officially ended decades of segregation and introduced institutionalized racial equality. Notwithstanding the passage of the Civil Rights Act, old racial mores prevailed, shifting from old paradigms to new ones. The race-fueled protests of the 1960s provided the opportunity for legislators and policymakers to criminalize African Americans, re-interpreting civil rights protests as crime and riots. Thus, race was publicly linked by authorities and media to disorder, riots, and crime; the new model was used to two effects: (a) To highlight the need for stronger law and order and (b) recast the political subtext of the protests as common crime. Weaver (2007) found that

What was unique is not that the media was reporting on riots and urban disorders erupting across cities in the U.S.; what was unique and not inevitable is that these were reported not as problems of racial tensions but as part of the problem of crime in the United States … the protocol for selecting articles excluded stories that were solely about violence and riots; these stories were included if they had direct relation to and discussion of crime. Mention of riots and urban disorders came standard in coverage of crime during this time. (2007, p. 162).

Crime reports during this period related race to crime to such an extent, that an editorial describing the crime rates in Washington DC also reported that Washington was almost 70% African American (Time Magazine, 1969). This strategy, then, served to shape and guide public perceptions of race and crime.

During the 1970s, the discourse which linked crime to urban African Americans continued, but morphed into a focus on “black pathology,” the “culture of poverty,” and other such terms that, while acknowledging the poverty of urban minority neighbors,
found ways to de-politicize and blame the victim. Indeed, even as poverty was acknowledged as linked to crime, this seems to be positioned as merely a disadvantage and, to a certain extent, a choice (Weaver, 2007). Finally, as Weaver (2007) argues, “Reagan entered the White House and quickly picked up the conservative thread on crime begun by Goldwater and woven into the national fabric by Nixon” (p. 174).

The fact is, as explained previously, that there was actually very little real crime growth in the early 1970s, despite the increasing media discourse on crime. Actually, up to the mid-1960s, a significant amount of crime reported was due to Civil Rights-related insurrections. However, there is no denying that there was a rise in crime which began slightly in the 1970s and even after the 1980s, although not to the extent that would justify the prevailing rhetoric. There prison population grew at a stunning rate during the years of 1980 to 2000, an occurrence never seen in United States history before (Zimring and Hawkins, 1994). By the 1970s, the model for crime reportage had been set—the linkage to crime, inner cities and race—and this conflation would become “common knowledge” in the coming decades (Weaver, 2007). The crime index showed that most crimes were committed in ghetto areas, for economic reasons (i.e., crime against property, robbery) and over fifty percent of offenders were younger than 21. These facts alone seem to account for crime in terms of poverty, lack of opportunity, and the lack of serious forethought mostly typical of youth.

However, it bears repeating that these fears were laden with prejudice. While urban crime was associated, in popular consciousness, with people of color, relatively hidden crimes, by its nature mostly committed by white individuals, went largely undetected by the public. We have seen, then, that conservative strains stayed into the
1970s, when they really flourished, and were seriously picked up by policymakers. During the 1970s David Rothman, one of the disciplines of corrections most important scholars, joined Robert Martinson in his hopeless view of rehabilitation. He stated that incarceration had failed to resolve crime and correctional institutions were not able to rehabilitate individuals. Therefore, new alternatives were needed (Rothman, 1980). The rhetoric stemming from such views flourished in the corrections field altogether with a growing outlook that understood crime as “inevitable”. Crime was viewed simply a normal hazard of living in societies, much like city fires (Rothman, 1974, p. 658).

Thus, as the views of Rothman, Wilson, and their colleagues spread and became popular with state authorities, a new relationship grew between the correctional system and government. Thus, crime moved from being considered a pathology, to being considered an inevitable hazard. A few years after Rothman’s (1974) findings were published, for example, the term “rehabilitation” was officially removed from the California penal code at the point that defines the purpose of prison (Kicenski, 2006). It was then and there that federal and state departments of corrections changed their outlook on prisons from rehabilitation centers to units meant to hold offenders. Sentencing practices shifted accordingly, becoming more severe. In the mid-1970s, some states abolished early parole (even for good behavior), and almost every state imposed mandatory minimum prison sentences. Up to then, sentencing had been indeterminate, so that judges could tailor their sentences to individuals depending upon circumstances and need. Parole boards had been an integral part of this process. Granted, indeterminate sentencing could also give way to disparities in sentencing for the same type of offenses and abuses of power. But appellate courts, review boards and other checks and balances
systems were also in place to deal with these possibilities. The new turn to a harsher view of sentencing and corrections, however, gave way to the development of a prison industry managed by private firms and ran by unskilled custodians focused merely on holding inmates (Kicenski, 2004; Tonry, 1996). It is important to note, however, that longitudinal studies show that around the middle of the 1970s, punitive measures continued to climb “while fear of crime levels off” (Weaver, 2007). In other words, even when fear of crime was no longer at peak levels among the public, attitudes did not return to the levels of the 1950s and 1960s, “when the public believed that the crime problem was a youth problem and attitudes to approaching crime and juvenile delinquency were oriented towards prevention and rehabilitation” (Weaver, 2007, p. 194).

The War on Drugs also increased the number of African Americans in the prison system. Blacks were most likely to be arrested and sentenced for possession of crack cocaine, for example, while the more expensive cocaine was more lightly punished, thus creating wide disparities in sentencing. Other “tough on crime” legislation, such as California’s Three Strikes Law, became law

Without any meaningful analysis and with reportedly no support from criminal justice experts. It is ironic that before the proposal gained favor it had been presented up and down the West Coast for close to six years. In fact [this law] was almost identical to other laws already on the books—so in essence, it was legally unnecessary. (Kicenski, p. 101, 2004)

These instances reflect that all too often, prison policy is approved with little distinction between the implementation of appropriate measures of punishment and control, and special interest imperatives. Thus, the persistent representation of black youth as
criminals served to develop a “tough on crime” ideology, which in turn, influences and acts upon other policy actions, such as training and education for inmates. During the 1990s, the prevailing ideology seems to have moved from “tough on crime” to “tough on prisoners.” In response to the questions “Do you think that inmates are entitled to humane prison environment? Whatever happened to the old idea that you forfeit your rights when you take away the rights of your victim?” prison scholar Robert T. Worth (1995) replied:

> It all depends what you mean by a “humane” environment. It’s easy to call for punishment without having seen the inside of a prison. Also, the fact is that the vast majority of the men and women now in prison will be out in 10 years. How do we want them? In a ferocious, brutalized condition? Or with a bit of job training, and the ability to move to a different lifestyle? (p. 3)

As part of the anti-offender wave, Pell grants—which allowed prisons to established programs with local colleges in order to educate inmates—were proscribed for felons and former felons. Denying felons with a criminal record—a majority of whom are African Americans—access to education, further compounds their status as an underclass. This policy drive seriously decimated prison educational programs. In the lapse of one year—1994 to 1995—these were cut down from 350 programs nationwide to less than a dozen (Worth, p. 3). The Three Strikes Law was opposed by criminologists, legal scholars, elected state attorneys, and other members of the judiciary and defense bars. Yet after heated rhetorical polemic designed to increase public fear of crime, it was passed into law (Kisenski, 2004).
To date, the press is still very color conscious in the way covers crime (Weaver, 2007). Racial fear-mongering was the main tool used to fight the civil rights movement and their political gains for equality. Demagogues then, as today, tapped into racist fear and anger among the public, compounding the oppressive circumstances of poor African Americans.

Overcrowding and Prison Violence

Many scholars have written on overcrowding and prison violence in the 1980s, a decade that resonated with a circular logic blaming out-of-control violent criminals with the overcrowding of prisons and vice-versa, which in turn gave way to a conservative retrenchment in penal policies (Bleich, 1983; Christianson, 1998; Funke, 1985; Harris, 1985; Paulus, 1988; and Toch, 1985). Prison overcrowding is a contentious issue. Scholars point out that even experts fail to agree on a shared definition for prison overcrowding, offering differing formulas and definitions. Overcrowding in prisons has been defined as a “human density” so “noxiously congested” that individuals have no sense of privacy left (Toch, 1985, p. 3). A Department of Justice (2006) study on the effect of prison crowding found that once space per person exceeds 50 square feet, how that space is arranged and the number of people an inmate is living with may be more influential on illness, death, and suicide and disciplinary infraction tallies than merely space per person. Mullen (1985) explains that

…definitions of rated capacity vary from state to state and can change over time … rated capacity is a highly flexible yardstick that may refer to the number of inmates a facility was originally designed to hold, the number of inmates who are actually living in the space, or the numbers
that corrections officials believe the space can accommodate. All of these numbers may be adapted to suit political, legal or financial convenience.

(p. 34)

However, in reference to overcrowding, most standard-setting institutions had converged around a spatial density of 60 square feet of confinement space per inmate. Yet according to a Department of Justice survey published in 1980, two-thirds of all prisoners lived with less than this minimum standard.

Writing of the situation as it was in the mid-80s, Toch stated that “congested prisons are mostly warehouses for people” (p. 2), and explained that “In recent history two disasters converged on each other: The advent of (1) unprecedented overcrowding coincided with (2) the loss of faith in correctional rehabilitation” (p. 2). Long periods of overcrowding are known to produce high levels of stress, often causing the younger inmates to become disruptive and older inmates to develop stress-related health issues (Toch, 1985). Toch blames the riots of Sing Sing (1993), a hard labor prison for felons serving time, on the prison having become “a residual depot of decrepit cells,” a place where human beings were placed in “pure storage” and left to spend their days with nothing to do (p. 10).

It is pertinent to note that, as for the racial demographics of prisons vis a vis geographical location in the last quarter of the twentieth century, there were significant differences between conditions in the south and those in the rest of the country (Mullen, 1980). A 1979 survey showed that Northeastern prisons confined slightly under 10 percent of inmates in crowded units while approximately 30 percent of inmates in the North Central and 60 percent of Southern inmates were confined in units that failed to
meet the minimum standards of spatial and social density confinement (Mullen, pp. 37-38). Thus the issue of overcrowding was more of a regional matter than a national situation.

Although many prison issues scholars argue that the issue of overcrowding, as has been stated before, may have been exaggerated or at least manipulated by different institutions, Bleich (1985) clarified that there might be those who harbored legitimate concerns for prison overcrowding. He added, however, that the growing rhetoric decrying violence in prison and prison overcrowding was exaggerated and self-serving:

Prison administrators, prison employees, and legislators advocating the current prison building program benefit institutionally from the perception of crowding. Prison administrators benefit because this perception supports their demands for more personnel, larger budgets, and stricter control over prisoners, and because it permits them to escape blame for prison disturbances. Prison guards and their unions view crowding as a lever to trigger increased hiring. Even legislators who advocate “law and order” profit from the perception of crowding because it creates a window of opportunity for passing legislation to build more prisons and to control prisoners more strictly (p. 1127)

Furthermore, Bleich (1985) presciently suggested that even if the numbers of prison inmates declined, it would remain a little-known fact given the strength of the public shift to a “law and order” mentality among the legislative bodies and the population at large. Moreover, the more prisons were built, the more pressure and incentives to keep the expanding facilities with inmates in order to justify their expense.
Others also wrote about the economic imperatives that fueled the building expansion of the prison system during this time. Funke (1985) argued that, seeing how crime rates were declining, the reason for an increase in demand for more prisons was a decline in a proportionate use of substitutes for prison, as states have enacted legislation that mandates time for crimes heretofore punishable by community sanctions … states have enacted add-on prison terms for crimes committed under exacerbating circumstances—such as the victim’s advanced age, the use of a firearm and so forth. (p. 87)

Terry Kupers, a psychiatrist who has testified as an expert witness on prisoners and prisoners mental health, explains the climate in prisons overcrowded by increased criminalization of minor offenses, and seems to link prison violence to idleness and frustration,

In the early 80s, the violence rate in prisons went sky-high. The prisons were totally out of control, and there were many reasons for it. One of the reasons was massive crowding. A lot of people were being put in prison for relatively minor, drug-related crimes, so there was massive crowding. At the same the Department of Corrections was dismantling rehabilitation, because the right wing had been going on and on about how it was “coddling” prisoners. So there were a lot of idle people in the yards, and there was a lot of violence. At the time, myself and others were testifying in class-action lawsuits that with crowding and lack of rehabilitation, you’re going to get increased violence, an increase in mental breakdowns, suicide, and that kind of thing. Instead of reversing the problem by
reducing the number of people in prisons, the California Department of Corrections (CDC) started saying “the reason we’re having so much violence in the yards is not that the prisons aren’t being managed correctly, it’s because we have particularly violent prisoners.” (parr. 4)

Other scholars, such as Toch (1985), also argue that the problem of riots may reside in the warehousing of thousands of human beings in states of almost absolute idleness. The issue of overcrowding and violence needs to be examined closely. One of the cases that gave the most fodder for the violence in prison demagoguery was the case of the Sing Sing riots. These were blamed on overcrowding. Toch places the cause for the riots of Sing Sing (1993), a hard labor prison for felons serving time, on the prison having become “a residual depot of decrepit cells,” a place where human beings were placed in “pure storage” and left to spend their days with nothing to do (p. 10). Bleich (1985) also examined the issue of the Sing Sing riots. He cites the official report on the Sing Sing riots (1983) to explain that it is not clear that overcrowding was truly the main reason for restlessness. The report actually states that the inmates “were virtually unanimous in their complaints about the lack of programs to fill their time and improve their lives” (p. 1178). In other words, most of the prisoners gave idleness as the main reason for their revolt, a reason supported by the local president of the prison officers union, who found that inmates remained idle around 90 percent of their time (p. 1178).

Addressing the issue of “warehousing” inmates in idleness, Toch (1985) warned that it is a destructive strategy which leads to viewing inmates as “commodities” (p. 70) and argued that “Two cellmates can be squeezed into a small room and somehow survive. Thousands can vegetate—and learn to vegetate—with stultifying quiescence. Physically,
it can be done, but the costs are unconscionable” (p. 71). Still, there were many who
linked an increase in prison violence to overcrowding even though the argument was not
proven. Psychologist Paul B. Paulus (1988) wrote often in the 1980s on prison crowding
and its psychological effects. Paulus argued that the social density experienced in
overcrowded prisons creates and/or exacerbates cognitive factors that induce stress and
frustration and, in consequence, may produce violence. Nevertheless, he conceded that
his theory was never tested and that gaps existed that precluded the model from ever
being tested. Thus, one of the main theories that link overcrowding with prison violence
remains unproved.

Generally in public perception, however, the media and racist discourse among
political leaders had been successful. Because harsher legislation was filling up prisons,
and the perception existed that overcrowded prisons were causing more violence, a need
for even more prisons was created. As Funke explains, during these years, incarceration
rates increased at the same time prison terms lengthened: “In 1970, the number of
persons incarcerated per 100,000 population was 96; by 1982 that rate had nearly doubled
to 160 per 100,000 population. Average time served rose by over one year during that
period” (p. 87).

The proposed remedies—building more prisons and lengthier punishment—which
seemed to count largely with public approval, were seen by some experts as ineffective
and costly. For example, Funke warned that building more prisons would inevitably
come at the expense of something else and in the end, not be an effective solution for
widespread crime. That is, “economically speaking, a vote for prison construction may
be a vote against free public education, libraries or parks, or more future disposable
income. It will impose substantial financial burdens on future generations. And it will not stop crime” (p. 87). But it was a losing battle, as public support for a harsher penal system grew.

The possible ways of dealing with this was fiercely debated. While some pushed for building more prisons, and while health professionals argued that overcrowding and substandard housing may contribute to stress and health problems, the extent to which prison violence can be blamed, per se, on overcrowding is unclear. Other experts have actually argued that prisons became safer around this time, and claim that the perception and the frequency of riots were greatly exaggerated by the media. Indeed, scholars, such as Useem and Piehl (2006), found that the argument for building more prisons because of rioting was unnecessary. They ran a wide gamut of statistical analysis on prison violence, and found that

Most measures point in the same direction—away from the position that prison buildup caused increasing rates of individual-level and collective-level disorder. In fact, quite the opposite: most measures show that prisons became safer and less likely to experience riots and disturbances. This trend, in turn, suggests that correctional management became more effective in organizing their activities. (p. 100)

Nevertheless, the government and media continued to push for lengthier and harsher sentences. Harris (1985) explains that from 1970s to 1983, government reports of growing crime rates “were treated as proof that being lenient … had bred greater lawlessness” and during that period, “Roper polls found that the percentage of people...
surveyed who agreed that courts were not dealing harshly enough with criminals went up from 66 to 83 percent” (p. 152).

In addition to the economic incentives for business and government institutions to build more prisons, as well as the political benefits gained by legislators who endorsed them, other factors fueled the preoccupation with prison overcrowding. Civil society groups became concerned, which signified a growing risk of legal challenge by civil rights and prisoner rights groups (Mullen, 1985). It is important to bear in mind that successful lawsuits against government legislation have the power to change policies and may result costly to government treasuries.

Thus, if an exaggerated rhetoric of overcrowding benefited business and government concerns, it also benefited activists as well, by providing ammunition that allowed them to further their scope of action (Bleich, 1985). Mullen (1985) explains that civil and prison rights litigation had caused Supreme Court and District Courts intervention, and the topic of prison overcrowding had become front page fodder nationwide, forcing policy action (p. 33).

Finally, Bleich (1985) argued that, not to say that some prisons are not, in fact, overcrowded … [yet] prisoners embrace the perception of crowding as an opportunity to reduce their sentences … prison reformers benefit from the perception of crowding because it offers them a “hook” for advocating, among other things, alternatives to prison, reduced sentences, early releases, decriminalization of certain crimes …” (p. 1127)
Although the issue of overcrowding was significant in driving the expansion of the prison industry, it also produced some contradictory results. The problem was perceived as so critical, that it prompted the proposal of emergency relief strategies such as imposing early release, “undeniably an expedient way of aligning population and capacity in the short term” (Mullen, 1985, p. 42) and suggested non-custodial arrangements for misdemeanors, such as community service and long-term correctional supervision, such as parole, rather than increasing the size and proliferation of prisons, a series of strategies that would work “if there is a perception of a joint interest in the public good along with practical collaboration and commitment from these leaders” (p. 57). These measures, however, did not take hold universally across the country. The implementation of early release systems was left to the states and its parole boards. While in some areas the early release programs allegedly provided some relief for overcrowding, by and large the numbers of the imprisoned continued to grow.

The shift from a rehabilitative ideology to a harsher, more punitive ideology and the issue of overcrowding was complicated with rather muddled definitions of crowding that were ambiguous enough to serve a variety of interests, from legislators and prison employees, to prison activists and the inmates, not to mention the myriad professions and industries that served the prison system. As the prevailing ideology moved from a rehabilitative to a retributive system, rehabilitative efforts decreased, and prison sentences lengthened and proliferated.

Meanwhile, as a result from previous prison rights reforms and a decrease in prison rehabilitative measures, prisoners were kept mostly in enforced idleness. In consequence, prison populations were affected by high levels of stress with the resulting
outcomes for inmates and the institutions guarding them: riots, violence, and ill health among the prisoners and calls for more oppressive measures of control and more prisons by the institutions.

Post-1990s. Race, Labor and Criminalization

The Bush and Clinton administrations of the 1990s reduced social spending and strengthened market sectors. With the opening of the former Soviet Union and the creation of innovative technological advances the economy grew, accompanied by high corporate earnings and low unemployment. Nevertheless, these jobs openings appeared increasingly in the service industry and at part-time hours, while the number of full-time industrial jobs and small-to-medium farmers declined (Conte and Karr, 2001). In other words, jobs that were likely to provide opportunities for growth and/or autonomy, an entry into the middle class, began to disappear. Even though there was a spurt of economic growth during the years 1995 to 2000 fueled by a “new economy” based on expanding debt and financial speculation, it was a short-term growth (Mishel, 2005). Economic conditions under drastically market-oriented policies have deteriorated meaningfully, especially when compared to the earlier part of the postwar period under progressive economics. In the words of Galbraith (2008),

Our postwar system was built on technological leadership, financial stability, and collective security … We were the bulwark during the Cold War. Our system was not imperial: we spoke instead of community, of freedom, of common purposes. (p. 42)

Interestingly, many important prison scholars have found that change in poverty rates, average income, and property crime in society do not directly impact imprisonment rates
These scholars consistently find, however, that “the penal system grows increasingly punitive as labor surplus increases” (Hochstetler and Shover, 1997, p. 364). Of course, some acknowledge that “it is entirely conceivable that increases in incarceration levels during downturns in the economy may occur due to amplified criminal activity among individuals with criminal records, rather than to the state’s attempt to control surplus” (D’Alessio and Stolzenberg, 1995, p. 182). It is necessary to consider that a portion of criminal activity, such as theft, may be due to reduced economic circumstances. Most of prison scholars, however, have concluded that the increase in imprisonment rates is not directly related to serious crime.

Moreover, scholars have stressed the significant correlations between the aforementioned historic economic dynamics and the branding of certain populations as “dangerous classes,” as occurred with African Americans.

In order to understand how the intersections of race, labor and criminalization work to create an underclass of African Americans, it is important to understand the notion of surplus labor, as used by many prison scholars. A classical definition of surplus labor describes it as advantageous to the market because it is imperative for capital that the population exists under conditions that force them to sell their labor. A labor surplus means that the supply of workers remains greater than its demand (Marx, 1977). Holding a surplus of incarcerated labor may serve several purposes. A disposable industrial reserve corpse of workers balances the fluctuations typical of the business cycle in industrialized societies (Marx, 1977). In other words, as explained by Adamson
(1984), “If a portion of the laboring population is excluded from employment, wages increase and erode profits,” (p. 437). This has been reflected, as previously mentioned, when union labor became one of the groups most opposing convict labor. It has also been reflected, for example, by the utilization of convict labor by private industry as “strike busters” in the past (Worger, 2004). In such a scenario, workers might be prevented from demanding higher wages, as they would fear the turn of employers to convict labor instead. Thus, surplus labor in the form of convicts serves to keep free labor wages in check. In consequence, during periods of economic downturn that show a sudden increase in prison population, prison authorities may resort to harsher policies in order to imprison and, in consequence, control an overpopulation of workers; in addition, experts insist on deterrence instead of reformation (Adamson, 1984; D’Alessio and Stolzenberg, 1995; Melossi and Pavarini, 1981; Pepinsky, 1983; Rusch and Kirchheimer, 1939). In other words, recent economic downturns have coincided with overall diminishment of more humane prison measures and reforms. The fact that this is possibly due, at least in part, to lessened employment opportunities must be seriously considered.

The joint increase in punitive measures and imprisonment rate served a second purpose: That of holding under control the emergence of an unemployed population lacking access to resources. During times of high unemployment, property owners worried about keeping their property safe and “dangerous” individuals at bay. Thus, in the words of Adamson (1984), “while prisoners were still exploited as an economic resource … they were, at the same time, increasingly feared as a threat to social order” (p. 449). In northern United States prisons, recent European immigrants were also
demonized as a dangerous class but these were able to eventually integrate into the Caucasian population (Christianson 1998). The perception of African American youth as a dangerous class, however, remains strongly in public perception. Chiricos and Delone (1992) posit that “the state’s punitive apparatus is mobilized to control ‘social dynamite’” (p. 430). “Social dynamite” refers to surplus labor that is young, active, and potentially threatening, both materially and symbolically, to established interests” (p. 437). These scholars find that “while labor surplus probably has an indirect impact on punishment through its influence on crime, there is clearly a direct and substantial labor surplus-punishment link that is independent of the mediating influence of criminal behavior” (p. 429). During times of economic stagnation or recession, then, imprisonment rates rise and punitive measures often become harsher. This serves to control a large segment of unemployed population represented as “dangerous”—as the unemployed are probably more likely to turn to crime—and to maintain the racial status quo. Myers and Massey (1991), King (1991), and Pager (2007), argue that while young men of color are economically marginalized outside of prison, the incarcerated are literally banished from the labor market and made into a lumpen class. In other words, the pool of surplus labor—those who are “flotsam, refuse, dross of all classes”, considered unfit for socially-constructive employment—threatens to become so large it is unwieldy (Marx, 1983, p. 300). Punishment then shifts from compulsory labor, to restraint and control of warehoused inmates.

