



**DEPARTMENT
OF ECONOMICS**

THE ROLE OF PRISONER VOICE IN CRIMINAL JUSTICE REFORM

KAITLYN WOLTZ

George Mason University
Department of Economics
Working Paper No. 20-50

The Role of Prisoner Voice in Criminal Justice Reform

Kaitlyn Woltz¹

Abstract

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

JEL Codes: K40, H10

Keywords: Criminal Justice Reform, Prison Journalism, Prisoner Litigation, Prison Riots, Economics of Bureaucracy

¹Email: kwoltz@gmu.edu Address: Department of Economics, George Mason University, MSN 3G4, Fairfax, VA 22030, USA. I'm grateful for the support of the Mercatus Center and IHS that made doing this research possible. Thanks to the librarians at John Jay College of Criminology for their help in accessing the collection of prison periodicals there. Special thanks to Dr. Ellen Belcher who helped me access the special collections at John Jay and recommended many helpful references. The usual caveat applies.

Introduction

Following the murder of George Floyd in May 2020, protestors began calling for criminal justice reforms ranging from ending pre-trial jailing to prison abolition (Herndon 2020). Calls for criminal justice reform are not new. Prison reformers have preached the failure of prisons since the nineteenth century, only a few decades after states began building prisons (Wines 1871; Wines and Dwight 1867). Previous efforts at structural criminal justice reform that aimed to reduce the racially based inequities perpetuated by the criminal justice system served to expand carceral institutions and exacerbate racial disparities (Murakawa 2014; Gottschalk 2006).

Previous research on criminal justice reform in the US argues that criminal justice reform is driven by political elites who use reform efforts to serve their interests, which include racist preferences, (Murakawa 2014; Gottschalk 2006; Alexander 2012; Smith 2005; Yates and Fording 2005; Fairchild 1981; Stolz 2002) or that public opinion drives criminal justice policies (Enns 2016, 2014; Jacobs and Carmichael 2001; Nicholson et al 2009; Brown 2012). These hypotheses cannot explain the failure of reforms demanded by the public to address racial disparities and reduce discrimination.

Pfaff (2016) identifies the failure of reforms to address the structural issues in the criminal justice system—namely political incentives to implement tough-on-crime policies—as the reason that criminal justice reforms have failed to stick. However, he does not identify what these structural reforms would entail. Pfaff (2017) argues that any successful reform will have to occur on the county and state level. He identifies the incentives that correctional officers' unions and politicians have to grow the prison system and population. He does not identify how to align the incentives of these correctional officers and politicians with those of the public. Instead, he suggests that any reforms of the criminal justice system must focus on reducing the incarceration of violent offenders through greater regulation of prosecutors if we want to reduce the prison

population in the US. He also suggests that closing prisons, well-designed private prison contracts, better-funded public defenders, changing the way we speak about offenders, and changing how we weigh the cost of crime compared to the cost of punishment will lead to an improved criminal justice system. Tabarrok (2003) likewise suggests that private prisons can serve as a better functioning alternative to public prisons, but only when the contracts are properly specified. Gottschalk (2006) identifies successful reforms as coming at the federal level. She argues that special interest groups and the public need to pressure policy makers to implement reform-based criminal justice legislation. Murukawa (2014) demonstrates that federal prison reforms intended to reduce the US prison system and increase racial equality within the system did the exact opposite. She argues that reduced discretion in sentencing led to higher rates of incarceration and racial disparity in those incarcerated. She suggests that reforms implemented through the state apparatus are doomed to fail. Instead, she suggests that reformers pursue alternative reforms like “the demilitarization of schools, revitalization of education at all levels, a health system that provides free physical and mental care to all, and a justice system based on reparation and reconciliation” (ibid: 155).

None of these works explore how to align the incentives of criminal justice officials with those of voters. The criminal justice reform literature treats state criminal justice bureaucracies as a black box. I leverage the economics of bureaucracy to identify the incentives faced by criminal justice bureaucrats with regard to implementing reforms. For criminal justice reforms to be effective, they need to consider the incentives of criminal justice bureaucrats. Effective criminal justice reforms will be those that fit with the interests of individual criminal justice bureaucrats. The interests of criminal justice bureaucrats, however, often conflict with changes desired by reformers.

Can avenues for prisoner voice serve to align the interests of criminal justice bureaucrats and voters? I argue that prisoner voice—through the avenues of prison journalism and prisoner litigation—serves as an information channel in state criminal justice bureaucracies, holding bureaucrats accountable to their superiors. I contribute to the literature on criminal justice reform by identifying the principal-agent problem as the explanation for the failure of previous reform efforts. I contribute to the economics of bureaucracy literature by applying the theory to the criminal justice context.

The paper proceeds as follows: The next section presents a theory of state criminal justice bureaucracies that identifies prisoner voice avenues as potential information channels. In the third section, I generate predictions from my theory of state criminal justice bureaucracies to test whether prisoner voice expressed via prison journalism, prisoner litigation, and prison riots serves as an information channel and influences effective reforms by aligning the interests of criminal justice bureaucrats and voters. It also provides evidence to test those predictions. This evidence, in part, comes from a unique dataset I compiled on prison newspapers in the US from 1800 to the present along with qualitative data coming from prisoner newspapers. The final section concludes.

