

## Chapter I Introduction

Few citizens realize that the end of the last century brought with it a burgeoning new business focused on the increasing population of our nation's prison institutions. A "prison market" began to take shape, opening opportunities to turn profits on building new prison facilities, managing their operations, and selling inmate labor. Once the enterprise gained momentum, it was clear that not since the convict leasing program<sup>1</sup> in the era of post-slavery had there been such an explicit system of mining wealth from those legally sentenced to prison.

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<sup>1</sup> According to Angela Davis "in the immediate aftermath of slavery, the southern states hastened to develop a criminal justice system that could legally restrict the possibilities of freedom for newly released slaves. Black people became the prime targets of a developing convict lease system, referred to by many names as a reincarnation of slavery. Angela Davis, Are Prisons Obsolete? (New York: Seven Stories Press, 2003) 29. Landing in prison was as easy as being caught running away from a job, being drunk, wanton in conduct or speech, neglecting family, handling money carelessly, or being just plain idle, according to the Mississippi Black Codes. Milton Fierce, Slavery Revisited: Blacks and the Southern Convict Lease System, 1865-1933 (New York: African Studies Research Center, Brooklyn College, City University of New York, 1994) 85-86.

More than 9 million people are confined in jails and prisons across the globe, half of those in the United States, Russia and China.<sup>2</sup> Of these three nations, however, the U.S. holds the single largest number of men and women behind bars confining approximately 700 of every 100,000 persons within its borders or 1 in every 31 adult residents.<sup>3</sup> A deep commitment exists to imprisonment even though it has endured a bitter and violent critique for at least the last 180 years.<sup>4</sup> As early as 1815 incarceration was recognized as a threat to a healthy, functioning society and some 190 years later, little has changed; experts working in corrections still agree that prison terms do not reduce crime or provide much of an advantage to society beyond holding convicted felons.

The state of California offers an interesting example of our nation's fixation on prison sentences as an answer to crime. The state sentences more than half of those incarcerated every year back to prison within 24 months of their release and its prison population is at a *record high* of over 170,000. Rather than having an extended dialogue about the effectiveness (or ineffectiveness) of imprisonment, or altering the penal code to design some more capable

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<sup>2</sup> Roy Walmsley, "World Prison Population List: Sixth Edition," International Centre for Prison Studies. 2005. Kings College London. 12 July 2006 <<http://www.csdp.org/research/world-prison-population-list-2005.pdf>>

<sup>3</sup> U.S. Department of Justice, "Corrections Statistics." Bureau of Justice. 2004. U.S. Department of Justice-Office of Justice Programs. 12 July 2006 <<http://www.ojp.usdoj.gov/bjs/correct.htm>>

<sup>4</sup> Michel Foucault, Discipline and Punish: The Birth of the Prison. (New York: Vintage, 1977) 293.

punishment program, the state has in fact expanded the use of incarceration. One wonders what motivates California's continued investment in a failing system.

Perhaps Michel Foucault's work provides an answer. He suggests that what some deem the "failure" of the prison institution—for example, its inability to reduce recidivism—is not actually failure at all, but a systematic mechanism quite integral to the system of penal justice to which it belongs. Following Emile Durkheim, he suggests that we ask not why the prison system continually breaks down and is unable to reduce crime, but rather, what functions and utility is served by that breakdown.<sup>5</sup> By this perspective, it is precisely through an examination of the ways in which the prison produces phenomena such as the maintenance of delinquency and recidivism that we come to see its true function in society.<sup>6</sup>

Foucault's claim becomes increasingly sensible if the discourses of profit and loss are applied to the proper modes of incarceration. When the processes, functions, and goals of a business become the model of the prison's success, the failure of the prison, insofar as it is able to reduce crime and recidivism, is a structural requirement. A corporate prison is faced with the objective of

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<sup>5</sup> Durkheim formulates the modern perspective of functionalism in The Rules of Sociological Method (1895).

<sup>6</sup> Foucault 272.

expanding its own market share against other companies and the state, fueling the expansion of prison inmates. In other words, a successful prison business must fail to reduce crime and delinquency.

Which is why, once again, its adoption in California and elsewhere has been curious from the standpoint of efforts to reduce prison populations. It seems that unless we substitute the typical question emerging in discussions of the ills of incarceration (such as “why do prison populations continue to grow?”) with an inquiry into the logic of maintaining large prison populations, we are unable to recognize the systematic requirements demanded by the state’s penal justice program, as well as its unique status within capitalist relations.

This project marks an entry point for such an examination. It is an analysis of the production of privatized prisons in the state of California. California is particularly significant to study because imprisonment patterns there since 1980 capture nationwide trends—trends unambiguously linked to private contracting. California is also unique in the sheer number of prisoners it has accumulated over the last twenty-five years. In fact, its prison population increased a staggering six fold between the years 1980 and 2000—a singular event in American correctional history.<sup>7</sup> Studying approaches Californians have taken to solve this issue, specifically the discourses used to debate private control, is one way to understand similar movements and struggles in other American states. It

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<sup>7</sup> Franklin E. Zimring & Gordon Hawkins. "The Growth of Imprisonment in California," British Journal Of Criminology 34 (1994): 83.

also provides insight into the capitalist relations that enable privatization itself to appear as a panacea. I am interested in the production of private prisons, however, not as a phenomenon in itself, but rather as a particular technique of intervention by the state to solve certain specific crises (or side-step the tendency toward certain crises) occurring within its economic, political, and ideological social relations. I argue that within California, specific material shifts (altered economic relations and/or public policies for example) and ideological images of crime and criminology emboldened private contracting as a strategy used by the state to intervene in relations of production, politics and law, and public discourse that served to integrate these realms.

Before I further explain my argument and establish its theoretical framework, I want to acknowledge the claim that the private contracting of prisons is dead (in relation to its zenith in the late 1990s), and therefore, not worth studying. It is true that the privatization movement has slowed in the state of California in recent years. But it is not dead in other locations within the U.S. and across the globe. The increased business being offered to the multi-national corporation, Corrections Corporation of America (CCA) by the Federal Bureau of Prisons, for example, indicates that although prison privatization has suffered blows in certain counties and states, it continues to be a viable enterprise in other jurisdictions—particularly as the immigration debates continue to put pressure on the federal government to crack down on persons living in the U.S. illegally.

CCA, whose annual revenues in 2004 were 1.15 billion, has sixteen facilities in Texas, nine in Florida and maintains a 95 percent renewal rate with clients.<sup>8</sup> Moreover, the privatization of other traditionally publicly owned or managed organizations has gained momentum.<sup>9</sup> In the present phase of capitalism, the state's intervention in industrial sectors that are chronically deficient continues to expand, if not by way of direct subsidy, than through public policy. And privatizing what has historically been state controlled functions has become quite commonplace, often as a means to resolve crises emerging from budget deficits. Ernest Mandel suggests that the growth in state intervention and its concomitant turn toward privatization has led to a succession of entirely new contradictions for capital—contradictions wherein the state faces the prospect of the impossible becoming necessary and the necessary becoming simply impossible.<sup>10</sup>

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<sup>8</sup> Corrections Corporation of America. "About CCA"; "Facility List." 2006. Corrections Corporation Homepage. 14 July 2006. <<http://correctionscorp.com>>

<sup>9</sup> For example, according to Barry Yeoman, private troops from companies such as DynCorp and Blackwater USA not only maintain weapon systems, participate in peacekeeping operations, but also engage in combatant roles, fighting in counter-insurgency operations in Columbia, the Balkans, as well as in the Gulf War. A lucrative business, private military companies are set to double their profits by the end of the decade to \$200 billion a year. "Soldiers of Good Fortune," Mother Jones (May/June 2003) 93. Perhaps slight compared to the previous example, even George Mason University has outsourced the service of providing enrollment status to loan officials and employers. I must now pay for this service or navigate some incomprehensible computer program in order to attain a loan deferment while I am in school part-time.

