

MASTERARBEIT | MASTER'S THESIS

Titel | Title

Incarceration in the Land of the Free
On the Genesis of American Legal Culture and its Current Application in
Louisiana's Prison System

verfasst von | submitted by

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angestrebter akademischer Grad | in partial fulfilment of the requirements for the degree of
Master of Education (MEd)

Wien | Vienna, 2024

Studienkennzahl lt. Studienblatt |
Degree programme code as it appears on the
student record sheet:

UA 199 507 511 02

Studienrichtung lt. Studienblatt | Degree
programme as it appears on the student
record sheet:

Masterstudium Lehramt Sek (AB) Unterrichtsfach
Englisch Unterrichtsfach Geschichte und Politische
Bildung

Betreut von | Supervisor:

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1. Introduction

The American carceral state and its underlying prison-industrial complex have had a major impact on social dynamics within the United States of America and have consequently become solidified as a long-standing wedge issue in elections as well as political decision-making on every level of governance. For most of its existence, governmental and academic research on penal practices of mass incarceration legislation showed no significant improvements towards a decline in America's rigorous prison boom, until rates of imprisonment slowly receded after reaching their peak in 2008¹. However, the average rates inside the USA remained nearly five times those of the OECD nations' average until 2016 – about 700 per 100.000 people living in the United States were incarcerated during that year². Louisiana was an outlier even among U.S. states, as it maintained the highest incarceration rates nation-wide for over twenty years, despite implementing some regulations to curb the extent of its prison population, following its peak in 2012.³ Only since a bipartisan criminal justice reform package was implemented by the Louisiana congress in 2017 could more substantial changes in the state's approach to incarceration be observed.⁴ The adoption of these reforms came in the wake of broader government incentives to invest in prisoner rehabilitation and re-entry programmes, that commenced in 2008, saw improvements by 2012, and resulted in the creation of a justice reinvestment task-force in 2015. In addition to rehabilitative programmes, these addressed pressing issues of overincarceration and the resulting lack of funds, by implementing 10 bills, thus expanding available facilities and mandating 70% of the \$12.2 million in savings resulting

¹ *Correctional Populations in the United States, 2013*, by Lauren G. Beatty, and Danielle Kaeble (Washington D.C.: Bureau of Justice Statistics, 2014), 13, accessed 18.6.2023, <https://bjs.ojp.gov/library/publications/correctional-populations-united-states-2013>.

² OECD, *Society at a Glance 2016: OECD Social Indicators* (Paris: OECD Publishing, 2016), 132-133. <https://doi.org/10.1787/9789264261488-en>.

³ Terry Schuster, Adam Gelb, Jake Horowitz, Emily Levette et al., *Louisiana's 2017 Criminal Justice Reforms: The Most Incarcerated State Changes Course* (Pennsylvania: Pew Charitable Trust, 2018).

⁴ Adam Gelb, and Elizabeth Compa, "Louisiana No Longer Leads Nation in Imprisonment Rate," *Pew Charitable Trust*, 10.6.2018, accessed 10.6.2023, <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/07/10/louisiana-no-longer-leads-nation-in-imprisonment-rate>.

"Building Better Lives," Louisiana Department of Public Safety & Corrections, accessed 14.6.2023, <https://doc.louisiana.gov/about-the-dpsc/justice-reform/>.

James LeBlanc, Mike Cazes, Daniel Claitor, et al., "Louisiana Justice Reinvestment Task Force Report and Recommendations", *Louisiana Department of Public Safety & Corrections* (2017).

from the reforms to be reinvested in community programmes and the Department of Security & Corrections.⁵

Following the implementation of this package, other U.S. states with comparably high rates of imprisonment have enacted similar laws on a bipartisan basis, making Louisiana's rate of incarceration rise back to the national top, which on one hand can indicate an upswing in lawmakers' willingness to roll back mass incarceration era policies to alleviate the strain on the prison system and improve prisoners' ability to reintegrate into society, but on the other hand poses the question, whether proposed solutions are sufficiently counteracting systemic patterns of stigmatising (former) convicts for decades prior.⁶ Researchers have attributed this sudden change in policy during the 2010s to a combination of alleviating the burdens of prison management, imposed by overcrowding and understaffing, as well as lawmakers' desires to improve their political profiles, after criticism of biases and systemic oppression within governmental institutions became more widespread in America's political discourse.⁷ However, while these analyses provide pragmatic motives for legislative reforms, comparatively little research has been conducted on the relation of these reforms and their enforcement at carceral institutions to previously established national paradigms of criminal justice.

This research will attempt to go beyond purely utilitarian perspectives and comment on the genesis and development of American carceral ideologies to establish a set of core principles pertaining to American *legal culture*. These insights will be used to assess its state at the turn of the millennium, and comment on its recent application, by investigating prison practices in two Louisianian carceral institutions during the mid-2010s. This period was selected, due to the increased scrutiny of American criminal justice at the time, brought about by more

⁵ Crime and Justice Institute, *Investing in Louisiana Communities Through JRI* (Washington D.C.: Department of Justice, 2021), accessed 6.7.2023, <https://bja.ojp.gov/library/publications/investing-louisiana-communities-through-justice-reinvestment-initiative-jri>.

Gelb, and Compa, "Louisiana No Longer Leads Nation in Imprisonment Rate".

⁶ Brittany Williams, "The Underbelly of the Criminal Justice System: A Critique and Proposed Reforms of Parole Hearings in Louisiana," *Louisiana Law Review* 81, no. 4 (2021), 1605.

Bureau of Justice Statistics, *Prisoners in 2020 – Statistical Tables*, by Ann Carson (Washington D.C.: Department of Justice, 2021), 13f, accessed 18.6.2023, <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf>.

⁷ Carl Takei, "From Mass Incarceration to Mass Control, and Back Again: How Bipartisan Criminal Justice Reform May Lead to a for-Profit Nightmare," *University of Pennsylvania Journal of Law and Social Change* 20, no. 2 (2017), 171-174.

Chris Surprenant and Jason Brennan, *Injustice for All: How Financial Incentives Corrupted and Can Fix the US Criminal Justice System* (New York: Routledge, 2020).

frequent disputes on the matter in domestic politics, that coincided with the beginnings of social movements against systemic discrimination and the abuse of governmental power⁸ and continued international condemnation of human and prisoners' rights⁹ violations in American prisons by the United Nations.¹⁰

For that purpose, this paper presupposes laws in democratic systems of governance to be intrinsically linked to the respective population's ideological beliefs, to enhance the legitimacy and effectiveness of punitive measures, but are not constrained to exclusively conform with them, as opposing ideologies within a nation often pursue conflicting ideals, thus resulting in dissonance between a nation's institutionally applied legal culture and individuals' moral beliefs.¹¹ Considering, that the target of this study are sentiments regarding American penal practices, whose core rhetoric and motivations have prevailed and were even expanded by members of both major parties throughout the majority of U.S. history¹², the underlying ideological justifications should enjoy broad support within the nation's collective conscious¹³.

Here, the suitability of Lawrence Friedman's concept of *legal culture* shall be elucidated as it is used throughout this thesis to describe Americans' common understanding of criminal justice. According to Friedman, legal culture entails ideas, opinions, values and attitudes toward law and justice, that people within a society hold, which is shaped by socio-economic forces (i.e.: economic depressions, technological advances, or emancipation of repressed groups) and the resulting interplay between existing expectations and changing

⁸ Artika R. Tyner, *Black Lives Matter: From Hashtag to the Streets* (Minneapolis: Lerner Publications, 2021).

⁹ United Nations General Assembly, Resolution 45/111, "Basic Principles for the Treatment of Prisoners: Resolution," 28.3.1991, <https://www.refworld.org/docid/48abd5740.html>.

¹⁰ Hassan Kanu, "US Prisons Rife with Human Rights Abuses, Especially Against Black People, UN Says," *Reuters*, 4.10.2023, accessed 10.11.2023, <https://www.reuters.com/legal/government/column-us-prisons-rife-with-human-rights-abuses-especially-against-black-people-2023-10-04/#:~:text=Practices%20that%20are%20routine%20in,opens%20new%20tab%2C%20which%20was.>

United Nations Human Rights Office of the High Commissioner, "Statement of the United Nations Special Rapporteur on Torture at the Expert Meeting on the Situation Detainees Held at the U.S. Naval Base at Guantanamo Bay," *Inter-American Commission on Human Rights*, 3.10.2013, accessed 10.6.2023, <https://www.ohchr.org/en/statements/2013/10/statement-united-nations-special-rapporteur-torture-expert-meeting-situation>.

Marie Gottschalk, "Razing the Carceral State," *Social Justice* 42, no. 2 (2015), 31-51.

¹¹ Christine Synowich, "Law and Ideology," In: Edward N. Zalta (ed.), *Stanford Encyclopedia of Philosophy* (Stanford: Stanford University, 2019), accessed 23.5.2023, <https://plato.stanford.edu/entries/law-ideology/>.

¹² Donna Selman, and Paul Leighton, *Punishment for Sale: Private Prisons, Big Business, and the Incarceration Binge* (Lanham/Plymouth/New York: Rowman & Littlefield, 2010), 33f.

¹³ Emile Durkheim, *The Division of Labor in Society: Translated by George Simpson* (New York: The Press of Clencoe, 1960⁴), 64, 80f, 108f.

requirements.¹⁴ It is especially apt for this project's purpose, as its definition includes, but is not limited to, laws and regulations set forth by governmental institutions as indirect markers of legal culture, while also considering their relation to dominant sentiments within the general population, represented here by an array of sources, that include official guidelines and government assessments of prisons' conduct along with individual accounts of prison inmates and independent investigations.¹⁵ The term will thus be applied to sentiments towards legal paradigms within American criminal justice, that form the ideological basis for structures and practices within the American and Louisianian carceral system.¹⁶

The concept of *legal culture* is used in favour of *legal consciousness*¹⁷ as it more clearly includes historical components and relations between common beliefs and their institutional representation, while the latter is more concerned with social practice and would be more fitting for conducting a study focussed on norms of social interaction or public opinions. Additionally, Friedman's distinction between internal and external legal culture helps in describing the relationship between attitudes of legal professionals (internal) and those of lay people, including incarcerated populations (external).¹⁸ It is important to acknowledge the fact that national legal cultures are no monolith, but consist of a plethora of diverging ideologies, that are particular to individuals and groups within a society.¹⁹ Yet, due to the limited scope of this paper's longitudinal analysis, that primarily focusses on institutionalised American legal culture, inclusions of ideological oppositions are restricted to developments, that are relevant within this study's frame. One example for this is the prolonged opposition to anti-Black ideologies in the United States, that prevailed after the abolition of slavery. A more detailed description will be provided in the analysis of important trends in American legal culture.

Despite efforts of advancing social equity through civil rights movements and legislative initiatives in the 20th and 21st century, the progress on combating criticisms of constitutional

¹⁴ Lawrence Friedman, *The Republic of Choice: Law, Authority and Culture* (Cambridge: Harvard University Press, 1990), 4f.

¹⁵ Lawrence Friedman, *The Legal System* (New York: Russel Sage Foundation, 1975), 193-222.
Lawrence M. Friedman, "Legal Culture and Social Development," *Law & Society Review* 4, no. 1 (1969), 29–44.
David Nelken, "Rethinking Legal Culture," In: Michael Freeman (ed.), *Law and Sociology* (Oxford: Oxford University Press, 2006), 203.

¹⁶ Nelken, "Rethinking Legal Culture," 204.

¹⁷ Susan Silbey, "Legal Consciousness," In: Peter Cane and Joanne Conaghan (eds.), *The New Oxford Companion to Law* (Oxford: Oxford University Press, 2008).

¹⁸ Ralf Michaels, "Legal Culture," In: Jürgen Basedow, Klaus Hopt, and Reinhard Zimmermann (eds.), *Oxford Handbook of European Private Law* (Oxford: Oxford University Press, 2011).

¹⁹ Lawrence Friedman, "Is there a Modern Legal Culture?," *Ratio Juris* 7, no. 2 (1994), 118f.

and human rights violations in the American prison system's overcrowding and management crises faced on state and federal levels remains limited.²⁰ Thus, the ultimate goal of this thesis is to assess to what extent current developments of penal practices in Louisiana's private and public prison system reflect the historically cultivated sentiments of its legal culture and provide an outlook on whether future improvements of prison conditions are likely to occur. An investigation into the cornerstones of these long-standing ideologies within legal culture needed for this juxtaposition will constitute the first chapters and will include identity-forming narratives propagated by national foundational myths. The insights gained through this analysis will be used to assess legal cultural developments during the latter half of the 20th century, brought about through mass incarceration policies and the establishment of America's prison-industrial complex.²¹ Building on the information gathered up to this point, long-standing tenets of American legal culture will be used as reference to examine the results of this project's case study.

The study itself will inspect two sides of Louisianas penal system, by evaluating the realisation of American legal culture in one publicly and one privately managed carceral facility. The former is represented by the Louisiana State Penitentiary, a high-security public prison able to hold 6.312 in 2016²², that has been used as a state prison since 1901, after having functioned as a slave plantation and a central facility within the South's system of leasing prisoners to private contractors. The second facility is Winnfield Correctional Center, which opened in 1990 and is the first privately managed medium-security prison with a maximum capacity of 1.440 in 2016.²³ The case study's theoretical approach is based on a *critical realist*²⁴ conception of *grounded theory*²⁵, to sensibly categorise the findings in the selected sources and allocate them to their respective spheres of the real, actual and empirical. The general focus is placed

²⁰ Alana Van Gundy, "American Prisons: Consequences of Mass Incarceration," In: Glenn W. Muschert, Brian V. Klocke, Robert Perrucci, and Jon Shefner (eds.), *Agenda for Social Justice: Solutions for 2016* (Bristol: Policy Press, 2016), 103–110.

²¹ Michelle Alexander. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: Perseus Distribution, 2010), 1-19.

²² Louisiana Commission on Law Enforcement, and Administration of Criminal Justice Statistical Analysis Center, *2016 Status of State and Local Correctional Facilities and Programs Report (R.S. 15:1204.1)* (Baton Rouge: Louisiana Department of Public Safety and Corrections, 2017), 7, accessed 20.6.2023, <https://justiceresearch.dspacedirect.org/items/4cd0643d-0192-42aa-a79f-b506ea63805a>.

²³ Louisiana Commission on Law Enforcement, and Administration of Criminal Justice Statistical Analysis, *2016 Status Report*, 8.

²⁴ Roy Bhaskar, *A Realist Theory of Science* (London/New York: Routledge, 2008).

²⁵ Melanie Birks and Jane Mills, *Grounded Theory: A Practical Guide* (London/Thousand Oaks/New Delhi/Singapore: Sage Publications, 2023).

on the mid-to-late-2010s, as it is especially suitable for evaluating, to what degree penal reforms impacted practices at carceral institutions, whether these indicate a shift in Louisiana's legal culture, and what other factors contributed to these changes. The specific research questions listed below will be answered sequentially, as they rely on each other's insights to properly follow the proposed methodology and provide a viable assessment:

- a. Which core principles constitute the ideological basis for the common understanding of justice in the United States of America and in what way are they represented within the Louisiana state prison system of the early 20th century?
- b. To what extent did the introduction of mass incarceration policies influence the Louisiana state prison system and, if so, how does the pre-existing discourse on criminal justice (as defined in RQ1) relate to this paradigm shift?
- c. In what ways do the results of this thesis' case study, focussing on practices in two Louisianian carceral institutions during the mid-2010s, reflect previously observed paradigms of American legal culture (RQ 1 & 2), and which socio-political factors can be identified as potential precursors to recent developments in the state's approach to criminal punishment?

The structure of this thesis is divided into three main sections: The first one gives an overview of the research methods applied throughout this paper. The second section provides insights into the historical development of the ideological, political, and institutional framework constituting American legal culture and changes in its major paradigms at the turn of the century. For this purpose, American foundational mythologies are incorporated as expressions of ideological principles, that build the basis for a distinctly American model of legal culture and distinguish it from general trends in western carceral systems of that time. The third segment investigates developments in Louisiana's legal culture during the mid-2010s, by conducting a case study on two Louisiana prisons, that employs analyses of legislative structures, their application within the carceral system, and accounts on individuals' experiences, to assess the quality of these prisons in relation to national legal culture and international standards.

2. Methodology

The methodology employed in this thesis is primarily qualitative and consists of an extensive literature review and a brief case study, that examines two Louisiana prisons, to assess how American legal culture is implemented in Louisiana's carceral practice. The review and critique entail prior research done on the genesis of American legal culture and American foundational myths, whose ideological overlaps and historical evolution will be used to establish a status quo of the early 21st century. This analysis of literature on the development of American prisons will incorporate aspects of *New (transnational) Americanist* myth criticism²⁶ as a means to explore underlying principles behind conceptions of morality and justice within the United States of America.

The resulting thesis on fundamental ideological principles of Louisiana's legal culture, as described in RQ1, will subsequently be expanded on, by examining developments during the introduction of mass incarceration policies, to assess in how far they present a deviation from or continuation of previous patterns in the state's legal culture. The insights gained from answering RQ1 and RQ2 thus constitute a prerequisite for the final research interest of RQ3, by establishing the accepted *modus operandi* for American prisons at the onset of the 21st century, against which the case study's results on recent trends in Louisiana's legal culture will be contrasted. The case study²⁷ itself follows the principles of a critical realist approach to grounded theory and entails the analysis of two state prisons for male convicts in Louisiana, which include the state-run Louisiana State Penitentiary (Angola) in West Feliciana Parish, north-west of Baton Rouge, and the privately operated Winn Correctional Center south-west of Winnfield, whose selection for this study will be explained in more detail in relation to used sources, after the methodological approach has been introduced.

For the case study, a critical realist approach to grounded theory was chosen, as it allows for an inductive analysis of sources, whose selection was determined by an initial literature review, that ascertained their viability and availability. The critical realist component is most prominent in the division of observations into three domains of reality. For this study, these layers encompass legislative structures and mechanisms (domain of the *real*), their application

²⁶ Heike Paul, *The Myths that Made America: An Introduction to American Studies* (Bielefeld: Transcript Verlag, 2014), 23-25.

²⁷ Mervyn Hartwig, *Dictionary of Critical Realism* (London/New York: 2007), 96-105.

in prison policies (domain of the *actual*), and individual experiences of people involved in these processes (domain of the empirical), intended to counteract fallacies of reduction and simplification commonly found in interpretative case studies.²⁸ Research in the domain of the empirical at the Louisiana State Penitentiary was conducted via a discourse analysis of the prison newspaper *The Angolite*, which consisted of an open coding process, that includes two steps: The initial assigning of specific codes, followed by the categorisation of observed themes through axial coding to highlight patterns within those labels.²⁹ Due to the lack of similar sources from Winn Correctional Center, the investigative reporting from Shane Bauer's "American Prison: A Reporter's Undercover Journey into the Business of Punishment"³⁰, covering a four-month period at the beginning of 2015, was consulted as a source for individual experiences of correctional staff and inmates at the facility. This methodology was selected to present a structured and transparent overview of insights in different spheres of American legal culture and to facilitate the assessment of the multi-layered social settings and power dynamics at play in America's prison system, by contrasting the results from individual domains with each other and assessing their relation to previously formed principles of American legal culture.³¹

While the insights gained through this approach will primarily focus on standards for prisoners' rights officially mandated by American law, due to national legal culture being this study's primary interest, it will also consider their relation to internationally ratified standards of confinement recognised by the United States, since American prison practice is frequently the target of criticisms from western nations and observers.³² This focus on national legal culture

²⁸ Eric T. Hoddy, "Critical Realism in Empirical Research: Employing Techniques from Grounded Theory Methodology," *International Journal of Social Research Methodology* 22, no. 1 (2019), 112.

²⁹ Birks and Mills, *Grounded Theory*, 15-20, 32f.

Juliet Corbin, and Anselm Strauss, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (Thousand Oaks: Sage Publications, 2008³), 160.

³⁰ Shane Bauer, *American Prison: A Reporter's Undercover Investigation into the Business of Punishment* (New York: Penguin Press, 2018).

³¹ Hartwig, *Dictionary of Critical Realism*, 89-91.

Steve Kempster, and Ken Parry, "Critical Realism and Grounded Theory," In: Paul K. Edwards, Joe O'Mahoney, and Steve Vincent (eds.), *Studying Organizations Using Critical Realism: A Practical Guide* (Oxford: Oxford University Press, 2014), 86-108.

Carolyn Oliver, "Critical Realist Grounded Theory: A New Approach for Social Work Research," *British Journal of Social Work* 42, no. 2 (2011), 1-17.

³² Alexis de Tocqueville and Gustave de Beaumont, *On the Penitentiary System in the United States and its Application in France* (Carbondale: Southern Illinois University Press, 1833/1979).

Sara M. Benson, "Democracy and Unfreedom: Revisiting Tocqueville and Beaumont in America," *Political Theory* 45, no. 4 (2017), 466-494.

under marginal consideration of internationally ratified norms aims to counteract researcher biases, that are likely to emerge as a consequence of preconceived notions, personal attitudes, as well as an inherent European perspective. This works in tandem with the systematic assignment of codes as part of the grounded theory approach, which allows readers to be privy to the evaluation process behind the case study's results.³³ While biases cannot be avoided entirely, this method intends to increase the validity and reliability of this study, by acknowledging preconceived notions in a way that is relevant for the thesis and structuring the research process to more accurately investigate changes specific to different layers of American legal culture.

Roy Bhaskar's critical realism is especially apt for this purpose, as it does not simply rely on atomistic instances of human behaviours to deduce meaning from data³⁴, but allows for an explicit distinction between the overarching legislative and ideological basis, the implementation of corresponding mechanisms within the prison system, and experiences of individuals involved in these processes, by separating them into the domain of *real*, *actual*, and *empirical*.³⁵ It thus offers great potential for contrasting examples of prison practices with their legislative counterparts to evaluate the appropriateness of common moral/ideological/legislative paradigms, the efficacy of their application within the American prison system, and the impact publicised cases of perceived injustice can have on those overarching frameworks. For this study specifically, the practice-oriented critical realist research design is used in combination with grounded theory, to determine in how far pre-existing structural and ideological paradigms embedded in American's legal culture are represented, when assessing current developments in its application at Louisiana State Penitentiary and Winn Correctional Center.

Glenn C. Loury, "Why Are So Many Americans in Prison?," *Boston Review* (July/August, 2007), accessed 6.7.2023, <https://www.bostonreview.net/articles/why-are-so-many-americans-in-prison/>.

Marc H. Morial, "Until We Resolve Our Racially Unjust Incarceration System, We Cannot Be at Peace," *UN Chronicle* 54, no. 4 (2017), accessed 6.7.2023, <https://www.un.org/en/chronicle/article/until-we-resolve-our-racially-unjust-incarceration-system-we-cannot-be-peace>.

Amnesty International, *United States of America Rights for All: "Not Part of My Sentence" Violations of the Human Rights of Women in Custody* (1999), accessed 6.7.2023, <https://www.amnesty.org/en/documents/amr51/001/1999/en/#:~:text=This%20document%2C%20produced%20as%20part,held%20in%20high%20security%20units>.

³³ Birks and Mills, *Grounded Theory*, 13f, 28f.

³⁴ Bhaskar, *A Realist Theory of Science*, XIII f.

³⁵ Bhaskar, *A Realist Theory of Science*, 2f, 46-52, 177f.

This focus on southern states – Louisiana in particular – was deemed appropriate, as these states’ societal developments in large parts coincide with the evolution of American carceral politics. Additionally, Louisiana’s incarceration rate consistently ranks amongst the highest in the country in a 2019 VERA study, suggesting an extensive implementation of mass incarceration policies and promising insightful data on developments of leading paradigms within America’s legal culture.³⁶ Similarly, like other southern states, Louisiana’s past displays a history of systemic discrimination, with its justice system being central to the state’s economy and maintaining of social hierarchies following Reconstruction, as incarcerations and forced prison labour were initially employed as substitutions for pre-abolitionist slavery³⁷, but prevailed until the 21st century.³⁸ Statistics compiled by the state and independent organisations still indicate a disproportionately high racial disparity in Louisiana’s incarceration practices, reaching 3.6 times that of White citizens.³⁹ This imbalance surrounding Louisiana’s legal practice needs to be considered, since one aspect to be investigated is its America’s assertion of unbiased justice in the face of racial and socio-economic disparities, which has attracted more attention in recent years through movements such as *Black Lives Matter* and frequent protests against police brutality since 2020⁴⁰.

Apart from these incarceration practices, Louisiana’s penal policies are similarly emblematic, as it was the first state to initially privatise their prison sector, when a private company took over management of some prisons and forced inmates to manufacture clothing in 1844, which is still acceptable under their adoption of the 13th Amendment in Louisiana’s constitution today.⁴¹ In addition to these features commonly associated with the southern United States, Louisiana is also representative of many practices, that distinguish U.S. prisons from those of

³⁶ Vera Institute of Justice, “Incarceration Trends in Louisiana,” *Vera*, 2019, accessed 17.4.2023, <https://www.vera.org/publications/state-incarceration-trends/louisiana>.

³⁷ Courtney Harper Turkington, “Louisiana’s Addiction to Mass Incarceration by the Numbers,” *Loyola Law Review* 63, no. 3 (2017), 557-591.

Wilbert Rideau, and Billy Sinclair, “Prisoner Litigation: How it Began in Louisiana,” *Louisiana Law Review* 45, no. 5 (1985), 1061-1076.

³⁸ Angela Davis, *Are Prisons Obsolete?* (Toronto: Publisher Group Canada, 2003), 29-33.

Amy Louise Wood, and Natalie J. Ring, “Introduction,” In: Amy Louise Wood and Natalie J. Ring (eds.), *Crime and Punishment in the Jim Crow South* (Urbana/Chicago/Springfield: University of Illinois Press, 2019), 4-10.

³⁹ Vera Institute of Justice, “Incarceration Trends in Louisiana,” *Vera*, 2019, accessed 17.4.2023, <https://www.vera.org/publications/state-incarceration-trends/louisiana>.

⁴⁰ Tyner, *Black Lives Matter*.

⁴¹ Syndey Young, “Capital and the Carceral State: Prison Privatization in the United States and United Kingdom,” *Harvard International Review*, 23.9.2020, accessed 15.7.2023, <https://hir.harvard.edu/us-uk-prison-privatization/>.

other western nations, ranging from its use of solitary confinement without needing a judge's approval⁴², and convictions without a trial, that are routinely settled via plea deal agreements⁴³, to its enforcement of the death penalty.

The selection of prisons and suitable sources for the case study is based on a review of statistical reports and investigations conducted by the United States' government (Bureau of Prisons, Bureau of Justice Statistics, Department of Justice) and NGOs (ACLU, Vera Institute, The Sentencing Project, American Bar Association Criminal Justice Section, ...) after an initial, purposeful sampling was conducted to narrow down the expansive pool of sources for an assessment of recent trends in American legal culture.⁴⁴ While the body of accessible primary sources concerning accounts of (formerly) incarcerated people from Louisiana State Penitentiary and Winn Correctional Center have proven to be suitable for this analysis, the availability of sources on prison policies and recent developments is increasingly limited, due to multiple reasons. These include the strict regulations on the flow of information to people outside the American correctional business, as well as lacking transparency of plea bargaining and confidentiality agreements established through out-of-court settlements.⁴⁵ These restrictions are especially noticeable for foreign nationals without any relation to inmates, which is why it was not possible to gather focussed data from guided interviews with prisoners or questionnaires that could provide a more precise description of people's experiences. Thus, this study had to largely rely on pre-existing sources for individuals' perspectives on Louisiana's legal culture, while supplementing them with additional materials to compensate for the lacking availability of suitable primary sources.