Theory of State Criminal Justice Bureaucracy

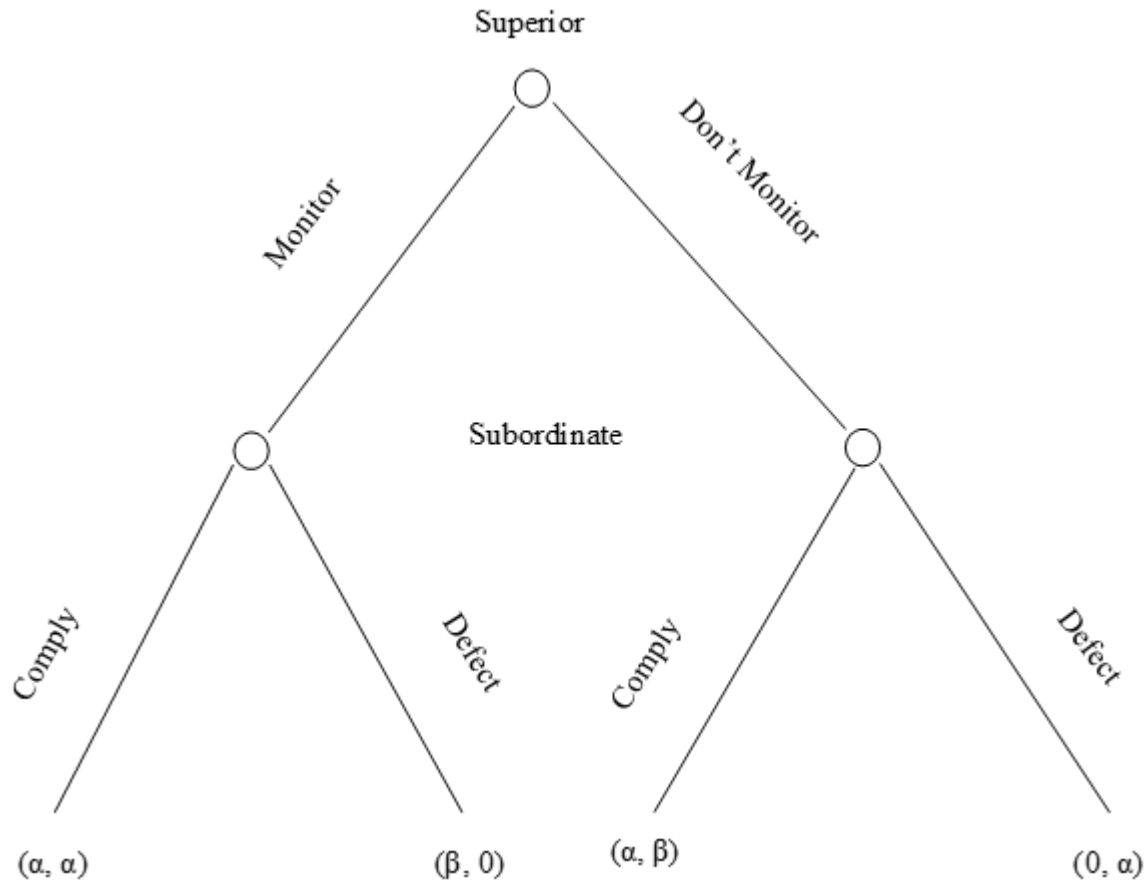
This section develops a theory of states' criminal justice bureaucracies. State incarceration rates and criminal justice policy drive mass incarceration in the US. Below, I present a theory of bureaucracies and apply it to the unique context of state criminal justice bureaucracies. I construct a game tree to model the relationship between officials in state criminal justice bureaucracies.

Theory of Bureaucracy

Bureaucracies consist of a nested set of superior-subordinate relationships along which instructions from the ultimate sovereign are communicated and implemented (Tullock 1965; Breton and Wintrobe 1975; Wintrobe 1976; Breton and Wintrobe 1982). For government bureaucracies in democratic societies (like the US criminal justice system) the voters are the ultimate sovereigns (Tullock 1965). Bureaucrats can be modeled as budget maximizers, maximizing their power along with their budgets (Niskanen 1968; Brenton and Wintrobe 1975; Brenton and Wintrobe 1982; Holcombe 2016). Each bureaucrat can be modeled as being both a superior and subordinate. Each oversees a subordinate whose compliance with the ultimate sovereign's interest she monitors. Each also serves as the subordinate of another bureaucrat whose direction she follows in pursuing the interests of the ultimate sovereign. A bureaucrat has the choice to either pursue the interests of the sovereign or own interests (in conflict with that of the sovereign). The bureaucrat will prefer to pursue her own interests in the absence of monitoring and sanctions for doing so. When she is monitored, in contrast, she will prefer to pursue her sovereign's interests so she will be promoted and, thereby, increase her power (Tullock 1965; Wintrobe 1976; Brenton and Wintrobe 1982).

Each relationship in a bureaucracy can be represented by a simple principle-agent game. In the game, there are two participants: a superior and a subordinate. The superior moves first and chooses to monitor her subordinate or not. The subordinate chooses to either comply with his superior's desires or defect and pursue his own interests. This is represented in the following game tree.

Figure 1: Principle-Agent Game in Bureaucracies



$$\alpha > \beta > 0$$

Monitoring by the superior aligns her subordinate's incentives with her own. In the absence of monitoring, her subordinate defects. In bureaucracies, the superior's ability to monitor her subordinates depends on the type of information channels in place. There are two main types of information channels: internal and external. Internal information channels operate within the bureaucratic structure. Subordinates communicate information to their superiors along internal information channels. Subordinates control what information is communicated along these channels making them less reliable sources of information for the superior. In contrast, external information channels, such as the news media, operate outside of the bureaucracy. They are often outside the influence of subordinates. These outside information channels can serve as a check

for the information communicated along internal information channels. When external information channels exist, subordinates will communicate more accurate information because superiors will compare the information communicated by internal and external information channels.

Due to the inability of sovereigns to perfectly monitor their subordinates' behavior, bureaucrats have opportunities to pursue their interests at the expense of their superiors', especially when they control the information about their activities that their sovereign receives (Tullock 1965; Breton and Wintrobe 1975). Superiors want high quality information about the actions of their subordinates. Subordinates, in contrast, want only favorable information about them communicated to their superior (Tullock 1965). For this reason, establishing good quality information channels is important for superiors because their subordinates are liable to manipulate the information sovereigns receive.

If external information channels exist, subordinates will communicate higher quality information than they would otherwise. In the absence of external information channels, the superior is less able to monitor her subordinates effectively. She has to rely on the information communicated by her subordinates. In the absence of external information channels, she will enact institutional reform to establish more reliable internal information channels. These channels often rely on her subordinate's subordinate to report on his superior's behavior (Tullock 1965).

