Law & Society REVIEW

Reclaiming the Power to Punish: Legislating and Administrating the California Supermax, 1982–1989

Keramet Reiter

This article examines how increasingly punitive prison conditions, epitomized by the birth and spread of the supermax prison, developed in the United States. This analysis builds on a growing literature about the "new punitiveness" of U.S. punishment policy and its global proliferation. This article shifts the focus away from the policies that have led to increasing *rates* of incarceration, however, and toward the policies that have shaped the *conditions* of incarceration. Drawing on archival research and more than 30 oral history interviews with key informants, I examine the administrative and legislative processes that underwrote the supermax innovation in California in the 1980s. During California's late twentieth-century prison-building spree, prison administrators deployed multiple rhetorics of risk to extend their control over conditions of confinement in state prisons. As the state invested billions of dollars in prison building initiatives, legislators, who were focused primarily on building prisons faster, ceded authority over prison design and conditions to prison administrators. In the end, rather than implementing legislative policy, prison administrators initiated their own policies, institutionalizing a new form of "supermax" confinement, pushing at the limits of constitutionally acceptable practices.

Reclaiming the Power to Punish: Legislating and Administrating the California Supermax, 1982–1989

Pelican Bay State Prison, one of the first *supermax* prisons ever built in the United States, opened in California in 1989. Pelican Bay's Security Housing Unit, or SHU, has 1,056 poured concrete, windowless cells designed for total and prolonged isolation. As of 2011, more than 500 prisoners had been in isolation in the Pelican

Award No.1061643 from the National Science Foundation, Law & Social Sciences Division supported this research. Franklin Zimring, Jonathan Simon, David Sklansky, Marianne Constable, Rebecca McLennan, Robert Kagan, Michelle Phelps, Ashley Rubin, the anonymous reviewers, and the editors all provided helpful comments on earlier versions of this article. Prison officials, experts, prisoners, and other respondents made this research possible.

Please direct all correspondence to Keramet Reiter, Department of Criminology, Law & Society, University of California, Irvine, 3373 Social Ecology II, Irvine, CA 92697; e-mail: reiterk@uci.edu.

Law & Society Review, Volume 50, Number 2 (2016)

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

Bay SHU for more than ten years (Small 2011). Prison administrators, not judges or juries, assign prisoners to these restrictive conditions of confinement, based on in-prison behavior.

The concrete SHU cells, equipped with surveillance cameras and fluorescent lights that never turn off, constitute a hygienic space where prisoners are constantly visible to prison staff. Technology precludes all human contact. A correctional officer in a central control booth presses a button, opening one door at a time on the cellblock, allowing each prisoner to move alone to the shower, or into a solitary exercise yard for his daily hour out of his cell. Phone calls and contact visits are prohibited. Televisions or radios must be earned, and purchased. Over the last 25 years, prisoners and lawyers have argued that the conditions in the Pelican Bay SHU are unconstitutional, and the United Nations Special Rapporteur on Torture has condemned the long durations of solitary confinement there as a violation of international human rights law (*Ashker v. Brown* 2013; *Madrid v. Gomez* 1995; UN News Centre 2011).

In 1989, however, the Pelican Bay SHU was virtually invisible, hidden in far northern California, a little-noticed segment of the dramatic expansions in incarceration happening in California and across the United States (Gilmore 2007; Zimring and Hawkins 1991: Table 5.1). At the time, only one other state had a prison that imposed a similar degree and scale of isolation: Arizona's Security Management Unit, or SMU (Dayan 2008: 495; Lynch 2010: 136–37). In the 10 years after Pelican Bay opened, however, more than 40 other states built and opened "supermax" prisons like California's Pelican Bay SHU and Arizona's SMU (Naday et al. 2008; Riveland 1999). This article examines how increasingly punitive prison conditions, epitomized by the birth and proliferation of the supermax prison, developed in the United States. This analysis builds on a growing literature about the "new punitiveness" of U.S. punishment policy, and the spread of this punitiveness around the globe (Feeley and Simon 1992; Garland 2001; Reiter and Koenig 2015; Ross 2013; Simon 2014; Simon and Feeley 2003; Wacquant 2006). This article, however, shifts the focus away from the policies that have led to increasing *rates* of incarceration, toward the policies that have shaped the *conditions* of this incarceration.

By focusing on decisions about prison design and conditions, reconstructed from in-depth archival analysis and more than 30 oral history interviews with key informants, this research reveals important new mechanisms of policy initiation and implementation within institutions facing rapid change (in this case, mass incarceration). During California's late twentieth-century prison-building spree, prison administrators deployed

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

multiple rhetorics of risk (Hannah-Moffat 2005; Lynch 1998) to maintain–and expand–their control over harsh conditions of confinement in state prisons. As the state invested billions of dollars in prison-building, legislators, focused primarily on building prisons faster, increasingly ceded authority over prison design and conditions to prison administrators. In the end, rather than implementing legislative policy, prison administrators initiated their own policies: institutionalizing a new form of "supermax" confinement, which pushed the limits of constitutionally acceptable practices.

The New Penology of Mass Incarceration's Harshest Conditions

Feeley and Simon provided one of the first analyses of this U.S. shift toward increasingly punitive ideologies in the 1980s in an essay called "The New Penology" (1992). They argued that correctional systems had abandoned a rehabilitative ideology focused on individuals in favor of a risk management ideology focused on dangerous classes of people.

The punitive implications of focusing on risky classes of people, including the "expansion of penal sanctions," resulted in higher incarceration rates and higher rates of people on probation and parole (Id. at 455, 460). The "New Penology" essay inspired two interrelated strands of literature about punishment: one about punitive ideologies (see, e.g., Garland 2001; Simon 2007; Wacquant 2006) and one about "risk society" (see, e.g., Baker and Simon 2002; Hannah-Moffat 2005; Rose et al. 2006).

Garland labeled the new punitive ideology "a culture of control" (2001), and Simon argued that this punitive culture seeped into nearly every social institution–from home to school to workplace–in a new politics of "governing through crime" (2007). Scholars describe this ideological shift as driven by neo-liberal economic perspectives and policies, including the criminalization of poverty (Wacquant 2006) and the oppression of women (Haney 2010; McCorkel 2013) and racial minorities (Alexander 2010; Lopez 2014). More recently, however, scholars have challenged the claim that punitive institutions underwent a dramatic ideological shift in the 1980s, arguing instead that many prison administrators both maintained a focus on individuals and espoused rehabilitative ideals throughout the 1980s and 1990s (Lynch 1998, 2010; Phelps 2011). The "risk society" literature has also noted the co-existence of risk models of institutional governance–focused on management of risky, at-risk, or dangerous

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

populations–with "other policy orientations, such as rehabilitation and restorative justice" (Hannah-Moffat 2005: 30).

California's supermax innovation provides a new lens through which to examine these debates. Re-focusing on the supermax contributes three new perspectives to the "punitive ideologies" and "risk society" debates. First, instead of focusing on the ideologies behind overall trends in mass incarceration, such as numbers of people incarcerated and lengths of sentences, as much of the new penology literature has done, this article focuses on the ideologies behind actual conditions of incarceration, examining how and why decisions implementing harsher *conditions* of incarceration were made. After all, mass incarceration is about not just the scale of incarceration, but also the day-to-day experience of being warehoused, stripped of rights, and, too often, abused (e.g., Irwin 2005; Schlanger 2006; Simon 2014). While a rich body of scholarship has examined how prisoners experience varying conditions of confinement in the era of mass incarceration (e.g., Calavita and Jenness 2014; Liebling 2011; Schinkel 2014; Shalev 2009; Sexton 2015), little scholarship has examined, as this article does, how these conditions came to be: how they were justified, who designed them, who controls them.

Second, by examining the ideology underlying specific conditions of confinement, this article adds detail to the "risk society" debates. This research documents how prison administrators leveraged not just the idea of dangerous classes of people, but also of specific dangerous individuals, and of specific sentencing policies perceived as dangerous to correctional authority, to justify increasingly punitive conditions of confinement. Building on the work of Lynch (1998) and Hannah-Moffat (2005) regarding the mix of ideologies making up the "risk society," this article analyzes specific narratives underlying broader claims that prisons generally–and supermaxes specifically–manage risky prisoners.

Third, the article argues that prison administrators did far more than simply implement legislative policy in California; they invented it. Focusing on prison conditions as an under-examined aspect of the new punitiveness reveals that prison administrators have been drivers of this punitiveness, playing decisive, discretionary roles in penal innovation. A rich body of socio-legal literature argues that frontline workers, or street-level bureaucrats, are instrumental to actualizing policy innovations. This literature examines a range of worker-bureaucrats, from educators (Weatherly and Lipsky 1977) and community corrections workers (Maynard-Moody et al. 1990) to police (Jenness and Grattet 2005), parole officers (Lynch 1998), and correctional officers (Vuolo and Kruttschnitt 2008), and notes a variety of ways that these

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

individuals affect policy implementation, from choosing what to enforce (see, e.g., Kagan 1978; Weatherly and Lipsky 1977) to interpreting and resolving legal ambiguities (see, e.g., Calavita 1998; Edelman 1990). This article examines a broader range of bureaucrats, incorporating not just front-line correctional officers, but mid-level bureaucrats like wardens and administrators in corrections headquarters, and argues that these mid-level bureaucrats were not just responsible for implementing punishment innovations in California, choosing among enforcement options, and interpreting legal ambiguities; they actually innovated the California supermax.

Historians and legal scholars alike, in tracing the growth of the "administrative state" over the course of the twentieth century, have noted that administrative agencies within states and the U.S. federal government have increasingly made major policy decisions, often with significant implications (see, e.g., Schiller 2007; Waldo 1948). Even earlier, as described in McLennan's history of nineteenth century imprisonment in New York, prison administrators played a role in designing new forms of isolation, which the state governor later abolished (2008). In this sense, prison administrators' "take-over" of punishment decision-making is not a new phenomenon, either from the perspective of the administrative state, or from the history of prison operations. New, however, is this article's analysis of prison administrators as primary agents, amassing increasing control over the design and conditions of modern punishments during the urgent period of prison expansion in California in the 1980s.

California is an important case study because of the scale of its prison system and its role as a punitive trendsetter. California's 1980s prison expansion was the largest in magnitude of the 50 states. California today has more people incarcerated than every other state except Texas (although its *rate* of incarceration is more moderate, hovering around the national average) (West and Sabol 2008: Table 2). California's state prison system exceeds the scale and costs of the prison systems of many nations. And California has popularized a number of punitive innovations, including determinate sentencing laws, "Three Strikes and You're Out" laws, and sex offender registries, and now the supermax (Zimring 1983: 101; Zimring et al. 2001; California Department of Justice 2009).