The sources selected from the two prisons will be used to address key points of contention concerning the American prison system, with Angola and Winn representing the public and private prison sector respectively. The intense levels of public scrutiny directed at Louisiana State Penitentiary has been due to it being the biggest high-security prison in the USA, earning

⁴² Ryan Sakoda and Jessica Simes, "Solitary Confinement and the U.S. Prison Boom," *Criminal Justice Policy Review* 32, no. 1 (2019), 66-102.

⁴³ Bureau of Justice Assistance, *Plea and Charge Bargaining: Research Summary*, by Lindsey Denvers (Washington D.C.: U.S. Department of Justice, 2011), 1f, accessed 6.8.2023, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/pleabargainingresearchsummary.pdf>.

⁴⁴ Leila Akremi, "Stichprobenziehung in der qualitativen Sozialforschung," In: Nina Baur and Jörg Blasius (eds.), *Handbuch Methoden der Empirischen Sozialforschung* (Wiesbaden: Springer, 2014), 265-282.

⁴⁵ Andrea Kupfer Schneider, and Cynthia Alkon, "Bargaining in the Dark: The Need for Transparency and Data in Plea Bargaining," *New Criminal Law Review* 22, no. 4 (2019), 470f.

it the reputation of being the “bloodiest prison in the South” in the late 20th century⁴⁶ and also because of having been in continuous use as a forced labour plantation since the 1830s⁴⁷. This repeatedly resulted in it becoming the target of criticisms regarding their treatment of and care for inmates. Criticisms became especially prevalent after increases in incarceration since the 1980s brought the prison’s capacity to its limits, with major points being the sub-standard quality of medical care⁴⁸, labour conditions and approach to rehabilitation, the latter of which is primarily based on teaching Christian morality for lowering recidivism rates (a practice introduced after Burl Cain became prison warden in 1995)⁴⁹; as well as understaffing and insufficient training of correctional officers, which has led to the abuse of prisoners in the past.⁵⁰

The sources incorporated for analysing the realisation of American legal culture at Louisiana State Penitentiary include the prison’s newspaper *The Angolite* as a primary source for prisoners’ perspectives in the domain of the empirical. Yet, despite its award-winning investigative reporting in the 1980s and 90s⁵¹, it has to be considered, that its publications are still subject to censorship by correctional officers, due to the newspaper’s inclusion of people outside of Angola in its target audience and especially after its rise to fame increased circulation. According to Wilbert Rideau, former award-winning editor of *The Angolite*, changes in management after his departure have deteriorated prison journalists’ abilities to investigate freely since its heyday.⁵² A tentative assessment of reporting on issues connected

⁴⁶ “History of the State Penitentiary,” Louisiana State Prison & Cultural Center, accessed 13.11.2023, <https://www.angolamuseum.org/history-of-angola>.

⁴⁷ Jeff Forret, “Before Angola: Enslaved Prisoners in the Louisiana State Penitentiary,” *Louisiana History: The Journal of the Louisiana Historical Association* 54, no. 2 (2013), 133-171.

⁴⁸ ACLU of Louisiana, “Federal Judge Rules that Medical Care at Angola Violates Eighth Amendment Prohibition on Cruel and Unusual Punishment,” *American Civil Liberties Union*, 1.4.2021, accessed 19.4.2023, <https://www.aclu.org/press-releases/federal-court-rules-medical-care-angola-violates-eighth-amendment-prohibition-cruel>.

Joe Gyan Jr., “Parts of Angola Prison Medical Care are Unconstitutional, Federal Judge plans to rule,” *The Advocate*, 26.2.2020, accessed 18.11.2023, https://www.theadvocate.com/baton_rouge/news/courts/parts-of-angola-prison-medical-care-are-unconstitutional-federal-judge-plans-to-rule/article_d0a3ec6e-58b9-11ea-9a27-e3368efec777.html.

⁴⁹ Michael Hallett, Joshua Hays, Byron Johnson, Sung Joon Jang, and Grant Duwe, *The Angola Prison Seminary: Effects of Faith-Based Ministry on Identity Transformation, Desistance, and Rehabilitation* (New York: Routledge, 2017), 47-51.

⁵⁰ United States Department of Justice, “Four Supervisory Correctional Officers at Angola Prison Sentenced for Beating a Handcuffed and Shackled Inmate,” *Office of Public Affairs*, 6.7.2020, accessed 19.4.2023, <https://www.justice.gov/opa/pr/four-supervisory-correctional-officers-angola-prison-sentenced-beating-handcuffed-and>.

⁵¹ James M. Morris, *Jailhouse Journalism: The Fourth Estate Behind Bars* (New York: Routledge, 2001), 157f.

⁵² Dave Gilson, “Inside Man: An Interview with Wilbert Rideau,” *Mother Jones*, May/June (2011), accessed 10.7.2023, <https://www.motherjones.com/media/2010/03/interview-wilbert-rideau-angola-prison/>.

to this case study (e.g.: solitary confinement, labour conditions, re-entry programmes) from Rideau's period as editor was done, to establish a base line for the degree of censorship in prior publications, that were considered when analysing current contributions. Other relevant sources that could be acquired include lawsuits as a source of descriptions on penal conditions produced by prison inmates and assessed by judges (domain of the empirical), along with governmental reports and statistics on the state of individual carceral institutions (domain of the actual) and state legislation (domain of the real). The nature of these sources will allow a differentiation between legal culture in the domain of the actual and empirical and will be supplemented by analyses of Louisiana's legal framework to depict the domain of the real, as representing the underlying structures and mechanisms of Louisiana's legal culture.

Winnfield Correctional Center on the other hand is incorporated to investigate consequences of privatising America's carceral state, as it is owned by the Louisiana Department of Corrections but currently operated by the private firm "Lasalle Corrections" under the umbrella of the Winn Parish Sheriff's office, since taking over from the "Corrections corporation of America" (CCA, now: "CoreCivic") in 2015.⁵³ The fact that it was the first privately managed medium-security prison in the United States in 1990 and has maintained its operations to the present day suggests the prison's general compliance with Louisiana's regulations set for private operators, thus increasing this study's reliability and representativeness for the state's legal culture.⁵⁴ Winn was further selected, since it was subjected to similar public scrutiny as the Louisiana State Penitentiary, following the publication of Shane Bauer's 2015 investigative report on their handling of prisoners (CCA) for the magazine "Mother Jones".⁵⁵ His detailed documentation and compiling of voice recordings, notes, and pictures will be used as a central source on individuals' experiences (domain of the empirical) and allowed for more direct insights, that would not have been obtainable via other means. Like for the Louisiana State Penitentiary, information on Winn's prison policies in the domain of the actual will consist of reports and audits from governmental agencies, that comment on the quality of provided services and the treatment of inmates according to state standards, while the domain of the real is represented by the state's criminal justice legislation. While its collaboration with Federal Immigration and Customs Enforcement

⁵³ United States Security and Exchange Commission, *Form 10-K: Corrections Corporations of America* (Washington D.C.: United States Securities and Exchange Commission, 2016), 30, 64, 68, 69.

⁵⁴ Selman and Leighton, *Punishment for sale*, 40-46.

⁵⁵ Bauer, *American Prison*.

(ICE) would be insightful to see how American penal practices are applied to non-citizens, the proper consideration of this development would go beyond the scope of this research, since additional socio-political aspects on immigration and ramifications of the Covid-19 pandemic's additional strain on prison capacities would need to be considered.⁵⁶ Consequently, while the nature of sources used to investigate Winn differ from those for the Louisiana State Penitentiary, due to a lack of primary sources of individual accounts, they cover similar topics and provide comparable results for the interest of this research.

The following chapter will provide a framework for the analysis done in this project's case study, by investigating long-standing ideological paradigms in American foundational myths that constitute the basis of legal culture in the United States, and consider particularities pertaining to the state of Louisiana. This exploration of American legal culture's historical genesis will be essential for defining its unique approach to criminal justice among western nations, that ultimately became a defining feature of American societal structures and moral values.⁵⁷ These underlying ideological principles are subsequently expanded in the next section, which will contrast them with major developments during the era of mass incarceration since the 1970s, as to properly establish a status quo on the dominant elements of Louisiana's legal culture at the onset of the 21st century, upon which the evaluation of observations made during the case study will rest.

3. Historical Foundations of Louisiana's Legal Culture

In this chapter, the origins and developments of ideological beliefs related to legal culture will be explored in more detail to give insights into the nature and changing dynamics within the justice system of the United States. The assumed adjacency concerning constituting factors of historical and contemporary sentiments on criminal justice are substantiated by the maintained purpose of incarceration, as the American carceral system mostly retained its

⁵⁶ Eunice Hyunhye Cho, Tara Tidwell Cullen, Clara Long et al., *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration* (New York: ACLU, 2020), 44.

American Civil Liberties Union (ACLU), "ACLU Calls on Biden Administration to Shut Down ICE Detention Facilities," ACLU Press Release, 28.4.2021, accessed 23.4.2023, <https://www.aclu.org/press-releases/aclu-calls-biden-administration-shut-down-ice-detention-facilities>.

Office for Civil Rights and Civil Liberties, *Retention Memo to ICE Concerning Winn Correctional Center* (Washington D.C.: U.S. Department of Homeland Security, 4.5.2021), accessed 19.4.2023, <https://www.dhs.gov/publication/retention-memo-ice-concerning-winn-correctional-center>.

⁵⁷ Marie Gottschalk. *The Prison and the Gallows: The Politics of Mass Incarceration in America* (Cambridge: Cambridge University Press, 2001), 289f.

declared objectives of providing retribution (1), deterrence (2), incapacitation (3), and rehabilitation (4) into the 21st century, with only the emphasis on specific functions and their public portrayal experiencing changes over time.⁵⁸

In addition to the societal purpose of incarceration retaining key characteristics, ideological foundations of criminal justice also show significant continuities, with the interconnected nature of the United States' legal culture and its civil religion⁵⁹ – consisting of dominant beliefs, symbols and rituals among American citizens⁶⁰, which “treat[s] the sociopolitical as having sacred dimensions”⁶¹ – being consistently reinforced throughout the 20th and 21st centuries.⁶² For the purpose of this study, American civil religion is thus initially observed through the lens of American myth criticism, since the analysis of correlating foundational narratives not only affects early moral beliefs, but will also be used as a reference point for developments within American legal culture at a later point of the nation's history⁶³, with long-standing beliefs expressed through foundational myths forming individual identity-forming building-blocks, that can operate independently from their initial context.⁶⁴ This prefacing intends to provide a framework for subsequent observations, that emphasise the role of American nationalist ideologies as a cornerstone of its approach to criminal justice.

This chapter's first section will describe some general features of American prisons and how its legal tradition deviates from European models in its general aims and assumptions. Building on these characteristics, the second part will incorporate American myth criticism to explore the ideological origins of guiding principles in America's legal culture. The final thoughts of that chapter relate to the legacy of slavery and its influence on penal practices in southern states, focussing on Louisiana. These underlying narratives will be used to provide adequate context

⁵⁸ Curtis Blakely, and Vic Bumphus, “American Criminal Justice Philosophy: What's Old--What's New?,” In: Wilson Palacios, Paul Cromwell, and Roger Dunham (eds.), *Crime & Justice in America: Present Realities and Future Prospects* (Upper Saddle River: Prentice Hall, 2002²), 16-24.

David Shichor, *Punishment for Profit* (Thousand Oaks: Sage Publications, 1995), 65.

Gregg Barak, *Integrating Criminologies* (Boston: Allyn and Bacon, 1998) 75f.

⁵⁹ Robert N. Bellah, “Civil Religion in America,” *Daedalus* 96, no. 1 (1967), 1-21.

⁶⁰ Marcela Cristi, *From Civil to Political Religion: The Intersection of Culture, Religion, and Politics* (Waterloo: Wilfrid Laurier University Press, 2001), 3f.

⁶¹ Rhys H. Williams, “Civil Religion and the Cultural Politics of National Identity in Obama's America,” *Journal for the Scientific Study of Religion* 52, no. 2 (2013), 239-257.

⁶² Sean Everton, “American Civil Religion in the Era of Trump,” *Religions* 14, no. 5 (2023), 633-653.

⁶³ Phillip E. Hammond, „Forum: American Civil Religion Revisited,” *Religion and American Culture* 4, no. 1 (1994), 1-7.

⁶⁴ Karl-Ernst Jeismann, „Didaktik der Geschichte,” In: Erich Kosthorst (ed.), *Geschichtswissenschaft: Didaktik – Forschung – Theorie* (Göttingen: Vandenhoeck & Ruprecht, 1977), 9-33.

for addressing systemic inequalities within the criminal justice system. Specifically, this thesis will home in on mass incarceration era policies, whose lasting impact on the establishment of America's prison-industrial complex and impact on poor urban communities will be the topic of the next chapter.

3.1 What Constitutes the Exceptionalism in America's Carceral System?

Prior to exploring core concepts and flaws within the ideological framework of the U.S. carceral system, this sub-chapter will briefly discuss general tendencies in the historical evolution of jurisprudence in America to outline the complex societal and political functions of its system of punishment.⁶⁵ The paradigms of early American law generally follow European legal traditions in their institutional makeup, albeit to a limited extent in some crucial respects, such as popular conceptions of what role criminal punishment should take on in maintaining social order and which means are regarded as acceptable and expedient to employ in prison facilities to achieve their purpose. Thus, this section will summarise characteristic elements of American legal culture, commonly linked to societal and academic paradigm shifts related to the age of enlightenment and distinguish the American approach from its European counterpart.⁶⁶

Ideologically, today's democratic carceral systems are almost exclusively defined by punishments that involve imposed control or the incarceration of individuals, that is oftentimes applied in combination with social rehabilitation to prevent offenders from becoming recidivists. Due to the historical developments surrounding nations' criminal justice systems being dependent on a multitude of unique political, cultural, and societal factors, it can be difficult to understand their intricacies from an outside perspective. However, some overarching tendencies regarding the ideological frameworks of appropriate systems of punishment are still observable within western discourse.

Drawing from Foucault's analysis of penal systems in his work "discipline and punish", the defining paradigm shift shaping today's carceral landscapes occurred in parts of the Americas and Europe during the late 18th and early 19th centuries, as reformations, which, he argues,

⁶⁵ Michel Foucault, *Überwachen und Strafen: Die Geburt des Gefängnisses* (Frankfurt a. M.: Suhrkamp Verlag, 2020¹⁸), 34f.

⁶⁶ Winfried Fluck, "Politische Kultur: Vom Exzeptionalismus der Werte zu einem Exzeptionalismus der Stärke," In: Christian Lammert, Markus B. Siewert, Boris Vormann (eds.), *Handbuch Politik USA* (Wiesbaden: Springer, 2020²), 25f.

were gradually brought about during the Age of Enlightenment, largely abolished humiliating, public punishments and the spectacle associated with them in favour of an implicit projection of a government's sovereign power through imprisonment in governmental institutions.⁶⁷ These closed-off facilities managed to project the government's monopoly of power through an enforced control and correction of inmates' behaviours, which postulates a normative effect on people's behaviour, while punishment itself evades public scrutiny through anonymised procedures.⁶⁸ Whereas scholars including Foucault have argued that these institutional changes and efforts of optimising incarceration practices indicate a connection to paradigm shifts regarding prison policies, as they prompted increased attention towards psychological processes and rehabilitation during incarceration⁶⁹, similar prison practices having been founded in religious rehabilitation instead of deterrence have already been present in America prior to these ideological shifts.⁷⁰ The changes to American and European penal systems that occurred around the turn of the 19th century would shape the character and challenges of carceral institutions to come and built the basis for the economic relevance of the American prison labour industry and its dimensions to come.⁷¹

Similarly, these new approaches to incarceration caused an overall increase in bureaucracy of carceral institutions and the concomitant anonymisation of criminal punishment mentioned above. The resulting reformatory impetuses collectively influenced western legal cultures, as they gradually led to a separation of criminal prosecutions, trials and corrections; thus, facilitating further regulation and institutionalisation, including a division of labour responsibilities to specifically trained prison-employees and an understanding of prisoners as legal subjects who possess agency and the same human rights as non-criminals, but have to abide by carceral regulations.⁷² These reforms likewise altered the attention of criminal justice from rather quick punishment to prolonged periods of confinement that assert authority by

⁶⁷ Foucault, *Überwachen und Strafen*, 14-20.

⁶⁸ Durkheim, *The Division of Labor in Society*, 64, 80f, 108f.

Foucault, *Überwachen und Strafen*, 229f.

⁶⁹ Adam Hirsch, *The Rise of the Penitentiary: Prisons and Punishment in Early America*, New Haven and London (New Haven: Yale University Press, 1992), 29-32.

Clemens Klammer, Rolf Parr, and Ulrich Johannes Schneider (eds.), *Foucault Handbuch: Leben – Werk – Wirkung* (Berlin: Springer, 2020²), 73f.

⁷⁰ Scott Christianson, *With Liberty for some: 500 Years of Imprisonment in America* (Boston: Northeastern University Press, 1998), 13f.

⁷¹ David Rothman, „Perfecting the Prison: United States, 1789-1865,” In: Noval Morris, and David Rothman (eds.), *The Oxford History of the Prison: The Practice of Punishment in Western Society* (New York: Oxford University Press, 1995), 100-116.

⁷² Foucault, *Überwachen und Strafen*, 17-21.

managing and sanctioning the inmates' body through strict time-scheduling, labour, and moral rehabilitation without exposing the justice system or actors within it to accusations of bearing responsibility for inhumane living conditions or forms of punishment.⁷³

Whereas some schools of thought, concerning themselves with the history and sociology of enforcing people's compliance with state authority, assumed the process to be grounded exclusively in external, top-down enforcements of rules⁷⁴, active policing and deterrence, the understanding of correctional processes considered here will be guided by Foucault's model of "Panopticism"⁷⁵, as an analogy that uses the enforced conformity in penal institution to characterise a general shift towards a disciplinary society, in which an ambiguity of whether or not an individual is under surveillance is established by obscuring the subjects' perception of that fact. Thus, prompting individuals to act under the constant assumption of being observed. This stresses the role assigned to bottom-up consolidations of power structures⁷⁶ and behaviours through surveillance-induced self- and peer-regulatory mechanisms, that produce disciplinary coercion along power-hierarchies inside the confines of penal institutions even prior to any wrongdoing.⁷⁷ It is also more suitable for research into incarceration such as is conducted in this thesis, as this bottom-up approach ascribes a degree of agency to incarcerated people, by focussing on the complex situational context rather than on power inherent to any institution or group of people.

While these new models of punishment and legal reforms are prevalent in Europe and America to different extents, the latter's societal and economic structures displayed significant adaptations to the challenges faced on the expansive territories of this new continent.⁷⁸ Despite early efforts of implementing forced labour and confinement by some states, laws in colonial America were generally grounded in the *English American* [legal] *Code*, that ranked among harshest legislation in Europe, after Britain expanded it during the 18th century, and was

⁷³ Foucault, *Überwachen und Strafen*, 197f, 229f.

⁷⁴ Louis Althusser, *Ideologie und Ideologische Staatsapparate* (Hamburg/Berlin: VSA Verlag Hamburg, 1977).

⁷⁵ Foucault, *Überwachen und Strafen*, 251-294.

Jeremy Bentham and Miran Božovič (ed.), *The Panopticon Writings* (London/New York: Verso, 1995).

⁷⁶ Michel Foucault, *Der Wille Zum Wissen* (Frankfurt am Main: Suhrkamp, 1977), 141f.

⁷⁷ Foucault, *Überwachen und Strafen*, 263-279.

⁷⁸ Lawrence Friedman, and Grant M. Hayden, "The Background of American Law," In: Lawrence Friedman, and Grant M. Hayden (eds.), *American Law: An Introduction* (New York: Oxford University Press, 2017³), 35-54.

primarily categorised by its frequent use of corporal and capital punishments.⁷⁹ This harsh treatment of criminals was especially prevalent in the younger southern colonies, that originated during this period of increased severity of penalty and perpetuated this trend due to its compatibility with their reliance on the Atlantic slave trade and forced labour for sustaining a positive economic output.⁸⁰ Following American independence, new legislation has mostly been identified by prior analyses to prioritise territorial expansionism and establishing economic stability along with growth, while moral concerns associated with its reliance on the African slave-trade, slavery and indentured servants were disregarded until disputes over the future of slavery in newly acquired states culminated in the American Civil War.⁸¹ However, race-specific slave-codes according to which behaviour of Black people was judged were not disbanded after the Confederacy's defeat, but found their way into criminal law through the introduction of Jim Crow Laws and Black-codes that perpetuated racial segregation together with its associated sentiments and solidified the majority Black prison population as a substitution for the labour force formerly occupied by slaves.⁸² As the specifics of ideological justifications will be discussed at a later point, it can be noted that this necessitation of a cheap workforce will act as one of multiple precursors to the acceptance and immense importance of forced prison labour, characteristic for the United States' current prison economy.

Along with these economically motivated characteristics came general trends in prison practices. These were famously commented on by the French Sociologist Alexis de Tocqueville in his characterisation of them as being "a spectacle of complete despotism"⁸³. Defining for this assessment was the economical component that permeated institutional structures and the role of democratically selected criteria for crimes and punishments, that supposedly justified and increased the severity of punishments.⁸⁴ In today's international context, the

⁷⁹ David Musick, and Katherine Gunsaulus-Musick, *American Prisons: Their Past, Present and Future* (Abingdon/New York: Routledge, 2017), 8f.

Stuart Banner, *The Death Penalty: An American History* (Cambridge: Harvard University Press, 2002), 267-271.

⁸⁰ Banner, *The Death of Penalty*, 7-10.

⁸¹ Friedman and Hayden, "Crimes and Punishment".

⁸² Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South* (New York: Oxford University Press, 1984), 151f.

Gottschalk, *The Prison and the Gallows*, 47-52.

⁸³ Tocqueville, and Beaumont, *On the Penitentiary System in the United States and its Application in France*.

⁸⁴ Manfred G. Schmidt, „Der Zielkonflikt von Freiheit und Gleichheit: Alexis de Tocqueville über die Demokratie in Amerika,“ In: Richard Saage (ed.), *Demokratietheorien. Uni-Taschenbücher* (Wiesbaden: VS Verlag für Sozialwissenschaften, 1995), 101-120.

most prevalent ones are the harsh treatment of prisoners, a liberal use of solitary confinement, and the practicing of capital punishment in certain states' laws. The sentiments regarding the death penalty's appropriateness fluctuated during the 18th and 19th centuries under the influence of humanistic theories and anxieties related to the infringement of state-power on individual rights during urbanisation and industrialisation processes⁸⁵, albeit approval only began to wane categorically during the early 20th century and following the atrocities of the Shoah⁸⁶, with no executions occurring during the Supreme Court's assessment of its constitutionality between 1968 and 1976.⁸⁷ Temporarily, the Supreme Court ruled it to be unconstitutional in 1972, but soon after reverted that decision.⁸⁸

After the acceptance of capital punishment began to rise again as part of America's push for tough-on-crime doctrines, that included catalogues of specific crimes to which it may be applied and the installation of additional safeguards, the death penalty was reinstated to varying degrees throughout the USA and deemed to be in accordance with the constitution.⁸⁹ On the grounds that these reforms required jury verdicts to be considered when passing a guilty verdict, the practice was ruled to no longer be prone to institutional discrimination by the Supreme Court, which was subject to international criticism, since the acceptance of death sentence legislation was on the decline in western nations. Today, legal disparities within the United States are noticeable, as sentencing laws including the death penalty are more strongly represented in former slave-states, as their history of lynchings as a form of vigilante capital punishment spans from the pre-abolitionist and Reconstruction South to the Jim Crow Era and beyond.⁹⁰

Despite executions having become less popular after the Second World War, and the U.S. Supreme Court ruling of 1972 declaring mandatory ruling criteria for death sentences in Louisiana as unconstitutional, due to their cruel and unusual nature in its discrimination of ethnic, religious, social position and wealth, it was nonetheless reinstated in 1976, after a 7-

⁸⁵ Daniel LaChance, "Executing Humanity: Legal Consciousness and Capital Punishment in the United States, 1915–1940," *Law and History Review* 35, no. 4 (2017), 930-935.

⁸⁶ Banner, *The Death Penalty*, 267-275.

⁸⁷ LaChance, "Executing Humanity: Legal Consciousness and Capital Punishment in the United States, 1915–1940," 968-971.

⁸⁸ Banner, *Capital Punishment*, 267f.

⁸⁹ Banner, *The Death Penalty*, 267-271, 300-303.

⁹⁰ David Jacobs, Jason T. Carmichael, and Stephanie L. Kent, "Vigilantism, Current Racial Threat, and Death Sentences," *American Sociological Review* 70, no. 4 (2005), 656–677.

to-2 U.S. Supreme Court decision in favour of the constitutionality of a Georgia court's death verdict was passed, as its decision was justified by multiple independent investigations and the lack of generalised sentencing practices.⁹¹ Nor did the Supreme Court's verdict disprove assertions presented in *Gregg v. Georgia*, that the death penalty functions as a deterrent for future offenders. Between its reinstatement under more restrictive sentencing guidelines and 2015 241 death sentences have been passed in the state of Louisiana, which presents about 1% of the state's homicide cases, and was enforced in 10% of convictions.⁹² In spite of regulatory anti-discrimination measures, these sentences mirror the biases in incarceration rates of Black Americans (1,522 per 100,000)⁹³, that are almost four times higher than for White people, as the death sentence is only applied in 0.52% of Black-on-Black homicide cases between males during this timeframe, while making up 15.56% of rulings in cases in which Black men committed murder on White women.⁹⁴

Similar to the death penalty's fluctuating popularity, solitary confinement has been rising and waning as a method of criminal and disciplinary punishment, depending on whether rehabilitative or retributivist paradigms were more defining for the American legal culture of a specific time period.⁹⁵ Initially employed as a form of criminal punishment, that stood in opposition to contemporary corporal punishments in England, it focussed on rehabilitation through the forcing of religiously connotated introspective processes under social isolation.⁹⁶ The roots of this forced isolation can be traced back to American Quakers around 1800, who already employed long-term solitary confinement, despite its primary proponent and architect

⁹¹ Frank R. Baumgartner, and Tim Lyman, "Louisiana Death-Sentenced Cases and Their Reversals, 1976-2015," *Journal of Race, Gender, and Poverty* 7 (2015-2016), 59f.

Roberts v. Louisiana, 428 U.S. 325, No. 75-5844 (U.S. Supreme Court, 1976), 9, [https://supreme.justia.com/cases/federal/us/428/325/#:~:text=Louisiana%2C%20428%20U.S.%20325%20\(1976\)&text=A%20death%20penalty%20law%20is,different%20crimes%20of%20varying%20severity](https://supreme.justia.com/cases/federal/us/428/325/#:~:text=Louisiana%2C%20428%20U.S.%20325%20(1976)&text=A%20death%20penalty%20law%20is,different%20crimes%20of%20varying%20severity).

