Prison Necropolitics

by

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Table of Contents

Acknowledgments 3
Foreword 4
Chapter 1: Introduction to Mass Incarceration and Necropolitics 5
Chapter 2: State Racism and Social Death in Slavery and its Afterlives 25
Chapter 3: State Racism and the Warehouse Prison 56
Chapter 4: The Warehouse Prison and Social Death 107
Conclusion: Prison Necropolitics 149
Bibliography 169
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Foreword

This thesis navigates recent accounts of mass incarceration, a crisis across America that has damaged some communities more and differently than others. Practically every account referenced here pays some level of attention to how the human cost of mass incarceration has differed by class, race, location, gender, or sexuality. Yet the latter two receive the least attention, and for this I apologize. This selective sampling reflects, at best, an attempt at discussing intersections of class, race, and location, and, at worst, betrays my challenges with time scarcity.

I appreciate that mass incarceration is a deeply personal topic for too many of us whose friends and family have been impacted. I approach this topic without personal experience of incarceration, as neither I nor anyone in my immediate family nor close friends has been imprisoned, and from the level of privilege that my experience reflects. Especially because of my position, I tread in sensitive and risky territory when discussing the experience of those who have been incarcerated. However, because the memoirs and testimonies of those incarcerated contribute valuably to the evolving discourse around mass incarceration, I have tried to include such writings and interviews without misrepresenting or obfuscating their words. All such text is linked to its original source for full reading.
Introduction: Mass Incarceration and Necropolitics

The dramatic growth and severe treatment of America’s prison population defines our current era of mass incarceration. The War on Crime and the War on Drugs, with increased length of sentencing, and an intensification of policing the poor, has entangled people of all classes and races. But the disproportionate rate of incarceration for black Americans, which has climbed in tandem with the prison population since the early 1970s, evokes the long history of racist laws and institutions in the United States. If slavery inaugurated antiblack racism in America, the (extra)legal orders of racism that followed, such as the black codes and Jim Crow, continued to define blackness as a threat. Against this historical background, I aim to understand the development of the warehouse prison, a site defined by a lack of rehabilitative and health resources, remote isolation from the public, friends and family for longer sentences, and regular prolonged solitary confinement, as necropolitical.

Recent Approaches to understanding Mass Incarceration

Various recent works contribute to our understanding of the racist dimensions of mass incarceration. I will briefly present them here, acknowledge their strengths and weaknesses, and explain how my analysis will build upon yet differ from these works.

In *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexander argues that the War on Drugs, (re)announced by President Reagan in 1982, largely caused mass incarceration, and has produced a system of exclusions that stretches beyond the prison. Alexander outlines how harsher laws, the extensive reach of the carceral system beyond imprisonment, and social stigma perpetuate exclusions
from society well after people are released from prison. Laws politically disenfranchise and enable economic discrimination against formerly incarcerated individuals, and, Alexander argues, ultimately produce an “underclass: a lower caste of individuals who are permanently barred by law and custom from mainstream society.” The disproportionately black composition of this undercaste reflects how “this new system of racialized control,” grown out of the War on Drugs, “purports to be colorblind, [yet] creates and maintains racial hierarchy much as earlier systems of control did,” such as Jim Crow and slavery.

Alexander outlines how each stage of the criminal justice process amplifies its racial disparities, including police stops, searches, charging, and sentencing. In each of these stages, judicial discretion provides an opportunity for prejudice. Even if the law itself is “colorblind,” police officers, (assistant) district attorneys, judges and juries are not. Advances in cognitive psychology show how the enduring equation of blackness and threat condition our decisions and create skewed outcomes, essentially reproducing these links of signification that justify themselves. This prejudice in the legal process exacerbates the effects of laws that allegedly already targeted poor and black people, as police use aggressive police tactics in urban areas that bear the lasting marks of racial segregation. Subsequently, the population of actual drug users and the population of those criminalized for drug use differ dramatically. While the majority

1 Michelle Alexander, The New Jim Crow (New York: The New Press, 2012), 13. Also on her use of “undercaste,” Alexander p. 7 “In major cities wracked by the drug war, as many as 80% of young African American men now have criminal records and are thus subject to legalized discrimination for the rest of their lives. These young men are part of a growing undercaste, permanently locked up and locked out of mainstream society.”
of America’s drug users and dealers are white, three fourths of those imprisoned for drug offenses have been Black or Latino.⁴

It is worth noting that other research similarly throws into question the colorblind and deceivingly commonsensical notion that high (black) crime rates are responsible for high (black) incarceration rates. Research suggests that the rise in prison population from 1985 to 1995 is mostly explained by the greater likelihood of a prison sentence upon arrest (51.4%) and increase in prison sentences (36.6%), rather than an increase in crime rates (11.5%).⁵ Furthermore, in a comparison of changes in crime rates in various states between 1981 to 1990, when incarceration rates hit a historic high, crime rates were just as likely to go up, down or stay the same, irrespective of incarceration rates.⁶ The question, then, is not the frequency of crime but rather modes of policing and the frequency and severity of punishment.⁷

Alexander convincingly narrates how the War on Drugs contributed to dramatic increases in the incarceration rate, and asserts that “violent crime is not responsible for mass incarceration.”⁸ But the War on Drugs alone cannot account for the scale nor quality of mass incarceration today. If Alexander’s book spans policing, incarceration, and the negative consequences thereafter, it focuses on how the criminal justice system processes people, marks them for life, and thereby pressures them to the margins of society. Alexander focuses not on prison itself, but rather on the effects of correctional control more broadly. To explain why she focuses on the War on Drugs, and not violent crime, Alexander explains: “most people who are

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⁷ This point will be addressed more comprehensively in Chapter 3.
under correctional control today are not in prison. As noted earlier, of the nearly 7.3 million people currently under correctional control, only 1.6 million are in prison.”9 Furthermore, “probationers are the clear majority of those who are under community supervision (84 percent), and only 19 percent of them were convicted for a violent offense.”10

However, by focusing more broadly on carceral control and shying from discussing violent crime, Alexander omits the majority of currently incarcerated offenders. To illustrate the dramatic increase of incarceration for drug crime, Alexander cites research showing that, from 1985 to 1995, the population of incarcerated drug offenders in State prisons increased by 478%.11 Yet the population of those who committed violent crimes increased 86% over the same time, and the number of those incarcerated for violent crimes was still, in total, more than twice the population of those incarcerated for drug crimes.12 Furthermore, Alexander cites this research to support her claim that “in less than thirty years, the U.S. penal population exploded from around 300,000 to more than 2 million, with drug convictions accounting for the majority of the increase.”13 Yet the research Alexander cited here does not actually support this claim, nor does other research. In fact, between 1978 and 2013, “if all drug cases were removed from the statistics, America's imprisonment rate would still have quadrupled.”14

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9 Ibid.
12 Mauer, Race to Incarcerate, 33-35.
population was incarcerated for violent crimes, versus 16% for drug crimes.\textsuperscript{15} Contra Alexander, violent crime plays a significant role in mass incarceration, especially when one considers prison itself.

In \textit{The Collapse of American Criminal Justice}, William J. Stuntz attributes the racial dimensions of mass incarceration to the rise of official discretion over the “rule of law,” the discrimination against black and poor Americans that this discretion enabled, and lack of local control over laws and their enforcement. These three factors converge at critical points such as the War on Drugs. For instance, police conduct “pretext stops,” pulling people over with the pretext of a petty crime like a traffic violation with the real intention of searching for drugs. The vast amount of crime in America and the resource limitations that police and prosecutors face mean that “the criminals who pay the highest price for their crimes will be those who are most cheaply caught and convicted.”\textsuperscript{16} For instance, drug arrests and prosecutions are cheaper and easier to secure on the street of a city than in suburbia.\textsuperscript{17} As police strategies focus on certain locations and their inhabitants, the lasting legacy of segregation means that poor blacks are criminalized. Stuntz largely follows Alexander’s argument here in that modes of policing and prejudiced discretion criminalize poor blacks.

Like Alexander, Stuntz attributes mass incarceration to America’s punitive swing, starting in the early 70s’ and characterized by longer sentences for all crimes (but especially drug crimes) and the geographically specific and aggressive policing of

\textsuperscript{16} Stuntz, \textit{The collapse of American criminal justice}, 54.
\textsuperscript{17} Stuntz, \textit{The collapse of American criminal justice}, 54.
poor and black people. Yet Stuntz diverges from Alexander in ultimately attributing this punitive swing to a period of relative leniency and under-incarceration.\(^{18}\) In this view, the punitive swing not only followed, but was a direct reaction to, the liberalism of the Warren Court and the “unfathomable lenity” of the system.\(^{19}\) In his account, those responsible for establishing the laws and strategies for enforcement were not those actually affected by crime; white, middle and upper-class neighborhoods were legislating and policing poor black neighborhoods. Since suburban voters, state legislators, and federal appellate judges are so removed from the populations they govern, “criminal justice policies are political symbols or legal abstractions [to them].”\(^{20}\) The remoteness of power holders from the black neighborhoods experiencing increases in crime, Stuntz argues, tipped the balance between “anger at crime and empathy for the young men whom police officers arrest and prosecutors charge.”\(^{21}\) According to Stuntz, these countervailing forces, moral outrage at the crime and empathy for the alleged criminal, achieve an “equilibrium” through local government.\(^{22}\) Stuntz sums up his argument: “Make criminal justice more locally democratic, and justice will be more moderate, more egalitarian, and more effective at controlling crime.”\(^{23}\)

The weakness of Stuntz’ historical account is that it neatly assigns blame for the punitive swing and largely ignores the role of local black actors. Contrasting the relatively lenient and responsive local policing of the Golden Age with the rise of mass incarceration, Stuntz says that “voters who lived on or near crime-ridden streets

\(^{19}\) Stuntz, *The collapse of American criminal justice*, 36.
mattered [during the Gilded Age]; relevant government officials had to listen to those voters in order to keep their jobs. Black Americans have never enjoyed that power.”

Stuntz generally paints the good-intending reformers as largely white and separate from the communities that they strictly governed. His narrative thus features white people’s politics making criminal justice in black neighborhoods more severe. From this diagnosis, Stuntz prescribes an increase in local control of the criminal justice system, for instance, through geographically (and thus racially) narrowing the pool of jurors to a neighborhood in order to vindicate the promise of a jury by one’s peers. Yet competing accounts, namely Locking Up Our Own by James Forman Jr., challenge Stuntz’ positive view of local control.

Forman focuses on what Stuntz relegates to the footnotes: the involvement of the growing black elite, including political and religious leaders and high-ranking police officers, in legislating and enforcing laws that caused the unprecedented levels of incarceration of black youths. As Washington, DC, saw its murder rate multiply with the proliferation of guns and crack cocaine, the city’s black power-holders increased sentences, declined decriminalizing marijuana, and sent addicts to jail years before the federal initiation of the War on Drugs. Through the minutes of city council meetings and news reports, Forman documents how these leaders called for much more than just a tough-on-crime approach to address the violence of poor black neighborhoods. But their proposals for fighting poverty, providing health care, and

26 Stuntz, The collapse of American criminal justice, 312.
27 Stuntz, The collapse of American criminal justice, 37f73.
investing in local projects and infrastructure went largely unfunded. Instead, the money went exclusively to the police and prisons.

Forman’s history challenges the idea that local control will produce a lenient system. In Washington, DC, locals’ empathy did not temper outrage and fear to maintain a lenient system. However, Stuntz’ concern is not actually the severity of punishments, but rather their instability over time. In an analogy between markets and criminal punishment, Stuntz defines his ideal system by stable pricing. One may try to reconcile Forman’s account with Stuntz by suggesting that Washington, DC, was swayed by the abstractions and symbolism of national politics, and was thus responding to the rhetoric and strategies of actors far from and ignorant of the local reality. But the city government embraced punitive measures years before Reagan announced the War on Drugs and broken-windows policing increased police attention to low-level, petty street crime. And, to those on the ground, the explosion of violence in the city was a lived reality, not a politician’s abstraction. For these reasons, Forman’s account shows that local control does not necessarily produce a more stable system nor a more lenient one.

Although the significant role of local actors in creating mass incarceration undermines Stuntz’s prescription for local control, Stuntz’s focus on police and prosecutors’ discretion, the subsequently amplified class and racial dimensions of policing, and a parallel between the end of slavery and the end of mass incarceration are insightful. The author laments how police exercise of discretion has amplified racial disparities and thereby delegitimized the criminal justice system in two ways.

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First, police discretion over who to pull over, stop and frisk in pretext stops targets blacks. Second, police strategies vary by area and their racial composition: poorer and blacker neighborhoods are policed more aggressively than suburban neighborhoods.

Stuntz laments prosecutorial discretion for similar reasons, although his reasoning is not explicitly based on race, but rather on discrepancies in the price of crime.\textsuperscript{30} Stuntz poses the latter analogy between the end of slavery and mass incarceration to illustrate how fear of black crime inclines people to treat blacks more severely in order to control the black population. White American’s violence against blacks shows how the “specter of free blacks” persisted as a powerful figure of imagination through the abolition of slavery, and enabled baseless destruction.\textsuperscript{31} Stuntz uses this parallel to question our fear of black crime today, the destruction this fear enables, and to press our obligation to reduce the prison population and support formerly incarcerated individuals.\textsuperscript{32} My thesis follows Stuntz’ line of questioning to the scale and character of America’s warehouse prisons.

Although Alexander’s research illustrates laws and strategies that contribute to mass incarceration’s racist outcomes and the lasting political and economic disenfranchisement of those processed, this thesis moves beyond her argument to focus more specifically on the prison itself and to take account of violent crimes. Stuntz also contributes valuable insights by focusing on policing and the War on Drugs, but avoids the prison itself.\textsuperscript{33} In his book \emph{Locked In: The True Causes of Mass Incarceration—and How to Achieve Real Reform}, John Pfaff illuminates how local

\begin{thebibliography}{13}
\bibitem{30} Stuntz, \textit{The collapse of American criminal justice}, 296.
\bibitem{31} Stuntz, \textit{The collapse of American criminal justice}, 45.
\bibitem{32} Stuntz, \textit{The collapse of American criminal justice}, 14
\bibitem{33} Stuntz’ discussion of the prison is limited to a discussion of incarceration rates.
\end{thebibliography}
prosecutors’ have exercised their discretion more aggressively in pursuing charges, and how their political ambitions almost always align with indulging “tough-on-crime” sentiments. Like Alexander and Stuntz’ work, Pfaff’s book offers a significant explanation for how the prison population has grown. Yet in all three works, the character of the prison itself is relatively unaddressed. Two sociologists, Loïc Wacquant and John Irwin, inform this thesis by addressing this gap. The first historicizes State racism against black Americans, and the second introduces my specific object of study, the warehouse prison. While all five of these works explain to some degree the increase in the prison population and racial disparities therein, the latter two works focus the most on the prison itself, and thereby provide a strong point of departure for this thesis.

Wacquant argues that the term “mass incarceration” inaccurately implies a general if large-scale rise in criminalization, while the reality is the “hyper-incarceration” of poor black youths in resource-starved ghettos. Taking the latter as the most recent iteration of antiblackness through law, Wacquant narrates the American history of successive institutions that “define, confine and control” black Americans: slavery, Jim Crow, the ghetto of the Northern industrial city, and finally today’s “remnants of the dark ghetto and the carceral apparatus.” According to Wacquant, the ghetto and the prison function analogously and each supports the other. He defines ghetto:

“a ghetto is essentially a sociospatial device that enables a dominant status group in an urban setting simultaneously to ostracize and exploit a subordinate group endowed with negative symbolic capital…

34 Adam Gopnik, "Rattling the Cage," _The New Yorker_, 93, 8 (2017): 71. Available at
[through] four elements: stigma; constraint; territorial confinement; and institutional encasement.”

With this definition, Wacquant charges that the prison enables the same dominance as the ghetto. He illustrates the relationship between the two spaces by pointing to how it “entraps a redundant population of younger black men (and increasingly women) who circulate in closed circuit between” the two. This structural approach does not purport to represent people’s experiences, but rather to describe how these two institutions function in tandem.

However, Wacquant identifies a discontinuity between prior forms of racial control and hyper-incarceration today. While “slavery, Jim Crow and the ghetto of the mid-century… [carried] out a positive economic mission of recruitment and disciplining the workforce,” the carceral system today does not do so. This argument is necessary for understanding that American prisons are not designed for rehabilitation, but rather incapacitation. Following Wacquant, Irwin explains the function of prison in relation to incapacitating individuals marked as inherently threatening and disposable.

John Irwin illustrates this final point with California’s history of what he deems “the warehouse prison.” This moniker reflects how the increase in the prison population since 1980 has transformed pre-existing prisons and set a new model for future prisons. Against the penological goals of job training, rehabilitation and healthcare, overcrowding has rendered prisons merely a place to serve a sentence.

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36 Wacquant, “From Slavery to Mass Incarceration,” 50.
38 Wacquant, “From Slavery to Mass Incarceration,” 53.
According to Irwin, warehouse prisons are characterized by limited access to rehabilitative or recreational programs and prolonged solitary confinement, and were built according to an understanding of the criminal as permanently committed to predatory crime, incapable of rehabilitation, and deserving of severe punishment. According to Irwin, the criminological discourses of “the dangerous criminal” and perpetually “wicked people,” dominant in the 80s’ and 90s’, materialized in the warehouse and supermax prisons. Super-maximum security prisons qualify as warehouse prisons, but the permanent isolation of all prisoners in solitary confinement distinguishes their design as especially restrictive.

**Theorizing the Warehouse Prison as Necropolitical**

To understand why Achille Mbembe’s theory of “necropower” accurately describes the justifications, methods and effects of the warehouse prison, I first turn to the inadequacy of Foucault’s biopower to account for the same. In *Discipline & Punish*, Foucault argues that Jeremy Bentham’s Panopticon has provided Western society with a model for disciplining students, the poor, the sick, and the criminal towards the norm. In this architecture, he argues, we see the serialization of individuals as objects of scientific-juridical discourse, tracked by their constant visibility and examination. If the imperative of power here is to discipline the individual, strategies and technologies have also developed for the regulation of the population, such as

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42 The irony of Bentham’s Panopticon is that it was intended to render punishment more humane by removing the anachronistic methods of punishment focused on inflicting grievous bodily pain, i.e. torture, that characterized earlier regimes.
health insurance, infrastructure, and campaigns for public hygiene. Foucault dubs this combination “biopower,” and demonstrates its power to spatialize bodies at the site of the Worker’s Estate, where visibility and accountability are maximized.

Departing from Foucault’s focus on Western Europe, Achilles Mbembe analyzes the late African colony and the American slave plantation to synthesize the lethal underside of biopower: necropower. While the former disciplines individuals and regulates populations with the understanding that these bodies have potentially productive and valuable lives, the latter operates upon the opposite assumption, that certain bodies are without value. Instead of normalization, necropower describes “the material destruction of human bodies and populations.” In stark contrast to the Worker’s Estate, Mbembe illustrates the necropolitical imperative to identify, isolate, and kill populations marked worthless or dangerous with Apartheid South Africa’s homelands. This organization of space was intended to limit production for the market by blacks, to appropriate land from blacks, and to exclude the black sub-citizenry from future land ownership.

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44 Foucault, *Society Must Be Defended*, 251. Specifically referring to the gridded layout of Workers Estates in the 19th century, Foucault suggests that “the layout, the fact that individuals were made visible, and the normalization of behavior meant that a sort of spontaneous policing or control was carried out by the spatial layout of the town itself.”
45 Handout “A Distinctly non-Definitive Glossary of Foucauldian Terms” from Prof. Kaye for CSS371
46 “Without value” takes multiple meanings within Foucault’s and Mbembe’s frameworks. For Foucault, the racialized other’s life is without value in the sense that it poses an existential threat; even if it did have value, per se, the other’s necessary death makes this question null. Mbembe, on the other hand, engages more with the question of value by repeatedly referencing how slavery rendered slaves natural resources rather than human beings, “ore” rather than labor. For the latter view, see chapter 2 of Mbembe’s *Critique of Black Reason* (Durham, NC: Duke University Press, 2017).
48 To some, this definition recalls Jewish ghettos, America’s Japanese internment camps, or overcrowded refugee camps.
In some aspects, Foucault’s account of biopower implies what Mbembe calls necropower. For instance, eugenics may define inferior sub-species within the larger population, and justify and forced sterilizations.\textsuperscript{50} If we understand eugenics as a biopolitical discourse and forced sterilizations as a connected practice, biopolitics seems necessarily violent and exclusionary because biopolitical practices do not cover the population uniformly, but rather may select some lives as less valuable than others.\textsuperscript{51} Foucault accounts for this devaluation of certain lives with “State racism,” which ensures the “death-function in the economy of biopower.”\textsuperscript{52,53} For Foucault, State racism fragments the population body into distinct species, including a privileged group and an internal threat to that group.\textsuperscript{54} State racism produces the latter as a biological-political enemy to society, devaluing certain lives by rendering them an existential danger to the privileged population. For an archetypal example, Foucault recounts how Jews in Nazi Germany became categorized as a biological threat to the Aryan population; this conception justified their identification, isolation into ghettos, and mass death.\textsuperscript{55} Beyond this example, Foucault capacious defines State racism’s “killing” as including “every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on.”\textsuperscript{56} Racism here is thus understood as a discourse justifying violence against a group marked inferior, the ultimate contradiction of biopower’s imperative to normalize and sustain life.

\textsuperscript{51} Ibid.
\textsuperscript{52} Lemke, \textit{Biopolitics: An Advanced Introduction}, 40.
\textsuperscript{53} Foucault, \textit{Society Must Be Defended}, 258.
\textsuperscript{54} Foucault, \textit{Society Must Be Defended}, 256.
\textsuperscript{55} Foucault, \textit{Society Must Be Defended}, 89.
\textsuperscript{56} Foucault, \textit{Society Must Be Defended}, 256.
Considering bio- and necropower on a spectrum clarifies why the framework is capacious, not manchurian. Foucault’s account of State racism already admits that the imperative to make live and the imperative to make die not only coexist, but also support one another: racism frames killing within biopolitics, making violence against some a requisite for the survival of the rest. Yet both bio- and necropower operate simultaneously, as bodies disprivileged by their racialization are not necessarily entirely excluded from biopower. The framework purports to describe how individual bodies and populations are understood and treated differently, but does not necessarily require that treatment differ in all aspects. Sensitive to the potential criticism that this framework is so capacious that, by describing everything, it describes nothing, I turn to a specific aspect of Mbembe’s account of necropower: social death.

Orlando Patterson originally defined social death by three core features. Patterson synthesizes these three elements from a historical survey of slave societies, so I will reproduce his example here. First, general dishonor distinguishes the slave from the freeman. Although the freeman may experience dishonor at certain points, the slave always lacks even the possibility of achieving public worth. Indeed, as reflected by the paucity of information on their histories, even private identity was circumscribed. This denial of private life informs upon the second characteristic of the slave relation, “natal alienation.” The slave is positioned as a genealogical isolate, stripped of heritage and denied the right to claim their own children. One may physically give birth to a child, but they are denied the social status of parent. Lastly,

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57 Foucault, *Society Must Be Defended*, 216.
58 Consider, for instance, the role of education in fashioning members of the colonized populations into bureaucrats.
gratuitous violence is the third condition and reflects the master’s “near total” power over the slave.\textsuperscript{59} Guarding against the objection that his work deletes the slave’s agency, Patterson does not describe the impossibility of family relations amongst the enslaved, but rather their illegitimacy within slave societies. Informal relationships existed, but they “were never recognized as legitimate or binding” by the slavers.\textsuperscript{60} Ultimately, the slave’s position is defined by social death, a status that denies their relationality.

If state racism marks certain bodies for violence by imposing signifiers like criminal threat, social death is a form of this violence that strains and denies interrelationality. Together, these two elements of necropower, state racism and social death, suggest significant continuities between slavery and mass incarceration in America. These continuities include the discursive production of blackness as threat and the actual criminalization of the black population, as well as the positioning and treatment of this population as antithetical to society, thus justifying and demanding exclusion.

Historically, criminality has been a site for producing blackness as threat. If prior forms of racial control produced racial distinctions, made them symbolically and materially real, by scientifically cataloguing and operating upon them, Wacquant argues that the carceral system today continues this production. More specifically, the carceral system “officially solidifies the centuries-old association of blackness with criminality and devious violence.”\textsuperscript{61} Here, racism justifies itself by the outcomes it

\textsuperscript{59} Ibid, 7. Emphasis added.
\textsuperscript{60} Orlando Patterson, \textit{Slavery and Social Death: A Comparative Study} (Cambridge, MA: Harvard University Press, 1985), 6.
\textsuperscript{61} Wacquant, “From Slavery to Mass Incarceration,” 55-56.
produces. The hyperincarceration “of blacks has supplied a powerful common-sense warrant for ‘using color as a proxy for dangerousness,’” and this linkage feeds back into the legislation and policing strategies that reproduce it.\textsuperscript{62}

This linkage between criminality and blackness is crucial for understanding how state racism justifies the systematic isolation of and violence against black bodies. State racism today fragments the population into criminal elements and law abiding citizens in rhetoric and in fact, with stigma that distinguishes someone for a lifetime. Politician’s polemical construction of the criminal as an existential enemy to society places the antiblack dimension of criminal justice behind the colorblind veil of common sense and scientific management of populations. If Saidiya Hartman is correct that “the fragile ‘as if equal’ of liberal discourse inadequately contends with the history of racial subjection and enslavement,” this is especially true of mass incarceration, where the formally colorblind concept of criminal obscures and justifies the damage that this aegis has enabled.\textsuperscript{63}

**Argument Structure**

This thesis traces these two elements of necropower, state racism and social death, in two periods: slavery, the black codes, and segregation (Ch. 2) and the current era of mass incarceration (Ch. 3, 4). By presenting select philosophers' work, Chapter 2 provides a theoretical basis to understand the history and design of America’s warehouse prisons (Ch. 3, 4).

\textsuperscript{62} Wacquant, “From Slavery to Mass Incarceration,” 56.

Chapter 2 reads Achilles Mbembe and Saidiya Hartman’s histories of antebellum American slavery and its immediate afterlives through the lense of social death. Mbembe’s *Critique of Black Reason* provides a historical-ontological account of blackness and explains the significance of this approach. Anticipated criticisms of an ontological account of race will be rehearsed and responded to here.

Hartman’s work *Scenes of Subjection* surveys laws and court decisions for how their reasoning positions blackness as a status of abjection and threat. Hartman argues that, during slavery, the law produced the social death of slaves by establishing criminal agency as the only recognized outlet of slave agency. Against a system established to produce their social death, black slaves asserted their agency in various acts of subversion and (communal) identity formation. Moreover, by framing the history of antiblack exclusions after the ratification of the 13th amendment as State racism, Hartman’s work also demonstrates the centrality of criminality in governing space and sexuality and maintaining social death after formal emancipation.

Two motifs guide Chapter 2. First, criminality was a site for producing blackness as threat both during slavery and after formal emancipation. In this sense, criminality provided a method to enforce the social death of slaves and newly emancipated blacks. Second, sociological discourse and print news adjusted their understanding of criminality to this function, thus encoding blackness as criminal and providing the grounds for a scientific state racism that would culminate in the segregationist policies of *Plessy v. Ferguson*.

Chapter 3 narrates the rise of mass incarceration and the warehouse prison, including the construction of supermax prisons. This chapter accounts for the increase of the prison population with the criminological discourses, political rhetoric
and legislation that characterize the punitive swing of the criminal justice system. Moreover, the fall of the rehabilitative ideal provided space for deterrence and incapacitation to overcome rehabilitation as both the dominant penological goal and criminological theories. The works of two influential criminologists, James Q. Wilson and John Diulio, characterize the criminology of America’s punitive turn. Wilson’s landmark book *Thinking About Crime* casts criminals as rational agents and presents an argument for deterrence, where harsher and more certain punishments will decrease crime. At the same time, Wilson identifies the “wicked person” as a limit-case for both rehabilitation and deterrence, as this type of criminal will never be deterred, and must be incapacitated. Dilulio dramaticized this latter limit-case criminal as a “super-predator,” and more obviously animalizes and racializes this figure. Together, both criminologists present an ever-dangerous criminal type that demands separation from society; and their shifting focus towards deterrence and incapacitation provided a theoretical basis for the punitive turn's longer prison sentences and harsher prison conditions.

Informed by these criminological narratives, political rhetoric and news media racially encode the criminal as black. As the Bush campaign’s famous Willie Horton advertisement graphically illustrates, the figure of the black criminal stands as a negative totem of law and order rhetoric around and against which voters oriented themselves. Moreover, changes in policing strategies towards quality-of-life, “broken windows” policing (introduced by Wilson), in combination with the lasting racial and class segregation of American cities, has meant the hyperincarceration of poor, black youth.
A brief review of legislation, often funding prison construction and increasing the punishments for crimes, reflects the punitive swing. For instance, the Anti-Drug Abuse Act, signed by President Reagan in 1986, replaced the federal government’s rehabilitative model of parole with a punitive model of federal supervision. At stake in this argument are the relationships between competing philosophies of punishment, prison conditions, and how criminologists and the public conceptualize criminality.