In looking to California, and to the specific decision to build one supermax institution, this article contributes to a growing body of socio-legal literature describing punitive trends as place-based and driven by local innovators (Barker 2009; Campbell 2011; Gilmore 2007; Lynch 2010; Schept 2013; Schoenfeld 2010; Campbell and Schoenfeld 2013). This literature has complicated

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

the idea that either harsh punishments or the broader system of mass incarceration can be understood as national phenomena. Gilmore (2007), for instance, has argued that economic pressures–especially in impoverished rural areas–combined with local tough-on-crime politics in California in the 1980s to produce the largest prison building project ever undertaken by a single state. And scholars like Schoenfeld (2010) and Campbell (2011) have argued that, in addition to tough-on-crime electorates and politicians, local prison conditions litigation and law enforcement officials, respectively, have augmented the harshness of punishment in the United States. This article adds another piece to the local innovations puzzle: demonstrating how prison bureaucrats, including wardens and mid-level administrators, have played decisive roles in shaping mass incarceration.

Methods

The supermax history in this article fits within a growing body of legal-historical literature, which re-centers the prison narrative in analyses of the civil rights movement and its aftermath (see, e.g., Chase 2015; Thompson 2010). This analysis responds, in particular, to recent calls from historians to shift the foci of prison histories from elite reformers to the people living and working inside prisons, supplementing historical documents with oral history interviews with such "insiders" (see, e.g., Goldsmith 1997; McLennan 2003).

The historical documents used here include the legislative record of prison building in California in the 1980s, which exists in the California State Archives in Sacramento, California, in the papers of individual legislators who were active in the Joint Legislative Committee on Prison Construction in the 1980s, and in the records of the limited debates over prison construction-related legislation in the 1980s. These papers include drafts of legislative bills, legislators' notes from debates about these bills, notes from legislative committees overseeing prison building, and transcripts of oral history interviews with key legislators involved in the prison building process.

To complement these data, I conducted semi-structured oral history interviews with key informants in California, including correctional employees and prison administrators (12), lawyers and judges (2), prison architects (4), and former prisoners (10), as well as dozens more informational interviews. Key informants included the 1980s Undersecretary of Corrections, the 1980s Warden of New Prison Design and Activation, four former supermax wardens, five California correctional psychologists who have

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

worked in supermaxes and supermax-like units in California, the judge who heard an early challenge to the constitutionality of supermax confinement in California, and one of the lawyers who brought that challenge, as well as current and former prison architects in California, Arizona, and the federal prison system. The interviews focused on how California's 23 new prisons were designed and built, and especially on how and why the state decided to establish 1,056 dedicated supermax beds at Pelican Bay.

In order to identify key informants for this research, I first approached (1) lawyers who had challenged conditions of confinement in California over the past three decades and (2) high-level staff in the California Correctional Peace Officers Association who had worked within the prison system over the past three decades. Through these two sources, I developed a working list of names of prison administrators likely to know about the history of prison building in California. From each administrator, lawyer, or architect I interviewed, I sought suggestions for other key informants. I verified the stories documented in oral history interviews by re-checking archival sources, as well as through relevant case law and news sources.

While oral history poses a range of methodological challenges (see, e.g., Laub 1984), the approach provides unique insights into the "subjective impressions" institutional actors develop about the "institutional logics" in which they operate (Koehler 2015: 518). In the case of the supermax innovation, the narratives are dependent on the memories and perspectives of the subjects interviewed, but these themselves become a point of analysis in this article, valuable for understanding changing perceptions of social realities (Fraser 1979: 29). As Haney did in analyzing women's prison labor, this article seeks to "shift [the] unit of analysis away from the micro- and macro-level analytic extremes" of either individual stories or neo-liberal social contexts (2010: 93), focusing instead on the intersection of individual and context in the specific institution of the supermax prison. In sum, this article constitutes a "strategic narrative," analyzing every step of the supermax innovation, from the problem of designing and building prisons quickly, to the proposed solution, to the translation of this solution into practice (Schoenfeld 2010; Stryker 1996).

By definition, this is detail-driven work; comparable work in another state about another institution might involve an entirely different set of actors making very different decisions. The broader value of the research, however, is to highlight the importance of using this kind of multi-source, administrator-focused

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

framework to think differently about how and where punitive decisions get made within complex bureaucratic processes.

Leveraging Risk Ideologies to Administer Punitive Conditions of Confinement

While subsequent sections describe how prison administrators designed and built one of the first supermaxes in the United States, with little legislative or public oversight, this section steps back to analyze the justifications prison administrators provided for avoiding implementing legislative recommendations, instead initiating a new policy of institutionalizing semi-permanent, technologically advanced, extreme isolation in California. Analyzing the justifications prison administrators provided in oral history interviews reveals the "micro-sociology of the institutional logics" within the California Department of Corrections (Koehler 2015: 518; McPherson and Sauder, 2013: 167–68), which led prison administrators to establish control over the prison building process–and to build a supermax prison.

California prison administrators referenced two key justifications for a supermax prison: (1) the existence of individual dangerous prisoners with the potential to disrupt the institutional logic of the prison and (2) the ratification of specific legislative policies with the potential to disempower prison officials. In one sense, these justifications echoed the kind of risk rhetoric Feeley and Simon describe as characteristic of the New Penology: prison administrators articulated "strategies of management" (like the need for a supermax prison) and deployed a "language of probability and risk" (about dangerous prisoners being mismanaged through legislative sentencing policy) in order to justify a new institution designed to contain large groups of dangerous offenders (1992: 459–50). But Feeley and Simon also describe the new penology's pervasive ideology of "waste management" as fundamentally de-humanizing and de-individualizing (1992: 470; see also Simon 2014). The California supermax justifications, however, reveal the close attention state prison administrators paid both to specific dangerous prisoners and to specific policies that stripped administrators of the ability to make individualized decisions about prisoner treatment.

In justifying the Pelican Bay supermax, prison administrators repeatedly referenced a particularly tense and violent period in California prisons in the early 1970s, along with the specific individuals blamed for the violence. Carl Larson, the Warden of New Prison Design and Activation for California prisons in the 1980s, who was instrumental in identifying the design for and

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

overseeing the building of the Pelican Bay supermax, described the 1970s as a decade of "violent revolution."[1] He remembered the August afternoon in 1971 when George Jackson allegedly tried to escape from San Quentin State Prison. Competing accounts of what actually happened to George Jackson have never been resolved, but the body count was indisputable: six people died (Cummins 1994). Jackson was shot and killed, two more prisoners died, and three officers were stabbed to death (Id.) Every other prison administrator I interviewed also remembered the Jackson incident. Steve Cambra, who worked as a prison guard at San Quentin in the 1970s and later as warden of Pelican Bay State Prison in the 1990s, remembered three "officers were cut ear-to-ear," and also the exact date and the day of the week of this event: "Saturday, August 21."[2] Craig Brown, who was Undersecretary of the Youth and Adult Correctional Agency (YACA) in the 1980s, similarly referenced "officers killed at the hands of inmates … in the '70s" as the central justification for the Pelican Bay supermax.[3] These prison administrators argued that individual dangerous prisoners, like George Jackson and his alleged co-conspirators, needed to be securely isolated in a supermax.[4] Prison administrators like Brown, Larson, and Cambra talked of a decades-old violent incident in vivid detail, as if it had happened the week before, compressing time as they justified the supermax.

The story of George Jackson's failed escape became a foundational narrative justifying the supermax. Prison administrators initially referenced this violent period as a justification for the supermax, and then repeatedly referred to uncontrollable violence and to the most dangerous prisoners to vindicate the ongoing importance of maintaining a supermax. For instance,

[1] Interview with Carl Larson, former Warden New Prison Design and Activation, California Department of Corrections, Sacramento, CA, Feb. 22, and Apr. 14, 2010.

[2] Interview with Steve Cambra, former warden of Pelican Bay State Prison, Sacramento, CA, April 14, 2010.

[3] Interview with Craig Brown, former Undersecretary of the Youth and Adult Correctional Authority (YACA), California, Sacramento, CA, Jan. 22, 2010. Brown worked for YACA as Deputy Secretary for Finance (1983–85) and then as Undersecretary (1987–96). YACA was the administrative agency, located within the governor's executive offices, overseeing the California prison system in the 1980s. According to Brown, YACA functioned as an intermediary between the prison system and politicians in the executive branch. Because of administrative restructuring, YACA no longer exists.

[4] According to Page, Jackson's escape attempt was also an impetus for the union of California prison guards to become more politically active. Thirteen guards resigned in the wake of the incident (2011: 25–26). Whereas Page argues that Jackson instigated grassroots political change, the oral history interviews with California prison administrators described here suggest that Jackson also became a basis for mid-level prison administrators to extend their power over both individual prisoners and categories of prisoners they labeled as dangerous.

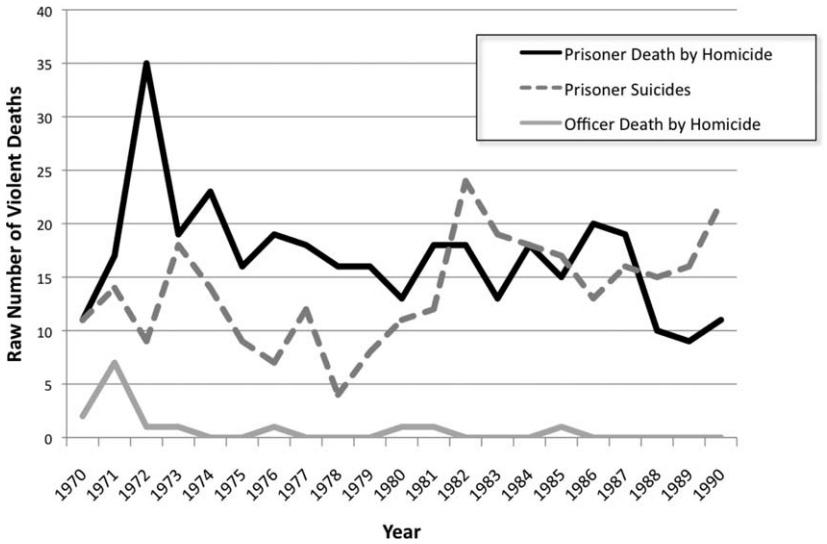

Figure 1. Raw Numbers of Violent Deaths in CDC, 1970–1990[5]

when questioned about whether supermaxes have actually controlled or reduced violence, prison administrators responded affirmatively. Craig Brown said: "We had a severe violence problem, and it got a lot better" after Pelican Bay opened.[6] In fact, based on raw numbers and rates of violent deaths in the California Department of Corrections (CDC), the severe violence problem actually "got a lot better" in 1976, 10 years before Pelican Bay (or the massive prison building project of which it was a part) was even imagined.[7] Figure 1, above, shows the number of prisoners who died annually by homicide, prisoners who committed suicide, and correctional officers who died by homicide in every year from 1970 through 1990. Figure 2, below, shows the rate of annual violent deaths, per 10,000 prisoners. These graphs indicate a dramatic increase in violent deaths in the CDC in the early 1970s. But from 1976, both the raw numbers and the rates of violent deaths in the CDC *decreased* annually.