Duster (1997) has argued that the move from manufacturing to service industries in the latter part of the twentieth century has increasingly disenfranchised blacks and Latinos. Whereas the trend that shifted labor from agriculture to manufacturing did not
require more schooling from the labor force, the shift from manufacturing to service jobs
does. Moreover, from 1910 to 1940 a great many young men of all ethnicities dropped out of high school in order to take one of the growing numbers of manufacturing jobs. In
the 1940s, for example, only 70 percent of whites and 55 percent of blacks between the ages of 17 and 18 years old were in high school. Moreover, although it is not distinctly obvious that service jobs require higher education, most companies today require high school degrees for the same jobs, effectively disenfranchising high school drop-outs, which tend to belong to minority groups (Duster, 1997). Still, the number of African American high school drop outs is decreasing; and yet, black youth are still facing higher levels of unemployment than ever before (Duster, 1997). Surely education and even recession alone cannot account for these developments, and it seems more than likely that elements of entrenched social and institutional racism are involved.

Indeed, African Americans face an institutionalized racism, where they are
demonized by public institutions such as the media and the criminal system. Such
demonization has inevitably tainted the business sector (Adamson, 1984; Christianson, 1998). Duster (1997) demonstrates that the retail and service industry are the business sectors that have enjoyed most economic growth in late twentieth and early twenty-first century. Moreover, he states, “This combines with the flight of retail trades, supermarkets, and discount stores to the suburban periphery” (p. 278). This migration of jobs away from the inner city to the suburbs is so pervasive that it is “so commonly observed and understood that it has become part of our taken-for-granted assumptions” (Duster, p. 278).
As manufacturing jobs disappear from the inner city, minority youth are left with greatly reduced access to jobs. Although some of it may be ascribed to service jobs going to high school graduates rather than, to young people who did not finish secondary education, this cannot fully account for the lack of representation of people of color in retail firms. Duster (1997) finds that rather than a the result of an overall conspiracy, such discrimination is the very real result of several institutionalized injustices: Active discrimination in hiring practices by business managers; the lower levels of educational quality in inner city schooling, which leaves many young minorities woefully underprepared for a growing service market; and public perceptions, fostered largely by the media and penal system, that make the styles of speech and presentation of minority youth seem threatening to firms and their clients.

The racial disparity in employment affect even a great number of middle class black workers with higher education report facing discrimination at the workplace (Feagin, 1995). The unemployment of African Americans in urban communities parallels the increase of minority prison labor hired by the private industry. As Lichtenstein explains:

Contemporary privatized convict labor—usually privatized, at best, with a sub-minimum wage—appeals in particular to the service sector, arguably the most “progressive” sphere of today’s economy, and appears suited to the imperatives and rhythms of postindustrial production. (1996, p. 193)

This privatization of prison labor accompanied a disenfranchisement of United States workers during the same three decades beginning in the late 1970s. Public institutions advertised prison labor while others weakened the power held by labor unions.
Gottschalk (2006) cites a National Institute of Justice report published in 1986, which invites private sector involvement in prison industries, positing the prison as an ideal source of labor and assuring its readers that “general benefits can accrue to virtually any company that agrees to employ prisoners” (p. 193). As reported by the AFL-CIO, by the mid-1990s tens of thousands of inmates working at well below market wages were generating over $1 billion in sales for private industries (Harrison, 2005).

Long-held racial stereotypes have the power to influence the decision-making process not only at the hiring and policy-making levels, but also at the judicial level. To further compound the marginalization of African American males, scholars such as D’Alessio and Stolzenberg (1995) have found “that an unemployed defendant is 3.5 times more likely to be incarcerated before trial than is an employed defendant. They too argue that this occurs because “As economic conditions deteriorate and as unemployment rises, judges may perceive the unemployed as threatening to middle- and upper-class political and social hegemony” (p. 191). The impact of unemployment on pretrial incarceration was strongest for young black males. A number of other studies also report evidence of a substantive link between employment status of criminal defendants and severity of imposed legal sanction (D’Alessio and Stolzenberg, 1995). What results from this is a sort of Catch-22 situation, in which young African Americans are unemployed for reasons out of their control, and their unemployment further demonizes the perceptions of authorities. The criminal justice system, as it is, does not reflect the best interests of the most vulnerable populations in the United States. Not only do African Americans suffer harsher sentencing than whites, but the proportion of black inmates as opposed to whites has been steadily increasing in the last decades.
The War on Drugs

The 1980s, which witnessed the “war on drugs” launched by the Reagan administration, was in step with the prevailing correctional management ideology. Faithful to the spreading retributive model, it promoted incarceration instead of methods of prevention and treatment. Extensive prison research finds that crime rates, economic and social disadvantages, and justice system procedures and policies are the factors that most contribute to racial inequality in the prison system of the United States. One of the strategies by which the criminal justice system has over-populated the prison system with poor minorities is the War on Drugs.

Most crime in areas of urban neglect is drug-related, as the empirical data from the Department of Justice, The Office of National Control Policy, and the American Correctional Association shows, and close to 20 percent of offenders in federal and state prison committed crimes in order to buy drugs (Mumola and Karberg, 2006). It is not clear, however, that most violent crime is drug-related. Indeed, it is difficult to gauge the percentage of drug-related violent crime and thus, to make the case that violent crime is predominantly related to drug use. In response to the question “What proportion of homicides is drug related?” the fact source website for The White House (2008) answers via its website:

This simple question is difficult to answer. The FBI's definition is specific but limited. Cities or police departments may have broader but inconsistent definitions. For offenses not as reliably reported or as thoroughly investigated as homicides, the question is even more difficult.
because complete information is not systematically available at the national level for any definition of "drug-related."

The stigma and stereotyping of minorities that accompanied the War on Drugs has been especially damaging on urban African Americans. One of the most deleterious long term effects of increasingly harsh drug laws is that convicts are proscribed from political participation due to the “criminal disenfranchisement,” which bars them from voting. In 14 states, former felons are barred from voting for life. This has the indirect effect of benefitting politicians from groups that are not usually voted in by minorities. Additionally, undocumented immigrants cannot vote. The outcome is that millions of United States citizens’ or inhabitants, most of them poor minorities—in the case of African Americans, a full one quarter of black males are barred from voting—are effectively prevented from participating in the political system of the country in which they live (Wacquant, 2001). In consequence, they have little say in the political issues related to the criminal justice system, labor policies and in any other policy-making issues.

Media and political focus on drug abuse and trafficking in largely minority urban neighborhoods has served to propagate the view that the use of illicit drugs is more widespread in poor neighborhoods than in other, more affluent—whiter—neighborhoods (Saxe et al, 2001). Regardless of prevalent public opinion, however, it is the reverse which has long been true. In absolute numbers, there are far many more white drug offenders than there are black (Human Rights Watch, 2008). However, the rates at which African Americans are sentenced to prison for drug offenses, when compared to whites—
particularly when sentenced to long-term imprisonment—show considerately unequal rates of punishment for drug offenses.

On the other hand, issues of race and class are complex, and the issue of class cannot be discounted. It is important to note, for example, that the number of whites arrested for drug use after 2003 has increased significantly, mostly due to the fueling of methamphetamine use in largely poor white rural areas nationwide (Human Rights Watch, 2008). Nevertheless, according to Human Rights Watch (2008)

Racial disparities evident in drug arrests grow larger as cases wind their way through the criminal justice system. Thus, blacks constitute 43 percent and whites 55 percent of persons convicted of drug felonies in state courts, and then the disproportion increases … among people sent to prison because of drug convictions (with blacks accounting for 53.5 percent and whites 33.3 percent). (p. 54)

The War on Drugs fueled by the war on crack cocaine “has played a dominant role in radically shifting incarceration figures and rates and legislatively mandated sentencing … it resulted in the arrest and imprisonment of disproportionate numbers of blacks” (Duster, 1997, p. 261). The consumption of drugs is consistent across race lines, with whites accounting for more of the population and a higher percentage of drug consumption per capita. However, great disparities exist in arrest and sentencing rates of minority groups, most specifically, African Americans (Tonry, 1995). Offenses for crack cocaine, a cheaper drug, carry much harsher sentences than those for cocaine. Crack is the most available drug for inner city populations, whereas cocaine in its purest form is more likely to be
consumed by white males in fraternities as well as by white young urban professionals (Austin and McVey, 1989). Duster (1997) argues that

The drug war has also affected the races quite differently with regards to rates of imprisonment. One of the most striking figures showing this is the racial composition of prisoners in the state of Virginia. In 1983, approximately 83% of the new prison commitments for drug offenses in the state were white; the rest, 37% were minority. Just six years later, at the peak of the crack scare, the situation was reversed; only 35% of the new drug commitments were white while 65% were minority (Duster, 1997, p. 265).

The bias in laws, arrests and sentencing, of course, is reflected in the ethnic composition of the prison population. For the year of 2001, The Bureau of Justice Statistics reports that 64% of prison inmates belonged to a racial or ethnic minority. In that year, the same institution noted “Based on current rates of … incarceration, an estimated 32% of black males will enter prison during their lifetime, compared to 17% of Hispanic males and 5.9% of white males” (parr. 8). Note that this is an estimate for the future based on rates at the time, rather than factual numbers current at the time. According to a study conducted by Human Rights Watch, based on national FBI data and statistics for the years 1980-2007, “The data also show that most drug arrests are for nothing more serious than possession” (March 2009, parr. 3). Of all inmates convicted of drug offenses in 1998, 51% of African Americans received a prison sentence, while only 33% of whites were sentenced to prison.
Sentencing is also significantly skewed against African Americans. It is important to note that sentencing can be affected by allegedly “race neutral” factors such as existence of a prior record or type of drug used. However, such facts are hardly neutral. Racial inequality in sentencing is the result of different variables, not least among them biased sentencing policies, such as the federal crack cocaine mandatory sentencing laws. In their statistical study, Mauer and King (2007) found that

Seeming “race neutral” policies have contributed to growing racial disparity. Due to the intersection of racially skewed policing and sentencing policies, the federal crack cocaine mandatory sentencing laws, for example, have produced highly disproportionate rates of incarceration for low-level offenses. Similarly, school zone drug laws produce severe racial effects due to housing patterns, whereby drug offenses committed near the urban areas that contain many communities of color are prosecuted more harshly than similar offenses in rural communities populated largely by whites. (p. 17)

It is difficult to claim that there is such a thing as race neutral policies, however, when racial profiling undoubtedly plays a role in the higher number of drug arrests of African Americans. Human Rights Watch (2008) has found that in Minneapolis, for the year of 1999, where blacks constituted less than 20% of the population, they experienced 37 percent of police stops, whereas whites, who are the majority at 65 percent of the population, experience 43% of stops. In the same city, and despite being a much smaller demographic than whites, 77% percent of males arrested were black, whereas barely 13.8% were white (p. 53). Statistics in similar amounts are repeated in comparable

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proportions nationwide, as the most recent scandal for the rampant profiling of New York City’s “Stop and frisk” laws attest.

The impact of the War on Drugs is huge. The Office of National Drug Control Policy (2002) reports that federal spending to incarcerate drug offenders totals nearly 3 billion a year. Close to 20 percent of offenders in federal and state prison committed crimes in order to buy drugs (Mumola and Karberg, 2004). According to Mumola and Karberg (2004), “[in 2004] violent offenders in state prisons were less likely than drug (72%) and property (64%) offenders to have used drugs in the month prior to their offense” (p. 1). In short, the statistics show that a vast majority of inmates have been incarcerated for non-violent crimes. Numbers presented by The Sentencing Project for 2007, offer a similar perspective for the incarcerated:

Racial and Ethnic Rates of Incarceration

<table>
<thead>
<tr>
<th>Racial/Ethnic Group</th>
<th>Rate per 100,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>412</td>
</tr>
<tr>
<td>Black</td>
<td>2,290</td>
</tr>
<tr>
<td>Hispanic</td>
<td>742</td>
</tr>
</tbody>
</table>


It bears repeating that longer and tougher sentences have been filling prisons with tens of thousands of individuals incarcerated for minor offenses in its sweep. The evidence presented in this section shows that racist practices have become institutionalized at all levels of the penal system, from profiling practices at the police level to drug legislation and sentencing application. It has become institutionalized as
well. Public policy and media portrayals too often do not correlate with actual empirical and demographic evidence.

Finally, the War on Drugs is expensive. The United States federal government spent $15 billion dollars on the War on Drugs in 2010, at a rate of about $500 per second (Miron and Waldock, 2010). It is close to that amount for 2013, plus $23 billion at the state level, for a total of $37 billion dollars for the year (Office of National Drug Control Policy, 2013). It is painful to consider how far those funds would go if invested in education, inner city revitalization, job creation, health care and other types of social investment. Nevertheless, the support for the War on Drugs continues in the United States and even as part of its foreign policy. Although President Obama has spoken of incorporating comprehensive education and treatment programs into the War on Drugs, recently this year, he stated in a speech in Mexico that "Much of the root cause of violence that's been happening here in Mexico... is the demand for illegal drugs in the United States" (Roberts, 2010). Furthermore, the Obama administration recently cracked down on Latin American presidents openly considering the de-criminalization of drugs in their respective nations. Although there is much theorizing about what slant the War on Drugs policies might take, the one constant is that at least for the foreseeable future, it is here to stay.
CASE STUDIES

INTRODUCTION

In academic circles, practices and theories are often studied in abstract terms and remain in the arena of purely epistemological, philosophical or ontological discussion. Case studies serve to identify positions and situations described in theoretical analysis. Besides serving to drive home the theoretical concepts, case studies clarify these concepts for those who are not used to purely conceptual arguments, amplifying in this manner the target readership. Because case studies introduce context, they serve to raise awareness and engage people in the situations described. Nevertheless, case studies by themselves run the risk of producing shallow or perverse analysis if used uncritically and unaccompanied by a serious and principled theoretical framework.

The case studies presented in this chapter are preceded by a thoughtful analysis of issues pertaining specifically to prison privatization: What are the ideas that support it? Do private prisons provide a more cost-efficient service? What drives its expansion? To finalize, there is a consideration of the correlations between race, labor and imprisonment in light of the privatization issues considered and presented during this chapter.

A Consideration of Prison Privatization

After almost 30 years in business, privatized prisons in the United States experience higher levels of violence (rape, assault and death) as well as higher rates of recidivism than public sector prisons. Moreover, they have failed to demonstrate that they are more efficient and cost-saving than public prisons. Yet the private corrections
industry continues to thrive in most of the United States. According to the American Council of State, County and Municipal Employees, there has been an almost 50% increase “in private prison inmates between the year 2000 and 2009—leading almost 8 percent of incarcerated Americans to be housed in private prisons by the end of the century” (AFSCME, 2011, p. 1). However, even as the private prison industry expands, some states are cancelling private prison contracts due to safety and budget concerns, causing the private prison industry to take aggressive strategic measures in order to keep the prisons full, which is how they measure profitability. The extent to which the market may replace government—and vice-versa—the jostling for power between economic and political imperatives, is crucial to understanding the ways in which the state governs and legisates (Lindblom, 1977). Private prisons pose more dangers for inmates and staff alike: “In the private prison, you have fewer guards, for example. You have guards who are less experienced, who are paid less, who get fewer benefits … which leads to more dangerous situations,” explained Alex Friedmann, editor of Prison Legal News, with two decades of experience covering corrections (Cohn, 2011, parr. 22). This has lead to higher turnover rates and assault incidents. In one of many such cases, Corrections Corporation of America had to settle a lawsuit from one of their private facilities in Idaho, filed by an inmate who was beaten for close to ten minutes before guards intervened. The inmate, Hanni Elabed, was left with permanent brain damage. Former staff state that they have witnessed dozens of such attacks in the prison before, all attributable to inadequate staffing and shortages as a result of cutting corners (Cohn, 2011, parr. 27). In short, the private prison industry is more interested in filling beds than
in prisoners’ wellbeing. There is little to none investment in quality management or inmate rehabilitation.

Notwithstanding these conditions, continuous lawsuits against private prisons and disclosures of concerning situations, private prison management corporations keep garnering more government contracts. Representatives of the private prison industry claim that all they have done is respond to a market demand and do not interfere in government policies (Cohn, 2001). However, a recent exposé by National Public Radio shed light on the key role played by the private prison industry in the drafting and passing of measure SB1070, Arizona’s controversial anti-immigration law (Sullivan, 2010).

Among the findings of the aforementioned report, was

… this bill was an important one for the company. According to Corrections Corporation of America reports reviewed by NPR, executives believe immigrant detention is their next big market. Last year, they wrote that they expect to bring in "a significant portion of our revenues" from Immigration and Customs Enforcement, the agency that detains illegal immigrants.

It is important to mention that legislation relating to the corrections system is usually crafted, discussed and passed with very little scrutiny by the public. According to a report published by The Sentencing Project (2002)

State prisons and local jails have traditionally been financed through tax-exempt general-obligation bonds that are backed by the tax revenues of the issuing governmental body. These bonds require voter approval. For-profit prison companies, however, can finance the construction and
maintenance of their organizations from private revenue, thereby circumventing the need for voter approval on bonds issues. Taxpayers are denied the opportunity to approve or disapprove the building of new facilities while remaining liable for the expenses incurred by the government through their contract with private prison companies. (p. 5)

Often, government officials are advised by individuals with corrections industry lobbying backgrounds, as is the case two of Arizona Governor Janice K. Brewer’s top advisors in crafting corrections policy. In an October 29, 2010 report, National Public Radio exposed the role played by an organization of private corporations (American Legislative Exchange Council) in the creation and drafting of legislation that directly impacts the proliferation of private prisons:

Only 28 people work in ALEC's [American Legislative Exchange Council] dark, quiet headquarters in Washington, D.C. Michael Bowman, senior director of policy, explains that the little-known organization's staff isn't writing the bills. The real authors are the group's members — a mix of state legislators and some of the biggest corporations in the country. Most of the bills are written by outside sources and companies, attorneys, [and legislative] counsels," Bowman says... ALEC is a membership organization. State legislators pay $50 a year to belong. Private corporations can join, too. The tobacco company Reynolds American Inc., Exxon Mobil Corp. and drug-maker Pfizer Inc. are among the members. They pay tens of thousands of dollars a year. Tax records show that corporations collectively pay as much as $6 million a year.
With that money, the 28 people in the ALEC offices throw three annual conferences. The companies get to sit around a table and write "model bills" with the state legislators, who then take them home to their states. An investigation conducted by the American Federation of State, County and Municipal Employees (2009) found that the Florida GOP received, in 2001, $1.5 million from the largest prison industry corporation in Florida, GAO Boca Raton. That same year, the Florida Senate pushed for private prisons in 18 more Florida counties. Texas has more privately-operated prisons than any other state in the nation. Only in 2006, private prison corporations gave over $130,000 to public office candidates and today, the state is considering privatizing all of state prisons. Tracing back contributions by private prison corporations in New Mexico, Tennessee, California and Arizona find similar results. In short, the private prison industry engages in the crafting and drafting of legislation that favors the expansion of privatized prisons and seeks to influence public officials in charge of voting on such laws, while at the same time, keeping its political maneuvers and private prison operations away from public oversight. Today, the privatized prison industry branches out to many services, which include prison management and construction, contracting of prison services and contracting out of prison labor, among others.

How does the corrections industry manage this? One of the rhetorical strategies employed is a discourse on the market ideology of reduced government interference, decreased costs, and increased efficiency. Let us then examine the reasons adduced by the corrections industry to expand prison privatization.
Do private prisons save money?

Cost is a critical factor when state legislatures consider privatizing prisons, and much of the debate over the privatization of corrections focuses on issues of cost effectiveness (Price, 2006; Morris, 2007). Yet there are very few comparative cost analysis published for private and public prisons systems. Researchers note that comparing prison facilities is difficult, due to differences in variables such as facility size, types of inmate population, and others. Nevertheless, based on a review of published analysis, claims of increased efficiency and cost savings by private prisons remain unproven. Research also shows that there is very little evidence that privatizing prisons save government money.

According to the US General Accounting Office, staffing expenses add up to approximately 80 percent of correctional operational costs (2009). In order to increase profits, however, private prisons usually decrease personnel and offer significantly less training than public prisons. This, in turn, leads to increased turnover, violence, escapes and recidivism.

The Sentencing Project reports a 58 percent turnover in private prisons compared to 16 percent in public sector prisons for the period of 2010 (Mason, 2012, p. 10). As mentioned before, research findings by several institutions, such as the Private Corrections Institute, the American Federation of State (2010), County and Federal Employees (2011), and the American Civil Liberties Union (2011), among others, consistently demonstrate that staffing instability at private prisons has resulted in increased violence (riots, rapes and assaults) as well as more escapes. The Bureau of
Justice Assistance (2001) finds that private prisons have reported 49 percent more
assaults on staff and 65 percent more inmate-to-inmate assaults than in public prisons.

According to a 2003 study by the Florida Department of Corrections, the
Correctional Privatization Commission, and Florida State University, not only have private prisons
failed to demonstrate decreased recidivism—except for one case in all 36 cases surveyed
—but there is statistically significant information which seems to indicate, after tracking
23,000 former inmates, that private prison recidivism is indeed higher. All of the factors
mentioned above undeniably add up to increased and hidden costs in private prisons and
for the public at large.

Nevertheless, there have been influential arguments in favor of privatizing
prisons. Notwithstanding the above-mentioned results, the website of Corrections
Corporation of America, a private prison enterprise, states that their escape stats are 29
percent less than public sector prisons. An important document supporting the
privatization of state prisons, the Camp and Camp Survey published in 1984, was
conducted in the 1980s before there were really many privatized prisons. The study,
which interviews prison staff, was based on participants’ expectations of what privatized
prison might offer as opposed to their current experience. The results were neither based
on empirical data nor quantification of prison operational cost savings, yet have been
cited often by entities in favor of prison privatization.

In the cases in which state prisons do show increased costs, it tends to be due to
public prisons housing inmates that cost more to maintain, such as death row, female and
ill inmates. Moreover, private prisons are known to engage in selective choosing of
inmates they will house, routinely selecting those with few health issues, for example, who are less expensive to keep. In short, the General Accounting Office report states that the private industry has failed to demonstrate any real cost savings to the public. A study by the Bureau of Justice Assistance (2001) found similar results.

Nevertheless, private corrections corporations continue to report that they can operate and manage prison facilities at lower cost, although as Schoen explains, this is often done via strategies which transfer the expense to government—hence, to taxpayers—such as tax shelters and other such incentives. Despite the lack of proof that privatized prisons are more cost efficient, the Florida Commission reviewed several studies, including the ones cited in this chapter, and concluded thus:

[The Florida Corrections Commission] strongly endorses privatization, encourages expansion and the fuller utilization of extant privatized operations, and recommends that the new prison facilities which are to be funded during the 1997 Legislation be privatized (1996, p. vi)

A review of literature pertaining to the privatization of prisons shows that not only the privatization of prisons continues to rise, but the increase of privatization is based on the premise that in general, private prisons are more cost efficient than public ones. It is one of the most important factors in legislative considerations of prison privatization. More statistical analysis is needed in the cost comparison between private and public prisons, and quality of services and care need to be taken primarily into account. Nevertheless, pro-privatization legislation continues to be drafted and endorsed by organizations and politicians who have a vested economic and political interest in the expansion of private prisons.
Private prison managers are subject to little public accountability, making of this a most controversial and urgent public issue today. Even if running private prisons were more cost-efficient than government-run prisons, we should consider Waltzer’s argument as cited by Bender and Leone (1991), in the sense that “helpless men and women have never fared well in the hands of profit-seeking entrepreneurs” (p. 168). In other words, running institutions with high staff turnover and skimping on wages and training, with little oversight, might make economic sense for the business-owners, but does not make economic sense for the public nor will it make for better justice.

In his study on economic factors explaining prison privatization, Price (2005) studied prison privatization data across 50 states begins by stating that

In most cases, budget appropriations are an indicator of policy choices, economic robustness or stress, and future monetary policies. The movement to privatize prisons is explained as a response to fiscal stress as a result of increasing correctional costs … and revenue shortfalls in some states. (p. 1).

The Corrections Industry has not incorporated performance-based budgeting, Price finds; in consequence, “privatization of prisons seems premature” (p. 1). Arguing that “for-profit prison providers often argue the economic perspective and it appears to have the most traction”, Price explores the economic arguments used in the discourse involved in prison privatization since the 1980s, which saw the emergence of prison privatization.