Chapter 4 considers how the criminal justice system produces social death during and after incarceration. I argue that the warehouse and supermax prisons are a materialization of the image of the criminal canvassed in Chapter 3. Lisa Guenther critical-phenomenological study, *Solitary Confinement: Social Death and its Afterlives* guides this chapter. For documenting how prolonged solitary confinement produces social death, I will rely on historical accounts, prison memoirs, and psychological studies to show how this wide-spread penal practice is torture, yet is not legally regarded as such.
Chapter 2: Social Death and State Racism in Slavery and its Afterlives

To understand how mass incarceration produces social death, it is necessary to understand how America’s history of racialized slavery instantiated blackness, and how the slave society violently denied black relationality through social death. Since American slavery did not just produce social death, but rather *black* social death, this chapter presents two recent figures in the critical philosophy of race, Frank Wilderson and Jared Sexton, to account for the racial character of American slavery, otherwise absent in Orlando Patterson’s account of social death. I consider the criticism that their arguments deny the agency of the slave and therefore repeats history from the perspective of the enslaver, essentially precluding the agency and resistance of the enslaved. The so-called “Afro-Pessimists” Wilderson and Sexton have also been criticized separately for their defining blackness as ontological. I address these criticisms via Achilles Mbembe’s history and conception of race. Together, these four authors provide an understanding of race and social death for the remainder of the thesis.

Saidiya Hartman’s work is central to understanding race and social death. She predates these authors in exploring racialization as an experienced ontology. By providing a text of resistance in social death, her work partially parries the criticisms made of Wilderson, Sexton and Mbembe, and ultimately demonstrates the utility of their definition. By framing the history of antiblack exclusions after emancipation as State racism, Hartman’s work also demonstrates the centrality of criminality in governing space and sexuality and maintaining social death after formal emancipation. In his book *The Condemnation of Blackness*, historian Khalil Gibran
Muhammad compliments Hartman’s focus on State racism by showing how print media and sociology encoded the criminal as black, and thereby justified antiblack discrimination and violence, through supposedly colorblind statistical science.

**What is Afro-Pessimism?**

For the critical philosophers of race Frank Wilderson and Jared Sexton, the horrors of the slave trade established blackness as an ontological cornerstone that scaffolds the world’s metaphysics. The Middle Passage systematically stripped Africans of their metaphysics, heritage and humanity: “Africans went into the ships and came out as Blacks.” Their enslavement and fungibility marked the original constitution of blackness, the creation of blackness through mass antiblack violence. Wilderson asserts that this violence metaphysically divided the world into black and nonblack, so that the coherence and maintenance of the latter requires the negation of the former. The form of this negation may be both physical and metaphysical, material and symbolic. Wilderson argues polemically that the nonblack and black differ in that “violence is a structural necessity to the constitution of blacks.” While everyone else experiences suffering as social oppression, the black experiences “structural” suffering, a necessity for the ontology of Humanity.

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65 Handout from Lori Gruen on Afro-Pessimism and Afro-Futurism [Can I cite this handout?]
67 Wilderson, *Red, White & Black*, 36. Wilderson often describes nonblack suffering as locked in “antagonisms” of race, sex, class and sexuality, while black suffering is “structural”: necessary for these other groups to progress and eventually resolve their antagonisms.
68 Wilderson, *Red, White & Black* (iBooks edition), 57. “The race of Humanism (White, Asian, South Asian, and Arab) could not have produced itself without the simultaneous production of that walking destruction which became known as the Black. [...] the Human was born, but not before it murdered..."
Unfortunately, Wilderon and Sexton’s polemical rhetoric and radicalism have rendered them liable to misreadings. A brief outline of the objections to his arguments will clarify the actual presuppositions, significance, and implications of this framework, in contrast to how works by Wilderson and co-authors have been misunderstood. Recent critics have dismissed their argument on the grounds of 1) the allegedly erased role of black agency and 2) the placement of blackness as an ontological concept rather than a subjective experience. From these objections, critics have concluded that Afro-Pessimism is counter-productive and defeatist.

**Critiques of Afro-Pessimism via Social Death**

To argue that Afro-Pessimism erases black agency, one may blame Patterson’s concept of social death for this erasure. This charge holds that no historical account of social death can appreciate a slave’s resistance against slaveholding society and those who maintain it. Afraid of depicting people as incapable of resistance and perpetuating the mythical image of the innately docile slave that slaveholders eagerly repeated, one may argue that to tell history through social death is to tell history exclusively from the eyes of the master or his society. This objection may emphasize the word “death,” as death usually signifies the end of life and agency, not temporary restriction.

In his article “Social Death and Political Life in the Study of Slavery,” Historian Vincent Brown surveys criticisms like this one. Brown urges us not to forget that social death is “a theoretical abstraction that is meant not to describe the lived experiences of the enslaved so much as to reduce them to a least common denominator the Black, forging a symbiosis between the political ontology of Humanity and the social death of Blacks.”
that could reveal the essence of slavery.” ⁶⁹ It would be an absurd mistake to use social death to “stand in for the experience of enslavement.” ⁷⁰ Rather, the concept “provides a neat cultural logic” to how slavery was imposed. ⁷¹ However, if to impose social death was to isolate somebody from their history, culture and society, this does not imply that this oppression is permanent and without resistance.

Historian Neil Roberts’ criticism of social death raises similar concerns about agency. According to Roberts, accounts of flight from slavery demonstrate the shortcomings of using social death to understand history. In defining social death, he curiously replaces one of Patterson’s three elements, the susceptibility to gratuitous violence, with “powerlessness.” ⁷² Powerlessness here implies a one-sided understanding of the relationship between the slave and master. For Roberts, social death “denies the significance of psychology to freedom, rendering it unable to explain how slaves are able to become free physically outside the actions and intentions of enslaving agents.” ⁷³ Accord to Roberts, social death is inadequate to explain slave resistance, then, because it either denies the power of the enslaved or fails to account for their experiences. Using the concept risks describing reality as “an inert state of social death.” ⁷⁴

Contrary to this criticism, Brown’s piece suggests that social death, “viewed properly as a compelling metaphysical threat,” creates a dynamic situation, not a

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⁷³ Roberts, Freedom as Marronage, 117.
⁷⁴ Roberts, Freedom as Marronage, 118.
Brown suggests that “the history of [slaves’] social and political lives lies between resistance and oblivion, not in the nature of their condition but in their continuous struggles to remake it.” Slave society imposed social death on living and breathing people who continued to forge connections despite the threat of violence.

Brown sees the threat of social death as a productive force in history, for instance, in the Haitian revolution and American slavery. In the first case, Brown claims that the Haitian Declaration of Independence features a “preoccupation with the threat of social death…. [that] would seem to enshrine the political importance of ancestry, mourning, and commemoration in the slaves’ struggle against social alienation.”

Louis Boisrond-Tonnerre, the colored author of the constitution, reacted to the threat of social death by evoking the present desolation of the Haitian land and people in a call to revolution, not to surrender. Brown’s reading of the Haitian revolution thereby demonstrates that social death is hardly a static concept, but a force in a dynamic political field. Brown extends this argument to American slavery, and is worth quoting at length:

“The violent domination of slavery generated political action; it was not antithetical to it. If one sees power as productive and the fear of social death not as incapacity but as a generative force — a peril that motivated enslaved activity — a different image of slavery slides into view, one in which the object of slave politics is not simply the power of slaveholders, but the very terms and conditions of social existence.”

This reading of social death provides a capacious understanding of “a politics of survival, [an] existential struggle transcending resistance against enslavement.”

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Social death cannot “stand in for” someone’s experience, but rather provides a rubric to understand how society can condition, ignore and perpetuate this experience. It ultimately describes and indicts slave society’s cultural logic for denying people’s relationality.

Like Patterson, neither Wilderson nor Sexton denies the actual ability of one to resist domination, even as they describe black social life today as within the “shadow of black social death.” When these authors investigate the conceptual underpinnings that make antiblack violence so rampant and systematic, they do not prescribe a specific experience onto all black people. Instead, the project charges that society precludes black relationality, but always against social resistance that proves the absurdity of the ontological divide that structures society. Jared Sexton thus claims that describing blackness in terms of social death “is not… a statement about an inherent black incapability, but rather about an imposed black incapacity.”

Furthermore, as a framework, Afro-Pessimism does not deny that nonblack people experience social death. It does not deny structural conflict and exploitation on the levels of class, race and sexuality, but rather understands blackness as ontologically and historically prior to these modes of conflict. Wilderson suggests that the antipathy towards blackness that structures our institutions may promote the phenomenon of social death of both black and nonblack bodies. Blackness does not necessarily mean

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81 Wilderson’s response to the literal interpretation of death should be read also as a response to this misconstrual of (lacking) agency in Afro-P: “In my own work, obviously I’m not saying that in this space of negation, which is blackness, there is no life. We have tremendous life.” (Wilderson in “Position of Unthought,” 187)
experiencing social death, but rather being susceptible to it; and the structures that produce social death do not exclusively target black people.

**Critiques of Afro-Pessimism for understanding race as ontological**

Prof. J. Kēhaulani Kauanui, an esteemed scholar of American and Indigenous Studies, criticizes Wilderson’s rendition of blackness as a “pure form” in the sense of ontological fact, questions of agency aside. Kauanui challenges Wilderson’s “ahistorical and universal” narrative, whereby the Middle Passage marks the foundation of blackness. Undermining this chronology, she retells the story of Bacon’s Rebellion in 1676, an armed revolt against the British that featured the cooperation of English, Irish, Scottish and African people. For the scope of my project, the specificity of which year one places the original constitution of blackness is of limited importance. Rather, the critical question is if American slavery could feasibly constitute this foundational moment of blackness and its metaphysical consequences; and that is not put into question by the challenge to identify a specific moment. In *Critique of Black Reason*, Achilles Mbembe addresses this concern by adding historical texture to Wilderson’s polemics.

For Mbembe, race is an instrument of domination, but its language is always contested and never static. Looking at the evolution of the law in Colonial Virginia, Mbembe historicizes the solidification of blackness as an instrument to mark segments of the population as “a kind of life that can be wasted and spent without limit.”

Specifically, “the process of racialization” at the turn of the 18th century involved

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structuring rights and punishments “according to an explicitly racial logic.”\textsuperscript{85} Bacon’s rebellion marks a period when the categories of white and black were not yet solidified in law and by violence. But an explicitly racist logic was becoming entrenched. For instance, the law levied harsher punishments on indentured whites who escaped with indentured blacks, and thus disincentivized solidarity and solidified racial divides.\textsuperscript{86} Blacks were prohibited from arming themselves, and would be punished harshly for doing so, while whites were given guns to police blacks.\textsuperscript{87} For Mbembe, if these laws operate to establish blackness, they do so by enabling mass violence against black bodies that are marked black by the legally and socially legitimate violence against them.\textsuperscript{88} Understanding this circular production as integral to the maintenance of blackness, Mbembe declares: “Blackness does not exist as such. It is constantly produced.”\textsuperscript{89}

Mbembe elaborates that this production, whether in slavery or apartheid, occurs on the level of language, the “semiotic.”\textsuperscript{90} As an element of language, “neither Blackness nor race has ever been fixed.”\textsuperscript{91} On the contrary, they have “always belonged to a chain of open-ended signifiers.”\textsuperscript{92} What race signifies is not static, but dynamic. Yet the meaning of race consistently bears a relation to its function. In the long history of antiblack racism, “black” may signify slave, biological enemy, or criminal, but these terms share the same function: to categorize life “in order to

\textsuperscript{85} Mbembe, \textit{Critique of Black Reason}, 44.
\textsuperscript{86} Mbembe, \textit{Critique of Black Reason}, 44.
\textsuperscript{87} Mbembe, \textit{Critique of Black Reason}, 45.
\textsuperscript{88} One might rephrase this: these laws produce blackness through antiblackness. But Mbembe does not use the term “antiblackness,” and imposing it on him may falsely imply that the label “afro-pessimist” describes Mbembe.
\textsuperscript{89} Mbembe, \textit{Critique of Black Reason}, 18.
\textsuperscript{90} Mbembe, \textit{Critique of Black Reason}, 45.
\textsuperscript{91} Mbembe, \textit{Critique of Black Reason}, 6.
\textsuperscript{92} Mbembe, \textit{Critique of Black Reason}, 6.
stigmatize, disqualify morally, and eventually imprison or expel.”

With race, one can “name the surplus and commit it to waste.”

Mbembe’s history of colonial Virginia’s law suggests that racialization reifies each racial group as distinct and of varying value and rights. Although Mbembe does not explicitly declare that his understanding of race includes aspects of Foucault’s account of State racism, he folds into his own work Foucault’s conclusion that State racism is an inevitable function of a biopolitical state that must justify its exclusionary expressions of sovereignty against some individual or group.

Mbembe’s account of race addresses how the black body is simultaneously the site of the denial of subjecthood and the autonomous assertion of agency. Mbembe defines race according to two simultaneous operations, one experiential, and the other ontological. We experience race and identify people by its classifications, but its power is entrenched in something further than “an optical effect.” Race is not only “a part of the world of senses,” but also “a way of anchoring and affirming power.” In fact, these two sides are mutually constitutive, as race infiltrates the senses by virtue of its position as “a structure of the imagination.” For example, Mbembe illustrates how race always operates as “a double, a duplicate, an equivalent, a mask” with the encounter of a real human face. Race replaces this human face in front of us with a projection from the “depths of our imagination.” This replacement means “substituting what is with something else, with another reality.” Mbembe inherits

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94 Ibid.
95 Ibid. Race “is the mechanism through which a group is reified.”
97 Mbembe, *Critique of Black Reason*, 32.
Foucault’s notion that power produces truth at the site of the body, an individual unit of the population. Race qualifies each individual body, so that each person is “constituted by the very act of assigning.” On the level of population, race ultimately “peoples and repeoples the world with substitutes” according to its classifications.

Mbembe’s focus on doubles, substitutes and masks explains how both social death and an ontological understanding of race do not preclude agency. Racializing assemblages may impose a mask upon the human, and thus change the appearance of a body, but the face beneath remains. According to Mbembe, race commits a symbolic violence by interpreting the face through the language of race, and posits its product as a new reality. Yet, even if this doubling mechanism enables the observer to register the black man through the difference of race, race is also “a site of rupture,” at which fugitive paths of flight chart an escape away from imposed identity towards the person who lies under the mask. Mbembe thus concludes that those assigned a race “exist behind appearance, underneath what is perceived,” as human, outside of the homogenizing register of race. “The truth of appearances” includes both the mask of race and the human face. One may thus be rendered a member of a race and regarded as such, so that we may say “he is black” and tell the truth, yet never foreclose the truth of life without race that we cannot express, namely, the human face. Mbembe concludes: “I remain a complete human being no matter how violent are the efforts aimed at making me think that I am not one. This uneliminable surplus

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100 Mbembe, *Critique of Black Reason*, 32.
102 Mbembe, *Critique of Black Reason*, 32.
103 Mbembe, *Critique of Black Reason*, 32.
escapes all attempts at capture and fixation within a particular social or legal status.”

Kauanui takes issue with Wilderson’s claim that "Blackness is incapacity in its most pure and unadulterated form.” In response, she suggests that this “means merely that the black has to embody this abjection without reserve.” Let this point stand generally for the objection that, by defining blackness in terms of incapacity, one reifies the connection instead of critiquing it, and thus denies black agency. A final response to this criticism highlights the significant role of criminality in producing black people as socially dead.

The example of criminality in slavery demonstrates that this framework does not deny black agency, but rather investigates and rebuts the ways that society does. In response, one should first contextualize Wilderson’s excerpt.

How is it that the Black appears to partner with […] partners of civil society […] when in point of fact the Black is not in the world? The answer lies in the ruse of analogy. By acting as if the Black is present, coherent, and above all human, Black film theorists are ‘allowed’ to meditate on cinema only after ‘consenting’ to a structural adjustment. […] signing on the dotted line means feigning ontological capacity regardless of the fact that Blackness is incapacity in its most pure and unadulterated form.

Here, Wilderson summons the metaphor of Blackness signing its name to demonstrate the contradiction of simultaneously acting as a person and being denied

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104 Mbembe, Critique of Black Reason, 46.
personhood, of being alive but socially dead, capable but restrained. In America, the slave was simultaneously rendered as lacking agency yet held responsible for committing crimes. This criminal culpability thus admits and punishes the real, expressed agency of the black slave. Wilderson renders this polemical example not to prescribe black incapacity, but to emphasize how black agency is always under the threat of punishment. The law reaffirmed ontology by only recognizing the slave’s agency as criminality, and thus justifying antiblack violence with criminal law.

**Blackness as Ontological: Wilderson, Hartman and Mbembe**

Although Saidiya Hartman did not make Wilderson’s exact argument, his work draws heavily from hers in a few key aspects that indicate the value of reading their works together. Specifically, Hartman draws a relationship between violence and ontology, and uses this relationship to position blackness in slavery and “its afterlives,” the continuing iterations of antiblack racism that structure American society. For Hartman, as later for Wilderson, violence is performative in its potential to shape reality. Her writing on slavery rests on this assumption.

Hartman defines the position of the slave on an ontological level, whereby the process of capturing, owning and trafficking someone reduces them to being-for-another. Instead of as a subject, the slave’s “social existence [is] as an object of property.” Hartman thus describes the “accumulation” of slaves as one would describe the accumulation of objects. However, Hartman moves beyond a Marxist

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reading, even as she explores the ontological consequence of the economic reality. For Hartman, the life of the slave, not their labor, is stolen. The slave doesn’t have labor power to exchange, but rather is the object of exchange.\textsuperscript{110} Although slaves labored, this work itself does not define their position as a slave. Rather, the accumulation of black bodies, each existing as a fungible thing, defined their position.\textsuperscript{111}

Hartman’s definition of blackness reflects how the Afro-Pessimists and Mbembe build upon her work, but also brings them to points of divergence. In the beginning of her landmark work \textit{Scenes of Subjection}, Hartman writes:

blackness is defined here in terms of social relationality rather than identity; thus blackness incorporates subjects normatively defined as black, the relations among blacks, whites, and others, and the practices that produce racial difference. Blackness marks a social relationship of dominance and abjection and potentially one of redress and emancipation; it is a contested figure at the very center of social struggle.\textsuperscript{112}

Crucially, this definition overlaps with Mbembe’s, in that blackness is ontological and semiotic, structured by various “practices that produce racial difference,” each asserting “contending articulations of racial meaning.”\textsuperscript{113} Although Wilderson and Sexton’s framework follows this definition, their characteristic pessimism doubts the potential of social relationality in an antiblack world. For Wilderson, blackness entails the denial of one’s relationality, so that he prescribes blackness’ total removal along

\footnotesize{\textsuperscript{110} Frank B. Wilderson “Gramsci’s Black Marx: Whither the Slave in Civil Society?”, \textit{Social Identities}, Vol. 9, 2 (2003): 231. “... a slave does not enter into a transaction of value (however asymmetrical) but is subsumed by direct relations of force, which is to say that a slave is an articulation of a despotic irrationality whereas the worker is an articulation of a symbolic rationality.” For Wilderson, the slave “does not enter” but rather is entered: is forced to enter the exchange as an object. This thesis does not delve into Wilderson’s attempt at distinguishing Afro-Pessimism from Marxism by identifying the alleged failings of the latter. This debate lies outside of the scope of this thesis.}

\footnotesize{\textsuperscript{111} Mbembe similarly understands the rendition and treatment of slaves as natural ore, a resource to be expended, rather than as laborers. See chapter 2 of \textit{Critique of Black Reason}.}

\footnotesize{\textsuperscript{112} Hartman, \textit{Scenes of Subjection}, 56-57.}

\footnotesize{\textsuperscript{113} Hartman, \textit{Scenes of Subjection}, 57. “These performances of blackness are in no way the ‘possession’ of the enslaved; they are enactments of social struggle and contending articulations of racial meaning.”}
with the entire ontology it enables. While he shares Mbembe and Hartman’s interest in tracing the varying significations of “black” over time, as this semiotic analysis follows different schemes for legitimizing antiblack violence, his understanding of ontology means that defeating antiblack racism requires the complete dismantling of our metaphysics and the world built upon it. Yet, by fragmenting the population into races of varying value and threatening danger on the semiotic level, race enables the violence that reaffirms ontology; so Mbembe’s desire to destroy race may be roughly equivalent to Wilderson’s desire to destroy an ontology constituted by the exclusion of blackness. However, further contrasting Mbembe and Hartman’s conception of blackness with Wilderson’s lies outside of the scope of this thesis. Rather, what is relevant here is that the authors, brought together, offer an understanding of race as a question of being and signification, ontology and semiotics. To demonstrate that this definition of race does not preclude black agency or relationality, but rather exposes the ways which both are denied, I turn to Hartman.

**Resistance against Social Death**

In *Scenes of Subjection*, Saidiya Hartman textures the experiences of the enslaved by reading American slave society’s rituals for their resistance. While public whippings, such as Frederick Douglass’ famous account of witnessing a white overseer torture his aunt, demonstrated the master’s dominion over the slave, Hartman’s scope of inquiry spans “popular theatre, the spectacle of the slave market, and the instrumental amusements of the plantation.”114 In each of these instances, Hartman explains, “the exercise of power was inseparable from its display because domination depended upon demonstrations of the slaveholder’s dominion and the captive’s

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abasement.” In order to amplify the terror of these spectacles, the slaveholder “forced the enslaved to witness the beating, torture, and execution of slaves.” Other announcements, such as “changing the names of slave children on a whim... emphasize[d] to slave parents that the owner, not the parents, determined the child’s fate.” As suggested by these excerpts’ focus on violence and the separation of children from their parents, Hartman uses the language of social death to describe the slave’s position.

While slaveholders intended to humiliate the slave and solidify their social death through staged rituals like punishment and performance, Hartman reads these rituals for expressions of the slave’s agency. Hartman argues that black slaves subverted these scenes of subjection into theatres of resistance. For instance, Fannie Berry narrates how a fellow slave woman named Sukie protested upon the auction block. After she defended herself against her prior master’s attempted rape, nearly killing him, he put her for sale. She continued to resist the sexualization of her body during her sale, which often featured would-be buyers groping the slave. When a potential buyer reached for her, she performed a “threatening stirptease,” ironically

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115 Hartman, Scenes of Subjection, 7.
116 Hartman, Scenes of Subjection, 8.
117 Ibid.
118 Hartman, Scenes of Subjection, 231. Responding to Spiller’s Mama’s Baby, Papa’s Maybe “Although I do not distinguish between the body and the flesh as liberated and captive subject positions, I contend that the negation of the subject that results from such restricted recognition reinscribes the condition of social death. See Orlando Patterson, Slavery and Social Death (Cambridge, Mass.: Harvard University Press, 1982).” Furthermore, on p. 56, “How does one discern ‘enabling conditions’ when the very constitution of the subject renders him socially dead or subversively redeploy an identity determined by violent domination, dishonor, and natal alienation?... this state of social death...” Lastly, on p. 24, the slave is “a subject who is socially dead and legally recognized as human only to the degree that he is criminally culpable.”
119 Hartman, Scenes of Subjection, 40-42.
120 Hartman, Scenes of Subjection, 41.
inviting the men to search for “teeth down there.” Hartman suggests that Sukie’s gesture “transpose[d] the captive body in its dominated and ravaged condition into a vehicle to be used against the would-be slave owner rather than in the service of his interests, wants, and desires.” This transposition requires and evokes Hartman’s concept of blackness, as Sukie subverts imposed significations of black female slaves as promiscuous, seductive and sexually available by using her body as a threat against sexual encroachment.

Hartman ultimately shows how understanding blackness as shaped by violence and social death as a descriptor of the slave’s position in society does not preclude the black slave’s resistance. Antibalck violence, even on the scale of American slavery at its peak, may deny the agency of the slave, but “strategies of domination don’t exhaust all possibilities of intervention, resistance, and transformation.” Rather, the character of domination shapes opportunities for resistance in both subverting rituals and the everyday. Hartman references various historians documenting the sociality of slaves, and explains that “the struggle waged in everyday practices… was about the creation of a social space… thereby granting property a social life and an arena or shared identification with other slaves.” In line with Vincent Brown’s reading of social death, Hartman reads struggle against social death for its potential value in creating social life, not as a static or inescapable condition to which the subjected must surrender.

**Criminality in Slavery and its immediate Afterlives**

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121 Ibid.
123 Hartman, *Scenes of Subjection*, 56.
Hartman documents how slaves’ assertions of agency and relationality were registered and punished as criminal acts. Hartman summarizes her reading of criminality in an interview with Wilderson: “Often when I’m looking through the criminal record of the nineteenth century, I’m seeing the text of black agency.”\footnote{Saidiya V. Hartman and Frank B. Wilderson, "The Position of the Unthought," *Qui Parle*, Vol 13, 2 (2003): 183-201. 192.} The law recognized the criminal agency of the slave, rendering an object of property as a subject, in the very act of denying subjecthood and its attendant agency. For instance, Hartman comments on Sukie’s threat on the auction block: “This breach of law enacted in the insolent disregard of the block's decorum, interestingly enough, provides the only possibility for the emergence of the subject, since criminality is the only form of slave agency recognized by law.”\footnote{Hartman, *Scenes of Subjection*, 41.} Leaving the plantation without permission in order to foster a social sphere outside of the master’s dominion evoked the same paradox within the law: the slave was denied subjecthood within common law, yet was punished as a criminal subject for acts of resistance.\footnote{Hartman, *Scenes of Subjection*, 68. “...stealing away was synonymous with defiance because it necessarily involved seizing the master’s property and asserting the self in transgression of the law.”} On the one hand, the law rejected the possibility of a slave’s subjecthood and therefore the agency and social relationality that subjecthood entails; yet on the other, it punished the manifestations of these characteristics.

Hartman’s *Scenes of Subjection* narrates the evolution of antiblack racism from slavery to “its afterlives.” Hartman famously coined the latter: “black lives are still imperiled and devalued by a racial calculus and a political arithmetic that were entrenched centuries ago. This is the afterlife of slavery—skewed life chances, limited access to health and education, premature death, incarceration, and
Wilderson and Sexton refer to this formulation often. For instance, Sexton describes this afterlife as one of social death: “black life is lived in social death”; political struggle takes place in “the shadow of social death.” Concurring with Hartman, Sexton suggests that the “continuing application of slave law facilitated the reconfiguration of [slave law’s] operation with the passage of the Thirteenth Amendment to the U.S. Constitution, rather than its abolition.” For these authors, the Thirteenth Amendment formally abolished slavery, not anti-black racism, and failed to completely abolish slavery because of the exception clause that criminals may be enslaved.

By reading black history after emancipation through State racism and social death, Hartman indexes how antiblack racism continued with the governance of space and sexuality through criminality. After emancipation, the organization of space and the regulation of sexuality emerged as two areas where black people were controlled through criminalization. Miscegenation statutes meant defining race after slavery could no longer do so. The criminalization of the black population meant reducing their mobility through debt and punishment.

In her analysis of how the regulation of sexuality entailed the subjection of the black population, Hartman reads miscegenation statutes through the lense of State racism. In the logic of State racism, the health and security of the white population required the subjugation of the black population. “The threat of contagion and defilement associated with blackness necessitated” the sequestering and policing of the black population.

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black population. In sum, Hartman’s analysis “focuses our attention upon the state’s role in producing racial subjects and managing populations while ostensibly working to eradicate forms of discrimination based upon race and servitude.” For instance, the growing discourse and fear about “miscegenation,” the mixing of black and white races, gave expression to outrage about nascent civil liberties for blacks. “As the pivotal figure of counterinsurgent popular sentiment,” the problem of miscegenation rose to new heights in political rhetoric. Hartman describes how miscegenation’s enduring political currency from abolition through the 1950s “discloses the obsessions of the state with pure blood, procreation, and legitimate union and the emergent antipathy and anxiety attendant to the new terms of interracial association.” After the formal abolition of slavery, racism remained “state policy”: the state reasserted and policed the borders between black and white social life.

Although the American colonies wrote the first miscegenation statutes, Hartman surveys their reemergence in political rhetoric for increased attention to codifications of race. She argues that the formal abolition of slavery meant that race could no longer be defined by servitude, so these statutes filled this vacuum by defining the borders of race. One must define races in order to prohibit their cohabitation, concubinage and intermarriage, so miscegenation statutes establish

131 Hartman, Scenes of Subjection, 186.
132 Ibid.
133 Hartman, Scenes of Subjection, 184-185. Rather than tackling this fear head on, and in times sharing the fear, white abolitionists engaged in the terms of a black sexual threat. For instance, the white abolitionist and senator from Illinois, Lyman Trumbull, parried fears that the bestowal of civil rights to the black population would lead to miscegenation: “...severe penalties are imposed in the State of Kentucky against amalgamation, between the white and black races. Well, sir, I am sorry that in noble Kentucky there is such a disposition for amalgamation that nothing but penalties and punishments can prevent it.”
134 Hartman, Scenes of Subjection, 185.
135 Hartman, Scenes of Subjection, 186.
various metaphysics of the blood, delineating blackness and whiteness by heritage and characteristics.\textsuperscript{136} Mirroring Mbembe’s focus on how the law disincentivized members of different races from escaping indentured labor, Alabama’s code of 1876 levied harsher punishment against interracial fornification.\textsuperscript{137} These statutes defined race and policed its borders to defend the purity of whiteness from the threat of blackness, especially black men.

The governance of racialized space aimed for a similar result. In slavery, “stealing away” meant leaving the master’s land without permission in order to enter and exist in other spaces. Defending encroachments against borders, from the plantation to later segregation, rested upon the state’s enforcement of white supremacy through legal punishment and extralegal, yet socially legitimate and widely unpunished, antiblack violence. Federal guide books for the emancipated urged them to stay on the plantation and acquiesce to the paranoid demands of white supremacy. If, as Hartman suggests, movement was the ultimate expression of freedom after generations of capture, then the criminalization of the black population after emancipation restricted this migration.