Even if officials like Brown knew that violence was decreasing in the later 1970s, they might have still argued for a supermax, in case violence increased again. Following George Jackson's

[5] Statistics compiled by author from a combination of publicly available documents and archival reports. Raw numbers and specific sources available upon request.

[6] Interview with Craig Brown, *supra* note 3.

[7] In 2003, the California Department of Corrections changed its name to the California Department of Corrections and Rehabilitation. Because this article mostly concerns departmental history prior to 2003, I use the former name: CDC.

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

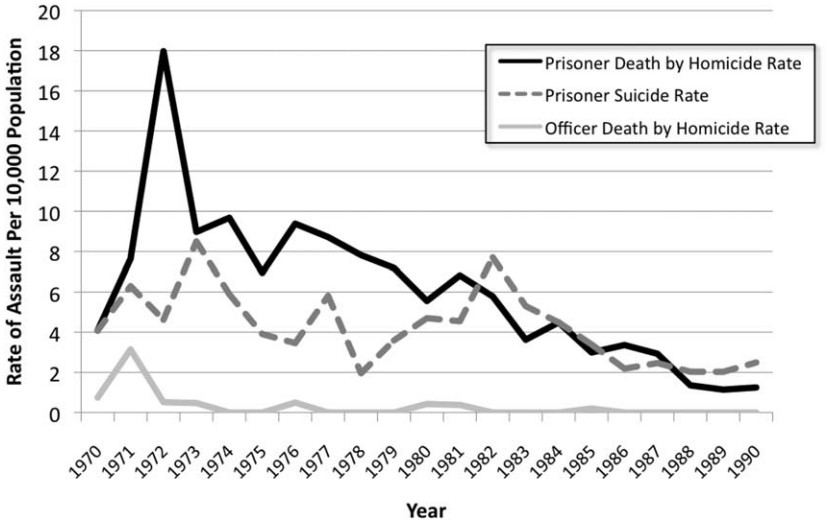

Figure 2. Rate of Violent Deaths in CDC, 1970–1990[8]

death, they had already initiated the agenda of maintaining some prisoners in long-term solitary confinement, which might have made alternative policies seem less viable or lucrative, in a pattern of path dependence (Pierson 2002). In sum, prison officials might well have had a legitimate fear of violence, which might not have abated by the 1980s. Whatever the initial justification was for the supermax, however, prison administrators repeatedly argued that it successfully reduced violence, but provided little evidence to justify this claim. Administrators like Brown might argue that Pelican Bay impacted other measures of violence, like rates of assault, but the CDC has never collected data with which to establish this claim (Reiter 2015).

Scholars of risk have documented this phenomenon of risk assessments being driven by institutional logics (like perceptions of past danger) rather than scientific processes (like evidence of ongoing danger) (Hannah-Moffat 2005: 38). In the case of California, however, prison administrators leveraged risk assessments not only to cultivate an institutional logic justifying the supermax, but also to defend the supermax against legal and public critics attempting to limit administrators' discretion in designing and operating the supermax. When prisoners and their advocates challenged the constitutionality of conditions in Pelican Bay, in the years immediately after the facility opened, prison administrators argued that the harsh conditions were necessary "to maintain

[8] Statistics compiled by author from a combination of publicly available documents and archival reports. Raw numbers and specific sources available upon request.

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

the safety and security of both staff and inmates" (*Madrid v. Gomez* 1995: 1159–60). While the *Madrid* court found that officers had abused prisoners in Pelican Bay, and ordered reforms on this basis, the court did not find that isolation conditions in the supermax were, by themselves, unconstitutional. According to the *Madrid* court, Pelican Bay housed "some of the most anti-social and violence-prone prisoners in the system" (Id. at 1160). But neither prison administrators nor the court presented any data about how anti-sociality or violence-proneness was defined, nor about how many prisoners in the Pelican Bay supermax met this definition (Reiter 2015). Despite the *Madrid* litigation, prison administrators maintained near-total control over who was sent to the supermax, for how long.[9]

Between 2011 and 2015, prisoners and their advocates brought the first sustained challenge to the constitutionality of the conditions in the Pelican Bay supermax since the *Madrid* litigation in the 1990s. Prisoners inside the supermax coordinated a series of statewide hunger strikes to protest the extremely harsh conditions of confinement in which they had lived for decades, and they brought a federal class-action case to challenge the harsh conditions and long durations of isolation they had experienced (Reiter 2014aa). As they had in justifying the supermax in the 1980s, and in defending it in the 1990s, prison administrators responded to the new challenge to the supermax with rhetorics of risk about both categories of dangerous prisoners and specific, dangerous individuals. "[T]hey are terrorists," a correctional department spokesperson said to the Los Angeles *Times* of the organizers of the 2013 hunger strike (St. John 2013). In a *Times* Op-Ed several weeks later, Jeffrey Beard, California's Secretary of Corrections, described the prisoners leading the hunger strike as "convicted murderers … putting lives at risk to advance their own agenda of violence" (2013). As in the initial justifications for the supermax, and the defense of the institution deployed in the *Madrid* litigation, little evidence sustained Beard's claims about risk. In fact, the majority of the prisoners Beard alleged had advanced "their own agenda of violence" would be assessed as eligible for housing in the general prison population, and released from isolation, under a settlement agreement reached in 2015 (*Ashker* Settlement).

Larson, Cambra, Brown, Beard, and the Los Angeles *Times* all deployed risk narratives about both specific dangerous prisoners–from George Jackson to the leaders of the 2011 and 2013

[9] The *Madrid* court excluded only prisoners with pre-existing mental illness from supermax confinement in the Pelican Bay SHU and placed no restrictions on how long a prisoner could spend in isolation.

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

hunger strikes–and categories of dangerous people, even in the absence of data on which to base this rhetoric. The ongoing salience of George Jackson's failed escape attempt in justifying the initial need for a supermax, along with the oft-repeated motifs of the "most violence-prone prisoners" and "terrorists" justifying the ongoing need for the supermax, reveals a key institutional logic underwriting the California supermax: a rhetoric of risk mingling references to categories of dangerous people with a foundational narrative about specific dangerous prisoners.

In addition to uncontrollable violence, prison administrators provided a second risk-based justification for the Pelican Bay supermax. In the 1980s, when prison administrators like Carl Larson designed Pelican Bay, they were concerned that the legislature had too much control over the duration of terms of incarceration in the state, thanks to a new determinate sentencing law (DSL) implemented in 1976. Prior to 1976, convicted felons in California were sentenced to an *indeterminate* range of years in prison, such as one-year-to-life. Parole boards determined actual time served, often by relying on prison officials' reports about prisoners' behavior and progress. The DSL, however, imposed fixed terms on convicted felons. As a result, prison administrators lost both individual and institutional management tools: administrators could no longer threaten misbehaving prisoners with bad reports to the parole board, nor could they relieve overpopulation pressures by working with parole boards to release well-behaved prisoners from overcrowded prisons.

Carl Larson explained that, to his perception, DSL fundamentally shifted the balance of punishment power away from prison administrators: "If I was going to rank things, I would say this is a deathblow … with an indeterminate sentence, you have a back door to the prison system." Larson elaborated: "On an armed robbery, five-to-life sentence, you could spend 2.5 years in prison and 2.5 years on parole, or you could do the rest of your life, if you sodomized littler prisoners, had knives, joined a gang."[10] Larson emphasized that the supermax was a new tool to control conditions of confinement and to deter bad behavior. And he justified the necessity of the supermax with reference to the importance of both (1) individualized risk assessments (prison officials should decide the length of sentence, based on individual records of in-prison behavior) and (2) categorical risk assessments

[10] Larson Interview, *supra* note 1. Ultimately, the changes in lengths of sentences associated with DSL produced a massive increase in California's prison population; specific sentencing provisions within the law shifted who was being sent to prison, increasing the number of drug offenders and nonviolent property offenders with prison sentences (Zimring and Hawkins 1992).

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

about groups of dangerous people like sex offenders (those who "sodomized littler prisoners") and those who "joined a gang."

Ironically, administrators like Larson, concerned by their loss of control over indeterminate prison sentences, developed a new system of indeterminate assignment to harsh conditions of confinement: a discretionary "validation" process for assigning prisoners to the Pelican Bay SHU, based on putative gang affiliations. Until 2013, any three pieces of evidence (such as a tattoo, a letter, reading materials, or observed interactions on a prison yard), collected in a prisoner's file and presented at a closed, administrative hearing run by prison officers, could serve to "validate" a California prisoner as a gang member. Validated gang members were eligible for indeterminate terms in the Pelican Bay supermax (Reiter 2012b). Not only did prison bureaucrats craft the justifications for–and the design of–the Pelican Bay supermax, they wrote and enforced the policies governing when prisoners would be confined in the supermax.

In justifying the supermax, prison administrators were especially concerned with both individual dangerous prisoners, like George Jackson, and with disempowering legislative initiatives, such as DSL, that limited their ability to make individualized punishment decisions. These administrators blended ideologies of risk (see also Lynch 1998; Hannah-Moffat 2005) as they defended the need for a supermax in California. And they continued to leverage these blended risk ideologies to resist critiques of the supermax they built, and to maintain the discretionary authority they first feared losing under DSL.

In the early 1980s, however, when administrators like Carl Larson and Craig Brown first started thinking about building a supermax, they did not have the administrative authority to build a brand new, extremely restrictive prison to their own specifications. They only gained this authority–to design and impose, rather than simply implement new policies–over the course of the prison-building boom in California.