Gregg v. Georgia, 428 U.S. 153, No.74-6257 (U.S. Supreme Court, 1976), <https://supreme.justia.com/cases/federal/us/428/153/>.

⁹² Baumgartner, and Lyman, "Louisiana Death-Sentenced Cases and Their Reversals, 1976-2015," 60.

⁹³ ACLU of Louisiana, *Blueprint for Smart Justice: Louisiana* (New Orleans: ACLU, 2018), 9f.

⁹⁴ Baumgartner, and Lyman, "Louisiana Death-Sentenced Cases and Their Reversals, 1976-2015," 69f.

⁹⁵ David H. Cloud, Brie Williams, Regine Haardörfer, Justin T. Hosbey, and Hannah L. F. Cooper, "Self-Injury and the Embodiment of Solitary Confinement Among Adult Men in Louisiana Prisons," *SSM – Population Health* 22 (2023), 2.

⁹⁶ Musick and Gunsaulus-Musick, *American Prisons*, 9f.

Peter Scharff Smith, "Solitary Confinement – Effects and Practice from the Nineteenth Century Until Today," In: Jules Lobel, and Peter Scharff Smith (eds.), *Solitary Confinement: Effects, Practices, and Pathways toward Reform* (New York: Oxford University Press, 2019), 21-42.

Ashley T. Rubin, "A Neo-Institutional Account of Prison Diffusion," *Law & Society Review* 49, no. 2 (2015), 365-400.

John Howard's insistence that periods of solitude ought to be interrupted by "associated labour and communal exercises" to effectively resocialise inmates.⁹⁷ This recommendation would soon be heeded and reinforced during the mid-19th century, when first observations on mental distress, muscle atrophy, and suicide among isolated individuals were reported.⁹⁸ While the practice enjoyed hardly any widespread popularity until the 1960s, prolonged total isolation has become a regular occurrence for even comparatively minor misconduct since the advent of mass incarceration, despite it still presenting a violation of the International Charta for Human Rights along with the domestic ban on "cruel and unusual punishment" from the 8th Amendment of the U.S. Constitution of 1791.⁹⁹

In the wake of solitary confinement being applied more liberally since then, racial disparities in its enforcement also rose across the board, lending credence to the proposition, that it is still influenced by the legacy of oppressive segregationist regulations and ensure obedience¹⁰⁰, while disrupting prisoners' efforts of political protest.¹⁰¹ In Louisiana, refusal to work or complete a job with "reasonable speed and efficiency" can result in 30 to 180 days in solitary confinement, depending if it is the first, second or a subsequent instance of being reprimanded.¹⁰² Apparently, criminal justice and carceral systems are inevitably linked to shifts in moral and ideological beliefs, which is why the following chapter will delve deeper into the moral justifications of practices within legal culture, whose ideological rationale is expressed through American foundational myths.

3.2 Unravelling the Mythology Behind American Legal Culture

Following structural and procedural features of the American prison system, this section will discuss the historical roots and ideological impact of American foundational myths, that historically shaped core values constituting the principles of American legal culture, to

⁹⁷ David Shapiro, "Solitary Confinement in the Young Republic," *Harvard Law Review* 133, no. 2 (2019), 548-550.

⁹⁸ Rubin, „A Neo-Institutional Account of Prison Diffusion," 378f.

⁹⁹ Ryan Sakoda, and Jessica Simes, "Solitary Confinement and the U.S. Prison Boom," *Criminal Justice Policy Review* 32, no. 1 (2021), 66-102.

⁹⁹ Nils Melzer, "United States: Prolonged Solitary Confinement Amounts to Psychological Torture," *United Nations Press Release*, 28.2.2020, <https://www.ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture>.

¹⁰⁰ Sakoda and Simes, "Solitary Confinement and the U.S. Prison Boom," (2019), 66-102.

Lisa Guenther, *Solitary Confinement: Social Death and Alternatives* (Minneapolis: University of Minnesota Press, 2013).

¹⁰¹ Marie Gottschalk, "Cell Blocks & Red Ink: Mass Incarceration, the Great Recession & Penal Reform," *Daedalus* 139, no. 3 (2010), 62-73.

¹⁰² Jennifer Turner, Mariana Olaizola Rosenblatt, Nino Guruli et al., *Captive Labor: Exploitation of Incarcerated Workers* (Chicago: ACLU and Global Human Rights Clinic, 2022), 49.

highlight their principal role within the broader systems of corrections. For this purpose, the approach to myth-criticism chosen here follows Roland Barthes' conception of myths in the tradition of semiotic study after Saussure as modes of signification, which functionally provide ideas with a specific realisation in the form of historical narratives and their diverse expression through speech, writings, the arts and popular customs to name a few.¹⁰³ Especially in the case of the United States, whose very pronounced form of nationalism is primarily defined by an adherence to the original representation of their national mythology, the consideration of these supposedly natural justifications for historical intention holds great importance.¹⁰⁴ One such example for the significance of myths can be found in early legal documents such as the American declaration of independence, which situates their country's institutional framework as being designed according to universal, God-given and therefore "self-evident" principles, whose legitimacy cannot be questioned and whose authority cannot be surpassed. This assumption encapsulates the spirit of American exceptionalism, which presents the morals and values of the nation and its citizens to be uniquely superior to others'. Thus, promoting the common moral belief among American citizens, that its society represents the undeniable pinnacle of individualism, equality and democracy values.¹⁰⁵

The roots for these self-characterisations lie in early efforts to establish an exceptionalist American nationalism, after the country gained independence in 1776, by constructing a "usable past"¹⁰⁶ as the ideological foundation for social coherence within the disparate young nation.¹⁰⁷ Since American colonial history was marred by violence and conflict, early American authors often glossed over unfavourable aspects of colonial history when characterising Americans in a positive light. Such was the case with French American author St. John de Crèvecoeur in his letter: "What is an American?"¹⁰⁸, where he postulated a prototype of narratives that would expand into fully fledged national myths over time. He describes the quintessential American as a hard-working "western pilgrim" and "new man", who is truly

¹⁰³ Roland Barthes, "Myth Today," In: John Storey (ed.), *Cultural Theory and Popular Culture: A Reader* (Harlow/London/New York: Pearson Prentice Hall, 1972), 293-302.

¹⁰⁴ Barthes, "Myth Today," 300f.

¹⁰⁵ Émile Durkheim, *The Elementary Forms of Religious Life*, trans. Karen E. Fields (New York/London/Toronto/Sydney/Tokyo/Singapore: The Free Press, 1995)

¹⁰⁶ Henry Steele Commager, "The Search for a Usable Past," In: Henry Steele Commager (ed.), *The Search for a Usable Past and other Essays in Historiography* (New York: Alfred A. Knopf, 1965), 3-27.

¹⁰⁷ Paul, *The Myths that Made America*, 29.

¹⁰⁸ Hector St. John de Crèvecoeur, "What is an American?," In: Paul Lauter (ed.), *The Heath Anthology of American Literature Vol I.* (Boston: Mifflin Houghton, 1998).

equal among their peers and no longer restricted by “ancient prejudice” or beholden to aristocracy hindering others’ progress for their own gains.¹⁰⁹ Crèvecoeur’s letters, their critique of European society and praise of harmonious coexistence in the colonies, presented early settlers in North America and their values, whose majority was mainly composed of Anglo-Saxon Protestants and other Christian minorities from north-western and central Europe, as a distinctly separate society, that learned from the mistakes of its European counterpart.¹¹⁰ By doing so, they not only furthered an impression of social stability, but also appealed to the ideals of the English Whig Party as a means of reconciliation after the War of Independence¹¹¹

These descriptions were one of the first incarnations of narrative elements for characterising a distinctly American society on the continent, that would later develop into the myths of America as a “melting pot” and its citizens as “self-made men”, as well as inform the overarching myth of the “American Dream”.¹¹² However, while the positive infatuation with and idealisation of early American society and governance in this early search for a usable past promote democratic principles, that appealed to liberal European readers and presented a stable alternative to dire living conditions of lower classes, they also disregard settler-colonial violence against native Americans in their descriptions.¹¹³ Similarly, when publishing his letters in the United States, they excluded sections condemning the practice of slavery as unjust and inhumane, instead focussing on the virtues and moral ideals of its citizens.¹¹⁴ Consequently, it can be observed that not only the core affirmations of identity-markers, but also those of whitewashing efforts conducted through national mythologies, are long-standing paradigms, the details of which will be discussed in detail in the subsequent sections. The totality of these ideas provides the framework for a relatively stable narrative of equality and self-actualisation,

¹⁰⁹ Crèvecoeur, “What is an American?,” 855.

¹¹⁰ Crèvecoeur, “What is an American?,” 856.

Bryan F. Le Beau, *A History of Religion in America: From the First Settlements through the Civil War* (London/New York: Routledge, 2018), 27-45.

¹¹¹ Norman A. Plotkin, “Saint-John de Crèvecoeur Rediscovered: Critic or Panegyrist?,” *French Historical Studies* 3, no. 3 (1964), 391f.

¹¹² David Carlson, “Farmer versus lawyer: Crèvecoeur’s Letters and Liberal Subject,” *Early American Literature* 38, no. 2 (2003), 257-279.

¹¹³ Joanna Innes, and Mark Philp, “‘Democracy’ from Book to Life: The Emergence of the Term in Active Political Debate, to 1848,” In: Jussi Kurunmäki, Jeppe Nevers, and Henk te Velde (eds.), *Democracy in Modern Europe: A Conceptual History* (New York/Oxford: Berghahn, 2018), 16-41.

Robert Palmer, *The Age of the Democratic Revolution: A Political History of Europe and America, 1760-1800* (Princeton: Princeton University Press, 1959).

¹¹⁴ David Robinson, “Crèvecoeur’s James: The Education of an American Farmer,” *The Journal of English and German Philology* 80, no. 4 (1981), 552–571.

that form the American Dream as a representation for the boundless opportunities in this new land.

The nationalist ideology surrounding the “American Dream” is commonly considered to have been the chief narrative for establishing a sense of community and social stability amongst the nation’s diverse population throughout its existence, in spite of logical fallacies that become apparent in light of America’s history of institutionalised discrimination.¹¹⁵ Using the presumption, that societal structures and public life within the USA are heavily influenced by sentiments expressed within this American Dream and the correlating idea of American exceptionalism, three foundational myths relating to morality, individualism, and social structures will be discussed to present the central themes of American legal culture. Since these myths are representing iterations of the same overarching narrative, overlaps in their origins and desired effects are noticeable: with the main motive generally being the establishment of cultural hegemony and the separation from Britain’s influence, while portraying this detachment as a liberating step on socio-economic, religious and moral fronts.¹¹⁶ The prison system, in turn, appears to deprive massive amounts of the American population from participating in this liberating dream, justifying harsh punishments on the basis of American laws’ absolute character, and excluding prisoners through stigmatisation and disenfranchisement. Thus, this section will expand on the justifications for this deprivation, by juxtaposing propagated moral values presented by American foundational myths with developments in the function of its prison system to assess their purpose within the nation’s legal culture.

The first theme discussed is the nation’s self-proclamation as a morally superior “city set upon a hill”, which promises religious freedom from Anglican and Catholic doctrines, reaffirms Puritan and Protestant morality as national values and introduce religious beliefs into the secularised structures of the United States, by compelling a plethora of religious Christian symbolism to be included in official and legal documents. The second motif of the “self-made man” is similarly linked to Puritanism, but focusses to a greater extent on individual responsibility, as it establishes an intrinsic association between socio-economic success, desirable work ethics and the belief that every labour contributes to the expansion of their

¹¹⁵ Jennifer Hochschild, *Facing up to the American Dream: Race, Class, and the Soul of the Nation* (Princeton: Princeton University Press, 1995).

¹¹⁶ Crèvecoeur, “What is an American?,” 854-859.

morally superior society. The last myth to be discussed mischaracterises the American history of violence against culturally and ethnically oppressed groups as a “melting pot” of cultures that culminates in a homogenous society, whose diverse populations intermix and constitute the identity of the American society, but do not deviate from the notion of “Americanness” expressed by American exceptionalism.¹¹⁷

The totality of these nation-building processes resulted in a form of ideology, that was applied to the context of the United States and popularised by Robert Bellah in his 1967 article “Civil Religion in America”, who based his theories on ideas previously outlined in Jean-Jacques Rousseau “Du contract social”¹¹⁸. This concept of American civil religion (ACR) has been refined and adapted to different fields of study after its initial introduction by Rousseau, with different iterations being applied in varying fields of sociological study. Despite these diverse approaches, Bellah’s definition of civil religion itself remained largely intact as the quasi-religious dimension of public life, which promotes social cohesion, by reaffirming a set of propagated national values, and is expressed primarily through specific rituals, symbols, and beliefs; including examples such as the pledge of allegiance, the national flag, and the veneration of the military in the U.S..¹¹⁹ Yet, ACR is no monolith, but comprises of dominant and subordinate sets of beliefs, belonging to different portions of society.

Despite some overlaps in ideological beliefs among people living in America, deviations from certain values and opposition towards the enforcement of ACR need to be considered, since individuals and societal groups excluded from partaking in America’s dominant civil religion and its benefits commonly opposed the status quo, as was the case with victims of racism and other forms of discrimination.¹²⁰ However, since this thesis’ focus is the application of legal culture by governmental institutions, these sub-categories of ACR will only be addressed if relevant to the topic at hand, or to contrast them with the dominant form of ACR, which understands its national purpose to be the upkeep and spreading of its doctrines.¹²¹ John

¹¹⁷ Philip Gleason, *Speaking of Diversity: Language and Ethnicity in Twentieth Century America* (Baltimore: Johns Hopkins University Press, 1992), 5.

¹¹⁸ Bellah, “Civil Religion in America,” 1-21.

Anthony Squiers, *The Politics of the Sacred in America: The Role of Civil Religion in Political Practice* (Passau/Fort Worth: Springer International Publishing, 2018), 7-9.

¹¹⁹ Squiers, *The Politics of the Sacred in America*, 1f, 147-150.

Robert N. Bellah, *The Broken Covenant: American Civil Religion in Time of Trial* (Chicago: University of Chicago Press, 1992²).

¹²⁰ Bellah, *The Broken Covenant*, 107f.

¹²¹ Williams, “Civil Religion and the Cultural Politics of National Identity in Obama’s America,” 240f.

Coleman described ACR in relation to the substantial influence of the Puritan faith in early American history as “point[ing] to the religious dimension of the polity”, as a secular system of governance was maintained, while Christian doctrines and their symbols were positioned as synonymous with national ideals.¹²² In chapter 3.3.1 it will be addressed, how this tight association between national affairs and the church provided domestic stability and trust in the government, while also ultimately influencing legal culture and its practice.

While analyses of the underlying narratives to ACR have been made throughout the nation’s history, social and legal scholars have only begun to critically assess internal logical flaws of American exceptionalism and the American Dream, since transnational Americanist myth criticism has risen to prominence in the mid-90s.¹²³ Through their appraisals and a recognition of America being a “nation among nations”, instead of the exception¹²⁴, institutional and systemic biases against historically, socio-economically deprived populations, previously justified by the American Dream’s assumptions and equations, were brought to prominence by advocates of prisoners’ rights and calls for prison reforms. Whereas ACR has many components that can be applied when investigating the genesis of its legal culture, the following section will analyse three mythological cornerstones of the American Dream, relevant for this research, that are expressed through three of the nations’ foundational myths in this argumentation, to highlight the specific effects these components have had on carceral practices.

3.3 Justifying Injustice – How American Civil Religion Shaped its Legal Culture

Historically, America’s social hierarchies and legal traditions have displayed systemic inequalities, that are reflected in a plethora of judicial and ideological disputes among its defenders and opponents, which substantially amended some aspects pertaining to mechanisms of oppression and simply re-codified others to appease critics throughout the history of American legal culture.¹²⁵ Despite this discord concerning the adequacy and equity of America’s societal model, the myth of the American Dream, with its unequivocal promise of upwards social mobility, has remained a cornerstone of the ACR, with its waning popularity in

¹²² John A. Coleman, “Civil Religion,” *Sociology of Religion* 31, no. 2 (1970), 67.

¹²³ Amy Kaplan, and Donald Pease (ed.), *Cultures of United States Imperialism* (Durham/London: Duke University Press, 1993).

Godfrey Hodgson, “The Other Exceptionalism,” In: Godfrey Hodgson (ed.), *The Myth of American Exceptionalism* (New Haven/London: Yale University Press, 2009), 128-154.

¹²⁴ Thomas Bender, *A Nation Among Nations: America’s Place in World History* (New York: Hill & Wang, 2006).

¹²⁵ Alexander, *The New Jim Crow*, 20f.

the broader public only being noticed since the early 2010s.¹²⁶ By juxtaposing core narratives of ACR with the main tenets of its legal culture, this section seeks to highlight patterns between the logic these myths operate under and American legal culture. For this purpose, relevant narratives concerning the makeup of the United States' carceral system will be looked at in more detail, when considering societal inequalities, discriminatory applications of laws and practices to oppress certain parts of society.

Specifically, this chapter will look at three myths to investigate their relation to this grand narrative and show how its components influenced the nation's legal culture. The main topics will thus include the presumed moral infallibility of the nation's foundational values of governance and the importance of its religious connotations, social mobility and individual responsibility, along with moral and as political justifications for the disproportionate impact of incarceration on people of colour and their communities. The myths covered in this chapter consequently include that of the *Promised Land*, the *self-made man*, and the *melting pot*, since they fulfil imperative aspects for the evolution of American legal culture and its incarceration binge. The origins of the current system's structural makeup are touched on here, but will be expanded in the subsequent chapter, as it will be dealing with the impact of mass incarceration policies on American legal culture.

3.3.1 Enforcing Destiny – Legal Culture in the American “City Set Upon a Hill”

Chronologically as well as ideologically, the Puritan myth of the *Promised Land* and its imagination of America as a *city set upon a hill* are parts of the earliest national mythology constituting the American Dream and its civil religion. Their impact is mainly rooted in a religiously connotated affirmation of American exceptionalism and imperialism in the tradition of *Manifest Destiny*, which postulates an intrinsic superiority over other nations along with a need to spread American moral, liberal, democratic, and economic values associated with it.¹²⁷ The incorporation of this religious self-affirmation as a tool for justifying various political agendas, prosecution legislation, and sentencing laws during different developmental stages of American history is well documented from early colonial and ante-bellum times, over

¹²⁶ Christian Lammert, Markus B. Siewert, and Boris Vormann, „Die Präsidentschaft Donald J. Trumps: Krise der Demokratie und Potenzial zur Demokratischen Selbsterneuerung,“ In: Christian Lammert, Markus B. Siewert, and Boris Vormann (eds.), *Handbuch Politik USA* (Wiesbaden: Springer, 2020²), 6-9.

Kim Eunji, "Entertaining Beliefs in Economic Mobility," *American Journal of Political Science* 67 (2022), 39–54.

¹²⁷ Fluck, „Politische Kultur,“ 19f, 26f.

Reconstruction and the Progressive Era, and well into the second half of the 19th century.¹²⁸ Surrounding the debate on the morality and legality of slavery, religiously motivated arguments were central to both: Opponents of slavery in the north argued that it violated doctrines of equality and charity, while proponents of it simultaneously defended racial hierarchies and slavery as a divine law in the South, through which slaves were granted an education and food, while ignoring the suffering and death caused by the practice.¹²⁹

While initial assessments of Puritan influences on American ideologies initially proposed by Max Weber in 1905 and revised by 1920¹³⁰ were dismissed, due to logical fallacies of overgeneralisations regarding the complexity of Protestant faiths in colonial America, the recurrence of Christian themes in American mythologies through Puritan and Calvinist doctrines, along with their relevance in rehabilitative programmes at Louisiana prisons, justifies their consideration in this paper.¹³¹ Similarly, the moral virtues postulated by Puritanism are commonly invoked in legal paradigms under mass incarceration, to justify harsh punishment of street criminality in lower-income areas over white-collar crimes of the upper class, such as finance fraud, bribery, or negligence concerning necessary safety precautions; since their sentences are usually relegated to fines or increases in governmental oversight, that are accumulatively more harmful to society than directly harmful behaviour.¹³² The following paragraphs will illuminate some specific aspects regarding perceptions of morality in Puritan narratives of the *city set upon a hill* in relation to American legal culture, before moving on to the next myth of the *self-made man* and the effects of its hyper-individualist ideologies on legal structures within America's neoliberal capitalism.

The phrase "a city set upon a hill", first coined in the political sermon "A Model of Christian Charity" by later Governor of Massachusetts, John Winthrop¹³³, that is said to have taken place

¹²⁸ Michael Hochgeschwender, „Religion und Politik in den Vereinigten Staaten von Amerika,“ In: Lammert, Siewert, and Vormann (eds.), *Handbuch Politik USA* (Wiesbaden: Springer, 2020²), 42f.

¹²⁹ Anthony E. Cook, *The Least of These: Race, Law, and Religion in American Culture* (New York/London: Taylor & Francis Groups, 1997), 99-104.

¹³⁰ Max Weber, Klaus Lichtblau (ed.), and Johannes Weiß (ed.), *Die Protestantische Ethik und der Geist des Kapitalismus: Vollständige Ausgabe* (Wiesbaden: Springer, 2016).

¹³¹ Hans-Peter Müller, and Steffen Sigmund (ed.), *Max Weber Handbuch: Leben – Werk – Wirkung* (Berlin: J.B. Metzler, 2020²), 136-138.

¹³² Jeffrey Reiman, and Paul Leighton, *The Rich Get Richer and the Poor get Prison: Ideology, class, and Criminal Justice* (New Haven/London: Routledge, 2017¹¹) 93-95, 135-139.

¹³³ John Winthrop, "A Model of Christian Charity," In: Edmund C. Stedman, and Ellen M. Hutchinson (eds.), *A Library of American Literature: Early Colonial Literature, 1607-1675* (New York: Charles L. Webster & Company, 1892), 304-307.

before their setting sail to North America in 1630.¹³⁴ Winthrop's speech has been adopted into the canon of America's founding mythology as a promotion of religious victimisation to establish a usable past, while disavowing their brutal conflicts with indigenous peoples like the Wampanoag^{135, 136} This self-characterisation expresses their purpose to be the active promotion of a society, that substitutes pre-existing dogmas of Europe's ecclesiastical institutions with their reformed views, unaffected by the corruption perceived to be inherent to those institutions, and free from aristocrats' exploitation of lower classes to accumulate wealth through feudalism.¹³⁷

In spite of doubts about its authenticity having been raised due to a lack of contemporary sources¹³⁸, within academic discourse this text and its proclamation of purpose are commonly referred to as a "sacred document" of ACR for its early national narratives; which includes the philosophy surrounding *Manifest Destiny*, that not only reinforces the exceptionality of the American people and institutions, but expands on it by proclaiming the duty to spread their ideology, into this newly discovered *promised land* and the rest of the world, to be the country's unavoidable destiny.¹³⁹ While there was by no means an inner-political consensus on the validity of the myth, with a considerable number of prominent Whigs advocating for a democratic model to be established for other nations to follow on their own volition instead of enforcing it on others, its core tenets and Puritan connotations of political messaging have remained a constant in ACR and the legal culture heavily influenced by it.¹⁴⁰

This narrative's importance for the preservation of the American Dream has lasted the test of time, as its invocation of an inherent moral pre-eminence over the rest of Christianity and non-Christian religions is still ubiquitous in the national political discourse of the 20th and 21st centuries. Most prominently, it was employed in justifications of American imperialist

¹³⁴ Peter Gardella, *American Civil Religion: What Americans Hold Sacred* (Oxford/New York: Oxford University Press, 2014), 1-8.

Jamie J. Bornstein, *Two Nations, Indivisible: A History of Inequality in America* (Santa Barbara/Denver: Praeger, 2016), xiif.

¹³⁵ Ward Churchill, and Israel W. Charny (ed.), *Encyclopedia of Genocide* (Santa Barbara/Denver/Oxford: ABC-CLIO, 2000), 434-437.

¹³⁶ Paul, *The Myths that Made America*, 185f.

¹³⁷ Paul, *The Myths that Made America*, 138f, 150-154, 159.

¹³⁸ Godfrey Hodgson, "A City Set Upon a Hill," In: Godfrey Hodgson (ed.), *The Myth of American Exceptionalism* (New Haven: Yale University Press, 2009), 1f.

¹³⁹ Fluck, "Politische Kultur," 19f, 26f.

¹⁴⁰ Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848* (Oxford: Oxford University Press, 2007), 705-710.

interventionism, as part of the Red Scare since the Cold War, or by lawmakers, to gain popularity among specific voter bases.¹⁴¹ These also include Roman-Catholics, such as John F. Kennedy, who invoked the symbolism in Winthrop's tradition to promote solidarity, shared responsibility, and the importance of bi-partisan collaboration; and Ronald Reagan, who applied the myth of the *city set upon a hill* to a lens on American exceptionalism, that re-frames America not as an example, but a goal to be attained through the pursuit of personal freedom, by framing individualism as the core theme of ACR.¹⁴² Similarly to earlier political discourses based on religious beliefs, the latter half of the 20th century also showed an ideological divide among proponents of Christian faiths; with ethnically diverse members of the Progressive Evangelical Movement having proposed models for historical structural and individual discrimination to be reconciled, that demand an official acknowledgement of guilt, since the mid-1960s.¹⁴³ However, these progressive movements only represent a minority in light of overwhelmingly conservative political opinions among religious representatives.¹⁴⁴ The versatile rhetoric surrounding morality-based reasoning exemplifies the myth's expansion from its original critique of Roman-Catholic practices, as well as its prolonged relevance in political image-cultivation, due to an internalisation of the myth into ACR and legal culture.

This belief in a divine Christian purpose, transported through American national myths, experienced a resurgence during the height of the cold war, with the official national motto being changed from "E Pluribus Unum" ("Out of many, one") to "in God we trust" in 1956 and the phrase "one nation under God" being added to the pledge of allegiance, where Christian symbolisms were weaponised as part of the opposition to atheist beliefs within communist ideologies during the second Red Scare.¹⁴⁵ The pattern of mentioning "God" in association with the nation's institutions and laws, without explicitly specifying which God they were referring to, emerged during this time to avoid accusations of excluding non-Christian faiths.¹⁴⁶ This connection between the religious and secular symbolism can also be observed in the

¹⁴¹ Hilde Eilassen Restad, "Whither the 'City Upon a Hill'? Donald Trump, America First, and American Exceptionalism," *Texas National Security Review* 3, no. 1 (2020), 72-76.

¹⁴² Gardella, *American Civil Religion*, 54-60.

Squiers, *The Politics of the Sacred in America*, 62, 107f.

¹⁴³ Brantley W. Gasaway, "'Glimmers of Hope': Progressive Evangelicals and Racism, 1965-2000," In: Russel J. Hawkins, and Phillip L. Sinitiere (eds.), *Christians and the Color Line: Race and Religion After Divided by Faith* (New York: Oxford University Press, 2014), 72f.

¹⁴⁴ Gasaway, "'Glimmers of Hope,' 72f.