Close to 36 percent of the privatized prisons are located in Southern states mired by poverty, bad budgeting decisions, fiscal problems and other financial dysfunctions. In an interview with the Memphis Daily News (2006), Price explained:
“If a state writes a poor contract, then the state is going to wind up paying more money … Before you privatize, make sure you have a handle on all of your costs and make sure the contracts are performance-laden” (parr. 23)

Typically, Price (2006) argues, governments do not take into consideration all of the costs involved in privatizing prisons. The state still has to monitor the prisoners, and absorb the costs of treating prisoners with infectious illnesses which the private prison industry refuses to treat. After a careful analysis of the available data on the decision-making of legislators concerning privatization of prisons, Price (2005) finds that “The data shows that performance-based budgeting and fiscal capacity are not determinants in prison privatization. That is to say … fiscal capacity and budgeting practices or performance-based budgeting do not explain why states may choose to privatize” even though, as Price argues, “as noted, governments tend to publicly justify their decisions to privatize one the basis that it is cost efficient” (p. 6). Moreover, Price argues that

If states incorporated performance-based budgeting into their correctional departments, they could control costs. Surprisingly, performance-based budgeting made no difference concerning the states’ privatization decisions, suggesting that other issues may be driving the states’ decision to privatize its prisons (p. 11)

Price adds that these results support the hypothesis that the privatization of prisons is a phenomenon that supports other studies finding that imprisonment, rather than a cost-saving measure for some state governments, is a form of social control. In short, other cultural, social and/or political factors are likelier to be determinant in prison-
privatization decisions, than those proposed by legislators and businesses involved (such as cost savings). In an ironic turn of events, in legislatures controlled by Democrats, prison privatization is typically promoted as a solution to overcrowding, rather than cost-cutting.

A significant majority of prison inmates are people of color, and this aligns with Alexander’s (2010) contention that the U.S. criminal system uses the prison system as a way to control and warehouse young black and Latino men, who are increasingly relegated into a second-class racial caste the way that Jim Crow laws used to do before the Civil Rights reforms. Rather than use openly use race as a rationale for marginalization and exploitation, however, many states now use “tough on crime” sentencing laws and the privatization of the prison system to ensure a permanent underclass which can be exploited for profit.

What Drives Prison Expansion?

Prison expansion feeds from a wave of policy choices that ensure that more men of color are sent to prison and, through popular harsh punishment measures such as the “three strikes law”, keep them for longer periods of time. Indeed, today “more than half of released offenders are back in prison within three years, either for a new crime of for violating the terms of their release” (Pew, 2008, p. 4). Furthermore, as the Pew report states,

Increasingly, however, states are discovering that casting … a wide net for prisoners creates a vexing fiscal burden –especially in lean times. Finding enough dollars to house, feed and provide a doctors care to a low-risk inmate is a struggle besetting states from Arizona to Vermont. In the
absence of tax hikes, lawmakers may find themselves forced to cut or limit other vital programs—from transportation to education and healthcare—to foot the incarceration tab. (p. 4)

Funding prison expansion deprives other important social services, and there are important economic issues at stake for many public and private institutions tied to the expansion of the prison system. For example, one of the most important economic incentives is that federal funds are provided mostly to agencies that demonstrate a significant increase in the volume of drug arrests, not those who are successful in dismantling drug traffic networks. Police departments are under pressure by policymakers to make the “quotas” because money allocations depend upon it, and documentation of cases of profiling and abuse of African Americans and Hispanics by police and prison authorities abound. In addition, there is the profitable business of purchasing drug arrest paraphernalia: SWAT teams, bulletproof vests, military grade weaponry and much more. In 2010, the Obama administration increased the drug war budget, with not nearly enough allocated to treatment (Smith 2012). Most of these expenses have been justified with “War on Drugs” needs, zero tolerance for crime and other.

Needless to say, no legislator would prefer a path that would put the community at risk. However, states such as Texas and Kansas have tried a strategy that offers a wider range of sanctions to lower risk offenders, which combined with incentives for reduced recidivism, have been able to protect society, punish offenders when they break the law and save public funds for other societal needs.
To understand what drives the prison build-up, it is important to give closer consideration to who are the organizations and individuals who stand to gain from prison privatization, besides the prison industry complex itself. We know that defunding social investment in job creation and education, as well as creating drug legislation that overwhelming penalizes minorities are factors in expanding the prison system. Measures such as extremely harsh legislation have also been crucial in filling up and building more prisons. Kicinski (2004) argues that among the strongest proponents of the “Three Strikes Law” were, first, the California Corrections and Peace Officers Association. The correctional guard’s union stood to benefit if the law passed, as a bill meant to increase prison population would create more corrections jobs. The NRA’s CrimeStrike program, which benefits from public support and public fear of crime, donated several thousand dollars to the campaign and helped shape the surge of public opinion. And finally, recumbent Republican candidate Pete Wilson needed a forceful campaign in order to secure the widest number of votes possible, so he took up the banner for the “Three Strikes” as part of his campaign. The California Correctional Peace Officers Association (CCPOA), a prison staff union with a vested interest in increasing prison populations, is one of the most powerful unions and California. The CCPOA has become an aggressive PAC with great political influence. As such, the CCPOA contributed over a million dollars to Pete Wilson’s campaign. Meanwhile, legal experts, state attorneys, and criminal justice scholars were not consulted or else, were simply ignored.

Bender (2000) finds that “Much of the correction corporations' early profits can be linked to the federal Sentencing Reform Act of 1984, which took effect in 1987” (parr. 25). The Sentencing Reform Act, a policy hallmark of the Reagan administration, came
hand in hand with efforts to privatize major elements of the federal government. The new law established prison sentencing for many offenses that up to then had received probation. It also mandated no parole and/or longer sentences for certain offenses and a reduction in the amount of time to serve for good-conduct in the case of federal for offenders (Bender, 2000). The relationship between private prison corporations and policy-makers is indeed remarkable.

Political campaign contributions from private prison corporations serve to influence or support certain interests. According to the Prison Policy Initiative (2005), “while comprehensive state campaign-contribution data doesn't exist for prior election cycles, the available data indicates that these corporations are enlarging their pattern of contributing.” In 1996 and 1998, for example, private prison corporations contributed more than $284,000 to political party committees in Florida alone, four-fifths of which went to the Republican Party during the 1998 election cycle. The Prison Policy Initiative also surveyed data from 43 states for the 1998 state elections cycle through May 2000. It found 1,187 contributions by corporations or individuals associated with private-prison companies going to 636 candidates for a total of $862,822. (See Table)

This amount is small compared to national standards; however, it represents a meaningful effort by private prison corporations “to ensure access to policymakers at crucial times.” Bender (2005) explains that that “the average amount needed to elect a representative in many states is about $5,000. And Senate seats go to candidates who raise less than $20,000 in some states” (parr. 9). Therefore, it is safe to argue that contributions in the amounts of $250, $500 and $1,000 are significant. To put it in perspective, the private prison industry’s overall contribution is higher than that of highly
influential groups nationwide, such as the National Rifle Association, which gave $588,195 in 1998 to state candidates. It is, however, still less than what other industries, such as gambling, oil and gas industries, have given at the national level (Bender, 2005 parr. 10). Oil, gambling and gas industries are much larger corporations than the private prison industry, but the latter has steadily increased its spread of financial political contributions and distributes widely throughout both relevant political parties, Democrats and Republicans.

Prisons are heavily dependent upon policy-makers to support and enact policies that will ensure a steady flow of inmates into their facilities. Thus, in order to protect the billions of dollars invested in their facilities, and in order to further expand, private prison corporations focus their best efforts on minimizing their business risks. Common sense dictates that one of the strategies for industry risk-protection is a steady show of financial support to key candidates across political parties making, in consequence, said candidates beholden to the interests of the private prison industrial complex. Private prison corporations acknowledge these dynamics. In its March 31, SEC filings for 1997, Corporate Corporations of America listed, under its “risk factors” section: "Dependence on Government Agencies for Inmates," "Short-Term Nature of Government Contracts," "Dependence on Government Appropriations." The strategy must have indeed proven effective: The stock price for Corrections Corporation of America increased more than tenfold from January 1995 to August 1997, from less than $5 per share to $45 per share (Bender 2002). If we take into consideration that private prisons are heavily subsidized by taxpayer money, these numbers represent quite a profit.
Nevertheless, costs have continued to increase for states investing in large prison populations. The most heavily invested in states by the private prison industry are Florida, Georgia, Mississippi, North Carolina, Oklahoma and Texas. As an example of how costs for private prisons escalated during the 1990s, the prison population of Texas grew at a scale of almost twice the number of any other state. According to the Texas Department of Criminal Justice, the prison population escalated from 48,320s in 1990 to 146,930 in 1999, virtually thrice its original number. At its highest point, nearly one adult in 20 was being supervised by the Texan criminal justice system (Bender, 2002; Albanese, 2001). Costs followed suit. Leaving aside the reported $2 billion building costs, budgets expanded from $793 million in 1990 to over $2.2 billion in 1999, which represents an increase of approximately 280 percent (Texas Department of Criminal Justice, 2001). Not surprisingly,

A 1996 audit by the Texas Department of Corrections found that corrections contractors paid for lobbyists and campaign contributions with taxpayer dollars, as well as legal expenses for health and safety violations, and even funded Christmas presents for judges. The most notable examples of alleged corruption came in 1998 when the director of the state corrections agency was indicted by a federal grand jury for taking more than $20,000 from a … supplier.” (Bender, 2002, p. 28)

The “tough on crime” policies of the 1990s in California and Texas have been replicated in all a great many southern states where the prison industrial complex has high levels of investment, such as Florida. In 2001, Governor Jeb Bush presented Florida policymakers with a budget plan that proposed $313 million in tax cuts, a decrease in social investment,
yet an increase in the corrections budget for $114 million. It is important to bear in mind the following:

Winning candidates and seated legislators—that is, the lawmakers who took part in the 2001 legislative session and made decisions about corrections policy and budget—accounted for 97.5 percent of the total raised. Only 2.5 percent went to candidates who lost their races. (Bender, 2002, p. 30)

In this manner, then, the major private prison companies continue to invest thousands of dollars in campaign contributions in all states of interest, giving to both Democrats and Republicans and favoring whichever party is in power, “an indication that they [are] more interested in access than a political ideology” (Bender, 2002, p. 30), even though an ideology of individual responsibility underlies the movement from rehabilitation to retribution.

The official and corporate rationale provided for increased investment in prison-building seem quite inconsistent with empirical findings and the interests of the public. They seem, rather, the result of a mixture of private interests and political strategy, both of whom have used ideology disguised as cost-efficient rationales and safety as the vehicle by which to accomplish their goals. Rather than a conscious conspiracy among these different sectors, the movement towards harsher penalties against poor urban minorities, and the growing trend of prison-building, seemed to favor several dominant interests at the same time: It made candidates and legislators appear as “tough on crime;” prison building in small towns allowed politicians to create jobs in poor communities; it effectively kept African Americans more easily controlled (and as a side effect, ensuring
a steady supply of low minimum wagers); it put money in the pockets of the private prison industry and all other industries which depend upon it (food suppliers, telephone companies, etc.); it helped control the blue collar labor market; and last, but not least, it provides a scapegoat for societal ills which should be blamed on the collusion of political and business interests.

Case Studies Overview

To understand the dynamics of prison growth, the states of Florida, Louisiana, Texas and nationwide Supermax prisons serve as compelling case studies. These state case studies are emblematic as they reflect the influence and effect of the private prison industry in state policies and population. Of special interest is the case of Texas, which paradoxically is considered one of the toughest on crime in the nation, yet has enacted a series of bi-partisan prison reforms that have been lauded throughout the country. The supermaximum prison systems case reflects the extent to which a narrative can take hold in the face of an absence of solid evidence, to fuel an unprecedented growth of the corrections system which takes oppression to a whole new level.

The first three case studies involve prisons in southern United States. It is important to bear in mind, however, that prisons may differ depending upon specific regional geographical, cultural and economic situations. To mention an element previously discussed in the overview of prison history, for example, Lichtenstein (1996) explains that the dynamics were not the same for all industries dependent on southern forced labor. What is common to all, is that they have been affected by the rapid expansion and privatization of the prison system overall.
Private prison business as known today started in the 1980s when the management of a Tennessee prison was granted to Corrections Corporation of America. Barely one year later, Corrections Corporation of America sought to manage the whole prison system of the State of Tennessee, a proposal which failed in face of public and legislative opposition (Bates, 1998). In David W. Miller’s *The Drain of Public-Prison Systems and the Role of Privatization* (2010), one of the salient facts is that in the last decades, the American Corrections Association has accredited more private than public prisons. Moreover, Wackenhut and Corrections Corporation of America operate the majority of privately owned prisons in the United States, and on the surface, appear to operate them more cost-effectively, and offering better quality services, than public prisons.

The increase in the number of prison inmates stands out as one of the most important elements inflating prison costs. Not only does a larger population require more health, housing, food and other services, but it also requires more personnel to manage and control both inmates and the facilities. Providing these basic services adds up to approximately twenty-five percent of the budget (Pew Center, 2008). Staff costs increase budgets as well. Due to high turnover rate, overtime pay increases salary costs. According to Schmidt (2006), Correctional guards made close to 300 million in overtime pay in 2005, which was twice what they made in 2004. In the state of California, bout 15% correctional officers earn an extra $25,000 a year in overtime pay and one guard made $187,000 over a base salary of $57,000. Not surprisingly, staff wages and overtime are cited by the private industry as one of the elements that increase public expenditure. As Cheung (2004) states,
Central to the argument in favor of privatization is the perceived inefficiency of labor costs in the operation of prisons. In using mostly nonunion labor and by controlling wages and fringe benefits, private prison companies maintain that they can efficiently reduce the costs of labor and thereby net substantial savings for the government (p. 1).

The validity of the studies which seek to prove that private prisons are more cost-effective constantly called into question by a number of scholars, activists and organizations. Some of these studies, in the words of Miller (2010) “question the findings due to faulty data collection or statistical methods, while others question the validity, claiming that they are either funded or conducted by privately operated corporations” (Miller, 2010, n/p). Other researchers find that the results from lowering costs in prisons tend to devolve from strategies that affect prison quality, such as cutting training programs and wages for staff, as well as reducing rehabilitation and education programs for inmates (Casarez 1995; Miller, 2010).

Miller (2010) describes micro-level studies as those that compare equivalent variables between two or more organizations, in these cases, between public and private prisons. Verwimpt, et al. (2009) explain that macro-level analyses are not able to comprehend nuanced factors visible only at the micro level. Thus, “A micro-level approach advances our understanding … by its ability to account for individual and group heterogeneity” (p. 308). In these pages, I will refer to micro-level studies published in the late 1990s and early 2000s.

In his research on a prison in Burnett County, Texas, Segal (2005) directed a review of all then-available studies comparing private and public prisons. These used a
variety of approaches to compare quality care in public and private prisons. His most important finding was that “The major charge against privatization is that by reducing costs, quality and security are sacrificed” (p. 1). Nevertheless, Segal found that the evidence shows that “Private facilities provide at least the level of service that government-run facilities do” (p. 2).

Perrone and Pratt (2003) conducted a meta-level analysis on the cost-effectiveness of public versus private prisons: “To do so, we collected every U.S. study that has been conducted on these issues through a systematic search” (p. 303). They found, from a philosophical point of view, that ceding the right to punish to private companies is problematic, and from a practical point of view, that some of the arguments used by analysts in favor of prison privatization—i.e., that these can cut costs by buying in bulk—can be adopted by the state as well. More importantly, however, these scholars warn that given the rapid expansion of prison privatization, it is now critical to assess whether these facilities actually live up to their expectations (cost and quality) or if the state and the inmates are being cheated out of quality care at an affordable cost by turning over the power to punish to the private sphere find that scholars and academics have debated the cost-effectiveness of private versus public prison abundantly and reaching little consensus. (p. 303)

Perrone and Pratt found that in a great many research endeavors, “private and public facilities are not properly matched on important characteristics; as such, various confounding factors could have influenced the results” (p. 306). Moreover,
Another methodological limitation within these studies is that there has not been a systematic method of analyzing and comparing the quality of confinement across facilities. Instead, studies follow the “laundry list” approach for assessing the overall quality of confinement that … is seriously flawed because it does not demonstrate the objectivity of the measures or the processes that produce a higher quality outcome” (p. 306).

For example, to assess security—one of the items on the “laundry list”—researchers measure the number of prison escapes. However, there are great differences between high, medium and minimum-security facilities and their inmates, with minimum-security inmates posing a lower risk for escape. In consequence, some prisons are going to report lower prison escape than others, and it may not have to do with the quality of safety of a given facility. Thus, “Results of the research addressing the quality of confinement are mixed … in some studies the private prison faired (sic) worse in the domain whereas in others it outperformed the public prison” (p. 307). As refers to quality, then, the results are inconclusive.

In the matter of costs, the Perrone and Pratt (2003) meta-level study finds that although the findings appear to have a consistent pattern with the private facilities operating with an approximate median per diem cost difference of US$3.40 cheaper than the public facilities, the methodological limitations of the studies are a cause for caution when interpreting results (p. 15).
Perrone and Pratt cite shoddy matching techniques, the use of “hypothetical” versus real costs, and scant employment of statistical tests, among other problems, which limit the possibility of generalizing the results of these studies. They conclude by stating:

The existing cost comparisons offer little in the way of firm conclusions about whether turning over the responsibility of managing prisons to the private sphere will result in any substantial and/or consistent cost savings…there are simply too many methodological variations and shortcomings. (p. 316).

The researchers found only one study that tried to address the problems of the previously mentioned studies, even though the results are not flawless: “[The Pratt and Maahs study of 1999] was the first study comparing private and public facilities that tests for the significance of ownership while controlling for other confusing factors” and yet “The analysis of 33 cost evaluations found that there was no overall significant pattern of cost savings for private over public prisons” (p. 316).

As a possible solution to the dilemma of the difficulty in matching and ambiguous results of case studies, Perrone and Pratt (2010) propose “to move beyond the case study method” because case studies lack “generalizability” (p. 317). Nevertheless, case studies are important because they can illuminate key points, especially in the analysis of complex, large-scale industries and societal dynamics. Indeed, there is important information to be gleaned from case studies, information which analyzed empirically may help illuminate the dynamics of prison expansion and the political, cultural and economic imperatives which fuel it.
Florida

Longer prison sentences have contributed to an increase of 700 percent in the prison population of the United States, between the years 1970 to 2005, according to the Pew Center of the States. For example, in the states of Florida, Virginia, North Carolina, Oklahoma, Michigan and Georgia, time served increased at rates ranging from 75 to 166 percent. In Florida, prison capacity increased in the early nineties, after public worry and outrage that the murder of two police officers and a British tourist was tarnishing the image of the Sunshine State. By 1995, the legislature of Florida voted unanimously to require that all inmates, regardless of crime, to serve 85 percent of their sentence before possibility of release (Pew, 2012, p. 26). This legislative move was followed by several similar bills which required longer sentences and minimum terms for a variety offenses committed by violent and non-violent offenders.

It is important to note that the private prison industry has benefitted greatly in the state of Florida in the last decades. Corporate Corrections of America in Florida, for example, has profited in the last decade from the step-up in the detention of undocumented immigrants, which has spearheaded the building of major detention centers: “Between 2005 and 2010, the amount of money appropriated for immigrant detention … has more than doubled, from $1.2 billion to more than $2.5 billion” (Kirkham, 2012, parr. 4). Not all believe that private prison development benefits communities, however. City officials, residents and activists of Pembroke Pines, Florida, have recently been sued by the company for attempting to stop the building of a 1,500 bed facility (Kirkham, 2012).
Indeed, as the private prison industry thrived financially from the development of prison facilities in Florida, short, sentence length for violent crime grew almost as much as did sentencing length for non-violent crime (see chart 2).

Between 1993 and 2007, the inmate population of Florida grew from 53 thousand to 97 thousand. This was the result of several legislative actions:

- One of the first came in 1995, when the legislature abolished “good time” credits and discretionary release by the parole board, and required that all prisoners—regardless of their crime, prior record or risk to recidivate—serve 85 percent of their sentence. Next came a “zero tolerance” policy … mandating that probation officers report every offender who violated any condition of supervision and increasing prison time for “technical violations”. As a result, the number of violators in Florida prisons has jumped by an estimated 12,000. (Pew, 2008, p. 7)

Indeed, while overall sentence lengths have grown nationwide, as discussed above, Florida inmates are serving 194 percent more time for drugs than in the 1990s, according to a recent study, and Florida leads all states with a growth of 166 percent in time served by all inmates. This numbers are considerably out of proportion to the average for the nation.

The rise in time served costs all states approximately $10 billion per year (Rudolph, 2012, p. 1). By August of 2012, the Florida Department of Corrections listed close to 100,300 inmates (FDC, 2012). At the end of the 2008 Pew report, it was estimated that Florida would reach 125 thousand inmates by 2013. Interestingly, crime has fallen during these years in the state of Florida; however, it has also fallen
substantially more in some other states that have not increased their prison systems or as in the case of New York, has actually shrunken them.

It is important to consider the element of public safety when analyzing the costs and benefits of lengthening prison sentences. Although studying the relationship between prison sentencing and public safety is a complex issue, recent studies show that while the increase in time served by inmates for non-violent crimes cost the states billions of dollars, these measures provide little public safety benefit (Rudolph, 2012, p. 1). A Pew report of 2012 affirms that “Despite the strong pattern of increasing length of stay … there is little or no evidence that keeping them locked longer prevents additional crime” (p. 4). Moreover, a Pew analysis performed by external research utilizing data from Florida, Maryland and Michigan “found that a significant proportion of non-violent offenders who were released in 2004 could have served shorter prison terms without impacting public safety” (Pew, 2012, p. 4). These empirical analyses are conducted using multiple factor risk assessment measures that include criminal history, time served and other related elements.

In numbers, then, the daily average prison population in Florida, Maryland and Michigan could have been significantly reduced, and “these reductions represent substantial savings in each state: $54 million in Florida, $30 million in Maryland, and $92 million in Michigan” (Pew, 2012, p. 4). The study also found that communities would not have been endangered from earlier release for non-violent inmates, and risk could be reduced even more with proper pre-release preparation and effective community supervision.
During these same years, as mentioned before, several states that have reduced their rates of imprisonment have experienced a decline in crime (Pew Center, 2012). Although one of the reasons for prison expansion has been public support for “tough on crime” measures, a Pew Center opinion poll conducted on January 2012 Revealed that the public is broadly supportive or reductions in time served for non-violent offenders as long as the twin goals of holding offenders accountable and protecting public safety can be achieved. Voters overwhelmingly prioritize preventing recidivism over requiring non-violent offenders to serve longer prison terms. (p. 5)

How does this pan out in racial terms? According to Alexander (2010), since the collapse of the Jim Crow era, the basic racist structure of US society has not changed. What has changed is the discourse used to justify a caste system in which blacks are oppressed and discriminated against, and people of color are now labeled as criminals in order to validate a system that enforces a racial caste hierarchy. Targeting a specific segment of the population for criminalization foments a wide array of legal and judicial measures of discrimination, which impact people of color adversely in relation to housing, education, employment, voting rights and, as is the contention of this thesis, makes them the specific target of an oppressive judicial system.

The numbers suggest that there is something substantial to Alexander’s argument. According to the Census Bureau for 2010, Florida has a population of 18,688,568 million of which whites account for 58.4 percent of the population and blacks for 15.2 percent.

This means that, according to the numbers published by the Florida Department of Corrections in 2011, the total inmate population numbered 102,232. Of these, the
white inmate population accounts for 47,602 (46.5%), while blacks account for 50,443 (49.3%) of inmates in Florida prisons. In other words, proportionate to their overall demographics in the State of Florida, the ratio of whites to blacks is of 4 to 1. In prison, however, black and white inmates represent a ratio of almost 1 to 1.