<sup>10</sup> Ernest Mandel From Class Society to Communism: An Introduction to Marxism, trans. Louisa Sadler (London: Billing & Sons Ltd., 1977) 61. This

California offers one such example of this process while providing specific illustrations of the capitalist system as it devises new ways to perpetuate itself in the face of significant social and political changes.

### **History of California Private Contracting**

Like many jurisdictions across the country, California has contracted with private companies to manage a relatively small number of prison beds. This has been primarily because the numbers of inmates and the costs to house them grew faster than the public expenditures supporting corrections. Allowing private companies to build and manage prisons was touted as sensible since it relieved the state of the burden to finance new prison building or house additional inmates. While California never privately contracted a high-risk, large-scale prison institution as a whole, it did privatize a handful of centers serving low-risk inmates in community settings. This practice got its start in 1988 and the state accrued nine facilities by the late 1990s. Maintaining a low profile, the sites ran with relatively little attention until a 1997 bill was introduced in the state legislature to allow additional contracts to private firms who would house women inmates convicted of non-violent felonies.

The bill's passage caught the attention of the largest private contractor of prison beds around the globe, Corrections Corporation of America (CCA). CCA

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description of contradiction I borrow from Claus Offe, Contradictions of the Welfare State. (Cambridge: MIT Press) 1984.

already had quite a reputation at this time, owning over half of all the private prison beds worldwide. In fact, by 1999, it acquired 79 detention facilities boasting guardianship of inmates in the United States, the United Kingdom, Australia, and Puerto Rico. This domination of the market sent its stock through the roof in the last half of the 1990s. By 1998, its shares peaked at \$149 making the company's performance among the top five on the New York Stock Exchange that year.<sup>11</sup> Taking note of the new legislation in California, the firm quickly appointed a West Coast Regional President to cultivate opportunities within that market, and in mid-1998, CCA broke ground on the state's first major commercial penal institution in California City. Chairman and CEO of CCA, Doctor R. Crantz, declared that California was one of the corporation's most promising markets, and that CCA was positioned for a long and successful partnership with the leaders of the state.<sup>12</sup> At the time, it appeared that the practice of privately contracting prisons was poised to continue ascendance.

But in fact, this expansion never occurred. Instead, the last decade has marked a loss of considerable momentum for prison privatization, particularly within California. And, there have been contradictions between the rationale for the slow-down and the factual data.

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<sup>11</sup> "Investor: Historical Price Look-up," Corrections Corporation of America Homepage 2006. 29 April 2006<<http://www.shareholder.com/cxw/lookup.cfm>>.

<sup>12</sup> Marc Lifsher, "Busting Into the Prison Business—Corrections Corp. of America Casts Longing Eyes on California," The Wall Street Journal 27 May 1998: 1.



The CCA California City prison that was to be the beginning of a large-scale acquisition of private beds in the late 1990s never saw a single California inmate. Unable to secure a contract with the state, CCA turned to other more cooperative clients such as Florida, Texas, Oklahoma as well as the federal government. According to the Sacramento Bee, the 500-bed prison was dismissed due to a “lower than expected inmate population.” Furthermore, the original nine private facilities in California marked the end of the state’s development, and in fact, two of the original nine were forced to close in December of 2003.<sup>13</sup> Once again, a shrinking inmate population was blamed for the closures. Governor Gray Davis claimed that the decreased numbers of inmates and the increased cost to house inmates privately, made a need for private contracting obsolete.<sup>14</sup> The California Department of Corrections and Rehabilitation, as well, asserted the inmate population was becoming ever

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<sup>13</sup> Recently, however, Governor Arnold Schwarzenegger proposed expanding the number of private beds once again since the California Department of Corrections and Rehabilitation (CDCR) projected that the prison population will continue to rise to an estimated 193,000 by 2011. As of July 2006, however, no contracts have been made available. See: Andy Furillo, “Prison Budget Shifts Strategy; Governor Looks to Rely on County Jails, Private Prisons to Ease Overcrowding,” Sacramento Bee 15 Jan. 2006: A-3; Warren, “Packed Prisons Brace for New Crush,” A-1.

<sup>14</sup> Staff, “Davis proposes to Cut Five Prisons in State Budget,” The Associated Press State & Local Wire 15 March 2002.

smaller, terminating a need for private beds.<sup>15</sup> In 2005 the state unexpectedly decided to reopen the private prisons it closed because of “a drastic increase in the prison population.” But in a sudden reversal, it canceled the bidding process and once again cited an “unexpected dip in the inmate population.”<sup>16</sup>

When we look at the records the year the California City prison was abandoned by the state (February 2000) the CDCR reported it held 162,381 inmates in its prisons and predicted that the present facilities would exceed their capacity of 177,197 in 2004.<sup>17</sup> Far from becoming less crowded, the prisons seemed to be becoming more and more full. Once again, according to the CDCR’s own records, the inmate population has only increased over the last decade, with the exception of a dip between 2001 and 2003. Between those years the population shrunk by 6,973 inmates or .044% of the average total number of state inmates over the last ten years.<sup>18</sup> Even during those “lean”

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<sup>15</sup> Dan Morain, “Private Prison Deal Voided,” Los Angeles Times 4 Feb. 2005: B-3.

<sup>16</sup> Morain, “Private Prison Deal Voided,” B-3.

<sup>17</sup> Jennifer Harry, “California Ditches Plans for Privatized Prisons,” Corrections Today 62 (2000): 20.

<sup>18</sup> California Department of Corrections & Rehabilitation “Spring 2006 Adult Population Projections” and “Total Population” The California Department of Corrections & Rehabilitation Homepage. 27 February 2006. State of California. 6 May 2006  
<<http://www.corr.ca.gov/ReportsResearch/OffenderInfoServices/PopulationReports.asp>>

years, however, the state institutions operated at an average of 188% of their original design capacity. We might more accurately conclude then, there was less of a “drop in the population” than a slight reprieve from the standard number of incoming prisoners.

In May of 2004 the department declared a “state of emergency” due to over-crowded conditions.<sup>19</sup> The following year the inmate count reached a record high of 165,000 and by January 2006 the state reported it needed seven new prisons (housing a population of at least five-thousand each) for the projected inmate increase over the next ten years.

Given the need for beds supported by the above data, why was the California City facility never opened with state prisoners? Why were the private prisons closed? Is a drop of .044% of the inmates in the state a reason to justify the closures? And, why have state officials changed their statements so often? To eliminate beds when the system is so plainly impacted reveals that the decisions being made, at least those regarding the allotment of space, are satisfying some other set of goals.

Another variable in this already unclear set of circumstances is the reported pressures exerted by the California Corrections and Peace Officers

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<sup>19</sup> Each facility is running at nearly twice their intended capacity. Staff, “Pound Foolish: Prison System in State of Emergency,” The San Diego Union Tribune 3 May 2004, B-6; Furillo “Prison Budget Shifts Strategy” A-3.