¹⁴⁵ Boris I. Bittker, Scott C. Idleman, and Frank S. Ravitch, *Religion and The State in American Law* (New York: Cambridge University Press, 2015), 136-140.

¹⁴⁶ Bellah, "Civil Religion in America," 5-9.

ceremonial of presidential inaugurations, which includes long standing traditions of swearing the presidential oath on the Protestant King James bible and concluding with “so help me God”, that go back to George Washington and are even practiced by non-Protestant presidents, such as John F. Kennedy, as a sign of aligning with traditional American values.¹⁴⁷ These religious connotations are essential to the United States’ *raison d’être*, justifying the rebellion against British governance in the colonies’ pursuit of economic and political independence, by applying civil religious morals to their rhetoric to oppose the high taxations, harsh working conditions in European factories and religious differences, not only on pragmatic, but on ethical grounds. Subsequently, this aspect of civil religion equates the abolition of British yoke to a victory over the old world’s oppressive structures, while simultaneously asserting the moral superiority of Americans as God’s chosen people, resulting in nationalist ideologies to thrive and contributing to the central premiss of Winthrop’s “city set upon a hill”, that America represents the pinnacle of democracy, liberty and justice.¹⁴⁸

Specifically, the most salient influences of this assimilation between religious and political practice can be observed in the following three characteristics of the American legal culture: (1) Its unwavering belief, that the contents of its foundational documents, such as religious scriptures for Puritans and pilgrims, and the Constitution, Declaration of Independence or criminal codes for secular messaging, are flawless and just, and must therefore not be subverted.¹⁴⁹ This belief operates on the basis of retributivist conceptions of criminal justice, that advocate for sentencings to be proportional to the committed crimes, and lies at the core of justifications for the government’s authority to impose harsh sentencing laws, including the death penalty as a form of punishment for severe crimes.¹⁵⁰ More recently, the assumption was incorporated into racist ideologies in the form of Constitutional Originalism, which advocates for an adherence to these founding documents in the manner they were originally intended, which includes racial segregation, the rejection of women’s right to abortions and

¹⁴⁷ Michael Nelson, "Speeches, Speechwriters, and the American Presidency," In: Michael Nelson, and Russell L. Riley (eds.), *The President's Words: Speeches and Speechwriting in the Modern White House* (Lawrence: University Press of Kansas, 2010), 13.

Ellen Lempres, ““The Spirit—The Faith of America’: The Role of Religious Rhetoric in Presidential Inaugural Addresses from George Washington to Donald Trump,” (Diss., Claremont Mckenna College, 2018).

¹⁴⁸ John Wisley, *American Exceptionalism and Civil Religion: Reassessing the History of an Idea* (Downers Grove: InterVarsity Press, 2015), 15-17.

¹⁴⁹ Paul, *The Myths that Made America*, 137-140, 151f.

¹⁵⁰ Gerry Johnstone, “The Restorative Justice Movement: Questioning the Rationale of Contemporary Criminal Justice,” In: Farah Focquaert, Elisabeth Shaw, and Bruce N. Waller (eds.), *The Routledge Handbook of Philosophy and Science of Punishment* (New York/London: Routledge, 2021), 77-80.

rights to Gender non-conforming lifestyles.¹⁵¹ (2) The institutionalisation of religious morality through reforms in civil laws, which can already be observed as a stable feature of the American political and judicial discourse since the mid-17th century.¹⁵² (3) Overlaps with capitalist notions, of equating hard work with piety/morality and success, as they supposedly promote the greater good of American society and are a noticeable feature of ACR and its legal culture,¹⁵³ which will be expanded on by ideas presented in the following section.

Within the context of legal culture, this connection between morality and work-ethics is applied to various occupations outside ecclesiastical institutions, as nearly every branch of professional life can be regarded as fulfilling God's purpose, as long as they contribute to furthering prosperity in America.¹⁵⁴ Along with this insistence on the ethical importance of prison labour as part of rehabilitation efforts, a belief in self-discipline and self-control is promoted, that already displays some conceptual similarities with later practices associated with Foucault's description of Panopticism's self- and peer-regulatory processes, characteristic of modern prisons. As a consequence of the myth's ideological and conceptual impact on legal culture through the establishment of prisons as a place for atonement, retribution, and re-education, its influence is also apparent in specific disciplinary measures against inmates' insubordination or violations of rules.

The most prominent application of this being the practice of solitary confinement, whose original purpose was expressed by the progenitor of its current form, John Howard, at the end of the 18th century to be the restoration of a person's moral compass by isolating criminals for periods no longer than a few days from outside distractions to allow for contemplation and an improvement of unlawful behaviour.¹⁵⁵ The concept was proposed in relation to his critique of 18th century English and American prisons, their negligent, disorderly conduct along with issues of disease outbreaks, corruption, and the intermixing of prisoners sentenced for crimes

¹⁵¹ Calvin Terbeek, "'Clocks Must Always Be turned Back': Brown v. Board of Education and the Racial Origins of Constitutional Originalism," *American Political Science Review* 115, no. 3 (2021), 821-834.

¹⁵² Fernando Rey Martinez, "The Religious Character of the American Constitution: Puritanism and Constitutionalism in the United States," *Kansas Journal of Law & Public Policy* 12, no. 3 (2002-2003), 465f.

¹⁵³ Peter E. Mudrack, and Sharon E. Mason, "The Asceticism Dimension of the Protestant Work Ethic: Shedding its Status of Invisibility," *Journal of Applied Social Psychology* 40, no. 8 (2010), 2043f.

¹⁵⁴ Mudrack, and Mason, "The Asceticism Dimension of the Protestant Work Ethic," 2045-2048.

¹⁵⁵ Shapiro, "Solitary Confinement in the Young Republic," 549-552.

of varying degrees of severity.¹⁵⁶ The implementation of solitary confinement into legal practice established checks and balances to ensure that: the length of isolation represents the crime committed and does not impose cruel and immoral punishments through prolonged confinement; only courts can assign solitary confinement as punishment; and carceral institution are subject to governmental oversight through regular inspections.¹⁵⁷ It consequently not only created the basis for specific forms of punishment within prisons, but prompted institutional changes, that would be codified in the laws set for state prisons as part of the Penitentiary Act of 1779 and shape the makeup of the modern American prison system, by prompting lawmakers to create the basis for today's distinction between federal and state prisons, as well as the categorisation into low- middle- and high-security prisons.¹⁵⁸

The next chapter expands on this piety associated with a willingness for hard labour, by exploring themes of social mobility, individualism, and inherent biases of ACR, that result from it and are communicated by the myth of the *self-made man*.

3.3.2 The "Self-Made Man's" Apathy towards Failure

After having addressed the American Dream's components relating to the religious predeterminism expressed by the myth of the city set upon a hill, this chapter will elaborate on the idea of individualism, transported via the myth of the *self-made man* within the American Dream, by reconstructing its origin and deconstructing its application in the legal system. Additionally, the investigation will include an assessment of its compatibility with the other myths discussed in this paper, along with the purpose of its inclusion into America's broader legal culture.

At its core, the myth of the self-made person follows the "American Promise"¹⁵⁹ that, due to the unique ubiquity of opportunities in the American *Promised Land*, every individual possesses the innate capability of moving up the social ladder on the grounds of their personal efforts alone, while portraying the competitive, individualistic *pursuit of happiness*¹⁶⁰ and

¹⁵⁶ Randall McGowen, "The Well-Ordered Prison: England, 1780–1865," In: Norval Morris, and David J. Rothman (eds.), *The Oxford History of the Prison: The Practice of Punishment in Western Societies* (New York/Oxford: Oxford University Press, 1998), 71, 78-80.

¹⁵⁷ Shapiro, "Solitary Confinement in the Young Republic," 553-557.

¹⁵⁸ Simon Devereaux, "The Making of the Penitentiary Act, 1775-1779," *The Historical Journal* 42, no. 2 (1999), 405-433.

¹⁵⁹ Simon J. Bronner, *Americanness: Inquiries into the Thought and Culture of the United States* (New York/London: Routledge, 2022), 23.

¹⁶⁰ U.S. Constitution, *National Archives*, <https://www.archives.gov/founding-docs/constitution-transcript>.

success as the main struggle to be overcome through ongoing efforts, in the face of circumstantial and directed hardships.¹⁶¹ According to Heike Paul, the origins of this myth can be found in colonial westward expansionist ideologies in the myths of the Promised Land and Manifest Destiny, whose call for the territorial expansion into the west, that resulted in the horizontal mobility of settlers, was applied to vertical social mobility within the American society itself, to promote the increased potential for individuals' economic success when compared to rigid European hierarchies.¹⁶² The first iteration of this core concept of the American Dream was proposed by Henry Clay in 1832¹⁶³ and later popularised by Charles C. B. Seymour in his collection of biographical accounts in 1858¹⁶⁴, of which Benjamin Franklin's stood out, as it became the paramount example for being self-made. For many, this myth, whose applicability and thus prominence rests entirely on the American exceptionalist assumption, that stand-out cases of success stories constitute the norm for one's own life, represents the quintessence of the American Dream's beliefs, as its explicit reference to individual, social and monetary successes within an unbiased, but nonetheless competitive, marketplace incapsulate the social Darwinist belief in the socio-economic *survival of the fittest*, often associated with laissez-faire economic principles and deregulations of post-industrial American capitalism.¹⁶⁵

However, the non-consideration of systemic and societal forms of discrimination in this *land of equal opportunity* – including a condemnation of historically grown and politically backed racial and class disparities in people's economic, cultural and social capital¹⁶⁶ – not only leads to the conclusion, that an individual's moral fortitude and efforts to succeed by fair means deserve to be acknowledged but holds also true for the inversion of this deduction. Thus, drawing assumptions from people's failure to become a self-made person, by insisting, that

¹⁶¹ Carl Hart, *High Price: A Neuroscientist's Journey of Self-Discovery that Challenges Everything You Know about Drugs and Society* (New York: HarperCollins, 2013), 112.

¹⁶² Paul, *The Myths that made America*, 367-370.

¹⁶³ Henry Clay, "Defence of the American System," In: James B. Swaine (ed.), *The Life and Speeches of Henry Clay of Kentucky. Vol. 2.* (New York: Greeley & McElrath, 1843), 9-67.

¹⁶⁴ Charles C.B. Seymour, *Self-Made Men* (New York: Harper & Brothers Publishers, 1858).

¹⁶⁵ Paul, *The Myths that made America*, 367f.

Alfred Hornung, "The Un-American Dream," *Amerikastudien / American Studies* 4, no. 4 (1999), 546f.

¹⁶⁶ Pierre Bourdieu, "The Forms of Capital," In: Richardson, J. G. (ed.), *Handbook of Theory and Research for the Sociology of Education* (New York: Greenwood Press, 1986), 241-258.

Darrell J. Gaskin, Alvin E. Headen Jr., and Shelley I. White-Means, "Racial Disparities in Health and Wealth: The Effects of Slavery and past Discrimination," *The Review of Black Political Economy* 32, no. 3-4 (2004), 95-110.

Claudia Olivetti, and M. Daniele Paserman, "In the Name of the Son (and the Daughter): Intergenerational Mobility in the United States, 1850-1940," *American Economic Review* 105, no. 8 (2015), 2695-1724.

individuals' moral depravity and unwillingness to contribute to society are the central reason for engaging in criminal behaviour, while disregarding circumstances leading up to criminal convictions.¹⁶⁷ Within the context of the carceral state, the implication of this indifference towards socio-economic disparities and insistence on a person's moral shortcomings as their cause, works in tandem with the themes of religious morality and its relation to a positive work ethic explored previously, to form the basis of the central argument justifying the harsh treatment of prisoners in the American carceral state.

Notably, the central virtues expressed by narratives surrounding the myth of self-made individuals gradually shifted away from its depictions of people defying social and economic hardships, towards the more abstract and widely applicable concepts of achieving individual freedom and an emancipation from state-powers, to retain its relevance despite its reduced applicability in light of increasing disparities between rich and poor, lower chances of vertical mobility, and the diversification of related discourses on social/racial equity during and following the 20th century.¹⁶⁸ This development can be observed in the portrayal of figures, thought to represent the ideals of *rags to riches* narratives and function as tokens to symbolise the truthfulness of its claims of providing equal opportunities in the *Land of the Free*, even though the stories were commonly embellished after the fact to suit the myth's objectives.¹⁶⁹ Among such narratives, Benjamin Franklin's autobiography is often highlighted, which details his humble beginnings and goes on to depict his life as a steady upwards curve towards international fame, as the archetypical example of socio-economic progression associated with this myth's promise, that was later further popularised by the successful narratives of Horatio Alger, whose stories promoted the same themes of ascending the social ranks through honest work, but reached a bigger audience in total.¹⁷⁰ Through this abstraction, underlying beliefs were strengthened, while changing social dynamics became less important over time.

As a consequence of the soaring popularity of Franklin's achievement of the American Dream, his biography and accounts of his diligent work ethic have become a principal document in the reaffirmation of the myth's truthfulness. The concept of the self-made woman is only

¹⁶⁷ Yascha Mounk, *The Age of Responsibility: Luck, Choice, and the Welfare State* (Cambridge: Harvard University Press, 2017), 15.

¹⁶⁸ Paul, *The Myths that Made America*, 390-395.

¹⁶⁹ Ipek Burnett, "The American Dream, The Royal Road," In: Ipek Burnett (ed.), *A Jungian Inquiry into the American Psyche* (London: Routledge, 2019), 57f.

¹⁷⁰ Paul, *The Myths that Made America*, 370-373, 390-398.

marginally insightful for the purpose of this research, as female representation in this myth, while featured in books and other narratives that incorporated critical calls for emancipation, were originally envisioned as part of rising consumerism and a “feminisation of American Culture” and are thus not as influential on American legal culture as the economic and moral implications of the myth’s original form. Since these accounts of self-reliant successes are confined to narratives originating from America’s privileged White population, they neither include women nor reflect the reality of the experiences of African Americans and immigrants, whose pursuit of becoming self-made people is important on two fronts: Their accounts not only proved that African Americans are capable of establishing themselves in America’s competitive market, despite the racial and social disparities, but also applied the socio-economic logic of the myth to the Black struggle for emancipation and legal recognition.

In contrast to White narratives of upwards mobility, Black freedmen and abolitionists, prominently featuring Frederick Douglass, commonly replaced economic themes of success with ones of freedom and emancipation in alignment with aspirations of American independence, to evoke positive sentiments from White Americans by forcing a recognition of these goals’ legitimacy through association with their own past. While Douglass is above all hailed as an example of how even former slaves can successfully climb up the socio-economic ladder, he himself not only opposed the idea of being self-made for his own life on the basis that he personally received aid, but also repudiated it categorically, as he denied individual successes’ independence from prior achievements and circumstantial supporting factors.¹⁷¹ The inclusion of the latter’s autobiography into the myth’s canon marks the first prominent instance of showing an acknowledgement of a former slave’s capability to achieve the American dream while adhering to the morality of ACR. However, Douglass’ success story was in part also promoted as a token to symbolise America’s abandonment of racial discrimination, because it indicated the possibility that even former slaves had the capabilities of becoming renowned statesmen within the USA. Prominent contemporary examples, such as Oprah Winfrey and Barack Obama, generally follow an affirmative approach to the myth of being self-

¹⁷¹ Frederick Douglass, *The Life and Times of Frederick Douglass. 1881. Autobiographies* (New York: Penguin, 1996), 900.

Frederick Douglass, “Self-Made Men,” In: John Blassingame, and John McKivigan (eds.), *The Frederick Douglass Papers. Series One, vol. 4* (New Haven/London: Yale University Press, 1992), 545-575.

made, while also acknowledging the inherently unequal nature of social hierarchies in America.¹⁷²

Reiterating this myth's lasting effect on American legal culture, the implicit assertion that criminality is primarily self-inflicted and linked to an individual's lack of intelligence or an unwillingness to work hard, instead of considering circumstantial influences, is vital in upholding the moral justifications for imprisonment and rehabilitation methods in American prisons, prominently including forced labour. Through the establishment of an association between negative character traits and specific groups of people – mainly lower classes and historically underprivileged communities of colour –, malpractice and abuse by prison officials against that group is more likely to be overlooked or deemed to be necessary, since less empathy is dedicated to individuals, who were perceived to be provided with equal chances at birth, but blundered theirs due to them underperforming in the moral virtues that encapsulate the judgement criteria of American legal culture.¹⁷³ This consequently obstructs the critical assessment of circumstantial factors to a person's economic and social standings, thus justifying the perpetuation of growing socio-economic inequalities, that have become a defining element of American society since its inception and were adapted throughout its history to fit changes in communication of legal paradigms and social hierarchies in the U.S..¹⁷⁴ Critical assessments of the all-encompassing nature of American ideologies for Black Americans, categorically view the myth of the self-made man and an independent achievement of it as one of the most pervasive deceptions in the nation's portrayal of its social order.¹⁷⁵ The following paragraph will elaborate on some prison practices that are grounded in the ideological implications listed above and highlight overlaps with the penal implications of envisioning America as a city set upon a hill.

Parallels between the myth's premise and American legal culture include the assertion, that lacking considerations for one's individual responsibility form the root of criminal behaviour,

¹⁷² John C. Goodman, "Obama: There Are No Self-Made Men," *Independent Institute*, 21.6.2012, accessed 20.8.2023, <https://www.independent.org/news/article.asp?id=3392>.

¹⁷³ Timothy Sandefur, "Frederick Douglass and the American Dream," *The Cato Journal* 40, no. 1 (2020), 220-223.

¹⁷⁴ Paul, *The Myths that Made America*, 367-370, 405-407.

¹⁷⁵ Joslyn Armstrong, Fiorelly L. Carlos Chavez, Julia H. Jones, Shar'Dane Harris, and Gregory J. Harris, "'A Dream Deferred': How Discrimination Impacts the American Dream Achievement for African Americans," *Journal of Black Studies* 50, no. 3 (2019), 246f.

Stephen A. Cernkovich, Peggy C. Giordano, and Jennifer L. Rudolph, "Race, Crime, and the American Dream," *Journal of Research in Crime and Delinquency* 37, no. 2 (2000), 132, 158-163.

instead of considering personal hardships, discrimination or insufficient support from the government as contributing factors to criminal behaviour. This logic will play a pivotal role in this paper's analysis of the reasoning behind racial profiling during the prison expansion of the 1970s and onward. Another observation concerns the perceived appropriateness of a punishment's severity in relation to the crime, as it generally aligns with the perceived degree of infringement on people's rights and a generally accepted moral code, instead of prioritising action to address and prevent causes for criminal actions. The third relevant connection between the two concerns the reassertion of the importance attributed to prison labour as a means of lasting rehabilitation, resulting from the reinforcement of moral education promoted through religious narratives and those of the self-made man, that highlight its value for aligning personal morals with social standards.

One penal paradigm of the American prison-industrial complex is its provision of a cheap workforce to finance itself and produce profits under the justification of it producing a rehabilitative and reintegrating effect on inmates. This practice has garnered more than \$11bn in 2021, consisting of \$2bn in goods as well as \$9bn in services and maintenance of the prison.¹⁷⁶ The legal culture associated with this instrumentalization of prisoners as an inexpensive means of production shows overlaps between the myths of the self-made man, which encourages an equation of poverty and criminality, as it views them as a self-inflicted condition brought about by an individual's poor life choices; and the myth of the *city set up on a hill*, which also maintained the legitimacy of prison labour within ACR as a continuation of slave labour and justified its relevance for the stability of the American economy. Prisoners are expected to repent for their crimes, during which they are effectively excluded from society and deprived of rights otherwise granted to every citizen. With regard to labour protections, especially those prohibiting slavery and forced labour, prisoners' rights are hardly respected. This exclusion is also present in legislatures, as the 13th Amendment to the Constitution, instated in 1865¹⁷⁷, exempts criminally incarcerated people from the ban on slavery, as the law states it to be accepted as a form of punishment in case of criminal misconduct ("Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States").

¹⁷⁶ Turner, et al., *Captive Labor*, 6.

¹⁷⁷ U.S. Constitution, Amendment XIII.

This long-standing acceptance of forced carceral labour has held firm for the majority of its existence, which can partly be attributed to its economic function of providing a cheap workforce, but also to America's retributivist doctrine. However, this assertion does not always hold true in practice: Since the legal system operates on an assumption of equality instead of a pursuit of equity, harsh legal judgements regarding people's transgressions are often dependent more on the degree to which moral values have been subverted by an individual than on the actual damages caused by a crime, as is evident by the examples of sentencing practices for non-violent, victimless crimes, such as prostitution, gambling, and drug offences.¹⁷⁸ Within this moralistic paradigm of individual responsibility, crimes are often assessed under a biased lens that necessitates less lenient punishments for marginalised communities in pursuit of enforcing the correction of unwanted behaviour, while white communities were assumed to be reformed after being reprimanded.¹⁷⁹ This will later become more apparent, when discussing the disparities between the extensive policing and sentencing of Crack-Cocaine users in connection to mass incarceration, commonly associated with disadvantaged communities living in poor, urban areas, and the comparatively lax sentencing laws on powder Cocaine, mostly used by white middle- and upper-class people, despite them containing the same illicit substance. This unequal application of criminal punishment is a prevailing feature of America's justice system and will be discussed further with regard to mass incarceration.

The myth discussed in this section highlighted the inherently flawed assumption of American laws' moral infallibility, when applied to the supposed provision of equal opportunity and assignment of individual responsibility propagated in the American Dream, and in how far the subsequent decrease in circumstantial considerations for the assessment of criminal behaviour has impacted American legal culture. The next section will discuss the myth of the *melting pot*, which will explore the handling of multicultural influences on the American Dream within its national discourse, by following developments surrounding the myth of the *Melting Pot*, whose original postulate included the recognition of people from different cultural backgrounds to reside in America, but thought of the melting pot's ultimate goal to be the

¹⁷⁸ Benjamin Levin, "The Consensus Myth in Criminal Justice Reform," *Michigan Law Review* 117, no. 2 (2018), 269-274.

Reiman, and Leighton, *The Rich Get Richer and the Poor get Prison*, 203.

¹⁷⁹ Friedman, and Hayden, "Crimes and Punishment," 163-167.

assimilation of these “other” cultures into the dominant American cultural paradigms, while diminishing their associations with their country of origin.

3.3.3 Conformity and Intolerance in the American “Melting Pot” of Cultures

The myth of America as a melting pot of ethnicities and cultures builds on previous notions of *new beginnings* and *unlimited opportunities* as part of the American Dream and initially expanded on them in light of increased migratory movements towards the US around 1900 to account for the perpetually transforming nature of communities and their needs, while retaining the core tenets of its previous nation-building processes. Considering the many accounts of pervasive systemic discrimination within the American justice system¹⁸⁰, an analysis of this myth promises to provide invaluable insights into the moral justifications for the disproportionately high policing and prosecution of minority communities, characteristic for American legal culture since the era of mass incarceration. At the same time, it will also grant a better understanding of specific developments and reasonings that led to the disadvantaged position, people of colour are relegated to in the American justice system.

The melting pot myth is transported through multiple channels of communication. Among them is the slogan “E Pluribus Unum” [“Out of many, one”], which is present on coins, statues, and the Great Seal of the United States and transports an ideology of unity, initially amongst its member states and later as a symbol for communal coexistence and acceptance of its citizens.¹⁸¹ This line of thought was also expressed by Crèvecoeur, which he described as “melting into a new race” that would bring progress and prosperity as a natural consequence of continuous advancements and innovations.¹⁸² This hopeful outlook on the future was also prominently featured in popular culture around 1900, with Israel Zangwill’s play “The Melting Pot” and Emma Lazarus’ poem “The New Colossus”, which was affixed to the statue of liberty as a symbol of good faith to migrants crossing the Atlantic, enjoying widespread circulation.¹⁸³ Its doctrine, that an assimilation of immigrants from their unique cultural backgrounds into a

¹⁸⁰ Alexis Burling, *Race and the Criminal Justice System* (Minneapolis: Essential Library, 2018).

Rachel R. Hardeman, Simone L. Hardeman-Jones, and Eduardo M. Medina, “Fighting for America’s Paradise: The Struggle Against Structural Racism,” *Journal of Health Politics, Policy and Law* 46, no. 4 (2021), 563-575.

Lisa Ly, “Federal Policies and Mass Incarceration in America,” *Policy Perspectives* 30 (2023), 1-14.

Mark Peffley, and Jon Hurwitz, *Justice in America: The Separate Realities of Blacks and Whites* (New York: Cambridge University Press, 2010).

Barbara Reskin, “The Race Discrimination System,” *Annual Review of Sociology* 38, no. 1 (2012), 17-35.

¹⁸¹ Paul, *The Myths that Made America*, 257f.

¹⁸² Crèvecoeur, “What is an American?,” 857.

¹⁸³ Tim Prchal, “Reimagining the Melting Pot and the Golden Door: National Identity in Gilded Age and Progressive Era Literature,” *MELUS* 32, no. 1 (2007), 29f.

uniform American society constitutes a boost to its overall cohesion and progress, experienced further legitimisation through the wholehearted endorsement of public figures and business owners on the basis of the utilitarian, ulterior motive of accessing an inexpensive workforce.¹⁸⁴ This included Henry Ford's business school, which was founded in 1914 and encompassed a graduation ritual for immigrants, in which their clothing was symbolically changed to fit the White American norm; this happened during a ceremony involving the entering and exiting of a giant cauldron as a representation of their assimilation into America and replacement of prior cultural influences.¹⁸⁵

This embrace of immigration was however not shared unanimously among scholars and the public alike. The main belligerent stances consisted of cultural pluralists' opposition to assimilation and conformity, which centred around the potential adverse effects of limiting people's sense of self on individuals and American society as a whole, as well as nativists, who used the drastically increased number of migrants at the onset of the 20th century to flame existing racially supremacist resentments and propagate the melting pot's goal to be the assimilation into the Anglo-American cultural hegemony.¹⁸⁶ With the culture of White Anglo-Saxon Protestants (W.A.S.P.) having been established as the quintessence of *Americanness* in its civil religion prior to its application to immigration processes, the majority of national developments during this myth's heyday were marred by widespread exclusionary sentiments in support of segregationist agendas, in which descriptions of desirable immigration were limited to White, European nations and miscegenation laws saw an upswing in popularity in the South.¹⁸⁷

The selective nature of who was allowed to freely partake in the American melting pot and who was to be excluded becomes all the more apparent, when looking at the ratifications of legislation, as restrictions on immigration from non-European countries were becoming more frequent (Chinese Exclusion Act of 1882; Asiatic Barred Zone Act of 1917; The Asian Exclusion Act of 1924; the Tydings-McDuffy Act of 1934). Simultaneously, Asian Americans already living

¹⁸⁴ Burnett, "The American Dream, The Royal Road," 67f.

¹⁸⁵ Burnett, "The American Dream, The Royal Road," 57f.

¹⁸⁶ Bellah, *The American Covenant*, 87-111.

Paul, *The Myths that Made America*, 280-286.

Jason J. McDonald, *American Ethnic History* (Edinburgh: Edinburgh University Press, 2007), 36-39, 58f.

Charles Hirschman, "America's Melting Pot Reconsidered," *Annual Review of Sociology* 9 (1983), 415-417.