The governance of space and sexuality here recalls Mbembe’s argument that racism involves limiting the circulation of racialized subjects who have been marked as a threat to the privileged race. For Mbembe, race demands that one neutralize the racialized “in advance,” before they strike, “through immobilization, incarceration, or deportation.”\textsuperscript{138} Each of these strategies produce race in Mbembe’s instrumental and semiotic sense through the organization of space. In certain contexts, the distribution

\textsuperscript{136} Hartman, Scenes of Subjection, 186. Most states declared anyone with 1/8th ancestry black.  
\textsuperscript{137} Hartman, Scenes of Subjection, 187.  
\textsuperscript{138} Ibid.
of rights and the organization of space reinforce one another, as “the process of racialization aims… to determine as exactly as possible which site [the racialized] can occupy.”\textsuperscript{139} By fixing someone to a location, apartheid and segregation fix someone to a race, as locations are understood in relation to what race is allowed to “circulate” there. Actual circulation across neighborhoods is understood as a risk to the safety of the privileged population, so the limits between spaces and races must be strict.

If miscegenation statutes produced racial subjects, it did not do so simply by decreeing the black population as a sexual threat to the white population. Rather, the enforcement of criminal law and extralegal punishments refashioned the black population as criminal. Hartman challenges us to ask “how race, in general, and blackness, in particular, are produced through mechanisms of domination and subjection that have yoked, harnessed and infiltrated the apparatus of rights.”\textsuperscript{140} In particular, Hartman details how the emancipated population was coerced into labor contracts through the Black Codes, vagrancy laws, and an elaborate system of “micropenalties” subjecting free blacks to punishment, legal and extralegal, at anytime. The criminalization of the black population, then, was critical to defining blackness (as a threat to whiteness) and defending whiteness.

Hartman documents how the “ever-present threat of punishment, legal and otherwise,” loomed over the black population.\textsuperscript{141} In the most spectacular case of terror, white mobs lynched thousands of blacks, reaffirming the sexual and spatial boundaries between white and black in community events.\textsuperscript{142} Yet the terror of

\textsuperscript{139} Mbembe, \textit{Critique of Black Reason}, 35.
\textsuperscript{140} Ibid, 118.
\textsuperscript{141} Hartman, \textit{Scenes of Subjection}, 148.
\textsuperscript{142} Angela Y. Davis, \textit{Are Prisons Obsolete?} (New York: Steven Stories Press, 2003), 25.
lynching alone cannot account for the criminalization of the black population after emancipation. Hartman shifts our attention to how less drastic “micropenalties” intended to discipline blacks and maintain white supremacy.\textsuperscript{143} Affronts to racist mores, whether through dress, demeanor, movement through public space, tone of voice, and companions, qualified as “unbecoming conduct” and was policed and punished accordingly.\textsuperscript{144}

The Black Codes and vagrancy laws demonstrate how the law criminalized the black population. In \textit{Are Prisons Obsolete?}, Angela Davis writes that lawmakers revised the Slave Codes into a set of Black Codes, aiming to transform the free black population into criminals, and thus subjecting them to a new set of horrors.\textsuperscript{145} These codes proscribed a range of actions, such as vagrancy, missing work, and owning a gun, only when the person charged was black.\textsuperscript{146} The criminalization of activities like hunting or fishing limited the avenues for subsistence outside of sharecropping.\textsuperscript{147} Lawmakers and judges increased penalties for petty crimes that blacks were “likely” to commit, such as stealing pigs. Historian Mary Ann Curtin points out that as former slaves starved, petty thievery was upgraded to a felony and thus carried harsher penalties.\textsuperscript{148} Furthermore, Curtin argues that local governments processed fabricated charges of theft to maintain the racial hierarchy and economic order.\textsuperscript{149} Statistics reflect the success of the Black Codes at criminalizing blackness. Within a few years of

\begin{footnotesize}
\begin{itemize}
\item[143] Hartman, \textit{ Scenes of Subjection}, 148.
\item[144] Ibid.
\item[145] Davis, \textit{Are Prisons Obsolete?}, 28.
\item[146] Davis, \textit{Are Prisons Obsolete?}, 28-29.
\item[147] Hartman, \textit{ Scenes of Subjection}, 147.
\item[148] Davis, \textit{Are Prisons Obsolete?}, 33.
\item[149] Davis, \textit{Are Prisons Obsolete?}, 34.
\end{itemize}
\end{footnotesize}
their enactment, Alabama’s prison population shifted dramatically from 99% white to majority black; the average prisoner became black.\(^{150}\)

Furthermore, the selective enforcement of vagrancy laws demonstrates how punishments for crimes were structured by race without explicitly referencing it.\(^ {151}\) Some advocated for the laws under the guise of colorblindness. For example, the editor of the Richmond Daily Dispatch wrote in an editorial that “the law is applicable to all persons, without distinction of color.”\(^ {152}\) However, although it was defined capably enough to allow the police to arrest practically anyone, the system targeted blacks.

In his book \textit{Slavery by Another Name}, Douglas Blackmon details the arbitrary arrest of tens of thousands of free blacks for supposedly violating vagrancy laws.\(^ {153}\) After combing through records of arrests and summary court cases, Blackmon discerns that the enforcement of the vagrancy laws essentially arrested people for being black and poor. Mississippi’s vagrancy law epitomizes Hartman’s “micopenalties,” as the police could now enforce a wide range of everyday activities as criminal, such as occupying public space, being in debt, and “neglecting a job or family.”\(^ {154}\) Although not carrying money left one especially vulnerable to vagrancy charges, “a black man traveling alone in Alabama could be arrested and charged with vagrancy on almost any pretense.”\(^ {155}\) (Meanwhile, Blackmon notes, carrying money

\(^{150}\) Davis, \textit{Are Prisons Obsolete?}, 29.
\(^{151}\) Davis, \textit{Are Prisons Obsolete?}, 28-29.
\(^{154}\) Davis, \textit{Are Prisons Obsolete?}, 29.
creates the greater risk of being robbed by any white man without recourse to the law.) In Alabama in 1927, one of every nineteen black men over the age of twelve “was captured in some form of involuntary servitude.” Crimes as trivial as possession of alcohol, for which more than 12,500 people were arrested in 1928, were punishable by servitude. The court fined and charged legal costs to them, thus ensuring their indebtedness, and forcing them to work off their debts through grueling, often lethal, labor in the South.

In addition to demonstrating that these laws targeted black people, Blackmon narrates how they supplied bodies for the reinstitution of slavery in all but its name. The Black Codes and vagrancy laws did not only mean the criminalization of the black population, but also their “systematic reenslavement,” to quote Hartman. The 13th amendment abolished slavery “except as a punishment for crime.” Taking advantage of this exception without even the plausible fiction of a free labor contract, state and local governments leased and sold convicted blacks to private farming and mining corporations. As slave labor contributed to the rapid industrialization of the south, the police and county profited from their sale and labor. If cycles of debt maintained one’s criminal status, this cycle was also one of grueling labor.

The conditions of the labor done to pay one’s criminal debt were analogous to those of slavery. For instance, the state of Alabama began to contract out all of its

156 Ibid.
157 Blackmon, Slavery by Another Name, 471.
158 Ibid.
160 Hartman, Scenes of Subjection, 175.
161 Davis, Are Prisons Obsolete?, 28.
162 Blackmon, Slavery by Another Name, 24. “A world in which the seizure and sale of a black man—even a black child— was viewed as neither criminal nor extraordinary had reemerged.”
male prisoners to Tennessee Coal, Iron & Railroad in 1888.\textsuperscript{163,164} For those forced to work in the company’s Pratt Mines, their term of labor meant risking death due to squalid living conditions, lack of medical treatment and food, frequent disease, and punitive floggings.\textsuperscript{165} Blackmon notes that “the brutal forms of physical punishment employed against ‘prisoners’ in 1910 were the same as those used against ‘slaves’ in 1840.”\textsuperscript{166,167} Many contemporaries observed that the new working conditions were worse than those of slavery, as managers had even less incentive to keep their workers productive: punishment for abusing leased labor was rare, and replacement workers were cheap and guaranteed. Stanley W. Finch, a Department of Justice investigator, observed in 1903 that slave labor was “by no means confined to a few isolated communities,” but rather quite common, and the cost of a “peon” was a fraction of a slave.\textsuperscript{168} In sum, Hartman concludes, this system of convict-lease labor “resuscitated the social roles of slavery.”\textsuperscript{169}

Moreover, in his book \textit{Texas Tough: The Rise of America’s Prison Empire}, Robert Perkinson sheds light on the racialization of crime and punishment in 19th and 20th-century America. According to Perkinson, the race of a prisoner in Texas’ postbellum prison system largely determined their mode of imprisonment. Whites largely stayed inside the penitentiaries, designed when the incarcerated population was mostly white, while blacks “were to be treated like impressed slaves during the war,” lent out

\begin{footnotes}
\textsuperscript{163} Blackmon, \textit{Slavery by Another Name}, 126.
\textsuperscript{164} Davis, \textit{Are Prisons Obsolete?}, 36.
\textsuperscript{165} Blackmon, \textit{Slavery by Another Name}, 128.
\textsuperscript{166} Blackmon, \textit{Slavery by Another Name}, 23.
\textsuperscript{167} Davis, \textit{Are Prisons Obsolete?}, 31. Matthew Mancini has observed that “Whipping was the preeminent form of punishment under slaver; and the lash, along with the chain, became the very emblem of servitude for slaves and prisoners.”
\textsuperscript{168} Blackmon, \textit{Slavery by Another Name}, 285.
\textsuperscript{169} Hartman, \textit{Scenes of Subjection}, 151.
\end{footnotes}
as labor to private companies and public projects.¹⁷⁰ Even after Texas’ black codes had ended, by the end of the 19th century, blacks were incarcerated at seven times the rate of whites. Poor blacks were faced high chances of incarceration, as they lacked adequate counsel and the vast majority were given heavy sentences for petty crimes like stealing or loitering.¹⁷¹ Through the end of the 19th century, labor assignments continued to be racialized, with African Americans “generally chained up and hauled by wagon or train to a plantation,” whites in penitentiaries, and the remaining whites joining Mexicans in semiskilled work.¹⁷² In order to protest the harsh conditions of their confinement, prisoners mutilated themselves so often, in the words of one prison administrator, that the practice “the proportions of a cultural pattern.”¹⁷³ For instance, despite guards’ threats of harsh corporal punishment, many prisoners slashed their achilles tendons, so that they could not work in the fields. Perkinson’s work compliments the above discussion of Hartman and Blackmon by providing a closer look at Texas’ long-standing system of convict-lease labor, and by cataloguing how prisoners’ modes of resistance often featured weaponizing their own bodies.

Concurrent with this shift in prison population after the civil war was a shift in the racial encoding of the prisoner from white to black in the “popular

¹⁷⁰ Perkinson, _Texas Tough_, 89, 92. Not quoted, but especially of interest, is 143: “Between 1890 and 1904, Texas’ white imprisonment rate fell by almost half, but it climbed 27 percent for blacks... Partly in response to humanitarian protests, prison officials concentrated as many white convicts as they could at Rusk and the Walls,” two penitentiaries without conditions and work less resembling slavery than other penal sites.

¹⁷¹ In the days before _Powell v. Alabama_ (1932) and _Gideon v. Wainwright_ (1963) guaranteed the poor a right to counsel. Regarding petty crimes, see Blackmon _Worse Than Slavery_ and Perkinson _Texas Tough_ 89, 121-123.

¹⁷² Perkinson, _Texas Tough_, 123.

¹⁷³ Perkinson, _Texas Tough_, 215.
Frederick Douglass’ observation that people in the South tended to “impute crime to color” speaks to the encoding of the criminal as black. The print media bears partial responsibility for this encoding. For example, the press often assigned the guilt of a crime to a black man, regardless of the perpetrator’s actual race, and especially when the crime was serious. Newspapers published false stories of crimes supposedly committed by black people. But sociological discourse contributed significantly to forging the metaphor of blackness as criminality under the guise of scientific objectivity.

In his book *The Condemnation of Blackness*, Khalil Gibran Muhammad investigates American sociology’s evolving yet durable linkage between blackness and crime from emancipation until World War II. As the demographics of the actual prison population shifted black, sociologists of all ideological stripes began to racially encode the image of the criminal. After the first federal census was published in 1890, in which blacks were reported to be 12% of the population but 30% of the prison population, sociologists presented black as the abnormal, criminally-inclined race.

As a racial category, white evolved to encompass Italian, Polish, and Irish Europeans. Sociologists of crime then presented this category as the normal rate of crime, and contrasted it to the abnormal, higher black rate. Renown and well-cited sociologists like Frederick L. Hoffman used this juxtaposition to frame white criminals “sympathetically, as victims of industrialization,” in contrast to pernicious and lazy

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174 Davis *Are Prisons Obsolete?*, 29.
176 Davis *Are Prisons Obsolete?*, 30.
177 Davis *Are Prisons Obsolete?*, 30.
blacks, who committed crime out of caprice, not necessity. Even progressives of the early 20th century, who explored environmental theories of white immigrants’ crime and advocated for their redemption and rehabilitation, contrasted the newly expanded category of white with the abnormal black. Muhammad argues that this account is not unique but rather definitive of the moment, and its organization sedimented by World War II: “...by the early 1940s, ‘Black’ stood as the unmitigated signifier of deviation (and deviance) from the normative category of ‘White.’”

While theories of what causes crime shifted from biology to culture, Muhammad observes the stubborn persistence of “race at the heart of the discourse.” Biological racism accounted for “crime-stained blackness,” to quote one proponent Hinton Rowan Helper, through hypotheses of inherent natural differences, such as lacking brain growth and size. Similarly, advocates of cultural accounts of varying crime rates levied their alternative theories with the veneer of objectivity, as sociological and statistical discourse gave such “colorblind” conceptions the allure of scientific objectivity.

Muhammad documents how sociologists combined statistics and narratives of black crime to intertwine the two. The work of Frederick L. Hoffman reflects the dominant depiction of “black criminality” through statistics. He proclaimed in 1901 that arrest and prison statistics from every city “confirm the census data, and show without exception that the criminality of the negro exceeds that of any other race of

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185 Muhammad, *The Condemnation of Blackness*, 16-17.
186 Muhammad, *The Condemnation of Blackness*, 3-4, 8.
any numerical importance in this country.” Muhammad summarizes how Hoffman framed these statistics in juxtaposition to normal levels of white crime: “[with] spectres of black rapists and murderers moving north one step ahead of lynch mobs, innovative racial demographers such as Frederick L. Hoffman explicitly sanitized and normalized the criminality of northern white working and immigrant classes.” Hoffman argued that black criminality justified the condemnation of blackness by accompanying crime statistics with narrations of black criminals’ “savagery.” Accounts of the rape of white women by black men captured white anxiety at its core, and reflect how historians, journalists and statisticians employed dehumanizing language to assert the heinous and unrestrained nature of black criminality. For instance, Philip Alexander Bruce, a heavily cited historian, described the rape of white women by black men as “indescribably beastly and loathsome,” without peer in the “whole extent of the natural history of the most beastial and ferocious animals.”

Works of qualitative sociology furthered the animalization of the criminalized black, thus suggesting the inevitability of such characteristics. In this vein, William Hannibal Thomas’ 1901 book *The American Negro* equated “the sum of black humanity to apes,” and flirted with evolutionary explanations for inherent black criminality.

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187 Muhammad, *The Condemnation of Blackness*, 51. This sentence and a few others from the paragraph are taken from my prior exegesis of the book for the class PHIL354 in December of 2016.
Muhammad suggests that Thomas, a black missionary, received consideration and attention unusual for black writers because his book’s blatantly racist message confirmed the dominant image of black people as criminals. In fact, reflecting its mainstream appeal, a glowing New York Times book review claimed that Thomas’ observations of black criminality provided a “mental vision [of a] sinister and terrible figure still to be dealt with in our social economy.”

Despite important interventions from figures like Ida B. Wells and W.E.B. Du Bois, the scientific and media establishment largely ignored their counternarratives. Muhammad regretfully notes that from the 1890s to 1920s, “most white practitioners of racial science were able to silence the opposition of black thinkers.” Mainstream, white writers like Hoffman maintained their dominance of the social scientific discourse on black criminality.

Reading Muhammad’s argument through Mbembe’s account of race and Hartman’s account of State racism emphasizes how criminality became a new colorblind cover for systemic antiblack violence. In the terms of Mbembe’s definition, this discourse fastened criminality to the black population; the semiotics of race shifted so that black signified criminal instead of slave. Together, politicians, sociologists and print media’s representation of the black criminal sedimented this image. If the afterlives of slavery included legal punishments, extralegal terror, and the partial

193 Muhammad, *The Condemnation of Blackness*, 79. “*...The American Negro* was hailed by many whites as the most authoritative treatise to date on African American inferiority.”


195 Muhammad, *The Condemnation of Blackness*, 61. The neglected fate of Du Bois’ *The Philadelphia Negro*, a comprehensive and data-crunching rebuke of Hoffman and his dominant strain of race relation discourse, illustrates the asymmetry of the field. Du Bois’ work struggled for an audience, was ignored by the *American Journal of Sociology*, and it was not officially acknowledged by the University of Pennsylvania until the late 1930s. (p. 73)


maintenance of slavery, then new conceptions of criminality provided a vehicle for justifying this violence.

The discursive work of State racism entails the production of an internal threat. Stories of supposedly black crime followed by statistics encoded the criminal as black under the cover of colorblindness. For instance, Hoffman decontextualized a reformer’s data on Chicago slum communities and presented as statistical fact, “so forcibly brought out,” that, given concentrations of black people living together, “houses of ill-fame and dives of the lowest order abound.” Through tactics like this one, “the black southern migrant — ‘Negro, stranger in our midst’ — was marked as an exceptionally dangerous newcomer.” Ultimately, Muhammad concludes, for white Americans across the political spectrum, in both the north and south, “African American criminality became one of the most widely accepted bases for justifying prejudicial thinking, discriminatory treatment, and/or acceptance of racial violence as an instrument of public safety.”

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198 Muhammad, *The Condemnation of Blackness*, 68.
200 Muhammad, *The Condemnation of Blackness*, 4-5.
Chapter 3: State Racism and the History of the Warehouse Prison

While the next chapter focuses on characteristics of the warehouse prison, this chapter explores the forces that led to its establishment as the model for prisons in America. The foundational premises of these two chapters are that social and political forces affect prison design, and that prison design reflects a society’s philosophy of punishment: how we treat a criminal reflects how we believe they should be treated. Although one may contest that prison design is largely determined by security and cost, i.e. the efficiency at which prisons mitigate the risks of forcibly controlling their population, this does not fully contradict either premise. Although security is inevitably a concern for all prison design, neither security nor cost is a philosophy of punishment. Efficiency entails metrics for measuring how well the prison fulfills its purpose, but it does not supply this purpose. That being said, security and cost may be used to delegitimize certain aspects of prisons. For instance, critics of America’s prisons today often suggest that recent changes in carceral practices, such as the elimination of Pell Grants, reduced availability of visitation by friends and family, and restriction of recreational time, reflect neoliberalism creeping into the imperatives of prison design. Yet politicians’ and prison staff’s judgments that providing these services to prisoners is “too expensive” cannot be fully separated from how we picture the criminal and what they deserve.

This chapter aims to demonstrate how the criminalization of blackness has supported the development of the warehouse prison, and vice versa. First, to establish how the former catalyzed the latter, this chapter presents the warehouse prison and moves backwards, considering how the warehouse prison has resulted from an
increased prison population and changes in prison programing; how these resulted from punitive legislation in the 70s, 80s and 90s; and how criminologists and politicians presented the racialized limit-concept of the predatory criminal to support this punitive turn. Through this line of causation, I hope to demonstrate potential links between the overcrowding, lack of rehabilitative resources, and use of solitary confinement, on the one hand, and the equation of blackness and criminality, on the other.

**Irwin - The Warehouse Prison**

John Irwin defines the warehouse prison as those which feature overcrowding, fewer resources for rehabilitation, and solitary confinement. According to Irwin, the warehouse prison emerged as the standard for prison design in the late 1970s.\(^1\) Starting in 1972, the prison population experienced 37 years of growth, unprecedented in the history of American prisons.\(^2\) Responding to increased demand for prison beds, hundreds of new prisoners were built between 1980 and 2000, a construction boom which surpassed the number of prisons in all of American history.\(^3\) In the same period, construction for Supermax prisons began and boomed, whose features epitomize the punitive ethos of the warehouse prison. While the former have dedicated units for solitary confinement, from and into which prisoners cycle, Supermax prisons are entirely structured by solitary confinement.

The punitive legislation of the 70s, 80s, and 90s has significantly contributed to the establishment of the warehouse prison, first by fueling the explosion of the

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\(^3\) Irwin, *The Warehouse Prison*, 58.
prison population and subsequent prison construction, and second by reducing rehabilitative programming. The increase in sentencing length, the shift from indeterminate to determinate sentencing [and more aggressive pursuits of technical violations on what’s left of parole] have supported the growth of the warehouse prison. Further changes in the quality of the prison included the elimination of rehabilitative resources, such as Pell Grants for education, and overcrowding. Additionally, new prisons were constructed far away from city centers. This siting practice, Irwin notes, “conflict with the penal concepts that emerged in the reform era of the 1960s.” The latter held that prisons should be close to urban centers in which their families lived, so that prisoners may benefit from more family contact and community resources. New prisons generally isolate prisoners from their family and community, and are prohibitively remote from work-release jobs.

**Fear of and Political Response to Crime, not Crime itself, Expanded Prisons**

Increases in crime rates since 1967 cannot adequately explain the increasing incarceration rate, and thus the increased demand for prison construction. Crime rates did increase in the second half of the 20th century, and in some cases

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204 Jeffrey Lin, *Parole Revocation in the Era of Mass Incarceration,* Sociology Compass, 4, 12 (2010): 999-1010. [http://onlinelibrary.wiley.com/doi/10.1111/j.1751-9020.2010.00335.x/full](http://onlinelibrary.wiley.com/doi/10.1111/j.1751-9020.2010.00335.x/full) Fig 1., Fig 2. Lin notes that “The increasing salience of parole revocation to prison population growth is clearly related to shifting perceptions of the causes of offending, the innate character of offenders, and the potential for offender reform.” He also notes the racial disparities produced by discretion: “…the effects of legal and demographic characteristics on revocation likelihood depended on whether the revocation was for a technical violation or a new criminal offense. For example, black race increased the chances of revocation on a technical violation more than the chances of revocation for a new offense—suggesting increased racial discretion in less serious cases.”

205 Irwin, *The Warehouse Prison,* 80f3.

dramatically. For instance, official statistics suggest that the America’s murder rate rose by 100% between 1960 and 1980. Although Marc Mauer notes that “it is far more likely that reporting of these offenses both by victims and police agencies increased substantially [from 1960 to 1980], thereby accounting for a significant portion of the reported increase,” it is implausible that changes in reporting fully account for the increasing crime rate. Rather, actual incidents of crime must have become more frequent. However, crime rates have consistently decreased since 1993. Furthermore, although the real crime rate increased, the political response to crime contributed to prison growth more significantly than increases in the crime rate itself. Moreover, Americans’ perception of levels of crime is at odds with measured crime rates, as the majority of Americans have held that crime rates are increasing, even when they are lowering.

While public concern for increasing crime significantly contributed to America’s punitive turn, increasing crime rates themselves cannot account for the

207 Although the measurement of crime is riddled with uncertainty, one may be certain that crime has increased substantially in certain periods. (See Irwin, The Warehouse Prison, 207-208.) Crime rates did increase between 1967 and 1974. Violent and property crime rates both rose from 1960 to 1980, and plateaued at a high rate in the early 1990s.

208 Marc Mauer, Race to Incarcerate (New York: The New Press, 2006), 31. Many local police agencies did not participate in the FBI’s annual Uniform Crime Report surveys, or provided only incomplete data, during the 1960s.

209 Advocating for more punitive measures and prison construction, the conservative American Legislative Exchange Council (ALEC) contends that crime rates overall rose by 215% from 1960 to 1980, and violent crime by 271% during the same period. (Mauer, Race to Incarcerate, 31) However, Mauer notes, The Law Enforcement Assistance Administration, created by the Safe Streets Act of 1967, improved reporting dramatically by funding technological improvements and better record-keeping in local and state police offices. To take account of changes in reporting procedures, criminologists often use the murder rate as a relatively reliable index of crime. Here again, however, official statistics suggest that America’s murder rate rose by 100% between 1960 and 1980, despite the fact that the 1960 figure likely underrepresents actual crime, since reporting changes were not yet in effect. Furthermore, murder rates remained relatively stable (fluctuating between 8.5 — 10 per 100,000) between 1980 and 2000.


211 Gramlich, "5 facts about crime in the U.S.”
increase in incarceration rates. In their book *The Punishment Imperative*, criminologists Todd Clear and Natasha Frost argue that policy changes in the 1970s, 1980s and 1990s have caused mass incarceration and its attendant expansion of prisons. In determining that policy changes caused the prison population to increase, they assess other factors, such as changes in the crime rate. After a survey of statistical surveys, Clear and Frost conclude that changes in crime rate contributed to the swelling prison population, but only to a limited degree. For instance, one study by Raphael and Stoll “reports that changes in rates of criminal offending explained relatively little (estimated at 11.5%, and at most 17%) of the growth in imprisonment between 1980 and 2005.”\(^{212}\) Another study attributes 88% of the growth in the prison population between 1980 and 1996 — when the incarceration rate increased most dramatically — to “changes in two stages of the criminal justice system: sentencing and time served,” rather than changes in crime and arrest rates.\(^{213,214}\) Furthermore, although drug arrests increased substantially since 1980, many criminologists attribute this increase in arrests to shifts in enforcement and sentencing — initiatives of the War on Drugs, not actual increases in drug offending.\(^{215}\)

Jordan Camp discounts the role of crime rates in enabling mass incarceration by suggesting that America’s “dominant ideology” has naturalized this response as

\(^{212}\) Clear and Frost, *The Punishment Imperative*, 34.
\(^{214}\) Mauer, *Race to Incarcerate*, 34.
inevitable, not contingent on political factors.\textsuperscript{216} Echoing Camp’s assessment, David Garland, a renowned sociologist of crime and punishment, suggests that the public’s response and legislation are determined more by political context than the objective reality of crime.\textsuperscript{217} To the extent that fear in rising crime enabled politicians to campaign on punitive shifts, one must distinguish between increases in actual crime rates and the fear of crime.

From the early 1970s, conservative criminologists, the news media, and “tough-on-crime” politicians produced an image of criminality that posed a limit-case for rehabilitative ideals and strategies of punishment. The depicted criminal, either a rational career criminal or a perpetually aggressive predator, challenged the rehabilitative ideal and the lenient liberalism of the 50s and 60s.\textsuperscript{218} If this aggressive criminal, encoded black in political rhetoric and news media, provided an imagined enemy for the punitive turn, including the War on Drugs, it galvanized support for and justified the warehouse prison. The following portion of this chapter traces legislation that characterizes the punitive turn, and the criminology, rhetoric, and media that supported it with a racialized image of the criminal. Ultimately, I want to understand the warehouse prison within the political context that established and shaped it, and how the limit-case of the racialized predator materializes in and has structured the design of the warehouse prison.

What follows reviews key legislation that led to the warehouse prison by 1) increasing the incarcerated population and 2) changing the form of their...

\textsuperscript{216} Jordan Camp, \textit{Incarcerating the crisis: freedom struggles and the rise of the neoliberal state} (Oakland, CA: University of California Press, 2016), 5. “The dominant ideology… has depicted mass criminalization as an inevitable reaction to criminality or threats to public safety and national security.”


\textsuperscript{218} The Warren court’s exclusionary rule for illegally seized evidence symbolized this liberal ‘leniency.’
incarceration. Although the authors of these laws responded to varying public opinion and within different political contexts, each law reflects and contributes to the shift in penal design from the rehabilitation of criminals to their incapacitation and deterrence. To avoid painting “the punitive turn” as a homogenous and monotonous shift, Clear and Frost discern three phases: 1) in the 1970s, Nixon began to change sentencing structures; 2) in the 1980s, Reagan administration redoubled efforts in the War on Drugs; 3) and in the 1990s, with attention to rising violent crime rates, Clinton administration pursued “the most violent offenders.” I will briefly address each of these periods.

If one deems the shift in dominant penal purpose from rehabilitation to incapacitation and deterrence “necropolitical,” one may take a broad construction of necropolitics as essentially a synonym for mass exclusion or along a spectrum from bio- to necropower. This perspective may prima facie seem merely descriptive and lacking in explanatory power. So, without rejecting this reading, I trace how the racialization of the criminal, both in image and fact, contributed to the development of the warehouse prison. If State racism calls for the removal of the criminal from society, tropes of black criminality as predatory, animalistic and dangerous enabled the development of the warehouse prison. Tracking how the limit-case of the racialized predator harshened the punitive turn helps reveal the necropolitical nature of the warehouse prison.

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219 Clear and Frost, The Punishment Imperative, 72.
Nixon and Race

Many critics of mass incarceration have traced the emergence of crime as a pressing, national political issue to the Nixon campaign, and emphasize that his campaign strategy was explicitly racist, even when his rhetoric wasn’t.\textsuperscript{220} In order to appeal to disaffected southern whites, worried about urban unrest, and frustrated or antipathetic to blacks’ civil rights struggle, Nixon and his strategists crafted a narrative that would access their sentiments without resorting to explicit racism. In a candid admission, Nixon’s domestic policy chief, John Ehrlichmann, confirmed the thinking behind this strategy:

The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people… We knew we couldn’t make it illegal to be either against the war or blacks, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities… We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.\textsuperscript{221}

Ehrlichmann’s description confirms the narrative whereby Nixon’s rhetoric of “law and order” and “safe streets” was designed as a mechanism for satisfying antiblack sentiment while maintaining the plausible deniability of being colorblind.

Furthermore, it confirms the same for Nixon’s launch of the War on Drugs, which has lasted almost five decades and successfully “disrupted” black communities across the country.