Association (CCPOA) on decisions regarding corrections.<sup>20</sup> The CCPOA represents the guards working in state prisons and is said to wield such a degree of power, that it has become an unchecked political force.<sup>21</sup> Private institutions do not hire these union-members, and therefore, the expansion of those facilities potentially diminishes their power and influence. Accordingly, the union's powerful leadership has put considerable pressure on the decision-making within the state's department of corrections and impelled high-ranking members of congress to steer clear of legislation that would enable private contracting of prisons on any large scale.<sup>22</sup>

I have recounted this brief history to establish the fact that adopting private prisons, or in some cases abandoning them, has not necessarily correlated with the Department of Correction's need for prison space. Far from addressing the need for inmate beds or a decrease in crime and delinquency, prisons have functioned as an intersection of political and economic struggle. The struggle, I will argue, is a consequence of a capitalist state attempting to reproduce its own

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<sup>20</sup> Jennifer Harry, "California Ditches Plans for Privatized Prisons," Corrections Today 62 (Feb. 2000): 1. Staff, "Prison Guards' Clout Difficult to Challenge," The San Francisco Chronicle 2 Feb. 2004: A-1.

<sup>21</sup> Dan Morain, "Potent Prison Guards Union Facing Challenges to Status Quo," Los Angeles Times 17 Jan. 2004: B-1.

<sup>22</sup> Staff, "Prison Guards' Clout Difficult to Challenge," The San Francisco Chronicle 2 Feb. 2004: A-1.

contradictory interests, and privatization, I will show, was positioned to stabilize these claims.

### **The State & the Notion of Contradiction**

The arguments I advance in the project use a Marxist theoretical framework of the state as opposed to commonly cited liberal democratic approaches. Liberal democratic conceptions maintain that the state is made up of individuals disposed of into free competition with one another for the realization of their own social and political goals. The state is established in the general interests of the whole society and mediates and/or resolves the antagonisms produced quite naturally by competing individuals or relatively small groups. Most important, the power of the state is not at the service of a ruling class, but diffused and fragmented—out of the hands of any one controlling party. The role of the state, then, is to stand above individual differences and maintain order between them. The assertion that the state is objective cannot be defended for long, however, when one considers Marx's observation that in the act of protecting private property and the ownership of the means of production, the state already chooses a side.

It is instructive to understand the Marxist view of the state in capitalist societies. Between Marx and Engels's two basic formulations, one perspective is better known and is perhaps more often abused in the course of certain arguments by Marxist and non-Marxist writers alike. The other perspective is

cited less often and requires an examination of a combination of Marx's texts to completely conceptualize. These two are clearer with an initial understanding of the ways the state is developed in primitive societies. To begin, Marx and Engels note that something similar to what we might conceive of as the contemporary state was first established in Asiatic society for the protection of common interests. Engels writes that functions of primitive communities which mark the beginning of state operations are found in situations such as "the settlement of disputes, the repression of illegitimate encroachments of individuals, the supervision of the water supply, particularly in hot countries, and finally under the most primitive conditions of life, religious functions." These duties, he continues, ". . . are, as a matter of course, equipped with certain sovereignty and are the beginnings of State power."<sup>23</sup> Until the private ownership of land and the development of class society, the functions of primitive communities remain virtually unchanged. However, once the division of labor ensues, Engels explains, "Society (becomes) divided into privileged and prejudiced, exploiting and exploited, ruling and ruled classes; and the State, into which primitive groups of kindred tribal communities had developed, first only for the preservation of common interests (e.g., irrigation in the orient) and for defense against invasion, (assume) from now on the aim of *maintaining the conditions of life and rulership*

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<sup>23</sup> Fredrich Engels, Anti-Dühring. (Chicago: Charles H. Kerr & Co., 1935) 182.

*of the ruling class against the ruled by force*" (italics mine).<sup>24</sup> As Engels makes clear, maintaining a mode of production becomes an equally important function of the state once primitive communism gives way to class society.

An extension of the same theme is suggested in the Manifesto of the Communist Party. Marx and Engels argue in a well-known passage "The executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie."<sup>25</sup> The modern state, no matter what its form, is essentially a capitalist machine, the state of the capitalists, the ideal personification of the total national capital. Engels claims it is "an organization of the particular class which (is) *pro-tempore* the exploiting class, an organization for the purpose of preventing any interference from without with the existing conditions of production, and therefore, especially, for the purpose of forcibly keeping the exploited classes in the conditions of oppression corresponding with the given mode of production (slavery, serfdom, wage labor).<sup>26</sup>

In these words Marx and Engels argue clearly that the state and its bureaucracy are instruments utilized for the *realization of the ruling class' interests*: namely, the protection of private property and the maintenance of

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<sup>24</sup> Engels, Anti-Dühring 150.

<sup>25</sup> The Communist Manifesto (New York: Bantam, 1992) 20. The text cited here is that of the 1888 edition edited by Friedrich Engels.

<sup>26</sup> Fredrich Engels, Socialism: Utopian and Scientific. trans. Edward Aveling (New York: International Publishers, 1935) 69.

political economic exploitation. This first perspective is, without reservation, the dominant and more classic viewpoint elaborated in the works of both thinkers. The state is both a direct servant to the bourgeoisie (even as it appears to be a mechanism of the general public interest) and the embodiment of a certain historical moment marked by definite shifts in social relationships. In short, interpreting the state from this perspective, one is forced to emphasize the subservient nature of its structure and organizations to the ruling classes and the degree to which its interest is a function of one particular set of private aims.<sup>27</sup>

Although this account of the state is a central component of Marxist analyses, it is also used, unfortunately, to support arguments that postulate certain strands of Marxism as nothing more than economic reductionism. Marxism, therefore, looks to have no practical use because it is too rigid and simplistic. This *vulgar Marxism* has been employed in the hands of certain scholars to explain a number of complex and nuanced processes operating within the system of monopoly capitalism. When the state is reduced to an instrument of the economic base, and this base—among other things—determines both its institutional form and the relative power of classes to one another, we are unable to account for the autonomy of state power in itself. If the logic of capital, as Roger King notes, is understood as the driving force behind

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<sup>27</sup> This formulation takes into account Marx's arguments in Critique of Hegel's Philosophy of Right.



the state's composition, then social and political variables that might allow a necessary measure of variation and historicity in that model, are left unexamined.<sup>28</sup>

In this way, reductionist readings do harm to a proper understanding of Marxism and certainly miss the very point of a theory grounded in historical materialism. Furthermore, the models ignore what Marx himself recognized so plainly, according to Bertrand Badie and Pierre Birnbaum. "Namely, that the phenomena (Marx's descriptions) seek to explain are extremely diverse in nature . . . To hold that this was Marx's view is to deny Marx the honor of having been one of the founders of the sociology of the state."<sup>29</sup>

Debates over the degree to which reductionist models of the state truthfully reflected Marx and Engels's thinking motivated some Marxist scholars to search for and write about another approach to the state that could be supported by Marx's work. This second perspective is drawn from the basis of Marx's Critique of Hegel's 'Philosophy of the Right' written in 1843 and The Eighteenth Brumaire of Louis Bonaparte completed in 1852. Here we find that the state as a whole, and its institutions in particular, may not only take a variety of forms, but also represent a source of power not necessarily connected to, or

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<sup>28</sup> See Roger King, The State in Modern Society: New Directions in Political Sociology (London: Macmillan, 1986) 64.