¹⁸⁷ Barbara Cruz, and Michael Berson, "The American Melting Pot? Miscegenation Laws in the United States," *OAH Magazine of History* 15, no. 4 (2001), 80-84.

in the country were branded through “legal exclusion, political disenfranchisement, labour exploitation, and internment”.¹⁸⁸ Practices like these have been described to prevent minority communities from actively participating in any form of assimilation or integration into American society.¹⁸⁹ The implication that this model of social and cultural assimilation constitutes a core value of American society was consequently very divisive, as the ambivalent interpretation on its intended purpose lends itself to being instrumentalised by supporters of opposing political ideologies: thus, prompting a situation, in which both parties’ agendas assume the moral high-ground, by claiming to be in line with the nation’s best interest, while also following narratives put forth by the myth.¹⁹⁰ This adaptability to different circumstances and its promise of equality among different ethnicities and cultures is why it has remained relevant as a means of reaffirming the American Dream’s promise of equality along with its effectiveness when applying it to the deconstruction of biases within the society by civil rights groups and political activists.

Concomitantly to the establishment of this cultural hierarchy, new housing policies reinforced their effect by widening economic gaps between ethnic groups. Specifically, the practice of *redlining*, which was enforced nation-wide by the Federal Housing Administration under the National Housing Act of 1934, was broadly applied to enforce racial segregation and gather ethnical minorities into isolated communities, deemed to be less secure, with increased costs of living and hinder their chances of upwards mobility.¹⁹¹ Political influence of these communities was further observed to have diminished through *gerrymandering*, a process of redefining voting districts to benefit the interests of one political party, commonly done to the detriment of non-White communities’ political representation¹⁹².

Thus, it can be stated that, while the melting pot as a metaphor for the conjoining of different cultures was highly influential in American conceptions and analyses of guiding cultures, its

¹⁸⁸ Lisa Lowe, *Immigrants Act: On Asian American Cultural Politics* (Durham: Duke University Press, 1996), 4,9f.

¹⁸⁹ Mohammed Berray, “A Critical literary Review of the Melting Pot and Salad Bowl Assimilation and Integration Theories,” *Journal of Ethnic and Cultural Studies* 6, no. 1 (2019), 142-151.

¹⁹⁰ Louis L. Gerson, “Ethics in American Politics,” *The Journal of Politics* 38, no. 3 (1976), 336-346.

¹⁹¹ Min Li, and Faxi Yuan, “Historical Redlining and Food Environments: A Study of 102 Urban Areas in the United States,” *Health & Place*, 75 (2022), 102775.

Dexter H. Locke, Billy Hall, Morgan J. Grove, Steward T. A. Pickett, Laura A. Ogden, Carissa Aoki, Christopher G. Boone, and Jarlath P. M. O’Neil-Dunne, “Residential Housing Segregation and Urban Tree Canopy in 37 US Cities,” *njp Urban Sustain* 1, no. 15 (2021).

¹⁹² Daimon Waymer, and Robert Heath, “Black Voter Dilution, American Exceptionalism, and Racial Gerrymandering: The Paradox of the Positive in Political Public Relations,” *Journal of Black Studies* 47, no. 7 (2016), 645-658.

application in the American experiment was more reminiscent of a repressive enforcement of societal norms that were prescribed by a nation's dominant culture in an effort to justify the exclusion of non-White communities from the unequivocal promise of equality¹⁹³, than of a conjoined blend of the immigrant population's sub-cultures with existing cultural paradigms.¹⁹⁴ This renewed assertion of inherent differences came in the wake of former slaves facing renewed challenges against intolerance and systemic bias after large portions of their population flocked to northern states in hopes of being included in the promises of the American Dream.¹⁹⁵ The continuation of discriminatory policies and the segregation of many communities from White ones, has prompted propositions for reframing the image of the melting pot into that of a *salad bowl* or *mosaic* to symbolise the maintenance of cultural differences, since cultural assimilation does not play as prominent of a role as the compartmentalisation and social stratification of individual cultures and ethnic groups does.¹⁹⁶

Similar to the myth of the self-made man, narratives surrounding the vision of America as a melting pot of cultures did not primarily rely on the construction of a national history for strengthening cohesion and solidarity amongst its existing population but relied on the myth's malleable vision for the nation's future to promote internal stability. With the central components of this myth being grounded in ideas of individual liberty, freedom of expression, and other core national values explored throughout this chapter, and supported by the underlying promise of a gradual, cultural assimilation of migrant populations to the dominant White Christian majority. Thus, both the proponents and critics of societal diversification during the height of early 20th century's industrialisation and urbanisation crises, as well as the simultaneous immigration boom, could be appeased.¹⁹⁷

The framing of American society within the comparatively narrow cultural paradigms of White Anglo-Saxon Protestantism and the forced conformity of other cultures' stands in contradiction with the nation's democratic core values of freedom, equality, and justice, but

¹⁹³ Sawyer Like, "Burning in the Melting Pot: American Policing and the Internal Colonization of African Americans," *Rutgers Race & the Law Review* 22, no. 2 (2021), 343-448.

¹⁹⁴ Jonathan Hansen, *The Lost Promise of Patriotism: Debating American Identity, 1890-1920* (Chicago: University of Chicago Press, 2003), 98.

¹⁹⁵ Like, "Burning in the Melting Pot," 344, 348-450, 485-491.

¹⁹⁶ Paul, *The Myths that Made America*, 260.

¹⁹⁷ Donald M. MacRaild, and Malcolm Smith, "Migration and Emigration, 1600-1945," In: Liam Kennedy, and Philip Ollerenshaw (eds.), *Ulster Since 1600: Politics, Economy, and Society* (Oxford: Oxford University press, 2013), 140-159.

Paul, *The Myths that Made America*, 257-260.

becomes tenable for political mobilisation, when presenting the convergence of cultures, propagated by the melting pot, as a deterioration of the nation's superiority.¹⁹⁸ Contemporary xenophobic accounts are explicitly addressing this division as the difference between the "best European blood" from early American settlers to the "parasites of Europe – the scum" of 20th century immigration¹⁹⁹. As will be addressed in more detail when discussing mass incarceration policies, the political and legal developments of the 20th century show strong connections to later legislation and can be viewed as precursors to current societal issues, that show the long-standing efforts of maintaining power structures, as well as the self-perpetuating mechanisms that stigmatise swaths of America's non-Christian and non-White population, consequently putting them at a disadvantage and diminishing their chances for financial success and upwards social mobility.

Concerning American legal culture, the myth of the melting pot is oftentimes evoked by either side of the political spectrum, to either uphold assumed White, Anglo-Saxon Christians' cultural hegemony and maintain the stability of America's moral superiority through a forced assimilation of minority cultures – much in the same vein as anti-immigration advocates and theories on eugenics during the myth's initial popularisation –,²⁰⁰ or to challenge these presumed discrepancies and promote a culturally diverse national vision, by addressing inherent fallacies and injustices of this racial nationalism and acknowledging the myth's historical relevance for giving an initial impetus for models of a heterogenous society to take root.²⁰¹ The initial exclusionary understanding of immigration to America, as leading to a uniform adoption of pre-existing national beliefs on the one hand, or a strict separation along cultural/racial lines on the other, implies, that people not adhering to the propagated culture of ACR, not only differ ideologically from the perceived majority or norm but are simultaneously associated with a moral inferiority. Consequently, this lens of American normativism oftentimes justified the discrimination and sanctioning of marginalised communities. The persistent re-codification of how communities of colour are systemically ostracised through the spreading of prejudice and enforcement of discriminatory policies, such

¹⁹⁸ Sarah Wilson, *Melting-Pot Modernism* (Ithaca: Cornell University Press, 2010), 14f.

¹⁹⁹ Edwin E. Grant, "Scum from the Melting-Pot," *The American Journal of Sociology* 30, no. 6 (1925), 641-651.

²⁰⁰ Henry Fairfield Osborn, "The Second International Congress of Eugenics Address of Welcome," *Science* 54, no. 1397 (1921), 311-313.

Steven A. Farber, "U.S Scientists' Role in the Eugenics Movement (1907-1939): A Contemporary Biologist's Perspective," *Zebrafish* 5, no. 4 (2008), 243-245.

²⁰¹ Paul, *The Myths that Made America*, 296-298.

as redlining and racial disenfranchisement, was a vital component in creating a more stable acceptance for increased policing and incarceration of these populations, that form a self-perpetuating acceptance of social and institutional mechanisms of discrimination.²⁰²

For this analysis of American legal culture, the myth's relevance is warranted through its role in broadening the discourse on an intrinsic link between individual success or failure and a person's sense of morality, discussed in prior chapters, by adding a generalisable cultural component. Specifically, it can be argued that the myth's assimilative interpretations, which disavowed any significant cultural value of minority communities' beliefs, are the ideological forerunner of exclusionary sentiments, that gained prominence in response to paradigmatic shifts during the 1970s towards multicultural social theories of celebrating minority cultures as a boon to the dominant American culture. Thus, expanding the social stigmatisation of criminal individuals, to create generalised, moralistic assumptions on entire communities based on selected examples, racial bias, as well as their overall socio-economic standing and compatibility with propagated principles of Americanness.²⁰³ The reorientation of cultural discourse in the United States is also reflected in the changing terminology associated with the melting pot myth's central metaphor, as new terms, such as "salad bowl" or "mosaic" are brought forward to symbolise the coexistence of various cultures alongside each other and a clear support for racial diversity in the name of the common good for American society, while also recognising individual needs of people belonging to either minority or majority communities.²⁰⁴

This next section will deal with historical developments specific to legal culture within Louisiana's and other southern States' justice systems, to elaborate on the impact the legacy of slavery and racial segregation have had on Louisianians' imprisonment rates and the importance of penal labour for the state's economy.

3.3.4 Vestiges of the Confederacy in American Legal Culture

While there is no consensus among legal historians, whether there is a distinctively "southern" legal culture within that of the United States at large, several particularities have been noted, with race relations and discrimination commonly being positioned at the centre of this

²⁰² Alexander P. Lamis, *The Two-Party South* (New York: Oxford University Press, 1988), 26f.

²⁰³ Hilal Elver, "Racializing Islam Before and After 9/11: From Melting Pot to Islamophobia," *Transnational Law & Contemporary Problems* 21, no. 1 (2012), 131-137.

²⁰⁴ Paul, *The Myths that Made America*, 260f, 298.

division.²⁰⁵ In light of Louisiana's prison system displaying disproportionately high incarceration rates with noticeable racial disparities, this next section will discuss the enduring legacy of slavery and its whitewashing through the revisionist *Lost Cause myth* in the state's legal culture, as an understanding of the link between racial disparities in social matters and within criminal justice is imperative for further investigations of modern prison labour practices applied to prisoners regardless of their ethnicity.²⁰⁶ To achieve this, this chapter will address the increased oppression of racial minorities under Jim Crow laws, their social and legal consequences for people of colour, and their underlying ideological justifications in the myth of the Lost Cause will be discussed at first; before examining the lasting effect, racial/criminal disenfranchisement, an overreliance on inmate labour in the form of convict leasing have had on the development of southern legal culture and prison practices overall.

Following the end of the American Civil War in 1860, it would take another five years until the 13th Amendment would be passed and ban slavery "except as a form of punishment" from the United States. However, since this interim period of uncertainty saw slavery still being utilised as a main pillar of economy in 9 out of 15 former confederate states, with only 15% of enslaved people having been actually freed from their bondage, northern and southern states alike needed to find solutions for the additional stress that the influx of nearly 4 million people put on the housing and labour market, along with social policies and welfare services, once the ban was ratified in 1865.²⁰⁷ While southern states' development after the abolition of slavery will be at the centre of this research, it has to be noted, that Black citizens' hopes of escaping discrimination, by migrating from the U.S. South to northern states, were not met. But that the roughly 31% of African Americans, who migrated to the north by the 1860s, experienced similar segregation, isolation and economic disenfranchisement as Black populations in former slave states, since they were mostly confined to city ghettos and disadvantaged through the application of red-lining policies on their communities.²⁰⁸

²⁰⁵ Paul Finkelman, "Exploring Southern Legal History," *North Carolina Law Review* 64, no. 1 (1985), 83- 88, 116.

²⁰⁶ Wood, and Ring, "Introduction," 4-10.

²⁰⁷ James Oakes, *Freedom National: The Destruction of Slavery in the United States, 1861-1865* (New York/London: W. W. Norton & Company, 2014), I-IV.

²⁰⁸ Elizabeth Hinton, *From the War on Poverty to the War on Crime: The making of Mass Incarceration in America* (Cambridge: Harvard University Press, 2016), 27-29.

Louis Lee Woods II, "The Federal Home Loan Bank Board, Redlining, and the National Proliferation of Racial Lending Discrimination, 1921-1950," *Journal of Urban History* 38, no. 6 (2012), 1036-1059.

An initial consequence to the abolition of slavery in the southern states was a rising need to substitute the economic and social void, left behind by its seemingly all-encompassing slave-economy. One means employed by former slave states including Louisiana, was the ratification of segregationist legislation, along with targeted policing and sentencing practices by the White political majority against people of colour, that was codified in *Jim Crow laws* and were a defining factor in the life of people of colour from the 1890s until the 1950s. Its lingering legacy has been prominently addressed in Michelle Alexander's work on the American prison system "The New Jim Crow" in 2010, which expanded discourse on prisons in the USA to include continuities of discrimination and will be addressed in more detail at a later point.²⁰⁹ Through the legislative reforms under Jim Crow, existing social and economic hierarchies of the pre-abolitionist South were reinforced, by rolling back emancipatory advancements African Americans achieved during reconstruction,²¹⁰ racially segregating public facilities – including schools, housing, and infrastructure –, and installing policing measures targeting non-White communities in the form of *Black Codes*. In Louisiana, these encompassed a wide array of laws and sentencing regulations that disproportionately criminalised Black citizens through vagrancy laws, that criminalised unemployment, miscegenation, and "disobedience" towards White people, while also restricting their movement and confining convicts to work on former slave plantations.²¹¹ This substituted slavery and its justification of an assumedly inherent, White superiority, with a prison industry, whose purported societal functions of providing retribution and deterrence, while restraining and rehabilitating criminals to ensure public safety, provided more legitimacy to the exploitation of Black people after the Civil War, since its rationale was built on beliefs inherent to ACR, that are universally accepted in the North and South alike.²¹²

In addition to discrimination by private individuals and law enforcement under Jim Crow, the deep-rooted conviction to upholding racial hierarchies was present in the 1898 Louisiana

²⁰⁹ Alexander, *The New Jim Crow*.

²¹⁰ Henry Louis Gates, and Anthony Appiah, *Africana: The Encyclopedia of the African and African American Experience* (Oxford: Oxford University Press, 2005), 1210-1212.

W.E. Burghardt Du Bois, *Black Reconstruction in America: An Essay Toward A History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860-1880* (New York: Harcourt Brace and Company, 1935), 30.

²¹¹ Mary Rose Whitehouse, "Modern Prison Labor: A Reemergence of Convict Leasing under the Guide of Rehabilitation and Private Enterprises," *Loyola Journal of Public Interest Law* 18, no. 1 (2017), 93-94.

David F. Forte, "Spiritual Equality, the Black Codes, and the Americanization of the Freedmen," *Loyola Law Review* 43 (1998), 570, 603.

²¹² Wood, and Ring, "Introduction", 4-6.

Constitution, which stated the “supremacy of the White race” to be the guiding principle.²¹³ Racist sentiments and repression established themselves as constants of institutions and legal cultures in the post-abolitionist South, as a substitution for previous, slavery-driven economic models began to emerge through the carceral state.²¹⁴ In Louisiana, lawmakers were vehemently opposed to emancipatory laws for people of colour, as is attested to by public disapprovals and the 131 state laws installed to combat desegregation, which far surpassed other states’ opposition.²¹⁵ Additionally, the interplay between the animosity towards Black Americans – strengthened by eugenics’ and Social Darwinists’ justifications of White supremacy at the time – and previously discussed trends in American legal culture, prioritising retribution in punishment over rehabilitative forms of imprisonment, exacerbated existing local traditions of retributivist justice and are often tied to modern paradigms of Louisiana’s legal culture.²¹⁶ Jim Crow segregation would only be successfully challenged much later in prominent cases of the civil rights era, such as *Brown v. Board of Education* (1954), in which the U.S. Supreme Court declared segregation in public schools to be unconstitutional, a claim reinforced by the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968 signed into law by Lyndon B. Johnson.²¹⁷

Many pervasive features of southern states’ legal cultures, separating them from their northern counterparts, concern the prominence of the “Lost Cause” myth, that actively promotes a distorted vision of racial violence and oppression under slavery in the South’s White supremacist past as falsehoods or exaggerations, to legitimise revisionist, historical narratives in support of restoring the “Old South”, in reference to the status quo preceding the Civil War and Reconstruction.²¹⁸ At the helm of spreading the ahistorical narrative of this Lost Cause of the Confederacy stood the *United Daughters of the Confederacy*, whose efforts to reintroduce racial hierarchies of the pre-abolitionist South back into the mainstream and

²¹³ Ashley Wennerrstrom, Bruce Reilly, Meredith Sugaman, Norris Henderson, and Anjali Niyogi, “Promoting Health Equity in Criminal Justice Reform: The Louisiana Experience,” *American Journal for Public Health* 111, no. 51 (2020), 39-41.

²¹⁴ Destin Jenkins, “Ghosts of the Past: Dept, the New South, and the Propaganda of History,” In: Destin Jenkins, and Justin Leroy (eds.), *Histories of Racial Capitalism* (New York: Columbia University Press, 2021), 188-192.

²¹⁵ James W. Loewen, *Lies Across America: What Our Historic Sites Get Wrong* (New York: The New Press, 1999), 216, 224-229.

²¹⁶ Ayers, *Vengeance and Justice*, 34–72.

Michael S. Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767–1878* (Chapel Hill: University of North Carolina Press, 1980).

²¹⁷ Judy Hasday, *The Civil Rights Act of 1964: An End to Racial Segregation* (High Point: Chelsea House Publishers, 2007), 83-95, 108-112.

²¹⁸ John A. Simpson, “The Cult of the “Lost Cause.” *Tennessee Historical Quarterly* 34, no. 4 (1975), 351f.

establish a distinctly southern historical consciousness, that whitewashes the brutality of American slavery and asserts their claim to a prerogative of interpretation through exclusive markers of Southern belonging.²¹⁹ While censoring was generally frowned upon, prominent figures, such as Robert E. Lee at the Charleston Confederate Reunion of 1899, often called for schoolbooks to not impose “false lessons, either in fact or sentiment”.²²⁰ Similarly, the creation and education of youth organisations and the erection of monuments in honour of prominent confederate figures across the South promoted a favourable retrospective on American slavery, which happened to the dismay of abolitionists and civil rights advocates at the time.²²¹ The success of these initiatives has proven so pervasive, that even after civil rights groups and politicians campaigned against their promotion of racial segregation, attenuated versions of White supremacist narratives, along with the continued trivialisation of slavery, retain a prominent role in southern states’ textbooks and historical awareness²²² to this day.²²³ Likewise, this prevalence of symbols for Lost Cause ideologies, such as the Confederate flag²²⁴ is still present in today’s discourse, as described by Nicole Maurantonio, who addressed how segregationist practices facilitated the consolidation of revisionist history in the South’s public and private spheres, by promoting a favourable perception of the regions past within White southerners’ historical consciousness.²²⁵

By building on pre-existing narratives of individual responsibility taken from the myth of the American Dream, these pseudohistorical narratives and their symbolisms not only permeated public life and historical consciousness during the majority of the 20th century,²²⁶ but can also

²¹⁹ Marc Howard Ross, “Flags, Heroes, and Statues: Inclusive and Exclusive Identity Markers in the American South,” In: Marc Howard Ross (ed.), *Cultural Contestation in Ethnic Conflict* (Cambridge/New York/Melbourne/Madrid/Cape Town/ Singapore/São Paulo: Cambridge University Press, 2009), 296-299, 305f.

²²⁰ Fred Arthur Bailey, “The Textbooks of the “Lost Cause”: Censorship and the Creation of Southern State Histories,” *The Georgia Historical Quarterly* 75, no. 3 (1991), 508.

²²¹ Karen Cox, *Dixie’s Daughters: The United Daughters of the Confederacy and the Preservation of Confederate Culture* (Gainesville: University Press of Florida, 2019), 93-117.

²²² Jörn Rüsen, “Introduction: Historical Thinking as Intercultural Discourse,” In: Jörn Rüsen (ed.), *Western Historical Thinking: An Intercultural Debate* (New York/Oxford: Berghahn Books, 2002), 1f.
Jörn Rüsen, “Tradition: A Principle of Historical Sense-Generation and Its Logic and Effect in Historical Culture,” *History and Theory* 51 (2012), 45-59.

²²³ Hevin N. Robertson, “Taking Offence: An Exploration of Racist, Misleading, and Problematic Language in Textbooks” (PhD Diss. Western Oregon University, 2018).

Cynthia Greenlee, “How History Textbooks Reflect America’s Refusal to Reckon with Slavery,” *VOX*, 26.4.2019, accessed 10.10.2023, <https://www.vox.com/identities/2019/8/26/20829771/slavery-textbooks-history>.

²²⁴ David W. Blight, “Lost Cause: Historical Interpretation, United States,” *Encyclopaedia Britannica*, 11.8.2023, accessed 20.9.2023, <https://www.britannica.com/topic/Lost-Cause>.

²²⁵ Nicole Maurantonio, *Confederate Exceptionalism: Civil War Myth and Memory in the Twenty-First Century* (Lawrence: University Press of Kansas, 2019), 1-20.

²²⁶ Jeismann, „Didaktik der Geschichte,“ 12f.

be observed in the perpetuation of racial discrimination through governmental institutions. Such was the case with the Supreme Court's ruling concerning *Plessy v. Ferguson* in 1896, which upheld the constitutionality of racial segregation, as long as the provided alternatives for non-White citizens were "separate but equal" and was only revised this decision in 1954 during *Brown v. Board of Education*. Without sufficient audits to ensure the mandated equality broadly, it provided grounds for the stark inequalities in education, housing, and the labour market conditions to be justified as a natural consequence of different ethnicities' willingness to participate in American society, since the chances provided are assumed to be equal; thus, effectively affirming the constitutionality of nativist hierarchies and people of colour's second-class citizenship.²²⁷

The pervasive circulation of the Lost Cause's premise in former Confederate states' legal ideologies, paired with insufficient support for creating a substantial opposition in Congress until the latter half of the 20th century are commonly associated with prioritising economic policies as well as a widespread attitude of indifference on matters of systemic racial discrimination and violent oppression. This racial violence against Black citizens was not only confined to governmental institutions, but extended to civilian actors, who perpetrated brutal lynchings as a means of enforcing vigilante justice and hardly had to face legal prosecution.²²⁸ This systematic repression of people of colour on a federal, state, and local level formed a seemingly inescapable environment of persecution and surveillance for affected people in the USA, whose lasting influence on national racial dynamics and the othering of people of colour, denying them their inalienable rights as American citizens, is important for understanding the origins of racial disparities still present in Louisiana prisons today. Similarly, the Lost Cause is connected to core justifications in support of a post-abolitionist necessity for a large, low-cost workforce as part of carceral politics and legal culture as described in studies on *racial capitalism*²²⁹, which argues that the success of capitalist expansion in the U.S. is highly dependent on racial exploitation.²³⁰ As a consequence of this systemic oppression of coloured

²²⁷ Aaron Sheehan-Dean (ed.), *A Companion to the U.S. Civil War* (West Sussex: John Wiley & Sons, 2014), 805f.

²²⁸ Cox, *Dixie Daughters*, 7, 37, 75, 134.

Adam Chamberlain, and Alixandra Yanus, "Monuments as Mobilization? The United Daughters of the Confederacy and the Memorialization of the Lost Cause," *Social Science Quarterly* 102, no. 1 (2021), 136f.

²²⁹ Jodi Melamed, "Racial Capitalism," *Critical Ethnic Studies* 1, no. 1 (2015), 76–85.

²³⁰ See: Jenkins, "Ghosts of the Past", 2f.

Hinton, *From the War on Poverty to the War on Crime*, 326f, 335.

Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Dunham: Duke University Press, 2009).

people, civil rights' organisation such as the NAACP also gained traction and were able to establish a united national front, with memberships increasing during the onset of the 20th century.²³¹

Following these reinforcements of America's socio-political, racial stratification in private and public life, southern states consolidated the economic exploitation of its Black population after the abolition of slavery through criminal prosecution and expanded it to target people of lower socio-economic standing regardless of race.²³² In doing so, not only could criticisms of inhumane discriminatory treatment largely be mitigated through claims of racially non-biased justice, supposedly attested to by convictions of White citizens, but the increased legitimacy and promotion of government-run prison labour as a considerable contribution to states' economies is frequently considered as a precursor to later dependence on sustaining high incarceration numbers for the system not to collapse in on itself.²³³ Whereas the persecution of White-on-Black crimes, such as lynchings and other acts of terror by the KKK amongst others, were hardly pursued, first steps towards a criminalisation of poverty independent from racial lines can be observed, that targets the outer margins of economic and social hierarchies.²³⁴ This is exemplified here by a 1930 Louisiana court case from New Orleans, in which economic considerations and attitudes stemming from tenets of the American Dream can be recognised. Jeffrey Adler's analysis of this court case and surrounding public discourse, involving the first ever conviction of a working-class White man killing a Black child in Louisiana's history, incapsulates how cases of punishment for a White-on-Black crime was used to pacify critics of justice under Jim Crow laws in Louisiana and perpetuate its practices, by using the prominence of such publicised events to raise a claim to racial justice under southern rule of law.²³⁵

²³¹ Melvyn Stokes, *D.W. Griffith's The Birth of a Nation: A History of the Most Controversial Motion Picture of All Time* (New York: Oxford University Press, 2007), 169.

Jennifer D. Keene, "Wilson and Race Relations," In: Ross Kennedy (ed.), *A Companion to Woodrow Wilson* (West Sussex: Wiley-Blackwell, 2013), 145f.

James Tilly, *Social Movements 1768-2018* (New York/Oxon: Routledge, 2020), 6f.

²³² Destin Jenkins, and Justin Leroy, "Introduction: The Old History of Capitalism," In: Destin Jenkins, and Justin Leroy (eds.), *Histories of Racial Capitalism* (New York: Columbia University Press, 2021), 13f.

²³³ Jeffrey Adler, "'A Low Caste White Man with Lust in His Heart': Race, Deviance, and Criminal Justice in Jim Crow New Orleans," *The Journal of Southern History* 84, no. 2 (2018), 246f.

Reiman, and Leighton, *The Rich Get Richer and the Poor get Prison* 203-205.

²³⁴ Wacquant, *Punishing the Poor*, 41f.

²³⁵ Adler, "A Low Caste White Man".