Central to this narrative is the understanding of unrest and criminality as metaphors for blackness. Marc Mauer comments that Nixon’s strategy relied upon the convoluted packaging of “crime in the streets,” spanning street crime, urban rebellions following the murder of Martin Luther King and police brutality, and civil rights protests. Each of these elements reasonably reference black Americans; as a whole, they signify the threat of black criminality. When Nixon described America as “the most lawless and violent [nation] in the history of the free peoples,” the historical context of the civil rights movement and urban unrest signalled to his “silent majority” the cause of chaos. Yet Nixon’s messaging also accessed older narratives of black criminality that predated the urban unrest and shifting cultural mores of the sixties.

For instance, one of Nixon’s televised advertisements features a wealthy white woman, walking alone on the street and clutching her purse. The frame remains dark besides her face, and suspense builds as we hear only the sound of her shoes against the hard concrete. The voiceover warns that crime rates are increasing, so that now “a violent crime happens every minute.” By the end of the 60 second long advertisement, the woman falls out of sight, covered by shadows. Without even showing an attacker, but rather only hinting at her assault through statistics and dramatic lighting and sound, the campaign advertisement blends the recently emerging trope of “street crime” with the old yet durable myth of black men

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222 Mauer, Race to Incarcerate, 53.
223 Andrew B. Whitford and Jeff Yates, Presidential Rhetoric and the Public Agenda: Constructing the War on Drugs (Baltimore, Maryland: Johns Hopkins University Press, 2009), 42.
assaulting white womanhood. In his book “Dog Whistle Politics,” Ian Haney-López argues that Nixon was a successful “racial demagogue,” strategically using racially encoded rhetoric to attract white voters. Criminality was the most important of these racially encoded topics, especially in relation to Nixon’s assurances about clamping down on “urban unrest” and maintaining the death penalty. Even those with no open animosity towards other racial groups, the author argues, found Nixon’s messaging attractive because it was compatible with their “common sense racism,” whereby racial stratification reflects natural differences, not social problems from structural disadvantage or racial prejudice. Indeed, it is this “common sense” aspect of racism that makes race-baiting strategies so successful, even in the absence of open racial hostility.

If Nixon relied upon the symbolics of black criminality, he successfully introduced law-and-order into the mainstream as a rallying cry for a more punitive society, less sympathetic to criminals. Mauer notes that “the issue had been reframed in these [Nixon’s] terms to such a degree that a 1969 poll reported that 81% of the public believed that law and order had broken down, with a majority blaming ‘Negroes who start riots’ and ‘communists.’” By the time the Nixon administration

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227 Haney-López, Dog Whistle Politics, 87-89.
228 Haney-López, Dog Whistle Politics, 90.
229 Mauer, Race to Incarcerate, 53.
took effect, public concern with drugs had “moved from 5.6 percent in 1957 to 37.9 percent in 1972”.\textsuperscript{230}

However punitive and racialized Nixon’s rhetoric may have been, sympathy for some criminals survived the messaging. Specifically, Nixon distinguished between drug users and drug dealers, and advocated for the former to receive rehabilitative care and programming. In 1971, Nixon called for the appropriation of funds to police departments to “further tighten the noose around the necks of drug peddlers.”\textsuperscript{231} Yet in the same breath, he called for the appropriation of funds to programs for drug users. His administration pursued treatment efforts, for instance, introducing the use of methadone to fight opioid addiction.\textsuperscript{232} These two points together indicate that, although Nixon’s rhetoric marshalled in punitive sentiments, they still had certain limits, even if impossible to draw cleanly. The Comprehensive Drug Abuse Prevention and Control Act of 1970 operated on this distinction between drug user and drug dealers.\textsuperscript{233} The bill appropriated funding for prevention and treatment, reduced penalties for marijuana possession, and increased penalties for trafficking.\textsuperscript{234}

Furthermore, it is worth noting that, although Nixon repeated the findings of studies that linked crime to drug use, he partially maintained the medical model for understanding this phenomenon. A study of people arrested in Washington, DC in


\textsuperscript{231} Peniche, “The War on Drugs,” 30.

\textsuperscript{232} Whitford and Yates, \textit{Presidential Rhetoric and the Public Agenda}, 44.

\textsuperscript{233} Whitford and Yates, \textit{Presidential Rhetoric and the Public Agenda}, 43.

\textsuperscript{234} Whitford and Yates, \textit{Presidential Rhetoric and the Public Agenda}, 43.
August of 1969 found that 44% tested positive for heroin.\textsuperscript{235} Although this study demonstrated a strong correlation, and, to Nixon and his aides, a causation, between drug use and crime, Nixon’s response was not purely punitive.\textsuperscript{236,237} There remained the implication that drug users who commit crime do so because of their addiction; that, for these people, crime is a symptom of a terrible sickness, not the autonomous decision of a calculating agent.

**The Decline of the Rehabilitative Ideal**

Yet within years of Nixon’s speech, a dramatic shift was underway in how American criminologists — and the public — understood criminality. As a starting point, consider that, “as late as 1968, a Harris poll showed that 48 percent of the public thought that the primary purpose of prison \textit{was} rehabilitation and that 72 percent believed the emphasis \textit{should be} on rehabilitation.”\textsuperscript{238} In assessing cases between state parole authorities and prisoners, a California judge explicitly ruled for the release of a prisoner, who had been released on parole and then had their parole revoked, on the grounds that they could “successfully reintegrate into society” and therefore “no further confinement or rehabilitation” was necessary.\textsuperscript{239} In 1966, Johnson signed the Narcotics Addict Rehabilitation Act, and, two years later, the Alcoholic and Narcotic Addict Rehabilitation Amendments. The acts included federal

\textsuperscript{235}\textit{Ibid.}
\textsuperscript{236}\textit{Ibid.}
\textsuperscript{237}Forman notes that Nixon focused largely on “hard” drugs. (\textit{Locking Up Our Own}, 20-21)
\textsuperscript{238}Mauer, \textit{Race to Incarcerate}, 44.
support for state rehabilitation programs. In addition, the former meant that, if someone was addicted to drugs and convicted a federal crime, they could seek civil treatment rather than incarceration. In 1967, Johnson’s Crime Commission released their report *The Challenge of Crime in a Free Society*, essentially arguing that the War on Poverty, if waged in earnest, would reduce crime. It first and foremost addressed “root causes” of crime, calling for legislation “to eliminate slums and ghettos, to improve education, to provide jobs, to make sure that every American is given the opportunities and freedoms that will enable him to assume his responsibilities.” The Comprehensive Drug Abuse Prevention and Control Act of 1970 repealed the Boggs Act of 1951, which imposed mandatory sentences for drug distributors and users, and allowed for offenders to seek treatment. Between 1970 and 1975, two-thirds of the total US drug budget went to prevention, education and treatment — the highest ratio it would reach before the punitive turn. In sum, these surveys, laws, and spending reflect the height of the rehabilitative ideal and liberal ideas of crime in America.

Within a few years of its release in 1974, Robert Martison’s article “What works?” proved a decisive critique of rehabilitative practices in American prisons. In this article, Martinson conducted a comprehensive survey of rehabilitation programs

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in prisons across the country.244 These programs ranged from education classes to vocational training, and were indexed for their impact on recidivism. Although Martinson famously concluded that “nothing works,” he also advised that the reason of failure for some programs may have resulted from a negative atmosphere, fostered by an apathetic administration that does not believe in the programs, or the design of the programs themselves, rather than the character of the prisoners.245 In regards to job training and release programs, the reluctance of businesses to hire the prisoners posed a serious challenge and frustrated the prisoners.246 Although certain histories of mass incarceration present Martinson’s work as conclusive and negative, this presentation abridges a complicated article to a punchline. Martinson did not only say that “nothing works,” but that “so far” programs have largely failed, and “we don't know why they have failed.”247 If Martinson’s article intends to improve the study of rehabilitation programs, or challenge assumptions about how to prepare people for reentry, it does not necessarily spell the demise of the rehabilitative ideal and the assumptions behind it. Regardless, some liberals welcomed the report as a sign that rehabilitation could not be successful in such a restrictive setting.248 Although Martinson would later publicly rescind his conclusion that “nothing works,” his article was born at a politically opportune time for tough-on-crime politicians and gained

245 Martinson, "What works?,” 26, 29.
247 Martinson, “What works?,” 29. “We don't know whether the programs themselves are flawed, or whether they are incapable of overcoming the effects of prison life in general.”
instant traction with conservatives.\textsuperscript{249,250} Across the spectrum, then, “What works?” was taken as convincing evidence that rehabilitation in prison was a colossal failure.

If “What works?” severely decreased the credibility of rehabilitation, two new penological ideals arose in its place. James Q. Wilson, a criminologist at Harvard, was perhaps the most prominent and influential criminologist of America’s punitive turn. While his obituary in the New York Times notes that he was most famous for theorizing so-called “Broken Windows policing,” which focuses on aggressively pursuing petty street crime in order to reduce all crime, his earlier contributions to criminology were also influential and significant.\textsuperscript{251}

Specifically, his landmark work \textit{Thinking About Crime}, released in 1975, lays the groundwork for and crystalizes the shift from rehabilitation to deterrence and incapacitation. Implicitly criticizing the liberalism of the 60s’, Wilson opines: “We have trifled with the wicked… Justice suffers, and so do we all.”\textsuperscript{252} In this book and accompanying newspaper editorials, Wilson argued that the function of prison should be “to isolate and to punish,” not to rehabilitate.\textsuperscript{253} Wilson applied rational choice theory to someone’s decision to commit a criminal act.\textsuperscript{254} From this, it follows that making sentences harsher and increasing the probability of being arrested will reduce crime. If the decision to commit a crime is analogous to the decision to buy a good, increase the cost or the chance of incurring the cost and people will buy the crime less often.

\textsuperscript{249} Mauer, \textit{Race to Incarcerate}, 47.
\textsuperscript{250} Lerman, \textit{The Modern Prison Paradox}, 32.
\textsuperscript{252} \textit{Ibid}.
\textsuperscript{253} Mauer, \textit{Race to Incarcerate}, 47.
\textsuperscript{254} Clear and Frost, \textit{The Punishment Imperative}, 30-31.
However, Wilson did not cast all criminals as more or less rational agents, but rather only most of them. In a 1975 article in The New York Times, Wilson identified the remainder of criminals: “some persons will shun crime even if we do nothing to deter them, while others will seek it out even if we do everything to reform them. Wicked people exist. Nothing avails except to set them apart from innocent people.”

Here, Wilson identifies the limit-case of the rehabilitative ideal: the predator that is impervious to reform of any kind; and yet also, simultaneously, the limit-case of deterrence: the predator that cannot be deterred. All that is left for this breed, Wilson concludes, is incapacitation — not only to punish, but to isolate.

The argument in this chapter does not require that there exists no “wicked person.” Perhaps there are a certain number of people in America whose incapacitation for life is justified; perhaps the number is 10, 100, or 1000 — or just 1, and he’s the president. I cannot claim to know. Rather, this chapter suggests that the figure of the predator in the criminological discourse did real work towards harshening prison conditions, in scale and quality, and that the racialization of this figure enabled this harshening.

**Legislation and the Shift to Deterrence and Incapacitation**

Clear and Frost, Irwin, and Mauer each comment independently that Wilson’s publications heavily influenced politicians in the 70s, 80s, and 90s, and thereby provided a theoretical foundation for America’s punitive swing. The

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256 Clear and Frost, *The Punishment Imperative*, 30, 49. Clear and Frost argue that the Punishment Imperative was entirely a product of policy, not based on evidence, but on new criminological theories.

emerging neoconservative rhetoric, emphasizing individual choice and responsibility, successfully relied upon Wilson’s presentation of crime as an individual’s economic decision, not the symptom of a sickness or poverty.\textsuperscript{258,259} If Wilson and the cohort that developed around and complimented his work influenced politicians and policy, the shift from rehabilitation to deterrence and incapacitation meant real changes for not just how crime is framed, but also the experience of incarceration.

Both deterrence and incapacitation generally recommend more punitive responses to crime than rehabilitation does. This is especially true in terms of how long someone should be incarcerated for, and what the nature of this incarceration should be. If lawmakers subscribe to and pursue deterrence, increasing sentences is an appropriate method to reduce crime, as people will internalize the increased disincentive to commit crime. On this point, sociologist Jonathan Simon explores how this shift in criminology led to longer and harsher sentences in his essay, “Mass Incarceration: From Social Policy To Social Problem.” Simon notes that Gary Becker’s 1968 article on the economics of crime, which theorized crime through rational choice theory, in agreement with Wilson’s later article, advocated for longer prison sentences in order to increase the cost of crime. Furthermore, beyond the length of one’s sentence, qualitatively harsher prisons should, in theory, produce a stronger deterrent effect. Surveys demonstrate that this commonsensical notion is ingrained in the American public. For instance, in 2001, 59 percent of the public

\textsuperscript{258} To be fair, poverty and “root causes” explanations were still important for Wilson, even if not for the conservatives that took up his book. in fact, Wilson framed crime as an alternative to having a job, and claimed that more jobs would mean less crime.

\textsuperscript{259} Clear and Frost, \textit{The Punishment Imperative}, 73
agreed with the statement: “Prisons are too comfortable and criminals don’t mind being sent to prison.”\textsuperscript{260}

According to Clear and Frost, the idea that prisons prevent crime through incapacitation was central to the turn towards longer and harsher sentences. This idea was “widely accepted as [a] demonstrably true statement about our penal system, shaping the reforms of the era.”\textsuperscript{261} While this idea became increasingly popular, it also became commonplace at the highest levels of government.\textsuperscript{262} For instance, these authors recount the publicity of a memo by a statistician in Reagan’s justice department, Edwin Zedlewski, in which he suggested that the cost of incapacitating criminals was lower than the cost their crime would impose on society; and therefore, the crime problem can be efficiently solved by incapacitating criminals.\textsuperscript{263} A competing Justice Department memo from 1983 contradicted Zedlewski’s, instead claiming that incapacitation does not appear to have a significant impact on crime rates, but “can cause enormous increases in prison populations” if pursued.\textsuperscript{264} Yet this latter memo was suppressed from publication and, when available, largely ignored by the administration.\textsuperscript{265} Meanwhile, Mauer notes that an increasing number of tough-on-crime conservatives publicly supported incapacitation as a penological goal.\textsuperscript{266}

The nation-wide shift from indeterminate to determinate sentencing provides a litmus test for the shift in leading penological philosophy from rehabilitation to incapacitation and deterrence. When a justice system practices indeterminate

\textsuperscript{260} Lerman, \textit{The Modern Prison Paradox}, 29.
\textsuperscript{261} Clear and Frost, \textit{The Punishment Imperative}, 15.
\textsuperscript{262} Clear and Frost, \textit{The Punishment Imperative}, 21.
\textsuperscript{263} Mauer, \textit{Race to Incarcerate}, 64.
\textsuperscript{264} Mauer, \textit{Race to Incarcerate}, 64.
\textsuperscript{265} \textit{Ibid.}
\textsuperscript{266} Mauer, \textit{Race to Incarcerate}, 49.
sentencing, convicted individuals are sentenced to a range of years of incarceration before release. Once one has served the lower limit, one becomes eligible for release at the discretion of prison officials. In principle, this system is neatly aligned with the rehabilitative ideals dominant at the time of its implementation because it enables prison officials to track the progress of an individual towards their rehabilitation.\textsuperscript{267, 268} This penal logic is intrinsically rehabilitative, as is obvious in the case where someone is released before the upper limit of their sentence: it would be gratuitous to continue to punish someone after they have become capable of reintegrating with society. In their history of California’s determinate sentencing statute of 1976, one of the first in the country, Sheldon Messinger and Phillip Johnson ascribe monumental importance to the statute.\textsuperscript{269} These two law professors at University of California, Berkeley, observed in 1978 that the statute effectively announced, and was symptomatic of, a shift in penal philosophy from rehabilitation to incapacitation and deterrence.

In California and across the country, indeterminate sentencing came under harsh critique from the political right and left alike. Activists on the left criticized indeterminate sentencing for granting such consequential discretion to parole officers and prison administrators.\textsuperscript{270} These activists charged that both agents exercised discretion in a prejudiced manner, compounding racial and class disparities in the

\textsuperscript{270} \textit{Ibid}, 17.
incarcerated population.\textsuperscript{271,272} Even more radical activists on the left, taking a position against the state, argued that prisons, regardless of the purpose for which they are built, are illegitimate; so even rehabilitation is an unworthy goal.\textsuperscript{273} The right, skeptical of the liberal goals of rehabilitation, protested that duly convicted individuals were not serving their full sentences.\textsuperscript{274,275}

Indeterminate sentencing came to a virtual end in the federal system when Reagan signed the Comprehensive Crime Control Act of 1984. First conceptualized as a liberal reformist project to curb discrimination, determinate sentencing was born a decade later as a conservative project to get tougher on crime.\textsuperscript{276} Conservative shifts towards more punitive drug policy in a few states in the 70s and passed legislation for longer and mandatory sentences. For instance, Mauer comments that the New York’s Rockefeller drug laws of 1973 provided a model for other states and the legislation of the Reagan presidency.\textsuperscript{277} When Reagan signed the crime bill of 1984, he almost entirely abolished federal parole, where incarcerated people were released early. Although the federal prison population is a relatively small portion of prisoners, this change reflects the increasingly punitive \textit{Zeitgeist} of this period.

The racialized figure of the predator in rhetoric and the media contributed to the harsh and specifically antiblack consequences of the punitive turn. When Reagan announced a redoubled effort in the War on Drugs in 1982, notes Alexander, less

\textsuperscript{271} Clear and Frost, \textit{The Punishment Imperative}, 77.
\textsuperscript{272} Mauer, \textit{Race to Incarcerate}, 46.
\textsuperscript{273} Mauer, \textit{Race to Incarcerate}, 45. For instance, political prisoner George Jackson.
\textsuperscript{274} Clear and Frost, \textit{The Punishment Imperative}, 77.
\textsuperscript{275} Mauer, \textit{Race to Incarcerate}, 47.
\textsuperscript{276} Kate Stith and Steve Y. Koh, "The Politics of Sentencing Reform: The Legislative History of the Federal Sentencing Guidelines" (1993), \textit{Faculty Scholarship Series}. 1273. \url{http://digitalcommons.law.yale.edu/fss_papers/1273}.
\textsuperscript{277} Mauer, \textit{Race to Incarcerate}, 56-57.
than 2% of the American public believed drugs were the most important problem facing the nation.\textsuperscript{278} Two sociologists, Travis Deseran and James Orcutt, argue that it is necessary to understand the crack cocaine “epidemic” as a moral panic fueled by sensationalizing media and politicians. They emphasize that, although crack cocaine usage peaked in 1985, it fell dramatically since; and although “national surveys indicated that most forms of drug use were declining during this period, these years were marked by unprecedented levels of public and political concern over an ‘epidemic’ of cocaine use among American adolescents.”\textsuperscript{279} Katherine Beckett sums up the conclusion of these constructivist accounts: “it is the definitional activities of the state and the media, rather than the reported incidence of crime or drug use and abuse, that has shaped public concern regarding those issues.”\textsuperscript{280}

Various critics of the War on Drugs, such as Michelle Alexander, blame Reagan for significantly contributing to the apocalyptic framing of the crack cocaine epidemic and the subsequently militarized response against it. Alexander draws particular attention to Reagan’s rhetoric on crime in order to emphasize his “racially coded rhetoric and strategy.”\textsuperscript{281} For instance, Alexander recites a speech by Reagan: the criminal is “a staring face — a face that belongs to a frightening reality of our time: the face of the human predator.”\textsuperscript{282} If the rhetoric of war posed this predator as

\textsuperscript{278} Alexander, \textit{The New Jim Crow}, 49.


\textsuperscript{281} Alexander, \textit{The New Jim Crow}, 48.

\textsuperscript{282} Alexander, \textit{The New Jim Crow}, 48. Alexander continues: “Reagan’s racially coded rhetoric and strategy proved extraordinarily effective, as 22 percent of all Democrats defected from the party to vote for Reagan. The defection rate shot up to 34 percent among those Democrats who believed civil rights leaders were pushing 'too fast.'”
a dangerous force threatening America, it not only justified the harshest of responses, but made them imperative.283

Alexander, Mauer and media sociologists suggest that the figure of the predator in the context of the War on Drugs was intensely racialized as black. For Alexander, the “flood of stories about the crack crisis” were replete with stereotypes of black women as “irresponsible, selfish ‘welfare queens,’ and black men as ‘predators.’”284 Mauer notes that a study by the Center for Media and Public Affairs found that “television coverage of crime more than doubled from 1992 to 1993, while murder coverage tripled during the period, despite the fact that crime rates were essentially unchanged.”285 A survey of capital murder cases in Philadelphia between 1977 and 1999 found that animalistic descriptions such as “urban jungle” or the suspect’s behavior as “aping” were more likely to be used when the suspect was black.286 Furthermore, those defendants described as animalistic were more likely to be ultimately sentenced to the death penalty.287 These findings reflect that the animalization of black individuals enables harsher treatment. It is worth noting that the overrepresentation of blacks as perpetrators, and whites as victims, has continued in local news reporting.288

With this messaging behind and shaping it, the legislation of Reagan’s War on Drugs matched the punitive rhetoric. In a speech on crime policy, Reagan rejected

283 Clear & Frost, The Punishment Imperative, 2, 39. Such rhetoric of war against predators “contributed to racial divide in punishment.”
285 Mauer, Race to Incarcerate, 72. Mauer infers that this sensationalization of crime created pressure for Clinton to be harsher on crime
287 Butler, Chokehold, 26.
liberal criminology, which attributes crime to “socioeconomic conditions and an unprivileged background” instead of the criminal, and, Reagan alleged, thereby unfairly shifts responsibility from the individual to society.\textsuperscript{289} Already, before the War on Drugs, Reagan eagerly fulfilled his election promises to be tough on crime. Reagan cut funding for prevention and treatment by 40\% in his first year in office. Over the next decade, notes drug policy expert George C. Galster, “law enforcement funding accounted for 90\% of the increases in the growing federal drug budget.”\textsuperscript{290}

In addition to establishing determinate sentencing, rejecting liberal theories of crime and the rehabilitative ideal, and shifting money from rehabilitation to punishment, Reagan and congress also sought to increases sentences for crimes and establish mandatory minimums. The 1984 crime bill included the Sentencing Reform Act, which established a federal sentencing commission. Mauer notes that the guidelines developed by this commission went into effect in 1987, “carrying a heavy presumption of imprisonment for most offenders and giving little regard for any mitigating circumstances involved in an offense.”\textsuperscript{291} In sharp contrast to the legislation of the late 60’s, the Anti-drug Abuse Act of 1988 established mandatory sentencing laws for drug crimes, ranging from five years to life in prison.

Many have criticized Republican candidate George H.W. Bush’s attack ad against Michael Dukakis in the presidential election of 1988 as an example of race-baiting political messaging around crime.\textsuperscript{292} If political messaging has racially codified the criminal as black, this 30-second advertisement crystallizes the political

\textsuperscript{289} Mauer, \textit{Race to Incarcerate}, 60.
\textsuperscript{290} Galster, \textit{Reality and Research}, 168.
\textsuperscript{291} Mauer, \textit{Race to Incarcerate}, 59.
\textsuperscript{292} Mauer, \textit{Race to Incarcerate}, 63-64.
motivations and racial strategy of this encoding. The advertisement begins by introducing the subject: a comparison between the two candidates “ON CRIME.”

While Bush supports the death penalty, the voiceover continues, Dukakis does not—and gives 1st degree murderers weekend passes. “One [murderer] was Willie Horton, who murdered a boy in a robbery, stabbing him 19 times.” Two photos introduce Willie: the first, a black and white mug shot; the second, restrained by a white police officer. “Horton fled, kidnapped a young couple, stabbing the man, and repeatedly raping his girlfriend.” This advertisement is similar to the Nixon ad discussed above, in that it accesses the dangerous criminality of black men in the most charged case: the rape of a white woman. Yet the racial dynamics of this advertisement are even more explicit than what Nixon’s team dramatized and left off-screen. Rather, Horton’s blackness is paired with the heinousness of his violence — “stabbed 19 times,” “repeatedly raped” — and the youthful innocence and lost potential of his victims. Similarly, the Bush campaign took the rape victim on tour, to detail to audiences the explicit details of the crime. The news media also emphasized these details.

Clear and Frost comment that the success of the Willie Horton advertisement signalled to aspiring political leaders the success of using crime-talk “as a proxy for

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294 The victim was, in fact, white, but one can reasonably assume the audience would assume this, whether subconsciously or explicitly, as well. In 1980, the racial composition of Massachusetts’ working age population (25 to 64) was 0.003% black and 93.5% white (2,549,440 whites, 93,840 blacks, and total working population of 2,726,520). Statistics from the National Center for Higher Education Management Systems, “Massachusetts State Profile,” available at http://www.higheredinfo.org/analyses/Massachusetts_State_Profile.pdf. Accessed March 15th, 2018.

race-talk,” and promising to get tough on dangerous criminals.²⁹⁶ So much so, they claim, that “for much of the 1980s and 1990s, various types of proposed crime legislation formed the cornerstone of many local and state elections.”²⁹⁷,²⁹⁸ Yet if the lesson politicians learned from the Willie Horton advertisement was that race and criminality could be linked to their advantage in elections, the narrative lesson of the advertisement delivered a separate lesson.

This advertisement began with the frame of the death penalty, contrasting Bush’s support with Dukakis’ disapproval, and then continues that Willie Horton got a weekend pass “instead of” execution. Although this is a logically absurd move, as the absence of weekend passes does not necessarily mean that one must be executed for a crime, a separate lesson survives. That is, Willie Horton needed to be incapacitated. Letting him reenter society, if even for only two days, posed too great a risk. This lesson continues in an accompanying advertisement of the Bush campaign. Titled “revolving door,” the advertisement features “murderers and rapist” entering a literal revolving door to the prison, only to reenter the community. Of the two dozen “criminals,” (only) one looks up, staring directly into the camera as he leaves the prison: the black criminal.²⁹⁹

If Wilson presented “wicked people” as the limit-case for rehabilitation, and even deterrence, criminologist and Princeton University Professor John DiIulio posed an analogous figure. Although coined 20 years after Wilson published Thinking About Crime, the two figures are similar in that, like Wilson’s “wicked people,” DiIulio’s

²⁹⁶ Ibid.
²⁹⁷ Ibid.
²⁹⁹ InterPositive, “The Willie Horton Ad and the Revolving Door Attack Ads.”
“superpredator” poses a great threat that requires incapacitation. Yet DiIulio’s figure seems a dramatically stylized and more obviously racialized figure than Wilson’s. For DiIulio, this “new breed” of juvenile offender was “fatherless, Godless, and jobless,” with “absolutely no respect for human life and no sense of the future.” Under the colorblind cover of statistics, DiIulio identified demographics of young black men as a driving factor for an impending apocalypse of crime, further suggesting that while black men committed the same crimes as whites, they did so with more violence.

In addition to lacking family structure, religion, or economic purpose, DiIulio emphasizes the animal characteristics of the (implicitly black) children, who travel in “wolf packs.” DiIulio and his collaborators simultaneously announce these children’s amorality and “radically impulsive” drive to crime. Posing superpredators as more similar to rabid dogs than calculating agents, he continues, “they perceive hardly any relationship between doing right (or wrong) now and being rewarded (or punished) for it later.” In an article in 1995, DiIulio reaffirmed his description of the superpredators as irrational animals rather than the calculating agent: “they kill or main on impulse… they quite literally have no concept of the future.” Common in these animalistic descriptions is the implication that these children must be incapacitated, as they are incapable of registering the future.

301 Ibid.
302 Ibid.
303 Ibid.
According to Mark Kleiman, a criminologist at New York University, the superpredator theory directly supported and shaped a wave of criminalizing youth. Kleiman writes, “dozens of states passed laws allowing juveniles to be tried and sentenced as adults, with predictably disastrous results.” In agreement, the Equal Justice Initiative lamented the lasting legacy of the superpredator myth 20 years after its birth: “the superpredator myth contributed to the dismantling of transfer restrictions, the lowering of the minimum age for adult prosecution of children, and it threw thousands of children into an ill-suited and excessive punishment regime.”

Sensational news coverage and punitive criminology pressured Bill Clinton’s administration to pursue tough policies similar to his predecessors. For instance, the Violent Crime Control and Law Enforcement Act of 1994 reflects how integral increased incarceration, and the changing form of incarceration, were to the punitive turn. The law allocated federal funding to states specifically to build new prisons to expand capacity. 50% of these total funds were appropriated as “Truth in Sentencing Incentive Grants”: “to be eligible a State must demonstrate that it requires that persons convicted of violent crimes serve not less than 85 percent of the

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sentence imposed or meet other specified requirements.” The remaining 50% were reserved for “Violent Offender Incarceration Grants.” Together, the two initiatives worked upon the explicit assumption that longer periods of incarceration for crime is the best way to prevent crime; that is, the idea that the cost of incapacitation is lower than the social cost of crime was reaffirmed in policy. Recent research has found that Truth-in-Sentencing laws increase sentences not only for those crimes outlined in the law, but for lesser crimes not included as well, since the law grants prosecutors greater leverage in plea deals, which account for the vast majority of criminal charges.

The bill also eliminated Pell Grants, which formerly allowed incarcerated individuals to pursue education beyond GEDs, a relic of the rehabilitative ideal.

Two years after the passage of this crime bill, Hillary Clinton gave a speech to an almost entirely white audience in New Hampshire. She assured the audience that her husband’s administration would meet the challenge of crime with a stricter response. Referencing Dilulio’s theory, Clinton assured the crowd that “we have to bring them to heel,” channeling the animalized depiction of black youths.