When the superior discovers that her subordinates are defecting, she will engage in institutional reform to improve the rate of compliance by her subordinates. She can either change the rewards for cooperation and sanctions for defecting (Tullock 1965; Wintrobe 1976), or she can improve the information channels by which she monitors her subordinates (Breton and

Wintrobe 1975). In short, bureaucrats will undertake institutional reform only to the extent that it furthers their interests. The degree to which these reforms ensure bureaucrats pursue the interests of the ultimate sovereign depends on whether the ultimate sovereign has access to effective information channels about the activities of the bureaucrats.

Theory of State Criminal Justice Bureaucracies

The Organization of US Criminal Justice Bureaucracies

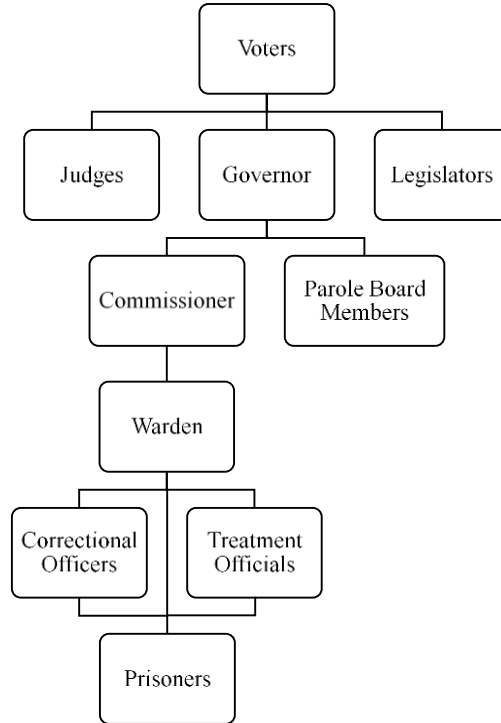
Because state criminal justice systems are situated within democratic governance structures, the voters as a unit are the ultimate sovereign of the criminal justice bureaucracy. The bureaucracy serves to facilitate punishments for crimes. The voters have three direct subordinates: (1) the governor who oversees the state criminal justice bureaucracy, (2) the legislators who decide the budget for the state criminal justice bureaucracy and criminal legislation, and (3) the judges who sentence convicts.

The judges and legislators have no direct subordinate within the criminal justice system. The governor, in contrast, oversees the state department of corrections (DOC). The governor's direct subordinates in the department of correction are the parole board members who have no subordinates themselves and the commissioner, all of whom the governor appoints. The commissioner oversees the operation of the state prison system.

Prison wardens serve as the commissioner's executive officer at each prison, overseeing the operation of the prison according to the standards and policies set by the commissioner under the direction of the governor. The warden directs the prison officials working under her, from assistant warden to the correctional and treatment officers who constitute the lowest members of the state criminal justice bureaucracy. Correctional and treatment officers manage the prisoners' day-to-day life. The correctional officers oversee the movement of prisoners within the prison, while the treatment officers facilitate the rehabilitative, vocational, and educational

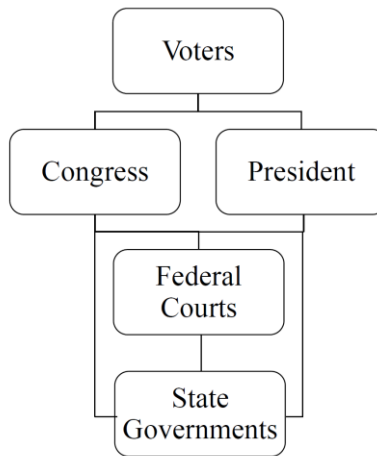
programming. Depending on the prison, correctional officers will also serve as treatment officers. These relationships are shown in the following organizational chart.

Figure 2: Organizational Chart of State Criminal Justice Bureaucracies



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

Figure 3: Organizational Chart of Federal Government Oversight of State Criminal Justice Bureaucracies



Operation of state criminal justice bureaucracies

Because voters are the ultimate sovereign of criminal justice bureaucracies, these bureaucracies should function to fulfill voters' desires regarding punishment. The degree of compliance, however, will depend on the degree to which voters monitor the state prisons. Voters, however, cannot easily access prisons or information about their operation. Historically, external information channels have been stifled by state governments. Press access to prisons is severely limited. When the press is allowed into prisons, journalists' access is controlled by the warden. Journalists often only see what the warden wants them to see. Prisoners' communication with the press is also limited by the censorship of prisoner mail and the threat of punishment. Because of the absence of external information channels, voters receive little to no information about the functioning of their local prisons. Internal information channels are often not set up to communicate with voters. The flow of information from these internal information channels stops with the governor, judges, and legislators.

In the criminal justice bureaucracy, superiors have an incentive to establish information channels that communicate more accurate, trustworthy information. Because internal information channels are the primary way superiors can oversee their subordinates, superiors want to

establish information channels that their subordinates are less able to manipulate. In the US, avenues for prisoner voice may provide such information channels. As discussed above, superiors may leverage the subordinates of their subordinates as information channels about their subordinate's behavior. Prison voice may serve a similar function. Avenues for prisoner voice may hold prison officials accountable to their superiors by increasing the degree to which their superiors monitor them. Because of this, prison officials will want to suppress prisoner voice. Thus, prisoner voice will only serve as an internal information channel when superiors establish avenues outside of their subordinates' control for prisoners to communicate information about the prisons in which they are incarcerated. Superiors will establish these formalized information channels as their bureaucracy grows because the difficulty of monitoring their subordinates will increase with the size of the bureaucracy. We will also expect prison officials to take steps to gain control of these information channels.