This case presents an example for the general trend, that the primarily racially motivated social hierarchies of the U.S.'s South were not abolished after criticisms arose, but simply adapted and expanded following reconstruction to include a class-component, through which White criminals and poverty-stricken people were subjected to similar discrimination as freedmen; thus, enabling a self-imagination of Southern segregation as "separate but equal" and naturally grown, while practically no changes were made to the social standing of people of colour in the segregated South.²³⁶ It can also be deduced, that legal culture in the 20th century southern United States never fully separated from its racist biases²³⁷, but expanded from being justified primarily through religious doctrines and tenets of individual responsibility to include dichotomies of *rich-poor*, *high-low social standing* and more generalised *White–Non-White*²³⁸, which arose from the nation's foundational mythology and are still noticeable parameters of ACR in the 21st century.²³⁹

Adding to the impression of powerlessness and constituting a key development in the history of American legal culture is the establishment of restrictive voting rights laws in the wake of Jim Crow segregation and their effects on the ostracism of Black and Brown people from the political discourse. These voting restrictions and their continuation into the 21st century via practices of gerrymandering and polling, taxes have been repeatedly criticised for contributing to the legitimacy of perpetuating institutionalised inequalities in southern states' criminal justice systems²⁴⁰, and the pervasiveness of racial discrimination, even as Black crime rates decreased over time.²⁴¹ Specifically, these state laws initially tied voting rights to literacy tests, tax payments, land property, or the verification of an ancestor's right to vote before the end

²³⁶ Alexander, *The New Jim Crow*, 20f, 43f.

Durkheim, *The Division of Labor in Society*, 45f.

²³⁷ Cardon, „Less than Mayhem,“ 420.

²³⁸ Hans-Jürgen Pandel, „Dimensionen des Geschichtsbewusstseins. Ein Versuch, seine Struktur für Empirie und Pragmatik diskutierbar zu machen,“ *Geschichtsdidaktik* 12, no. 2 (1987), 130–142.

²³⁹ Cox, *Dixie's Daughters*, 4–12, 120f.

Mahzarin Banaji, Susan Fiske, and Douglass Massey, „Systemic racism: individuals and interactions, institutions and society,“ *Cognitive Research: Principles and Implications* 6, no. 82 (2021).

Rebecca Klein, „The Rightwing US Textbooks that Teach Slavery as ‘Black Immigration’,“ *The Guardian*, 12.8.2021, accessed 20.6.2023, <https://www.theguardian.com/education/2021/aug/12/right-wing-textbooks-teach-slavery-black-immigration>.

²⁴⁰ Susan Carle, *Building the NAACP's Legal Agenda, 1910-1915* (New York: Oxford University Press 2013), 284ff.

William Arp III, and Berlisha Morton, „A Political History and Analysis of Disenfranchisement and Restoration of the Black Vote in Louisiana,“ *The Western Journal of Black Studies* 29, no. 3 (2005), 633–635.

Wood, and Ring, „Introduction,“ 5f.

²⁴¹ Jeffrey Adler, „Less Crime, More Punishment: Violence, Race, and Criminal Justice in Early Twentieth-Century America,“ *Journal of American History* 102, no. 1 (2015), 34–46.

of the Civil War – which was discontinued after the Supreme Court ruled it to be unconstitutional (*U.S. v. Guinn 1913-1915*) under the 15th Amendment’s affirmation that voting rights cannot be denied “on account of race, color, or previous condition of servitude”²⁴² – and banned felons from the voting process.²⁴³ This disenfranchisement did not affect White populations of lower socio-economic status to the same extent as it did Black citizens, which would only become more pronounced, since restrictions on White voters loosened over time and provided legal loopholes to increase their political representation, while Black voters could only make effective use of their suffrage after the passage of the Voting Rights Act in 1965.²⁴⁴

However, while these advances in dismantling discriminatory practices for voting had been somewhat effective for people of colour in the general population, combating disenfranchisement of felons and ensuring the enforcement of their rights remained a constant struggle in America’s legal discourse. Simultaneous to the civil rights movement and other repressed groups’ struggle for equality, the prisoner’s rights movement and its supporters – primarily characterised in its early stages by Black Muslim inmates’ protests against religious and racial discrimination – increasingly took prison administrators and staff to court over a disregard for people’s rights, and throughout the next decades slowly managed to secure concessions through hard-fought legal battles.²⁴⁵ While this form of depriving people of their vote in conjunction with the disproportionate policing and imprisoning of Black communities to considerably lessen their chances of participating in the political discourse and reinforce stereotypes of Black criminality. These would become the main impetus for the broad acceptance of increasingly targeting members of minority groups during mass incarceration, which resulted in 1 in 7 Black men being charged and denied suffrage

²⁴² Alexander, *The New Jim Crow*, 187f.

²⁴³ Carol Anderson, *One Person, No Vote: How Voter Suppression is Destroying Our Democracy* (New York: Bloomsbury Publishing, 2018), 9-24.

²⁴⁴ Glenn Feldman, *The Disfranchisement Myth: Poor Whites and Suffrage Restriction in Alabama* (Auburn: University of Georgia Press, 2004), 136f.

²⁴⁵ James Jacobs, “The Prisoners’ Rights Movement and Its Impacts, 1960-80,” *Crime and Justice* 2 (1980), 429-470.

Christopher E. Smith, “Black Muslims and the Development of Prisoners’ Rights,” *Journal of Black Studies* 24, no. 2 (1993), 131-146.

Livia Gershon, “What the Prisoners’ Rights Movement Owes to the Black Muslims of the 1960s,” *JSTOR Daily*, 22.1.2018, accessed 20.10.2023, <https://daily.jstor.org/what-the-prisoners-rights-movement-owes-to-the-black-muslims-of-the-1960s/>.

nationwide in the mid-1990s.²⁴⁶ Consequently, this policy not only exasperated the exclusion of already marginalised groups from participating in the political discourse, but also served as a precedent for the acceptance of flouting criminals' essential rights as part of serving punishment, if deemed adequate by prison staff; a trend that is mirrored in the implementation of prolonged solitary confinement, administered by correctional officers instead of officially mandated by judges, and degrading disciplinary measures.²⁴⁷

As a result of a steady influx of inmates during the 20th century, state prisons followed two main avenues to handle the demands, whilst providing a substitution for the receding profits of agricultural production following abolition. These included the operation of prison plantation by the state itself, and the cooperation with private contractors in need of a workforce for the farming, mining, railroad, and lumber industry, following the dissolution of slavery and a need to move from Louisiana's agricultural to an industrial economic model.²⁴⁸ In other European and North-American nations, practices of forced labour in correctional institutions were gradually abolished towards the end of the 19th century, as the industrialisation of market structures and societal models necessitated a shift from menial labour to an effective rehabilitation and reintegration of prisoners into society, to utilise their economic potential and maximise industrial developments.²⁴⁹ Yet, United States' prisons doubled down on violent regiments and forced labour practices, with northern prisons predominantly favouring state-owned industrial prison labour, while former confederate states were more likely to apply practices, that presented continuations of prior forms of population and workforce control, derived from their pre-abolitionist slave economies.²⁵⁰ With the intention of compensating for the low degree of industrialisation and lacking infrastructure following the destruction brought about by the Civil War, convict labour has been identified by

²⁴⁶ Jamie Fellner, and Marc Mauer, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States* (Washington D.C.: Sentencing Project, 1998).

Tammy Ingram, "The South's Sin City: White Crime and the Limits of Law and Order in Phenix City, Alabama," In: Amy Louise Wood, and Natalie J. Ring (eds.), *Crime and Punishment in the Jim Crow South* (Urbana: University of Illinois, 2019), 82-84.

Jeff Manza, Christopher Uggen, and Angela Behrens, "The Racial Origins of Felon Disenfranchisement," In: Jeff Manza, and Christopher Uggen (eds.), *Locked Out: Felon Disenfranchisement and American Democracy* (New York: Oxford University Press, 2006), 41-68.

²⁴⁷ Alison Liebling, "Moral Performance, Inhuman and Degrading Treatment and Prison Pain," *Punishment & Society* 13, no. 5 (2011), 530-550.

²⁴⁸ Nathan Cardon, "Less Than Mayhem": Louisiana's Convict Leasing System, 1865-1901," *Louisiana History: The Journal of the Louisiana Historical Association* 58, no. 4 (2017), 418-420.

²⁴⁹ Foucault, *Überwachen und Strafen*, 36f.

²⁵⁰ Musick, and Gunsaulus-Musick, *American Prisons*, 22-26.

research as a cornerstone of modernising Louisiana, while also allowing for a reaffirmation of existing racial hierarchies through the criminalisation of its Black and economically disadvantaged populations.²⁵¹

The specific means of coping with these economic hardships primarily consisted of a model, that leased convicts to private contractors, who managed prison populations and employed them as a cheap and dispensable workforce to expand infrastructure, primarily by building railway tracks, working in agriculture, and mining using chain-gangs.²⁵² Thus, showing a direct connection to and having been implemented as compensation for mitigating the economic losses following the abolition of slavery. In Louisiana, the extent of this practice and its influence was most striking, as the state's convict leasing was conducted exclusively with former Confederate major Samuel Lawrence James, who sub-leased inmates to private contractors under this monopoly and contributed to the state's industrial modernisation, while also employing convicts on his farm at Angola, before its acquisition and transformation into an official state prison in 1901.²⁵³ However, after the issuing of new contracts ceased in Louisiana around 1898 and the last one expired in 1901 (the practice was suspended on a federal level in 1905, and eventually on a state level by Alabama in 1928)²⁵⁴, profit-driven prison management had already been established as a core paradigm of the Louisianian prison sector, leading to the for-profit operation of plantations and factories being maintained by state and federal officials, to increase oversight of their operations.²⁵⁵ This also resulted in the expansion of the Angola farm by 18.000 acres in 1922 and simultaneously drastically increasing prisoner numbers to expand its production.²⁵⁶

As described by James Gray Pope; the fact that forced prison labour under convict leasing was permitted by the 13th Amendment's ban on slavery, with its continued legal legitimacy having been lobbied for by powerful northern as well as southern interest groups and upheld by courts for the sake of economic stability as its constitutionality was hardly contested on legal grounds until convict leasing was slowly phased out, due to criticisms by prison reformers and

²⁵¹ Cardon, "Less Than Mayhem", 418-420.

²⁵² Whitehouse, "Modern Prison Labor," 93-97.

²⁵³ Cardon, "Less Than Mayhem", 419.

²⁵⁴ Musick, and Gunsaulus-Musick, *American Prisons*, 20f.

²⁵⁵ Thomas Murton, *The Dilemma of Prison Reform* (New York: Holt, Rinehart and Winston, 1976), 12f.

Mark Carleton, "The Politics of the Convict Lease System in Louisiana: 1868-1901," *Louisiana History: The Journal of the Louisiana Historical Association* 8, no. 1 (1967), 24f.

²⁵⁶ Scott E. Peyton, *Solitary Confinement in the Pelican State* (Austin: Texas Public Policy Foundation, 2020), 6f.

union workers, who denounced the enforced violence's resemblance to practices of slavery and its detrimental effect of the labour market.²⁵⁷ However, since these criticisms concerning the racially and socio-economically discriminatory functions of forced prison labour over its use for criminal punishment during convict leasing were not sufficiently deconstructed and assessed for a long time, the legal tradition of utilising prisoners as a source of cheap labour while disregarding their well-being was never unequivocally condemned, but rather substituted the already established retributivist sentiments discussed related to the myth of the self-made man and promised land, that require incarcerated people to do penance and rectify the damage they caused, rather than being concerned with the inmates' wants and needs. Thus, leading to the conclusion, that the lack of legal opposition and its economic potency during the first half of the 20th century described by Gray Pope contributed to an unchallenged²⁵⁸ legitimacy of forced prison labour under convict leasing, administered through non-governmental actors and paved the way for reintegrating private contractors into the management of carceral institutions during the latter half of the century, as skyrocketing incarceration numbers brought the public carceral system to its limit.

Another remnant of the segregationist South, pivotal for the long-lasting institutional stability, was the prominent repression and disenfranchisement of people of colour and (ex-) inmates, as the consequently insufficient political representation has had a detrimental effect on the implementation of improvements to prisoners' rights. To summarise the findings of this section, it can be deduced that Louisiana's legal culture during the first half of the 20th century already displayed systemic tendencies for profit-driven privatisation, racial discrimination and a failure to provide prisoners with basic rights, attested to them by the American Constitution, that were amplified as remnants of the southern, pre-abolitionist hierarchical structures shaped subsequent incarceration practices and normalised disciplinary regiments against a purportedly pathological Black criminality across the United States. A development that was described by Douglas Blackmon as the "re-enslavement of Black Americans".²⁵⁹ Contrary to common beliefs of racial equality within the USA following a steady upwards development

²⁵⁷ James Gray Pope, "Mass Incarceration, Convict Leasing, and the Thirteenth Amendment: A Revisionist Account," *New York University Law Review* 94, no. 6 (2019), 1520-1527.

²⁵⁸ Gray Pope, "Mass Incarceration," 1521.

²⁵⁹ Douglas A. Blackmon, *Slavery by Another Name: The Re-enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2009).
Hinton, *From the War on Poverty to the War on Crime*, 302f.

since the abolition of slavery, many contemporary accounts and historical analyses, including Justin Leroy's contribution to a racial capitalist reappraisal of America's past, in which continuities between pre- and post-abolitionist forced labour practices are highlighted and supplemented with evaluations made by Frederick Douglass and other sources of the time, emphasise the maintaining or even worsening of conditions after achieving freedom from enslavement.²⁶⁰ The implemented measures of racial oppression gradually expanded their reach to include other marginalised groups, which ultimately formed a separate caste for criminals, that increased the societal rift between people profiting from and getting harmed by this system.²⁶¹

3.4 Insights – American Foundational Mythology and Legal Culture

In summary, the findings of this chapter indicate significant and pervasive correlations between the concept of *justice* in American legal culture and values expressed through narratives in its foundational myths, the circulation of which perpetuated favourable conceptions of the nation's past and reinforced beliefs in American law's moral superiority, while also taking on a functional role after the abolition of slavery in the South.²⁶²

On religious grounds, this superiority was propagated via the myth of American exceptionalism and Puritan settlers' fashioning of America as a "city set upon a hill", which was routinely reinforced by incorporating religious rhetoric in legal documents and political speeches to legitimise deviations from European conventions as improvements and foster a stable, nationalist civil religion.²⁶³ On socio-economic and cultural grounds, the myths of the "self-made man" and the "melting pot" are most prominent in appeasing criticism of societal inequalities and, under the pretence of a moral monopoly of the state, for justifying severe methods of criminal punishment and discrimination. These defining features of legal culture show a prevailing orientation of American penal practices along retributivist, religious doctrines and racial biases that reflect the lacking historical consciousness inherent in self-

²⁶⁰ Justin Leroy, "Racial Capitalism and Black Philosophies of History," In: Destin Jenkins, and Justin Leroy (eds.), *Histories of Racial Capitalism* (New York: Columbia University Press, 2021), 169-184.

Carleton, "The Politics of the Convict Lease System in Louisiana: 1868-1901", 5f.

²⁶¹ Katie R. Eyer, "The New Jim Crow is the Old Jim Crow," *The Yale Law Journal* 128, no. 4 (2019), 1047-1050.

²⁶² Mary Ann Glendon, *Rights Talk: The Impoverishment of Our Political Discourse* (New York: Free Press, 1991), x.

Neal Davins, „Fundamentalist Christian Educators v. State: An Inevitable Compromise," *George Washington University Law Review*, 60 (1992), 824.

²⁶³ David G. Winter, Ryan Leclerc et al., "Developing a Measure of Generative Historical Consciousness from Political Leader's Speeches," *Personality and Social Psychology Bulletin* 45, no. 9 (2019), 1338-1351.

perceptions of ACR.²⁶⁴ Despite frequently proclaiming the nation's underlying core values of *personal freedom, political democracy, peace, and cultural tolerance*, as essential to the concept of "Americanness", its conduct throughout history has shown perpetual violations of these very principles, especially in the treatment of ethnic minorities and people of lower social standings.²⁶⁵

In addition to these cornerstones of American mythologies, *the myth of the Lost Cause* was shown to have significantly influenced developments of pre-existing social hierarchies and economic frameworks of repression in former Confederate States. It was shown to demonstrate how the need for a cheap workforce after the abolition of slavery motivated a continued stigmatisation of entire ethnic groups and contributed to a retention of slave labour as a form of punishment in the U.S. Constitution. Consequently, post-civil war prison labour, including convict leasing, was symbolic of the transition carceral forced labour underwent, while keeping carceral institutions at full capacity. This tendency is essential in understanding subsequent developments, as it will be described at a later point how it was exacerbated under mass incarceration policies and the extensive incorporation of the private sector's vested interest in governmental decision-making, in what was first described by Eric Schlosser as the prison-industrial complex in 1998, due to its similarities with dynamics of America's military-industrial complex.²⁶⁶

As a consequence of the overlapping and sometimes contradicting narratives presented throughout ACR, dichotomies of poor vs. rich, virtuous vs. sinful, free vs. imprisoned and the racial aspect of White vs. non-White were given much prominence in implementations of its legal culture and caused dissonance amongst its individual components. The glue, holding these interconnected components of American mythology together, thus creating a competing model to European society, is the promise of unlimited upwards social mobility and a pronounced constitutionalism, with a firm belief in the unquestionable righteousness of intentions laid out in its foundational documents.²⁶⁷ The validity of this claim to boundless personal opportunities regardless of race, faith or social standing are commonly legitimised by

²⁶⁴ Karl-Ernst Jeismann, „Geschichtsbewusstsein,“ In: Karl-Ernst Jeismann, and Wolfgang Jacobmeyer (eds.), *Geschichte als Horizont der Gegenwart: Über den Zusammenhang von Vergangenheitsdeutung, Gegenwartsverständnis und Zukunftsperspektiven* (Paderborn: Schöningh, 1985), 43-71.

²⁶⁵ Gardella, *American Civil Religion*, 1-8.

²⁶⁶ Eric Schlosser, "The Prison-Industrial Complex," *Atlantic Monthly* 282, no. 6 (1998), 51-77.

²⁶⁷ Paul, *The Myths that Made America*, 367f.

its proponents through selected rags to riches narratives.²⁶⁸ Statistical analyses however show, that social mobility within the United States is generally very low and inherently linked to a person's class, race and gender, even in the 21st century.²⁶⁹

While industrialisation, technical innovations and advances in gender, as well as racial equality have had a significant influence on social hierarchies and corporate dynamics, climbing the social ladder and escaping generational poverty remains an unlikely prospect for most.²⁷⁰ The limited opportunities for increasing one's social and economic capital within America, especially for people of colour, low-income working-class people, and people affected by intersectional discrimination, in combination with the categorical condemnation of criminal behaviour as being a moral deficiency instead of taking contextual factors into account, characterise the various layers of stigmatisation²⁷¹ experienced by incarcerated persons, even after they have received their allotted punishment. The longevity of these biases rests, among other things, on a prolonged exposure and performance of rites, that shape historical awareness and strengthen an unquestioned belief in narratives of ACR.

Compared to other western nations' implicit historical memory, as described by Guy Beiner²⁷², ACR has permeated historical awareness within the United States through repeated engagement with popular customs, social events and prolonged trans-medial efforts to promote elements of American foundational myths, that successfully intertwined moralistic narratives with people's positive self-conceptions.²⁷³ The mass-effectiveness of this is compounded by multiple rituals and codes that are invoked regularly – including: frequently pledging allegiance to its values by singing the national anthem and displaying the national flag; celebrating national holidays; showing reverence for historical figures and the *sacred*

²⁶⁸ Paul, *The Myths that Made America*, 405f.

²⁶⁹ Raj Chetty, John Friedman, Nathaniel Hendren, Maggie Jones, and Sonya Porter, "The Opportunity Atlas: Mapping the Childhood Roots of Social Mobility," *National Bureau of Economic Research*, last revised February 2018. accessed 6.10.2023, www.nber.org/papers/w25147.

C. Jencks and S. E. Mayer, "The Social Consequences of Growing Up in a Poor Neighborhood," In: Lawrence Lynn, and Michael McGeary (eds.), *Inner-City Poverty in the United States* (Washington D.C.: National Academy Press, 1990), 111–186.

²⁷⁰ Florian R. Hertel, Fabian T. Pfeffer, "The Land of Opportunity? Trends in Social Mobility and Education in the United States," In: Richard Breen, and Walter Müller (eds.), *Education and Intergenerational Social Mobility in Europe and the United States* (Stanford: Stanford University Press, 2020), 29-68.

²⁷¹ Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (Englewood Cliffs: Prentice-Hall, 1963).

²⁷² Guy Beiner, *Forgetful Remembrance: Social Forgetting and Vernacular Historiography of a Rebellion in Ulster* (Oxford/New York: Oxford University Press, 2018).

²⁷³ Astrid Erll, "The Hidden Power of Implicit Memory," *Memory, Mind & Media* 1, no. E14 (2022), 5-9.

documents associated with them – to ensure ACR’s lasting effectiveness as well as encourage social cohesion and solidarity amongst its population.²⁷⁴ In the case of Louisiana, additional influences from the South’s legacy of slavery, the Confederacy, and segregation under Jim Crow laws on racial disparities within social hierarchies can be observed within the state’s civil religion and its realisation through legal culture along with its carceral practices. Despite of developments that lead to these disparities being in large part rooted in systemic racial oppression and persecution, the resulting low social and economic standing of marginalised groups were often employed in efforts of othering portions of society, even after the end of segregation in efforts to justify the waiver of people’s rights expressed in ACR for the greater good of the nation.

Within Social Dominance Theory, research conducted by Unger (1986)²⁷⁵, Borowiak and Golec (2004)²⁷⁶ and Redlawsk (2002)²⁷⁷ has also confirmed this relevance of moral and ideological prejudice for the dynamics of social power struggles among suppressed groups (e.g.: ethnic, social, cultural) and an increased likelihood of uneven criminal justice enforcement, favouring dominant groups over its perceived inferiors. This general acceptance of moralistic justifications, along with the social stigmatisation of criminal perpetrators and marginalised populations accelerated the expansion of America’s carceral state in the latter half of the 20th century into one of mass imprisonment and increased its resilience against divesting and downsizing the prison sector.

Drawing from Jörn Rüsen’s concept of historical awareness and its constituting factors, it can be argued that the aesthetic, religious, moral and psychological dimensions described by him are the most pronounced features of nation- and norm-building processes for legitimising inequalities of American social structures.²⁷⁸ Especially the sentiments transported through moralistic myths have been internalised by the collective consciousness and distorted the understanding of the United States’ past, with them only having been scrutinised in connection

²⁷⁴ Gardella, *American Civil Religion*, 5-7.

²⁷⁵ Roberto Mangabeira Unger, *The Critical Legal Studies Movement* (Cambridge: Harvard University Press, 1986), 7-14.

²⁷⁶ A. Borowiak, A. Golec, “Motivated Cognition and Cultural Worldview as Predicators of political preference,” *Psychological Studies* 42 no. 2 (2004), 5-16.

²⁷⁷ David Redlawsk, “Hot Cognition or Cool Consideration? Testing the Effects of Motivated Reasoning on Political Decision Making,” *The Journal of Politics*, 64 no. 4 (2002), 1021-1044.

²⁷⁸ Jörn Rüsen, *Historische Sinnbildung: Grundlagen, Formen, Entwicklungen* (Wiesbaden: Springer, 2020), 41f, 45-51.

to the idealised and romanticised self-perception of Americans after they had already been inextricably linked to well-established social and legal norms. The deconstruction of these conceptions could only begin, once the absolute character of American conceptions about the nation's past was unravelled.

Due to their prolonged circulation and widespread support, broader condemnation and questioning of these master narratives, which treated the United States' population as a homogenous entity in support of the expressed ambitions, only came about during the 1960s, as subnational approaches from the *Critical Myth and Symbol School* recognised asymmetrical power hierarchies within American exceptionalist narratives²⁷⁹ and promoted a more inclusive interpretation of ACR, by encouraging new fields of American studies to investigate experiences of marginalised groups (Black studies, Native American Studies, Gender studies, ethnic studies, ...).²⁸⁰ In its latest evolution during the 1990s, the transnational *New Americanist* perspectives primarily employed in this thesis entered the discourse and opened it up to the scrutiny of international and multilingual analysis. By approaching the discourse from this angle, research began to gradually demystify the United States' national narratives and its colonial past as a "Nation Among Nations"²⁸¹, by situating them within the global context and questioning the determinism of American foundational mythology.²⁸² In the context of this paper it is argued, that the pervasive influence of this mythology, abetted by the spreading of critical perspectives only taking place after hierarchies had been solidified during the first half of the 20th century, contributed in enabling the extent of today's prison-industrial complex and the mass incarceration perpetuating its system of discrimination.

The upcoming chapter will clarify how the nation's mass incarceration crisis built on the narratives described above to substantially amplify existing biases in America's prison system and its underlying legal culture in pursuit of specific political and economic interests. Following this, a short case study on two Louisiana carceral institutions and an analysis of its results will be provided to compare the status quo of Louisiana's legal culture at the turn of the millennium

²⁷⁹ Henry Nash Smith, *Virgin Land: The American West as Symbol and Myth* (Cambridge: Harvard University Press, 1950).

²⁸⁰ Paul, *The Myths that Made America*, 21-23.

Richard Slotkin, *Regeneration Through Violence: The Myth of the American Frontier, 1600-1860* (Norman: Oklahoma Press, 1973).

²⁸¹ Bender, *A Nation among Nations*.

²⁸² Kaplan, Pease, *Cultures of United States Imperialism*.
Paul, *The Myths that Made America*, 23-25.

to its current trends and deduce possible implications for whether significant changes can be observed.

4. Mass Incarceration and the Deterioration of American Legal Culture

This chapter will draw from the insights gained previously to explore crucial steps in the development of American legal culture since the introduction of mass incarceration. The associated political and social developments since the 1970s have largely been shaped by a paradigm shift in sentencing practices, that gradually implemented long-term sentencing laws for non-violent offences as a preferred punishment and was primarily established during the presidencies of Nixon, Reagan, and later Clinton.²⁸³ The political landscape itself was also altered, after the backlash to the Democratic Party's support of civil rights causes under President Lyndon B. Johnson resulted in disturbances within their most stable base of voters, the constituencies of White southern communities; and the Republican Party's shift towards a racialised, reactionary political approach, that was initially employed effectively by the Nixon campaign's "southern strategy", to appeal to that base, by introducing thinly veiled discriminatory policing and sentencing laws.²⁸⁴ Thus, the following section will analyse, to what extent pre-existing biases from America's foundational mythology are represented in practices and ideologies of mass incarceration, in order to assess the impact these policies have had on American and Louisianian legal culture and establish the parameters, on which the case study will build on.

In the leadup to the American incarceration boom of the 1980s and onward, the issues of racial disenfranchisement, along with financial and social discrimination of African Americans under racial segregation were becoming more apparent in national political discourse, as racial disparities surged during America's post-World War 2 economic growth.²⁸⁵ This increased prominence of intersections between ethnic discrimination against non-white communities and their simultaneous destabilisation, caused by extreme poverty and the resulting social

²⁸³ Lisa D. Moore, and Amy Elkavich, "Who's Using and Who's Doing Time: Incarceration, the War on Drugs, and Public Health," *American Journal of Public Health* 98, no. 5 (2008), 782–786.

Bureau of Justice Statistics, *Bulletin: Prisoners in 1989*, by Lawrence A. Greenfield, and Thomas Hester (Washington D.C.: U.S. Department of Justice, 1990), accessed 20.6.2023, <https://bjs.ojp.gov/content/pub/pdf/p89.pdf>.