By emphasizing that these “superpredators” lack both “a conscience” and “empathy,”

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310 Mauer, Race to Incarcerate, 77.
312 Mauer, Race to Incarcerate, 77.
313 Mauer, Race to Incarcerate, 77-78. Mauer notes that the congressional black caucus lobbied for and successfully included money towards prevention and treatment instead of incarceration, although this was originally not included, and the expenditures towards incarceration, which continued on a state level through September 2009, eclipsed these preventive and rehabilitative expenditures. Regardless of their lobbying, the legislation in sum reflects a shift in the prison’s stated purpose and design from rehabilitation to incapacitation.
315 Robinson, "Bill Clinton, Superpredator."
Clinton further distinguished these children from supposedly moral beings, endorsing the punishment of them as adults.

Legislation by state legislatures during the 80s’ and 90s’ shows how changes at the federal level led states to become more punitive, and how their subsequent legislation similarly reflects the punitive Zeitgeist. For instance, consider California and Florida, two of the largest states with relatively high incarceration rates. California’s republican governor George Deukmejian (1983–1989) proudly presented prison construction is his state:

In 1983, California had just 12 state prisons to house dangerous criminals. Since then, we have built 14 new prison facilities. That has enabled us to remove an additional 52,000 convicted felons from neighborhoods to send them to state prison.316

In response, Jonathan Simon read this message for the philosophy behind mass incarceration. Simon quips: “The state has ‘removed’ people from ‘neighborhoods’ and sent them to ‘state prison’—end of story. There is no pretense that this will effectuate change among those imprisoned; it will only provide security through removal and custody in prison.”317

Simon’s comment holds in regards to changes in Florida’s sentencing system. In October of 1983, Florida became the sixth state to eliminate parole and replace indeterminate with determinate sentencing.318 Forced by successful court challenges against overcrowded prison conditions 5 years later, yet unwilling to roll back the

317 Ibid.
punitive 1983 changes, the state temporarily introduced a good-credit system to allow for relatively early release. Yet, after an accelerated program to build many new prisons for permanently expanded capacity, this temporary reinstitution of indeterminate sentencing ended in 1994. In 1995, in order to qualify for Clinton crime bill money, Florida passed Truth-in-Sentencing laws requiring prisoners to serve at least 85% of their sentence. In the same year, Sentencing Guidelines increased prison time for nonviolent and violent crimes.

Across the country, prison overcrowding and cuts in rehabilitation programming meant generally more hectic and punitive prison conditions. Criminologist Joan Petersilia found that at least 25 states cut vocational technical training as of 2003. These programs are among the most effective at providing inmates with a career when they re-enter the community. While these cuts exacerbate lack of access to rehabilitative programming, even states that have not cut programs, but whose prisons suffer from overcrowding, have reduced access and resources. For instance, participation in state prisons’ academic programs fell from 45% to 36% between 1986 and 2007. Sociologist Francis Cullen, observing that various states and congress were drafting legislation to make prison life harsher, decried that “it has become politically correct… to devise creative strategies to make

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320 Ibid.
321 Ibid.
323 Lerman, The Modern Prison Paradox, 35
324 Ibid.
325 Ibid.
offenders suffer… we are witnessing a movement whose supreme aim is the infliction of penal harm.”326

To summarize so far: the rejection of the rehabilitative ideal and liberal ideas of crime paved the way for a new conceptualization of the criminal, both in the mind of the public and in the theories of criminologists. Moreover, the limit-case posed by the new criminological theories — the racialized predator — against old ideals gave direction to the punitive turn and its attendant legislation. To grave effect, this limit-case criminal was racialized in political rhetoric and the news media, depicting black criminality through animalization as savage, unrestrained, impervious to rehabilitation, and demanding incapacitation. These new theories set deterrence and incapacitation, rather than rehabilitation, as the dominant penological goal, and provided a grounding for more punitive legislation. While the shift from indeterminate to determinate sentencing and the end of federal parole reflect changes in penological purpose, the punitive turn’s legislation also directly supported to the growth of the warehouse prison by increasing sentences, stimulating overcrowding and prison construction at the lowest cost deemed possible, and cutting prison programs.

**Hyperincarceration and the criminalization of blackness as State racism**

So far, this chapter has considered the role black criminality played in the punitive turn in terms of the increasing prison population, in order to account for the development of the warehouse prison. However, a second phenomenon is equally worthy of attention. As the incarceration rate and total prison population increased

dramatically, racial disparities in the prison population increased in tandem from 1972. Since the beginning of the punitive turn, the racial demographics of the prison population have shifted from majority white to almost 70 percent people of color.\textsuperscript{327} The ratio of white to black rates of imprisonment grew from 1:4 in 1960 to 1:8 in 2000.\textsuperscript{328} The distinction should be made between anyone (i.e. the media and sociologists) encoding black as criminal, and the state factually criminalizing the black population. In the first case, blackness and criminality are linked metaphorically, semiotically, in media, sociology and rhetoric. While each side of this distinction supports the other, only the latter case involves the factual production of black criminality. I refashion State racism to describe the criminalization of blackness, which thereby justifies the violence of its recreation.

State racism marks certain bodies for physical and social isolation through the organization of space and the discretion of state actors. Stop & Frisk strategies demonstrate how these two avenues work in tandem to produce blackness as criminality. This case study exemplifies how police discretion in choosing who to stop, question, search and arrest necessarily includes an opportunity for prejudice. Lasting segregation in cities across America, products of racist state planning and discrimination by private actors, enables and legitimizes Stop-and-Frisk to produce blackness as criminality. The remainder of this chapter applies State racism to link 1) the factual production of black criminality through shifting police tactics and police discretion; and 2) how lasting segregation enabled these shifting practices to criminalize blackness with the colorblind cover of space & crime.

\textsuperscript{327} Camp, \textit{Incarcerating the crisis}, 3.

Loïc Wacquant’s essays on “hyperincarceration” suggest how policing at the intersection of class and (segregated) space criminalizes blackness. In his article “Class, race & hyperincarceration in revanchist America,” Wacquant argues that the label “mass incarceration” fails to capture how the “expansion and intensification” of policing have targeted of black men “first by class, second by race, and third by place, [ultimately leading] to the hyperincarceration of (sub)proletarian African American men from the imploding ghetto.”329 In another essay, Wacquant concludes:

Among the manifold effects of the wedding of ghetto and prison into an extended carceral mesh, perhaps the most consequential is the practical revification and official solidification of the centuries-old association of blackness with criminality and devious violence.330

Criminologist Jess Mawhirt’s study on the relationship between segregation and incarceration provides statistical support for Wacquant’s argument. Mahwhirt finds that “black men aged 18 to 65 who live in more segregated states have a higher probability of being in jail than those living in less segregated states.”331

Facilitated by federal funds, state and local police departments embraced more aggressive policing strategies, including so-called “quality of life” policing and fighting the War on Drugs. James Wilson’s “Broken Windows” theory, announced in an article in The Atlantic in 1982, provided a theoretical basis for pursuing petty crimes of disorder on the street. The theory suggested that too many small acts of disorder

329 Loïc Wacquant, “Class, race & hyperincarceration in revanchist America,” Daedalus 139, 3 (2010), 74-75.
creates an environment conducive to serious crimes like robbery or assault.\footnote{Ana Muñiz, Police, Power and the Production of Racial Boundaries (New Jersey: Rutgers University Press, 2015), 58-60.}

Sociologist Ana Muñiz delivers a critical exegesis of the theory, whereby law-abiding citizens fear areas visibly marked by “disorder,” in contrast to the “wrong” kind of people (criminals) who are attracted for the area’s disorder as a site for cheap (low-risk) crimes. According to Muñiz, “the concept of disorder,” which the entire theory hinges upon, “is necessarily vague and indefinitely expansive, allowing for ample discretion.”\footnote{Sarah Childress, ”The Problem with ‘Broken Windows’ Policing,” PBS, published June 28th, 2016. Available at https://www.pbs.org/wgbh/frontline/article/the-problem-with-broken-windows-policing/. Accessed March 2nd, 2018.} This discretion was exercised plenty, and increasingly for so-called quality of life offenses. From 1984 to 1998, the chance of receiving a prison sentence after an arrest increased by more than 50%.\footnote{Lerman, The Modern Prison Paradox, 27.} From 1985 to 1995, 61% of people imprisoned were incarcerated for a nonviolent drug or property offense.\footnote{Mauer, Race to Incarcerate, 34.}

**State racism: Discretion in Stop & Frisk**

Even if the people legislate the law, Jacques Derrida argues in his essay “Force of Law,” the law cannot prescribe every aspect of its enforcement. The State of Exception dramatically illustrates the inherent limitation of the law, and the violence it requires for its maintenance: if the law cannot prescribe a response to every case in advance, it cannot determine exactly what situation would call for its suspension. Such a decision ultimately falls to the discretion of a state executive, whether the president or a police officer. Addressing how the law must include the possibility of its
suspension in the name of preserving itself, Derrida explains that the police assume power over the law “each time the law is indeterminate enough to open a possibility for them” to do so.\textsuperscript{337} This means that the discretion of which people to stop on the street, and even which people to kill, resembles the State of Exception both in terms of negating rights and inevitably wielding the choice over when to do so. Derrida’s essay guides this discussion of the law by arguing that the enforcement of the law operates in the void that its prescriptions cannot cover, and thereby exceeds the actual codification of the law.

American judges have admitted that any exercise of discretion, even when limited in scope by the law, provides an opportunity for racial prejudice.\textsuperscript{338} Reflecting on empirical evidence that black men charged with killing white men are much more likely to be sentenced to the death penalty than any other combination of killer and victim, Justice Brennan of the Supreme Court wrote, “The discretion afforded prosecutors and jurors in the Georgia capital-sentencing system creates such opportunities… for racial considerations to influence criminal proceedings.”\textsuperscript{339}

Scholarship has similarly documented how the exercise of discretion by prosecutors, judges or police, does in fact produce racially disparate outcomes.\textsuperscript{340,341,342} As discussed in Chapter I, Michelle Alexander describes how the

\textsuperscript{338} This paragraph and the ideas explored below are largely either sourced from and edited or directly related to an essay I wrote on the same topic, “Stop & Frisk as State racism,” submitted 12/18/2017 for Prof. Karera’s CHUM391.
\textsuperscript{340} On racial disparities in sentencing, see the ACLU’s brief from 2014, “Racial Disparities in Sentencing: Hearing on Reports of Racism in the Justice System of the United States,” available at https://www.aclu.org/sites/default/files/assets/141027_iachr_racial_disparities_aclu_submission_0.pdf.
\textsuperscript{341} Carlos Berdejó, "Criminalizing Race: Racial Disparities in Plea Bargaining," Boston College Law Review, Vol. 59, 2018 (Forthcoming). Because 96% of criminal cases end in plea deals, American
War on Drugs has disproportionately criminalized the black population, and ascribes a central role to police discretion. Clear and Frost echo Alexander, “differential selection of blacks for criminal justice processing operates by moving blacks through the system at slightly higher rates at each and every stage of the system… the overall effect, when all these small effects are added up, has been substantial.”

In her book *The Political Roots of Racial Tracking in American Criminal Justice*, Nina Moore coins the term “racial tracking” to describe how “blacks are not only disproportionately entangled in the criminal process but are also subject to a less lenient form of criminal processing.” Moore finds that, for all crime, blacks serve more time than whites. Interestingly, Moore suggests that differences between how the two races are processed does not result from agents being more punitive with blacks, but rather less punitive with others; for instance, whites are more often given opportunities towards alternative, diversionary treatment than blacks. Common to each of these authors’ studies is the premise that discretion provides an opportunity for discrimination.

Stop-and-Frisk provides a powerful case study because it expands the void identified by Derrida and folds racial discrimination within the letter of law. In *Terry v. Ohio*, the Supreme Court ruled as constitutional so-called *Terry* stops, where the police can stop and frisk someone on the street so long as the officer can articulate a “reasonable suspicion” that the person stopped is “armed and dangerous.” Although

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prosecutors have an unfettered and unreviewable level of discretion in determining the sentences of alleged criminals beyond their usual powers of deciding what crimes to charge someone for.


the liberal judges intended for the ruling to curb police harassment of blacks, courts across the country have drafted capacious lists of what circumstances constitute “reasonable suspicion.” For instance, one ruling holds that an officer’s suspicion of simple drug possession implies sufficient danger for a search.347 Across America, notes sociologist Michael K. Brown, “race still play[s] a large role in [police’s] determination of dangerousness,” so police are more likely to select black people than whites.348

Alexander documents how *Terry* stops are a crucial tactic of the War on Drugs and enable the criminalization of black youths, since any drugs found in the searches are admissible evidence. For instance, in Denver, using slang, wearing “clothing of a particular color,” hairstyle, pagers and jewelry qualify as sufficient signals of being potentially “armed and dangerous,” and thus justify a police stop.349 These rules virtually guaranteed the criminalization of black youths. In 1992, Denver citizens discovered that 8 of every 10 people of color in their city were on the police’s list of suspected criminals.350 The wide array of grounds for stopping someone means that police enjoy practically unfettered discretion in selecting who to stop.

In *Locking Up Our Own*, Forman describes how the police regularly targeted black children outside of their public school in Washington, DC with *Terry* stops. Forman reports from his perspective as a teacher: “Our students complained constantly about how the police treated them. They told us they were routinely subjected to verbal abuse, stopped and searched for drugs or weapons, or even

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348 Harris, “Frisking Every Suspect,” 44f191.
punched, choked, or shoved.” Forman continues that these weekly rituals humiliated the students, compromising “their privacy and dignity.” Forman frames aggressive police strategies like Terry stops within “the warrior model” of policing, which “inverts the presumption of innocence.” He concludes: “in the ghetto, you are not presumed innocent until proven otherwise. Rather, you are presumed guilty, or at least suspicious,” and this suspicion can be based on such an extensive array of criteria that it need not be grounded at all.

**Space in Stop & Frisk**

As Forman suggests, Police departments pursue Stop-and-Frisk strategies most aggressively in ghettos and their remnants, products of racist planning by local, state and federal governments. The history of segregation in America therefore partially explains the specifically antiblack damage of aggressive police tactics. In *The Color of the Law*, Richard Rothstein tackles the myth that private actors alone were responsible for segregation by documenting how local, state and federal governments across the country segregated America. While private actors, such as real estate agents, played significant roles in segregating towns and cities across the country, public policy enabled these people to maintain segregation, so attributing segregation to private citizens alone is ahistorical.

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353 Forman, *Locking Up Our Own*, 154. “Under this warrior worldview, officers are locked in intermittent and unpredictable combat with unknown but highly lethal enemies.”
racism and public policy, Rothstein presents evidence of how governments across America deliberately segregated cities by race.

On the local level, zoning laws drew the color line, while groups of armed white residents and the police enforced it. To circumvent possible legal challenges to explicitly racist zoning laws, cities like St. Louis used colorblind classifications: single family home, multi-family building (apartments), industrial and commercial. They then planned for white families to live in single-family homes in the suburbs, and to concentrate black families to live in multi-family buildings in certain areas of the city. In the 1940s and 1950s, the Federal Housing Administration facilitated this plan by subsidizing white flight from the city center to the surrounding suburbs. The suburbs became bastions of whiteness in single family homes, geographically separated from multi-family buildings, predominantly populated by blacks. City councils and planners placed commercial zones between the outer suburbs and the inner-city to forestall integration of the suburbs. They placed dangerous waste sites and heavy industry in black neighborhoods. Laws that banned interracial marriage, in combination with marriage requirements for public housing and mortgages, precluded integration.

In sum, local, state and federal governments across America segregated cities by race in order to confine black Americans, to limit their economic opportunities,
and to separate them from whites. Of all the areas of American life to be integrated, Rothstein observes, housing poses the slowest and most difficult process. Diner counters, parks and even schools are easier to integrate than neighborhoods. This lasting segregation of cities by the government means that police strategies like Stop-and-Frisk can focus on poor black neighborhoods.

Segregation legitimizes Stop-and-Frisk by offering space as a colorblind metaphor for race. To rebut accusations of racism, politicians and police chiefs can point to disparities in neighborhood crime rates. For example, Michael Bloomberg, the former Mayor of New York, parried criticism that his data-driven, aggressive policing strategy creates racist outcomes: “We go to where the reports of crime are.” Bloomberg faced further criticism in 2013 after suggesting that minorities should be stopped more often than they were because of varying murder rates by race. He responded: “the numbers are the numbers.” (In 2013, only 11% of stops were of white people, while 56% were of black people.) In both cases, Bloomberg demonstrates how one can harness the commonsense and statistics of public safety discourse to legitimize the selective deployment of Stop & Frisk tactics in poor and black neighborhoods.

364 Ibid.
But even when police commissioners and politicians describe this strategy as colorblind, supposedly responding exclusively to crime, not race, lasting segregation means it cannot be. With race and space delimited together, police officers have free reign to select “suspicious” people by race under the alibi that they’ve chosen these people by space. Since a neighborhood’s crime rates and past police experience in the neighborhood may imply that anyone there is armed and dangerous, “minority group members can be not only stopped, but subjected to a frisk without any evidence that they are armed or dangerous, just because they are present in the neighborhoods in which they work or live.” Circuitously, this policing produces higher crime rates.

Black and 23 years old, Nicholas Peart’s experience living in Harlem, a historically and predominantly black neighborhood, evoke the origins of Stop & Frisk. Peart recalls the multiple times he’s been stopped:

> These experiences changed the way I felt about the police. After the third incident I worried when police cars drove by; I was afraid I would be stopped and searched or that something worse would happen... I don’t hang out with friends outside my neighborhood in Harlem as much as I used to. Essentially, I incorporated into my daily life the sense that I might find myself up against a wall or on the ground with an officer’s gun at my head. For a black man in his 20s like me, it’s just a fact of life in New York.

Out of fear of police harassment for straying into nonblack neighborhoods, Peart restricts himself to Harlem. This self-segregation reflects the process of racialization as described by Mbembe: limiting circulation of racialized bodies, affixing them to

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366 Unless a police officer admits that they stopped a black person because of their blackness, any drugs found are admissible as evidence against the individual.
367 Harris, “Frisking Every Subject,” 44.
spaces through terror. In fact, this police strategy was originally developed in the ghetto for the purpose of enforcing segregation. For instance, Rothstein writes about migration of black workers to Richmond California after World War II,

To ensure that no African Americans migrated to Richmond unless they were essential to the war effort, the city’s police stopped African American men on the street and then arrested and jailed them if they couldn’t prove they were employed.

With criminality serving as an official excuse, police enforced segregation without needing to betray the racism that motivated and guided their exercise of power. A strong proponent of initiating the first Stop & Frisk programs, police superintendent Orlando W. Wilson explained that the program was an effective form of “psychological warfare” because it “gives the impression of the police being everywhere.” The architects of the program intended for the policed to internalize the imperatives of segregation, and hoped that the invasive ritual would communicate this imperative. The origins of Stop & Frisk reflect the historical link between the expansion of police discretion and the imperatives of segregation, where the policing of space means forging blackness as a criminal threat.

In *Critique of Black Reason*, Mbembe emphasizes how preventing the circulation of blackness is critical for “the process of racialization.” Stop & Frisk does so by maintaining segregation and terrorizing the population. In terms of maintaining segregation, Stop & Frisk severely curtails the life chances of many because it

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incarcerates many for petty crimes that would otherwise be undetected, and thereby subjects them to the economic disadvantages of incarceration. Yet even those who have never committed a crime are racialized because where they live marks them as “armed and dangerous.” Space and discretion mean that the police do not select, stop, search and arrest white people at the same rate as they do blacks, being a significant factor in producing both races. Mbembe’s history of Virginia suggests that legislating blackness as criminal necessarily means creating whiteness as its legitimate, rights-bearing opposite. While the police produce blackness as criminality, they simultaneously produce whiteness as the law-abiding norm.

In her analysis of American segregation as State racism, Saidiya Hartman presents how indispensable discretion is for segregation. Specifically, Hartman shows how state actors other than the police assign race to subjects. Commenting on Plessy v. Ferguson, a Supreme Court case that upheld segregation, Hartman notes that, “in directing individuals to separate cars, the conductor, in effect, assigned racial identity.” The separation of races by space entailed the recreation of both races as antagonisms, one privileged, the other disprivileged, one innocent, the other criminal. According to Hartman, in terms of this “productive character of racism, the state's work can be understood as securing racial integrity rather than simply ensconcing aversion in the law.” Hartman’s discussion concurs with Mbembe in that exercises of discretion by State actors never merely create blackness as criminality, but rather also implicitly define legality as well.

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374 Hartman, Scenes of Subjection, 205.
Using State racism charts the evolving strategies and narratives of antiblackness in America. Although few advocates of Stop & Frisk today would use the explicitly racist language of segregation, and instead use the supposedly colorblind language of crime and space (“the numbers are the numbers”), segregation means that neighborhood crime is a metaphor for blackness. If the meaning of race is dynamic, aggressive police programs like Stop & Frisk refashion black people as carriers of danger and threat, to paraphrase Christina Sharpe.\textsuperscript{375} This semiotic production is a vicious cycle that justifies its own violence. Aggressive policing in black neighborhoods marks targeted populations as criminal; and then advocates marshall the subsequent link between crime, space and race for more aggressive policing and punishment. This concentration by space limits the collateral damage of the strategy against nonblack people, and thereby refines the production of black as criminal and white as law-abiding.

Derrida’s discussion of law as a performative force accounts for this circuitous logic of antiblack policing. In his reading of Benjamin, Derrida breaks down the imposition of law into two components, founding violence and preserving violence. Violence always involves both of these forms, as no violence exclusively creates the law nor preserves it.\textsuperscript{376} To account for the “mystical source of authority” that legitimizes law, and thus allows for the definition of legal and illegal violence, Derrida approaches this schema of violence through J. L. Austin’s speech act theory. The latter identifies performative speech acts by their social effect.\textsuperscript{377} For a performative

\textsuperscript{375} Christina Sharpe, \textit{In The Wake: On Blackness and Being}, 15.

\textsuperscript{376} Derrida, “Force of Law,” 260, 264, 272.

\textsuperscript{377} For example, a pledge, promise, and naming are performative speech acts, in contrast to constative speech acts, which carry a true/false value.
speech act to be understood, it must conform to the conventions that govern the act. When Derrida describes the foundation and enforcement of law as “a performative violence,” he suggests that conventions are to speech acts what law is to violence.\textsuperscript{378} Violence is legitimate because it follows conventions that it both assumes and creates; it legitimizes the basis of its legitimacy. For Derrida, “law is always an authorized force,” a force which legitimizes itself.\textsuperscript{379} Derrida’s account of violence as performative explains the legitimizing power of State racism. The latter legitimizes antiblack violence by creating blackness as criminality.

**Varying frames of State racism and their implications**

The above discussion of State racism has focused exclusively on how discretion and segregation criminalize blackness. Yet the driving question here was why the prison population underwent a major shift in racial composition at the same time as it expanded tremendously. This racial shift was not only from majority white to majority black, but rather was also fueled by increasing incarceration rates of poor latinos and poor whites, especially following the War on Drugs. One may disagree with using State racism here for the simple facts that America does not only incarcerate black people, and that mass incarceration has affected people of all races.

In using State racism to account for the demographic shifts of the warehouse prison, it does not necessarily follow that these strategies target (exclusively) black people. Rather, analyses may differ on the question of who the target of State racism is. Who are these strategies primarily oriented against: blackness or the “dangerous underclass”? In the first interpretation, one may follow Hartman’s analysis of

\textsuperscript{378} Derrida, “Force of Law,” 271.

\textsuperscript{379} Derrida, “Force of Law,” 233.
segregation as State racism, and extend her framework and assumptions into an
analysis of the warehouse prison. This interpretation would crucially follow her
assumption that State racism is oriented against black Americans, and would find
agreement in the recent writings of Afro-Pessimist writers, as gleaned in Chapter 2.
Yet one need not subscribe to the metaphysical polemics of the latter to foreground
blackness as a driving antagonism in American’s history of punishment. For instance,
without subscribing to the ontological tenets of Afro-Pessimism, Law Professor Paul
Butler writes in his politically charged book *Chokehold: Policing Black Men* that everyone
besides black men are “collateral damage” in “a system originally designed to ensnare
black men.”380

However, if one wishes to read the structuralist critiques of Irwin, Simon and
Wacquant through the lens of State racism, one may focus on their discussion of “the
underclass” and “the dangerous class” as a perpetually criminalized and sequestered
population. Although each author notes how racialized rhetoric and an image of
black criminality support mass incarceration, they argue that mass incarceration
(re)creates an “underclass” of disprivileged, dishonored and excluded individuals.
Each author notes that the underclass is disproportionately black while foregrounding
how incarceration selects by class and place.381 Yet class is perhaps more of a focus
here than in the first interpretation. For instance, these theories would emphasize
class and place to explain why blacks who dropout of high school have seen the
greatest increase in incarceration rate between 1980 and 2008, while college educated

381 Wacquant, “Class, race & hyperincarceration in revanchist America,” 74-75.
blacks have experienced relatively no increase over the same period.\textsuperscript{382} If prejudiced discretion and the subsequent differential tracking of the black population could explain mass incarceration today, then we wouldn’t see well-off black people incarcerated at the same (relatively low) rate as they were 40 years ago.\textsuperscript{383} Similarly to Irwin, Simon and Wacquant, Michelle Alexander argues that mass incarceration creates a racial caste system by excluding a section of society — largely black — from economic opportunities, access to crucial welfare benefits, and political rights. The target of mass incarceration, then, isn’t always exclusively and explicitly black, even when the majority of those most harmed are black.

Whether State racism targets the black or underclass (and thus largely black) population informs the conceptual work of the lens. For instance, consider exercises of police discretion, via Derrida, as small exercises of sovereignty, potentially suspending the law by exercising it. Weathering the troubled Weimar Republic a year before the Nazis seized power, political theorist Carl Schmitt famously foregrounded the State of Exception as the defining mark of sovereignty. For Schmitt, the State of Exception polemically constitutes the political group — the most important, primary marker of existential identity — by expelling the group’s enemy. Synthesizing Derrida and Schmitt together, one may identify exercises of police discretion as exercises of sovereignty. In this theoretical context, State racism defines the political enemy, an internal threat that must be sequestered and excluded from society.

\textsuperscript{382} Bruce Western & Becky Pettit, "Incarceration & Social Inequality," \textit{Daedalus} 139, 3 (2010), Figure 1.
\textsuperscript{383} Thank you to Professor Kaye for this intuitive point.
If “the exercise of police power constitutes the population as its object,” then it does so along the latent distinction between political group and political enemy.\footnote{Hartman, \textit{Scenes of Subjection}, 199.} In the first interpretation of State racism, blackness is the political enemy. Framing his trace of antiblack violence in America from slavery to segregation, Nikhil Pal Singh comments on the relationship between policing and racializing populations: “Policing makes race and race has defined the objects of police at the point where relations of force take primacy.”\footnote{Nikhil Singh, \textit{Race and America’s Long War} (Oakland, CA: University of California Press, 2017), 35.} Also critiquing police force against black Americans, Afro-Pessimist Jared Sexton suggests that these shows of force demonstrate that blackness is the “constitutive outside” of American society.\footnote{See Jared Sexton, \textit{Amalgamation Schemes: Antiblackness and the Critique of Multiracialism} (Minnesota: University of Minnesota Press, 2008).} This reading seems to connect more directly and obviously to prior analyses of State racism and the State of Exception — for instance, Jews in Nazi Germany — because it primarily defines the enemy in racial terms.\footnote{However, Sexton’s co-author, Frank Wilderson, polemically denies the possibility of any analogy between black suffering and the suffering of other races. See “The Ruse of Analogy” in \textit{Red, White and Black}.} From this reading where blackness is identified as a threat and sequestered as such, criminality and space provide metaphors for blackness and colorblind alibis for antiblack racism. In contrast, the second interpretation of State racism, in which the underclass is the target, seeks to expel dangerous elements that are not necessarily black. American subjecthood in this latter interpretation is defined in antagonism to a dangerous population rather than a sequestered race.

Regardless of different emphases between these two readings of State racism, a necropolitical framing suggests how the fear of criminality supports mass (and hyper) incarceration, especially fueled by the limit-case of the predatory criminal, racialized
black in image and fact. If this limit-case defeated the rehabilitative ideal and replaced it with the dominant philosophy of deterrence and incapacitation, this story may explain longer sentences, widespread overcrowding, rapid expansion, and cut programs. But the link between the racialization of the criminal and solitary confinement is more difficult to draw. Ultimately, changes in American penology at the end of the 20th century should be understood in conversation with both readings of State racism.

**The New Penology**

In 1992, Feeley & Simon announced a tremendous shift underway in criminology and prison management. In their article “The New Penology,” the authors place themselves within the decline of the rehabilitative ideal, investigating what now guides penology in its place. Feeley & Simon describe a major shift not just in the sentiment of criminologists and prison administrators, but rather towards a new “shared way of framing issues.” Instead of focusing on treating the individual, contextualizing their offense and trying to understand how best to reintegrate them into society, the New Penology primarily aims to control the risks of a dangerous population: “the task is managerial, not transformative.”

New regimes of classifications have significantly affected prison design in terms of purpose and conditions of confinement. For instance, California’s prisons were

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organized through the 70s for specialized functions for specific types of prisoners: the California Rehabilitation Center, designed for drug users; the California Medical Prison at Vacaville, designed for the mentally ill; and the Deuel Vocational Institute, designed for young adults. Now, they are organized by risk levels. “Increasingly,” the authors note, “prisons are short-term holding pens for violators deemed too dangerous to remain on the streets.” Especially of interest is the author’s observation that planning for “high rate offenders” and “career criminals” has increasingly defined the design and programming of the prison. New techniques therefore focus on managing risk, not rehabilitation. To the extent that the prison is organized to receive the dangerous, “its correctional mission is replaced by a management function.”