If, through avenues for prisoner voice, superiors find that their subordinates are defecting, they will institute reforms to ensure subordinates comply with their directions. These reforms will increase the sanctions (rewards) for defection (cooperation). Whether these reforms serve the interests of the ultimate sovereign, the voters, depends on if voters have access to information channels about bureaucrats at all levels of the criminal justice bureaucracy. When avenues for prisoner voice serve as information channels for voters, we would expect institutional reforms to ensure bureaucrats pursue voter interests.

Testing the Role of Prisoner Voice Predications

Several predictions follow from the theory of state criminal justice bureaucracies developed above. First, if avenues for prisoner voice serve as internal information channels, then they will provide information about the subordinates of the bureaucrat that formally establishes

them. Second, subordinates will try to gain control of prisoner voice avenues to control the information they communicate. Third, bureaucrats will implement reforms in response to prisoner voice when they learn that their subordinates are defecting. Lastly, any reforms will be in line with voter interests only when voters have access to prisoner voice.

Evidence

If the above theory is correct, the avenues for prisoner voice should conform to the predictions outlined above. Three main avenues of prisoner voice have existed in the history of US prisons: prison journalism, prison litigation, and prison riots. In the remainder of this section, I examine how each avenue adhere to the above predictions.

Prison Journalism

Prison journalism refers to the prisoner-produced newspapers that circulated in prisons across the US. They began in the 1880s and reached their height in the 1960s with over 200 publications circulating. These publications were published out of prisons in every state (except New Hampshire) and the District of Columbia. The following graph shows the number of prison newspapers from 1880 to 2020.

Figure 4: Prison Periodicals in the US, 1880-2020 (source: Woltz, Prison Newspaper Database)



These newspapers only operated with the assent of the prison warden. The warden controlled the newspapers' funding, staff, and published content.

Prisoner newspapers communicates information about subordinates

If these newspapers served as information channels, we should see the content of the newspapers reflecting the behavior of the wardens' subordinates: correctional and treatment officers. Examining the content of prison newspapers, we see that the publications did indeed communicate information about warden's subordinates. Baird (1966) found that 50 of the 56 publications he surveyed dedicated over 50 percent of their space to reporting on general prison news. These included reports on prison events and prison programming. Prison journalists routinely documented the performance of prisoners' sports teams, activities by prisoner clubs, reaction to the previous movie night, any hiccups at mealtime, etc. These activities all required oversight by correctional and treatment officers whose success or failure to facilitate the many aspects of prisoners' daily life would be apparent in the journalists' reporting.

In addition to reporting on daily events at the prison, journalists documented sources of tension (or lack thereof) between prisoners and correctional officers. For example, editors of the *Reflector* called for prisoners and correctional officers to treat each other more respectfully. One editorial by Charles Long suggested that if he were a correctional officer, he would never call an prisoner "Boy," but, rather, by his name or "Mister" (*Reflector* January 13, 1956: 20). Another editor called for prisoners to show gratitude to correctional officers for their help in making the periodical run smoothly (Cooney 1974). Runyon (1953) documents one man's comparison of Iowa State Penitentiary to Leavenworth Prison saying,

There's more tension there in an hour than there is here in a week,' one man told me. I was in Leavenworth for eight years, and I doubt that five officials or guards knew me by name. There's no individual treatment in that place. The difference between there and here is simple—there you're treated like a number; here you're treated like a man. There's a difference (Runyon 1953: 279).

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

In another instance, the *Angolite* at Louisiana State Penitentiary published a letter from a prisoner who complained about the practice of mail censors stamping "censor" across the front of letters or cards. The *Jefftown Journal* likewise reported prisoner discontent. They suggested that the prisoners be shown newsreels instead of cartoons since most prisoners found the cartoons boring (*Jefftown Journal* 1959). In 2008, the *San Quentin News* reported officials' misconduct, detailing the poor conditions of administrative segregation (or solitary confinement). This article was approved by the warden but was met with anger by correctional officers. The officers demanded that the *SQN* print rebuttals of the article. The *SQN* complied. The rebuttals, however, "didn't deny that the situation was true" (Drummond 2020: 74-75).

Subordinates to try to gain control of prison newspapers

If prison newspapers served as information channels for the warden, we should see correctional officers and treatment officials try to gain control of them. There is little documented evidence about how prison staff reacted to the prison journalists' documenting day-to-day prison life. Rideau (2010), however, reports some evidence of resistance from correctional officers. First, correctional officers formally complained to the warden when the *Angolite* staff received a camera to help document prison events. Second, some correctional officers would try to instigate fights involving newspaper staff to have a reason to confine them to solitary or revoke their trusty status. Additionally, when the *Angolite* staff participated in farm work for a story on the experience of prisoners' working in the fields, they explained that they did not stay long for fear that the correctional officer in charge would find a reason to revoke their trusty status (*Angolite* September/October 1979).

As detailed above, we do see correctional officers at San Quentin try to reclaim some power over the information communicated by prisoners. In response to the article detailing the poor conditions in administrative segregation, correctional officers demand that their side of the story be told as well (Drummond 2020: 74-75).

Warden enacts reform to increase subordinate compliance

If prison newspapers serve as information channels for the warden, we should expect him to enact reforms to increase his subordinates' compliance. In response to reports by prison journalists, wardens adjust prison policies. In one instance, the mail room supervisor at Louisiana State Penitentiary attested that they adjusted the prisoner mail policy in response to the prisoner complaint published in the *Angolite* (*Angolite* September/October 1979: 9). At Missouri State Penitentiary, prison officials acquired newsreels and adjusted the prison's viewing schedule in response to the *Jefftown Journal*'s reporting of prisoner dissatisfaction about the viewing material (*Jefftown Journal* 1959). The largest adjustment occurred at San Quentin. Jeff Brooks's article about the poor conditions in solitary confinement led to improvements in conditions and officer treatment of prisoners there (Drummond 2020: 74-75).