²⁸⁴ Jeremy D. Mayer "Nixon Rides the Backlash to Victory: Racial Politics in the 1968 Presidential Campaign," *The Historian* 64, no. 2 (2001), 351–366.

²⁸⁵ Frédéric Docquier, Riccardo Turati, Jérôme Valette, and Chrysovalantis Vasilakis, "Birthplace Diversity and Economic Growth: Evidence from the US States in the Post-World War II Period," *Journal of Economic Geography* 20, no. 2 (2020), 321–354.

issues, that prevailed for many despite living in one of the wealthiest nations, is mentioned by political scientists to have substantially fuelled following social movements and civil unrest.²⁸⁶ During the 50s and 60s, this prolonged struggle of civil rights activists expanded its reach, as rising condemnation of continued racial violence and ostracization of Black people²⁸⁷ were substantiated by prominent anti-segregation verdicts of the United States Supreme Court under Chief Justice Earl Warren, which established the racially segregated housing, schooling, and healthcare practices to be in direct conflict with constitutional law.²⁸⁸ However, despite achieving broader federal bans on racial discrimination, enforced primarily by the Voting Rights Act of 1962, Civil Rights Acts of 1964 and 1968, and the Fair Housing Act of 1968, inequalities between White and non-White communities prevailed, as the mandated equality for people of all ethnicities therein did not provide equity or issue compensations to counteract the continual build-up of generational poverty.²⁸⁹ This neglect constitutes one factor that contributed to the deterioration of urban communities of colour, whose high crime rates were postulated as a main impetus for implementing stricter policing and sentencing laws.

While the early 1970s did not see major shifts in carceral politics, limitations to the promised equality began to show, as vestiges of preexisting racial inequalities and systemic biases circumvented civil rights legislation, despite Black citizens' efforts to expand their political representation through voting (increasing participation in Louisiana from 31.6% to 60.8% between 1964 and 1969).²⁹⁰ One major contributing element can be found in the continued practice of redlining non-White neighbourhoods, which disincentivised investments in "high risk" areas, which are deemed less desirable or safe on the basis of income levels, housing quality, or crime rate; three parameters that cause historically disadvantaged parts of society

²⁸⁶ Frances Fox Piven, and Richard A. Cloward, *Poor People's Movements: Why They Succeed, How They Fail* (New York: Pantheon, 1977), 269.

²⁸⁷ Devery S. Anderson, *Emmett Till: The Murder that Shocked the World and Propelled the Civil Rights Movement* (Jackson: University Press of Mississippi, 2015), 344-355.

²⁸⁸ Lillian A. BeVier, "Intersection and Divergence: Some Reflections on the Warren Court: Civil Rights, and the First Amendment," *School of Law Washington and Lee Law Review* 59, no. 4 (2002), 1092f. Paul Molk, *Earl Warren and the Struggle for Justice* (Lanham/Boulder/New York/London: Lexington Books, 2015), 181-206.

²⁸⁹ Fabian T. Pfeffer, and Alexandra Killewald, "Generations of Advantage: Multigenerational Correlations in Family Wealth," *Social Forces* 96, no. 4 (2018), 1411-1442.

Kevin J. A. Thomas, "Familial Influences on Poverty Among Young Children in Black Immigrant, U.S.-born Black, and Nonblack Immigrant Families," *Demography* 48, no. 2 (2011), 437-460.

²⁹⁰ Stephen F. Lawson, *Black Ballots: Voting Rights in the South, 1944-1969* (New York: Columbia University Press, 1976), 300, 321, 329, 331.

to be disproportionately affected.²⁹¹ Additionally, hiring practices, favouring White over Black applicants with the same qualifications, were not eliminated by civil rights legislation, since employers could base their rejection of applicants on other factors than openly discriminatory reasonings, that were more common in non-White populations, such as job experience, criminal records, or stability in one's private life.²⁹² One federal-level example for this is the Carter administration's economic model, which diverted from previously employed Keynesian approaches for combating the fiscal recession between 1973-1975, as it defunded welfare programmes almost immediately after assuming office²⁹³ and favoured a *service economy*, that saw a renewed increase of racial disparities in unemployment rates, in turn lowering public trust in the government and destabilising affected areas.²⁹⁴ Another instance, displaying the limitations of the Voting Rights Act in the state of Louisiana, concerns its continuation of voting rights limitations via its carceral system, as it continued to deny suffrage to (ex-) felons, in a system with disproportionately high numbers of Black citizens being subject to this practice.²⁹⁵ The main flaw of legislation achieved through the Civil Rights Movement can thus be stated to be the lack of attention directed towards the racially biased structures established during the Jim Crow era, and the insufficiently precise enforcement of the laws, whose seemingly egalitarian rules allowed for the continuation of discrimination by indirect means.

To set the stage for the following exploration of the pivotal role mass incarceration fulfils in the formation of today's legal culture in the United States, an initial definition of the terminology and its implications for assessing ideological changes is provided here. Being initially termed "mass imprisonment" in 2001, this conceptualisation of American carceral policies is used to describe the "unprecedented expansion of prison populations" and the establishment of a legal frame for the reproduction of systemic racial and economic oppression against

²⁹¹ Margaret S. Pfunder, "The Legality of Redlining Under the Civil Rights Laws," *American University Law Review* 25, no. 2 (Winter 1976), 463-496.

²⁹² Lincoln Quillian, Devah Pager, Ole Hexel, and Arnfinn H. Midtbøen, "Meta-analysis of Field Experiments Show no Change in Racial Discrimination in Hiring Over Time," *Proceedings of the National Academy of Sciences* 114, no. 41 (2017), 10870-10875.

²⁹³ Chuck Stone, "Carter's Paternalistic Racism and the Inept Presidency," *Black Scholar* 9, no. 6 (1978), 39-41. Bruce J. Schulman, "Slouching towards the Supply-Side: Jimmy Carter and the New American Political Economy," In: Gary M. Fink, and Hugh Davis Graham (eds.), *The Carter Presidency: Policy Choices in the Post-New Deal Era* (Lawrence: University Press of Kansas, 1998), 51-71.

²⁹⁴ Hinton, "From the War on Poverty to the War on Drugs," 303f.

²⁹⁵ Bruce Scottus Reilly, "'To Purify the Ballot' The Racial History of Felon Disenfranchisement in Louisiana," *Loyola Journal of Public Interest Law* 19 (2018), 118f.

marginalised groups via means of policing, sentencing, and social control, that were gradually consolidated within the American criminal justice system since the 1970s.²⁹⁶

Michelle Alexander's seminal critique of oppressive mechanisms within America's prison system is commonly referred to as a defining approach to the deconstruction of mass incarceration narratives in modern discourse, as it opened up public debate on the issue, by expanding the term "mass incarceration" to not only be applicable to the criminal justice system directly, but include stigmatisation and second-class citizenship, people labelled as criminals, including released inmates that have *served their time*, are commonly subjected to by police or at court, along with discrimination in housing and labour markets.²⁹⁷ Alexander's definition emphasises the stark disparity in policing and sentencing standards in connection to the devastating effects the war on drugs has had on people living in marginalised neighbourhoods, by supplementing her claims of discrimination with ample legal cases and statistical evidence.²⁹⁸ Provided data for example underscore, how targeted policing destabilised poor, urban communities and contributed to a higher rate and severity of sentencings for drug-related crimes in these areas²⁹⁹, with trends regarding disproportionately high policing of drug-related crimes to be most impactful for them, with 80% of young men in affected areas having a criminal record around the year 2000³⁰⁰, despite a similar potential for drug offences amongst young people regardless of ethnicity³⁰¹. One central element of Alexander's use of "mass incarceration" subsequently draws the conclusion, that this prolonged oppression gradually destabilised communities in question and their regenerative capabilities, which eroded trust in the government, increased overall crime rates and created

²⁹⁶ David Garland, *Mass Imprisonment Social Causes and Consequences* (Chicago: University of Chicago Press, 2001), 2.

²⁹⁷ Alexander, *The New Jim Crow*, 12f.

²⁹⁸ Ryan Moore, *An Analysis of Michelle Alexander's The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (London: Routledge, 2017), 60-68.

²⁹⁹ Human Rights Watch, "Punishment and Prejudice: Racial Disparities in the War on Drugs," *HRW Reports* 12, no. 2 (2000).

³⁰⁰ Paul Street, *The Vicious Circle: Race, Prison, Jobs, and Community in Chicago, Illinois, and the Nation* (Chicago: Chicago Urban League, Department of Research and Planning, 2002).

³⁰¹ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Summary of Findings from the 2000 National Household Survey on Drug Abuse*, NHSDA Series H-13, DHHS pub. no. SMA 01-3549 (Rockville: National Clearinghouse for Alcohol and Drug Information, 2001). Human Rights Watch, "Punishment and Prejudice".

U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Results from the 2007 National Survey on Drug Use and Health: National Findings*, NSDUH Series H-34, DHHS pub. no. SMA 08-4343 (Rockville: National Clearinghouse for Alcohol and Drug Information, 2007).

a vicious circle, that exacerbated the already limited chances of social and economic mobility of people in low-income communities.³⁰²

While this criminal stigmatisation mostly penalises social insecurities in economically disadvantaged and marginalised ethnic communities, intersectional discrimination as an amplifying factor must not be discarded, since poor, Black neighbourhoods are already affected overlapping factors of inequity, even without the added burdens for women or people with disabilities.³⁰³ This was showcased in studies on relationships between incarceration and employment from the early 2000s by Bruce Western. In them, it is described, how negative repercussions of criminalising swathes of communities with a broad brush are even more pronounced in communities that have multiple prejudices raised against them, with the average income of Black citizens with felony convictions in affected areas decreasing to only 44% of their wages prior to being incarcerated³⁰⁴, and Black women showing less likelihood of finding employment after their release than non-Black women.³⁰⁵ Despite gender-based, ableist, and cultural discrimination presenting insightful variables for research on legal culture, they are not sufficiently represented in the selected prisons and their available sources to adequately discuss their influence. They will thus only be included to a limited extent when describing paradigms of Louisiana's legal culture.

The remainder of this chapter will attempt to illuminate, how a gradual bipartisan alignment behind mass incarceration policies and their incorporation into paradigms of American legal culture relate to sentiments, already manifested through earlier narratives of its national mythology and civil religion.

³⁰² Jacob Bor, Gregory Cohen, and Sandro Galea, "Population Health in an Era of Rising Income Inequality: USA, 1980-2015," *The Lancet* 389, no. 10077 (2017), 1488.

³⁰³ Katrin Losleben, and Sarah Musubika, „Intersectionality," In: Melina Duarte, Katrin Losleben, and Kjersti Fjørtoft (eds.), *Gender Diversity, Equity, And Inclusion in Academia: A Conceptual Framework for Sustainable Transformation* (London/New York: Routledge, 2023), 72-84.

Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum* 1 (1989), 139-167.

³⁰⁴ Wacquant, *Punishing the Poor*, 140.

Bruce Western, and Becky Pettit, "Incarceration and Racial Inequality in Men's Employment," *Industrial and Labor Relations Review* 54 (2000), 3-16.

Bruce Western, "The Impact of Incarceration on Wage Mobility and Inequality," *American Sociological Review* 67, no. 4 (2002), 541f.

³⁰⁵ Robert J. Lalonde, "The Impact of Incarceration in State Prison on the Employment Prospects of Women," *Journal of Quantitative Criminology* 24, no. 3 (2008), 243-265.

4.1 The Southern Strategy and Nixon's "War on Drugs"

The structural groundwork for what would later become America's prison-industrial complex was initially laid by the Johnson administration, whose decision to combine the responsibilities of the Treasury Department's *Federal Bureau of Narcotics* and the *Bureau of Drug Abuse Control*, operating under the Department for Health, Education and Welfare, into the Department of Justice's *Bureau of Narcotics and Dangerous Drugs* (since 1973: Drug Enforcement Administration, DEA) shaped the government's general approach to combating drug addiction.³⁰⁶ This merging of agencies limited governmental collaboration with communities to resolve social issues and replaced them with law-enforcement agencies to curb growing social unrest and rising rates of drug-related crime during and following the civil rights era's push for racial equality of the 1960s.³⁰⁷ While Johnson and prior efforts of combating drug use focussed primarily on international drug trade and military interventionism as part of the Cold War, its establishment of drug use as a criminal problem, instead of a social and public health issue, marks a defining moment in legal culture, that would only come into force during the 1968 presidential election, when Richard Nixon utilised the rising crime rates of preceding years and waning support for the further emancipation of people of colour, following the apparent fulfilment of the civil rights movement's demands between 1964 and 1968 as a foundation for his campaign.³⁰⁸

Assumptions about the appropriateness of punishment and its purpose were also vital in ensuring the prolonged stability of America's system of mass incarceration. After a decline in the popularity of harsh criminal punishment following publications on the atrocities of the Nazi regime and the Second World War, retributivist sentiments were reestablished as a defining factor of American legal culture during the late 1960s and 1970s.³⁰⁹ This leaning towards

³⁰⁶ Joseph Spillane, William B. Macallister, "Keeping the Lid on: a Century of Drug Regulation and Control," *Drug and Alcohol Dependence* 70 (2003), 8f.

³⁰⁷ James Inciardi, *The War on Drugs IV: The Continuing Saga of the Mysteries and Miseries of Intoxication, Addiction, Crime, and Public Policy* (Delaware: Pearson Allyn and Bacon, 2008⁴), 286.

³⁰⁸ Richard W. Boyd, "Popular Control of Public Policy: A Normal Vote Analysis of the 1968 Election," *American Political Science Review* 66, no. 2 (1972), 445f.

Helena Barop, Jan Eckel, Ulrich Herber, Sven Reichardt, and Raphael Lutz (eds.), *Mohnblumenkrieg: Die Globale Drogenpolitik der USA*, *Moderne Zeit: Neue Forschung zur Gesellschafts- und Kulturgeschichte des 19. und 20. Jahrhunderts* Band XXXII (Göttingen: Wallstein Verlag, 2021), 54-56.

³⁰⁹ Kristin Henning, "Deserve Ain't Got Nothing to Do with It," In: Austin Sarat and Charles Ogletree Jr. (eds.), *Punishment in Popular Culture* (New York/London: New York University Press, 2015), 121.

Robin Anthony Duff, "Penal Communications: Recent Work in the Philosophy of Punishment," *Crime and Justice* 20 (1996), 23-25.

seeking justice through payback for the victims and penance for perpetrators is also reflected in rhetoric associated with serving prison time, including expressions such as: “Don’t do the crime if you can’t do the time” (popularised by the 1970s detective television series “Baretta”), that applauds the impartiality and equal standing provided by American laws routinely denied to the fringes of society³¹⁰; and “just desserts”, as a euphemism for criminal punishment.³¹¹ This prioritisation of satisfying a desire for criminal retribution and to enact vengeance, is key to establishing acceptance for mass incarceration laws, as a reliance on emotional impulses as indicators for the severity of moral failure ultimately encourages an assessment of criminal behaviour through subjective perceptions of morality, instead of standardised legal procedures.³¹² This approach tries to punish unfair advantages gained through breaking the law, but assumes equal social and legal circumstances that are not present in America’s hierarchical social structures, thus, leading to rising distrust regarding its social contract within its general population.³¹³ The critical step for applying this logic to victimless, drug-related crimes, was the emphasis on their detrimental effect on societal stability and national morals, which provided a justification for the criminal persecution and stigmatisation of drug users.

In the wake of increased political pressure to address the wedge issues of criminality, the Vietnam War, and economic stability, lawmakers applied different strategies in their (re-) election campaigns, with the Republican Party’s southern strategy seeking to form a *new majority*³¹⁴, by simultaneously appealing to their existing base and pandering to the wishes of White Southern, Catholic, and blue-collar voters. These constituencies historically supported members of the southern Democratic Party, until some of their members became increasingly outspoken in support of ending the war in Vietnam and fulfilling civil rights demands; especially following Johnson’s speech to Congress, in which he presented the Civil Rights Act as John F. Kennedy’s legacy, and the successful signing into law shortly thereafter.³¹⁵ On top of this already weakened Democratic voter base, inner-party disputes amongst the upper echelon of Democratic leaders further weakened trust in their ability to govern effectively – a

³¹⁰ Richard J. Kish, “The Injustice of Justice,” *Critical Issues in Justice and Politics* 8, no. 1 (2015), 71f.

³¹¹ Duff, „Penal Communications,” 1-3.

³¹² Duff, „Penal Communications,” 28-31.

³¹³ Duff, „Penal Communications”, 4-9, 25-28.

³¹⁴ Michelle Alexander, *The New Jim Crow*, 43f.

³¹⁵ Katherine Beckett, and Megean Min Francis, “The Origins of mass Incarceration: The Racial Politics of Crime and Punishment in the Post-Civil Rights Era,” *Annual review of Law and Social Sciences* 16 (2020), 436f.
Lyndon B. Johnson, “Address before a Joint Session of the Congress, November 27, 1963,” *Public Papers of the Presidents: Lyndon B. Johnson, vol. 1* (Washington D.C.: GPO, 1965), 8f.

fact that aided in Nixon's appointment as president, since the openly segregationist independent candidate George Wallace caused him to lose electoral votes in five states of the deep south, including Louisiana.³¹⁶

Despite the overwhelming approval of Johnson's domestic and economic policies among Democrats, division between advocates of his pro-war stance on Vietnam and the left-wing, anti-war factions, who wanted to replace the incumbent as a candidate, overshadowed the presidential elections of 1968 and destabilised the party.³¹⁷ The rift culminated in a seven-day clash between roughly 10.000 demonstrators, initially attending a convention organised by anti-Johnson Democrats, and 11.000 Chicago police and federal guard officers, that left one dead, over eight-hundred injured, and resulted in 668 recorded arrests.³¹⁸ This event would prove to be disastrous for any Democrat's election prospects, after Nixon reaffirmed his support for law and order and used the incident to bring discredit on the Democrats for their violent clashes, in the same way as had been done with the Chicago Riots that followed MLK's assassination early the same year.³¹⁹ The resulting reforms within the Democratic Party also alienated many liberal members and voters, whose refusal to vote in the 1972 election would secure Nixon's second term in office³²⁰, which signalled a critical development in the bipartisan political shift to the right via an economic and tough-on-crime consensus and the realignment of Democratic and Republican voters, characteristic of today's political divide.³²¹

To accelerate this detrimental development for the overall perception of the Democratic Party, the Republicans under Richard Nixon started to employ campaigning strategies, that distanced him from openly White supremacist agendas of previous elections by substituting them with a focus on conservative economic policies and neoliberal laissez-faire capitalism – a tactic that

³¹⁶ Douglas E. Schoen, *The Nixon Effect: How Richard Nixon's Presidency Fundamentally Changed American Politics* (New York: Encounter Books, 2016), 94f.

³¹⁷ Melvin Small, "The Election of 1968," *Diplomatic History* 28, no. 4 (2004), 513-528.

³¹⁸ Frank Kusch, *Battleground Chicago: The Police and the 1968 Democratic National Convention* (Chicago: University of Chicago, 2008), 148f.

³¹⁹ Kenneth J. Heineman, *Campus Wars: The Peace Movement at American State Universities in the Vietnam Era* (New York: New York University Press, 1992), 182f.

Patrick Hagopian, "The 'Frustrated Hawks', Tet 1968, and the Transformation of American Politics," *European Journal of American Studies* 3, no. 2 (2008).

³²⁰ Small, "The Election of 1968," 523.

³²¹ Merle Black, "The Transformation of the Southern Democratic Party," *The Journal of Politics* 66, no. 4 (2004), 1004f.

Terry H. Anderson, "The 1968 Election and the Demise of Liberalism," *South Central Review* 34, no. 2 (2017), 41-47.

Fluck, "Politische Kultur," 93f.

would be expanded on under Reagan in an effort to combat economic stagflation in the early 80s.³²² These strategies were compatible with beliefs of individual responsibility and tight work ethic inherent to civil religious beliefs, while also promoting the expansion of habitual discrimination, through market deregulations and the discontinuation of welfare programmes. The southern strategy thus focussed on the establishment of associations between poverty and race, and proposed policies, that would exacerbate the existing inequalities, by stigmatising non-White ethnicities and impoverished neighbourhoods as criminal and morally inferior, while simultaneously restricting their chances of upwards social movement and expanding this criminalisation to whole communities through increased policing and harsher sentencings. Emancipatory demands for racial equity were discredited, by emphasising the importance of individual agency for personal success, and the usefulness of state-funded welfare was characterised as a band-aid solution, as laziness, poverty and crime were deliberately set in relation to one another to depict them as naturally more common in populations that deviated from traditional values of ACR, such as non-White minorities, to justify the disproportional policing of Black and Brown citizens along with people criticising the resulting structural injustice.³²³

As part of Nixon's strategy to garner public support for his stances on slowly withdrawing from Vietnam and limiting the political influence of civil rights advocates since the 1960s, the Nixon administration employed targeted repressions and defamations of anti-establishment and anti-war protests, that stood in proximity to the civil rights movement and hippy culture, by presenting them as the prime targets of the War on Drugs and curbing social unrest, next to communities of colour.³²⁴ This approach to achieving the delegitimisation of these groups' purpose and character has been described by multiple political analysts and individuals involved in Nixon's political campaigns.³²⁵ A comprehensive account on the issue stems from a 1994 interview with John Ehrlichman, which was released as part of a Harper's Magazine

³²² Joshua Inwood, "Neoliberal Racism: the 'Southern Strategy' and the Expanding Geographies of White Supremacy," *Social & Cultural Geography* 16, no. 4 (2015), 407-423.

³²³ Michael B. Katz, *The Undeserving poor: America's Enduring Confrontation with Poverty* (Oxford: Oxford University Press, 2013).

Gibran Muhammad Khalil, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge: Harvard University Press, 2010).

³²⁴ Barop, *Mohnblumenkrieg*, 127-130.

³²⁵ Schoen, *The Nixon Effect*, 88-108.

Angie Maxwell, and Todd Shields, *The Long Southern Strategy: How Chasing White Voters in the South Changed American Politics* (New York: Oxford University Press, 2019), 83f.

Report by Dan Baum in 2016 and describes the campaigns desired effect on the perception of communities of colour and the hippie-movement, that oppose their political aspirations³²⁶:

“The Nixon campaign in 1968, and the Nixon White House after that, had two main enemies: The anti-war left and Black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or Black, but by getting the public to associate hippies with marihuana and Blacks with heroin, and then criminalise both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meeting, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course, we did.”³²⁷

– John Ehrlichman

Ehrlichman’s account underscores claims, that prototypes of later talking points had already been consciously employed by the Republican campaign in 1968 to forcefully obstruct the organisation of civil opposition against their political agenda and criminalise them, before this was solidified in later stages of the war on drugs. The presentation of drug use and criminality within certain populations as a detriment to society overall was not only employed to justify the policing of people affiliated with these movements, but also in pursuit of promoting a media-effective criminalisation of government-critical movements in general.³²⁸ Apart from discrediting counterculture movements of the 1960s and 70s, the southern strategy entailed paradigm shifts in political messaging, that were more far-reaching.

In 2012, the magazine “The Nation” released a now infamous 1981 with the Republican campaign consultant Havey Leroy “Lee” Atwater interview on the southern strategy³²⁹, which revealed the crux to reframing racist ideologies, that have come under scrutiny of rising social awareness following the civil rights movement. In it, he describes in detail, how Republicans of the post-civil rights era gradually shifted away from openly anti-Black rhetoric and favoured dog-whistle politics in their stead, that substituted racial slurs and explicit agendas against

³²⁶ Jamila Hodge, and Nazish Dholakia, “Fifty Years Ago Today, President Nixon Declared the War on Drugs,” *Vera Institute of Justice*, 17.6.2021, accessed 3.10.2023, <https://www.vera.org/news/fifty-years-ago-today-president-nixon-declared-the-war-on-drugs>.

³²⁷ Dan Baum, “Legalize It All,” *Harper’s Magazine*, April 2016, accessed 3.10.2023, <https://harpers.org/archive/2016/04/legalize-it-all/>.

³²⁸ Barop, *Mohnblumenkrieg*, 46f, 128f.

³²⁹ Rick Perlstein, “Exclusive: Lee Atwater’s Infamous 1981 Interview on the Southern Strategy,” *The Nation*, 13.11.12, accessed 5.10.2023, <https://www.thenation.com/article/archive/exclusive-lee-atwaters-infamous-1981-interview-southern-strategy/>.

marginalised ethnic groups as markers of political allegiance with increasingly abstract concepts of “states’ rights”, and a fiscal conservatism, that did not deter moderates and supporters of civil rights causes from voting for them.³³⁰ However, the intended effect of previous racist agendas, to disproportionately restrict social progression for non-White citizens, remained intact in its policies, including the administration’s cost-cutting, which saw reduced funds being allocated to governmental welfare programmes, as policing and subsidy distribution were placed under the umbrella of the Law Enforcement and Assistance administration.³³¹ This merging of responsibilities saw the beginning of how forceful policing replaced subsidies for people in need as a means to quell social unrest and contributed to stigmatising swathes of the American population as having criminal dispositions.

Research conducted on Nixon’s war on drugs also addresses a secondary motivation for the implementation of tighter drug abuse laws and an end to the war in Vietnam, which concerned Vietnam War veterans’ potential for drug addictions to opioids, heroin, and cannabis when returning to the United States, as this involvement of U.S. troops would provide an incentive for more urgent and drastic measures in the war on drugs.³³² Congressional investigations conducted in 1971 indicated that habitual heroin use amongst U.S. soldiers during the Vietnam War, as a common coping mechanism in response to the prolonged stress and internal dissatisfaction about the war’s purpose along with its limited success, was on average as high as 10-15%.³³³ Following this widely publicised report, the Nixon administration implemented programmes to identify and combat drug addiction in returning veterans and used the incident to further characterise drug abuse as a disease-like epidemic; declaring it as “public enemy number one” and reinforcing the reductive assumption that street crime in low-income communities is primarily caused by drug users.³³⁴ By defining the issue of drug use as a disease, exaggerating its scale³³⁵, and connecting its origin to foreign nations, fears of a potential spread

³³⁰ Takei, *From Mass Incarceration to Mass Control, and Back Again*, 126-128.

³³¹ Hinton, *From the War on Poverty to the War on Crime*, 223-230.

³³² Barop, *Mohnblumenkrieg*, 116-125, 134-140.

³³³ Committee of Foreign Affairs, *Congr. Rec., The World Heroin Problem, Report of Special Study Mission*, by Morgan F. Murphy, and Robert H. Steele (Washington D.C.: U.S. Government Printing Office, 1971), 18. Lee N. Robins, “Vietnam Veterans’ Rapid Recovery from Heroin Addiction: A Fluke or Normal Expectation?,” *Addiction* 88 (1993), 1041-1054.

³³⁴ Daniel Weimer, “Drug-as-a-Disease: Heroin, Metaphors, and Identity in Nixon’s Drug War,” *Janus Head* 6, no. 2 (2003), 263f.