<sup>29</sup> Bertrand Badie, Pierre Birnbaum, The Sociology of the State. trans. Arthur Goldhammer (Chicago: The University of Chicago Press, 1983) 3.

under the immediate, unambiguous control of, a dominant class. The state is therefore understood to have a measure of relative autonomy in that it maintains a level of power and independence apart from the ruling class.<sup>30</sup>

Marx's essay, Critique of Hegel's 'Philosophy of Right,' claims that Hegel makes a mistake similar to theorists of the liberal democratic state in viewing state apparatuses as a neutral and objective means to ensuring the public's general interest. The legislative, the executive, and the crown, Hegel originally argued, *aim to serve a civil society in their commitment to the general welfare and common will of this body.* Marx claims the state does no such thing and promptly attacks Hegel for failing to see beyond its ideological representation.

Marx writes:

The bureaucracy asserts itself to be the final end of the state. . . The aims of the state are transformed into the aims of the bureaus, or the aims of the bureaus into the aims of the state. The bureaucracy is a circle from which no one can escape. Its hierarchy is a

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<sup>30</sup> The concept of relative autonomy, made theoretically fluent by Louis Althusser, was a crucial component of the competing perspective of the state suggested by Marxist scholars. Unsatisfied with models that imagined the state to be a mere reflex of the economic relations, these writers recognized the state's offices, institutions, and artifacts to have a measure of agency apart from the capitalist classes. Even if these offices and institutions were understood to eventually serve the aims of the capitalist system, and by extension, the capitalist class in the long run, Althusser argued that the state was not simply a tool or some direct manifestation of the material relations of production. Louis Althusser, "Ideology and Ideological State Apparatuses: Notes Toward an Investigation," in L. Althusser Lenin and Philosophy and Other Essays Trans. B. Brewster (New York: Monthly Review, 1971) 121- 173.

hierarchy of knowledge. The highest point entrusts the understanding of the particulars to the lower echelons, whereas these, on the other hand, credit the highest with an understanding in regard to the universal [the general interest]; and thus they deceive one another.<sup>31</sup>

This critique is focused precisely on the way in which structures of the state and the "bureaucratic officialdom" in place to serve it articulate a definite form of independence from both society and members of the ruling class. Marx's objection to Hegel's argument is that it fails to acknowledge that state offices, institutions, and representatives operate in ways which become autonomous. But in the process, he also suggests that there exists a power produced by these state institutions that are out of the direct control of the ruling class.

The Eighteenth Brumaire of Louis Bonaparte extends the line of thought in Critique of Hegel's 'Philosophy of the Right.' The essay is an examination of Bonaparte and his role as an executive between the years 1848 and 1852. The analysis reveals that this leader occupied a unique place in relation to civil society and the political representatives of the capitalist class. He describes the way in which the executive power endowed in Bonaparte is consolidated at a cost to both of these forces, and how the state, in its massive organization of

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<sup>31</sup> G. F. W. Hegel, The Philosophy of the Right. trans. T. M. Knox, (Oxford: Oxford University Press, 1967) 46-47.

bureaus, armies and officials, wields a level of power and influence beside that of the bourgeoisie:

This executive power, with its enormous bureaucratic and military organization, with its ingenious state machinery, embracing wide strata, with a host of officials numbering half a million, beside an army of another half million, this appalling parasitic body. . . emeshes the body of French society like a net and chokes all its pores.<sup>32</sup>

The descriptions in this passage coupled with those above demonstrate a slightly different conceptualization of state and bureaucratic power. In contrast to Marx's discussions in The German Ideology and those in the Communist Manifesto with Engels, the state is apportioned a measure of unparalleled independence. Here, the state has the ability to block certain political outcomes and intervene into processes which might threaten the status quo. Its power is akin to an overbearing parasite that drains force from the central control of the ruling classes. While Marx demonstrates that Bonaparte seized political power and struggled against those who owned and controlled productive means, he still recognizes that he and "his state" were reliant upon the material power that kept that apparatus running. Therefore, it must be acknowledged that Marx's notion of

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<sup>32</sup> Karl Marx, The Eighteenth Brumaire of Louis Bonaparte (New York: International Publishers, 1963) 121.

state intervention, as it is exemplified through the actions of Bonaparte, is not an unencumbered power in and of itself. On the contrary, this force employed by the state has some serious limitations. But, Marx *does* afford such a "parasite" the autonomy to disrupt the bourgeois order—through policy, for example. Ultimately, this body has no other choice but to reproduce the goals of the capitalist system and the requisite politics which nourish its survival.

These two central approaches to the relation between state and capital in Marx and Engel's writings, one which imagines the state essentially as a committee for managing the interests of the ruling class and the other which conceptualizes the state to have a measure of power unavailable to that class, are sometimes seen to be in conflict. Scholars such as Paul Sweeny argue there exists "a fundamental contradiction" in Marx and Engels' thinking about the state, or at the very least, their work is incomplete and inconsistent.<sup>33</sup>

This view appears suspect. As David Wells points out, that which may seem to be a contradictory between the formulations is really a conflict between "what appears to be" and "what really is." That is, the state has features of both of the perspectives. According to Marx "Through the emancipation of private property from the community, the State has become a separate entity, beside

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<sup>33</sup> Paul M. Sweezy, The Theory of Capitalist Development: Principles of Marxian Political Economy (New York: Oxford University Press, 1942) 239-40; David Wells, Marxism and the Modern State: An Analysis of Fetishism in Capitalist Society (New Jersey: Humanities Press, 1981).

and outside civil society.” However, ultimately, he continues, “[I]t is nothing more than the form of organization which the bourgeois necessarily adopt both for internal and external purposes, for the mutual guarantee of their property and interests.”<sup>34</sup> The state is therefore implicated in but also an entity that stands apart from the arena of market exchange and class struggle. Imagining it to function otherwise is a mystification made possible by the social relations of capitalist production. Marx’s writings embrace both perspectives of the state and affirm the basic principle of historical materialism that the organization of humanity’s material production *is* the foundation of *all* social organization.<sup>35</sup>

It is important to note that this thesis has specific implications for a proper interpretation of the state and is at bottom determinist—social existence determines social consciousness.<sup>36</sup> This is not to say that the economic or material production “determines” activities in the superstructure or that the state merely reflects the base. Rather, it means that in the last instance, *all* relations—those comprising the state or otherwise—are conditioned by the way people relate within a certain mode of production.<sup>37</sup> My arguments, then, recognize the

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<sup>34</sup> Karl Marx, "The German Ideology," Marx-Engels Reader. ed. Robert Tucker (New York: W. W. Norton & Co., 1978)187.

<sup>35</sup> Mandel, From Class Society 168

<sup>36</sup> This is in opposition to the idea that individual men or women do, for example.

<sup>37</sup> As Mandel puts it, historical materialism is not *economic determinism* but *socio-economic* determinism. Mandel, From Class Society 169.

two perspectives of the state as interconnected, complimentary and dependant upon historically situated relations of capital.