This article links the discourse that supported the growth of the warehouse prison to the extensive use of solitary confinement in these prisons. The authors explicitly note how “underclass” theories support and guide their argument that the new penology, characterized by warehousing dangerous populations rather than rehabilitating individuals, has become dominant. Although the concept of the underclass was introduced first in the late eighteenth, early nineteenth century, the term “dangerous class” was common in discussions of English criminal justice policies. In this context, “crime [was treated] as an indicator of the dangerousness

396 i.e. those structuralist accounts that fit under the second interpretation of State racism, where the dangerous class is the enemy.
of a larger group, rather than of individuals.”398 In response to this perceived threat, policies ranged from exporting the entire classes to indentured servitude.399 The rebirth of the concept today, according to Simon & Feeley, marks a shift from the individualization of punishment, once characteristic of the early prison, to controlling the dangerous class. Indeed, because the underclass is forced into “permanent marginality,” it “rendered the old penology incoherent and laid the groundwork for a strategic field that emphasizes low-cost management of a permanent offender population.”400 Simon & Feeley’s article presents the underclass as the limit-case for the old penology and the prototypical criminal for the new warehouse prison.

399 Ibid.
Chapter 4: The Warehouse Prison and Social Death

In an attempt to move beyond a diagnostic analysis of power in the prison along a spectrum from bio- to necropower, this chapter focuses on a specific element of the warehouse prison that inherently involves the denial of inter-relationality. Solitary confinement — the isolation of an individual, deprived of environmental stimulus and meaningful social interaction — was first introduced by American reformers in the 19th century to transform the criminal into a law-abiding citizen. An individualistic ontology, heavily laced with religious undertones and crystallized in the physician and founding father Benjamin Rush’s writings and advocacy for solitary confinement, supported the practice. Yet the practice fell out of favor after criticism that it drove prisoners insane and failed to facilitate their reformation, and then lay dormant for a century, rarely used.

However, facing prison overcrowding and a subsequent rise in violence, prison administrators reinstated the practice as an emergency control and punitive measure in United States Penitentiary near Marion, Illinois in 1983.\(^{401}\) Solitary confinement grew into an accepted practice both in warehouse prisons and their new, even more restrictive counterpart, the “Supermaximum security” prison. Supported by huge outlays of state and federal funding for new prison construction, new “Supermax” prisons feature the permanent isolation of all prisoners. Anthropologist Lorna Rhodes distinguishes the former prisons, which house the majority of all offenders prisoners and feature “control units,” from supermax “control prisons.”\(^{402}\) This distinction


emphasizes how prison administrators across the country — not just those managing supermax prisons — have come to rely on the practice, while maintaining the distinction in their usage: prisoners typically cycle in and out of control units, whereas a prisoner in supermax is permanently isolated. Solitary confinement thus crystallizes the necropolitical tenets of the New Penology: identify and isolate.

Understanding this practice as necropolitical frames solitary confinement in terms of the damage the practice has wrought on prisoners and the individualistic ontology structuring this violence. To chart the damage, this chapter presents international condemnation of prolonged solitary confinement as torture, and the growing consensus that it exacerbates and produces mental illness. To understand how our conceptualization of the prisoner supports isolation, this chapter presents philosopher Lisa Guenther’s recent work, *Solitary Confinement: Social Death and its Afterlives*. Her critical-phenomenological critique explains how solitary confinement produces social death by violently denying the inter-relationality of the prisoner. By identifying how solitary confinement inevitably challenges the prisoner on an ontological level, Guenther’s critique implies continuity between the warehouse prison and slavery and pushes the boundaries of an ethical critique beyond selective advocation towards abolition of prolonged solitary confinement.

**History of Solitary Confinement in America: 19th Century**

Solitary confinement began in America in the early 19th century as a defining element of the penitentiary, a house of correction heavily influenced by Quaker reformers. As older, public methods of punishment, such as indentured labor or humiliation and torture, seemed brutish and inhumane, reformers devised the
Rather than inflict physical pain in public, the penitentiary would operate more “humanely” upon the psychological anxiety of isolated individuals. For instance, the Great Law of Pennsylvania (1682), largely influenced by Quaker reformers, restricted the death penalty and “shifted the emphasis of punishment from retribution to correction and even redemption of the prisoner.” As seen in these twin moves, replacing the scaffold with the penitentiary meant more than simply changing the target of punishment from physical to psychological, but also reflected a serious shift in the philosophy of punishment. Rather than focus on the crime as a transgression, punishment would focus on reforming the criminal.

Lisa Guenther provides an exegesis of physician and founding father Benjamin Rush’s influential writings on what causes criminality and how to address it. These writings provide a representative sample of Quaker reformers’ philosophy and demonstrate significant links between the philosophy and the practice. According to Guenther, a critique of this philosophy also reveals the ontological stakes of solitary confinement. Benjamin Rush’s understanding of humanity rested upon an individualistic ontology, where everyone is a “living machine composed of sensible matter, or nerve fibers.” He applies this understanding to practically all questions of health and spirituality, which are closely related and often interchangeable in his writings. To quote Rush, “life is the effect of certain stimuli acting upon the sensibility and excitability which are extended, in different degrees, over every external and internal part of the body.” Negative emotions like fear and jealousy disrupt our

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bodily equilibrium and make us sin. To cure sin, one must be isolated from these negative stimuli. If we reduce these negative social, emotional and physical stimuli, our body will naturally return to health, our spirit to innocence.\textsuperscript{408} In concurrence with many contemporaries, Rush defined criminality and insanity as diseases and sin as a symptom thereof.\textsuperscript{409} Applying this theory to criminality, criminals can be turned into good citizens, productive republican machines, if forced into solitude and reflection.

The first and second penitentiaries were Walnut Street Jail (1790) and Eastern State Penitentiary (1829), both built in Philadelphia, PA. In the latter, prisoners were isolated day and night, confined to a concrete box 8 feet wide by 12 feet long.\textsuperscript{410} Each cell contained a bed, a toilet, a workstation, and a bible. The penitentiary’s rules required silence at all times, and provided a prototype for other prisons of the “silent system.”\textsuperscript{411} All contact from outside the penitentiary, including news and visits from friends and family, was strictly limited.\textsuperscript{412} In all these aspects, the design of the prison closely followed the plans by reformers like Rush: without corrupting influences from the outside (or inside), prisoners lived in isolation with ample time to reset their body and mind and study the bible.\textsuperscript{413} Isolation was designed and established to facilitate

\textsuperscript{408} Guenther, \textit{Solitary Confinement}, 10. Guenther notes that Rush was not unique, but rather representative of contemporaneous reformers, in this view. One reformist argued in April of 1790, “solitude and darkness are known to have a powerful influence on the mind. When the avenue of external sense is shut, and every accession of ideas from without precluded, the soul becomes an object to herself, her agitations subside: and her faculties tend to the natural equipoise.”

\textsuperscript{409} Guenther, \textit{Solitary Confinement}, 9-11.

\textsuperscript{410} Guenther, \textit{Solitary Confinement}, 13.

\textsuperscript{411} Guenther, \textit{Solitary Confinement}, 14.


\textsuperscript{413} Guenther 9. Well-intentioned and of sincere belief, Rush admitted his depressed son to solitary confinement in his own institution, the Pennsylvania Hospital. The son died after twenty seven years of confinement.
moral regeneration and spiritual redemption.\textsuperscript{414} Rhodes notes that this design reflects “the larger impulse behind the reformatory movement, [which was] the mid-nineteenth century shift of focus toward ‘the criminal, not the crime.’”\textsuperscript{415}

But everything did not go according to plan. In the 19th century, critics of solitary confinement observed that many left the penitentiary damaged, insane, and unable to reenter society.\textsuperscript{416} When left without work, prisoners fared even worse. Rather than produce republican machines, these critics alleged, the system produced madness. In \textit{American Notes}, Charles Dickens reflected on his tour of penitentiaries with solitary confinement in 1842. Pointedly reversing reformists’ enthusiasm towards psychological rather than corporal and capital punishment, Dickens writes: “I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body.”\textsuperscript{417} Dickens expressed this concern because the “secret punishment” and the prisoner’s scars were both hidden from society, and difficult to diagnose.\textsuperscript{418} However difficult to understand, Dickens records the signs of damage that prisoners showed during his tour of three “silent system” prisons: trembling, picking at their bodies, difficulty in conversation, broken posture, nervous crying, and compromised sensory perception and awareness.\textsuperscript{419} One prisoner strikes Dickens as a “helpless, crushed and broken man” who has “lost all care for everything,” even the capacity to care for himself and others.\textsuperscript{420} Dickens does not conclude these observations by predicting that everyone would become “crushed,” as

\textsuperscript{414} Rhodes, \textit{Total Confinement}, 36.
\textsuperscript{415} Rhodes, \textit{Total Confinement}, 198f10 [p. 278].
\textsuperscript{416} Rhodes, \textit{Total Confinement}, 40.
\textsuperscript{417} Guenther, \textit{Solitary Confinement}, 18.
\textsuperscript{418} Guenther, \textit{Solitary Confinement}, 18.
\textsuperscript{419} Guenther, \textit{Solitary Confinement}, 19.
\textsuperscript{420} Guenther, \textit{Solitary Confinement}, 20.
some people bear isolation better than others, but rather that isolation affected everyone’s mind and body negatively.

As solitary confinement lost its allure with negative results, it was slowly abandoned. A Supreme Court ruling, *In re Medley* (1890) demonstrates the awareness of these negative consequences. The basic facts of the case are that a man was found guilty of murder and sentenced to death; but after his sentencing, and partially in response to his crime, the legislature required that anyone facing the death sentence be isolated in solitary confinement until their execution.\(^{421}\) He won an appeal on the grounds that this constituted an unconstitutional ex post facto punishment, and was set free. Although the majority did not find solitary confinement to violate the 8th amendment’s prohibition of cruel and unusual punishment, it is nevertheless significant because it found that solitary confinement carries “a further terror and peculiar mark of infamy.” Writing for the majority, Justice Miller supports his argument with the history of solitary confinement in Philadelphia:

A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.\(^{422}\)

Although the court did not acknowledge solitary confinement as cruel and unusual, they did recognize that it was a qualitatively harsher punishment than otherwise.

Regardless of the practice’s constitutionality, prisons had solitary confinement units


sporadically if rarely. For instance, a few dozen prisoners at Alcatraz in San Francisco Bay, a prison built for “the worst of the worst,” were isolated in the prison’s D-Block.423

**History of Solitary Confinement in America: Recent History**

Solitary confinement returned as a wider practice in 1983, when two prisoners killed two correctional officers at the United States Penitentiary near Marion, Illinois.424 After the closing of Alcatraz, this prison near Marion largely replaced the latter for housing those prisoners deemed to be the most dangerous.425 In response, the warden put the prison into a “permanent lockdown,” isolating every prisoner for 23 hours a day, removing all communal yard time for all prisoners, firing all work positions, shutting down educational programs, and closing the cafeteria.426 (The aftermath of the incident allegedly also included guards beating dozens of prisoners.)427 To the extent that prison overcrowding increases rates of violence, the legislation of the punitive turn that caused overcrowding facilitated more frequent incidents of

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423 Ibid.
426 Sullivan, "Timeline: Solitary Confinement in U.S. Prisons."
427 Peters, "How a 1983 Murder Created America's Terrible Supermax-Prison Culture." Former Marion C.O. David Hale discussed the aftermath with Mother Jones: “I can’t describe to you—I never seen beatings like that. At least fifty guys got it, maybe more. I was only involved in seven or eight, but there was beatings every day there for a while. I had inmates ask me how long this madness was going to last. And I said, from what I seen, it better be a permanent lockdown, because when you beat a man like that, he's gonna retaliate.”
violence. This prison became the model for so-called “Super-maximum” security prisons, which are defined by the constant isolation of all prisoners by design.

As prison building boomed across America in the 80s and 90s, many of these prisons were Supermax. In 1986, state correctional officers planned the country’s first Supermax prison, California’s Pelican Bay, to house the “worst of the worst” prisoners. Upon its opening in 1989, national news sources described it as a “prison of the future.” The LA Times quoted Edward Caden, a program administrator for California’s corrections department: “Prisons are representative of what's going on in the streets... You've got more gangs and violence on the streets, so you've got more gangs and violence in prisons. You need a place to put these people... that's why a place like Pelican Bay is necessary.” This perspective of a prison administrator reflects the connection between the punitive turn on a national level, replete with fear-evoking depictions of a “new breed” of criminality, and the management of prisons.

The punitive turn fueled Supermax prison construction across the country. According to a report commissioned by the Congressional Research Service, the number of state and federal prisons rose from 1,277 in 1990 to 1,821 in 2005, a 43% increase in 15

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430 Ibid.

years.\textsuperscript{432} Prison construction boomed in the mid-1990s, when “a new U.S. prison opened every 15 days on average.”\textsuperscript{433}

A study of supermax prisons by the Urban Institute and funded by the Department of Justice documents states’ decisions to build Supermax prisons. One of their case studies, the Maryland Correctional Adjustment Center, illustrates the reasoning behind the Department of Public Safety and Correctional Services’ (DPSCS) decision to design and construct the prison. Similarly to the history of the Supermax near Marion, Maryland correctional officers first proposed building the supermax prison after a prisoner killed a correctional officer in the mid 1980s.\textsuperscript{434} The researcher notes that overcrowding and violence strengthened the argument in favor of supermax construction. The incalcitrant prisoner, impervious to disincentives, loomed large in their decision making:

The prison reportedly had experienced difficulty managing prisoners who were sentenced to life in prison or who had received so many disciplinary reports that they were permanently in administrative segregation. Respondents stated that the lack of incentive to comply with rules might have contributed to the death of the correctional officer since the prisoner who killed him had been sentenced to life in prison.\textsuperscript{435}

Here, the twin theories of deterrence and incapacitation, discussed in the prior chapter, return. The prisoner with “nothing to lose” is posed as the limit of the disciplinary system, and referenced to demand something more restrictive than life in prison: life in solitary confinement. In favor of constructing the prison, a different

\textsuperscript{433} Ibid.
\textsuperscript{435} Mears, “Evaluating the Effectiveness of Supermax Prisons,” 17.
respondent argued: “Prisoners had changed demographically and required a new management approach; in particular, prisoners were younger, less receptive to programs, and less responsive to traditional punishment.” This latter respondent’s argument is strikingly similar to DiIulio’s super-predator theory in its premises and conclusion. This respondent translates DiIulio’s ‘new breed’ of offender into a correctional setting, where both rehabilitation and “traditional” incentives are insufficient. Moreover, if this respondent’s argument closely resembles the Californian prison official’s explanation that “prisons are representative of what's going on in the streets,” the reference to street crime further accesses the racialization of the criminal in and through the punitive turn.

If these two respondents suggest that the theories of the punitive turn and the New Penology intersect at the Supermax prison, the report further confirms how the political atmosphere supported administrators’ decision to construct it. No state legislator working on the bill to fund the prison reported any complaints from the public. Rather than draw animus in a time of budget tightening, politicians packaged and sold the project as an “economic tool” to provide jobs to local residents. The Maryland DPSCS realized within a few years of the prison’s opening that the prison was simply too large, and the department would need to fill those beds with prisoners who would not otherwise be assigned to Supermax conditions. The administrators explained their own mistake: “the political dimensions of the issue and the resulting media coverage created a ‘lock them up’ atmosphere

439 For a fuller consideration of this point, which has been largely left out of this thesis, see Ruth Wilson Gilmore, Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California (California: University of California Press, 2007).
that enabled this overestimation to occur and contributed to the decision not to support programming. An internal Department of Justice probe in 1996 found that the Supermax facility was plagued with problems regarding prisoner health, including markedly worse medical and mental health care.

As of 2004, 44 states have Supermax prisons. However, researchers of prison conditions have noted that data on supermax confinement — who is isolated, for how long, and why — are plagued by methodological issues and counting errors. States’ methodologies for measuring their usage of solitary confinement vary widely, especially in actually defining solitary confinement. Policy changes and court decisions make corrections departments reclassify prisoners, so that statistics fluctuate rapidly yearly. For instance, in some states, the yearly change in number of prisoners isolated in solitary confinement has grown more than 1000% per year. After taking these problems into account, Alexandra Naday, Joshua Freilich and Jeff Mellow estimate in their article “The Elusive Data on Supermax Confinement” that 20,000 people are housed in Supermax units.

But solitary confinement is also a standard feature of American prisons that are not Supermax. As of the Fall of 2014, an estimated 80,000 – 100,000 people are isolated in solitary confinement in America. With an estimated 20,000 people permanently isolated in supermax, this means that any time 60,000 – 80,000 people are isolated in control units in non-supermax prisons. The most

441 Mears, “Evaluating the Effectiveness of Supermax Prisons,” 20.
442 Mears, “Evaluating the Effectiveness of Supermax Prisons,” i.
444 Naday, Freilich, Mellow, “The Elusive Data on Supermax Confinement,” 69.
comprehensive statistical study so far, compiled in 2015, finds from a sample of 54,382 prisoners in isolation that 82% of then-isolated prisoners had spent more than a month in isolation.

Yet practices vary widely by state. For instance, according to their own statistics, the Texas Department of Criminal Justice confines 4.4% of its prison population in solitary confinement; on average, prisoners in Texas remain in isolation for almost four years.447

Prisoners generally fall into one of three categories when isolated, when systems make such distinctions: “punitive segregation,” “administrative segregation,”

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and “protective custody.” The first category typically includes prisoners who violated some rules, ranging from failing to finish one’s food to participating in violent incidents. The second category, “administrative segregation,” relies upon classification systems of risk and gang affiliation rather than the behavior of prisoners. While punitive segregation usually lasts several weeks to a year, administrative segregation usually last much longer, even indefinitely. Lastly, “protective custody,” whether voluntary or involuntary, is intended to separate those most likely to be victimized in general population, for instance, children in adult prisons or LGBTQ individuals. While the names and stated purposes of units vary, they all qualify as solitary confinement.

Advocates of solitary confinement often argue that protective custody demonstrates the benefit of solitary confinement, so that focusing on the first two categories obscures how solitary confinement does, in fact, make prisons safer. However, the most recent and comprehensive data available casts doubt on this argument. “Aiming to Reduce Time in Cell,” a 2015 report by researchers at Yale, found that, from a sample of 37 jurisdictions, only 5% of those isolated were there for protective custody. In a report on Texas’ use of solitary confinement, the

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449 Ibid.
450 Ibid.
451 Ibid.
452 Ibid.
455 The highest estimate I found for the proportion of those in protective custody was from the 2000 census of prisoners, at 12.5% of the isolated population. (10,765 people in protective custody, of the total 80,870 people in restricted housing.) It is worth noting that this census found the number of
ACLU of Texas and the Texas Civil Rights Project note that less than 1% of those
isolated were in “protective custody.”\footnote{120}{ACLU of Texas & the Texas Civil Rights Project, “A Solitary Failure: the Waste, Cost and Harm of Solitary Confinement in Texas,” 20.} So, although these cases complicate critiques of solitary confinement, they do not represent the vast majority of cases.

This current deployment of solitary confinement differs from the 19th century penitentiary and the 20th century prison in terms of their competing penal philosophies. Historian Charles Bright contrasts the early 20th century prisons to the prison situation in 1996, marked by the increasing use of solitary confinement. From his micro-history of Michigan’s Jackson State Penitentiary from 1920 to 1955, Bright describes the role of the penitentiary: “a prison that was part of the production of political life and the constitution of moral knowledge was itself constituted by its inmates, who were empowered in historically specific, albeit limited, ways by the redemptive promises of the prison.”\footnote{457}{Rhodes, Total Confinement, 278f12} According to Bright, the current project focuses on “identifying those who do not belong and are to be permanently excluded. Here the illusions of compliance that the prison once sustained are no longer necessary, because… inclusion is no longer a goal and willing compliance no longer expected of those with no prospects of access [to social resources].”\footnote{458}{Ibid.} Bright’s diagnosis highlights the interaction between penal goal, practice and subject. Today, neither the promise of religious restoration nor the prospect of rehabilitation and social inclusion undergird solitary confinement in the warehouse prison.

\footnote{456}{ACLU of Texas & the Texas Civil Rights Project, “A Solitary Failure: the Waste, Cost and Harm of Solitary Confinement in Texas,” 20.}

\footnote{457}{Rhodes, Total Confinement, 278f12}

\footnote{458}{Ibid.}
Critiques of Solitary Confinement: Mental Illness and Torture

America’s usage of solitary confinement has drawn criticism from researchers for producing and exacerbating mental illness and international condemnation from human rights groups. In the first case, a growing body of research has found that prolonged solitary confinement, defined as longer than 15 days, produces and exacerbates mental illness. In 1993, Harvard psychiatrist Stuart Grassian first identified a constellation of symptoms that prisoners experienced in Pelican Bay and deemed it “SHU Syndrome.”

Grassian’s 2006 report “Psychiatric Effects of Solitary Confinement” found that prolonged solitary confinement either “massively exacerbated a previous psychiatric illness or precipitated psychiatric symptoms associated with RES [Reduced Environmental Stimulation] conditions” in 80% of prisoners. Over half of the prisoners reported severe panic attacks.

While Grassian’s report identifies a unique constellation of symptoms, numerous studies support the finding that prolonged solitary confinement produces and exacerbates mental illness. For this argument's sake, Psychologist Craig Haney sets aside the decades of evidence from across the world that documents how acute sensory deprivation and lacking social contact both independently pose harmful psychological consequences.

Instead, he surveys anecdotal evidence of the experience of mental health workers and case studies, as well as surveying data-driven studies. The list of research he enumerates is too extensive to recreate here, but the

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459 Solitary Watch, “Solitary Confinement in the United States: FAQ.”
461 Guenther, Solitary Confinement, 135.
463 Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” 129.
negative effects of isolation in prison include: negative attitudes and affect; insomnia; anxiety; panic; hypersensitivity; ruminations; cognitive dysfunction; hallucinations; loss of control, motor and emotional; irritability, aggression, and rage; paranoia; hopelessness; depression; lethargy; a sense of impending emotional breakdown; self-mutilation; and suicidal ideation and behavior. Violent behavior of all kinds, whether self-mutilation and suicide or other-directed violence, is more prevalent in isolated housing than the general population. To summarize, there is not a single published study of solitary or supermax-like confinement in which nonvoluntary confinement lasting for longer than 10 days, where participants were unable to terminate their housing at will, that failed to result in negative psychological effects.

While the psychological tenacity of prisoners and the context in which they are held varies, so that individual consequences range from resilience to suicide, there is no doubt that solitary confinement poses grave psychological problems for those involuntarily detained for prolonged durations.

Haney contributes to this consensus by conducting further research on prisoners held in Pelican Bay Prison's Security Housing Unit. His study aims to estimate prevalence rates of the symptoms listed above. Of a list of 12 symptoms of psychological and emotional trauma, the majority reported suffering from all besides fainting. Virtually all of the isolated prisoners were plagued by nervousness and anxiety [91%], by chronic lethargy [84%], and felt themselves on the verge of an

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466 Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” 132.
467 Ibid.
468 Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” 133, Table 1.
emotional breakdown (70%)."\(^{469}\) A second list (below) documents the percent of prisoners who suffer from a dozen "psychopathological effects of prolonged isolation."\(^{470}\)

<table>
<thead>
<tr>
<th>Symptom</th>
<th>% Presence Among Pelican Bay SHU Prisoners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ruminations</td>
<td>88</td>
</tr>
<tr>
<td>Irrational anger</td>
<td>88</td>
</tr>
<tr>
<td>Oversensitivity to stimuli</td>
<td>86</td>
</tr>
<tr>
<td>Confused thought process</td>
<td>84</td>
</tr>
<tr>
<td>Social withdrawal</td>
<td>83</td>
</tr>
<tr>
<td>Chronic depression</td>
<td>77</td>
</tr>
<tr>
<td>Emotional flatness</td>
<td>73</td>
</tr>
<tr>
<td>Mood, emotional swings</td>
<td>71</td>
</tr>
<tr>
<td>Overall deterioration</td>
<td>67</td>
</tr>
<tr>
<td>Talking to self</td>
<td>63</td>
</tr>
<tr>
<td>Violent fantasies</td>
<td>61</td>
</tr>
<tr>
<td>Perceptual distortions</td>
<td>44</td>
</tr>
<tr>
<td>Hallucinations</td>
<td>41</td>
</tr>
<tr>
<td>Suicidal thoughts</td>
<td>27</td>
</tr>
</tbody>
</table>

NOTE: SHU = security housing unit.

Compared with the rates of these symptoms in the population at large, prisoners in Pelican Bay's SHU suffered more from these issues. "For certain symptoms, rates for the prisoner samples were five to ten or more times as high [as the population at large]."\(^{472}\) Interestingly, these prevalence rates were high for the supermax prison sample, but also "exceeded even those reported for protective custody prisoners."\(^{473}\) Since protective custody is qualitatively similar to Administrative Segregation and Punitive Segregation, the lower prevalence rates in protective custody may reflect or be a consequence of the fact that many "have some control over their status as

\(^{469}\) Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” 133.

\(^{470}\) Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” 134, Table 2.

\(^{471}\) Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” 134, Table 2.

\(^{472}\) Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” 135.

\(^{473}\) Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” 135.
When one removes the minority of prisoners in protective custody from the sample of total SHU prisoners, the rates of these psychopathological effects increase. Jim Bruton, formerly a warden at the Oak Park Heights supermax prison in Minnesota, confirms these findings: “after long-term confinement and the loss of hope for offenders controlled under these conditions, mental deterioration is almost assured.”

Although women are less likely to be held in prolonged solitary confinement than men, the woman-identifying population in federal prisons suffers from mental illness at a rate of 1.5x that of men in federal prisons. Woman-identifying prisoners also report higher rates of past traumas. Moreover, privacy for women is an even more acute issue than for men because of the increased potential for sexual degradation when male guards strip search women or watch them shower and undress. Together, these factors render them especially vulnerable to the stresses of solitary confinement.

Largely in response to these findings, international human rights groups have criticized the United States for the extensive use of prolonged solitary confinement in its prison system. For instance, the United Nations’ Committee Against Torture published a report in 2014 condemning the United States for the extraordinarily long length of detention, discernable from the limited yet available data, including

474 Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” 135, data on 136.
476 Nolan and Amico, “Solitary By The Numbers.” An estimated 5% of incarcerated men are in solitary at any point in time, compared to 2% of incarcerated women.
478 Ibid.
indefinite confinement in Supermax prisons and “its use against juveniles and individuals with mental disabilities.” 479 (The report also follows other expressions of concern about sexual abuse in prisons and immigrant detention centers.) The UN Special Rapporteur on torture, Juan E. Méndez, cited Grassian and Haney’s research when calling for the “absolute prohibition” on prolonged solitary confinement and a prohibition of solitary confinement of any length for juveniles and the mentally ill. In his plea, Méndez deploys the language of torture. 480

The United States government’s official defense has been three-fold. The first strategy was to deny any problem at all, claiming that there is “no systematic use of solitary confinement in the United States.” 481 As the United Nations noted, this defense is incoherent in the face of dozens of organizations documenting prisoners’ experiences and the limited data available. If solitary confinement is “a routine management strategy” in jails, prisons and immigrant detention centers across America, it is used systematically. 482 If by “systematic” the government means “not fully understood,” in reference to the lack of uniform data reporting on its usage, this results from the government’s failure to adequately document their own practices, not from the non-existence of these practices. If by “systematic” the government means “not uniform,” in reference to states’ and the federal government’s diverse criteria for who should be isolated and how to label this isolation, this ignores the real focus of the

482 Shames, Solitary Confinement, 5-6.
United Nation’s report: the ongoing torture of individuals, who are experiencing solitary confinement regardless of what it is called or how its usage is measured.

The government’s second defense is that solitary confinement, assumedly in the form of both control units and control prisons, is necessary for prisoner safety. This defense either references those housed in solitary confinement for “protective custody” or the safety of the larger prison system. The first point, already addressed above, does not reflect the vast majority of cases. Furthermore, lacking data, it is not clear what proportion of those placed in protective custody are placed voluntarily and involuntarily. This distinction may significantly impact one’s experience in solitary confinement.

Secondly, prolonged solitary confinement has not been shown to reduce violence in the prison system. It should be noted that wardens almost always name this as the intended goal of Supermax prisons. The Urban Institute report from 2006 finds from a national survey of wardens that they most commonly associate Supermax with increased control of prisoners. When asked if the goal of the goal of the Supermax is to “increase control over the prison system,” 38.2% of wardens agreed and 59.3% strongly agreed.483 The consensus amongst prison wardens across the country was also considerable in terms of how this result would be achieved: asked if the goal of the Supermax is to “incapacitate violent or disruptive inmates,” 38.4% agreed, 57.0% strongly agreed, with only a remainder of 3.5% disagreeing and 1.1% strongly disagreeing.484 Moreover, since that the majority of wardens did not believe the goal of Supermax was rehabilitation, yet the vast majority believed that the

483 Mears, “Evaluating the Effectiveness of Supermax Prisons,” Appendix, Table 4b1.
484 Ibid.
purpose was to “improve inmate behavior throughout the system,” one may deduce that deterrence is also a goal of Supermax confinement, essentially rendering Supermax a form of punitive detention.