Moreover, according to several statistical studies, this has been a consistent state of affairs for decades, especially after the Civil Rights Act of 1964. The Criminal Punishment Code adopted in 1997, granting greater discretionary powers to judges in sentencing, had the effect of increasing punishment for a wide variety of crimes and also increasing the average term served by offenders (Pew Center, 2012). The findings of this study shed new light on research results that prove that black and Hispanic individuals are sentenced in disproportionate numbers than whites, and seem to suggest that personal perceptions of judges may play a role in the skewed numbers of sentencing when viewed in a framework of race.

Louisiana

According to the Louisiana State Department of Corrections, Louisiana ranks as 6th in violent crime in the nation (2012). However, it also ranks as first in incarceration rates nationwide and considerably more than half of those are incarcerated for non-violent offenses (ACLU 2011). In an 8-part series of investigative reports published on the penitentiary system of Louisiana, Cindy Chang of the Times Picayune stated:

Louisiana is the world’s prison capital. The state imprisons more of its people, per head, than any of its U.S. counterparts. First among Americans means first in the world. Louisiana’s incarceration rate is nearly five time
Iran’s, 13 times China’s and 20 times Germany’s. The hidden engine behind the state’s well-oiled machine is cold, hard cash. (2012, parr. 3)

In this state, most suspects are required to stay in jail while awaiting trial, unless they can afford bail, even for non-violent crimes and when they do not pose a risk of flight. Individuals accused of nonviolent or petty crimes are treated the same way as people accused of felonies. New Orleans, for example, is one of the Louisiana cities that still pay jail and prison managers based on the number of people held on a daily basis, so that a perverse incentive exists to keep jails and prisons as full as possible, for the longest length of time possible (McCarthy 2012). Clay McConnell, who runs Louisiana Incarceration-for-Profit, Inc., a vast prison industry company that houses fifteen percent of all Louisiana inmates, declares: “We realized that prisons are like nursing homes. You need occupancy to be high” (Chang, 2012, parr. 3). It so happens that most of Louisiana’s inmates are housed in private facilities, which make up a $183 million industry. The system must be fed constantly with inmates in order to remain profitable, and cannot afford to lose members. In fact, many state governments have signed contracts with private prison corporations which contain prison-bed guarantee clauses. In the case of Arizona, this means a 100 percent inmate quota or the state must pay a fine to the corporation for any unoccupied beds (In the Public Interest, 2013). This puts pressure on police and justice system to convict individuals in order to fill private prison beds. In any case, empty beds still mean a loss of profit for many private prisons, such that “the prison lobby ensures this does not happen by thwarting nearly every reform that could result in fewer people behind bars” (Chang, 2012, parr. 4). In this system, inmates
subsist in bare-bones conditions with few programs to give them a better shot at becoming productive citizens… sheriffs trade them like horses, unloading a few extras on a colleague who has openings. A prison system that leased its convicts as plantation labor in the 1800s has come full circle and is again a nexus for profit. (parr. 4)

Ironically, inmates with long sentences—often life sentences—serving in state prisons get better rehabilitation, occupational and learning opportunities. The experience of those housed in private prisons, run on the cheap, is quite different: “While lifers at Angola learn welding, plumbing and auto mechanics, 11,000 of the 15,000 people released from Louisiana prisons each year come out of local facilities and have had no such opportunities” (Change, 2012, parr. 7). One of the reasons for this is that Louisiana private prisons, which are often managed by sheriffs, cut costs in order to reap higher profits. According to the investigative series published in the Times Picayune (2012)

Annual profits in good years range from about $200,000 for an average-sized operation to as much as $1 million for parishes with several prisons. "For the sheriffs, that became like heroin, that became a regular source of income for them," said Burk Foster, a former University of Louisiana-Lafayette professor and an expert on Louisiana prisons. "The way they save money is not because the sheriffs are more efficient but because they have fewer staff and almost no services in terms of medical care or psychological assistance or rehab or educational classes." (Chang, parr. 12 and 13)
As is the case of Florida, in the past couple of decades, the inmate population of Louisiana has grown significantly, with Louisiana inmates serving time at twice the national average. The majority of the population incarcerated in Louisiana prisons is hardly violent. According to a Civil Liberties Union report (2008):

Louisiana continues to lock-up too many of elderly prisoners and too many people whose biggest problem is addiction. June, 2008 figures from the Louisiana Department of Corrections show that 13% of the prison population in Louisiana is over the age of 50. More than 30% of inmates were convicted of drug offenses. Louisiana also disproportionately incarcerates African-Americans, with more than 60% of the Louisiana prisoners being African-American (ACLU, p. 1)

Burl Cain, warden of Angola prison, corroborates that many inmates can be left free without posing danger to the community: “Something has to be done about the long sentences. Some people you can let out of here that won’t hurt you and can be productive citizens” (Chang, 2012, parr. 10). Moreover, despite incarcerating people at a higher rate than any other state in the nation, Louisiana continues to have the highest rate in violent and property crime. In other words, the high rates of incarceration are not only keeping non-violent offenders from being productive members of society, but are not really keeping the communities safer.

Orleans Parish Sheriff Marlin Gusman has often been accused by the press, opponents and activists of profiting from the current prison system in Louisiana. As recent as October 2012, Gusman requested nearly $40 million from the city government to pay for jail reforms, a request that has been received with strong opposition: “The city
claims the request would cripple the budget and force furloughs on several hundred
police officers, firefighters and other city employees” (Simmerman, 2012, parr. 12). In
September of 2012, The U.S. Justice Department requested to join a class-action lawsuit
against Marlin Gusman, accused of overseeing a jail that subjects prisoners to severely
brutal conditions (Associated Press, parr. 1, 2012), and the ACLU among other
institutions are fighting Gusman’s proposal to build a new prison with a capacity to house
close to 1,500 inmates, even though the old prison has renovation by FEMA after Katrina
has not been finished (Associated Press, 2012). Meanwhile, inmates in Louisiana are
routinely moved around to fill empty beds in private prisons around the state, a
circumstance that highlights the collusion of the private industry and politically
connected state system. This occurs in spite of the opposition of large segments of
citizens and civil society, and it is a detrimental use of public funds.

While Louisiana has one of the highest rates of poverty, infant mortality and
lowest literacy rates in the nation (after Mississippi), it spends $663 million to provide for
close to 40,000 inmates. A third of that money goes to private prisons (Chang, 2012). It
is undeniable that the communities of Louisiana would be better served with public funds
going to re-integration of non-violent offenders as well as to health and education
services for the population at large. Paradoxically, Louisiana Governor Bobby Jindal, a
Republican, has repeatedly tried to pass small measures of prison reform, only to be faced
with strong resistance from the prison industry lobby and legislators (Smith and Sarma,
2012).

As in the case of Florida, it is not clear that the increase in sentencing rates and
private prison proliferation saves money for the state, keeps communities safer or
provides better quality services to inmates, as its proponents argue. Indeed, there is much
evidence that cuts come at the expense of medical care and education for inmates, even
though there exists many studies that demonstrate that inmate education decreases
recidivism. What is clear that the prison industry complex in Louisiana generates a great
deal of profit for the private prison industry and some government officers. Moreover, in
their study on the influence of race on the administration of criminal justice in Louisiana,
Smith and Sarma (2012) demonstrate that racial disparities are present in many criminal
justice scenarios:

[There are] three mechanisms that exclude black citizens from jury service
at a disproportionate rate and thus dilute their influence … African
Americans are systematically disenfranchised from participating in the
administration of justice … and these processes drive substantively
unequal outcomes. (p. 363)

In other words, as Smith and Sarma argue, in Louisiana, African Americans are excluded
from jury duty in numbers disproportionate to their demographics (for example, in a
county where African Americans represent 25 percent of the population, District
Attorneys may seek to strike out most from jury duty and leave one sole African
American juror). Their research shows that racial profiling is a cause for the
disproportionate arrest of black citizens. Further, their research into jury trials shows that

Within the subset of society’s most serious criminal offenses …
prosecutors disproportionately seek the death penalty against African
Americans, and juries disproportionately sentence African Americans …
at the same time the system locks up and harshly sentences racial
minorities, it also ensures they are under-represented or unrepresented in
criminal juries. State action plays a significant role in creating and
maintaining these racial disparities. (p. 364)

Close to 30 percent of inmates in Louisiana are in prison for a drug offense. Though drug
use is consistent among both African Americans and whites, African Americans in
Louisiana are over-represented for drug arrests (Smith and Sarma, 2012). Thus there are
racial disparities at every step of the justice system, from arrests to striking jurors on the
basis of their race all the way to sentencing. The whole system ensures that entire
communities will struggle to rise from poverty and, in the words of Smith and Sarma, the
justice and prison system as it stands is rife with racism and “contributes to self-
sustaining structural inequality” (p. 406).

Texas

The case of Louisiana is salient, because no other state in the United States has a
system in which local sheriffs, jailers and private prisons have such levels of political
power and financial incentives to keep so many human beings in prison. Right next door,
however, Texas offers a different model. Louisiana has the most per capita inmates in the
nation, and Texas—with a population of over 25 million—has more inmates than any
other in the United States. In the two decades spanning 1985 to 2005, the state of Texas
increased its prison population by 300 percent, with the expectation of receiving
approximately 17,000 inmates within the next five years (Pew, 2008). Facing the need to
invest $523 million on more prisons, bi-partisan legislators approved in 2007 a complete
change of the penal system:
Anchoring their approach was a dramatic expansion of drug treatment and diversion beds, many of them in secure facilities. Legislators also approved broad changes in parole practices and expanded drug courts. In all, the reforms were expected to save Texas $210 million over the next two years—plus an additional $233 million if the recidivism rate drops and the state can avoid contingency plans to build three new prisons. (Pew, 2008, p. 18).

Texas prison experts realized that the size of a prison population is fueled by “the number of admissions and the length of time an inmate remains behind bars” (Pew, 2008, p. 18) (see chart 3). The state is now saving through diverting non-violent offenders—such as those with drug addictions or mental illness—from prison to settings that are less expensive to maintain. Another strategy is the enforcement of non-prison sanctions for former inmates who violate their parole or probationary conditions. For example, the court system combines substance abuse treatment with sanctions for missing or failing drug tests. The measure of giving non-prison penalties to offenders is important, because by 2005, parole violators accounted for over 30 percent of inmates. The result of this experimental strategy has been positive. For example, just in Travis County between the years of 2005 and 2011, felony parole revocations fell by almost 30 percent (Tilove, 2012). As stated by Jonathan Tilove (The Times Picayune, May 20, 2012):

The result: Texas saved money, the incarceration rate is down, probation and parole revocations are down, the prison population has remained stable, recidivism has been declining, the crime rate continues to tumble to historic lows, and instead of building new prisons at more than $300
million a pop, they were able to shutter the century-old Sugar Land
Central Unit. (parr. 28)

This was achieved by passing a bi-partisan legislative package that allocated $241 million in the previously mentioned diversion options and substance treatment programs. The American Civil Liberties Union, the Texas Criminal Justice Coalition (a research institution that works on criminal justice reform) and the Texas Public Policy Foundation (a Libertarian institute) also worked to pass the new reforms. Governor Rick Perry (R) signed it into law in 2007. From 2007 to 2009, the prison population stabilized rather than increasing (ACLU, 2011, p. 23). One of the motives that brought Conservatives to the reform table, by their own admission, was the necessity of reconsidering building more prisons or cutting taxes. Conservative analysts viewed the proliferation of prisons built in Texas during the 1980s to the 1990s as “Big Government” at its most wasteful; the discourse changed from being “tough on crime” to “right on crime” and “smart on crime” (Tilove 2012).

The case of Texas is salient because due to its size, it has been able to implement these changes at a massive scale, and without losing its reputation for being tough on crime. Texas has more inmates than any other state in the nation, and is fourth in incarceration rates in the country, after Louisiana, Mississippi and Oklahoma. It is also third in the nation in total number of death row inmates, with Florida ranking as second (Death Penalty Information Center, 2012). And though the reform allocations survived the June 2011 budget cuts, Governor Perry approved a slash of $23 million from Legal Aid funds (Texas State Budget, 2011). Because Legal Aid is the assistance offered to
individuals who cannot afford legal representation, it serves the poorest and most vulnerable demographics, and it is crucial to improving access to a fair trial.

Of course, the reforms have had strong critics, such as some district state attorneys, who do not see the public support for the reforms as sustainable (Tilove, 2008). However, recently elected Tea Party representative Charles Perry, a self-reported “lock ‘em up” believer when he was appointed to the Corrections Committee, quickly changed his mind, stating:

> We can all agree that we’d like to lock up every guy that doesn’t abide by our laws, but that is not realistic. And I think that’s where Texas tried to strike a balance and has been successful in finding a balance. We have interjected, if you will, common sense. I would like to that that with (Louisiana Governor Bobby) Jindal over there, our kinds of reforms would be warmly received. You don-t want to reinvent the wheel. (Tilove, 2012, parr. 43)

Despite the nationwide praise for its successful bi-partisan 2007 reforms, Texas has room for improvement. The reforms concentrate on probation and parole programs, and might be even better served by decriminalizing drug offenses, eliminating the disparity between crack and cocaine sentencing, and increasing spending in education (school allocations were also drastically slashed in June 2011).

According to the Bureau of Justice Statistics (2003), the nationwide incarceration policies which have had a disproportionate impact on African Americans, affects the Texas penitentiary system as well. A brief published by the Justice Policy Institute (2005) finds that “Controversy has periodically flared up around the racial impact of law
enforcement practices in Texas” (Zeidenberg and Schiraldi, p. 1). Indeed, by the time the brief was published, African Americans and Latinos represented 7 out of 10 inmates in the state of Texas and 4 out of 10 African Americans imprisoned were sentenced due to drug offenses (see chart 4).

It is important to note that at the time of this writing, Texas has an African American population of 11 percent but African Americans comprise 44 percent of inmates. It is also important to note that the rate of arrest for African Americans has increased rather than decreased. Zeidenberg and Schiraldi (2005) report that from 1986 to 1999 the number of whites incarcerated in Texas for drug offenses decreased 9 percent, while the number for young African Americans increased 360 percent (p. 7). Although prison rates for African Americans are usually higher in the south of the United States, proportionally that does not hold true nationwide. For example today Maryland, which is not in general considered the Deep South, with an African American population of 30 percent, houses the largest population of African Americans (77 percent inmate population) inmates. Wisconsin, with only 6 percent of African American population, has an African American prison population of 48 percent (United States Census, 2011).

These blatantly discriminatory practices have a serious economic impact in African American communities. Put in dollar amounts, researchers find that “lost economic productivity in the African American community exceeds $1 billion” in the state of Texas (Zeidenberg and Schiraldi, p. 8). Alexander (2010) argues, the racial caste systems in the United States today is alive and well, and even measures as the well-regarded prison reforms in the state of Texas have not really made a dent.
The Supermax System

As the rehabilitative model developed during the Progressive Era gave way to the retributive model in the 1980s, Supermax prisons represented the newest shift in the correctional industry. Ron King, a criminologist, explained the supermax build-up as “one of the most dramatic features of the great American experiment with incarceration” (1999, p. 163). The first supermax facilities opened in the mid 1980s (Haney, 2003). The proliferation of supermax prisons skyrocketed particularly in the 1990s. According to surveys of the National Institute of Corrections (1997, 1999), while there were only four prisons that could be properly considered supermax in the 1980s, by 1996 there were 30 states operating supermax prisons. Pupovac (2008) explains that

Once exclusively employed as a short-term punishment for particularly violent jailhouse infractions, today, 44 states hold "supermax" facilities, or "control units," designed specifically to hold large numbers of inmates in long-term solitary confinement. A concept that spread like wildfire in the 1990s, today an estimated 20,000 prisoners live in these modern-day dungeons, judged to be "unmanageable" by prison officials and moved from other penitentiaries to the nearest supermax. (p. 2)

A supermax prison is defined as a series of units or a facility designated for inmates who have been disruptive or violent while incarcerated and whose behavior can be controlled only by separation, restricted movement and limited direct access to staff and other inmates (NIC,1997). This excludes protective custody, routine disciplinary segregation, and other routine strategies. By this definition, a supermax may confine solely those prisoners who cannot be controlled by customary disciplinary methods in
other facilities. They may also include special case inmates, such as convicted terrorist Edward Kaczynski, also known as the Unabomber. Supermax regulations particularly establish that inmates suffering from mental health issues may not be housed in a supermax facility. A supermax is also defined as an extremely restrictive unit or facility which “isolates inmates from the general prison population and from each other due to grievous crimes, repetitive assault or violent institutional behavior” (Riveland, 1999, p. 6).

At face value, the build-up of the supermax system was justified because of the increase in crime and the rise of a more violent type of criminal. The supermax prison was supposed to provide more control and security within prison walls. It is important to keep in mind through this section, that there is very little an inmate can do when correctional administrators determine that the inmate must be transferred to a supermax unit. When transferred to a supermax, “the prisoner has no right to advance written notice or a formal hearing, to present witnesses and evidence, to be represented by an attorney, or to obtain a written decision” (Kurki, p. 389). As a result of these dynamics, supermax inmates are branded as dangerously violent felons by corrections staff and viewed as such by the public at large. Thus, it is not solely those inmates with the worse crime records who get sent to supermax units, but those who have been labeled as difficult or contrarian by prison administrators (Pizarro et al, 2006). In fact, research shows that not all inmates placed in the supermax system have committed violence within prison walls (Wells, Johnson and Henningnsen, 2002). Mentally ill inmates may also act out in ways that brand them as violent; many supermax prisons neglect to
provide mental health services to inmates who need them, causing mental illness to worsen (NIC, 2007).

It is also important to bear in mind that it is difficult to study what occurs inside a supermax prison, as private prisons are not subject to the transparency and public accountability requirements that state prisons are subject to. A review of studies of supermax systems for the purposes of this work finds a very few serious empirical studies on how a supermax inside operations and results. As stated by study on supermax prisons commissioned by the Department of Justice (2006),

At a time when governments increasingly are calling for state agency accountability, the absence of benefit-cost analysis of supermaxes is surprising. Yet supermaxes … represent a close to $1 billion investment over 30-40 years, the typical life span of a prison. (Mears, p. 49)

Moreover, Mears adds that

Supermax systems may in fact prove to be an effective corrections management tool, one that is cost-effective and that achieves outcomes that no other approach can. The results of this study suggest otherwise, however. There is little research … to suggest that supermax prisons effectively achieve any range of goals, including improving system-wide order and safety, and much research, including the present study, to suggest that they are unlikely to be able to achieve these goals. (2006, p. 52).

To date, there are still very few published cost-benefit and cost-effectiveness assessments of supermax prisons but what there is, support the idea that the promise of higher security
and cost-effectiveness has not panned out; worse still, the system serves to increase the pathologies of inmates housed in its confines. Mears (2006) finds that some prison experts believe that using quality of life programs (those that offer education and life skills opportunities) throughout the prison system could function as a viable alternative to a supermax prison (p. 23). This is seconded by the findings of other scholars. For example, after running a census through various prisons, Alzua et al (2009) found that participation in educational programs significantly reduced indicators of aggressiveness in prisons and had a deterrent effect on crime.

Despite these findings, one of the reasons given for the supermax system to exist continues to be the widespread perception that prisons are communities of violence, which place correctional officers as well as other prisoners at risk. Useem and Piehl (2006) predicted that the momentum for this situation would continue:

We might expect that a growing proportion of inmates would be placed in maximum security, rather than lower security, prisons. Supermax prisons, extremely high security ‘prisons within prisons’ would be increasingly used to solve the problem of order. Rules would be tightened in other types of facilities. (p. 88)

Indeed, during the last two decades, the new approach of the supermax prison in the corrections industry has spread. The prevailing image of the supermax prison, despite its dysfunctions, is of an “innovative, tough, and efficient” institution, an image which fits in with the preferred retributive philosophy in the United States today (Pizarro et al, 2006, p. 8). This generally positive image of the supermax prison is promoted for political purposes—as a source of income to depressed, rural communities, and as a “tough on
crime” imperative which works as a deterrent to violent law-breaking. However, the real facts of the super maximum system and recent empirical research present a very different reality. Its build-up is a consequence of many complex factors. These institutions appear desirable to large numbers of the population, because they are popularly perceived as bringing jobs to depressed rural areas. Few of the people that find prisons desirable as a source of employment know that supermax corrections mostly hire non-union staff for far lower wages and benefits than those provided by state and federal prisons. Politicians are aware of these perceptions, as well as of the fact that heightened public fear of crime garners votes for “tough on crime” political and judicial candidates. As long as people continue to believe that supermax units are good sources of employment, that they do house the most violent felons and do work to keep them safe, they will continue to support building prisons. Finally, prison-building policies are not a difficult issue to endorse during election time, as most people and politicians never get to see the inside of a prison, much less a supermax—and most felons have lost the right to vote.

The build-up has been promoted by politicians across parties. Since the 1970s and 1980s, fueled by the decline in faith in rehabilitative measures, the widespread law-and-order stance, and the mass media effect the politization of crime increased until it became a focal point for many election campaigns (Pizarro et al, 2006). Simon and Freely (1992) describe the retributive model that displaced the rehabilitative model that had existed until the 1960s as “the new penology”, and explained it as follows:

The new penology is markedly less concerned with responsibility, fault, moral sensibility, diagnosis, or intervention and treatment of the individual offender. The task is managerial, not transformative … It seeks to sort and
classify, to separate the more dangerous, and to deploy control strategies
… It is about identifying and managing unruly groups. (p. 452).

The new penology came hand in hand with advocacy for more responsible and
effective cost-management. But the numbers have not borne out the offered cost-savings.
An example of a supermax prison, the Tamms Closed Maximum Security Facility, or
"CMAX," was built in 1998 at a cost of $72 million in the state of Illinois. According to
the Illinois Department of Corrections, the prison could house up to 500 of the "most
disruptive, violent and problematic inmates," at a yearly cost per inmate of $60,000, an
amount higher than the per-inmate annual cost at regular prison facilities (Pupovac,
2008). In 2012, it was estimated that it costs approximately $85,000 per year to house an
inmate in the Tamms Maximum Security prison, and for the same year, the Department of
Corrections of Illinois declares an average annual cost of approximately $38,881 per
inmate (Broyles, 2012; Southwest Illinois Correctional Center, 2013). A significant
amount of the Supermax expenditures were logged to prison guard overtime, even though
inmates spend 23 hours a day in their cells and Tamms, at least, is two thirds empty most
of the time (Broyles, 2012). Riveland (1999) found that “in most jurisdictions, operating
costs for extended control facilities are generally among the highest when compared with
other prisons” (p. 21). Still, supermax prisons continue to grow and be filled.

Morris (2007) found the implications of the inefficient private prison management
troubling:

[The implications] … are important in that they suggest a new approach
and level of artificiality of the common justifications for privatization as a
cure for government failure … they appear to bring into question the
presumed advantage of the private sector to provide or deliver those functions more efficiently than government. (p. 52)

Certainly the government’s management can be, and often is, unprofitable and inefficient. However, it is not intended to be profitable, as it is not a business. Indeed, it has long been argued as a tenet of conservative political philosophy, that the purpose of prisons is to provide security for the people, as one of the limited public services that it is the duty of the State to provide. On the other hand, the private prison industry’s reason for being is to generate a profit by providing a better quality and more efficient service. As these reports have indicated, this is not what is happening. Moreover, recidivism has not decreased and there is little to none inmate rehabilitation occurring in the privately managed prisons. Morris (2007) ends his report by warning that upon considering privatizing prisons, “policy makers and policy analysts [should] examine whether the decision would create a new pathology as a result” (p. 52). Thus, the supermax prison comes at a cost much greater, both financially and human, than state prisons. It is important, then, to examine closely if their claims of less violence are provable.

Impact of Supermaximum Units on Prison Violence

The rhetoric of prison violence has ebbed and flowed through the decades, depending on the imperatives of policymakers, private sector and other institutions. It is true that prisons are places of violence, but it is questionable that such violence is uncontrollable. Crime rates do not sufficiently explain either the sudden proliferation of supermax prisons. Crime rates do not explain the explosive mass incarceration of minorities—especially African Americans—during the last three decades either. As demonstrated throughout this work, crime rates have waffled and fallen, but
imprisonment rates have increased significantly and steadily in the last 30 years. The devastation of “War on Drugs” policies have been brought almost exclusively upon poor communities, mainly poor communities of color, even though there are myriad of studies and statistics proving that drug use and selling is prevalent among all ethnicities almost equally. In some cases, whites have been shown to engage more in illicit drug action. Of course, the high numbers of black and other minority inmates—between 80 and 90 percent of drug offenders are sent to prison, according to Alexander—are useful for those who are intent on portraying African Americans as more prone to crime (Alexander, 2010).