Reforms align with voter interests when voters have access to prison newspapers

State voters did have access to many prison newspapers while they circulated. Prison newspapers circulated both inside and outside of prisons. Many offered subscriptions to members of the public. Some even had international subscribers (Morris 2002). From letters to the editor published in prison newspapers, outside subscribers included community members, reporters, lawyers, judges, legislators, etc. The first prison newspaper, the *Summary*, had a subscription list that included "three hundred judges, state officials, attenders of prison congresses, penologists, and others" (Morris 2002: 49). At the time, over two thousand copies of

the *Summary* were printed and mailed out (this usually happened “when the state legislature was in session”) (ibid).

If the theory developed in section two holds, we should see criminal justice reform in line with voters’ interests if they learn from prison newspapers that the criminal justice system is operating contrary to their interests. With regard to criminal justice, voters report preferences for reform in surveys, but vote for tough on crime measures, especially with regard to violent offenders (Pfaff 2016, 2017; Gottschalk 2006). Voters are less concerned with the actual conditions in the prison, and, historically, seem to prefer prisoners endure harsher conditions (Runyon 1953; Carleton 1971; Enns 2016). Thus, we do not expect reforms due to prison newspapers to improve prison conditions. Voters are often most concerned with the tax burden associated with prison management (Carleton 1971, Enns 2016). This, in part, underlies voters’ desire for harsh prisons. Prisoners should be subject to punishment, not state-funded luxury (Runyon 1953; Carleton 1971). Thus, we should expect any reforms to reduce taxpayer burdens.

The most robust reform due to prison newspapers was the release of long-term prisoners. Prison journalists often spotlighted prisoners who they perceived as having been missed by the parole board. Often, shortly after being featured in the prison newspaper, these prisoners would be granted parole. For example, *The Angolite* staff succeeded in winning the release of a long-term prisoner, Frank Moore, through an article on long-term prisoners. The article generated so much publicity that “the Board of Pardons requested his prison record and shortly thereafter voted to release him” (Morris 2002: 163). Through the *Presidio*, Runyon achieved the release of a “forgotten” lifer, Ole Lindquist through an article criticizing the parole board (Runyon 1953: 287). His article was reprinted by several newspapers, inspiring criticism of the parole board in Iowa. In direct response to his story, the Iowa governor, William S. Beardsley, asked the parole

board “to review the cases of all lifers in Iowa and make recommendations on those deserving clemency” (Runyon 1953: 268). The parole board was inundated with letters calling for them to release Ole. After the public attention, Ole received, the governor, Robert D. Blue commuted the sentences of fourteen lifers in 1948. The commutation of their sentence made those lifers eligible for parole (Runyon 1953: 261).

In Illinois, *Menard Times* editor Dave Saunders succeeded in changing the parole laws. His article on the discrepancies in Illinois’s parole laws identified how those prisoners who had a support network and a job waiting for them after release received parole and supervisory assistance, while prisoners who had neither were not released until the end of their sentence and were only given a new suit and twenty-five dollars (Morris 2002). Through the *Presidio*, Tom Runyon changed Iowa’s parole norms, so that the Iowa parole board began allowing prisoners with detainers to be paroled to the prisons where those detainers were held (Runoy 1953).

Ensuring that prisoners are released when they are suitably reformed reduces some of the cost of state prisons. Taxpayers did not want to pay to house prisoners who were suitable for release. Prison journalists failed to influence any reforms of prison conditions. Efforts by Tom Runyon, Wilbert Rideau, and other prison editors to improve the resources and treatment they received often fell on deaf ears (Morris 2002; Runyon 1953; Rideau 2010; Drummond 2020).

Prisoner Litigation

Prisoner litigation began in 1964 with the lifting of the “hands-off” doctrine (Sigler and Shook 1995; Fliter 2001). When federal courts declared that prisoners had a right to sue over violation of their civil rights, the judges created a channel by which the courts could monitor prisons for violations of prisoners’ constitutional rights. Prior to 1964, federal and state courts followed what was known as the “hands-off” doctrine (Sigler and Shook 1995, 246; Fliter 2001: xvi). While there was never any explicit ruling to establish the “hands-off” doctrine by the

Supreme Court, most federal courts followed its guidelines to avoid intervening in the operation of state penal systems (with only few exceptions). State judges followed suit. As elected officials, most state judges adhered to their constituents' preferences and resisted hearing prisoner suits (Fliter 2001: 65).

Prison litigation communicates information about subordinates

If prison litigation serves as an information channel from prisoners to federal courts, then the litigation should provide information about the behavior of the federal courts' subordinates: correctional officers, treatment officials, wardens, commissioners, governors, legislators, and state judges. Examining the content of prisoner suits shows that prisoner litigation did serve to provide federal judges with information about their subordinates. Surveying the general topics of prisoner litigation, Schlanger (2003) finds that rights violations by prison officials and the failure of state legislators to provide adequate funding to state prisons, which contributed to those rights violations, constituted the majority of prisoner suits. Prisoner suits often addressed physical assault (by correctional officers and/or prisoners), inadequate medical care, due process violations with regard to disciplinary sanctions and living conditions complaints (i.e. sanitation or nutrition). More specifically, these suits identified "inadequate heating coupled with inadequate clothing (to protect from cold), inadequate toilets, absence of mattresses, the presence of vermin..., inadequate lighting, inadequate ventilation, intrusive surveillance, closed front cells, and crowding" as violations of the Cruel and Unusual Punishment clause of the Eighth Amendment (Sigler and Shook 1995: 250; Samaha 1988).