Yet studies have repeatedly thrown this belief and defense into doubt. A 2006 study by three policy experts examined the effect of Supermaxes on prison systems’ aggregate rates of violence, in order to understand if Supermaxes do actually increase prisoner safety of those not permanently isolated, as advocates of the practice claim. From their findings, “no support was found for the hypothesis that supermaxes reduce levels of inmate-inmate violence.”\footnote{Chad S. Briggs, Jody L. Sundt, Thomas C. Castellano, “The Effect Of Supermaximum Security Prisons On Aggregate Levels Of Institutional Violence,” Criminology, 41, 4 (2006): 1341-1376.} In terms of rates of violence between prisoners and staff, the data was also inconclusive, with some prisons seeing decreases and some seeing increases. The federal Bureau of Prisons (BOP) announced in a report in 2013 that the “BOP has not assessed the impact of segregated housing on institutional safety or the impacts of long-term segregation on inmates.”\footnote{John Wihbey and Denise-Marie Ordway, "Solitary confinement in prisons: Key data and research findings,” Journalist’s Resources of the Shorenstein Center on Media Politics and Public Policy, last updated January 26th, 2016. Available at \url{https://journalistsresource.org/studies/government/criminal-justice/solitary-confinement-prisons-key-data-research-findings}. Accessed March 20th, 2018.} In a report the same year, the federal Government Accounting Office (GAO) concluded that, “given available data, it remains unclear… whether the policies achieve the goals for which they are crafted,” including reducing violence.\footnote{Ibid.}

The third defense against these criticisms was that the conditions of imprisonment in facilities do not qualify as solitary confinement. Although prisoners are isolated for 23 hours at a time, the State Department qualified, “they are not

\footnote{Ibid.}
deprived, however, of human interaction.” The State Department gives two examples to support this claim. First, they suggest that outdoor recreation, which is almost always in complete isolation, and where, even if another prisoner is in an adjacent cage, communication is prohibited, provides adequate “human interaction.” Second, and partially explaining the logic of the first claim, they suggest that prisoner contact with guards also meets this requirement. A critical-phenomenological account of human ontology, as provided by Lisa Guenther, directly challenges both of these claims.

**Critiques of Solitary Confinement: Social Death**

By focusing on the inter-relational nature of human existence, Lisa Guenther’s critique explains how the practice produces and exacerbates mental illness, how it inherently qualifies as torture, and ultimately challenges selective advocacy. Rather, Guenther demonstrates the ethical problems of forced, prolonged solitary confinement, regardless of the identity of those isolated: everyone, not just juveniles or the (already) mentally ill, is put at risk.

In *Solitary Confinement: Social Death and its Afterlives*, Gunether’s central premise that animals have an inter-relational ontology comes from a critical merger of two phenomenologists, Edmund Husserl and Maurice Merleau-Ponty. Guenther adapts Husserl’s emphasis on mutually co-constitutive relations between beings and Merleau-Ponty’s emphasis on the behaviour of beings and how they forge meaning out of

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stimuli. The former’s work argues that our sense of reality comes from our relations with others: “the ego… cannot constitute the higher level of an ‘Objective world’ without a community of others with whom it partakes in a transcendental intersubjectivity.” Yet even more basically, Husserl insists that one’s sense of self requires the reciprocity of touch. For instance, when one presses their finger into their thigh, they feel both the active finger, pressing inward, and the passive thigh, responding. This physical experience enables us to understand the reality of ourselves, but according to Husserl, is insufficient alone for a “concrete sense of personhood.” The latter requires “experience of other embodied egos in a shared world,” so that ultimately, “the personal ego is essentially constituted in relation to a world and to other egos.” Merleau-Ponty’s work elaborates that perception is more important than merely the physical processes that it involves because it is also central to “the grasping of meaning: the orientation of intentional consciousness towards noemata [the object of thought] and towards the ideas or essences that they express.”

Synthesizing their accounts of the nature of reality, Guenther suggests that the world surrounding us, our Umwelt, significantly “regulates” how we understand the reality around us and how we understand ourselves. Our inter-relational ontology

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489 Portions of this paragraph are informed by and sourced from an earlier essay that I wrote on the same topic for Prof. Moon’s class “Global Justice” (GOVT 340). I owe him thanks for his guidance and feedback.

490 Guenther, Solitary Confinement, 34.

491 Guenther, Solitary Confinement, 30.

492 Guenther, Solitary Confinement, 30-31.

493 Guenther, Solitary Confinement, 28.

494 Guenther, Solitary Confinement, 28.

495 Guenther, Solitary Confinement, 28.

496 Guenther, Solitary Confinement, 105.

497 Guenther, Solitary Confinement, 107. The full quote from Merleau-Ponty: “Between the situation and the movement of the animal, there is a relation of meaning which is what the expression Umwelt
means that we necessarily “rely on a network of others... to support our capacity to make sense of the world, to distinguish between reality and illusion.” According to Guenther, we understand ourselves in relation to others around us, who in turn understand themselves in relation to our shared space. Our understanding of the world as both appearing to us and co-appearing to others allows us to grasp an objective reality of the world beyond our subjective perspective. Because the objective world exceeds our own experience of it, “the experience of other subjects oriented toward a common world is crucial for the constitution of objective reality.”

Human beings’ inter-relational ontology explains how solitary confinement is inherently torturous despite ostensibly reducing violence. If we understand our self and reality through others, then without others, we cannot do so. To ground our sense of reality, as Husserl suggests, “the first concrete person is not myself but the other.” Guenther argues that solitary confinement challenges one’s capacity to make sense of themself; it demands one maintain a sense of reality without the network of others necessary to do so. At the heart of the issue are two competing philosophical frames. The individualistic ontology of Benjamin Rush sharply contrasts with this inter-relational ontology. These different understandings of how human beings create reality for themselves leads to two irreconcilable positions: one in which

conveys. The *Umwelt* is the world implied by the movement of the animal, and that regulates the animal’s movements by its own structure.”

Guenther, *Solitary Confinement*, 146.

Guenther, *Solitary Confinement*, 33. Guenther succinctly declares that we understand ourselves through others, so that without others we cannot understand ourselves: “the first concrete person is not myself but the other.”


solitary confinement is harmless, if not potentially beneficial, for those isolated; and the latter in which solitary confinement undermines our ability to maintain reality.

Guenther argues that Grassian’s observation that psychosis results from “Reduced Environmental Stimulus conditions” is directly related to her phenomenological account. While psychologists and psychiatrists observe that solitary confinement produces and exacerbates mental illness, Guenther reads these observations as evidence that humans are truly inter-relational, co-constituted with others, not machine-like individuals compatible with prolonged isolation. In this argument, solitary confinement produces mental illness, undermines one’s sense of self “by blocking prisoners’ concrete experience of depth in its spatial, affective, and social dimensions.”

However, if ontology is the structure that makes possible lived experiences, it does not adequately describe them. The nature of our being is not necessarily identical to how we experience our reality. In other words, neither the phenomenologists Guenther reads, nor Guenther herself, intend for this philosophical framework to replace the lived experiences of those incarcerated and isolated. Likewise, Guenther describes solitary confinement as a form of social death without purporting to replace these lived experiences.

Instead, the author uses social death to at least two ends. First, Guenther traces the racialization of criminality in America, and essentially reproduces the chronology of antiblack institutions from slavery to Jim Crow, as glossed in the second chapter of this thesis. Of particular interest to Guenther is how white criminals were

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504 Guenther, *Solitary Confinement*, 175.
(and are) treated differently than black criminals. The former were presented as capable of reformation, and their punishment in reformatories was intended to focus on their soul, while the latter were animalized, and their punishment focused on their body. Guenther cites evidence that northern penitentiaries incarcerated blacks at dramatically disproportionate rates. For instance, in 1830, the population of Pennsylvania was 2.8% black, but 46% of the incarcerated population Walnut Street Jail was black.\textsuperscript{505} While forced labor outdoors grew out of fashion in the north, driven by the outcry following the shocking visual of white prisoners working as slaves, this labor “remained the norm for black slaves in the south.”\textsuperscript{506} Guenther concludes that black prisoners’ history predominantly features “forced labor, bodily pain, public humiliation, and isolation to the point of social death.”\textsuperscript{507} The reemergence of solitary confinement in 20th-century America first targeted people of color.\textsuperscript{508} Today, data shows that blacks are disproportionately subjected to solitary confinement.\textsuperscript{509}

Secondly, Guenther uses the concept of social death to draw attention to the “structural parallel between the living death of mid-twentieth-century inmates and the natal alienation and social death of antebellum slaves.”\textsuperscript{510} Guenther does not purport that all prisoners, nor all slaves, share identical experiences, but rather implies that Patterson’s three criteria of social death persist in some form in the structure of solitary confinement. For instance, Guenther reads the relationship between guard

\begin{footnotesize}
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\item \textsuperscript{505} Guenther, \textit{Solitary Confinement}, 40.
\item \textsuperscript{506} Guenther, \textit{Solitary Confinement}, 41.
\item \textsuperscript{507} Guenther, \textit{Solitary Confinement}, 39.
\item \textsuperscript{508} Guenther, \textit{Solitary Confinement}, 129.
\item \textsuperscript{510} Guenther, \textit{Solitary Confinement}, 83-84, 95-96.
\end{itemize}
\end{footnotesize}
and isolated prisoner as analogous to that between master and slave in the specific sense that the prison is structured to deprive the prisoner of any contact outside of the guard staff.\textsuperscript{511} To support this argument, Guenther quotes Eddie Griffin, a former prisoner at Marion Penitentiary, in his paper “Breaking Men's Minds: Behavior Control and Human Experimentation at the Federal Prison in Marion, Illinois,”

\begin{quote}
[the attempt to control time and space absolutely, to regiment the prisoner's life in every aspect, is] part of the systematic process of reinforcing the unconditional fact of a prisoner's existence: that he has no control over the regulation and orientation of his own being. . . . In essence, a prisoner is taught to be helpless, dependent on his overseer.\textsuperscript{512}
\end{quote}

While the US State Department has argued that contact with guard staff qualifies as meaningful social contact, Guenther’s framing challenges this argument by emphasizing that the guards’ constant attempt to completely control the prisoner’s movements, communications, and behavior. If the guard is an authority, and the only legitimate point of contact between the prisoner and the world, they are hardly a peer.

In analogizing solitary confinement to slavery, Guenther frames the practice within the racialized history of American punishment and as structurally similar in terms of denying one’s inter-relationality. But this argument does not preclude the agency nor the resistance of those forcibly isolated. If this thesis’ second chapter reads Hartman to demonstrate that social death does not completely preclude either, but rather that resistance against social death demonstrates both, Guenther makes a

\textsuperscript{511} It is fair to note that prisoners may have intermittent discussions with psychologists and psychiatrists.  
similar argument. For Guenther, as for Hartman, there is social life in resisting social
death, “something more generated by the resistance of human and nonhuman
animals to the conditions of their confinement: a meaningful relation to others and to
the world that exceeds the terms of one’s own capture.”

My intention in presenting the following writings is not to suggest that
everyone experiences solitary confinement the same way, nor that the consequences
of prolonged isolation are uniform (i.e. that 100% of prisoners are driven insane). I
want to pay due attention to what being placed into isolation means for those people
who are isolated, what form this isolation takes for them, and how they resist their
isolation. People’s reflections of their experience in solitary confinement deserve
attention in academic scholarship, and are critical to understanding the violent,
exclusionary logic of the warehouse prison. They provide a testimony both to how
these conditions of confinement challenge prisoners and how some manage to
maintain social relationships in an architecture designed to prevent them.

**Voices from Solitary Confinement: Deprivation and Resistance**

Sarah Shourd suggests in her preface to *Hell Is A Very Small Place: Voices from Solitary
Confinement* that “over time you experience a ‘social death,’” without citing any
particular work. However, in this collection of personal reflections on people’s
experiences in isolation, only a few contributors describe their experience as social
death. If it is Shourd’s contention that social death is inevitably experienced in some
way, she is not necessarily claiming that everyone’s experience is identical, only that

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514 Jean Casella, James Ridgeway, Sarah Shourd (ed.), *Hell Is A Very Small Place: Voices from Solitary
they happen in settings defined by similar structures of environmental and social deprivation.

Reflections by individuals currently or formerly placed in prolonged solitary confinement confirm the consensus of psychologists and psychiatrists and texture how the denial of meaningful social relationships damages threatens one’s sense of self.

Discussing her initial placement into solitary confinement, Dolores Canales writes,

> When you are put into solitary confinement you are taken at a moment’s notice. I mean, if anything, they try not to even warn you. You just feel like your whole world was ripped out from under you. As soon as I walked in I just felt like I was cut off from everyone. It’s like you’ve been put into another country and you don’t even know the language, or the area, or anything. You have to navigate to re-establish yourself in this new world.\(^{515}\)

Here, by not warning Canales, the guards may have been attempting to minimize resistance and maximize the deterrent value — the fear and horror — of her sudden placement. She laments that her placement in solitary necessarily means a loss of contact with other prisoners. Canales recalls that she felt isolated because “from the moment you walk in, there’s nothing but concrete and steel.”\(^{516}\)

Johny Perez, a black man first incarcerated at age 21 for robbery, was first placed in solitary for drug use, then later for administrative violations. After spending a total of three years in solitary, including a 10-month stretch, Perez laments “sitting in silence, complete silence.” He explains that he spoke to imaginary friends in order to fill the silence and find company in others. “I question myself, ‘am I developing a


\(^{516}\) Ibid.
mental illness? It’s an overwhelming feeling of constant stress.” He reports losing a sense of time, feeling disoriented, and paranoid thoughts, including fearing drowning in the cell, or being starved by guards. He concludes his interview with The Guardian: “I am who am I am [today] despite solitary, not because of it… I can’t say the same of many of my peers. Not everyone has the will and mental fortitude to survive intact.”

Victor Pate, a black man, spent a total of two years in solitary confinement, cycling in and out, for charges including not following directions, not finishing his food, and having an “excessive” number of bed sheets. While some of these infractions were minor, he describes the heavy toll isolation took on him:

It’s as if the whole world has disappeared and this space that I occupy is the only space that exists for me. All I am left in is a small, dark, deep space and the space never changes and all I find is darkness around me and I just can’t seem to get out of this darkness. You do begin to hallucinate after a while and I did hear some voices inside my head.

In an interview, Pate explains that his “survival skills” were all aimed at trying to “escape that darkness.” In isolation, “I know that I am here, but then I don’t know that I’m here. There’s no one for me to reach out to, to speak to, to engage with, to even seem as though I’m actually alive…” These comments reflect the necessity of social connection, or even the possibility of it, for one’s maintenance of one’s sense of self. Deprived of opportunities for meaningful social contact, Pate feels himself “dropping into an endless hole, and you just keep dropping and dropping and you keep falling and you keep falling.”

517 Ibid.
518 Ibid.
Lorna Rhodes quotes an anonymous prisoner experiencing his first 30 days of isolation and complaining of sensory deprivation: “Your lights are on all day… it really kind of dulls all your senses… It makes you numb. You get easily mad. You feel that everything they do is just to make you mad… It’s terrible in here. I think they go out of their way to turn this into hell.”519 Another prisoner agrees with the prior’s interpretation of these conditions as a deliberate method to punish them harshly:

[isolation] is part of their psychological war that they inflict upon us in order to get us to conform and to do what they want. But they don’t realize that they’re actually doing more harm to us… There’s no correction here. There’s no rehabilitation here… If you take a dog and put him in a corner… sooner or later this dog is going to come out biting, snapping.520

Rhodes notes that prisoners (and some guards) often used animal metaphors to describe the treatment of individuals in solitary. In this usage, the metaphor communicates the inevitability of a negative reaction to negative treatment, simultaneously engaging with the individualistic frame of custody and critiquing its absurdity in its own language. Moreover, his comment implies that the present and lasting harm done to the prisoners is antithetical with rehabilitation.

Five Maulimm-Ak spent five years in solitary confinement before becoming an advocate and organizer for ending mass incarceration and solitary confinement.521 Maulimm-Ak expresses frustration at how carelessly “absurd tickets” lengthened his stay in solitary, one of which included having too many pencils.522 He describes his sensory deprivation as a bleak matter of fact: “There was nothing to hear except

519 Rhodes, Total Confinement, 30.
520 Rhodes, Total Confinement, 31-32.
522 Maulimm-Ak, “Invisible,” 149.
empty, echoing voices from other parts of the prison. I was so lonely that I hallucinated words coming from out of the wind. They sounded like wimpers… There was no touch… Even time had no meaning in SHU. The lights were left on for twenty-four hours.”

Of particular interest in relation to Guenther’s argument is that Maulimm-Ak attributes his hallucinations and depression to a combination of sensory deprivation and the “absence of human contact,” stating that the “very essence of life is human contact.” Jesse Wilson, who has spent more than a decade in isolation, restates Maulimm-Ak: “loneliness is the destroyer of humanity.”

Personal accounts of solitary confinement reflect that the practice is designed to reduce contact both with the outside world and with other prisoners. In either case, the architecture aims to remove someone from any possibility of meaningful social contact. But separation from the outside world especially resembles natal alienation, the forcible separation of familial relationships deemed illegitimate. From Wilson’s perspective, “this place is horrific with the solitary, and the lack of communication outside of these walls.” Yet he explains that he is most distraught by his separation from his family: “our families suffer most, watching us grow old and go crazy in a cage. This is my biggest pain, knowing my mother and sister suffer with me.”

Wilson is not alone in drawing attention to how his conditions of confinement prevent him from supporting his family, and how this incapacity frustrates him immensely.

After spending more than a decade in solitary confinement, Joseph Cole reflects that his forced, prolonged separation from his family has successfully undermined his

524 Maulimm-Ak, “Invisible,” 149.
525 Jesse Wilson, “Loneliness is the Destroyer of Humanity,” in Hell Is A Very Small Place: Voices from Solitary Confinement, 82.
526 Ibid.
527 Ibid.
ability to support his family. The staff at Tamms Correctional Center, a Supermax prison in southern Illinois, did not allow for phone calls between prisoners and their families. He reproduces his writing from an earlier essay:

Most people’s conceptions of being locked up are completely wrong. It’s not the physical things that you’re without that make it so hard to be incarcerated for life. It’s the fact that you’re helpless to take care of your family when you’re sick, to raise your children, to help in their times of struggle, and to give back to your community… This is what breaks a man, not the absence of good food, alcohol, or sex…

Dole offers a recent example: he learns from a letter, probably a few weeks after the fact, that his stepmother’s brother died of a heart attack, and immediately feels “completely useless in any type of situation like this.” The most he can do is send a postcard, and only when he has sufficient funds to do so, which, at the time of writing, he did not. Cole inverts a common misconception, also evident in court decisions over prison conditions, that prisoners need bare physical needs the most. These reflections significantly demonstrate that solitary confinement threatens one’s ability to be cared for and to care for others.

Reduced visitation and prohibited communication, often justified as reducing security risks or as a punishment, ultimately harms both the incarcerated individual and their family by straining their ability to support one another. Video visits, where and when they are available, are plagued by technical glitches, subject to cancellations minutes prior, and expensive, especially considering that the poorest are the most

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529 Dole, “Supermax Diary,” 64.
530 Jennifer Erschabek, Director of the Texas Inmate Families Association (TIFA), a non-profit organization that advocates for the family members of prisoners in Texas, explains that the impossibility of contact visits for prisoners places an onerous burden on family members and friends. See ACLU of Texas & the Texas Civil Rights Project, “A Solitary Failure: the Waste, Cost and Harm of Solitary Confinement in Texas,” 26, 33-34.
heavily incarcerated.\textsuperscript{531} The cost of communicating with one’s friends and family is prohibitively high for many.\textsuperscript{532} Calling services offered by private companies with monopoly powers have recently come under investigation by the FCC for exploiting families.\textsuperscript{533} Private companies challenged the FCC’s proposed price caps for calls, halting the reform; and the FCC of the Trump era has reversed course, stepping back from regulation.\textsuperscript{534} In addition to their high cost, these calls are all subject to recorded surveillance. Similarly, mail for prisoners in control units is subject to delay, censoring and confiscation. The increasingly remote siting of warehouse prisons makes it more difficult for families to visit their missing loved ones. Again, this cost is amplified by the fact that the urban poor are disproportionately incarcerated. Meanwhile, research over the last fifty years has led to a general consensus that, when families and friends are more capable of visiting their loved ones, the latter fare better in prison and upon release.\textsuperscript{535} For those prisoners who are removed from their family, placement in prolonged solitary confinement exacerbates the trauma their family feels and further


\textsuperscript{532} Ibid.


\textsuperscript{535} Breanne Pleggenkuhle, Beth M. Huebner & Monica Summers, “Opting Out: The Role of Identity, Capital, and Agency in Prison Visitation,” \textit{Justice Quarterly} 24, 1: 1-24. Available at https://www-tandfonline-com.ezproxy.wesleyan.edu/doi/pdf/10.1080/07418825.2017.1339113?needAccess=true. Accessed March 23rd, 2018. 3. This article argues that strengthening a prisoner’s right to reject visitation may empower them and lead to better outcomes. This conclusion does not contradict anything written above, but rather fits well with Guenther’s argument that inter-relational beings need not only the capacity to engage but also the capacity to withdraw in order to maintain their sense of reality and self.
endangers their children's’ wellbeing.\textsuperscript{536} This problem may generally more acute for women, who are more likely than men to be a sole caregiver.\textsuperscript{537}

If reading these experiences through the lens of social death emphasizes how solitary confinement directly undermines the very essence of being human, anthologies, official accounts and prisoners’ writings document how prisoners develop ever-evolving strategies of resistance, aiming to maintain sociality in a context designed to prevent it. Lorna Rhodes’ study of solitary confinement, \textit{Total Confinement: Madness and Reason in the Maximum Security Prison}, depicts the struggle of prisoners, guards and mental health providers to deal with the contradictions of prolonged solitary confinement, a “profoundly irrational” system.\textsuperscript{538} Following years of ethnographic work, Rhodes suggests that this irrationality is born from the contradictions between “psychiatry and custody,” which “are mutually dependent and at the same time speak irreconcilable languages.”\textsuperscript{539} Most critically, custody assumes that prisoners have the capacity to reason, and will respond to incentive and disincentives accordingly: prisons are designed with rewards for cooperation and punishments for disobedience.\textsuperscript{540} While custody is “centered on projects of discipline founded in [these] notions of rationality,” psychiatry is centered “on projects of restoration aimed toward normal subjectivity.”\textsuperscript{541} The mentally ill, by definition at times lacking reason and rationality, contradict the foundational assumptions of penal

\textsuperscript{536} See ACLU of Texas & the Texas Civil Rights Project, “A Solitary Failure: the Waste, Cost and Harm of Solitary Confinement in Texas,” 33-36.
\textsuperscript{537} ACLU, “Worse than Second Class,” 2.
\textsuperscript{538} Rhodes, \textit{Total Confinement}, 5.
\textsuperscript{539} Rhodes, \textit{Total Confinement}, 6-7.
\textsuperscript{540} Rhodes, \textit{Total Confinement}, 67. “For the prison to do its work of control, a self capable of responding to and eventually internalizing that control must be assumed for the prisoner.”
\textsuperscript{541} Rhodes, \textit{Total Confinement}, 11.
custody. Rhodes concludes that “prisoners are entangled in institutional contradictions within which they become — and suffer for becoming — the extremes and exceptions that mark the limits of the rational.”

Rhodes documents the varying forms of resistance that prisoners develop in this context structured by contradictions. Prisoners must navigate the contradictory languages and imperatives and custody of psychiatry to their benefit. For instance, Rhodes meets a prisoner in the psychiatric unit who is missing a thumb. Describing the moment he mutilated himself, he said to her, “I made ‘em carry me to the hole.” Rhodes notes that “several years after the event, he was still triumphant” because he understood the institutional response that his action would carry and taylored his resistance accordingly. Similarly to self-mutilation, although less damaging to the prisoner, “throwing” directly transgresses the rigid boundaries between guard and prisoner by weaponizing the object of control, the body, into a weapon against control. In each unit she visited, prisoners weaponized their bodies in a constant battle with staff for control of their confinement. “Throwing” involves storing and throwing bodily excrements — urine, feces, and semen — at guards. Prisoners interviewed by Rhodes presented throwing as a social act of resistance, a powerful way to taint the authority of guards. In addition to the sheer disgust of drenching in

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543 Rhodes, Total Confinement, 5. See also 68, “These men find themselves engaged in the performance of an autonomy that both resists the domination of the prison and fiercely engages its terms.”
544 Rhodes, Total Confinement, 68.
545 Rhodes, Total Confinement, 68.
546 Rhodes, Total Confinement, 49.
547 Rhodes, Total Confinement, 44.
another person’s bodily fluids, throwing also carries a serious health risk for those targeted, especially in a setting where hepatitis is so common.\footnote{Rhodes, Total Confinement, 46.}

Prisoners also weaponize their bodies with violence, whether against themselves, their environment of concrete and steel, or the custodial staff. Dole records the regular phenomenon of what he calls “bugging up”: violent outbreaks of varying duration.\footnote{Dole, “Supermax Diary,” 63.} In his unit, prisoners throw their bodies against their steel door or concrete wall, over and over again for hours.\footnote{Ibid.} By so doing, they make their presence felt by fellow prisoners and guards, both in noise and vibrations, even if at a great cost to their bodies. Guards interviewed by Rhodes understand these methods of prisoner behavior as communicative, demonstrating some element of control over the guards and demanding attention. For instance, a correctional officer explains the non-cooperative behavior of a prisoner as a conversation between the prisoner, guard staff and witnesses: “He just had a conflict with a couple of officers. It was a personality conflict. So instead of giving up his tray, he had us do the show of force to get his tray. He wanted everyone to stop what they were doing, ‘now focus on me, this is my statement…’ His statement was made by coming in there, by us entering his cell.”\footnote{Rhodes, Total Confinement, 42-43.} Shaka Senghor similarly understands resistance from his perspective as a prisoner in solitary:

Whenever the officers do something that we feel is unjust, we respond by flooding the wing with water from our toilets under they come and cut it off. This is the only way we have of voicing our grievances and getting a response. The officers know if they don’t pass out our mail in a timely fashion or if they serve us our meals cold, they’ll have to wade through water until the porters come to clean it up. They know if they
deny us showers, we’ll be on the doors relentlessly until they let us go. The way we see it, if we don’t fight back, we might as well lie down and die.552

Here, Senghor recounts how collective resistance enables his control unit to defend their interests and keep guards accountable. Expectations of behavior and how one will respond go both ways, conditioning prisoners and guards.

Against regulations, prisoners develop and use methods of communication to develop friendships and organize collective resistance. In the words of Lorna Rhodes, this sort of environment “fosters distorted forms of sociality patched together from the little contact that is available.”553 Although communication between fellow prisoners is largely prohibited, one may risk the punishment to talk through vents with adjacent cells. Especially in response to crack downs on speaking, some slide paper with fish line underneath each others’ doors, passing notes. These tactics enable prisoners to care for one another and to organize collectively. For instance, two prisoners at Red Onion State Prison, Vito and Hanson, communicate daily through their shared vent and build a friendship of mutual support. In an interview, Vito says:

Me and Hanson, we’re on the vent together now, so we know a lot about each other, and he knows me. Like he can tell in my voice when something’s wrong. Like he might call me and I’ll get up and be like, ‘Hey.’ And he’d be like, ‘Are you all right today?’ It’s our telephone system, we kind of feel each other out.554

Another prisoner at the same prison explains the significance of communicating through vents: “being able to open up and talk, it really helps me to think clearly

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553 Rhodes, Total Confinement, 34.
instead of thinking in a negative way.”\textsuperscript{555} Through these methods, people manage to provide personal and legal advice to their peers. Herman Wallace reflects that his role as a “jailhouse lawyer” helped him “keep [his] dignity as a man,” suggesting that both being cared for and caring for others maintains one’s sense of personhood.\textsuperscript{556}

Although Supermax prisons were built to mitigate the potential for prisoners to build social capital, the California hunger strike of 2013 marks the efforts and capacity of incarcerated activists. From their isolation cells in Pelican Bay State Prison, twenty prisoners established the Pelican Bay Short Corridor Collective with the stated goals of ceasing inter-racial violence in prisons and collectively bargaining for better prison conditions and the end of solitary confinement.\textsuperscript{557} Todd Lewis Ashker, a founding member, writes that the collective was a major social and political outlet for prisoners. It provided a format for political discourse, sharing readings and interpretations, and supported a strategic struggle through litigation and the largest hunger strike in prison history, with more than 29,000 prisoners starving themselves.\textsuperscript{558} Their strike ended successfully upon California lawmakers announcement that they would hold public hearings into the use of solitary confinement in the prison system.

**Legal Challenges and Social Death**

When prisoners and advocates have challenged prisons’ use of prolonged solitary confinement in court, their victories have been limited and may in fact

\textsuperscript{555} Ibid, 53:38.
\textsuperscript{556} Herman Wallace, “Dream House,” in *Hell Is A Very Small Place: Voices from Solitary Confinement*, 95.
\textsuperscript{558} Ashker, “A Tale of Evolving Resistance,” 87.
reentrench the logic of the practice. First, prisoners rights have been limited to bare physical needs, such as heating and food, and thus have been ruled to not include meaningful social contact. Second, Laura Rovner, an accomplished constitutional lawyer and civil rights advocate, writes that successful litigation has been limited to protecting the already-mentally-ill and juveniles. The case *Madrid v. Gomez* (1995) set the standard that prolonged solitary confinement only violates the Eighth Amendment’s prohibition on cruel and unusual punishment “in situations where the person is a juvenile or has a preexisting mental illness.” Rovner notes that this has since remained the prevailing standard, even in one case, *Silverstein v. Bureau of Prisons*, where the defendant Thomas Silverstein’s thirty years of isolation was ruled as constitutional. In the latter case, Rovner notes, the court deferred to prison officials: “the opinion of a prison administrator on how to maintain internal security carries great weight and the courts should not substitute their judgment for that of officials.” The Supreme court has similarly “scaled back judicial scrutiny of prison conditions,” instead deferring to prison officials. In the words of another legal review, as of 2010, “Eighth Amendment claims against supermaxes have failed to establish any principle of fundamental unconstitutionality inherent in the structure and conditions of modern supermax facilities.”

By making her argument in terms of social death, Guenther draws attention to how the denial of our fundamental-interrelationality supports the denial of social

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559 Guenther, *Solitary Confinement*, 275f17, quoting *Madrid v Gomez* and *Toussaint v. McCarthy* (Toussaint IV), 801 F.2d 1080 at 1107 (9th Cir. 1986).