Consolidating Administrative Discretion

Between 1984 and 1996, California built 23 new prisons–in order both to modernize decrepit facilities from the nineteenth century and to hold increasing numbers of people serving longer sentences (Gilmore 2007; Reiter 2012a: 108; Zimring and Hawkins 1992). Each new prison held one thousand or more prisoners. Building two massive prisons per year for 12 years required maximally efficient decision-making about where and what to build. In the process of establishing mechanisms to implement

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

this building project, legislators gradually ceded authority over prison design and conditions to prison administrators. This ultimately allowed prison administrators to design and build the new Pelican Bay supermax they had so carefully justified through the blended risk ideologies discussed above, instead of implementing existing legislative recommendations.

At first, prison administrators had limited tools with which to respond to legislative and gubernatorial pressure to build prisons fast.[11] Craig Brown recalled: "Budget and schedule were the only two important commodities," because then-Governor Deukmejian "wanted prisons built." When Brown oversaw his first prison-building project in Vacaville, not far outside of Sacramento, the state capital, he prioritized getting the prison built in a year, "proving it could be done." To do this, Brown had lime added to the muddy soil of the prison's foundation, at a cost of a quarter-million dollars, so that construction could continue uninterrupted through the rainy season. And he had wooden doors installed at the last minute, painting them to look like the steel doors that would eventually be installed.[12] This story sets the stage for understanding the power shifts that would ultimately occur as Brown and other administrators oversaw the building of 22 more prisons in California. First, administrators like Brown were integral to developing the mechanisms that accelerated prison-building in California. Second, many of these mechanisms–like the wood doors painted to look like steel–lacked transparency. Efficiency often obfuscated what decisions prison administrators made, and how much they controlled both prison design and conditions.

Voter-approved general obligation bonds funded the first few new prison projects Brown oversaw. These bonds were, themselves, a work-around to improve the speed with which prisons were built. Senator Presley, who created the Joint Legislative Committee on Prison Construction and Operations (JLCPCO) in 1982, and served as its chair for the next 10 years, explained that he first suggested general obligation bonds as a means to fund prison construction, because he was frustrated with the Assembly Ways and Means Committee's refusal, in the late 1970s, to

[11] *See* Patrick Ettinger, *Oral History Interview with Honorable Robert Presley, California State Senator, 1974–1994, Agency Secretary, Youth and Adult Correctional Agency*, 1999. California State University, Sacramento. California State Archives, State Government Oral History Program, Dec. 18, 2001, April 17, 2002, July 18, 2002, June 5, 2003: 116 (describing the speed with which both Governor Deukmejian and Senator Presley expected prisons to be built).

[12] Interview with Craig Brown, *supra* note 3.

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

allocate funding to prison building.[13] General obligation bonds conveniently transferred the budget allocation from resistant Assembly Members to compliant voters. Even more conveniently, California law exempts public debt incurred through voter-approved general obligation bonds from the state's constitutionally required balanced budget calculations (Gilmore 2007: 97). These general obligation prison bond ballot measures succeeded at the polls three times: in 1982 ($495 million), 1984 ($300 million), and 1986 ($500 million) (Algar and Molinari 1987: 8).[14] By the mid-1980s, though, criticisms of these multi-million-dollar bond measures surfaced; the measures were ultimately replaced with an even more efficient, even less transparent funding process.[15]

Legislators and prison administrators turned instead to "lease-revenue bonds," created through a less public process than general obligation bonds. First, a California investment bank worked in collaboration with Governor Deukmejian, Senator Presley, and other elected leaders of the prison construction projects to establish lease-purchase agreements between private funders and the Public Works Board (Gilmore 2007: 98). California then used the lease-purchase funds to build state prisons. Once facilities were built, the legislature appropriated funds, so the CDC could make "lease" payments to the private funders. The state takes title to a facility only when the lease-revenue bonds are fully repaid (Mattera 2004; Pranis 2007: 37). In California, these lease-revenue bonds are not backed by "full faith, credit, and taxing power" repayment guarantees of general obligation bonds (Alger and Molinari 1987: 6; Gilmore 2007: 98). Because of the decreased guarantees of repayment, the debts required higher interest payments to investors, to compensate for the higher risk. Moreover, these riskier, more expensive bond investments were created by a legislative sub-committee and issued by the Public Works Board, without the general election voter approval required for general obligation bonds (Gilmore 2007: 100–01).

Although California never privatized its entire state prison system (Page 2011: 137–59), legislators did privatize the process by which the system was funded. Scholars have noted the

[13] Ettinger, *supra* note 11: 53-4.

[14] In addition to the January 1982 bond measure for $495 million, voters approved a November 1982 bond measure for $280 million, for local jail, rather than state prison construction.

[15] First, legislators feared a tax revolt along the lines of Proposition 13, which had eliminated property tax increases and constrained the issuance of general obligation bonds (Gilmore 2007: 97; Mattera 2004). Second, legislators feared that assuming too much general obligation bond debt would jeopardize the state's strong municipal bond ratings (Alger and Molinari 1987). Indeed, as of 2000, California's once-strong municipal credit rating had fallen (Mattera 2004).

increasing privatization and profitability of carceral industries across the United States, beginning in the 1980s (e.g., Gilmore 2007; Haney 2010; Domanick 2004), as well as the transparency problems associated with prison privatization (e.g., Aman 2005; Tartaglia 2014). The history of prison-building in California, however, reveals another collateral consequence of piecemeal privatization, and its associated decrease in transparency: it was a critical step in the process of limiting legislative (and public) oversight and expanding administrative control over prison design and conditions. In fact, Craig Brown, the prison administrator who oversaw the building of the first of California's 23 new prisons, explained that he helped to negotiate the system of lease-revenue bonds so that "we got to do what we wanted" with the money.[16]

At California's Youth and Adult Correctional Agency, Brown worked closely with Senator Presley's JLCPCO to design and implement procedural exemptions to accelerate prison-building in California. According to Brown, until 1983, the General Services Office in California had had the final say over prison building; the California Department of Corrections was simply a customer of this building-and-budgeting arm of the executive branch. As part of the process of creating the JLCPCO, Senator Presley implemented a direct bridge between the legislature and the CDC, bypassing the usual intermediary, the Office of General Services (Gilmore 2007: 94). Brown took credit for this bypass.[17] Within the next few years, he would also see the lease revenue bond system implemented. And this was only the beginning.

In a 1986 report assessing the "New Prison Construction Project at Midstream," the Legislative Analyst's Office (LAO) enumerated the special exemptions that had been granted to the CDC by Presley's JLCPCO, including allocations of funding to the CDC based on "general specifications for each proposed prison." These proposals specified little more than general location, security level, and expected bed count. The LAO Report further noted that decisions about both location and design of new prisons would have significant economic effects, ranging from the allocation of land-use rights and the costs of varied prison staffing

[16] Brown Interview, *supra* note 3. Gilmore describes lease-revenue bonds for prison-building as a legislative creation, but my interview with Craig Brown suggests that the bonds resulted from legislative-administrative negotiations.

[17] Brown Interview, *supra* note 3.

levels to the overall tone of prison management policies. The legislature not only relinquished control over these substantial policy decisions; it also "provided the Department of Corrections with extraordinary delegations of authority and exemptions from existing law," including exempting the CDC from requirements for environmental review by independent agencies, from supervision by the Office of State Architect Design, and from following a streamlined process in selecting construction consultants.[18] By 1986, the legislature had little influence over either the exact location of new prisons, or the design of facilities.

As the JLCPCO continued to "oversee" prison construction in the second half of the 1980s, it also increased the procedural exemptions available to the CDC. For instance, in 1986, Presley sponsored Senate Bill 2098. Along with a provision that extended the life of the JLCPCO for another seven years (through 1993), the bill provided for a modification to the prison construction plan approval process: adding a legislative review of suggested prison construction 30 days before any hearings would be held. The bill also provided for 45 days, instead of 30, for the Committee to review construction plans post-hearing. Crucially, however, approval was automatically assumed if the Committee did not notify prison administrators of any objections within 45 days.[19] The bill thus created *default* legislative approval of construction plans–another exemption from normal oversight.

In sum, pressure to build prisons quickly justified (a) suspending a variety of legislative rules governing state building processes and (b) designing workarounds that bypassed various oversight mechanisms. These suspensions and workarounds shifted the balance of power among actors in what Page has called the California "penal field," or the set of orientations, values, and actors affecting punishment (2013: 10–11). Through the 1980s, some actors in the penal field, including the public, legislators, and the JLCPCO, steadily lost control over prison conditions, while prison administrators gained control over prison conditions, becoming penal policy initiators, rather than implementers. In a sense, a colloquial "state of exception" resulted, in which the normal rules of legislative and public oversight no longer applied, and prison administrators were free both to

[18] Keller, Richard, under the supervision of Gerald Beavers (1986), *The New Prison Construction Program at Midstream*. Sacramento, CA: Legislative Analyst's Office: v, 10–13.

[19] Senate Bill 2098 (Presley, California). California State Archives, Loc: LP220: 30–79; LP228:57–114; LP347:1–347–Robert Presley Papers–Bill File on SB-2098. (1986).

build new prisons and to design newly punitive conditions of confinement.[20]

Craig Brown summarized the state legislature's role in prison construction projects: "You're not going to find much in the record; it was all negotiated [off the record], and we [YACA] pretty much had our way with the legislature."[21] The legislative history of Pelican Bay State Prison, therefore, reveals little of the decision making process.

Role Reversal: Administrators Initiate and Legislators Rubber Stamp Penal Innovations

By the time administrators like Craig Brown and Carl Larson conceived of the Pelican Bay supermax, the suspended rules described in the prior section not only facilitated avoidance of legislative oversight of prison design, but also allowed prison administrators to disregard legislative recommendations regarding prison-building. So prison administrators faced few real obstacles in implementing the newly punitive prison conditions envisioned for the Pelican Bay supermax. A thorough review of state legislative archives in Sacramento revealed only four bills mentioning anything about a prison in Del Norte County, where the Pelican Bay supermax would ultimately be built.[22] None of these four bills engaged substantively with any details of design, or conditions in the planned facility. And Pelican Bay is not specifically mentioned in existing oral history interviews with either State Senator Barry Keene, who authored two of the first bills dealing with the prison, or State Senator Robert Presley, who

[20] Schmitt first explored the idea of a "state of exception" in his writings on sovereignty and political theology; he argued that the "unlimited authority" to institute a state of exception, or "a suspension of the entire existing order," was the defining characteristic of sovereignty (1933: 12). This state of exception was not necessarily a lawless state, or a system of pure violence, but rather "the suspension of law could be used for legal ends" (McLoughlin 2013: 2). While California prison administrators negotiated a kind of suspension of the law, and used these suspensions to create new, but fundamentally legal, institutions, the analogy to the Schmittian state of exception is imprecise. A Schmittian state of exception requires the declaration of a state of emergency, by a sovereign. Although California prison officials pronounced the existence of many urgently dangerous circumstances in the California prison system in the 1970s and 1980s, they did not hold the sovereign authority to declare a state of emergency, nor was such a state of emergency declared in that period.