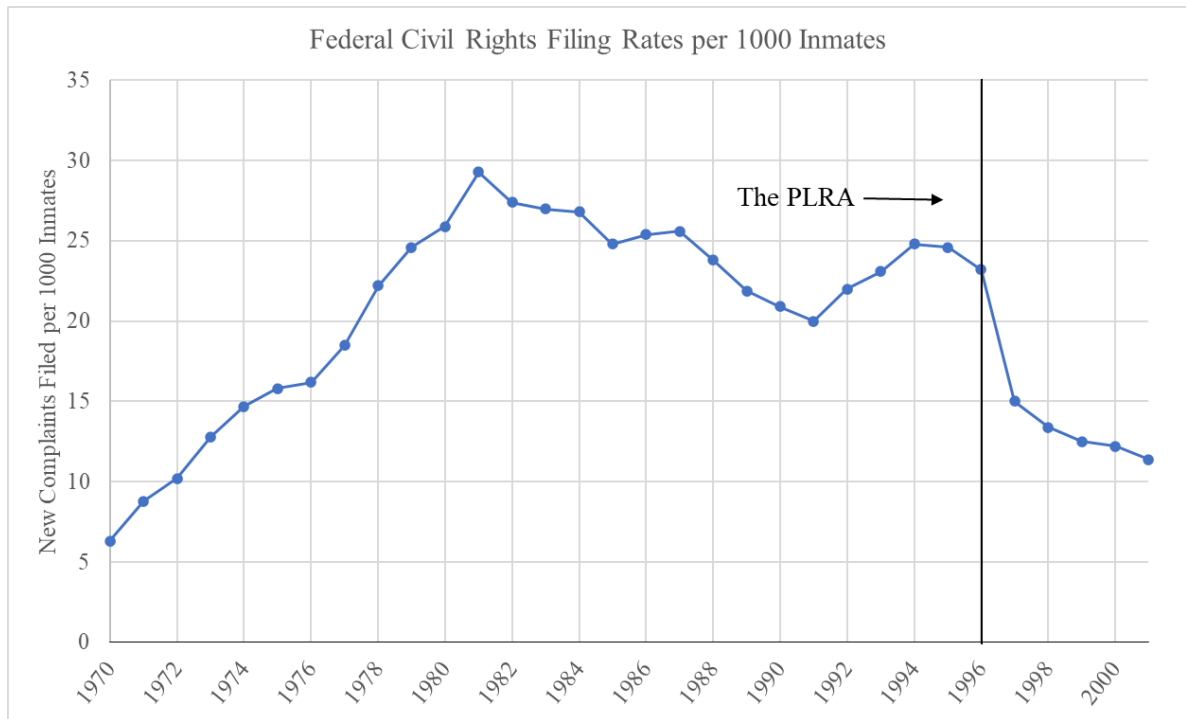
Subordinates to try to gain control of prisoner litigation

If prisoner litigation serves as an information channel for federal judges, we should see state official try to gain control of the litigation. In fact, many state criminal justice officials were outraged by the intervention of federal judges that were a result of prisoner litigation. Prison

systems in several states, including Alabama, Arkansas, Louisiana, Texas, and Florida, had been placed under federal injunction to remedy constitutional violations identified by federal judges. In response to the unwanted monitoring and intervention of federal judges, US senators proposed the Prison Litigation Reform Act (PLRA) to eliminate frivolous prisoner suits and reduce the burden of prison litigation on the federal courts.

The PLRA passed in 1996 and served to reduce the amount of prisoner litigation and the number of successful suits (Schlanger 2003). Five years after the passing of the PLRA, prisoner litigation had dropped by 43 percent despite a 23 percent increase in the US prison population during that time (ibid). Schlanger and Shay (2008) find that the filing rate of prisoners continued to fall after 2001. They find that in 2006, the filing rate had fallen to eleven cases per thousand prisoners—a 60% decline from its 1995 height of twenty-six filings per thousand prisoners (Schlanger and Shay 2008: 141-142).

Figure 5: Federal Civil Rights Filing Rates per 1000 Inmates, 1970 – 2001 (Source: Schalnger (2003))



The PLRA largely eliminated a significant information channel from prisons to the federal courts. PLRA advocates suggested that the act would simply reallocate prisoner litigation from federal courts to state courts (Schlanger 2003; Brill 2008; Sigler and Shook 1995). Despite this anticipated diversion of litigation to state courts, prison litigation has been limited in state courts. Brill (2008) demonstrates that state immunity and separation of powers legislation limits prisoners' ability to successfully sue in state courts. Additionally, several states passed PLRA-type legislation before and after the passing of the PLRA. Historically, state courts rarely provided prisoners relief unless there were constitutional violations.

Federal judges enact reform to increase subordinate compliance

If prisoner litigation served as an information channel for federal judges, we should see those judges enact reforms to increase their subordinates' compliance. Prisoner litigation led to reform when federal judges found that state prison systems had violated prisoners' constitutional rights. Prison systems in Alabama, Arkansas, Louisiana, Texas, and Florida all received federal injunctions to improve their prison systems in response to prisoner suits. For example, in *Costello v Wainwright* (1975), Judge Scott ordered the Florida Department of Corrections to reduce overcrowding and for the Florida legislature to provide the funding necessary to do so (Schoenfeld 2010). In *Ruiz v Estelle*, the judge ordered the Texas Department of Corrections to enact a series of reforms to eliminate the brutality, overcrowding, and medical neglect to which prisoners had been subject (Perkinson 2010). These injunctions included eliminating the building tender system, double the number of guards, hire health-care professionals, upgrade all facilities, and rewrite operating procedures. Similar measures were included in the federal injunctions of the Alabama and Arkansas prison system.

In sum, when state prisons were found to have violated the constitutional rights of prisoners, federal courts intervened. These interventions resulted in federal court mandates for

state legislatures to allocate more resources to the prisons and for state criminal justice systems to reduce overcrowding in prisons.

Reforms align with voter interests when voters have access to prison newspapers

The reforms enacted by federal judges should align with voters' interests only if they have access to prisoner litigation regarding a state's compliance with federal injunctions. State voters did not have access to information about the compliance of their state prison systems with federal injunctions. Often the federal judges who placed the injunction on a state had difficulty obtaining information about compliance. As a result, federal injunctions led to the growth of state prison systems. States DOCs built more and larger prisons to adhere to mandates to reduce overcrowding. This, however, conflicts with voters' preference for prisons to impose a minimal tax burden. With more prisons, the cost of a state's prison system rose. As previously discussed, voters prefer that prisoners endure harsh prison conditions and that prisons impose a small tax burden (Enns 2016; Carleton 1971).