Work by Claus Offe focuses on the role of the state in the phase of late capitalist production. His arguments provide a theoretical model to explain the perennial crises—or the tendencies toward crises—of the welfare state.<sup>38</sup> Offe suggests that the welfare state has had an impossible objective to achieve, and in so doing, he weaves together the two perspectives of the state I cite above. The challenge, he suggests, is that the state must be separate from the sphere of private capitalist production as it acts to protect the larger public interest. However, it must also intervene in this sphere to ensure that system's reproduction and protect its own self-interest. This conundrum is the primary contradiction of the welfare state. Offe writes:

[T]he concept of 'contradiction' might be sketched out in the following way. Any human society operates through an institutionalized set of rules. A part of these rules determines the process by which the society reproduces itself materially, and thereby transcends the lifetime of its individual members. More specifically, these institutionalized rules of material production regulate three things; namely, the effective control

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<sup>38</sup> Contradictions of the Welfare State. (Cambridge: MIT Press) 1984.

over human labour power, over the material means and resources of production, and over the product itself. . .A contradiction is the tendency inherent within a specific mode of production to destroy those very pre-conditions on which its survival depends. Contradictions become manifest in situations where, in other words, a collision occurs between the constituent pre-conditions and the results of a specific mode of production, or where the necessary becomes impossible and the impossible becomes necessary.<sup>39</sup>

The term contradiction, then, is a concept that describes the way a mode of production within a specific society is at its base “self-paralysing” or “self-destructive.” Furthermore, contradictions must not be understood to be uniform (that is, the same throughout the history of any particular capitalist development) or necessarily an automatic indication of the collapse of the mode of production.<sup>40</sup>

Equally important in Offe’s work is the framework he uses to explain the three fundamental interdependent systems composing the late capitalist or welfare state. To accomplish this he uses a systems theoretical approach.<sup>41</sup>

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<sup>39</sup> Contradictions of the Welfare State, John Keane ed. (Cambridge: MIT Press, 1984) 132.

<sup>40</sup> Offe, 133.

<sup>41</sup> Systems theory generally focuses on the arrangement of and relations among parts that connect to make a whole. Offe’s designation of sub-systems



These systems are (1) the relationships of commodity production and exchange, (2) the relations of political and administrative power and coercion, and (3) the relations of socialization (or ideology). The welfare state is understood as the set of political and administrative institutions whose aim is to manage or coordinate the other two systems to attain a level of harmony. State power has the purpose of regulating and integrating conflicting strategies that arise from the self-contradictory nature of the sub-systems within the capitalist system. The welfare state is essentially a means of managing crisis in a political economic system that perpetually provides its own disruptive and disorganizing effects.

My argument applies Offe's theorization by asserting that within each of the three systems, private contracting was used as a means to stabilize the deficiencies and limitations of capitalist relations within California. Each chapter, (aside from Chapter 2 which suggests social and political changes present in California from roughly the end of the second World War), investigates the conflicts existing within each system and then details the methods by which the private contracting of prisons was potentially positioned to solve these issues. Turning to private contractors to run (and/or build) the state's prisons, I claim,

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correlates nicely with what Marx termed: the "structures of society," in "Preface to A Contribution to the Critique of Political Economy" ["The sum total of these relations of production constitutes the economic structure of society, the real foundation, on which rises a legal and political superstructure and to which correspond definite forms of consciousness."] My arguments make use of these same component parts or systems as frames from which to view the process of privatizing prisons.

became a method of intervention by the state to order relations within all three systems.

Finally, as this dissertation is written in partial completion of a doctoral degree in Cultural Studies, it's worth noting how this work in fact fits into those studies. My reading of privatization is not as some object of linear penal history—which ignores its complex relational character and contingent nature—but rather as a strategy to integrate social relations that assure the general conditions of capitalist production. I foreground relations existing between production and the market, political organizations and policies constituting the welfare state, as well as institutions that contribute to the ideological maintenance of capitalist relations. I explain the drive to privatize as a social phenomenon that stands as a site, an intersection, or negotiation of precisely these relations.<sup>42</sup>

Approaching my object of study in this way allows me to advance an explanation of prison privatization and state functioning that is largely absent from the existing literature. As most work on this issue is produced within traditional disciplinary boundaries, little attention is paid to the intersections and struggles between state power and capitalist relations. Instead, the phenomenon of privatization is usually positioned as an isolated response to criminal justice

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<sup>42</sup> However, my analysis is not meant to examine every force, strategy, and articulation present in the social relations and institutional framework of the state of California. The study suggests what I see as the most significant forces or strategies operating within each system that served to legitimize private contracting as a productive and politically viable enterprise.

problems. The way the fear of crime works to crystallize state campaigns, the structural necessity of poverty or the symbiosis between racism and capitalism, in fact, are rarely acknowledged at all. The latter approach is relevant because it highlights the value of cultural criticism from the purview of Cultural Studies and enables the phenomenon of privatization to be understood as an active social practice which links together culture and politics.

### **Structure of the Project**

In the remainder of this chapter, I introduce the penal-welfarist culture, the corner-stone of the California criminal justice system for most of the twentieth century. I explain how this culture provided a distinct approach to crime and the treatment of criminals. I suggest differences between penal-welfarism and the culture of crime control today and I highlight the role of social science in that former vision of a community without crime.

In chapter two, I describe a series of historical, social and political shifts within the state that are best understood, in the context of this project, as new pressures upon the culture of penal-welfarism. I argue that reactions to the shifts set the stage for a number of new obstacles to appear within the social relations of the state. I show the nature of these relatively recent developments in the

criminal justice field<sup>43</sup> generally, and corrections policy more specifically. Chapter three begins my examination of the tripartite structure of the relations of the state and the way private contracting was positioned within each one to ameliorate disunity or the tendencies toward crises. I start by addressing three specific changes that occurred in the politico-legal system within California. As each of these presented an altered political “geography” and/or legal restraints, the call to privatize the state’s prisons was rendered feasible. The move to privatize allowed these shifts to take on a specific meaning that aided state objectives and grounded a very different version of criminal justice from the height of penal-welfarism.

Chapter four provides a context for understanding how private contracting was made to appear reasonable within the socio-economic relations of the state. I offer a genealogy<sup>44</sup> of California economic relations at this time and argue that its conditions served to elicit a class of individuals ready to be collected and utilized by the prison. I show that the department of corrections exacerbated this

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<sup>43</sup> I refer to here the myriad of agencies employed to police, sentence, judge, research, legislate and of course, oversee the population we transport to prison to be punished. This field also contains laws that define illegality, proper treatments for offenders, and official rationales for delinquent behavior.

<sup>44</sup> I am using this term, as did Foucault, as a description of a type of history of the present. My account does not depend upon the assumption of some inevitable historical progress but instead traces events, practices, rhetorical images and institutional conventions both loosely connected and contingent.

process through its inability to resolve budgetary crises and its perpetually increasing prison population.

Chapter five takes up the final component of social relations within the state: the system of ideology. I examine a set of ideological representations that circulated in the public sphere and served to legitimize mass imprisonment. These representations, I argue, served as a primary fodder for private contracting solutions for over-crowded conditions in state facilities. I argue that race, class and ethnicity—both then and now—ground the very image of crime and criminals, that imprisonment marks the body of an inmate socially, economically, and symbolically, and that the private imprisonment business benefits from this process.

In the closing chapter of the study, I describe what I name the “mythology of privatization,” the rhetorical imagining that enabled the California public to displace the exploitation of a specific class of people. I explain that the privatization of the state’s prisons was positioned as a feasible and satisfactory means to accommodate the massive prison population and the mythology of privatization functioned to align disjointed social relations in production, politics and law, and culture. I conclude with the suggestion that we focus additional study on the contradictions within capitalist social relations that allows the process of accumulation to become symbiotic with those that serve to reproduce the nation-state as a whole.