[21] Brown Interview, *supra* note 3.

[22] Del Norte County, on California's border with Oregon, was then the second poorest county in the state. In 1986, the county had a 25 percent unemployment rate, and the median income was 57th out of 58 counties (Senate Bill 1222 Assembly Comments 1986).

chaired the JLCPCO.[23] The new oral history interviews with prison administrators I conducted in the course of researching this history complement the scant legislative record about Pelican Bay and reveal just how much control administrators had over prison conditions in California by 1986.

Senate Bill 95, proposed by State Senator Barry Keene in July 1985, was the first piece of legislation to address a prison in Del Norte County. SB 95 neatly summarized the broad discretion CDC officials like Craig Brown had over prison design decisions by 1985: the bill authorized CDC to do everything from purchasing land in Del Norte County to designing floor plans and hiring construction agencies to erect the buildings. Efficiency prevailed; the Senate and Assembly unanimously approved SB 95.

Two months later, in September 1985, another bill provided for yet another exemption for the proposed Del Norte prison. Senate Bill 253 exempted the prison from the California Environmental Quality Act, permitting an alternative environmental assessment study, conducted by the CDC itself, to be approved by a local public works board, prior to purchase of the land on which the prison would be sited. Again, pressure to build prisons fast justified overriding existing protocols.

Once SB 95 and SB 253 passed the legislature, prison administrators had the authority to select not only a site, but a design for California's next prison in Del Norte County. In 1986, Carl Larson had just been promoted to finance director (his title was officially Warden of New Prison Design and Activation), replacing Craig Brown, who was promoted to Undersecretary of the correctional system. Within CDC, Larson faced intense pressure to design and open a new, high-security prison immediately. Federal courts had ordered CDC either to release prisoners from the existing San Quentin and Folsom isolation units, or move prisoners to alternate facilities with constitutionally adequate lighting, outdoor exercise areas, and shower access (*Toussaint v. McCarthy* 1984).

So Larson asked his staff to "identify every maximum security and lock-up the U.S. built in the last 10 years." He would visit each one, synthesize the best practices, and design the ideal facility for California. On the last stop on his U.S. prison tour, Larson found the perfect prison, the first modern supermax: the Security Management Unit (SMU) I in Florence, Arizona. "It was the

[23] *See* Carol Hicke, *Oral History Interview with Barry Keene, July 7–Sept. 16, 1994*. Sacramento, CA: California State University, California State Archives, State Government Oral History Program, http://www.archive.org/details/barrykeeneoral00keenrich (accessed 29 Oct. 2010). Keene likely sponsored the bills for geographic reasons; he represented the district in which the prison would be built.

prototype for Pelican Bay," Larson said.[24] A technological feat, the SMU I imposed more restrictive conditions of isolation on more people than any other prison previously built in the United States.

On one interpretation, the prison Larson saw in Arizona was simply the most technologically advanced prison on the market. There were so many technological innovations in the Arizona supermax that one prison architect said: "I think these are the kind of facilities that could almost be patented."[25] As Lynch has documented, prison administrators often exchange technological ideas, especially those oriented toward security, at professional meetings and through professional publications (2002). However, the careful justifications deployed in initially explaining the need for a supermax, and defending it against critics over decades of litigation, suggest that the technological novelty of the Arizona supermax was only one element in its appeal to Carl Larson and other California prison administrators; its ability to isolate harshly and totally was its other major appeal.

Once Larson chose the design for the Del Norte County prison, he methodically ensured that key players within CDC agreed with his design decision, *before* the legislature learned of its details. Larson remembered: "I took Don Novey and some of the union leaders down there [to the Arizona supermax on which Pelican Bay was modeled] to look at it, got their buy-off." (This would have been in 1985 or 1986, before the California Correctional Peace Officers union gained the political influence they would claim by the end of 1980s, as detailed by Page in *The Toughest Beat* (2011)). Then, Larson charged Craig Brown with obtaining the "buy-off" from both Senator Presley and Governor Deukmejian. Larson recalled that the legislature struggled only briefly with the idea that the Pelican Bay design was single-purpose: the prison could never be anything but a supermax, keeping people in total isolation, without direct human contact or access to any educational or treatment programming–or, it turned out later, adequate healthcare (*Madrid v. Gomez* 1995). Larson recalled describing the Pelican Bay supermax as "Spartan" rather than "Draconian."[26] Richard Kirkland, who was in charge of the Pelican Bay construction project and who presented the final Pelican Bay design plans to the JLCPCO for sign-off, remembered that when he presented the final supermax plan, the Committee was much more concerned with the

[24] Interview with Carl Larson, *supra* note 1.

[25] Phone interview with anonymous justice architect, Feb. 4, 2011.

[26] Interview with Carl Larson, *supra* note 1.

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

environmental impact of the prison–"Where would the sewage go? How many trees would be cut down?"–than they were with the actual details of its design.[27]

Only hints of these conversations between Brown, Larson, Kirkland, Deukmejian, and Presley remain in California's legislative record, in the few notes appended to Senate Bill 1222, the third bill to mention a prison in Del Norte County. SB 1222 and its associated "comments"–the summary recording of the debate about the bill on the legislative floor–constitute the sole public record of legislators' engagement with the proposed new prison in Del Norte County. There is no indication that they knew the facility would be a supermax–only the second in the United States. And there is no evidence in the record that any outside interest groups knew about, or commented on, the proposed facility.

Senator Keene proposed SB 1222 in August of 1986. The bill sought to provide the final authorization for the construction of the 2,000-bed "maximum security complex in Del Norte County," to be funded with up to $325 million in lease-purchase revenue bonds. Within the span of a year, the CDC (under the direction of Carl Larson) had conducted all the necessary environmental assessments, purchased the requisite land, amassed the necessary funds through the lease-revenue process, and drawn blueprints for the Del Norte prison.

According to SB 1222, "up to half of the facility" *could* be used "for special cases."[28] But "special cases" were not defined; there was no reference to the institutional design that would be used to manage them. Assembly Comments about an earlier draft of the bill criticized the phrase "special cases" as "a term undefined" and queried whether the term referred to "lock-ups," or to something else. These same Assembly Comments also criticized both the expedited process and the broad discretion granted to the CDC in planning the Del Norte prison. Specifically, the Assembly questioned the exemption of the Del Norte site from the independent environmental review process (as per SB 253): "Given that a prison is a major public institution with an expected life span of a century, should there be some independent review of its planning?" The comments reference both the absence of management details in the legislation–"the bill contains no per-cell cost ceilings or staff ratio targets," which would help to establish construction and operation costs–and the

[27] Interview with Richard Kirkland, former Project Director for Pelican Bay State Prison Construction Project, Sacramento, CA, Sept. 9, 2014.

[28] Senate Bill 1222 (Keene, California). Leg. Gen. Sess. (1986) (enacted). Assembly Comments to the Third Reading Comments, Jun. 30, 1986. Enacted Aug. 13, 1986.

absence of adequate details provided by administrators–"the CDC has not settled upon a site," nor "completed the feasibility study required by last year's legislation."[29]

Notably, the Assembly Comments emphasized the process by which the CDC was designing and seeking approval of the Del Norte facility plans, rather than addressing the design itself. The comments contained only one vague reference to the mission of the proposed institution; the eighth comment asked: "Why only maximum security?" Under this heading, the comments reference conditions at San Quentin and Folsom (which had been condemned by a federal court in the *Toussaint* case) as evidence that concentrating high-security prisoners in one institution creates management problems. The comments further suggested two possible resolutions to the management problem of concentrated, high-security prisons: either lower-security facilities should be strategically located near higher-security facilities, so that prisoners could be easily moved between security levels, or multi-security-level facilities should be built, so that prisoners could "work their way through lower custody levels," without incurring high transportation costs between facilities.[30] These comments ultimately affected neither the substance of SB 1222 nor the design plans of CDC administrators, but they were representative of a broader trend of legislative attention to what kinds of prisons California should be building.

In legislative hearings regarding violence in the CDC in the early 1980s, prisoners, experts, and legislators alike criticized the existing use of long-term isolation in the state's oldest prisons, San Quentin and Folsom; legislators considered a variety of alternatives.[31] University of California, Santa Cruz professor and psychologist Craig Haney, for instance, testified in a hearing about

[29] *Id*. at 2–5.

[30] *Id*. at 4.

[31] *See, e.g.*, *Violence at Folsom* 1985; Thomas W. Hayes, *A report of an audit of security measures at two California prisons* (State of California, Office of the Auditor General, March 14, 1986), Sacramento: California State Archives AN: 2003-029, Joint Committee on Prison Construction and Operation Subject Files, Hearing Files 1981–1999, Loc: B4181–2907 (Box 1 of 2), copy on file with author (containing specific recommendations on isolating and consolidating prisoners in the Security Housing Unit from Folsom, at 155); Daniel J. McCarthy, "Response to: A report of an audit of security measures at two California prisons (California Department of Corrections, Mar. 1986), Sacramento: California State Archives AN: 2003-029, Joint Committee on Prison Construction and Operation Subject Files, Hearing Files 1981–1999, Loc: B4181–2907 (Box 1 of 2), copy on file with author (responding to recommendations on isolating and consolidating prisoners, at 44-45); *Anatomy of a Prison, Folsom: Examination of Selected Operational, Policy, and Fiscal Questions Affecting California's Prisons Today*, Special Report (Joint Committee on Prison Construction and Operations Publication, 1990), California State Archives AN: 2003-029, Joint Committee on Prison Construction and Operation: Subject Files, Hearing Files 1981-1999, Loc: B4181–2907 (Box 1 of 2), copy on file with author (referencing frustrations with prison litigation).

violence at Folsom Prison that the CDC had avoided major riots by adopting "a strategy of isolating and segregating inmates and using force and a kind of intimidation to keep them under control." But, he said, such practices come at "a great cost" (*Violence at Folsom* 1985: 30). Lewis Fudge, a consultant to the JLCPCO, agreed with Haney in a report he submitted to the Committee. Fudge recommended that the CDC "dispense with the failed notion that … segregation units and prolonged lockdowns are effective long-term means of control" (Id. at A-30). Ironically, these were exactly the conditions prison administrators planned to impose in the Del Norte prison under consideration in SB 1222, although legislators like Senator Keene seemed surprisingly unaware of this plan's details.