Supermax advocates claim that these prisons hold the worst inmates; the argument is adopted rather unquestioningly by a majority of the population because it provides the public with a deeper sense of security (Alarid and Cromwell, 2002). The truth of the matter, however, is that these arguments are based on speculation rather than in-depth research (Haney, 2003; Kurki and Morris, 2001). Wynn (2008) found that the offenses that resulted in confinement as reported in a New York supermax were assault (43%), drug possession (29%), disobeying a direct order (24%) and weapons possession (28%) (p. 89). In short, not even half of the offenses were uncontrollable violence. Another of the few psychopathology studies found that many of supermax prisons are mentally ill, and seriously questions the actual “dangerousness” ascribed to mentally ill patients by prison staff; they also suggest that some inmates are severely worsened by their confinement in a supermax unit (Lovell and Johnson, 2008, p. 20). It stands to logic, after all, that prison officers with little to no mental health training can confuse symptoms of mental illness with insolence, obstinacy, or passive aggression, thus
increasing the risk for disruption, and the need for excessive force and segregation. The restrictive discipline of prisons, moreover, can exacerbate mental illness in some inmates and cause it in others. In some prisons, mentally ill inmates account for more than half of the individuals punished with segregation (Haney, 2003).

Research has been done, then, to try to determine if the need for supermax prisons arose from a need for more effective safety measures and if they actually work in increasing safety. One of the ways in which it is possible to shed light on the effectiveness of supermax systems in reducing prison violence, is assessing the rate of prison riots. As has been laid out in Chapter 2, prisons have become increasingly safer and the risk for serious prison riots is highly improbable. Those findings suggest that although there were riots due to overcrowding in past decades, overcrowding may not have been the main culprit after all. Other elements, such as enforced idleness, mistreatment and lack of services seem to have been the root causes of rioting.

In order to search for an alternative explanation for lower rates of prison violence, Useem and Piehl turn to examine the proliferation of supermax prisons from the 1980s to the 1990s. In their words, “Supermax prisons, once a novelty, have become common… [they] certainly incapacitate those so confined, and they may deter general population inmates from committing in-prison crimes, trying to escape or causing prison riots” (p. 101). As other scholars have argued, however, supermax prisons, rather than deterring disorder, increase it by affecting inmates mental health and setting up a harsh ambiance of intolerance (King, 1999; Kurki and Morris, 2001; Pizarro and Stenius, 2004). Moreover, Useem and Piehl (2006) cite the study of Briggs et al (2003) on four supermax prisons (Arizona, Illinois, Minnesota and Utah), which has shown that
A formal data analysis has found little effect. Specifically, the opening of a supermax does not reduce the level of inmate-against-inmate assaults. Inmates were nor safer after the opening of a supermax than before. The opening of supermaxes had mixed effects on inmate-against-staff violence. The opening of a supermax left unaffected inmate-against-staff assaults in one prison system, decreased it in another, and increased it in a third. (p. 102)

The sample is small, and longitudinal effects cannot determine if supermax systems have a deterrent effect on violence, as Useem and Piehl acknowledge. However, if supermaxes really were a major causal force in the broader trend toward order, some trace of that effect would have shown up in Briggs’ excellent analysis. While this claim is somewhat speculative, less so than the assertion that supermaxes caused a decrease in disorder. (p. 102)

Blomberg and Lucken (2000) actually argue that the rise in imprisonment could lead to increased riots and violence in prison and that prison contributes little to the overall reduction in prison violence:

It does not appear likely that prisons will fare any better in the future. Rather, and quite the opposite, it appears that prisons will worsen in conditions and inmate consequences … Prison riots, hostage taking, gang warfare, and inmate to inmate, inmate to staff, and staff to inmate all increasingly routine aspects of everyday operations. (p. 132)

In conclusion, Useem and Piehl argue that “it is quite possible that there were many negative social consequences” to the surge in prisons and prison population, and that
changing demographics of the inmate population might account for a small portion of the decreasing ratio of homicides to total inmates … and the proliferation of supermaxes might account for some portion of the decline in violence, but the best evidence suggests that this is a minor factor. (p. 108)

Their data and analysis is consistent with a correlation of lessened violence and riots in prison, with an increase in notions and practice of quality of political and correctional leadership in (regular) prisons. They argue that it is actually quite possible for prisons to maintain order through good management practices, rather than brutalizing inmates through a repressive supermax system. Better practices reduce state expenditure and tax payer expense in the long run. Thus, just as cost effectiveness is not the real reason for the proliferation of private prisons and supermax facilities, security needs in the face of a rise in prison violence is not the main reason either. Besides the fact of profits, it may be an issue of control and classification.

When the National Institute of Corrections (1997) surveyed penal institutions and asked for reasons to build supermax prisons, the aggregate responses seemed to mirror the 1980s rhetoric of a new kind of dangerous criminal. They highlighted a new kind of “dangerous” inmate, more disruptive and violent than the norm, which created an urgent need for supermax prisons. However, most responses also stated that the need for supermax prisons was directly related to the need for more efficient control and supervision of gang activity in general, rather than to better manage violent criminals (Haney and Lynch, 1997). The responses suggest, then, that supermax prison administrators consider that these are useful to facilitate bureaucratic-related control of
inmates rather than for keeping the majority of inmates safe from a minority of predator felons. That is, rather than concerned that particularly violent inmates might prey on others, it might be more an issue of keeping aware of gang-related activities such as drug-dealing and other felonies inside and outside of prison, rather than the protection of the overall inmate population. Moreover, as explained before, once supermax units are built, there is an economic incentive and a tendency to keep them full. This imperative is reflected in the efforts evidenced by private prison companies to have States agree to “minimum bed occupancy” rates for prisons. Thus, sending inmates to supermax prisons fulfills the requirement of filling up more beds.

Correctional administrators and most correctional researchers deem that order and safety is crucial to the management of prisons. It is hard to argue against the need for control and security in a prison. In general, however, prisons historically have had some sort of segregated in-house system to hold violent inmates who may harm themselves or others (Logan, 1990; Riveland, 1999). Furthermore, there have been high security prisons prior to the supermax systems. The most renowned of these was Alcatraz, which was closed and its inmates disbanded in the 1960s. Surprisingly, the dispersal of the highly violent inmates concentrated in Alcatraz to other prisons in the system seemed to work better than concentrating violent inmates in one single unit. In consequence, the Bureau of Prisons adopted this system—called “the dispersion model”—by which violent or disruptive inmates are distributed throughout the prison system in order to prevent prisoners from attracting others into aggressive group misconduct (Riveland, 1999). This system prevailed in the United States until the advent of the supermax facilities.
Finally it is important to consider if supermax institutions serve as a deterrent to violent crimes, as prison administrators aver. Some prison scholars have found that the argument that the severity of the supermax prison acts as a deterrent does not find support in the deterrence literature, especially if the inmates question the certainty of such confinement for violent or disruptive behavior. (Pizarro and Stenius, 2004, p. 13).

Furthermore, in Pizarro’s view, “for deterrence to be effective, offenders must not only be aware of the sanctions but also believe that they will get caught and punished with the threatened sanctions” (Pizarro and Stenius, p. 12). Inasmuch as placement in supermax units is often based upon arbitrary administrative determinations over which inmates have no control nor appeal, it is unlikely that inmates perceive the remittance to supermax units as based upon violent behavior—or solely upon violent behavior. Hence, Pizarro argues that it may be unlikely that a majority regard the threat of being sent to a supermax unit as legitimate (Pizarro and Stenius, 2004; Riveland, 1999). In other words, many inmates see the supermax threat as what it often is: An administrative decision rather than as punishment. Of course, inmates do not have to believe a punishment is legitimate in order to behave, but behaving out of fear of an arbitrary decision rather than a belief in just desserts, belies the idea of punishment as just. Furthermore, truly violent or disruptive inmates are, for a variety of differing reasons related to mental health and/or personality, unlikely to be concerned with their actions and the consequences from these. In other words, the population who should be most deterred by the threat of the supermax unit, is probably the least concerned with such a deterrent. Thus, not only is the argument
in support of supermax units serving to deter crime unproven, but it seems that the threat of being sent to such a facility might actually work to the contrary (Pizarro et al, 2006).

It bears repeating that numerous studies have proven that providing education, skills-building programs and rehabilitation treatment in prisons lessens recidivism. These are not characteristics of private prison practices but keeping inmates productively busy is a preferable strategy than warehousing inmates in supermax facilities. In the decades since funds have been cut for education, rehabilitation and training in prison, recidivism increased. A longitudinal national study by the Bureau of Justice Statistics in 1994 showed that 67.5% of released inmates were re-arrested within 3 years (2013). A recent Pew Report showed that in 2007 about 43% of inmates were returned to prison within 3 years—still a very high percentage—although almost half the number than in the 1990s. It is important to note, however, that some states (Alaska, California, Illinois and Minnesota, among others) show 50 to 61 percent recidivism rates. Oregon shows the lowest at 25 percent, and many experts ascribe this to an individualized reentry plan for each inmate that tracks them and provides social service management from the moment they enter prison until they leave. Those states were recidivism has decreased, such as Texas, correlate with an expansion of social services and substance abuse programs mandated by the state (Justice Center Report, 2011). Thus, these institutions have failed to prove that they deter inmates in the general prison population from committing criminal acts inside prison and have resulted in increased administrative problems and economic costs.
Effects of Supermax Confinement on Inmates

It has already been stated that a significant number of inmates are found to be mentally ill, and receiving inadequate or no treatment at all. Inmates may easily spend up to 10 years in solitary confinement within the supermax system. In many supermax facilities, inmates are remanded to their usually windowless cells for practically all day. In a supermax unit there is no physical contact, most verbal communication takes place via intercoms, and inmates only have human contact when staff or clergy members make their rounds (Riveland, 1999). This accounts for a vast numbers of hours in a state of sensory deprivation, except when the often loud ranting of mentally ill inmates can be heard (Riveland, 1999). In short, supermax institutions are specifically designed to hold violent inmates in segregated or solitary confinement, with a minimum of human contact and practically no educational, addiction management, mental health or any other type of rehabilitative program. Thus, the effects of supermax prisons on inmates are similar to those of regular prisons, albeit in aggravated form. There are few rehabilitative outcomes and much harm done. The consequences of releasing psychologically harmed and untreated individuals back to their families and communities are tragic, especially in light of the wealth of wasted opportunities for rehabilitation and redemption.

Considering that inmates in prisons are overwhelmingly underclass minorities, as well as a great number of the mentally ill, this further marginalizes individuals from vulnerable populations. According to the Commission on Safety and Abuse in America’s Prisons (2005), it is common for "psychiatric symptoms [to] emerge in previously healthy prisoners … in this context of near-total isolation and idleness." Psychiatrists testified at the hearings that scores of inmates deteriorated psychologically during their confinement
in solitary. Many of these inmates had become psychotic and others were engaging in self-harming behavior. A recent investigation on the supermax system finds that for long, the application of solitary confinement was not unusual in the United States:

By the 1830s, evidence began to accumulate that the extended solitude was leading to emotional disintegration, certainly in higher numbers than in communal prisons. In 1890 the U.S. Supreme Court weighed in, deploring solitary confinement for the "semi-fatuous condition" in which it left prisoners. The case was narrow enough that its effect was merely to overturn a single law in a single state, but the court's distaste for the idea of solitary was clear. The justices saw it as a form of what some people now call no-touch torture. (Kluger, 2007, parr. 7)

The article further explained that corrections authorities have long known that long periods of solitary confinement “sends prisoners in one of two directions: catatonia or rage” (Kluger, parr. 7). Notwithstanding this documented history, the core of the modern supermax system is solitary confinement. Indeed, in the 1980s, supermax managers presented isolation and segregation as a novel method of inmate control (Pizarro et al, 2006).

To summarize, when held in a supermax unit, inmates are completely isolated from human interaction. In most facilities, inmates spend all day completely alone in their cells, and in over half supermax facilities, interaction between inmates and staff, and among inmates, is strictly prohibited (Department of Corrections, 1997). This serves to illuminate, then, some likely reasons why inmates in supermax prisons often exhibit
psychotic behavior and/or worsened pathologies (when they were already mentally ill) after a significant period of time. As Kluger (2007) found,

Modern science has confirmed … with electroencephalograms showing that after a few days in solitary, prisoners' brain waves shift toward a pattern characteristic of stupor and delirium. When sensory deprivation is added--as when [an inmate] is being led from his cell wearing a blindfold and sound-deadening earphones--the breakdown is even worse. As long ago as 1952, studies at Montreal's McGill University showed that when researchers eliminate sight, sound and, with the use of padded gloves, tactile stimulation, subjects can descend into a hallucinatory state in as little as 48 hours. (parr. 8)

As psychologist Hans Toch noted

The most extreme punitive confinement—supermaximum isolation—most heavily taxes limited coping competence, and leads, literally, to points of no return . . . prison cells become filled with prisoners who have withdrawn from painful reality and quietly hallucinate. Their symptoms, their torpor, incoherent mumbling, restless sleep, and waking nightmares are difficult . . . for casual observers to spot, and noncasual observers are unwelcome in punitive segregation facilities (Rhodes, 2005).

It is not that prison staff members are inhumane, as much as the environment of mistrust and the segregationist rules and regulations make for an inhumane environment. As Rhodes (2005) explains,
even when symptoms are obvious to staff, they may be influenced by a lack of resources, the pervasive emphasis on inmate ‘manipulation,’ and distrust of social or psychological explanations of behavior. Staff who hold a strong belief in individual “choice” and who are charged with treating all inmates “equally” may not regard their withdrawn, angry, or delusional charges as needing attention. (p.)

In the case of inmates found to be psychologically fragile or actually mentally ill, their pathologies are often worsened by prison. As the table below indicates, the numbers of mentally ill individuals committed to a mental health hospital has declined significantly over the last six decades. In consequence, the mentally ill are often homeless, left to their own devices and untreated. Many prisons now hold nationwide a greater number of the mentally ill who would have been hospitalized in another era, and who have a harder time adjusting to life in and out of prison than other do other individuals (Haney, 2006).

Decline in number of hospitalized patients over time 1955-1990

<table>
<thead>
<tr>
<th>Year</th>
<th>Number Per 100,000 Persons 15 and Older</th>
</tr>
</thead>
<tbody>
<tr>
<td>1955</td>
<td>460</td>
</tr>
<tr>
<td>1965</td>
<td>410</td>
</tr>
<tr>
<td>1975</td>
<td>110</td>
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<td>1985</td>
<td>50</td>
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<td>1990</td>
<td>40</td>
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</tbody>
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Adapted from “Special needs prisoners in extremis” by Craig Haney, Reforming Punishment, Psychological Limits to the Pains of Imprisonment, 2006, p. 246

Lack of occupation also has a harmful impact on inmates. The Federal Bureau of Prison’s 2007 Report states that access to educational, rehabilitation and vocational programs is a crucial factor in prisoner rehabilitation. Yet while such opportunities are decreasing significantly in regular prisons, they have always been practically non-existent in supermax prisons (other than some instances of self-guided study for very few inmates
deemed deserving by the supermax authorities). The Federal Bureau of Prison’s 2007 report also highlights the need to have access to family contact and visits in order to maintain or improve inmates’ emotional and mental wellbeing, yet supermax prisons make visits extremely difficult, when not impossible. Inmates, then, are further isolated from family and from opportunities of personal growth.

What we see here is the increasing numbers of inhumane and purposeful warehousing, degradation, and deterioration of large segments of minority population. This creates societal problems beyond the harm inflicted upon the inmates. As Senator Ted Coburn, Chair of the Senate Judiciary Subcommittee on Corrections and Rehabilitation correctly warned at the 2006 Senate hearings, "The experiences inmates have in prison--whether violent or redemptive--do not stay within prison walls, but spill over into the rest of society” (Confronting Confinement, 2006).

Supermax authorities are well-aware that they house mentally ill individuals, despite regulations explicitly against it. As a couple of pertinent examples, seventeen out of fifty inmates at Pelican Bay supermax were found to be mentally ill (Madrid vs Gomez), and the staff at Indiana’s supermax unit stated that half to two thirds of inmates held are mentally ill at any given time (Human Rights Watch, 1997). In the words of a supermax prison visitors allowed to Tamms,

At the time of writing, there are several floridly psychotic prisoners in Tamms and several more teetering on the brink of clearly diagnosable psychosis. No prisoner should be placed in Tamms or a prison like it without having been interviewed at reasonable length by a psychiatrist … and then again, at least quarterly. (Kurki and Morris, 2001, p. 406)
The lack of accountability is even more disturbing because, as human rights observers state, “All the characteristics of supermaxes are more likely than not to create a culture that supports abuse of power … The staff has practically unlimited amount of power to control inmates access to food, possessions and movement” (Ward, 1995). Trial cases such as Madrid vs Gomez and Ruiz vs Johnson have established that supermax systems are more likely to produce excessive force, abusive and violent behavior by the staff. Moreover, Human Rights Watch (1997, 1999) has documented deliberate patterns of violent behavior and abuse against inmates by supermax unit staff in Texas and Indiana.

The different types of violence to which inmates are subjected in supermax units have wider repercussions. Conditions in high security units often engender pathological feelings of rage, resentment and mental pathologies (Korn, 1988); it follows, then, that inmates are more, not less, likely to commit worse crimes once released back into their communities.

Further Considerations

There are harmful consequences to returning damaged individuals to vulnerable communities. The State fails to protect its citizens when this occurs. As the penal system continues to grow, the noxious repercussions on poor communities of color become incalculable. Most of Europe and many other nations have been moving towards a more humane direction in punishment and rehabilitation, but the United States seems to reject the idea that as society modernizes, we should move to rehabilitative and integrative models (Gottschalk, 2006). Alternative measures are not only ethically prescribed, but also financially advisable. It is painful to consider how far funds invested today in expanding the prison system would go if invested in education, inner city revitalization,
job creation, health care and other types of social investment. Indeed, the prison system has created a demographic of second-class citizens, beginning with a criminalization of African Americans and a “tough on crime” narrative meant to stem the gains of the civil rights movement and entrench a racial caste system. The high point of the privatization of prisons was in the 1990s; but although it has slowed down, it is by no means finished. Private prison corporations have continued to thrive, especially after the War on Terror and the wave of crack-downs and legislation criminalizing undocumented immigrants. It is time to halt this wave and consider other alternatives.
TRANSFORMATIVE JUSTICE.

CONCLUSIONS

Restorative Justice Approaches

This dissertation has dealt at length with the disproportionate confinement of minorities in the prison system, and the perpetuation of a racial caste system in the United States. The issue of how to justify punishment is also core to issues of incarceration. What can justify the state in using the law to inflict punishment on its citizens? And if that is the state’s responsibility, can it be deflected? The philosophy of retributive punishment focuses, as well, on the imperative of punishing the guilty to the extent that they deserve; in other words, it is the deserved response to a criminal action (Boonin, 2008). This view considers lawbreakers as somebody who has taken unfair advantage over his or her fellow citizens, by refusing to obey the law that all citizens are burdened with. Finally, another justification for this view is that punishment communicates to the lawbreaker the condemnation for the crime. Ideally, once the person accepts this justification, he or she will avoid committing crimes in the future ((Braithwaite, 1999; Boonin, 2008; Mathiesen, 1990). However, condemnation and punishment can take many forms, even symbolic, and penalties for the same crime change over time. In some cases, for example, punishment can become progressively harsher, such as when drug laws are increasingly criminalized.
Restorative justice proposes a balanced response to delinquency and crime; as opposed to more traditional criminal justice systems, restorative justice expects the active participation by everyone included in the criminal action (Van Ness and Strong, 1997). It is important to note, however, that victims are not forced to participate. Because of its more ecumenical—so to speak—orientation, restorative justice has been slowly gaining track as a way to deal more justly with the disproportionate incarceration of minorities of color, specifically (but not limited to) African Americans (Jenkins 2006). Rather than viewing crime as an offensive action against the state, for example, restorative justice views crime as an action against the community, and focuses on restoring or repairing the relationship—to the extent possible—between offender, victim and community. Thus, because of the disproportionate numbers of African American community members who are either victims or perpetrators of crime, the use of community-centered restorative justice tenets is seen as especially beneficial to communities of color (Umbreit and Coates, 1999; Jenkins, 2006). In this manner, individuals accused of non-violent crimes may be allowed to return to their communities to repay their crimes in more beneficial ways, be able to work in order to support themselves and family, and cost less in public expenditure.

There is no denying that there is a need to lock up violent criminals as well as others who threaten the safety of the community. Nevertheless, some states are trying different strategies in order to alleviate budgetary burdens. For instance, in the face of serious prison population expansion, the states of Kansas and Texas have started a strategy that combines
incentives for reduced recidivism with greater use of community
supervision for lower risk offenders … In addition, the two states
increasingly are imposing sanctions other than prison for parole and
probation violators whose infractions are considered ‘technical’, such as
missing a counseling session. (Pew, 2008, p. 6).

This novel strategy, approved by partisan leadership, allows the states to offer enough
prison beds for violent inmates, while at the same time helping less dangerous offenders
become “productive, taxpaying citizens.” A white paper published in 2009 on an
assessment of Texas adult supervision programs explains:

> One discrete component of the diversion program was incorporation of
early discharge in progressive sanctions models to provide incentives for
probationers to be successful and to decrease caseload sizes … these
diversion programs were designed to reduce recidivism, or provide
alternatives to incarceration, and they are working. (2009, p. 9)

Other costs that have been measured in restorative justice programs have been costs of
reconviction. In a widespread study performed in the United Kingdom, costs of
reconviction for participants were sufficiently lower than the control group, enough that
“it could be said to be value for money on the strict reconviction test” (Shapland et al,
2008, p. 69). Other countries that have been well-represented in the implementation of
restorative justice approaches, reporting cost-effectiveness and beneficial results, have
been Australia, New Zealand and Canada. A recent government study in Canada, for
example, reported that “these programs are more effective at reducing future crime, cost
less and are preferred by victims” (Carreira da Cruz, 2010, p. 4). It is important to note,
however, that these measures also have critics who claim that very few cost-effectiveness studies have been performed up to date and more studies in this field are warranted. It is also important to note that because restorative justice approaches require the participation of different segments of community and government authorities it distributes power more evenly, diffusing the possibilities of centralization of power, arbitrariness, lack of transparency and racial oppression. Thus, the gains in social benefits must also be taken into account when assessing the costs involved in traditional and restorative justice measures.

In this section, then, an analysis of restorative justice methods, philosophy and programs are considered as alternate possibilities to the current system of incarceration, and as one of the ways to involve the community and counteract the widespread propagation of the costly private prison industry and the behemoth supermaximum facilities.

On Restorative Justice as Alternative Methods to Incarceration

The final section of this dissertation will offer the limitations of this research endeavor, respond to current conservative arguments on crime strategy by offering solutions, and recommendations for further research. The discipline of Restorative Justice might seem a novel way of dealing with crime and community, but it has a far reaching history in Western and other societies. Moreover, it is being implemented with success by correctional systems in Canada, Australia and New Zealand, as well as other democratic nations worldwide. Restorative Justice as a movement could effectively contribute to the development of more humane and efficient correctional policy, one which could join forces with the prison reform movement that seeks to do away with the
supermax system. The dissertation will look at empirical studies on different restorative justice strategies, as well as the work of restorative and criminal justice scholars, the scope and the limitations of the discipline. It is also important to note that in this dissertation I do not consider other scenarios than the current practices of common and criminal law jurisdictions. For this purpose, I will look mainly at the work of John Braithwaite (2002), Kathleen Daly (2002), James Dignan (2000), Russ Immarigeon (2002), Leena Kurki (2003), Tony Marshall (1999) and Charles Villavicencio (1999).