### **The Roots of the California Correctional Ethos: Penal-Welfarism**

Prison privatization in the state of California is not a novel idea that appeared suddenly in the last century. It was precipitated by a shift in the state's criminal justice field that was largely a reaction to penal-welfarism.<sup>45</sup> David Rothman has labeled the age of penal welfarism a progressive era where a modernist penal project became distinct in terms of theory, practice and desire.<sup>46</sup> Under its auspices, both public and official crime control workers' attitudes about illegality shifted from understanding the offender as a moral failure to be "reconditioned" by work, to a social science project to be rehabilitated. Methods for treating delinquents changed to reflect the growing belief that prisoners could be cured of the psychological sicknesses causing them to commit crime. The

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<sup>45</sup> Penological modernism is also a term used to express the philosophy, reasoning and practice of penal welfarism. For more on the history of penal welfarism see: David Rothman, The Discovery of the Asylum: Social Order and Disorder in the New Republic, (Boston: Little Brown & Co., 1990); Franklin Zimring & Gordon Hawkins, Incapacitation: Penal Confinement and the Restraint of Crime, (New York: Oxford University Press, 1995); David Garland, The Culture of Control: Crime and Social Order in Contemporary Society (Chicago: The University of Chicago Press, 2001) 3. In writing this section I have placed particular reliance upon Garland's articulation of penal history spanning roughly from 1890 through 1970. It is from his work that I borrow the term penal welfarism which captures a general consensus of penological values and purpose in the field.

<sup>46</sup> David J. Rothman, Conscience and Convenience: The Asylum and its Alternatives in Progressive America (Boston: Little, Brown and Company, 1980) 43.

image of the condemned man was not animated by juridical concerns of accusation, judgment, or condemnation; but rather by reform, treatment and rehabilitation. Combating crime during this period was akin to ameliorating the deficiencies of particular **people** as opposed to our present model that seeks prison as a means of retribution or removal of our society's criminal element.

The penal-welfarist ethos recognized individuals who broke the law as "broken" or compromised by infirmity in some respect themselves. "The extinction of the criminal class," argued Cesare Lombroso in his text on the causes of crime, "and the ultimate abolition of prisons are ideals to be kept in view, just as the elimination of disease must be the perpetual aim of medical sciences."<sup>47</sup> According to this analogy, offenders were not criminal because they were naturally immoral, hostile, or had some predisposed disdain for the law, but because they had not been properly socialized or adjusted to society. Indeed, those who chose lawlessness were "sick" on some level and must be treated, reformed and re-adjusted so that they could take their rightful place in the camaraderie of law-abiding citizens. An anonymous inmate wrote in 1911 that he was better served behind bars "until cured, just as a person suffering from a physical disease or infection is sent to a hospital or asylum to remain for such

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<sup>47</sup> Cesare Lombroso, Crime: Its Causes and Remedies (London : W. Heinemann,1911) vi-vii.

period as may be necessary for his restoration to health.”<sup>48</sup> Common sense dictated that criminals did not choose illegality, but rather were debilitated and unable to be rational decision makers. Once an individual was brought back to normative mental/psychological health, heeding the rule of law was a natural choice that brought the advantages of well-being and social progress. To accomplish this task, penal measures were seen to be effective to the extent they could identify the problem in a convict that created delinquency and eradicate it. Unlike a century before, retribution was dismissed. It was an unenlightened and ineffective goal and its practice marked a state institution as crude and backward. Repression opposed therapeutics, a principle driving American criminologists to rally around Tannenbaum’s argument that, “There is not a shred of evidence that punishment—severe or mild, with good intentions or bad ones—has beneficial effects on the future lives of men punished.”<sup>49</sup> In fact, according to Dr. Karl Menninger, the act of punishing criminals, rather than treating them, was a sign of our own pathology.<sup>50</sup> Accordingly, prison was not a popular answer to crime

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<sup>48</sup> Anonymous, “The Indeterminate Sentence,” Atlantic Monthly 108 (1911) : 330.

<sup>49</sup> Frank Tannenbaum, Crime and the Community (New York: Columbia University Press, 1938) 19-20.

<sup>50</sup> Indeed, we were the ones who were maladjusted and ignorant when we opted to treat criminals as punitive objects. Criminals were to be nurtured and rehabilitated. Otherwise, “The inescapable conclusion is that society secretly wants crime, needs crime, and gains definite satisfaction from the present mishandling of it!” Karl Menninger, The Crime of Punishment (New York:



since it was merely a coercive instrument that stifled men and ignored the unique nature of the offender.

Progressives guiding inmate treatment did not completely discard the traditional morality so important to discipline in the penitentiaries and reformatories of the past, but they recognized it as a new animal: that which emerged under degenerate social and economic conditions. The causes of crime lay in social and economic environments where “conditions of employment in the sweat shops and loft manufactories (as well as) the seasonal fluctuations of labor (create) unrest and lawlessness.” Slums and ghettos were seen to contain poverty that created delinquency that in turn produced criminals.<sup>51</sup> If crime was to be obliterated, so too would “wretched living conditions,” “child labor,” “the wrong kind of education,” and “unsupervised street life.” It was poverty that generated crime—or at least conditioned its existence. However, it was not just, as Miller wrote, that lower class values and middle-class values were different, and thus created a clash in the moment of the criminal act, or, that some people just happened to be poor. It was, according to one of the most

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Viking Press, 1968), excerpted in Rudolph J. Gerber and Patrick D. McAnany, eds. Contemporary Punishment: Views, Explanations, and Justifications (Notre Dame: University of Notre Dame Press, 1972) 179.

<sup>51</sup> Robert Hunter, Poverty (New York : The Macmillan Company, 1904; reprinted edition 1965) 25; 47. See also Sophonisba Breckinridge & Edith Abbott, The Delinquent Child and the Home (New York : Charities Publication Committee, 1912).

significant works on the causes of criminality in the first half of the twentieth century, that criminality graduated out of a certain “social location.” For, “[I]f, in a given social location, illegal or criminal means are not readily available, then we should not expect a criminal subculture to develop.” A person’s *place*, directed what tools s/he might have at her disposal, what behaviors she might engage. And those tools determined the available choice of solutions for everyday problems. In short, the general wisdom among crime control scholars was that responses to life—and indices of crime—were driven by social conditions, whether those be environmental or relational.<sup>52</sup>

From the purview of contemporary perspectives of crime, it is interesting that psychiatrists and social workers were sure that delinquent behavior could be permanently corrected. They argued that as the work of social hygiene continued, they would ultimately remove “the epidemic forms of criminality” so that “nine-tenths of the crimes [would] disappear.”<sup>53</sup> But, treatment had to

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<sup>52</sup> See Richard A. Cloward, Lloyd E. Ohlin, *Delinquency and Opportunity: A Theory of Delinquent Gangs* (New York: Free Press, 1960) 151. This citation relies upon the work of James Wilson wherein he surveyed a number of leading scholars in the field of criminology. He asked what book or essay written before 1960 was the most significant on the subject of causes for crime. He reports that there was “remarkable agreement” as to the titles. Cloward and Ohlin’s book was one of two texts most cited. See also on this theoretical thesis: W. Kvaraceus, W. Miller, *Delinquent Behavior: Culture and the Individual* (Washington D.C.: National Education Association, 1959) 68-69.