Federal injunctions also explicitly increased the cost of state prison systems by requiring state legislators to allocate more funding to the state prisons. This was done to ensure the provision of adequate medical care and improve living conditions. Improving conditions for prisoners is also in conflict with voters' preferences. While voters may say they want more humane prisons in surveys, they often vote to make prisons harsher (Gottschalk 2006: chapter 2).

Prison Riots

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

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

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

Conclusion

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

Avenues for prisoner voice can serve as an information channel, and thereby influence reform, only when they are formally established by criminal justice officials. Both prison journalism and prisoner litigation served as information channels and led to reforms because

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

This analysis has implications for prison reform efforts. Efforts to reform the US criminal justice system need to consider the incentives of the actors involved in the criminal justice system. The history of US prisons has been characterized by unintended consequences of the policies implemented by reformers. Attempts to reduce and humanize the US prison system have led to its growth in both size and severity (Murakawa 2014). Reform by those outside the prison system needs to consider the incentives of the criminal justice bureaucracy. Prison journalism, which has been growing again in recent years, may aid in this task. Prisoners know the realities of prison life and can anticipate unintended results from proposed policies. Those working as prison journalists are already working with prison officials to publish newspapers that speak to the realities of prison life, suggest reforms, and identify areas where the lack of nuance by outside reformers has resulted in the worsening of conditions for prisoners. For example, in 2019, California Supreme Court judges ruled that California state prisons could not use private prisons to house their prisoners. This triggered the return of thousands of California Department of Corrections and Rehabilitation (CDCR) prisoners to already overcrowded California state prisons. This ruling was in response to the perception that private prisons do not adequately provide for prisoners' well-being. *San Quentin News* staff interviewed some of the prisoners who

had newly arrived at San Quentin from out-of-state private prisons. These prisoners expressed that “those [private] prisons are much better than California institutions, even though they dislike the separation from their families” (*San Quentin News* August 2019: 1). Aron Kumar Roy—a *San Quentin News* writer—gives the following account of his interview with one recently returned prisoner as follows:

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

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

Sustainable reforms must come from inside the criminal justice bureaucracy in each state. Forcing reforms from outside the bureaucracy will have unintended consequences that may actually perpetuate aspects of the prison system the reforms intend to eliminate. The history of reforms from prisoner litigation shows how criminal justice bureaucrats can commandeer reform efforts to serve their interests rather than the intent of the reform. For example, judicially mandated reform of the Florida prison system led to the growth of the prison system there. Federal judges ruled that the prison overcrowding in the state was unconstitutional and established guidelines for what constitutes overcrowding. They placed an injunction on the

director of Florida Department of Corrections (FDOC) to eliminate overcrowding according to those guidelines. Rather than reducing the prison population, which was the intent of the judicial ruling, Florida criminal justice bureaucrats built new, larger prisons. Voters in the state were resistant to the idea of releasing large numbers of prisoners to comply with the judicial mandate. Voters saw prisoners as dangerous. To accommodate voter preferences, legislators allocated greater resources to build new, larger, more industrial prisons in the state. These new buildings reduced the prison population at a single prison and addressed the judicial mandate to reduce overcrowding in the state prisons. Rather than reduce the prison population, which was the intent of the judicial mandate, the way that the state criminal justice system complied with the order actually facilitated the growth of the system, creating space for the incarceration of more prisoners (Schoenfeld 2010).

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

the costs of re-entry for former prisoners may aid sustainable and effective reform of this legislation.

References

- Adams, R (1992) *Prison Riots in Britain and the USA*, Macmillan Press.
- Alexander, M (2012) *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, New York: The New Press.
- Angolite* July/ August 1979, Louisiana State Penitentiary, Angola, LA: Louisiana Department of Corrections.
- Angolite* March/ April 1979, Louisiana State Penitentiary, Angola, LA: Louisiana Department of Corrections.
- Angolite* May/ June 1979, Louisiana State Penitentiary, Angola, LA: Louisiana Department of Corrections.
- Angolite* November/ December 1979, Louisiana State Penitentiary, Angola, LA: Louisiana Department of Corrections.
- Angolite* September/ October 1979, Louisiana State Penitentiary, Angola, LA: Louisiana Department of Corrections.
- Baird, RN (1967) *The Penal Press*, Evanston: Northwestern University Press.
- Breton, A & Wintrobe, R (1975) "The Equilibrium Size of a Budget-maximizing Bureau: A Note on Niskanen's Theory of Bureaucracy" *Journal of Political Economy*, 83(1): 195 – 208
- Breton, A & Wintrobe, R (1982) *The Logic of Bureaucratic Conduct: An economic analysis of competition, exchange, and efficiency in private and public organizations*, Cambridge: Cambridge University Press.
- Brill, A (2008) "Rights without Remedy: The Myth of State Court Accessibility after the Prison Litigation Reform Act," *Cardozo Law Review* 30(2): 645-682.
- Brown, EK (2012) "Rethinking Public Opinion in Penal Policymaking: Recommendations for Research," *Sociology Compass* 6(8): 601-613.
- Carleton, MT (1971) *Politics and Punishment: A History of the Louisiana State Penal System*, Baton Rouge: Franklin Press.
- Cooney, MW (1974) *The History of the Penal Press in Indiana State Correctional Institutional*, Ball State University, MA Thesis.
- Drummond, WJ (2020) *Prison Truth: The Story of the San Quentin News*, Oakland: University of California Press.
- Enns, PK (2016) *Incarceration Nation: How the United States Became the Most Punitive Democracy in the World*, New York: Cambridge University Press.
- Enns, PK (2014) "The Public's Increasing Punitiveness and Its Influence on Mass Incarceration in the United States," *American Journal of Political Science* 58(4): 857-872.
- Fairchild, ES (1981) "Interest Groups in the Criminal Justice Process," *Journal of Criminal Justice*, 9: 181-194.
- Fox, V (1956) *Violence Behind Bars: An Explosive Report on Prison Riots in the United States*, Westport: Greenwood Press.
- Gottschalk, M (2006) *The Prison and the Gallows: The Politics of Mass Incarceration in America*, New York: Cambridge University Press.
- Holcombe, RG (2016) *Advanced Introduction to Public Choice*, Cheltenham: Edward Elgar