In his book *Restorative Justice and Responsive Regulation* (2002), Braithwaite provides the historic background for restorative justice strategies, which are rooted in the Greek and Roman civilization, as well as Eastern and Christian traditions. Leena Kurki’s work, especially her essay “Restorative and Community Justice in the United States” (2003), are of particular importance. Her work is helpful in providing examples of restorative justice strategies and their implementation within the United States proper. In an argument which complements Marx and Engels’ take on the justice system of primitive societies, Kurki (2000) argues that the prototype of restorative justice “was the dominant response to crime before centralized and organized state power and church, when victims’ and offenders’ families and, later, village meetings began to negotiate restitution agreements” (p. 264). Villages benefit from restitution agreements that forestall family revenge actions that can take place in some communities.

Because of its widespread roots and ancient roots, providing a definitive definition of restorative justice is a seemingly intractable endeavor, since many definitions have been provided, none of which has yet proven universally acceptable (Braithwaite, 2002). In his book *Restorative Justice: An Overview* (1999), Tony
Marshall defines it as follows: “Restorative justice is a process whereby parties with a stake in a specific offense collectively resolve how to deal with the aftermath of that offence and its implications for the future” (p. 5). In his book *Understanding Victims and Restorative Justice* (2005), Dignan finds this definition both too widespread yet restrictive, claiming that it overlooks the fact that restorative justice approaches have also been widely used in other conflict resolution arenas, such as inter-communal or group conflicts. The latter may be neighbor and community disputes, decisions relating to child care, school-related conflicts, and situations in which the aggressor has been the state or its agents, as in cases of crimes against humanity; and others. Thus, Dignan’s definition entrenches the practice of restorative justice even more firmly into a community ethos. Moreover, he argues that focusing on the definition of restorative justice solely as a process overlooks the issue of outcomes. As Dignan (2005) explains:

> The need to take account of outcomes as well as processes is important for two main reasons. First, some restorative justice processes often result in negotiated outcomes that not only purely symbolic, or even simply “reparative,” but may also include the imposition of additional obligations for offenders. Some such outcomes may be every bit as onerous—and indeed punitive—as the sentencing outcomes that may be imposed at the end of a conventional criminal trial. As such, they raise well-founded concerns and do need to be addressed (p. 3).

The second weakness with Marshall’s definition, in the understanding of other criminal justice scholars (Bazemore and Walgrave, 1999; Dignan, 2005), is that there may always be cases in which restorative justice practices are not fully applicable:
In cases such as these, it may be preferable … to adapt the sentencing powers of the court to that, as far as possible, they also seek to secure outcomes that attempt to repair the harm that has been caused by the offense; and to do so in a way that as far as possible is consistent with restorative justice goals and values. (Dignan, 2006, p. 4)

Moreover, there are also differences of opinion among scholars as to the role that criminal justice officials and agencies should play (Dignan, 2005; Kurki, 2000). Notwithstanding these concerns, restorative justice advocates today propose restorative justice practices and approaches as an ideal model of informal justice in which individuals deal with their conflicts without state interference. Others argue for the implementation of these practices at the state level, as some of these approaches are already in practice in the United States. In contemporary American society, restorative justice practices began formally as victim-offender reconciliation programs in the early 1970s and have grown, albeit slowly, to a more integral approach toward crime. As Kurki (2000) explains,

> The goal is to create processes and responses that repair harm, heal parties, mend broken relationships and build communities. Families, friends, supporters and other community residents are involved in practices that include victim-offender mediation, family group conferencing, sentencing circles, and various types of citizen panels. (p. 263)

The restorative justice models of the early 1970s often lacked community orientation and focused mostly on restoring the peace between victims and offenders. More recent advances reconsider the role of community and residents (Kurki 2000).
It is interesting to note that the role of religion in the theory and praxis of restorative justice in the United States has been little evident yet an important influence in the development of restorative justice models. In The United States, many of the first supporters of restorative justice belonged to communities of faith (Wright 1990, Zehr 1990, Van Ness and Heetderks Strong 1997). Mennonites were the first to establish a victim-offender reconciliation program in the country. Today, an institution associated with Prison Ministries, the Justice Fellowship, advocates “the Biblical principles of restorative justice” (Justice Fellowship 1999). The base of restorative justice, at least in Canada and the United States, is religious and moral theory, as established in Russ Immarigeon’s essay “Prison-based victim offender reconciliation programs” (2002) and Kathleen Daly’s book Criminology at the Crossroads: Feminist Readings in Crime and Justice (2002).

Although there are differences in considerations and methodology, most of these restorative justice principles suggest that in order to achieve a fairer, more efficient and inclusive justice process, the state ought to surrender its monopoly over the ways crime is dealt with and, more importantly, that the victim, the community and the offender should participate in the process. After all, restorative justice views justice as a healing process, one in which “all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm” (Braithwaite, 2004, p. 29). It is important because the commitment and participation of citizens is the stuff from which a just society is made from, and “a society where we relied mainly on lawyers to enforce rights would be a dangerous society” (Braithwaite, 2004, p. 31). It is important to note, however, that surrendering its
monopoly does not require that the state do not play a role; rather, it de-centers the role of the state and enriches it with civic engagement. In this view, if the state allows the participation of community members and citizens, responses to crime should be based on the needs of victims and community, rather than solely on the needs or guilt of the offender, the dangers he or she presents, and his or her criminal history (Zehr 1990). In short,

Restorative justice is about relationships—how relationships are harmed by crime and how they can be rebuilt to promote recovery and healing for people affected by crime. Restorative justice respects equally victims and offenders, and this is why it cannot be seen as part of the victims’ rights’ movement. The victims’ movement has been used to justify more punishment. (Kurki, 2000, p. 266)

Radical sociology tenets help the scholar understand how an individual might use his or her personal experience in the light of the public sphere. If an offender’s vision is limited by his cell and the limited sphere of the criminal justice system of trial and sentence, he or she might not be able to fully comprehend the widespread repercussions of the offenses committed. Rather than maintaining a predator worldview, for example, by facing the victim and community members, he or she possibly gains an understanding that as members of a community—usually a poor community—they are not alone. The cause and effects of poverty and crime affect all. It also allows all participants to understand, from different points of view—the ways in which the personal is public. In other words, restorative justice strategies, as will be examined in another chapter, help
participants develop understandings which might encourage individuals to address, in positive ways, the social forces that have caused their condition.

The work of criminal justice scholars D.C. Emmons (1970), Lucius Garvin (1945), and James Sterba (1977) explain the foundations for the prevailing theory of justice in the penal system today, which is retributive justice. Retributive justice has a utilitarian facet in which it is mostly seen as deterrent and/or persuasive, and it is also based on Biblical imperatives that of “just deserts” or, as close to possible to the Deuteronomy dictum of an eye for an eye (Dignan, 1997). In other words, retributive justice seeks a proportional and sometimes greater response which, especially in the United States, has assumed truly Draconian levels, as will be discussed later in this dissertation, especially as relates to drug violation laws. In his work, Sterba (1977) argued for a “theory of punishment” (p. 349). Emmons (1970), in his essay in defense of a retributive approach, describes it as follows:

An act (or class of actions or institution) is just if and only if it results in equal treatment of equals; i.e., equal distribution of goods and/or evils to equals. Now this abstract definition does not provide us with a working criterion for justice… (p. 133)

Further ahead, Emmons argues that “we need not reject this widely embraced criterion purely on logical grounds” and suggests that an allocation of goods and evils be distributed in proportion to virtue, arguing that “the plain man often uses it when deciding how to parcel out goods and ills,” which makes a retributive conception of justice “a legitimate normative option for any moral agent” (p. 313). Lucius Garvin
(1945) argues that the retributive theory is, at least in its inception, a thoroughly moral theory and that

The customary explanation offered by utilitarians to account for the high moral regard in which retributive theory has been held is the simple one that, punishment and reward having been found most profitable expedients for accomplishing their respective utilitarian ends, people come to respect them and regard them as good for their own sakes—the familiar error of confusing instrumental with intrinsic value. (p. 273)

Furthermore, Garvin argues that such utilitarian views are made credible by the rhetoric used by retributive scholars to describe their ideology of punishment and reward: “as, for example, in their statement that these acts produce ‘a balancing of the moral scales’” (p. 274). However, although such discourse may position retributive justice as inherently persuasive rather than punishing, the spirit of retributive justice is quite focused on punishment. In this view, “harm done to others is a matter which disturbs the prevailing balance of distress and welfare in the community” and a wrongdoer is “one who has failed to bear his share of the total cost … that the benefits of social life as regarded as being purchased with. It is therefore fair that he be made to suffer and so restore a balance of sorts within the system” (Atkinson, 1974, p. 85).

In order to restore the balance, then, it would be necessary to inflict harm upon the offender. This balancing of the moral scales is also commonly known as the “just desserts” theory. It proposes that an offender be given a punishment that “equalizes” the wrong he or she has committed, in this manner taking one “good” from the person who committed the wrong (in this case, his or her liberty), to redress the harm done against
another. In a retributive view, “wrong doing is an act of deprivation, a subtracting of good experience or a producing of bad experiences for the victim” (p. 274). Hence the moral imbalance, an inequity that must be redressed: “something” must annul or cancel the original wrongdoing. The problem with this theory is the lack of proportionality between the effects of a crime and its punishment, which makes punishment appear, to a large extent, arbitrary. Garvin (1945) argues that for this principle of retribution to work, the subtracting of a good to the offending party—in the case of a prisoner, taking away his or her freedom for a determined period of time, for example—should imply an equivalent enhancement in value to the life of the offended party or victim. But

To subtract from the good experience of a member of society without any even partially compensating addition to the good experience of any of the other members is to reduce the total of good experience within the society (p. 275)

It stands to common sense, however, that in most victim-offender situations, the wrong committed is of such nature, that there cannot be an equal restitution to the wronged party. Hence, the retributive ideology cannot be truly grounded on “a balancing of the scales” as some retributive justice scholars argue—an argument based on what Garvin calls “half truths.” As it is, retributive justice is based solely on applying punishment for the wrongdoing. The latter is still a moral argument as the goal of the punishment is, in the view of some (though not all) retribution theorists, to incorporate moral reform. In this view, in order to benefit from moral reform, the offender must acknowledge that he or she has received his or her “just desserts.” However, “punishment works moral reform only to the extent that it makes the criminal say of the punishment ‘it serves me right’”
(Garvin, p. 276). In other words, for the punishment to be a valid learning experience there must be an acknowledgement of its being just: “If I do wrong and am punished for it, I can only receive moral benefit from the punishment if I recognize it as being in itself, and prior to any reaction of my mind upon it, the due reward of my deed” (Garvin, p. 276). That is, the punished person must believe that the punishment is right and regret his or her wrongdoing.

Nevertheless, accepting punishment does not equal believing it is just. If the lesson to be learned is purely that of the coercive and even arbitrary nature of the state, it might work, but this philosophy of punishment does not support a “lesson learned” for individuals to understand the roots and consequences of harmful behavior and how to be a viable member of society. Moreover, Garvin argues that for moral reform to occur, the punished person needs not acknowledge that the punishment “serves him [or her] right” or is just, as the theory of “just desserts” posits, but simply to acknowledge that he or she has done wrong and resolve to do better in the future. Getting to the point of accepting or believing that the punishment is just, Garvin states, is something else altogether.

The weakness of this strategy becomes clear, as will be discussed later in this dissertation, when faced with the lack of trust that most offenders have in the criminal justice system. For an offender to arrive at the point of acknowledgement for wrongdoing, he or she surely believes—at least, mostly so—that the system is just and the punishment fair. However, as we shall later see, this is seldom the case. The offender does not face the effects of his or her wrongdoing, except as it pertains to his or her incarceration. Hence, his or her concern is rooted in the self and, perhaps, his or her immediate dependents. Moreover, most offenders distrust the criminal justice system and
feel a sentence is excessive, possibly because it often truly is excessive. As can be seen
by scholars discussing the retributive justice system, punishment needs to be truly logical,
rather than just logical in appearance, as it can be to those meting out the punishment.
After all, police officers, politicians and legislators are not the ones having to experience
the punishment and its repercussions. Moreover, because a punishment perceived as
arbitrary is not perceived as logical, but rather as meted out at will or capriciously, it does
little to foster respect for the law among individuals processed for crime.

Punishment in this sense is placed as if on a balance of loss and assets that
appears to be neutral. In other words, despite it being determined by legislators and
judges, it appears to be a sort of “invisible hand of the market”—especially as pertains to
the establishment of fixed sentencing guidelines. But as will be made clear later, the
setting of laws and policies has been structured in such a way, that it specifically targets
the crimes that poor urban minorities are more likely to commit. Indeed, it is individuals
from these communities who receive the brunt of sentencing from the criminal justice
system. Hence, as a Marxian theory of state supports, the state creates legislation in
seemingly neutral ways, which only serve to obscure the collusion of forces which
operate hidden in daily relationships. The legal system is, in his view, the mystification
—or abstraction—of class conflicts.

Thus, following a retributive strategy does not necessary serve for the prisoner’s
moral reform, as some retributive justice scholars argue it does. Moreover, its
implementation remains completely in the hands of the state—increasingly subject to
fixed sentencing guidelines which often result in absurd sentencing—and does not include
the contribution or participation of victim nor community members. There are others,
however, who seek a middle ground and argue for a reconciliation of retributive and restorative justice. In his essay “The reek of cruelty and the quest for healing. Where retributive and restorative justice meet” (1999), Villavicencio argues that

The demand for retribution, the defense of righteous anger and the need for a healthy refusal to settle for less than what it takes to immediately transform the perpetrator makes a lot of sense. It involves upholding moral and legal norms. It affirms the dignity of the victim and sometimes survivors. It requires the perpetrator to take responsibility as a moral agent. At the same time, it creates space for the possibility of mercy and forgiveness—recognizing that its telos is restoration, not punishment per se. (p. 185)

Criminal justice scholars, then, propose different schemas for restorative justice, allowing for a flexibility to adapt to different circumstances and needs, i.e., youth offenders, adult offenders, non-violent crime, violent crime, etc.

To summarize, a retributive ideology does not truly balance the moral scales between victim and offender. It is also not an effective catalyst for the moral reform or growth of offenders to occur. It starts off being, then, punishment for punishment’s sake, causing the offender to feel oppressed and resentful and, when interned in a supermax unit, contributing to the inmates’ wasting away and deterioration of mental health. Furthermore, the ways in which a philosophy of retributive justice seems to mesh with Neo-conservative economic interests will be discussed in another chapter of this dissertation. However, what is particularly disturbing about retributive justice is the ways
in which it contributes to the oppression, marginalization and enforced servitude of a specific group of society.

It is hardly surprising, then, that many offenders, historically having borne the brunt of penal system injustice, reject altogether the possibility of a just punishment at the hands of the state. Yet they might, given the right circumstances, be able to acknowledge that they have committed a wrong and address it in a manner that might provide a personal growth experience, as well as bring a sense of healing to the wronged party and the community at large. This dissertation will explore and propose, in its conclusion, alternative strategies that move away from barren ideologies of retribution and open the door to productive strategies that aim to redress social injustices, help restore families and communities, and are more likely to create spaces for healing for victim, offender, and communities.

As seen in the conflicted ups and downs of the history of the prison system, surely there are other societal forces that manage, at times, to come together and trump racism, as those that eventually rendered the convict lease system null in the south. These were, among others, a growing sense of moral indignation among the society—especially at the sight of toiling white men as they began to be added to the chain gang--and New Deal government incentives meant to provide employment, such as the work relief measures, and jump start a depressed economy. New Deal government, labor unionists, industrial engineers, businesses, all came together to support union organization, which was seen as crucial to improving working class consumption, thus aiding the economy (Rogin, 2002). All of these elements informed the public and influenced opinion. Strengthening organized labor, in turn, contributed to the weakening of the prison labor system.
Hence there are other societal forces today that may also come together. As editorials in the *New York Times* and lengthy articles in publications such as *The Atlantic Monthly* and *The New Yorker* show, there is a growing awareness of the disturbing growth of the prison system and the supermax facilities. An increasing number of scholarly books and academic articles contribute to the growing body of prison scholarship. The public outrage for the financial activities that caused the collapse of the U.S. economy might signal a new opportunity for scaling back the prison-building trend. It opens the door for creating public awareness about the dire situation of prisons in the United States and the need for better opportunities for inmates. It is possible that the low tolerance that the public and government currently exhibit for corporate excess might begin to turn the tide. On the other hand, the polarization that a broken economy and growing numbers of unemployed has caused between documented and Hispanic undocumented workers might propitiate a growing number of minority individuals in the prisons of the United States. Time will tell.

Having dealt with the philosophy of restorative justice in the Literature Review (Chapter 2) of this dissertation, in this chapter I will build upon the empirical and practical findings of scholars and activists who have implemented successful alternative justice approaches. Scholars such as Sassen-Koob (1986) Steinberg (1981), and Wilson (1978) explain the inner-city economic dynamics from a point of view in which international economic structures have destroyed manufacturing jobs and replaced them with service-related employment, the latter which reinforces historically racist structures of power. Much of the destruction of inner-city dynamics is internalized by its residents, who from their earliest years must attend poor schools graded F, and live and grow an
environment lacking employment opportunities, viable business development and quality social services.

Others (Foley, 1990; Fordham, 1988; Willis, 1977) argue that inner city residents are not passive victims; rather, a majority of them engage in a culture of resistance that leads them to reject what they perceive as oppressive white, middle class values, in lieu of a resistant behaviors that lead them to engage in a life of crime and pathological behaviors. An example of this would be minority students who excel in school being called an “Uncle Tom” by their peers; or, the perception that inner city drug dealers have always preferred working in illicit trades rather than participating in the mainstream labor market. However, whereas scholars who examine the effect of historical structures of power and modern capitalist dynamics provide valuable insight into the structures of political-economical inner city realities, they tend to position the poor as passive victims of historic socio-political structures. And those who focus exclusively on the cultural resistance engaged upon by inner city residents miss a crucial piece of the puzzle. In the words of Bourgois (1997), not only inner city residents are “frantically pursuing the American Dream” but the assertion of theorists who claim that the poor “have been badly socialized and do not share mainstream values is simply wrong” (p. 69)

Bourgois (1997) argues convincingly that “What is surprising is how few inner-city youths become active in the underground economy; most still enter the legal economy and accept low-wage jobs” (p. 65). In my experience teaching inner city youth with criminal records, most of them spent hours of obsessive search for employment in the licit market sector and jumped at the chance of working where they would earn a steady wage, especially one that might offer benefits. The constant preoccupation with
finding shelter and food is significantly augmented with the desire for consumer goods they are constantly being bombarded with in TV commercials and billboards, further fueling their drive to find steady employment. This desire was not only constantly trumped by market realities in the inner city, but also by disagreeable job interviews where it is made clear to them that their residential addresses, manner of speech and/or spotty employment records make them unwelcome, relegating them to the jobs at the lowest rungs or the underground economy.

In his books *Gang Leader for a Day* and *Off The Books: the Underground Economy of the Urban Poor*, both published in 2008, sociologist Sudhir Venkatech demonstrates that such anecdotal information is rather an overall pattern. Moreover, in his field work, Bourgois (1997) has found that many drug dealers find benefits in not being perceived as “exploitable” by society; however, not only do they “pay lip service to the value of a legal, steady job,” but they also internalize societal stereotypes that position them as shiftless and lazy (p. 65). Many others cycle in and out of legal employment when they can find one, or supplement their meager incomes with some illicit trade on the side. In short, inner city residents, even those engaging in illicit trades and resistant behaviors, are more often than a population that would welcome steady work and living wages if provided in a context of dignity and economic sustainability. Bourgois (1997) and Venkatesh (2008) further argue that a growing underground economy comes hand-in-hand with a “culture of terror” (Bourgois, p. 65) enacted by outside forces such as policing institutions, but more immediately, by “employers or new entrepreneurs in the underground economy who can demonstrate their capacity for effective violence and thus terror,” as, in communities where the police come to be perceived as not to be trusted
with protection—indeed, they are often the victims of police profiling and brutality—many inner city residents perceive that their own ruthlessness is their only security (Bourgois, p. 66).

Thus, the need to cultivate a reputation for violence is seen as imperative by those engaging in an inner city underground economy, a culture of violence that taints almost every aspect of the communities in which they live. Bourgois’ work finds that the culture of terror becomes so pervasive it brings a set of rules and roles all of its own, and extends to individuals who are not involved in illicit underground economy, to “all individuals living in the neighborhood who want to maintain a sense of autonomy” (p. 68). Indeed, the culture of terror is so all-encompassing, that “small children already talk about it in grade school,” and children who do not “fight back” may be subject to daily violence and oppression (p. 69). At worse, residents must participate in the culture of terror if only passively, by anxiously trying to keep under the radar. The latter strategy, however, does not make for a fulfilling life, as expressed by a former student of mine, an inner city resident, who explained that he had to remain indoors all weekend long watching television in order to avoid being mugged, attacked or the potential victim of random violence. In short, inner city residents do not freely “choose” to live this way. The fact is, the neglect of the inner city by authorities and business development, generate an environment in which violence is prevalent and residents must “toughen up” or partially opt out of community engagement in order to survive. The end result is, sadly, that some individuals will prey upon others and civic society finds little space to thrive.

It is true that, as Bourgois explains that “The dynamism of the multi-billion dollar underground economy, the rejection of demeaning exploitation, and the dignity offered
by illegal entrepreneurial activity” explain a great deal of the “the violence and substance abuse of the inner city experience” (p. 72). But he also finds that many inner city males find it humiliating, as well as impossible, to support a family on welfare or while living unemployed. It is especially difficult for former inmates, who face great obstacles in finding employment and are barred from aid in the form of housing or student loans. Venkatesh (2008) finds that women on welfare in the inner cities resort to the underground economy by selling candy from their home or socks in park benches, or else taking in boarders or engaging in prostitution, all the time striving to remain undetected by police, tax and/or welfare authorities. Overall, then, scholars find that inner city residents not only continuously strive to find market-related ways to make ends meet, but also to find ways that offer the possibility of living their lives with dignity and meaning. Rather than opening doors to such possibilities, traditional criminal justice approaches, combined by socio-economic abandonment and historically marginalizing structures of power, serve only further confine and reduce opportunities for inner city residents and increase their despondency and alienation. It is time to pursue non-traditional approaches that have proven successful elsewhere, strategies that, as re-interpreted in a progressive approach, may be funded by a government with a new vision of what really works and how to truly invest in benefitting underserved communities.

The Philosophy of Restorative Justice

Leena Kurki (2000, 2003) and Charles Villavicencio (1999) explain that restorative justice ideals require the participation of all parties to a conflict in order to ensure a satisfactory resolution to the conflict. One of the goals of restorative justice is deep healing, for victims as well as communities. Villavicencio (1999) explains
Deep healing involves more than a judicial ruling and more than monetary compensation, recognizing that both are immanently helpful. It involves the quest for a new quality of life and a creation of a milieu within which the atrocities of the past are less likely to occur. (p. 184)

As Garvin has argued before, the offenders’ repentance, a willingness to restore what has been unjustly gained and the commitment to live henceforth a transformed life, makes moral sense. However, this is easier said than done, as it takes time for an offender to be brought to this understanding. It gets even more complicated when the offender has reason to distrust the authorities or has acted in, in Villavicencio’s words, in “ideologically laden situations where the most hideous deeds are done in the name of all that is said to be decent and worth dying for” (1999, p. 185). The milder approach of truth commissions, he argues, often produce the intended goal more readily than the more retributive approaches that demand repentance or death. To this end, he cites one of the participants of South Africa’s truth commission, Cynthia Nomveyu Ngewu whose son was shot by the police:

We do not want to see people suffer in the same way that we did suffer and we do not want our families to have suffered. We do not want to return the suffering that was imposed upon us. We would like to see peace in this country … (cited in Villavicencio, p. 184)

This kind of generosity, Villavicencio tells us, should never be taken for granted: “It cannot be demanded of anyone. It is, at the same time, the kind of response that constitutes the wellspring on which healing is so often premised” (p. 185). In the view of
restorative justice advocates, the ultimate goal of justice should not be vindictive but restorative, healing, building a better community in which to live.

Kurki (2000) explains that

Trends in criminal justice and sentencing policies in the United States are often represented by the cliché of a pendulum that swings from social work to law enforcement or from rehabilitation to retribution. The opposing approaches either attempt to change the offenders’ behavior or to punish them. (p. 290)

The purpose of restorative and community justice, however, is to bring in community-based values that cannot be molded by strictly binary concepts. These values address the individual as well as the community, expect the offender to take responsibility yet looks for constructive ways for the perpetrator to pay back rather than vindictive retribution that does nothing to contribute to society. The goals of retributive justice are of restoring victims, creating relationships, and building communities.