While administrators were planning the Pelican Bay supermax, which would institutionalize the very isolation conditions at Folsom that Haney and Fudge condemned, legislative analysts were busy drafting reports detailing alternatives. In recommendations prepared in response to the hearings about violence at Folsom, the Senate Office of Research suggested improving education programs, preparing prisoners to return to their communities, and providing more jobs for prisoners inside (Id. at iii-vii). Joe Marquez, former warden of the California State Prison at Tehachapi, emphasized the need to involve prisoners in prison operations: "Unless we start dealing with inmates as people … let them know that we care and make a point to learn what their concerns are and try to address them, let them have a part in the decision making … we're going to stay like we are from now on" (Id. at 82). James Austin, from the National Council on Crime and Delinquency, proposed further policy reforms: early release; limited lock-up for gang members; and open communication channels between prisoners, line staff, and upper-level management in the prisons (Id. at 86-88). Each suggestion directed legislators to consider *alternatives* to the kind of long-term isolation facility prison administrators were planning in Del Norte County.

The same year the California Legislature approved the building of a prison in Del Norte County, they also passed Stirling's Assembly Bill 277, which established the Presley Institute of Corrections Research and Training (named for Senator Presley, chair of the JLCPCO): a "public think tank, structured to study, understand and recommend solutions" to crime, incarceration, and prison violence problems.[32] The establishment of the Presley

[32] The Presley Institute was later absorbed by the University of California Riverside, becoming a research center that still exists today.

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

Institute provides further evidence that California legislators were far from uninterested in questions of prison design and operation.

Nonetheless, in an effort to build prisons fast, legislators suspended so many oversight rules and mechanisms that prison administrators were able to design the prisons they wanted, rather than the prisons legislators imagined. And so SB 1222 ultimately passed–unanimously–with no major revisions to its vague language, to the expedited and discretionary approval process, or to the proposed "special cases" and "maximum security" mission of the Del Norte County facility. Legislative critiques of the CDC's plan, like those in the Assembly Comments, were futile.

While Assemblyman Stirling might have been disappointed by the legislature's lack of influence, Senator Presley did not mind as much. Recalling the peak prison building years and his role as Chair of the JLCPCO, Presley said he "should have left off 'operations'" from the JLCPCO's name, because "most of our time during that period was spent over-sighting construction, because that was the big problem."[33] While Presley argued that he focused more on prison construction than on operations, even his focus on construction was limited. Moreover, other legislators, like Stirling, disagreed with Presley and believed that both construction and operations deserved more legislative attention. Indeed, the design and implementation of punishment practices, unlike the design and implementation of schools and hospitals, has traditionally been addressed by state or federal legislators and overseen by state or federal courts–as in California's own history, wherein legislators held hearings to examine prison conditions and courts intervened to order improvements, as in the *Toussaint* case.

Based on Larson's and Kirkland's descriptions of the sign-offs they sought for the Del Norte prison design, and critical questions appended to proposed legislation like SB 1222, Presley certainly had some idea that Pelican Bay would be a high-tech, high-security prison. He likely even supported specific plans for the facility. However, based on the 1980s record of legislative hearings, reports, and debates over the bills authorizing new prisons, other legislators likely would have had questions and concerns, which they never had a chance to raise.

The final bill in the California legislative archives that discussed the Del Norte prison replicated the same superficial legislative oversight of prison design and conditions. Senate Bill 1685

[33] Ettinger, *supra* note 8: 65.

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

(1988) addressed the name of the new prison. While most of the 23 prisons authorized by the state legislature and constructed by the CDC prison administrators in the 1980s and 1990s have functionalist names, indicating either the counties or towns in which they are located or the mission of the institution, the Del Norte County prison inspired more legislative creativity. SB 1222 had designated an initial name for the Del Norte facility: "Prison of the Redwoods." Two years later, SB 1685 re-designated the institution: "Pelican Bay State Prison."

The Conference Committee notes on Senate Bill 1685 refer to an apparently flippant discussion about possible names, including: "Slammer by the Sea," "Dungeness Dungeon," and "Casa No Pasa." The Committee notes assert that the latter two names "have no official dignity," but record that legislators reserved the right to refer to the institution as the "Slammer by the Sea."[34] This jocularity, including a reference to a "name that prison contest," suggests that legislators were aware that the Del Norte prison would be somehow different and special. Furthermore, references to "dungeons" and "houses that no one could leave" suggest that legislators were aware that the conditions in this prison would be extreme. But references to any such legislative knowledge are oblique at best, and, again, there is *no* record of formal legislative engagement with the specifics of institutional design.

Other scholars have equated gubernatorial and legislative rhetoric around prison building with actual oversight of prison conditions. For instance, Gilmore argued that the JLCPCO played a significant oversight role in the prison building process. By requiring public hearings for approval of prison construction projects, Gilmore explained, the JLCPCO kept the CDC's prison-building projects in the public eye, providing "a highly visible platform to promulgate dire projections about an imminent prison overcrowding crisis" (Gilmore 2007: 94–96; *see also* Gottschalk 2009: 453). Gilmore and Gottschalk are correct that prison construction in California remained high-profile news throughout the 1980s. Every two years between 1982 and 1986, voters were asked to approve multi-million-dollar general obligation bond measures intended to fund new prisons. And some of the proposed sites for new prisons raised great controversy; for instance, Los Angeles residents fought for years to prevent a prison from being sited within the city limits. In northern California, courts

[34] No legislative record references who proposed the name Pelican Bay, or the fact that the name echoes that of Alcatraz (once the U.S. federal government's highest security prison, located on an island in San Francisco Bay, operating from 1934–1963), an archaic Spanish word for "pelican."

continued to hear cases challenging the conditions of confinement, especially at Folsom and San Quentin (see, e.g., *Toussaint v. McCarthy* 1984). Meanwhile, the CDC and legislature both projected that prison populations would continue to grow, based on sentencing changes implemented in the 1970s.[35] But public attention was really focused on the scale and rate of incarceration, and there was little attention to the new *conditions* of confinement prison administrators were designing.

Even when Governor Deukmejian attended the grand opening of Pelican Bay in 1990 (a few months after the prison accepted its first occupants in December 1989), he focused on California's need for an ever-bigger prison system, not on the specific conditions of confinement in the brand new, extremely high security prison. Deukmejian defended costly and restrictive imprisonment wholesale: "While we were trying to 'understand' these criminals, California's crime rate soared … The number of major crimes quadrupled. By 1980, one in every 25 Californians was robbed or beaten, raped or murdered, their homes burglarized or their car stolen." In its story covering this speech, the Los Angeles *Times* noted that the governor had already overseen the doubling of California's prison population (from 24,000 to 51,000), and the building of 10 new prisons. At the Pelican Bay dedication, Deukmejian encouraged the building of even more prisons; Los Angeles residents should be more cooperative and welcoming toward prisons, he said, as residents of Del Norte County had been toward Pelican Bay (Weintraub 1990). But Deukmejian said nothing about Pelican Bay's newly harsh conditions of confinement.

Even prison conditions watchdogs in California knew nothing of the conditions of confinement at Pelican Bay–until they started receiving letters from prisoners housed there. Steve Fama, an experienced prisoners' advocate who had litigated unconstitutional conditions of confinement throughout California, in cases like *Toussaint*, remembered he only heard about Pelican Bay after prisoners were already living there.[36] Judge Thelton Henderson, who would later oversee the *Madrid* litigation challenging the conditions of confinement at Pelican Bay, first heard about the prison when he began receiving *pro se* legal petitions filed by Pelican Bay prisoners, alleging seriously unconstitutional conditions

[35] Zimring and Hawkins (1992) argued that these projections were based on false premises and were exaggerated–arguably too late and too quietly.

[36] Interview with Steve Fama, attorney with the Prison Law Office and co-counsel in the *Madrid v. Gomez* case, Berkeley, CA, Oct. 13, 2010.

at the institution.[37] Not only was there little oversight of the Pelican Bay design process, but the unusual conditions at the prison went unnoticed, at least at first, by the governor, by legal advocates, and by judges in California.

Prison administrators designed an exceptionally punitive institution, in spite of legislative and judicial critiques of exactly this kind of institution. In the end, Carl Larson not only had control over normal prison operations; he had the ability to design, build, and operate the biggest, highest security prison in the United States, with more than 1,000 beds for segregating and concentrating California's highest security prisoners–as assessed by prison administrators, not judges or legislators. Once designed and built, the Pelican Bay supermax would remain perpetually obscured from public view and continuously hard to regulate.

Implications

Scholars have noted that in the 1960s and 1970s, prison experts and bureaucrats played important roles in the development of criminal justice policy in the United States (Messinger 1984: ix; Garland 2001: 35–7). In California, laws like the 1976 Determinate Sentencing Law were explicitly designed to remove this discretionary power from prison bureaucrats (Messinger and Johnson 1987). This article has revealed a new way in which such policies failed: prison administrators like Brown, Larson, Kirkland, and Cambra played central roles not simply in shaping prison "system performance and rationality" (Simon and Feeley 2003: 107), but in determining the outer extremes of constitutionally acceptable conditions of punishment, through the design and implementation of long-term solitary confinement facilities. At least in the case of the California supermax, bureaucrats drove significant penal change, and they acted without the support (or even the knowledge) of the tough-on-crime politicians and voters that many social theorists suggest dominate the penal field (e.g. Garland's "culture of control" (2001); Wacquant's "deadly symbiosis" between racism, poverty, and punishment (2006); or Alexander's "New Jim Crow" of oppressive institutions (2010)).

The process of designing and implementing the California supermax, as documented in this article, has a number of important implications for understanding the new penology and punitiveness, which scholars argue has characterized punishment in the United States in the late twentieth and early twenty-first

[37] Interview with Thelton Henderson, former Chief Judge of the federal court of the Northern District of California, San Francisco, CA, May 24, 2011.

centuries. First, prison conditions deserve more attention as a lens through which to examine the characteristics and mechanisms of the new punitiveness. In addition to considering the sources of mass incarceration, scholars must also consider the sources of harsh, punitive, and potentially inhumane prison conditions (*see also* Simon 2014). Mass incarceration and increasingly harsh conditions of confinement are closely interrelated, as this article has revealed; for instance, the passage of determinate sentencing laws in California, which contributed to increasing rates of incarceration, also contributed to prison officials' sense that they needed more punitive conditions of confinement to manage this growing population.