- Jacobs, D & Carmichael, JT (2001) "The Politics of Punishment across Time and Space: A Pooled Time-Series Analysis of Imprisonment Rates," *Social Forces* 80(1): 61-89.
- Jefftown Journal* April 1959, Missouri State Penitentiary, Jefferson City, MO: Missouri Department of Corrections.
- Jefftown Journal* August 1959, Missouri State Penitentiary, Jefferson City, MO: Missouri Department of Corrections.
- Jefftown Journal* December 1959, Missouri State Penitentiary, Jefferson City, MO: Missouri Department of Corrections.
- Jefftown Journal* February 1960, Missouri State Penitentiary, Jefferson City, MO: Missouri Department of Corrections.
- Jefftown Journal* January 1960, Missouri State Penitentiary, Jefferson City, MO: Missouri Department of Corrections.
- Jefftown Journal* July 1959, Missouri State Penitentiary, Jefferson City, MO: Missouri Department of Corrections.
- Jefftown Journal* June 1959, Missouri State Penitentiary, Jefferson City, MO: Missouri Department of Corrections.
- Jefftown Journal* March 1959, Missouri State Penitentiary, Jefferson City, MO: Missouri Department of Corrections.
- Jefftown Journal* May 1959, Missouri State Penitentiary, Jefferson City, MO: Missouri Department of Corrections.
- Jefftown Journal* November 1959, Missouri State Penitentiary, Jefferson City, MO: Missouri Department of Corrections.
- Jefftown Journal* October 1959, Missouri State Penitentiary, Jefferson City, MO: Missouri Department of Corrections.
- Jefftown Journal* September 1959, Missouri State Penitentiary, Jefferson City, MO: Missouri Department of Corrections.
- Jorgensen, RR (1974) "Prison Riots as Agents of Prison Reform: A Sociological Study of Violence and Change," University of Nebraska, Master's Thesis.
- La Roca*, August 1974, Arizona State Penitentiary, Florence, AZ: Arizona Department of Corrections.
- La Roca*, October 1974, Arizona State Penitentiary, Florence, AZ: Arizona Department of Corrections.
- La Roca*, September 1974, Arizona State Penitentiary, Florence, AZ: Arizona Department of Corrections.
- Morris, JM (2002) *Jailhouse Journalism: The Fourth Estate Behind Bars*, Brunswick: Transaction Publishers.
- Murakawa, N (2014) *The First Civil Right: How Liberals Built Prison America*, New York: Oxford University Press.
- Nicholson-Crotty, S, Peterson, DAM & Ramirez, MD (2009) "Dynamic Representation(s): Federal Criminal Justice Policy and an Alternative Dimension of Public Mood," *Political Behavior* 31(4): 629-655.
- Niskanen, WA (1968) "The Peculiar Economics of Bureaucracy" *The American Economic Review*, 58(2): 293 – 305
- Ostrom, E (2005) *Understanding Institutional Diversity*, Princeton: Princeton University Press.
- Perkinson, R (2010) *Texas Tough: The Rise of America's Prison Empire*, New York: Picador.

- Pfaff, JF (2016) "The Complicated Economics of Prison Reform," *Michigan Law Review* 114(6): 951 – 982.
- Pfaff, JF (2017) *Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform*, New York: Basic Books.
- Reflector* 1956, Indiana State Penitentiary, Indiana State Department of Corrections.
- Rideau, W (2010) *In the Place of Justice: A Story of Punishment and Deliverance*, New York: Vintage Books.
- Runyon, T (1953) *In for Life: A Convict's Story*, New York: W.W. Norton and Company, Inc.
- San Quentin News* (August 2019) San Quentin State Penitentiary, San Quentin: California Department of Corrections and Rehabilitation.
- Schlanger, M & Shay, G (2008) "Preserving the Rule of Law in America's Jails and Prisons: The Case for Amending the Prison Litigation Reform Act," *University of Pennsylvania Journal of Constitutional Law* 11(1): 139-154.
- Sigler, RT, & Shook, CL (1995) "The Federal Judiciary and Corrections: Breaking the 'Hands-Off' Doctrine," *Criminal Justice Policy Review* 7(3-4): 245-254.
- Schlanger, Margo (2003) "Inmate Litigation," *The Harvard Law Review Association*, 116(6): 1555-1706.
- Schoenfeld, H (2010) "Mass Incarceration and the Paradox of Prison Conditions Litigation," *Law and Society Review* 44(3/4): 731-767.
- Stolz, BA (2002) "The roles of interest groups in US criminal justice policy making: Who, when, and how," *Criminal Justice*, 2(1): 51-69.
- Summary* 1885, 1897, New York State Reformatory, Elmira, N.Y.: New York State Department of Corrections.
- Tabarrok, A (2003) *Changing the Guard: Private Prisons and the Control of Crime*, Oakland: The Independent Institute.
- Tullock, G (1965) *Politics of Bureaucracy*, Public Affairs Press.
- Useem, B & Kimball, P (1991) *States of Siege: U.S. Prison Riots, 1971-1986*, New York: Oxford University Press.
- Wines, E.C. (ed) (1870) *Transactions of the National Congress on Penitentiary and Reformatory Discipline, held at Cincinnati, Ohio, October 12-18, 1870*.
- Wines, E.C. & Dwight, TW (1867) *Report on the Prisons and Reformatories of the United States and Canada*.
- Wintrobe, R (1976) *The Economics of Bureaucratic Organization*, Toronto: University of Toronto, Doctoral Dissertation.
- Yates, J & Fording, R (2005) "Politics and State Punitiveness in Black and White," *Journal of Politics* 67(4): 1099-1121.