There are overlapping concepts between restorative and community justice, and it is important to clarify this distinction. Restorative justice values, as stated before, are based on healing, repairing harm, and rebuilding relations among victims, the offenders and the communities. Community justice “views crime as a social problem that affects life in communities and suggests that prevention is an essential part of all criminal justice agencies’ work. Both share goals of community participation, empowerment and development” (Kurki, 2000, p. 235). Most participants in restorative justice practices express satisfaction with its results, although there is little evidence that these experiences have decreased crime or prevented victimization. However, Kurki (2000) argues,
“limited results reflect more the inadequacies of evaluation research to date than the nonfeasibility of restorative and community justice concept and goals” (235). Indeed, the mostly positive results of restorative justice implementation support this assessment.

Zehr (1990), Barajas (1996), Van Ness and Heetderks Strong (1997), Braithwaite (1998), Trojanowicz et al (1998), Bazemore and Wargrave (1999) and Kurki (2000) provide in-depth clarification and critique of restorative justice concepts. Although models of restorative and community justice are unclear and overlapping, each has specific core elements. Core restorative justice concepts argue that the state should “surrender its monopoly over responses to crime to those that are directly affected—the victim, the offender and the community” (Kurki, p. 260). These values aim to the restoration of victim and community, as well as to repair ruptured relationships in a process that allows the participation of all parties. Community justice tenets uphold the view that crime is a social problem, deleterious to communities, and it seeks to redefine the role and activities of criminal justice agencies. Instead of focusing only on retribution or punishment, deterrence, or even the rehabilitation of individual offenders, criminal justice agencies should widen their purpose to include preventing crime and solving communal problems, such as neighborhood conflicts. That is, local activities should be moved to the pertinent communities, and the involvement of community members should be encouraged (Barajas 1996, Trojanowicz et al 1998; Kurki, 2000).

Both restorative justice and community justice approaches, as argued before, hold community-wide empowerment and participation, rather than punitive measures, as important values. They take into account the mores and values of the local communities, which makes the system more sustainable. They also share the belief that communities
are empowered when individuals have more opportunities to communicate with each other, thus creating personalized relationships. And finally, they place social control in the hands of community members. In fact, restorative justice assigns roles of equal importance to victims, offenders and communities in decision-making roles, whereas community justice tenets focus mainly on the role of the community, and usually do not address the roles of victims and offenders. Community justice tenets posit that “crime prevention—whether building communities through citizen action or providing family, school or neighborhood-based skills programs or services—is an essential part of criminal justice agencies’ work” (Kurki, 2000, p. 238)

Community justice approaches, then, share a basic premise: crime is viewed not only in the context of an offender that needs to be processed through the justice system, but also as a social problem with deleterious effects on the community. Community justice posits that crime prevention is a core facet of the criminal justice system. However, this may be accomplished by providing guidance, through the actions of both community members and state agencies, with school or community-based programs and services. Indeed, a fundamental element in crime prevention is encouraging community empowerment and participation. The benefits gleaned from these values are that community participation in crime prevention decreases crime, strengthens the social fabric of the community and generally increases a sense of civic society. Moreover, the interaction brought by state and community agencies working together brings increased public satisfaction with agencies. Kurki (2000) warns, however, that often criminal justice agencies discourage citizen participation; “community policing and prosecution
efforts instead use them as “eyes and ears,” symbolic supporters, or providers of funds. (Kurki, 236, 237).

In short, scholars find that community justice, by acknowledging that crime is the result of complex social conditions and in an effort to prevent crime, aims to build bridges between state entities and local communities. And in a restorative justice context, victim, offender and community meet to negotiate restorative solutions to crime, express feelings and decide appropriate sanctions and responses. These sanctions might include, but do not need be limited to, rehabilitative treatment such as anger management or addiction counseling, community service, letters of apology, monetary restitution, and others (Umbreit 1994, Immarigeon 1999, McCold and Wachtel 1998, and Daly 2002).

Umbreit (1994) and McCold and Wachtel (1998) have found that in community-mediated situations, a great majority of victims, offenders and other participating parties declare themselves satisfied and an agreement is reached. More often than not, a reparation plan drafted during such meetings is eventually fulfilled by the offenders. These findings prove true for studies of adult and juvenile programs, and for victim-offender mediation and family group conferencing cases, in both domestic and international reports. Quantitatively speaking, satisfaction, agreement, and completion rates are reported to at between 75 and 100 percent. Notwithstanding these findings, Kurki (2000) states that restorative justice initiatives in the United States remain minimal, used only as diversion programs for juveniles in minor, nonviolent crimes.

Other countries use restorative justice tenets more extensively: “In New Zealand, family group conferences are used for all youth crimes except murder and homicide. In Germany, 70 percent of both adult and juvenile cases in victim-offender mediation were
violent crimes in 1995. Similarly in Austria, 73 percent of adult and 43 percent of juvenile cases were violent crimes in 1996” (Kurki, 2000, p. 240). In the United States, however, when there is mediation involving serious crime, it is more likely that these are mediated inside prisons. Such mediation does not offer community-oriented goals, such as agreement on some sort of community service or victim, and the offender does not gain benefits in early release or parole consideration (Kurki, pp. 269 - 270).

To summarize, there are several arguments in favor of a criminal justice shift towards restorative values. From what can be seen, the majority of human beings we imprison the most may be those who harm us less overall. Underclass crime remains mostly confined to impoverished neighborhoods and a majority of offenders are imprisoned for drug-related or minor offenses. Being that we cannot cast aside class and race bias in the legislative system, the harm we inflict upon those offenders we brand as felons may be as unjust and unwarranted as the pain they have inflicted on their victims. Moreover, it is often a nonviolent crime. Thus, we ought to seek ways in which we might lessen the inhumanity of prison punishment and create windows of growth opportunity for victims, offenders and community. If restorative justice is a less brutal and more humane way to deal with crime, why not consider it as a governing principle of the criminal justice system as other countries do? Without an overall systematic change, however, criminal justice agencies will remain unwilling to shift to restorative justice approaches. From a radical sociology standpoint, it is clear that government elites share mindsets and these permeate the criminal justice system. Nevertheless, institutions are formed by human beings, and although human beings are the product of their environment, they do have agency and the ability to change.
Thus, based upon the concepts of the above mentioned scholars, this dissertation considers the following. If, in order to integrate restorative justice approaches to crime, we consider both traditional and restorative approaches, a traditional system of trial and punishment may process offenders and subsequently move them to community-based restorative programs for parties to convene on a reparative agreement. Moreover, restorative programs may serve to expand community-based formal control over very minor crimes that are traditionally ignored by police authorities, such as vandalism in poor neighborhoods. However, restorative approaches may be integrated to deal with other types of crime, such as violent crime. Without widespread systematic support, however, any restorative justice programs that develop might remain ensconced in more affluent areas—i.e., white, middle class neighborhoods—and not reach nor empower those that need them the most, underclass neighborhoods populated by minorities, immigrants and the poor.

Buerger (1994) explains that ordinary citizens are seldom invited to participate or included in decision-making processes, especially as pertains to neighborhood revitalization projects or local crime prevention measures. Given this state of affairs, community and restorative justice practices would empower community members and allow them real participation in community problem-solving, community sanctions and identifying opportunities for community projects, as well as other community-oriented activities. Allowing the opportunity for community members to become invested in their neighborhood encourages the participation of individuals at the margins and fosters social growth and renewal.

Addressing Victim Reparations

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In his extensive work on victim-offender reconciliation, Immarigeon (1996) argues that quite often the victim is willing to meet with the offender in order to learn more about what occurred. This, they find, helps in reaching beyond feelings of anger and fear in order to help with the healing process. Gustafson (1997) explains that a Canadian survey found almost 90 percent of victims of serious crimes wanted to meet with the perpetrator in a safe environment. Only 11 percent stated that they would refuse to meet the offender under any circumstance. Kurki (2003) states that currently serious crimes are mediated on a case-by-case basis, and there is growing need for permanent programs. Umbreit and Bradshaw (1997) explain that in the programs they studied, victims and offenders meet to agree upon a restitution contract. However, emotional healing is often cited as the primary reason for meeting. “Victims consistently report that the most important element of mediation is to be able to talk with the offender and to express their feelings,” (Kurki, 2000, p. 270). Moreover, offenders often report, as well, that being able to talk about what happened is more important than the restitution agreement (Umbreit and Warner Roberts, 1996).

Many scholars believe that helping an offender develop empathy for the victim reduces criminal behavior and helps the offender become a better person. Others, however, express concern that restorative justice practices cannot achieve goals and results that may be unrealistic (Young and Goold 1999). They also express concern with the possibility of unacceptable negative effects; for example, they worry that the potential for harm being done by offenders going through mediation may be higher than by similarly situated offenders being held in the regular prison system. Others suspect that “immediate positive experiences of mediation fade away with time and cannot affect
future offending” (Kurki, 2000, p. 271). Results of a handful of evaluations are mixed, studies are very few, and none seem to show conclusively that mediation has any statistically significant effect on recidivism (Kurki, 2000). These are very valid concerns and should be taken seriously. It is imperative that criminal justice agencies and other research bodies allocate funds and time to further research on the issue, so that both positive and negative outcomes can be properly assessed. This is especially necessary since studies tend to show that

The vast majority of victims and offenders are satisfied with the process, an agreement is reached in practically all cases, and the vast majority of restorative plans are fulfilled by the offenders. The results are similar in the earlier and more recent studies, in juvenile and adult programs, and in U.S. and international evaluations. Satisfaction, agreement, and completion rates typically vary between 75 and 100 percent. (Kurki, 2000, p. 271)

In their studies on arbitration and mediation as alternatives to felony prosecution, Davis, Tichane and Grayson (1980) asked victims if mediation had reduced their fear and anxiety of the offender and of crime in general. They reported that 40 percent of victims in the random control group felt fear and anxiety, whereas those who had participated in the mediation group were 21 percent less likely to experience fear or revenge. The latter also expressed less anger at the offenders (23 percent versus 48 percent). Other studies report similar results. It is important to point out that traditional criminal justice methods seldom—if ever—allow the victim to have an input in the sanction imposed upon the offender. It seems clear that allowing victims to air her or his feelings and have a say in
the sanction imposed upon the offender has salutary effects and provides the offender, as well, with an opportunity to take responsibility for his or her actions and desire to change.

Some Examples of Community and Restorative Justice Programs

Kurki (2000) describes several programs rooted in community and restorative justice, such as “community corrections” which refers to “sanctions served in communities instead of in prisons or jails. Goals include reduced crime and victimization, decreased fear of crime, increased citizen involvement, improved neighborhood conditions, and greater citizen satisfaction with criminal justice agencies” (p. 249). Moreover, she reports that studies performed worldwide show that in community sanction programs that adhere to restorative justice tenets, “nearly 75 percent of offenders are ordered to perform community work in neighborhoods and nearly 75 percent complete their work without violations. Neighborhood residents are encouraged to participate ...” (259). Some reparative community service programs are run in cooperation with business owners, community neighbors and leaders: “Offenders have built houses for Habitat for Humanity, cut and distributed firewood for elderly citizens, and built and maintained parks” (p. 262).

Provisions and Parole

The American Correctional Association (1995) defines parole as

A court-ordered dispositional alternative through which an adjudicated offender is placed under the control, supervision and care of a probation staff member in lieu of imprisonment, so long as the probationer meets certain standards of contact.
The probation system is an outcome of the positivist school of criminology, and provides, as explained above, individualized supervision. Broad public and institutional support for rehabilitation and treatment lasted into the 1970s, after which, following the shift towards a “law and order” approach discussed previously, it was considered as a “soft on crime” approach (Petersilia, 1997, p. 150). However, until that time, prison was considered a stigmatizing institution that separated inmates from family members, and public opinion proved more favorable to the probationary system. The President’s Commission on Law Enforcement and Administration of Justice of 1967 suggested that improvement in the quality of community treatment should be a major goal for community-based corrections. The Commission also recommended that community corrections begin to rely on help from volunteer citizens in everyday operations (Kurki, 2000, p. 260).

Currently, the system of probationary corrections is understaffed, underfunded, and poorly administered (Petersilia, 1997). Petersilia (1997) argues that nearly 2 percent of all United States’ citizens are under probation supervision, and the numbers continue to rise. Nevertheless the increasing rate of individuals supervised by probations, according to Petersilia “probation is often depicted as permissive, uncaring about crime victims, and committed to a rehabilitative ideal that ignores the reality of violent, predatory criminals” (p. 150). Moreover, during the gradually conservative political climate taking place during the 1970s, several reports informed that most forms of treatment, rehabilitation, or integration programs were ineffective and failing (Kurki, 2000).

The community corrections system has since developed in two major ways. Primarily, today there are more options, which include electronic monitoring, day-
reporting centers, home confinement and community service. Secondly, the essential function of probation turned from rehabilitation and integration, to one of law enforcement (“get tough” approaches), which focus almost exclusively on restricting felons and in this way, reducing potential harm to communities (Petersilia, 1997). In short, the perspective shifted from offender rehabilitation and integration, to deterrence and restriction. A significant number of studies show that in its current shape, however, such community-based sanction programs have not reduced recidivism, but are mostly effective in catching felons for minor technical violations. Petersilia writes that some courts have tried experimenting with more individualized responses to crime, i.e., treatment and close monitoring for first time drug offenses, a strategy that seems to show lesser rates of recidivism. But meting out individualized sanctions and allocating time and resources for close monitoring takes effort, and few courts can afford to do so. However,

the more difficult problem is finding jail and prison capacity to punish violators once they are discovered. Most local jails do not have space to incarcerate all drug users because a greater priority is to have space for violent offenders. (p. 151)

Notwithstanding, Petersilia adds, programs that offer more intensive supervision, such as in Oregon, show lesser rates of recidivism among former offenders and a higher rate of participation in rehabilitative programs. On the other hand, “probationers in urban areas receive little or no supervision, and the recidivism rates are high for felons” (p. 152). Such lack of supervision is especially detrimental to the community in the cases of violent offenders. Petersilia (1997) adds that criminal justice officers find that properly
managed and funded, probation could work well. The problem is not in the system, but in the application. Probation programs in the United States are vastly underfunded, which is a dangerous and short-sighted strategy, especially in view of the fact that “recent evaluative evidence suggests that probation programs—properly designed and implemented—can be effective on a number of dimensions, including reducing recidivism” (p. 152).

Community Courts and Sentencing Circles

The Center for Court Innovation (2008) describes the role of community courts as follows:

[It] grew out of a single experiment in judicial problem solving. The Midtown Community Court was created in 1993 to address low-level offending around Times Square. The Midtown Court combines punishment and help, sentencing offenders to perform community service and receive social services. The project’s success in making justice more visible and more meaningful led the court’s planners, with the support of New York State’s chief judge, to establish the Center for Court Innovation to serve as an engine for ongoing court reform in New York.

A few other informal court systems have opened in the United States, such as the Brooklyn Dispute Resolution Center and the Center for Restorative Justice and Mediation in University of Minnesota. But these are used mostly for juvenile cases of first time offenders and minor crimes.

Sentencing circles were born from traditional Native Canadian and American peacemaking processes. Participants sitting in a circle take turns expressing their
feelings about the crime. These include expressions of support for the victim and the offender. Often, separate healing circles are created for the victim and the offender each before they are allowed to sit in a shared circle. The process depends upon negotiation and peacemaking skills, and all circle members must agree on the results (Aboriginal Corrections Policy Unit, 1997). Sentencing circles are a form of restorative justice that includes community members in the decision-making process. This, in turn, works towards empowering and developing communities. Indeed, sentencing circles include both victim and offender, but it encompasses, as well, their supporters and key community members. These are open to the whole community. The primordial goal is to achieve the well-being of the victim and communities affected by the crime, as well as real changes in the behavior of the perpetrator. A similar situation is taking place in indigenous Mayan communities in Guatemala. Offenders are turned in by the authorities to the community leaders, who sit for hours in a talking circle, open to the whole community. Offenders are often shamed publicly. In the end, most of the offenders offer an apology to the victim and community, agree to a reparation contract, and are provided with employment in the community. Part of his or her gains will be separated for the reparations agreement. In cases of serious crime, the offender may be banished to another community, where he or she will labor under the supervision of those community leaders. This serves to keep the perpetrator within the indigenous communities, provide him or her with gainful employment while allowing an acknowledgement of culpability, and avoid the stigma of having served a prison sentence. If the perpetrator defaults on his communal agreement, he or she is turned in to the official authorities to serve a
traditional prison sentence. The authorities express satisfaction with such measures, and indigenous communities as well as the victims feel empowered and respected.

However, Kurki (2000) states that in the United States, “the exposure of a few officers to restorative justice principles and community involvement did not change overall police attitudes, organizational culture, or role perceptions in the … police department,” possibly because of the lack of similar programs and in consequence, the lack of respect for such measures (p. 278-279). The participation and leadership of the criminal justice system is of crucial importance. If the criminal justice system does not participate in the shaping, execution, and monitoring of restorative justice projects, it is not likely to refer serious cases to them. Criminal justice authorities are not likely to support practices whose results it cannot understand, trust or rely upon. Were restorative practices to become more mainstream they would surely gain wider acceptance and respect. In native or indigenous communities, restorative justice approaches require the participation of community volunteers and besides seeking to reduce the incarceration of community members, they deal broadly with social problems that are often neglected by traditional criminal justice system, such as the participation of victims and community and the re-integration of the offender into his or her community. Such approaches have a great chance of working in underserved urban areas, which is where most of United States inmates hail from, and the very same communities to which they will return.

CeaseFire, The Campaign to Stop Shooting

According to its mission statement

The Chicago Project for Violence Prevention is an umbrella organization with two primary goals: To work with community and government
partners to reduce violence in all forms and to help design interventions to be included in a community or city anti-violence program.

Created in 1995, this organization’s main goal is to prevent violence in poor neighborhoods. In order to accomplish its work, it partners with key community leaders and organizations, as well as with city, state and federal government agencies in Illinois and throughout the nation. Moreover, besides going into high schools to work with students, it maintains ties to higher education as well, as The Chicago Project is housed at the School of Public Health at the University of Illinois at Chicago. As explained in its website,

The Chicago Project has designed and tested a new intervention — CeaseFire — that approaches violence in a fundamentally different way than other violence reduction efforts. CeaseFire works with community-based organizations and focuses on street-level outreach, conflict mediation, and the changing of community norms to reduce violence, particularly shootings.

CeaseFire’s violence prevention strategies have been adapted, to great success, by several other cities. What makes CeaseFire of special interest to this dissertation, is that it relies on well-trained outreach workers and “violence interruptors,” all of whom are former gang members and more often than not, felons as well. Because the mediators are local, and have the “street cred” of a gang and/or prison background, they are trusted by neighbors and gang members alike. This enables them entry into areas and situations often out of the scope of authorities and social workers. It also effectively reintegrates former inmates into their communities, allowing them to grow and contribute to
strengthening the neighborhoods. It has been successful enough that it was recently

The organization is the brain child of an epidemiologist, Dr. Gary Slutkin, who
applied the expertise gained in containing epidemics in Asia and Africa to containing
violence in areas of urban strife. In the public health field, according to Slutkin, there
have been two schools of thought on diffusing violence. One focuses on environmental
factors, such as trying to control gun sales. Another tries to change behavior by
disseminating public information, such as safe-sex campaigns. Slutkin argues that there
must be a third way. In order to be effective, there must be a shift from thinking of
violence as what happens between “good” and “bad” people, to a public health one,
“healthy” versus “unhealthy” behavior. In order to achieve this, the cooperation and
involvement of key community members is essential. In his work to contain the spread
of cholera epidemics in Africa and Asia, for example, Slutkin engaged the help of
community midwives in order to spot the first symptoms of infection and provide first aid
treatment. This, in turn, helped change a culture of fear in which community members
were afraid of reporting illness to medical providers. By stopping the spread of violence
and, in the long run, changing behavior and what is considered socially acceptable in a
given community, Slutkin hopes to make long term inroads by changing a culture of
violence (Kotlowitz, 2008, p. 55). Slutkin explains that punishment is not what drives
behavior: “Copying and modeling and the social expectations of your peers is what drives
behavior” (cited in Kotlowitz, p. 57). He later added

it was a real turning point for me, when I was working on the AIDS
epidemic and saw research findings that showed that the principal
determinant of whether someone uses a condom or not, is whether they think their friends are using them. (p. 58)

Thus, it is important to consider the different kinds of harm that widespread imprisonment of community members wreak in that community. For young people with few options, serving time becomes expected and even “natural,” and makes crime seem less socially reprehensible. However, witnessing peers or community members they look up to engage in peacemaking behavior might serve as a catalyst for a worldview shift. The mediators or “interruptors” have a reputation in the street culture of the areas they live and work in, and they operate walking a fine line, upholding both the law and the logic of the streets. Although they work to mediate and solve disputes, they are not meant to substitute for the police. Daniel Webster, professor of Public Health at John Hopkins, who has studied the work of CeaseFire comments: “the hope is that they start to change a culture so that you can retain your status … and walk away from events where all expectations were that you were supposed to respond with lethal force” (cited in Kotlowicz, p. 58). The program has made inroads in changing the mindset of authorities as well. Most of the police officers interviewed in Baltimore and Chicago were grateful for the interruptors and willing to work with them. However, organizations such as CeaseFire have serious limitations. They may be able to keep some individuals out of a violent situation, but they cannot keep all of them them out. In other words, an individual may walk away from a shooting, but if there is only substandard schooling, decrepit housing and lack of employment to be found, there is very little incentive for individuals not to drift back into similar situations again. As Slutkin (2008) explains, “people who have little expectation for the future live recklessly. On the other side of the coin, a
community in which arguments are settled by gunshots is unlikely to experience
economic growth and opportunity” (cited in Kotlowicz, p. 102). Moreover, Slutkin
argues that historically, in cases of epidemics, it is the victims who are blamed. Speaking
of responses to past epidemics, Slutkin explains:

Everybody blamed the people. Dirty. Bad habits. Something about their
race. Not only is everybody afraid to go there, but the people there
themselves are afraid all the time because people are dying a lot and
nobody really knows what to do about it. And people come up with all
kinds of other ideas that are not … grounded—like putting people away,
closing the place down, pushing the people out of town. Sound familiar?
(cited in Kotlowicz, p. 102)

Critiques to Restorative Justice Approaches

Kurki (2000) argues that “there are legitimate concerns about power balances in
face-to-face meetings—unequal treatment of indigenous people and minorities and the
position of young offenders who are vulnerable and less skilled to defend and represent
themselves” and states that in some experiments, police officers dominated 50 to 70
percent of the words spoken (p. 268) However, as Braithwaite (1999) posits, there is no
evidence either that the traditional criminal justice systems does a better job, and he
argues that many are convinced that it actually does a worse one.

The most relentless critiques against restorative justice come from researchers and
legislators who support “just deserts” and stricter sentencing approaches. Critics view
restorative justice approaches as unequal and individualizing—thus unfair--sentencing.
Tonry (1999) posits, however, that even states that have strict sentencing guidelines have
abandoned the system of equal sentences based on proportionality requirements, in favor of mandatory minimum, three strikes, and sexual predator laws. That is, the United States’ sentencing system is fragmented already.

Restorative justice approaches would mean unequal and inconsistent sentences if the benchmark were certain and equal sentences. In the United States justice system, however, there is no such baseline. The federal government, the states and the District of Columbia, have all different sentencing systems. Moreover, as Tonry argues, the heart of the United States’ sentencing system is the plea bargain, as well as the wide discretion allowed to prosecutors to shape their charges. There is no reason why, however, the state could not fund and provide for systematic training on restorative justice principles to criminal justice agencies as well as community leaders and volunteers. This would allow for proportionality and equality in restorative justice practices and sentencing. It would also help revitalize the probationary system and strengthen ties between communities and state agencies. This issue will be further explored in the next chapter.