<sup>53</sup> Excerpt from a lecture given at the University of Naples, April 24 1901, reprinted in Stanley E. Grupp, ed., *Theories of Punishment* (Bloomington: University of Indiana Press, 1971) 231-33.

address the causes driving *each individual offender* and h/er whole psychology. It wasn't enough to take stock of the crime committed and devise punishment that fit that indiscretion. Indeed, the punishment should *not* fit the crime, against our own popular adage. Instead, the punishment should fit the man (or woman) who committed the crime. According to Charlton Lewis, "the method of apportioning penalties according to degrees of guilt. . .is as completely discredited and as incapable. . .as is the practice of astrology or. . . witchcraft."<sup>54</sup> Accordingly, approaches to treating offenders not only had to be unique, but applied with a good deal of discretion.

This perspective is intriguing because it seems to oppose so much common sense about criminality today.<sup>55</sup> In short, conditions existing inside the state created the criminal, and this plight could befall anyone who had the bad fortune to live in impoverished conditions. Professional treatment had to take this realization into account and work to help the unfortunate offender satisfy his or her needs alternatively.

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<sup>54</sup> Charlton Lewis, "The Indeterminate Sentence," National Prison Association Proceedings (1900) 175.

<sup>55</sup> Which is to say that mainstream views of criminality hold that either *individuals* are primarily responsible for criminal behavior—versus the environments they exist within—or specific cultural systems. I will unpack each of these arguments in detail in chapters three and five respectively.

If an offender's rehabilitation had to be suited to her unique person, then conventions of sentencing had to allow for individual flexibility. This flexibility was accomplished through indeterminate sentencing, probation and parole. In adopting these practices, the U.S. used the court system and the prison to practice what academics and theoreticians preached.<sup>56</sup> Arguing for increased flexibility and discretion on the part of penal experts, Wines explained that prisoner reform "(could) be based only upon the character of the actor, which," he reminded us "it (was) desired to correct." Given this, it was impossible to predict how long a sentence ought be for any given offender. Indeed, the time "required to alter (him) cannot be estimated in advance any more than we can tell how long it will take for a lunatic to recover from an act of insanity."<sup>57</sup> Since Progressives genuinely believed that inmates were ill and in need of care, it was completely illogical to assign sentences—or rehabilitative programs—before a complete assessment of each individual could be made.

In California, indeterminate sentencing officially entered into law for a number of criminal convictions in 1917; by 1944, the entire sentencing framework was wholly indeterminate. In support of the measure, the California Supreme

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<sup>56</sup> As testimony to the popularity of probation, the Attorney General's report states that between 1915 and 1920 approximately thirty states either created or expanded probation policies. See U.S. Attorney General, Survey of Release Procedures, vol. 2, Probation (Washington, D.C., 1939) chap. 1.

<sup>57</sup> Frederick Wines, Punishment and Reformation: A Study of the Penitentiary System (New York : T. Y. Crowell, 1919) 221.

Court stated the way of the “modern” penal expert was to create opportunities for reform of which indeterminate sentences were a prime example.

It is generally recognized by the courts and by modern penologists that the purpose of indeterminate sentencing law is to mitigate the punishment which would otherwise be imposed upon the offender. These laws place emphasis upon the reformation of the offender. They seek to make the punishment fit the criminal rather than the crime. They endeavor to put before the prisoner great incentive to well-doing in order that his will to do well should be strengthened and confirmed by the habit of well-doing.<sup>58</sup>

The beauty of indeterminate sentencing was that it gave courts the freedom to assign prison terms individually on the basis of each case and further heightened the level of autonomy enjoyed by judges, prison officials and crime control workers generally. Typically, a judge set minimum and maximum terms and bowed out of the process to allow parole boards to decide the actual number of years served. This discretion enabled early release for good time served and created a flexibility to monitor and assess the inmate’s progress as she was

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<sup>58</sup> Quoted in Malcolm Davies, Punishing Criminals: Developing Community-Based Intermediate Sanctions (Westport: Greenwood Press, 1993) 29.

treated. If a prisoner amassed enough “good marks” or “credits,” it signaled that reform had been achieved and he should go free.

Probation was an additional route to increased correctional discretion. When probation was given to a convicted criminal it allowed h/er to avoid the prison altogether. But perhaps parole was the most complementary program to indeterminate sentencing since it essentially “tried the inmate out” in public to see if s/he could fly right without the restrictive walls of the prison. Parole consisted of release from the prison structure under the legal supervision of a parole board. In this way, offenders were granted freedom from living inside the prison, but could be summoned back anytime they were deemed incapable of being law abiding. Boards granted parole by examining variable such as the seriousness of the offender’s crime, the offender’s behavior in prison, and, how successful s/he might be if released. Many believed that parole would make up for inconsistencies in sentencing by judges and provide yet another route to identify the good apples from the bad.<sup>59</sup>

In one sense, penal-welfarism marked an unquestioned faith of the criminal justice field in the possibilities and potentialities of social engineering. Progressives believed in the knowledge produced by state experts, modern research, science, and technology. In short, these were the tools to achieve the

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<sup>59</sup> Sheldon Messinger, “The Foundations of Parole in California,” Law and Society Review 19 (1985) : 69.

full flowering of the social contract.<sup>60</sup> Most criminologists realized the American criminal justice system was imperfect. But the (near) eradication of crime was certainly possible, even probable, and the wonders of a middle-class life style were available to all. Indeed, not only was this lifestyle available to all people, it was desirable to all—even if the victims of neglect did not yet know it. The state was the mechanism to provide welfare and freedom to each individual. It was obligated to accomplish this task, for its very stability depended upon the cohesion and participation of each and every citizen. Terence Morris, in a 1959 Nation article, admonished his readers to take heed of precisely such wisdom advanced by Belgian social theorist Adolphe Quételet: “Society bears in its womb the embryo of every crime that is to be committed; it prepares for the crime while the criminal is merely the tool.” Morris explained that no offender was ever “wholly free” from some “handicap” (social or physical) that carried “social significance.” And as “(The criminal) is at unease with the world and has many

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<sup>60</sup> Scott has framed this cumulative logic “high-modernist ideology”: a form of thinking invested in “scientific and technical progress, the expansion of production, the growing satisfaction of human needs, the mastery of nature (including human nature), and, above all, the rational design of social order commensurate with the scientific understanding of natural laws.” See James C. Scott, Seeing the Like the State: How Certain Schemes to Improve the Human Condition Have Failed (New Haven: Yale University Press, 1998) 4.

needs. . . in the long run, the needs of the offender are the self-interest of the community as a whole.”<sup>61</sup>

Certainly Morris’ suggestion characterizes the humanist and utilitarian ethos motivating the larger construction of western liberal democracy during this period. The pathway to achieving a universal citizenship was not necessarily avoiding the fact that the offender was guilty—that is, declaring that he or she had no personal responsibility in crime—but rather recognizing that the social contract was still a “work in progress” whose promise had not yet reached everyone equally. Eliminating the poor by bringing them to a greater level of affluence, uncovering the causes of criminal behavior and eradicating them, and integrating all individuals within the broad fabric of society would begin this process. And, it was in the whole community’s self-interest to do so. In short, the cultural improvement of the delinquent was a democratic mandate. Educating workers, redistributing resources, and expanding economic opportunity was the means by which penal-welfarists would march steadily toward the goal of social peace and universal democracy.