Second, this article reveals the importance of both nuanced rhetorics of risk and suspended legislative oversight rules negotiated by prison administrators, as mechanisms that facilitated administrative control over conditions of confinement. A rich literature has examined the role of risk rhetorics in mass incarceration, but this article has identified specific rhetorics about both individually dangerous prisoners and categories of dangerous prisoners, which have served as the foundational logics for punitive innovations. Furthermore, the article analyzed how these rhetorics were used over time to resist legal and public attempts to constrain administrative discretion. In sum, prison administrators leveraged risk narratives in order to consolidate the discretion to design and implement a new tough-on-crime innovation: the supermax. These findings highlight the importance of looking to local-level administrators to understand not just the implementation, but the initiation of major policy innovations.

The importance of these findings is not just historical or theoretical. Understanding exactly what role prison administrators have played in developing and maintaining California's penal system is critical to understanding subsequent reform attempts, too. As California embarks on major reform efforts both to reduce its prison population and to improve conditions of confinement (Simon 2014), the power administrators have had, not only in designing conditions of confinement, but in justifying and maintaining these conditions in the face of a variety of legal, public, and legislative criticisms, will be critical to acknowledge and address. Reforms that do not acknowledge the ongoing control prison administrators wield over conditions of confinement in California might well fail.

As informative and as pivotal to national trends as California's case may be, this is the history of only one state's supermax implementation. More research is needed to establish whether other states followed a similar pattern in either (1) designing and implementing supermaxes, or in (2) designing and implementing

other punitive innovations. For instance, Lynch's research suggests that Arizona, which also had little legislative oversight in building its supermax, set the precedent for California's administrative initiation of policy (2010). And in the years after Arizona and California opened the first supermaxes, nearly every other state, as well as the federal system, built some kind of technologically advanced, long-term solitary confinement facility (Riveland 1999). (Where prison administrators innovate punishments in one state, these innovations seem to have surprising resonance across states (*see also* Rubin 2015).)

However, other states followed different patterns of policy innovation and implementation. In Illinois, for example, lawyers, prisoners' families, prison guards, and legislators engaged in a very public debate about the pros and cons of building a supermax throughout the 1990s. Illinois finally did open a 500-bed supermax, Tamms, in 1998. But unlike in California, Illinois prison administrators had not established the administrative control necessary to resist the sustained legal and public criticism of the institution, and the facility closed, 15 years after it opened, in 2013, when the governor simply eliminated Tamms from his budget (Mills 2013). While Tamms was structurally similar to Pelican Bay, its political history, not to mention its institutional longevity (or lack thereof) was quite divergent. Still other states, like Minnesota, never built a supermax that maintained prisoners in conditions of confinement quite as isolating and extreme as the conditions in Arizona, California, and Illinois.[38] Likewise, some nations, including Canada and Denmark, have chosen to build supermax-like facilities (*see* Reiter 2014b; Ross 2013), while others have not. Such cases deserve further study to better understand the mechanisms by which new policy innovations, like the supermax designed by California prison administrators, are diffused and replicated.[39]

In addition to investigations of how the supermax model has propagated, further research is needed to examine administrator-driven policy innovation, wherein policies are implemented and replicated with little public oversight, in contradiction to legislative or legal recommendations. The case study in this article suggests that such policies may be especially likely to take place during periods of rapid change–as in the case of mass incarceration and prison building in California, or in the case of immigration reform and

[38] Minnesota's highest security prison is Oak Park Heights, which, unlike the Pelican Bay SHU, has windows in prisoners' cells and common areas for group recreation and communal meals.

[39] See Rubin 2015 for a discussion of the context of carceral institution diffusion, more broadly.

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press

deportation increases in the United States more broadly. Recent news coverage of the drastic expansion of private, federal detention facilities, designated solely for immigrant detainees, implemented by agreement of federal administrators with private prison contractors, "without a single vote in Congress" (Constantini and Rivas 2015) suggest that California's supermax innovation may be one of many examples of a controversial social control policy initiated by the kind of institutional administrators who are usually assumed to be implementing policy, not dictating it.

References

Alger, Paula & Theresa Molinari (1987) *The Use of General Obligation Bonds by the State of California*. Sacramento, CA: California Debt Advisory Commission, Sept. 9, Available at:www.treasurer.ca.gov/cdiac/reports/go_use.pdf (accessed 25 February 2011).

Alexander, Michelle (2010) *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: New Press.

Aman, Alfred C. (2005) "Privatization, Prisons, Democracy, and Human Rights: The Need to Extend the Province of Administrative Law," 12 *Indiana J. of Global Legal Studies* 511–50.

Baker, Tom & Jonathan Simon (2002) *Embracing Risk: The Changing Culture of Insurance and Responsibility*. Chicago: University of Chicago Press.

Barker, Vanessa (2009) *The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders*. New York: Oxford Univ. Press.

Beard, Jeffrey (2013) "Op-ed: Hunger strike in California prisons is a gang power play," *Los Angeles Times*, Aug. 6, Available at: http://articles.latimes.com/2013/aug/06/opinion/la-oe-beard-prison-hunger-strike-20130806 (accessed 10 February 2015).

Calavita, Kitty (1998) "Immigration, Law, and Marginalization in a Global Economy: Notes from Spain," 32 *Law & Society Rev.* 529–66.

Calavita, Kitty, & Val Jenness (2014) *Appealing to Justice: Prisoner Grievances, Rights, and Carceral Logic*. Berkeley: Univ. of California Press.

California Department of Justice (2009) "Sex Offender Registration and Exclusion Information," Available at: http://www.meganslaw.ca.gov/sexreg.aspx?lang=ENGLISH (accessed 4 March 2011).

Campbell, Michael (2011) "Politics, Prisons, and Law Enforcement: An Examination of the Emergence of 'Law and Order' Politics in Texas," 45 *Law and Society Rev.* 631–61.

Campbell, Michael C., & Heather Schoenfeld (2013) "The Transformation of America's Penal Order: A Historicized Political Sociology of Punishment," 118 *American J. of Sociology* 1375–423.

Chase, Robert (2015) "We Are Not Slaves: Rethinking the Rise of Carceral States through the Lens of the Prisoners' Rights Movement," 102 *J. of American History* 73–85.

Constantini, Cristina, & Jorge Rivas (2015) "Shadow Prisons," *Fusion*, Feb. 4, Available at: http://interactive.fusion.net/shadow-prisons/(accessed 11 February 2015).

Cummins, Eric (1994) *The Rise and Fall of California's Radical Prison Movement*. Stanford: Stanford Univ. Press

Dayan, Colin (2008) "Due Process & Lethal Confinement," 107 *South Atlantic Q.* 485–507.

Domanick, Joe (2004) *Cruel Justice: Three Strikes and the Politics of Crime in America's Golden State*. Berkeley: Univ. of California Press.

Edelman, Lauren B. (1990) "Legal Environments and Organizational Governance: The Expansion of Due Process in the American Workplace," 95 *American J. of Sociology* 1401–440.

Feeley, Malcolm M., & Jonathan Simon (1992) "The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications," 30 *Criminology* 449–74.

Fraser, Ronald (1979) *Blood of Spain: An Oral History of the Spanish Civil War*. New York: Pantheon Books.

Garland, David (2001) *Culture of Control: Crime and Social Order in Contemporary Society*. Chicago: Univ. of Chicago Press.

Gilmore, Ruth Wilson (2007) *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*. Berkeley: Univ. of California Press.

Goldsmith, Larry (1997) "History from the Inside Out: Prison Life in Nineteenth-Century Massachusetts," 31 *J. of Social History* 109–25.

Gottschalk, Marie (2009) "The Long Reach of the Carceral State: The Politics of Crime, Mass Imprisonment, and Penal Reform in the United States and Abroad," 34 *Law & Social Inquiry*, 439–72.

Haney, Lynn (2010) "Working through Mass Incarceration: Gender and the Politics of Prison Labor from East to West," 36 *Signs* 73–97.

Hannah-Moffat, Kelly (2005) "Criminogenic Needs and the Transformative Risk Subject," 7 *Punishment & Society* 29–51.

Irwin, John (2005) *The Warehouse Prison: Disposal of the New Dangerous Class*. Los Angeles: Roxbury.

Jenness, Valerie, & Ryken Grattet (2005) "The Reconstitution of Law in Local Settings: Agency Discretion, Ambiguity, and a Surplus of Law in the Policing of Hate Crime," 39 *Law & Society Rev.* 893–941.

Kagan, Robert (1978) *Regulatory Justice*. New York: Russell Sage Foundation.

Koehler, Johann (2015) "Development and fracture of a discipline: Legacies of the School of Criminology at Berkeley," 53 *Criminology* 513–44.

Laub, John H. (1984) "Talking About Crime: Oral History in Criminology and Criminal Justice," 12 *Oral History Rev.* 29–42.

Liebling, Alison (2011) "Moral performance, inhuman and degrading treatment and prison pain," 13 *Punishment & Society* 530–50.

Lopez, Ian Haney (2014) *Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism and Wrecked the Middle Class*. New York: Oxford Univ. Press.

Lynch, Mona (2010) *Sunbelt Justice: Arizona and the Transformation of American Punishment*. Stanford: Stanford Univ. Press.

——— (2002) "Selling 'securityware': Transformations in prison commodities advertising, 1949-99," 4 *Punishment & Society* 305–19.

——— (1998) "Waste Managers? The New Penology, Crime Fighting, and Parole Agent Identity," 32 *Law & Society Rev.* 839–70.

Mattera, Phillip, ed. (2004) "Public Finance and Public Debt," *Corporate Research Project of Good Jobs First*, Available at: http://www.publicbonds.org/prison_fin/prison_fin.htm (accessed 13 December 2010).

Maynard-Moody, Steven, Michael Musheno, & Dennis Palumbo (1990) "Street-Wise Social Policy: Resolving the Dilemma of Street-Level Influence and Successful Implementation," 43 *Western Political Q.* 833–48.

McCorkel, Jill (2013) *Breaking Women: Gender, Race, and the New Politics of Imprisonment*. New York: New York Univ. Press.

McLennan, Rebecca (2003) "Punishment's 'Square Deal': Prisoners and their Keepers in 1920s New York," 29 *J. of Urban History* 597–619.