Critics argue, as well, that giving significant sanction powers to community volunteers might result in arbitrary, unequal and/or randomly harsh sanctions (Kurki, 2000). Restorative justice, however, is not based on a punitive ideology. Participants are required to understand and agree with the principles of restorative justice. Moreover, an argument can be made for restorative justice allowing a space for equality and proportionality of sanctioning, as long as these are understood as comparable sanctions for comparable offenses. Moreover, sanctions are meant to be related, in a significant way, to the type of offense and the effect of the same. The traditional criminal justice system as it is, with its rules and regulations, does not guarantee and too often does not
provide equal, proportional nor fair sentencing. On the other hand, flexibility of rules and more contingent guidelines should not necessarily result in unequal or unfair sentences. After all, the traditional justice system as it exists now has been handing out unequal sentencing to African Americans for decades, and the only effect has been to entrench a caste system that decimates African American communities and ensure that the majority remain in hopeless poverty.

There is no reason why the traditional criminal justice system could not collaborate with community-based restorative justice programs. Crime is, after all, an offense against victim, community and state. Offenders could first be processed through the traditional system and then move to the community-based restorative program to participate in a reparative agreement. This would offer the double benefit of having the offender under greater supervision, which has been proven to reduce recidivism. Finally, restorative justice approaches offer the possibility of greatly reducing spiraling prison-related costs to society.

Efforts to disseminate restorative justice values face a combination of challenges: Criminal justice culture and the hierarchical nature of government bureaucracies, little understanding of the role and infrastructures of neighborhoods and communities, navigation of bureaucratic boundaries between city government, and county and state departments, lack of familiarity among communities with the criminal justice system and with civic organization and participation. All of these present obstacles to true partnership between government and communities, but are not insurmountable. After all, to paraphrase Braithwaite (1999), restorative justice has been the dominant model of criminal justice for most of the history of all the world’s peoples.
Conclusions

Summary

Our justice system offers two stories about the penitential system, both of which are impossible to sustain: First, that our prisons rehabilitate human beings and second, that it imprisons human beings after the provision of a just and impartial justice. Foucault shed light, almost 40 years ago, on the technological discourse behind the prison system, which consists on constant mechanisms of so-called reform in order to control it and improve it. In reality, as Alexander (2010) and Pettit (2012) have convincingly pointed out, the prison system adapts and re-adapts to remain a system of control, one which has been instrumental in keeping a majority of African Americans as an underclass racial caste.

This dissertation has built upon the work of new development of the private prison industry which will be “more cost-efficient” has expanded explosively, reaping gargantuan profits while failing to prove the benefits they offer have taken place. Despite opposition from the public, unions, activists and even state agencies and city government council members, the private prison industry continues to grow because of powerful lobbying, connections with the amenable politicians, and because it is a multi-billion industry. Worse still, while state prisons are accountable to the public, however, private prisons are seldom accountable to the public, and are, in fact, accountable mainly to their shareholders and investors. This system has been instrumental in re-articulating a caste system of African Americans in a state of quasi-slavery, who are seen as little more than commodities to move around at will and make profit from.
Correlating with theories of power proposed by Adams (1966), Foucault (1977) and Marx (1976) as framed in the theoretical methodology, the penal system discourse includes not only serious theoretical problems, but also enormous contradictions in practice which intersect, in turn, with each other. The theory of incorporated comparisons has been used to identify how these contradictions include a correctional system which evolves from punishment and repression (even as it argues otherwise) born within elitist ideologies: Who creates and hands down new the laws? How are these enacted? Under what circumstances do state governments award contracts to private prison corporations? Under conditions of great injustice, the discourse will protect the legitimacy of State violence and coercion: Who is deserving of punishment by the State? How does the judicial process proceed against people of color? When looking at the disproportionate numbers of African Americans imprisoned and inequality in sentencing, it is clear that the system itself works towards the perpetuation of historic inequalities.

The increasing community-oriented conditions of the Progressive Era fueled the rehabilitative and humanitarian movement of prison reform that took place from the first quarter of the twentieth century to the early 1970s. With the growing disappearance of public investment in the prison system and inmate rehabilitation, incarceration has become a vastly profitable business venture for corporations and a profitable platform for legislators. Since the late 1970s, when neoconservative economic imperatives and “tough on crime” measures were put into practice, the national rate of prison population has increased sixfold. The greatest increase occurred after the 1980s, most especially during the last ten years. This has coincided with the economic divesting of social programs during the Clinton and second Bush administrations, which proved devastating for the
poor. This paralleled a growing conservative mindset among the public, fueled by media and government reports on the need for stringent laws and a war on drugs. Since then, the response to crime—even minor or nonviolent crime, such as most cases of theft, property and drug crimes—has been aggressive policing and increasingly harsh mandatory sentences. As the social infrastructure of urban communities weakened, crime grew and has been fueled further by the disruption caused by larger numbers of individuals taken to prison and later returned to their communities in a seemingly endless cycle.

One of the results of more aggressive prosecution and longer sentences is that the number of drug offenders in federal prisons increased more than 12 percent annually, on average, from 1986 to 1999 (Scalia, 2001). During this period, however, there was a significant drop in violent crime. All traditional indicators, from a weakening economy to the growing numbers of newly released felons on the streets, had led many experts to predict the crime rate would go up. According to the National Crime Victimization Survey (NCVS) of the U.S. Bureau of Justice Statistics (2006), “since 1994, violent crime rates have declined, reaching the lowest level ever recorded in 2005” (Summary Findings).

Meanwhile, and as a consequence to punitive measures such as the war on drugs, which targets the nation’s poorest minorities, the prison industry has expanded into a $40-billion-a-year industry. The rise in incarceration rates—as well as the pervasiveness of drug addiction in blighted areas—results from the prevalence of substandard schools, and the lack of economic opportunities, employment, access to education, health care, and drug treatment programs. Higher rates of unemployment and less access to social programs have impoverished large numbers of the working class, the majority of which
are black and Hispanic. This deterioration is closely aligned with how funding is allocated in the criminal justice system. Funding has increasingly shifted away from rehabilitation and public defense toward more aggressive prosecution, policing and the expansion of the prison system. At the same time, legislators and lawmaking agencies have implemented harsher sentencing policies, removing, in consequence, the flexibility and autonomous power from the judicial system and gutting programs such as in-prison education and the probations system.

In keeping with neoconservative tenets that call for less public investment and the take-over of government services by private interests, the prison industry has become an expansive business and becoming increasingly privatized. Most prisons contract out telephone systems, health services, food preparation, uniforms, transportation, and maintenance to private corporations. Moreover, corporations benefit from using prison labor paying rates greatly below minimum wage, which are payable to the prison system that rents them out. It goes without saying that inmates cannot save the income they produce, nor provide for their families. Seldom do the “wages” earned go to reparations for their victims. Currently, a growing number of inmates considered as surplus are warehoused in supermax prisons where they are virtually left to rot while corporations generate profits out of holding them.

Incarceration has become a profitable business endeavor for corporations some legislators; this has been followed by drastic cuts in inmate rehabilitation. Moreover, showing leniency even to nonviolent violations is constantly discouraged at many different levels. Thus, the subjugation and exploitation of human beings and whole communities to profit-making industries finds its most inhumane expression in our
prisons. It is not surprising, then, that critical diseases such as HIV/AIDS, mental illness, as well physical assault (sexual and other) are rampant and out of control in the large penitentiaries. The majority of inmates are held, to this day, in overcrowded facilities. The issue of overcrowded facilities serves, as well, to fuel rhetoric that can be used to promote the allocation of public funds for more facilities.

The ever-present racial and economic inequalities pervading United States society are blatantly revealed in the demographics of incarceration. African-American men continue to represent a greatly disproportionate rate of incarceration compared to their numbers in society at large. This translates into an even astonishing incarceration rate of one third of African American men in the United States imprisoned at some point. The incarceration rates of minorities reflect, then, the purpose of the prison system as a measure of control for the social ills of the poor, a state of affairs which they are perceived as being responsible for. Moreover, it serves as a means of containment for the dissatisfaction experienced by the poor, who are then perceived as a “dangerous class.”

Funds allocated for work training and community development, as well as for drug treatment programs, is minuscule compared to the funds allocated to waging a war on drugs. Moreover, as argued before, there is more money allocated to building prisons than enhancing the educational level and literacy skills of prison inmates, and of the urban poor at large. Instead, legislators, politicians and corporations expend great effort to bring the maximum security industry—and supermax prisons—to poor rural regions as well as allocating funds to police enforcement, drug raids, and prosecution for long-term sentences. In consequence, as most prison scholars argue, selecting a punitive rather than a rehabilitative approach has led to very high levels of recidivism, especially among
individuals arrested for nonviolent crimes, such as drug possession, petty theft, and non-payment of fines. “Three strikes” and excessively long sentences nationwide have effectively shunted the poorest of inmates, sentenced for minor crimes, into overcrowded, dangerous, and oppressive prisons. Thus, inmates suffer constant violations of their rights under the statutes of the Universal Declaration of Human Rights. At the very least, they often suffer violations of the right to security of person and the right to be considered equal before the law and receive equal protection. Moreover, once released from prison, many felons are confronted with a permanent disenfranchisement in terms of voting rights and employment opportunities. To make matters worse, felons are often prohibited from moving in with family if their family receives government aid, and are proscribed from ever receiving housing aid, education grants and other benefits. Thus, upon returning to their community, they find obstacles finding housing and work. Moreover, they have not received any serious rehabilitative treatment or training, and have not been allowed to work gainfully, so that they are released with little in the way of useful skills or savings. Added to the mix there are often issues of ill health, addiction, and low literacy or work skills. It is small wonder that the rates of recidivism are so high. In the words of James Galbraith (2008)

> Without public planning, who is in charge? Lobbyists who represent the private planning of the great corporations. The public interest ceases to exist, and the public sector becomes nothing more than a trough at which private interests come to feed. (p. 43)

The current penal system, with its aggressive privatizing and growing lack of public investment, is not working. The deleterious effects of the prison cycle extend to
entire communities, and have become a devastating form of collective punishment for the United States’ poor. Furthermore, the Bureau of Justice Statistics informs that the increase in rate of incarceration for women in the decade ending 2005 was almost 5 percent, which is much higher than the 3 percent rate increase of male imprisonment. Women are the fastest growing population in prison today, surpassing the rate of the male prison population for every state. Indeed, the female prison population has surged by 757 percent since 1977. Like male inmates, poor minority women are disproportionately represented in the prison system, and recipients of long sentences. Moreover, most incarcerated women have been convicted as a result of drug offense of for aiding a male drug offender, usually a boyfriend or husband. They tend to be, as well, low-income mothers of one or more children. Upon becoming felons, women often lose their children to the state and their right to receive housing and welfare benefits. As their male counterparts, they often become trapped in the entry and release prison cycle, a situation that burdens their families and communities and provides more fodder for the expanding prison system.

Drug addiction is most certainly a critical problem for the urban poor in the United States. Rather than criminalizing the poor, addictions should be approached as a social health problem in need of support infrastructure and helpful programs. The current approach to poor minorities addicted to drugs--and individuals who are associated with them—reflects the interconnections between the vastly expensive war on drugs waged by the government and the growing profitability of the prison industry. In other words, the prison industry increasingly requires more prisoners in order for the industry to keep expanding and generating ever more profits.
A political philosophy more socially-invested would call for government planning and budgeting processes that would invest in the prison system and its inmates. These could be effectively combined with community involvement. The money spent today on prison building and other types of crime control and drug enforcement, at the national and international levels, could well finance new public policies that build, educate, treat, and, in short, rehabilitate inmates and revitalizes their communities. Fresh, new ways of looking at problems are also necessary. Traditional theories of crime, such as the ubiquitous “broken windows theory,” contribute to a body of theoretical work that places the blame for urban decline on marginalized youth, prostitutes, alcohol and drug addicts, beggars and vagrants, rather than perceive them as its victims. As stated above, one of the significant motive for crime in areas of urban neglect is drugs. However, it doesn’t follow that violent offenders have been incarcerated for crimes related to drugs. According to Mumola and Karberg (2004), “violent offenders in state prisons were less likely than drug (72%) and property (64%) offenders to have used drugs in the month prior to their offense” (p. 1). Craig and Zimbardo (1998) argue that

Department of corrections data show that about a fourth of those initially imprisoned for nonviolent crimes are sentenced for a second time for committing a violent offense. Whatever else it reflects, this pattern highlights the possibility that prison serves to transmit violent habits and values rather than to reduce them. (p. 721)

Thus sentencing human beings to long terms for relatively minor offenses, and confining them to overcrowded facilities and—or worse, inhuman isolation and idleness—subjects
them to a culture of violence, a risk of disease and mental illness, which can only work to the detriment of the individual, his or her family and in the long run, the community.

As examining the history of the prison system in the United States has shown, it has long served as a system of control and oppression that targets poor African Americans and other minorities of color. As the quantitative and qualitative research has shown, the numbers of prisoners are increasing and the system is not working except to benefit a minority of corporations and government institutions. We have seen, however, what has a better chance of working: An alternative system of corrections, one which engages in a spirit of brotherhood and principles of restorative justice, engages ordinary citizens, validates the victim and allows the offender a chance at regeneration, and creates bonds between community members and community and government.

Integrating Community-building, Restorative Justice and Prison Education

From the point of view of authorities and ordinary citizens, education is a viable investment in prison populations because it has an established connection to increased employability possibilities for former convicts. Despite clear correlations, however, the role that education plays in successful reintegration has yet to be studied in depth. Many of the studies consulted for this work took place before changes in legislation prohibited four year and graduate degrees in prisons, and denied the use of Pell Grants by prisoners. Prison inmates are considered a fragile population, and prison authorities restrict access of researchers to prison populations for these and other reasons. Hence, the solutions proposed in this dissertation remain at the theoretical level, and its goal is to contribute a model to the growing body of research and ideas proposed for prison reform and viable reintegration of former convicts into their communities.
Although there is nothing essentially religious in the concept of restorative justice, some of its underpinnings have been developed by religious organizations. The Methodist and Quaker Church in the United States, and the Buddhist Peace Fellowship, among others, lead restorative ministries projects. They reach across faiths and advocate for victims and offenders, as well as providing a forum for organization. In the words of Harmon Wray, Executive Director for Restorative Justice Ministries for the Methodist Church (1999)

Sometimes, when I converse with colleagues in criminal-justice ministry, we begin to discover patterns and similarities. For example, if several folks in a local church are visiting individuals in the county jail and they discover that as many as four or five prisoners have trouble communicating with their lawyers, this problem becomes an issue. If we have the courage and the commitment, we may now begin to work together as issue advocates, taking collective action. In this particular case, it is time to go together to see the public defender or the president of the county bar association. (parr. 12)

The latter exemplifies how key community members, such as religious organizations woven in the local social fabric, are vital allies in the project of restorative justice and community building. The question arises, how is legal representation linked to the concept of restorative justice? An executive summary published by the Department of Justice of Canada provides a useful explanation,

According [to] Cappelletti and Garth, there were three "waves" of access to justice reforms: the "first wave" of the movement involved provisions
for legal aid; the "second wave" was a group of substantive and procedural reforms which enabled legal representation for more "diffuse" interests including environmental and consumer protection. By contrast, the "third wave" was labelled by Cappelletti and Garth the "access to justice" approach because of its aspirations to attack barriers more articulately and comprehensively (Mossman and Hughes, 2010, parr. 3).

As restorative justice approaches gain ground worldwide, there is a growing need to educate and train practitioners, activists, community members, inmates and officials about this alternative model for responding to crime and creating justice. Courses are increasingly taught at various institutions and organizations, from academic programs to churches and prisons. The peer counselor role is growing in both high schools and prison systems. Training peer counselors in mediating skills along the tenets of restorative justice would create inroads into spreading the model in an educational setting.

I argue that restorative justice approaches provide an ideal pedagogical base. In order to contextualize it for community members and/or former inmates, for example, one can tailor them along culturally- and situationally-relevant lines for participants. In other words, just as mediators for CeaseFire and student-centered prison teachers shape their lessons to situations their listeners can relate to, a restorative justice practitioner may work ethical tenets into contexts that are relevant to his or her public. This is why engaging allies in each community is important, as these are in daily contact with local populations and better able to negotiate information and make alliances. Thus, school teachers familiar with Hip Hop pedagogy might be better able to reach and relate to urban students and incorporate restorative justice approaches in the selected pedagogical
framework. Engaging and training teachers and school officials is, then, of great importance. Most educational programs fail due to lack of resources. Hence, it is imperative to engage not only the teachers, who are at the forefront of the classrooms, but also administrators, who allocate supplies and funds.

Opportunities to expand restorative justice approaches can be sought for in community and faith-based organizations. Community activists may be able to contextualize these approaches in a problem-based learning setting. For example, restorative justice may provide community-relevant frameworks in which locally-based participants, as stakeholders, are given responsibilities and empowered, in this manner becoming agents of learning and change. Strategies using collaboration and problem-solving skills can be implemented at all levels of public school, parent-teacher organizations, prison learning settings, training organizations or institutes, including agencies used for policing and control. There may be many barriers to incorporating restorative justice strategies in educational institutions, namely, lack of resources, time and broader institutional support. However, activists engaging key community members--such as faith-based organizations and local activists--might forge alliances that may be able to exert pressure on social institutions such as schools and the criminal justice system. One of the advantages of retributive justice tenets is that a wide variety of cultural and religious beliefs, such as “an eye for an eye,” resonate with its tenets, this allowing it to dwell well in many social scenarios. It is also possible that there is an element of psychological satisfaction for many in the idea of a purely retributive justice. Nevertheless, as stated before, a majority of victims who have engaged in a restorative justice process declare themselves satisfied with the results.
The idea of spreading restorative and community justice focus points wherever possible would make inroads in “mainstreaming” strategies that have in-built elements that resonate with communities and community-builders. It is hard and arduous work, and may not spread far and wide rapidly. Yet just as the growth and privatization of the prison system is expanding, community justice programs are disseminating like moss spores driven by the wind. It is up to us to see them germinate in our communities and make the necessary alliances at the local, state, national and international levels to make them root. To summarize, the goal is complete systematic change. The current criminal justice system is not working, and increasingly disenfranchises populations that have been historically oppressed and marginalized. The strategy is revolution, albeit a peaceful, persistent and systematic revolution, with education and community-building as its tactics for change.

The challenge is daunting. It calls for putting all the pieces together, designing a new system, identifying the most promising possibilities and taking steps to achieve these. Such strategies require some sort of central planning, government investment and organizing community participation. Instead of creating new profit-making ventures for private interests, the United States, with the investment of the government and participation of its citizens, could invent a new social model in the model of the New Deal. Perhaps more than growth and riches, we need to return to earlier community-oriented models. We need to visualize public investment and public participation that creates fertile ground for businesses to thrive in tune with their communities. Today, we have more prison inmates than farmers and small business people. We must demand and
strive for sustainability, durability and an expansion of morally and physically healthy communities.

Where the research questions answered?

This dissertation has endeavored to pinpoint the crucial historical and economic intersections which coincided with the advance and retrenchment of progressive movements in the history of the prison system. It has tried to identify those instances that have seemed crucial to the tightening of punishing policy. The background history has shed light on the ways in which a culture of enslaving African Americans, under different political guises, prevails to this day. It also illuminates how people in Northern states found the sight of inmates in force labor situations intolerable and produced a system in which inmates were trained in sustainable artisan work.

Upon the dismantling of the Southern system of slavery, business and state forces colluded to enslave African Americans through a cynically unfair prison system, labor lease contracts and, eventually, the chain gang. Brutal as the chain gang was, it soon integrated black and white prisoners as a result of the Progressive Movement and it did not last long, possibly because watching white inmates in brutal labor was intolerable to a population accustomed to another established order.

The progressive movement and progressive policies impelled the economy towards a wider distribution of wealthy. There seems to be a clear correlation between the decades in which a more humane and enlightened treatment of offenders developed, and years of investment in the public sector greatly benefitted the prison system. During these years, there was little allusion to crime in the context of race. Indeed, crime was seen as a social pathology which needed cure and rehabilitation.
Progress continued with the Civil Rights Act of 1964. Sadly, these were the years in which social forces colluded again to re-direct ideology and the economy towards unregulated market, corporate-friendly policies, and a greater move towards conservative imperatives. The reasons are complex, and include a distortion of progressive policies to favor tax breaks and other measures, which caused an excessive government deficit; an effort among dominant groups striving to restore control over African Americans; and increasingly racist and jingoistic discourse by mainstream media linking inner city African Americans with frightening levels of “violent crime.”

By the 1980s, Neo-conservative economic measures were in full flow. These colluded with increasingly harsh “tough on crime” measures which targeted young black males for prison. “Race-neutral” fixed laws which also targeted inner city residents were enacted, alongside other Draconian measures, which quickly and disproportionately raised the levels of the incarcerated to numbers of minorities in numbers unrelated to their actual representation in the population. Politicians on both sides of the political spectrum, eager to curry votes, jumped on the bandwagon. Corporations soon discovered an opportunity to exploit this state of affairs. Governments friendly to corporations—from Reagan to Clinton and the latest Bush administration—were only to happy to discharge their wards into the hands of the private sector.

Once prisons become a business, there is only one way to keep them at maximum profit: Ensure that inmates will keep returning. It cannot be a coincidence that since the Reagan administration funds for prison education were eviscerated, unless it were to ensure a higher rate of recidivism. While inmates are set to work in repetitive factory jobs at way below minimum wages, they receive no sustainable work training. Factory
jobs are disappearing outside prison walls. What chances do inner city residents have to landing a factory job nowadays? There is also very little in the way of mental health care or drug rehabilitation. Super maximum units, private and state-owned (or state-owned and privately managed), are intended for the truly violent or incorrigible, yet are full of inmates who are not sentenced for violent crimes and/or who are mentally ill. Many become mentally ill in the supermax due to the inhumane system. In short, the supermax system ensures that inmates will return to their communities in such a dysfunctional state that they will not be able to adapt to the outside world. Hence, the prisons will keep filling. Because supermax units do not allow visitors, it is impossible to understand the extent of punishment, pain and suffering occurring inside. We can only hear the inmates’ stories and see the results.

Thus, I believe this dissertation has effectively answered the research question in a positive manner, to the extent that it possibly could: The years of progressive policies do coincide with more benevolent and positive prison management. The ways in which this was done, have been adequately described. Neo-conservative interests chipped away and eroded the progress of humane policies and reversed the prison management trend to levels beyond comparison to any other country—including China—in contemporary society. We remain the country with the most prisoners and prisons, by such a wide gap, that it is unexplainable by numbers of inhabitants or levels of crime. Unless something is done, it is not going to stop.

Limitations and Further Recommendations

Most literature available on prison education has used quantitative approaches based on recidivism rates. These fail to describe the individual experiences of inmates
and former inmates as they return to society post release. Understanding the role played by individual experience can provide insight into how some groups negotiate their environments in and out of prison, and how education and restorative justice approaches might work better. The same can be said about the institutional mindframe. There is very little published on the perceptions and mental attitudes of police, prison and court authorities. Being able to conduct more ethnographic studies among these populations might help find better ways of communicating and outreaching. In short, much more dialogue and exchange is required pertaining numerous issues touched upon in this dissertation.

Another limitation is curriculum development for restorative justice. Beyond methods and strategies that are ingrained and part of indigenous culture, there is very little in the way of standardized pedagogical methods. There is much out there, of course, in the way of ideas and practices, but not one general methodology. In order to make the practices systemwide, there is a need for a more across-the-board curriculum, one that would afford flexibility to adapt to local circumstances yet common points of understanding.

Finally, in order to implement restorative justice tenets in schools, a serious gleaning of teachers and school officials must take place. In my personal experience teaching former inmates, virtually all of them had stories of public school teacher indifference and of actively racist behaviors or comments from teachers and school officials as well. Schools in poor neighborhoods bear the brunt of teachers that have been found lacking or considered unemployable in any other schools. I have been witness to prejudiced behavior and comments from public school teachers that serve in less affluent
neighborhoods. However, there are also a great many community-rooted and caring educators. The “trick,” so to speak, is to comb out those that would prove creditable to students as well as other community members.

Perhaps the next step should be to identify research and practice situations that minimize negative outcomes for participants or—more importantly--maximize opportunities for participants. I am hoping that this dissertation is the first step in being able to actively work on some of the limitations stated above.
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