By the middle of the twentieth century, however, a new relation was being forged between crime and the social sciences. More and more often the American problems of crime, of inequality, of education or conflicts at work were

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<sup>61</sup> Terence Morris, “Social Values and the Criminal Act,” The Nation (4 July 1959) 9.



all understood as social problems that would be solved by a “more highly socialized democracy.”<sup>62</sup> Much like Michel Foucault’s account of the conversion of the insane asylum by medical personnel at the end of the eighteenth century,<sup>63</sup> the crime control field experienced a revolution precipitated by social scientists and a regulation of “the social.”<sup>64</sup> To the degree that a wide range of social

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<sup>62</sup> Herbert Croly, The Promise of American Life (New York: Capricorn, 1909) 5; 22-25.

<sup>63</sup> Michel Foucault, Madness and Civilization: A History of Insanity in the Age of Reason (New York: Vintage Books, 1965).

<sup>64</sup> George Stenmetz, Regulating the Social: The Welfare State and Local Politics in Imperial Germany (Princeton: Princeton University Press, 1993) 2. As I mention above, some have written that a new focus on the social sciences and “the social” as an area for inquiry came about to control the perceived conflicts and perversions of the state. The approach was a “new technology” that held the promise of increased control and dominion. No doubt the increased presence of women in the public sphere and their varied movements to articulate social needs helped the drive along. Women’s participation in political arenas at the start of the twentieth century bolstered Social Progressives’ aims in that women’s involvement in civic associations and other organizations created attention around and immediacy to a number of causes that overlapped with a therapeutic orientation to societal issues. Beginning with a general interest in philanthropy, women championed the rights of children, the need for temperance, and mothers’-aid. From here they built a platform for programs that utilized the state as an instrument to protect home and family. As women commanded more press attention and influenced campaign outcomes, political leaders began to recognize their importance as quasi-lobbyists and public rhetoricians in their own right. But beyond women’s participation, the social science view gained currency as a function of the academy. At the end of the nineteenth century the newly formed American Social Science Association began producing its own journal. Certainly to bear witness to its growing popularity, one of its first volumes contained an article offering an inventory of social science courses being taught at universities ranging from Harvard to Bryn Mawr. In effect, the article argued for its own legitimization. Readers were to draw comfort and encouragement that a large number of colleges and universities were in fact embracing teaching and

practices posed a challenge to the order of the state and capitalist political economy, social science research became a panacea. Social questions and answers to such questions were a primary feature of criminological thought at this time and accordingly articulated specific approaches to penology. The field became constituted by a positivistic discourse that prized observation, classification, diagnosis and recommendations for cure. Specific kinds of schooling were required for this new perspective and in California as across the nation, professionals began to enter the field specializing in corrections, counseling, and community treatment. For the first time, many had college educations—some even with post-graduate degrees—in social work, public administration or some other related field. The “old-school” wardens typically had risen through the ranks; any formal education they possessed was “incidental to their sense of themselves” or how to do the job. In 1965, according to Charles Silberman, every warden in the state of California had climbed the seniority ladder. But by 1974, there wasn’t a single warden who had started as a guard and not only had the majority completed college, six of the eight held graduate

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coursework that took a sociological perspective. Perhaps much like “the cultural turn” that has infiltrated the gamut of social sciences today (to the extent that this dissertation project *is* in the field of Cultural Studies), “the social turn” did the same in studies of liberal arts. See Emily Talbot, “Social Science Instruction in Colleges,” *American Social Science Journal* 22 (1887) : 12-14.

degrees.<sup>65</sup> This difference pushed the reformist agenda and brought a level of expertise to the prison institution that changed the face of crime control quite radically.

During the middle part of the twentieth century, the goal of correctional professionals was to be a social practitioner and “transform prisoners into enlightened citizens who shared bourgeois aspirations and who respected the rules of conduct necessary for functioning in an interdependent world.”<sup>66</sup> It is not surprising that as the theories of social science entered the practice of treating delinquent behavior, the work of crime control—this business of creating a transformation in people—became mystified and somewhat obscured. It was not judicial authorities but penal experts who oversaw the processes of identifying, categorizing and treating criminal offenders. Eventually, the influence of social scientists—clinicians, probation workers, counselors, researchers, parole board members and the like—eclipsed “common” knowledge to the extent that their work became inaccessible to the layperson. The war against the delinquent mind became unwinnable without the insight of experts or specialists. When at one time “the leading principle had been: *nullem poena sine crimine* (“no punishment

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<sup>65</sup> Charles E. Silberman, Criminal Violence, Criminal Justice (New York: Random House, 1978) 404.

<sup>66</sup> Andrew J. Polsky, The Rise of the Therapeutic State (Princeton: Princeton University Press, 1991) 81.

without crime"), in the world of penal-welfarism it came instead to be no treatment without diagnosis, and no penal sanction without expert advice."<sup>67</sup>

Henceforth, decisions about sentencing, parole eligibility, suitability for particular rehabilitation treatments and so on were increasingly made by a limited set of individuals whose discretion was unparalleled from the perspective of 21<sup>st</sup> century criminal justice standards. Unlike today, the work carried out in the field was accomplished with little legislative or public oversight and officials were trusted to fight crime and regulate crime control politics in relative isolation. Also notable was the dearth of politicians who adopted crime control politics as a unique mode of running for or staying in office. While today crime is an issue that is almost never left out of political platforms or debates about how one could favorably change the state, through most of the 20<sup>th</sup> century, discourse by political hopefuls largely steered clear of the "crime card" to appeal to voters and constituents. This meant that crime and prison conditions, as well as the court system and the police, were largely out of the public eye apart from the occasional prison escape or sensational court case. The common wisdom was that the professionals were doing their jobs and the public had no cause for worry. Perhaps this was also so because crime rates stayed relatively constant up until about 1963. But by 1964, this conventional wisdom was recast, and for the first time, presidential candidate Barry Goldwater declared crime to be a

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<sup>67</sup> Garland 36.

national issue. In a public address he accused the current administration of turning a blind eye to what he referred to as “crime in the streets”—a thinly veiled allusion, according to many pundits, to the black riots occurring in cities across the nation. Apart from this mention, the rhetoric of crime and punishment was largely absent from the political weaponry of state and national leaders until at least the 1970s.<sup>68</sup>

As I have been arguing, the philosophy and practice of penal-welfarism, spanning roughly from the late 1800s into the middle of the twentieth century, was unique in the view that criminal tendencies were signs of sickness, in the assumption that it was possible to cure such sickness, and in the belief that it was the state’s responsibility to accomplish this task. As the social sciences began to multiply and gain credibility through the first half of the 20<sup>th</sup> century, the nature of penal leadership changed. Experts were the key to proper arrest, sentencing, and reform processes. And since criminal acts were *individual acts* directed by the unique problems of each offender, responses to crime had to follow suit. Flexible programs ensured that each condemned individual would have reform designed for just h/er. The public literally ignored corrections policies, management and effectiveness. As long as criminals were out of sight, crime was a distant reality for most California residents. The practices of the

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<sup>68</sup> James Q. Wilson, Thinking About Crime (New York: Basic Books, 1975) 64.

progressive project soon hit material and ideological roadblocks, however, that forever changed the nature of corrections and created significant shifts in the relationship between citizen and state.