——— (2008) *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941*. New York: Cambridge Univ. Press.

McLoughlin, Daniel (2013) "The Fiction of Sovereignty and the Real State of Exception: Giorgio Agamben's Critique of Carl Schmitt," 1 *Law, Culture and the Humanities* 1–20.

McPherson, Chad M., & Michael Sauder (2013) "Logics in action: Managing institutional complexity in a drug court," 58 *Administrative Science Q.* 165–96.

Messinger, Sheldon L. (1984) "Introduction," in *The Art of Corrections Management, California 1967-1974, Government History Documentation Project, Ronald Reagan Gubernatorial Era*. Berkeley: Regional Oral History Office.

Messinger, Sheldon L., & Philip E. Johnson (1987) "California's Determinate Sentencing Statute: History and Issues," in Franklin E. Zimring & Richard S. Frase, eds., *The Criminal Justice System: Materials on the Administrations and Reform of the Criminal Law*, Boston: Little, Brown and Company. 950–87.

Mills, Alan (2013) "Refusing to Disappear: Prisoners at Tamms and their Families Conducted a Sustained Advocacy Campaign to Shut this 'Supermax' Down," *ACLU Blog*, Jan 4, Available at: https://www.aclu.org/blog/refusing-disappear-prisoners-tamms-and-their-families-conducted-sustained-advocacy-campaign (accessed 7 September 2015).

Naday, Alexandra, Joshua D. Freilich & Jeff Mellow (2008) "The Elusive Data on Supermax Confinement," 88 *The Prison J.* 69–93.

Page, Joshua (2011) *The Toughest Beat: Politics, Punishment, and the Prison Officer's Union in California*. New York: Oxford Univ. Press.

Phelps, Michelle (2011) "Rehabilitation in the Punitive Era: The Gap Between Rhetoric and Reality in U.S. Prison Programs," 45 *Law & Society Rev.* 33–68.

Pierson, Paul (2002) "Increasing Returns, Path Dependence, and the Study of Politics," 94.2 *The American Political Science Rev.* 251–67.

Pranis, Kevin (2007) "Doing Borrowed Time: The High Cost of Backdoor Prison Finance," in Tara Herivel & Paul Wright, eds., *Prison Profiteers: Who Makes Money from Mass Incarceration*. New York: The New Press.

Reiter, Keramet (2012a) "The Most Restrictive Alternative: A Litigation History of Solitary Confinement in U.S. Prisons, 1960-2006," 57 *Studies in Law, Politics and Society* 69–123.

——— (2012b) "Parole, Snitch, or Die: California's Supermax Prisons and Prisoners, 1987-2007," 14.5 *Punishment & Society* 530–63.

——— (2014a) "The Pelican Bay Hunger Strike: Resistance within the Structural Constraints of a U.S. Supermax Prison," 113.3 *South Atlantic Q.* 579–611.

——— (2014b) "Punitive Contrasts: United States vs. Denmark – A Socio-Legal Comparison of Two Prison Systems," *The Criminal Justice and Law Enforcement Annual: Global Perspectives*, Larry Sullivan, ed., Vol. 6.1, New York: AMS Press, Inc. 139–76.

——— (2015) "Supermax Administration and the Eighth Amendment: Discretion, Deference, and Double-Bunking, 1986-2010," 5.1 *University of California Irvine Law Rev.* 89–152.

Reiter, Keramet & Alexa Koenig (2015) *Extreme Punishment: Comparative Studies in Detention, Incarceration, and Solitary Confinement*. New York: Palgrave MacMillan.

Riveland, Chase (1999) *Supermax Prisons: Overview and General Considerations*. U.S. Department of Justice, National Institute of Corrections, January, Available at http://www.nicic.org/pubs/1999/014937.pdf (accessed 13 February 2012).

Ross, Jeffrey Ian (2013) *The Globalization of Supermax Prisons*. New Brunswick: Rutgers Univ. Press.

Rose, Nicholas, Pat O'Malley & Mariana Valverde (2006) "Governmentality," 2 *Annual Rev. of Law & Social Science* 83–104.

Rubin, Ashley (2015) "A Neo-Institutional Account of Prison Diffusion," 49 *Law & Society Rev.* 365–99.

Schept, Judah (2013) "'A lockdown facility … with the feel of a small, private college': Liberal politics, jail expansion, and the carceral habitus," 17 *Theoretical Criminology* 71–88.

Schiller, Rueul (2007) "The Era of Deference: Courts, Expertise, and the Emergence of New Deal Administrative Law," 106 *Michigan Law Rev.* 399–442.

Schinkel, Marguerite (2014) "Punishment as moral communication: The experiences of long-term prisoners," 16 *Punishment & Society* 578–97.

Schlanger, Margo (2006) "Civil Rights Injunctions over Time: A Case Study of Jail and Prison Court Orders," 81 *New York University Law Rev.* 550–630.

Schoenfeld, Heather (2010) "Mass Incarceration and the Paradox of Prison Conditions Litigation," 44 *Law and Society Rev.* 732–68.

Schmitt, Carl (1985/1922) *Political Theology: Four Chapters on the Concept of Sovereignty*. George Schwab, Trans. Cambridge: Massachusetts Institute of Technology.

Sexton, Lori (2015) "Penal subjectivities: Developing a theoretical framework for penal consciousness," 17 *Punishment & Society* 114–36.

Shalev, Sharon (2009) *Supermax: Controlling Risk through Isolation*. Portland: Willan Publishing.

Simon, Jonathan (2014) *Mass Incarceration on Trial: A Remarkable Court Decision and the Future of Prisons in America*. New York: The New Press.

——— (2007) *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. New York: Oxford Univ. Press.

Simon, Jonathan & Malcolm M. Feeley (2003) "The Form and Limits of the New Penology," in *Punishment and Social Control*, Thomas G. Blomberg, & Stanley Cohen, eds., New York: Aldine D. Gruyter.

Small, Julie (2011) "Under Scrutiny, Pelican Bay Prison Officials Say They Target Only Gang Leaders," *89.3 KPCC Southern California Public Radio*, Aug. 23.

St. John, Paige (2013) "Prison hunger strike leaders are in solitary but not alone," *Los Angeles Times*, Jul. 28, Available at: http://www.latimes.com/news/local/la-me-ff-ashker-20130729,0,1059923.story?page=1 (accessed 1 August 2013).

Stryker, Robin (1996) "Beyond History vs. Theory: Strategic Narrative and Sociological Explanation," 24 *Sociological Methods and Research* 304–52.

Tartaglia, Mike (2014) "Private Prisons, Private Records," 94 *Boston U. Law Rev.* 1689–744.

Thompson, Heather Ann (2010) "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History," 97.3 *The J. of American History* 703–34.

UN News Centre (2011) "Solitary confinement should be banned in most cases, UN expert says," Oct. 18, Available at: https://www.un.org/apps/news/story.asp?NewsID=40097 (accessed 22 October 2013).

Violence at Folsom Prison: Causes, Possible Solutions, Hearing Held by the Joint Legislative Committee on Prison Construction and Operations, Jun. 19, 1985, transcript available in the California State Archives.

Vuolo, Mike & Candace Kruttschnitt (2008) "Prisoners' Adjustment, Correctional Officers, and Context: The Foreground and Background of Punishment in Late Modernity," 40 *Law & Society Rev.* 307–36.

Wacquant, Loïc (2006) *The Place of the Prison in the New Government*. Minneapolis: Univ. of Minnesota Press.

Waldo, Dwight (1948) *The Administrative State: A Study of the Political Theory of American Public Administration*. New York: The Ronald Press Company.

Weatherly, Richard & Michael Lipsky (1977) "Street-Level Bureaucrats and Institutional Innovation: Implementing Special-Education Reform," 17 *Harvard Educational Rev.* 171–97.

Weintraub, Daniel M. (1990) "Deukmejian Defends Buildup of Prison System," *Los Angeles Times*, Jun. 15: A-3.

West, Heather C. & William J. Sabol (2008) *Prisoners in 2007*, NCJ 224280. Washington, D.C.: Bureau of Justice Statistics, Available at: http://www.ojp.usdoj.gov/bjs/pub/pdf/p07.pdf (accessed 17 February 2010).

Zimring, Franklin E. (1983) "Sentencing Reform in the States: Lessons from the 1970s," in Michael Tonry & Franklin Zimring, eds., *Reform and Punishment: Essays on Criminal Sentencing*. Chicago: Univ. of Chicago Press.

Zimring, Franklin E., & Gordon E. Hawkins (1991) *The Scale of Imprisonment*. Chicago: Univ. of Chicago Press.
——— (1992) *Prison Population and Criminal Justice Policy in California*. Berkeley: Institute of Government Studies Press.
Zimring, Franklin E., Gordon Hawkins, & Sam Kamin (2001) *Punishment and Democracy: Three Strikes and You're Out in California*. New York: Oxford Univ. Press, Inc.

Cases

Ashker v. Brown, Case No. 09-5796 CW (N.D. Cal. 2013). Order Denying Motion to Dismiss, Docket No. 160, filed April 9. Document on file with author.
Ashker v. Brown, Case No. 09-5796 CW (N.D. Cal. 2013). Settlement Agreement filed Sept. 1, 2015. Document on file with author.
Madrid v. Gomez, 889 F. Supp. 1146 (N.D. Cal. 1995).
Toussaint v. McCarthy, 597 F. Supp. 1388 (N.D. Cal. 1984), *aff'd* 801 F.2d 1080 (9th Cir. 1986).

Legislation

Assembly Bill 277 (Stirling, California). As amended Aug. 25 (1986) (enacted).
Senate Bill 253 (Presley, California). Read Sept. 13. Microfilm text. (1985).
Senate Bill 1685 (Keene, California). Read Jun. 20. Microfilm text. (1988).
Senate Bill 1222 (Keene, California). Leg. Gen. Sess. (1986) (enacted).

Keramet Reiter *is an Assistant Professor in the Department of Criminology, Law & Society and at the School of Law at the University of California, Irvine. Her research focuses on prisons, prisoners' rights, and the impact of prison and punishment policy on individuals, communities, and legal systems. She has a forthcoming book on the* History and Uses of U.S. Supermax Prisons, 23/7, *and she is the co-editor of the anthology* Extreme Punishment. *She has recently published in* Punishment & Society, South Atlantic Quarterly, *and* Qualitative Inquiry.

https://doi.org/10.1111/lasr.12204 Published online by Cambridge University Press