561 Ibid.


564 Keramet Reiter 221
recognition. One may extend this argument to understand the new penology and the accompanying language of custody as resting upon an individualistic ontology. If solitary confinement refracts the warehouse prison’s logic of exclusion, it also rests upon an individualistic rationale of accountability that understands people as mechanic, rational agents. Together, Rhodes and Guenther’s arguments imply that the punitive turn’s individualistic, self-possessive frame of public policy and the volitional criminology, discussed in Chapter 3, correlate with the custodial frame of the new penology.565

Staff and wardens often describe solitary confinement, especially control units in non-supermax prisons, as “a prison within a prison.”566 As noted earlier, the two dominant goals of control units/prisons, from the perspective of wardens, are deterrence and incapacitation, the same two goals embraced by the criminology of the punitive turn. In the words of a warden at a large facility in Minnesota: “[Special housing units] serve a punitive purpose… They exist to deter people from acting out. I’m not going to apologize for that.”567 Recall that, asked if the goal of the Supermax is to “incapacitate violent or disruptive inmates,” 95.4% of surveyed prison wardens either agreed or strongly agreed.568 If solitary confinement in Supermax prisons is intended to serve the same purpose as solitary confinement in non-Supermax prisons,

565 Rhodes, Total Confinement, 81, on how an the primary justifying frame for prison order is individualistic, and 84, on “volitional discourse” of the criminal.
567 Rhodes, Total Confinement, 59.
568 Ibid.
this characteristic of the warehouse prison directly reflects the political context and criminology that supported its development.

This framing suggests that reforming solitary confinement by preventing those who are already mentally ill from entering isolation will actually re-entrench the practice by refining its logic. Such reforms, which are the current direction and greatest achievement so far via 8th amendment claims, maintain the punitive individualism that structures and supports the practice. Screening the already-mentally-ill from entering solitary protects the conceptualization of the criminal as a willful, volitional agent by removing the most obvious challenge to this model: the mentally ill.

Guenther’s argument challenges prolonged solitary confinement beyond the selective advocation of the most vulnerable by arguing that these conditions undermine everyone, not just juveniles and the mentally ill. Moreover, even if solitary confinement were abolished in US prisons, the warehouse prison still threatens to undermine the relationality of its captives. Placement in a warehouse prison, even if never placed into solitary, targets prisoners inter-relationality in many of the same ways as solitary does. Issues that are especially acute in solitary, such as separation from one’s friends and family, are still present in general population. Furthermore, Guenther’s synthesis foregrounds that the capacity to engage with others requires its inverse, the capacity to withdraw from others. Prison conditions like overcrowding and lacking privacy directly challenge the latter.

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569 Guenther and Rhodes both note that, given the setting does not only exacerbate extant mental illness, but also produces new psychopathological problems, this reform essentially says: if not mentally ill, you can be placed in setting that may make you mentally ill.

570 Guenther, Solitary Confinement, 118, 199.
Conclusion: Prison Necropolitics

In Summary

This thesis has aimed to understand the rise and design of the warehouse prison as necropolitical. This theoretical framework has the potential to ground various critiques of how people are marginalized and excluded from society. I presented two approaches of necropower as a lethal underside to biopower, each producing different forms of critique. The first approach understands the fundamental difference between the two forms of power as the assumed value or threat of a racialized body. This approach understands biopower as assuming the value of life of disciplined individuals and regulated populations as potentially productive subjects. Necropower, in contrast, entails a population’s identification as a dangerous threat to the privileged population and calls for their isolation from the latter. This possible orientation of the two frameworks would suggest archetypes for each: the panopticon or worker’s estate, which Foucault presents as models of biopower, and the Apartheid township or American slave plantation, which Mbembe presents as models of necropower. The second approach understands the warehouse prison in relation to two constituent elements of necropower: social death and State racism.

In Chapter 2 I argued that understanding the warehouse prison as an “afterlife” of slavery, an iteration of antiblack violence in the age of colorblindness, contextualizes this invention of the punitive turn within the history of social death and State racism against black people in America. After examining various explanations of how racism operates to devalue bodies, I identify enough of a common ground to provide a working definition. Specifically, I look to Saidiya Hartman who brings
Foucault’s promising but relatively underdeveloped discussion of State racism into the American context to investigate State strategies of racial subjection. The recent and controversial intervention of the so-called “Afro-Pessimists,” Jared Sexton and Frank Wilderson, continues Hartman’s focus on race as an ontological property of one’s body. Their work demonstrates that one can understand race as ontological and apply social death to contemporary problems without precluding the possibility of resistance.

Although the common theoretical critiques of their arguments are partially parried by my reading of Hartman and Mbembe, one need not accept the radical, polemical conclusions of the Afro-Pessimist position to understand race as ontological and semiotic. Here, Mbembe’s work *Critique of Black Reason* grounds necropolitics by explaining how race operates simultaneously on these two levels, the being and significance of a human, to posit its product, the racialized body, as reality. Together, the work of Mbembe and Hartman offer a lens for critiquing the warehouse prison that foregrounds the role of State racism, the increase in the total prison population and racial disparities of said population, and the characteristically punitive qualities of the warehouse prison.

Many authors have observed continuities between slavery and mass incarceration, emphasizing the criminalization of the black population and the thirteenth amendment’s exception which allows the enslavement of criminals. For instance, Hartman argues that criminal law during slavery denied the agency and relationality of black slaves and that the criminalization of the poor, black population after formal abolition further threatened their social death. Blackmon and Perkinson record how the aggressive pursuit of petty crimes, some elevated to felonies after
emancipation, principally targeted poor blacks and facilitated this de facto reinstitution of slavery.

Hartman indexes how antiblack racism continued with the governance of space and sexuality through criminality. After emancipation, the organization of space and the regulation of sexuality emerged as two areas where black people were controlled through criminalization. If the discursive work of State racism involves the production of an internal threat, the fashioning of the black population as a threat followed such a logic: from the perspective of white society and the State, “the threat of contagion and defilement associated with blackness necessitated” the sequestering and policing of the black population. 571 Muhammad’s work compliments Hartman’s by showing how the dominant streams in America’s sociology of crime uniformly presented black criminality as a threat, tying blackness to criminality and antiblack violence to public safety.

If the warehouse prison belongs to the array of the “afterlives of slavery,” it is perhaps not only because the criminalized and warehoused populations are disproportionately black, but also because of how antiblack racism has enabled the prisons’ current form in terms of both scale and architecture. In scale, the prison population changed in two ways since the 1970s: first, the actual population soared; second, so too did its racial disparities. Changes in time served, rather than actual increases in crime, statistically account for the vast majority of the first increase. In terms of design, overcrowded prisons faced cuts to rehabilitative and educational programming, and even when those cuts were not dramatic, increases in the total prison population rendered the remaining resources disproportionate; prisons were

placed remote from where most of their population comes from — the poorest sections of cities — thus straining prisoners’ relationships with family, friends and their community generally; and prisons increasingly developed and used solitary confinement "control units," in addition to the Supermax “control prisons,” which are defined entirely by prolonged isolation.

The racialized figure of the predator in rhetoric and the media contributed to the harsh and specifically antiblack consequences of the punitive turn. Alexander, Mauer and many media sociologists suggest that the figure of the predator was intensely racialized as black, especially in the context of the War on Drugs. Animalistic descriptions, disproportionately applied to black defendants, were laced with references to “aping” in the “urban jungle.” Nixon, Reagan and Bush successfully campaigned with messaging that addressed criminality in a way that accessed the implicit and more subtle “common sense” racism of voters. If black criminality in political rhetoric and the news media garnered support for the punitive turn, the legislation written in this atmosphere was created by both parties.

As the rehabilitative ideal fell and liberal ideas of crime receded, a new conceptualization of the criminal rose both in the mind of the public and in the theories of criminologists. These new theories set deterrence and incapacitation, rather than rehabilitation, as the dominant penological goal, and provided a grounding for more punitive legislation. Pursuing deterrence and incapacitation, politicians followed the advice of these criminologists and channeled public outrage at higher crime rates and moral panics surrounding crack cocaine. Criminal sentences increased across the country, driving up the prison population, both directly and by giving prosecutors more leverage in plea deals. Federal dollars incentivized the scaling
back of parole, which was replaced by determinate sentencing. For what parole remained, parole agents more aggressively pursued technical violations, returning people to incarceration.

Chapter 3 refashioned Hartman’s history of State racism in American to explain the increasingly disproportionate incarceration of black Americans over the same period. Lasting segregation means that aggressive police strategies, which are described as “colorblind” by their advocates, and which focus on resource-cheap and highly politicized “street crime,” work to criminalize poor, black Americans. The example of stop-and-frisk shows how the vestiges of a more obvious and explicit State racism, one which relied on the segregationist logic of *Plessy v. Ferguson* and the threat of blackness to white purity, continues to facilitate the criminalization of black Americans today. The production of black criminality in image, through political rhetoric and news media, and in fact, through aggressive policing strategies and “racial tracking” at each stage of the justice system, legitimizes the very practices that create it.

The return of systematic, prolonged solitary confinement provides a case study for understanding how new conceptualizations of the criminal and, subsequently, what treatment they deserve, have influenced prison design. Reports and the testimony of prison administrators involved demonstrate that the political atmosphere — media coverage, political rhetoric, and public sentiments — contributed to the decision to expand solitary confinement and limit rehabilitative programming. Wardens explained that “demographic changes” in the prison, including an increase of younger individuals arrested for “street crime,” required new, more repressive technologies for taming this “new breed” of criminal. These concerns were framed
within the new penology, so that prisons’ task became increasingly managerial, rather than transformational; the new penology is fundamentally focused on identifying and managing a class of dangerous people. Planning for the most dangerous — “high rate offenders” and “career criminals” — increasingly defined the design and programming of the prison. Prolonged solitary confinement exemplifies how this new penology, in pursuing control, jeopardizes the wellbeing of prisoners and enables social death.

Although Feeley and Simon emphasize that the new penology frames prisoners on this larger level of a dangerous population, the practices used towards this end, such as prolonged solitary confinement, operate upon an individualistic ontology. While earlier proponents of prolonged solitary confinement believed it would rehabilitate those isolated, contemporary adherents instead understand this “prison within a prison” as a technology for incapacitation and deterrence. Critiquing the individualistic ontology that underlies solitary confinement, as represented by the writings of Benjamin Rush, Lisa Guenther argues that human beings are fundamentally inter-relational creatures: we constitute our sense of reality and self through relationships within a network of others. Solitary confinement destroys that reality.

If one understands social death as the violent denial of someone’s inter-relationality, solitary confinement threatens social death. In substantiating the material aspects of Guenther’s phenomenological critique, psychologists and prisoners have documented the damage that an individualistic ontology enables. Studies have found that prolonged isolation produces and exacerbates mental illness by reducing environmental stimulus and social contact to a bare minimum. Guenther’s argument
thereby argues not just for selective advocacy, removing a small portion from solitary confinement, but rather total abolition of forced, prolonged isolation.

This argument does not preclude the resistance of those isolated, but rather emphasizes how, “viewed properly as a compelling metaphysical threat,” social death creates a dynamic situation, not a static one.\footnote{Brown, “Social Death and Political Life in the Study of Slavery,” 1244.} Individuals’ memoirs provide testimony for how people maintain their sense of self and perception of the world in an environment that, by its architecture, undermines the constituent elements of our very nature. On the individual level, isolated prisoners address their conditions of confinement in various ways, and some fare better than others. Common techniques of resistance, however, involve weaponizing the body. Moreover, despite the prison’s attempts to cut off all communication, many prisoners forge creative ways to communicate with one another. This communication allows prisoners to maintain a network with others, a network of care and reciprocal attention, in a space designed to preclude this possibility. Lastly, the Pelican Bay Short Corridor Collective organized the biggest hunger strike in prison history, demonstrating the possibility for collective resistance in even the most restrictive spaces. In sum, to quote Guenther, resistance creates “a meaningful relation to others and to the world that exceeds the terms of one’s own capture.”\footnote{Guenther, Solitary Confinement, 128.}

In sum, the history and design of the warehouse prison are important elements of mass incarceration. Critiquing the warehouse prison itself compliments works like Alexander’s The New Jim Crow, which document how economic discrimination, political disenfranchisement, and social stigma marginalize those formerly
incarcerated. If Alexander’s work and related research demonstrate that criminal status entails a permanent debt to society, the warehouse prison reflects the high price already paid before exit.

**Opportunities for Further Research**

This thesis has left various substantial questions unaddressed. Each area provides an opportunity for further research. In this section, I identify a few of these questions. They include: the relationship between State racism and social death; the role of prosecutors and parolee agents; the risk of painting prisons in America with a homogenous brush (i.e. the diversity of prisons and their unique histories); how neoliberalism relates to the warehouse prison; the need to investigate the philosophy of punishment known as retributivism; and how sex offenders factor into the punitive turn.

What is the relationship between State racism and social death? There remain serious questions about how State racism and social death are related and how they differ. Answers may vary depending on how each is defined and what aspects of each are emphasized within a given definition. Although poverty, disenfranchisement and stigma by themselves do not necessarily produce social death, one may seek to identify how this combination of various factors reflects social death. However, saying that these factors in sum reflect social death may blur the distinction between State racism and social death, especially if State racism is taken in Foucault’s most capacious definition as “every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death,

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expulsion, rejection, and so on.” Therefore, if social death is taken principally as a broader status of exclusion — political, economic, and social — rather than Patterson’s original three constituent elements or Guenther’s refashioning of the concept as the denial of inter-relationality, it is not clear what conceptual work social death performs that State racism does not already cover. If social death entails the violent denial of one’s inter-relationality (through the three constituent elements that Patterson identifies), and if State racism essentially marks certain bodies as belonging to dangerous populations, then the denial of these people’s inter-relationality becomes the imperative of State planning. Analyzing how bodies are handled in different contexts may reveal the strengths and weaknesses of varying definitions.

Questions linger about State racism’s relationship to sovereignty, the boundaries of communities, and its inevitability. Foucault identifies State racism as an inevitable feature of states that must square biopolitics, the imperative to discipline and regulate life, with sequestering and ending life. How does Foucault’s account clash or compliment the arguments of Afro-Pessimists? Representing the Afro-Pessimist position, Jared Sexton argues that, shy of an (unclear) metaphysical revolution, antiblack violence will maintain blackness as the “constitutive outside” of society. Is this position of a constitutive outside inevitable, and, either way, has criminality always played this role?

Perhaps even at the height of the rehabilitative ideal there was still the assumption that rehabilitation required the removal of one from society. In one of the

575 Foucault, Society Must Be Defended, 256.
576 If one casts aside the Afro-Pessimist arguments, one might fall back on social contract theorists to understand criminality as antithetical to society’s order. Committing a crime no longer renders someone an outlaw, outside of the protection of the law and the social order. However, do criminals occupy a marginal space between citizen and outlaw, where legal protections are limited, but not entirely erased?
earliest instances of a rehabilitative ideal, the 19th-century penitentiary, Benjamin Rush deemed complete isolation necessary for spiritual reform. When rehabilitation was understood in spiritual terms, the body was merely a vessel to be isolated from negative stimuli. How would accounts of bio- and necropower understand Rush’s argument? Perhaps Rush’s theory was biopolitical in aspiration, but necropolitical in reality — he aimed to produce productive citizens, but the technology of isolation sequestered life and drove people insane.

And at the height of the rehabilitative ideal, those prisons that aimed to reform prisoners to prepare them for a more successful return to society were hardly havens. Even if rehabilitation was at some point the main purpose of punishment, prisons have always been punitive. This thesis, towards understanding changes in America’s prison system, argued that a predatory figure of criminality emerged in the criminology, rhetoric and media of the punitive turn, ultimately calling for longer — even permanent — exclusion from society, and in turn grounded the new penology. If the argument above purports to show how a new, racially coded image of the criminal facilitated a shift towards more punitive conditions, it does not assume that the rehabilitative ideal ever defeated punitive attitudes towards crime.

Although Chapter 3 proposed to understand biased discretion as an element of State racism, the example of stop-and-frisk mainly focused on police discretion. Yet recent accounts of mass incarceration have demonstrated that prosecutors and parole agents have both played significant roles in driving up the prison population, and thereby provide grounds for similarly understanding the discretion of other state actors in producing race (as criminality). For instance, John Pfaff’s study, Locked In, focuses on the role local district attorneys have played in driving up the prison
population; and Jeffrey Lin’s work on parole revocation demonstrates the same. Both were only briefly touched upon in this thesis — one in the introduction, one in a footnote — and deserve more attention. Under a reading of necropolitics, at question in both of their works would be the relationship between how one understands criminality, and specific criminals, and how they are ultimately handled: what they are ultimately charged with; whether they are given relatively lenient or punitive plea deals; whether or not a technical violation will spell the end of their parole, etc.

Also unaddressed is the role of neoliberalism in the punitive turn and establishing the Warehouse prison. Future research should address if and how neoliberalism is largely consistent with the criminology of the punitive turn, namely, the deterrence- and incapacitation-focused work of Wilson and Dilulio. Rhodes describes their work as “volitional criminology,” emphasizing the stress it places on individual choice and responsibility. (These two latter motifs appear in political arguments about other racialized programs by the state, such as welfare.) Lingering behind this question are the relationships between the dominant philosophy of punishment, our conceptualization of the criminal, and prison conditions. Supermaximum prisons were designed and built according to the bare minimum of prisoner welfare, primarily understood as physical necessity, to withstand legal scrutiny. How are these Supermaximum prisons symptomatic, or characteristic, of neoliberalism? Given that Supermaximum prisons are publicly owned and operated, instead of pointing to the privatization of prisons, an analysis of how neoliberalism has conditioned the growth and architecture of these prisons requires future research.

This thesis only discussed three of the four philosophies of punishment: rehabilitation, deterrence, and incapacitation. Yet many accounts of the criminal
justice system are retributivist, focusing on retribution, which this thesis never addressed. For instance, Richard Adelstein advances one such theory in his book *The Exchange Order: Property and Liability as an Economic System*. For Adelstein, markets, tort law, and criminal law are three spheres of exchange. While markets feature consensual trades for a good at a price, trades in tort and criminal exchanges are non-consensual. In the latter two, the buyer takes a good without paying for it, and our civil and criminal justice systems make sure that they pay the price. However, criminal exchanges differ from tort exchanges, in that they also carry an aspect of moral failure that rises to a sufficient level to warrant greater punishment; not only is one person a victim, but the whole community has been offended. As a principle of criminal justice, retributivism defines penal justice as accurately inflicting proportionate damage on someone for their crime. If someone takes an eye, society takes something of roughly equal value: an eye for an eye. But rather than repeating crimes onto the criminal (killing murderers or fining thieves), crimes are to be generally priced according to the socially-assessed blameworthiness of the criminal who committed the crime. Ideally, after one’s sentence is establish and time served, they have paid their debt to society.

Further research is necessary to see how retributivism fits into, or contradicts, this thesis’ account of the warehouse prison. If the retributionist account is essentially Durkheimian, it assumes that punishment reaffirms the moral boundaries of the community and that the price of crime is proportional to the anger and vengefulness of said community, as represented by juries or politicians. Perhaps, as Stuntz suggests in *The Collapse of American Criminal Justice*, moral panic and/or systemic problems with how we determine the price of crime have caused mass incarceration. Stuntz’ work
recommends more local handling of crime, so that we avoid handling crime in the abstract and so that local ties will strengthen empathy with criminals and dampen punitive attitudes. Although Foreman’s history of punitive laws and policing in Washington, DC, shows that local politics do not inevitably temper the most punitive attitudes, Stuntz’ thesis that the price of crime has been driven extraordinarily high is plausible. In that case, Stutz and retributivist accounts do not necessarily contradict this thesis, but rather contribute further dimension to Chapter 3. For instance, perhaps the racialization of the criminal provides such a powerful platform for tough-on-crime politicians because voters assign more blameworthiness to crimes that they believe are committed by urban blacks, blacks, or because dominant groups within society have adopted an increasingly revanchist affect during a period of neoliberal individualization and cutbacks.

However, if retributivist accounts provide a strong basis for understanding sentencing (pricing) in the criminal justice system, they cannot completely explain changes in penal practice. Wardens, the head local authorities that actually manage prisons, identify the goals of the criminal justice system generally as deterrence, rehabilitation, and incapacitation, but they subscribe the least to retribution. This is perhaps because the philosophy of retributivism deals with blameworthiness, the cost of a crime, whereas prisons are organized around dangerousness, a marker purporting to represent the criminal themself. Whereas crime pricing is backwards-looking, focused on completing a non-consensual exchange, the actual form of this

\[577\] Daniel P. Mears, "Evaluating the Effectiveness of Supermax Prisons," on behalf of the Urban Institute, submitted to the Department of Justice in January, 2006. Available at https://www.ncjrs.gov/pdffiles1/nij/grants/211971.pdf. Accessed March 15th, 2018. 42. I assume that wardens who identified “punishment” itself (rather than incapacitation, deterrence or rehabilitation) were indicating retribution, although less than 8% indicated “offender retribution.”
punishment looks forward by considering the criminal themself. More local, anthropological work like Lorna Rhodes’ *Total Confinement* may provide a fuller picture of how correctional officers justify their reactions to prisoners’ behavior, including placement in solitary.

Further research on how sex offenders factor into the punitive turn and the warehouse prison is necessary. This thesis barely discusses sex offenders, despite the potential importance of doing so. Sex offenders are perhaps the most often cast as predators, a rendition that calls for incapacitation. From different perspectives, Lancaster and Bumiller both argue that sex offenders and even feminist campaigns against sexual violence have represented something of “the tip of the spear” in forging a more punitive penal policy. Further research could investigate how politicians present sex offenders to the public in speeches and advertisements, how news media reporting on sex crimes has changed, and how these depictions fueled or altered the punitive turn. If the political advertisements discussed in Chapter 3 are indicative, this research would likely intersect with the racialization of criminality. To what extent did the punitive turn single out sex offenders for harsher penalties, extended surveillance, and permanent exclusion? How are paedophiles and rapists distinguished, and how do prisons handle this distinction? Depictions and the treatment of sexual offenders deserve further research, especially as the conversation

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579 Robert Perkinson, *Texas Tough: The Rise of a Prison Empire* (New York: Metropolitan Books/Henry Holt, 2008). 348-349. George Bush’s Attorney General, John Ashcroft, “directed federal prosecutors to refuse any deals and instead to seek the maximum allowable penalties for the most serious possible charges; those who balked were among those targeted for dismissal.” Most significantly for the discussion here, Ashcroft defended the order, claiming it would “guarantee stiffer penalties for ‘child predators, criminal bosses, drug kingpins, and violent gun criminals.’”
around reforming mass incarceration today has converged with more open
discussions of sexual violence.

Understanding shifting modes of prison management across the country
presents a mammoth task. This thesis has spoken about the development of the
warehouse prison across the country, and has focused on a few examples of state laws
and state-level prison siting and construction. But America doesn’t have a single
prison system, but rather many distinct ones with great philosophical and practical
differences. Work like Robert Perkinson’s *Texas Tough* demonstrates that the
rehabilitative ideal did not uniformly change prisons across America and was stronger
in some states’ prison systems and weaker in others. For instance, Texas, the focus of
his study, continued convict leasing for the majority of prisoner jobs, and continued to
levy corporal punishments against disproportionately black laboring prisoners
through the 1960s.\(^{580}\) *Texas Tough* challenges us to texture prison histories with local
prison data and the testimonies of those imprisoned in order to avoid abstracting
diverse histories into a uniform history, where the north east and California are taken
as representative of the nation.

This thesis did not include a history of rehabilitative efforts in state and federal
prisons, so much is left unaddressed. How can the the history of rehabilitative efforts
shed light on today’s prison system? And more specifically, in what ways did the
rehabilitative swing prepare the ground for the new penology? For instance,
California’s post-WWII efforts at reorienting the prison system towards rehabilitation
included extending data gathering about each prisoner, conducting personality tests

and probing into each new prisoner’s personal history.\textsuperscript{581} If efforts at rehabilitation are forward-looking in their attempts to personalize treatment, it is plausible that these changes laid the ground for the new penology, a similarly forward-looking management system that aims to incapacitate the greatest risks with the greatest restraints.

Moreover, by shying from a more in-depth history of rehabilitative efforts, this thesis leaves unaddressed the implication that biopolitics is normatively preferable to necropolitics. Although I personally believe this is the case, as I take biopolitics to assume the potential value of an individual as a productive member of society, looking at the history of rehabilitative efforts troubles this view. Given that Benjamin Rush’s well-intentioned work enabled the prolonged isolation of prisoners, the risks of rehabilitation projects are high, and success is hardly guaranteed. Yet more contemporary examples deserve further research and treatment, especially since one may describe violent, destructive projects as biopolitical. For instance, Leo Stanley, who served as chief surgeon at San Quentin Prison in California from 1913 to 1951, conducted ghastly experiments on prisoners, ranging from eugenics experiments and sterilization to plastic surgery and the injection of deceased prisoners’ body parts into living prisoners.\textsuperscript{582,583} The benefit of reading these practices through bio- and necropolitics is uncertain but promising, as such a reading may emphasize how various conceptualizations of the criminal relate to their treatment, and how racism intersects with both concept and treatment.

\textsuperscript{581} Perkinson, \textit{Texas Tough}, 220-221.
\textsuperscript{582} Perkinson, \textit{Texas Tough}, 218-219.
A full investigate of how the warehouse prison relates to the political context would include a treatment of felon disenfranchisement. Critics of mass incarceration decry the disenfranchisement of an estimated 6.1 million people who cannot vote because they have been or are currently incarcerated for a felony.\textsuperscript{584} Advocates’ attention is usually cast most aggressively on the 50.6% of this group, living in ten states, are free from any form of punitive surveillance, having fully served their sentence, yet still lack the right to vote.\textsuperscript{585} Of particular concern is the racialized history of voter disenfranchisement, especially given that these policies today disproportionately prevent black men from this fundamental democratic right.\textsuperscript{586}

What developments supported these laws, and (how) did the punitive turn of the late 20th century affect them? A comparative history of Maine and Vermont’s laws, which allow prisoners to vote, with other states, which temporarily or permanently disenfranchise criminals, may shed light on the relationship between public perceptions of crime — why people commit crime, who commits crime, estimates of the damage caused by crime — and public support for policies that limit criminals’ political participation.

**Future Policy**

America’s high incarceration rate perpetuates the warehouse prison in scale, and the combination of lasting racial segregation, concentrated urban poverty, and aggressive police tactics ensure the warehouse prison’s disproportionately black population. Any effort towards ameliorating these supporting factors would


\textsuperscript{585} Ibid.

\textsuperscript{586} Ibid.
undermine the warehouse prison. The case study of Stop & Frisk demonstrates how punishment concentrated by class, race and space, so that poor black men in resource-starved communities face life-changing punishments for crimes that students commit every day with relative impunity on college campuses with private police forces. While a student at Wesleyan caught with a small bag of marijuana would probably get a light slap on the wrist or complete a quick educational program about the risks of drug use online, someone of the same age on the street in Louisiana is facing jail time and a fine. Yet ending the War on Drugs will not end the criminalization of poverty. Wacquant’s work urges us to wage a war on poverty, not on the poor. Aggressive police tactics for quality of life policing, pursued in those areas where segregation has concentrated black life, will continue to produce a disproportionately black underclass.

More can be done to reform the warehouse prison than only reducing the numb of prisoners. Specifically, the United States’ use of solitary confinement needs to be thoroughly questioned beyond selective advocacy. Chapter 4 explained that the leading official defense for solitary confinement is protective custody, either paternalistically referencing the welfare of an at-risk prisoner or the prison system more generally. Since the former group of protected individuals is small, and therefore does not represent the vast majority of those isolated, and since studies have not supported the purported benefits of solitary confinement on total prison violence, neither of these defenses are adequate. Rather, it seems that the tenets of the new penology are what really legitimize the use of forced, prolonged solitary confinement.

For this reason, challenging solitary confinement means challenging the new penology that frames practices within the warehouse prison. If grounded on an inter-
relational understanding of human life, abolishing forced, prolonged solitary confinement would not only mean the end of the practice, but also a questioning of other practices that threaten social death. Namely, allowing prisoners to forge relationships with each other and maintain their relationships with friends and family outside of the prison walls has been shown to aid reentry into society. Yet it also requires that we understand those imprisoned as members of our community, or at least human beings, for and about which we care, despite their removal. From this standpoint, the rendition of criminals as predators slated for long-term incapacitation poses an obstacle to projects to either reform or abolish the warehouse prison. If we want to affect the latter, we must critique and change the necropolitical narratives and practices that support it.

A new prison program called T.R.U.E. at Cheshire Men’s Correctional Institution in Connecticut suggests the benefits of allowing prisoners to socialize and mentor one another. The program consists of mentees, incarcerated men between the ages of 18 and 25, and mentors, who are older and have served more time; the participants are mostly black. 587 Those in the program enjoy more time for social and educational programming than otherwise, including reading groups for current events. The program was developed after high-level prison officials visited German prisons to understand their model. They observed “age-appropriate programming” by “specially trained staff,” such as counseling, job training, and learning how to cook. 588 Relationships in the German model were treated as productive, not

588 Ibid.
threatening, as prisoners were given time to socialize. These insights traveled back to Connecticut’s T.R.U.E. program, where younger prisoners’ social life is taken principally as an asset rather than a liability. Although the program is limited to a small portion of the population, with only 28 young prisoners, it is set to expand during the time of writing to a total of 70 young prisoners. Although this program is designed to be selective, packaged with appeals to neurocognitive development that only apply to young adults, I hope its success will challenge the lingering narratives and practices of the punitive turn.
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