³³⁵ Edward Jay Epstein, *Agency of Fear: Opiates and Political Power in America* (New York: Verso, 1990), 44, 108f, 165-172

of drug addiction were stoked and negative association with people of colour reinforced.³³⁶ Due to the diverging interests of potential voters, Nixon's campaign promises, to put an end to the Vietnam War and combat criminality in urban centres, both refrained from addressing specific activist or interest groups directly, to avoid the formation of political fronts and leave it ambiguous, on which side of the domestic discourse he positioned himself.³³⁷

The success of diminishing public opinion towards urban communities of colour and political opposition, including anti-war activists, by defining them as an inherent danger to public order and safety, allowed for the reinforcement of control over marginalised populations, as police presence increased and tighter sentencing laws related to drug crimes were implemented, while operating under the guise of counteracting a *culture of poverty*.³³⁸ This condemnation of critical voices as anti-American would also be defining for the future political landscape, as the Democratic Party gradually joined Republicans in their tough-on-crime rhetoric not to lose voters. Following Emile Durkheim's approach, that criminal justice is legitimised and upheld by aligning with citizens' moral and social norms, this othering through an economic lens was essential for legitimising mass incarceration, because it aligned with the popular neoliberal, performance-oriented understanding of social stratification at the time and diminished the political influence of people living in affected communities, by criminalising them and discrediting their criticisms as unfounded.³³⁹

Elements of ACR previously discussed, which gain in prominence during this initial phase of mass incarceration include the focus on individual responsibility associated with the self-made man as well as the belief in constitutionalist infallibility and moral superiority of American law, originating from the myth of the American Dream, to frame political opponents' criticism as apologetic about criminal behaviour.³⁴⁰ By neglecting America's history of systemic racial oppression, Nixon's and subsequent approaches to criminal justice targeted the symptoms of criminality among marginalised communities, rather than address the inherent biases, that fuelled them. The popularity of these harsh criminal justice laws coincided with the backlash

³³⁶ Weimer, „Drug-as-a-Disease,” 275f.

³³⁷ Barop, *Mohnblumenkrieg*, 126-129.

³³⁸ Hinton, *From the War on Poverty to the War on Crime*, 314f.

Barop, *Mohnblumenkrieg*, 134.

³³⁹ Matthias Mahlmann, *Philosophy of law and theory of law* (Baden-Baden: Nomos Verlag, 2015³), 231.

Musick, and Gunsaulus-Musick, *American Prisons*, 65-93.

³⁴⁰ Marting Gilens, *Why Americans Hate Welfare: Race, Media and the Politics of Anti-Poverty Policy* (Chicago: Chicago University Press, 1999).

to the civil rights movement's gains from America's White population³⁴¹ and incentivised both parties to propose increasingly strict criminal laws. The pursuit of these policies built the basis for the bipartisan legislative arms race that followed and constitutes large swathes of today's mass incarceration crisis, as it contributed to the legitimisation of racist rhetoric through the parties' active engagement with attributions of inherent criminality.³⁴²

The Republican success of using the southern strategy can thus be attributed in part to its conscious appeal to pre-existing moral, religious and racial biases transported through American myths and a persistent retention of discriminatory hierarchical structures, that were achieved in pursuit of lowering drug usage and criminality in marginalised communities, by means of policing and criminal prosecution, without engaging much with the people most affected by them. While Nixon's propaganda resulted in some support from within Black populations for increased policing, it was more often recognised as an attempt to legitimise the disproportionate arrest of people of colour, since Nixon's approach generally discarded possibilities of implementing programmes on education, job-creation, housing, and economic incentives instead of a binary choice between increasing or decreasing police presence.³⁴³ The criminalisation of poverty and the neglect of historical discrimination against urban communities of colour discussed in this section was essential for legitimising mass incarceration in its early stages and establish it as a lasting paradigm of American legal culture.

4.2 Reaganomics – Rediscovery of Civil Religion – Privatisation of Justice

Nixon's resignation after the Watergate scandal was followed by a period that continued to experience social unrest connected to socio-economic disparities under Gerald Ford, whose most substantial contribution to the justice system was an expansion of prison capacities, in response to reports of overcrowding in state and federal prisons³⁴⁴, and a doubling of the police budget following urban riots of the late 1960s and 70s³⁴⁵, along with his advocacy for mandatory minimum sentences for violent crime and repeat offenders, which had introduced the idea to legislators, but had a limited impact until their later reimplementation for drug

³⁴¹ Inwood, "Neoliberal Racism: the 'Southern Strategy'", 420f.

³⁴² Aubrey Jackson, and David Jacobs, "On the Politics of Imprisonment: A Review of Systematic Findings," *Annual Review of Law and Social Sciences* 6 (2010), 129-149.

³⁴³ Michael Javen Fortner, "The 'Silent Majority' in Black and White: Invisibility and Imprecision in the Historiography of Mass Incarceration," *Journal of Urban History* 40, no. 2 (2014), 266f. Alexander, *The New Jim Crow*, 203f.

³⁴⁴ Tony Platt, and Paul Takagi, "Law and Order in the 1980s," *Crime and Social Justice* 15 (1981), 1-6.

³⁴⁵ Tony Platt, "U.S. Criminal Justice in the Reagan Era: An Assessment," *Crime and Social Justice* 29 (1987), 59f.

offences in 1986.³⁴⁶ In his assessment of political culture in the United States, Winfried Fluck describes how, after neoliberalism had been developed into a coherent economic model during the 1950s and 60s, political decision-making during the Carter Administration showed early bipartisan signs of a neoliberal turn in American economics, which would expand under Ronald Reagan and prove instrumental in the legitimisation of tough-on-crime legislation and the introduction of the private sector to the carceral system.³⁴⁷

The 1970s also saw deregulatory reforms and staff appointments of free-market advocates to leading fiscal positions, including that of the economist Paul Volcker as the chairman of the Federal Reserve by Jimmy Carter, who advocated for an open market economy to counteract the rampant inflation and fears of a recession at the time.³⁴⁸ These political and ideological shifts built the basis for justifying the broadening wealth and racial disparities under Ronald Reagan's social Darwinist positions, which were subsequently met with increased support in their efforts of gradually rolling back market regulations and the concurrent cancelations of welfare programmes.³⁴⁹ This approach to social policies not only disadvantaged lower-income households in the short term, but also contributed to the continuously growing disparity between the top 1% and the rest of America's society, which saw most financial reliefs and tax-cuts being granted to the wealthiest, while underprivileged portions of the population were mostly deprived of sensible governmental aid.³⁵⁰

Among all the presidents discussed in relation to American legal culture, Reagan's approach to it was most prominently structured along the originalist America's civil religion and Americans' traditional self-conceptions, when presenting his solution for people's hardships to be a return to a vaguely defined, more optimistic past and its system of values.³⁵¹ In his rhetoric, he reenforced the idea of American exceptionalism following its deterioration during the Vietnam

³⁴⁶ George T. Felkenes, "Domestic Tranquility: President Ford's Policy Position on Criminal Justice Issues," *Presidential Studies Quarterly* 23, no. 3 (1993), 533-534.

³⁴⁷ Fluck, "Politische Kultur," 93f.

Daniel Stedman Jones, *Masters of the Universe: Hayek, Friedman, and the Birth of Neoliberal Politics* (Princeton/Oxford: Princeton University Press, 2012), 6f.

³⁴⁸ Jones, *Masters of the Universe*, 216f.

³⁴⁹ Antoine Joseph, "The Resurgence of Racial Conflict in Post Industrial America," *International Journal of Politics, Culture, and Society* 5, no. 1 (1991), 85-87.

Stormy-Annika Mildner, „Wirtschaftspolitik: Checks and Balances unter Druck,“ In: Christian Lammert, Markus B. Siewert, and Boris Vormann (eds.), *Handbuch Politik USA* (Wiesbaden: Springer, 2020²), 513-531.

³⁵⁰ Doug Rossinow, *The Reagan Era: A History of the 1980s* (New York: Columbia University Press, 2015), 280-297.

³⁵¹ Fluck, "Politische Kultur," 26-29.

War, by expanding the idealised imagining of the United States as a *shining* city set upon a hill, to allude to an overall improvement of ideological as well as material conditions, and combat criticisms of its underlying moral and religious values brought forward by liberals' transnational views, that demystified American exceptionalism, by putting it in relation with the rest of the world.³⁵² This populist claim to being the main advocate for American exceptionalism not only was an effective continuation of the southern strategy's appeal to White southern voters, but is also commonly described by researchers to have necessitated Democratic leaders to concur with conservative political lines, in an effort to portray themselves as true advocates of American values, as Reagan's messaging tightly linked these two concepts together.³⁵³

By drawing on the ACR's conservative dogma of equating socio-economic success to positive personal qualities and a reaffirmation of equal opportunities among American citizens, Reagan's social Darwinism reenforced stereotypes on historically repressed communities, by supposing a general inaptitude for upwards social mobility to be a flaw inherent to a certain group of people.³⁵⁴ This restriction of opportunities and subsequent condemnation of failure also presents a common thread to earlier forms of open racial discrimination, as can be observed in assessments of Woodrow Wilson's eugenicist justification of racial repression in the federal bureaucracy and public life.³⁵⁵ The combination of economic instability, civil unrest, and the spreading of prejudiced assumptions about marginalised communities' moral constitution is already noted in 1980s' academic assessments to promote racial stigmatisation from conservative White voters and constitute the basis for a rejection of affirmative action in the form of subsidies or reparations for historically disadvantaged groups.³⁵⁶ Reagan pushed for this, by continuing to engage with previously discussed talking points of a *crime wave* in

³⁵² Ronald Reagan, "Transcript of Reagan's Farewell address to American People," *New York Times*, 12.1.1989, accessed 20.10.2023, <https://www.nytimes.com/1989/01/12/news/transcript-of-reagan-s-farewell-address-to-american-people.html>.

Taesuh Cha, "American Exceptionalism at the Crossroads: Three Responses," *Political Studies Review* 13 (2015), 352f.

Charles W. Dunn (ed.), *American Exceptionalism: The Origins, History and Future of the Nation's Greatest Strength* (Lanham: Rowman and Littlefield, 2013), 145f.

³⁵³ Joseph Lowndes, "White Populism and the Transformation of the Silent Majority," *The Forum* 14, no. 1 (2016), 25-37.

³⁵⁴ Joseph, "The Resurgence of Racial Conflict in Post Industrial America," 86.

³⁵⁵ Jerry Bergman, "President Woodrow Wilson: A Darwinian Racist Eugenicist," *Answers Research Journal* 16 (2013), 433-438.

Thomas C. Leonard, "Mistaking Eugenics for Social Darwinism: Why Eugenics is Missing from the History of American Economies," *History of Political Economic* 37, no. 1 (2005), 200-233.

³⁵⁶ Joel Krieger, *Reagan Thatcher and the Politics of Decline* (New York: Oxford University Press, 1986), 26f.

American cities. A claim that has been extensively reassessed by governmental institutions and academic researchers, including Craig Haney, who characterises the period in question as a *punishment wave*, since violent and non-violent crime-rates of the early 1980s were originally declining from where they stood during their previous peak in the mid-1970s.³⁵⁷

Nonetheless, laws, such as the congressional *Anti-Drug Abuse Act of 1986* were installed, which started enforcing mandatory minimum sentences for drug-related offences, tied eligibility to social benefits to being drug-free, and allocated financial assistance for narcotics control to individual states.³⁵⁸ While the origins of mandatory sentencing laws in the United States' justice system date back to life-sentences for murder and piracy from 1790, only having been use in state legislation to a limited extent³⁵⁹, this reintroduction of widespread mandatory sentencing laws first applied them to a broad array of lower-level offences and would prove to have a far greater impact on American society than previous regulations. In 2008 the repercussions were still noticeable, with 79.4 % of convictions under mandatory minimum sentencing laws having been issued on drug offence charges, while only 11.3% of them pertained to firearms and 68 out of the 171 statutes not having been used at all that year.³⁶⁰

The enforcement of mandatory minimums represents one of the most striking examples of implicit legislative discrimination under mass incarceration, since their standards for punishing crack cocaine consumption and sale, common among low-income urban communities of colour, were a hundred times more severe than those for the more expensive powdered form of cocaine, whose use was associated with economically stable White communities, despite consumption overall being similarly distributed among both ethnicities.³⁶¹ The inherent racial disparities between the enforcement and sentencing procedures of White defendants, in

³⁵⁷ Craig Haney, "Riding the Punishment Wave: On the Origins of Our Devolving Standards of Decency," *Hastings Women's Law Journal*, 9 no. 1 (1998), 27f.

³⁵⁸ Anti-Drug Abuse Act of 1986, Pub. L. 99-570, 100 Stat. 3207 (1986), accessed 20.11.2023, <https://www.congress.gov/bill/99th-congress/house-bill/5484>.

³⁵⁹ Erik Luna, and Paul G. Cassell, "Mandatory Minimalism," *Cardozo Law Review* 32, no. 1 (2010), 8f.

³⁶⁰ U.S. Congress, House of Representatives, *Hearing Before the Subcommittee on Crime, Terrorism and Homeland Security of the Committee on the Judiciary House of Representatives, 111th Cong., 1st Sess.* (2010), 124-155, accessed 20.11.2023, <https://www.congress.gov/congressional-report/111th-congress/house-report/712/1>.

³⁶¹ Mona Lynch, and Marisa Omori, "Crack as Proxy: Aggressive Federal Drug Prosecutions and the Production of Black-White Racial Inequality," *Law & Society Review* 52, no. 3 (2018), 773f.
Lauren-Brooke Eisen, *Inside Private Prisons: An American Dilemma in the Age of Mass Incarceration* (New York: Columbia University Press, 2018), 22.

comparison to those of marginalised groups were already criticised shortly after their signing into law.³⁶² The nature of this legislation has also been deemed a systemic form of discrimination by recent studies, who discard the assertion, that discrimination only occurs on the level of law enforcement.³⁶³ The ideological developments in the lead-up to and under Reagan's administration can thus be judged as a shift away from legal culture of the civil rights era, during which a broader portion of the public empathised with the blights caused by racial discrimination.

This shift also saw the re-introduction of the principle of individual responsibility mentioned previously, for which Reagan relied on dog-whistles to rally support for increased imprisonments, by associating rising crime rates with individual people's failure to follow the law.³⁶⁴ In addition to increased policing (e.g.: in schools, and other public facilities) and sentencing rates as a solution to social issues, campaigns such as Nancy Reagan's "DARE"/"Just Say No" emphasised drug prevention. These programmes effectively directed the blame for deteriorating conditions in low-income communities of colour away from their historical origins of prolonged socio-economic ostracism, by limiting the discourse to the short-term symptoms caused by drug abuse and propagating police intervention as the only viable solution.³⁶⁵ The crux of the campaign's underlying ideology is its insistence on the drug users' obligation to avoid criminal behaviour regardless of the social insecurities and continued destabilisation brought about by discrimination in housing, labour, education and policing in targeted communities. To frame it within ACR, Reagan's war on drugs drew from elements of the American Dream; specifically, the myth of the self-made man's and Puritan religious doctrines' concept of an individual's responsibility to contribute and prosper within society, for justifying the targeting of members from marginalised communities and presenting them as pathological criminals.

The implementation of regular policing in schools had particularly devastating consequences, since the simultaneous implementation of zero-tolerance policies for educational facilities gave rise to the *School-to-Prison Pipeline*, that is frequently criticised as pushing minors, who

³⁶² David A. Slansky, "Cocaine, Race, and Equal Protection," *Stanford Law Review* 47, no. 6 (1995), 1283-1332.

³⁶³ Lynch, and Omori, "Crack as Proxy: Aggressive Federal Drug Prosecutions and the Production of Black-White Racial Inequality," 799-803.

³⁶⁴ Mounk, *The Age of Responsibility*, 2-3, 33-37.

³⁶⁵ Max Felker-Kantor, "DARE to Say No: Police and the Cultural Politics of Prevention in the War on Drugs," *Modern American History* 5 (2022), 313-337.

are not aware of the lasting ramifications of their actions, into juvenile correctional institutions and thus exacerbating the problem of criminality in low income urban neighbourhoods.³⁶⁶ Also being situated within the discriminatory framework of America's war on drugs, these policies disproportionately affected communities of colour in Louisiana and other states and admitted Black male students into the criminal justice system at a higher rate than other societal groups.³⁶⁷ Nonetheless, the presentation of these incentives on combating crime and addiction also appealed to progressive Democrats, who were discontent with the Democratic Party's leadership, forming a new voting bloc in the Reagan Democrats.³⁶⁸ The following paragraphs will highlight, how these ideological changes affected the American Justice system and its underlying legal culture.

While Reagan's narrow framing of American in-groups under American exceptionalist doctrines added to the othering of people of colour, that presents a continuation of Nixon's domestic approach, the lasting influence Reagan exerted on the judicial and carceral systems shall also not be disregarded in the context of legal culture. Tony Platt's 1987 assessment of Reagan's presidency highlights several key policy changes, that were central in the realisation of radical Right shifts in American politics and legal culture under his presidency:³⁶⁹ The constituting elements for the effective adaptation of Reagan's changes to the ideological basis of American justice include a major restructuring of the federal judiciary, including the establishment of a conservative majority in the U.S. Supreme Court, whose support and Reagan's pandering to Puritan/Evangelical Christian sentiments was essential for a reinstatement of the death penalty as an accepted form of punishment for severe crimes.³⁷⁰

³⁶⁶ Russel J. Skiba, and Karega M. Rausch, „Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness,” In: Carolyn M. Evertson, and Carol S. Weinstein (eds.), *Handbook of Classroom Management: Research, Practice, and Contemporary Issues* (New York: Routledge, 2013), 1063-1089.

Kade-Ann K. Henry, Robyn M Catagus, Annette K. Griffith, and Yors A. Garcia, “Ending the School-to-Prison Pipeline: Perception and Experience with Zero-Tolerance Policies and Interventions to Address Racial Inequality,” *Behaviour Analysis in Practice* 15 (2021), 1254-1263.

³⁶⁷ Chris Curran, “Racial Disproportionalities in Discipline: The Role of Zero Tolerance Policies,” In: Information Resource Management Association USA (ed.), *Discrimination and Diversity: Concepts, Methodologies, Tools, and Applications* (Hershey: IGI Global, 2017), 1251-1266.

Jordan A. Williams, “Separate but Unequal: The Resegregation of Louisiana Public Schools through the School-to-Prison Pipeline Student Works,” *Journal of Race, Gender, and Poverty* 8 (2017), 167-194.

³⁶⁸ Schoen, *The Nixon Effect*, 95f, 109-110.

³⁶⁹ Platt, “U.S. Criminal Justice in the Reagan Era,” 58-69.

³⁷⁰ Jeff Manza, Jennifer A. Heerwig, and Brian J. McCabe, “Public Opinion in the Age of Reagan: Political Trends 1972-2006,” In: Peter V. Marsen (ed.), *Social Trends in American Life: Findings from the General Social Survey Since 1972* (Princeton/Oxford: Princeton University Press, 2012), 132-134.

In Louisiana, the changing attitudes in federal governance and prosecutors' experience, gained after the popularisation of capital punishment, had an impact on the state's execution rates, since death sentence verdicts were hardly carried out between their legislative reintroduction following *Gregg v. Georgia* (1976) and the mid 1980s; however, after the death row inmates' sentence reversal requests were exhausted and the Supreme Court began to deny their appeals, Louisiana's rate of executing death row inmates spiked from 4% in 1987 to 30% just one year later.³⁷¹ While Louisiana does not excessively impose the death penalty, with 241 death sentences having been passed in the state between 1976 and 2015, representing 1% of the state's homicide cases of which it is enforced on 1 in 10 convicts³⁷², the state does exhibit one of the largest racial disparities in incarcerations of Black Americans, who are almost four-times more likely to be convicted when compared to White citizens.³⁷³ Compared to this, the racial disparities of death row convicts show significantly more bias, as the death sentence was only applied in 0.52% of Black-on-Black homicide cases between males from 1976 until 2015, while making up 15.56% of rulings in cases in which Black men committed murder on White women.³⁷⁴ Additionally, recent NAACP Legal Defence & Educational Fund data³⁷⁵ still indicate minority populations to consistently make up more than 70% of death sentences in Louisiana since 2016.³⁷⁶

Another crucial development in America's prison landscape was the expansion of its private prison sector since the 1980s. A possibility, that was opened by Reagan's neoliberal economic stance of intertwining the governmental and private sector and necessitated by the increased rate and number of imprisonments.³⁷⁷ The introduction of the private sector for policing and incarceration purposes during this time was initially concerned with immigration detention,

³⁷¹ Platt, "U.S. Criminal Justice in the Reagan Era," 63f.

Baumgartner, and Lyman, "Louisiana Death-Sentenced Cases and Their Reversals, 1976-2015," 65f.

³⁷² Baumgartner, and Lyman, "Louisiana Death-Sentenced Cases and Their Reversals, 1976-2015," 60.

³⁷³ ACLU, "Blueprint for Smart Justice: Louisiana", *ACLU-Smart Justice* (2018), 9f.

³⁷⁴ Baumgartner, and Lyman, "Louisiana Death-Sentenced Cases and Their Reversals, 1976-2015," 69f.

³⁷⁵ Deborah Fins, *Death Row U.S.A. Winter 2023: A Quarterly Report by Legal Defence Fund* (New York/Washington D.C.: NAACP Legal Defence & Educational Fund, 2023), accessed 7.11.2023, <https://www.naacpldf.org/our-thinking/death-row-usa/>.

Deborah Fins, *Death Row U.S.A. Winter 2016: A Quarterly Report by Legal Defence Fund* (New York/Washington D.C.: NAACP Legal Defence & Educational Fund, 2016), accessed 7.11.2023, <https://www.naacpldf.org/our-thinking/death-row-usa/>.

³⁷⁶ "Death Row USA," *Death Penalty Information Center*, accessed 5.11.2023, <https://deathpenaltyinfo.org/death-row/overview/death-row-usa>.

³⁷⁷ Platt, "U.S. Criminal Justice in the Reagan Era," 60-62, 65-67.

before expanding their reach to housing U.S. citizens and providing surveillance technology.³⁷⁸ However, they soon widened their operations and developed into an important strand of American manufacturing, after upkeep costs for the prison populations increased and the civil economy of the United States started to shift towards a service-oriented model, in the wake of urbanisation in the latter half of the 20th century, which reduced rural populations from roughly 44% in 1950 to 23% in 1990.³⁷⁹ This allowed for a positive reception of private contractors, that acted within the confines of Reagan's free market, to aid and modernise the overstrained carceral institutions and make rural areas more economically productive.³⁸⁰

This opening up of the prison industry coincided with the founding of Corrections Corporations of America (since 2016: CoreCivic) in 1983 and GEO Group in 1984, which were subsidised and received tax exemptions for the construction and upkeep of their prison facilities by the respective states they were working in.³⁸¹ Additionally, due to the scope of their operations and lobbying efforts, they had influence over the three main branches of the emerging prison-industrial complex: the governmental administration, legislative institutions, and the private sector itself.³⁸² The Department of Justice also approved <\$1/h wages (\$0.20 in state, \$0.31 in federal prison³⁸³) of prison labour in 1985, which excluded prisoners from the Federal Labor Standards Act by enacting the Fair Labor Standards Amendment, to provide corporations with enough earnings to adequately care for inmates.³⁸⁴ Today, the national average wage for non-industrial prison jobs is \$0.13-\$0.52 and \$0.30-\$1.30 for industrial jobs, with Louisiana being on the lower end of the spectrum, paying an average of \$0.02-\$0.04 for the former and \$0.02-

³⁷⁸ Congressional Research Service, *Economic Impacts of Prison Growth*, by Suzanne M. Kirchhoff (Washington D.C.: Library of Congress, 2010), 22f, accessed 17.11.2023, <https://sgp.fas.org/crs/misc/R41177.pdf>.

³⁷⁹ Robert M. Orrange, *The Corporate State: Technopoly, Privatization and Corporate Predation* (London/New York: Routledge, 2020), 125f.

Eisen, *Inside Private Prisons*, 81f.

³⁸⁰ Platt, "U.S. Criminal Justice in the Reagan Era," 62.

³⁸¹ Phillip Mattera, Mafruz Kahn, Greg Leroy, and Kate Davis, *Jail Breaks: Economic Development Subsidies Given to Private Prisons* (Washington D.C.: Institute on Taxation and Economic Policy, 2001), 21-24, 28-29, accessed 25.10.2023, <http://www.goodjobsfirst.org/sites/default/files/docs/pdf/jailbreaks.pdf>.

³⁸² Karen Manges Douglas, and Rogelio Saenz, "The Criminalization of Immigrants & the Immigration-Industrial Complex," *Daedalus* 142, no. 3 (2013), 199–227.

³⁸³ Beth Schartzapfel, "Modern-Day Slavery in America's Prison Workforce," *American Prospect*, 28.4.2014, accessed 22.10.2023, <https://prospect.org/justice/great-american-chain-gang/>.

³⁸⁴ National Institute of Justice, *The Private Sector and Prison Industries*, by George E. Saxton, Franklin C. Farrow, and Barbara J. Auerbach (Washington D.C.: National Institute of Justice, 1985), accessed 13.10.2023, https://www.prisonpolicy.org/scans/NIJ_private_sector_and_prison_industries.pdf.

\$0.40 for the latter, and requiring certain inmates to work for up to three years until they are eligible to receive payment at all.³⁸⁵

Yet, investigations of carceral facilities have shown the promised benefits regarding the quality of prison services by alleviating economic burdens for the management have not been achieved, after conditions for convict labour were deregulated.³⁸⁶ Especially as the quality of prisoner care and health services are concerned, significant violations of federal and state regulations were observed, that were perpetuated to lower expenses and increase profits of private corporations, which could not easily be closed down, due to the limited carceral capacities in the face of rising demands and the detrimental consequences to secondary and tertiary contractors (food, transportation, hotels for visitations).³⁸⁷

One particularity of the American judicial process that gained popularity during this period is the practice of plea bargaining; meaning the closure of a criminal process, in which prosecutors propose concessions to their proposed sentence, to convince defendants of confessing to the crime and agreeing to an out-of-court settlement, that foregoes additional fees for court proceedings. While this practice was documented to have been prevalent since the latter half of the 20th century, with 40% of criminal convictions between 1880 and 1910 and up to 70% or 90% of convictions in a 1928 study of 20 cities having been settled this way, plea bargaining, while not unanimously agreed on, has already become a stable feature of judges' ability of managing their courts at the onset of the 20th century.³⁸⁸ Following the introduction of mass incarceration policies and increases in the American prison and jail population since Reagan took office³⁸⁹, courts needed to accelerate legal proceedings and increase the number of court cases they could manage per day, to prevent extended waiting periods for trials.³⁹⁰ The solution to handling this issue was the replacement of criminal trials and guilty sentences with convictions achieved via plea deals for defendants to settle their criminal cases out of court,

³⁸⁵ Turner, et al., *Captive Labor*, 57.f

³⁸⁶ Takei, *From Mass Incarceration to Mass Control, and Back Again*, 142-153.

³⁸⁷ Samantha Fredrickson, Carl Takei, Rebecca Robertson, et al., *Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System* (Washington D.C./Houston: ACLU, 2014), 54-55.

³⁸⁸ William Ortman, "When Plea Bargaining Became Normal," *Boston University Law Review* 100, no. 4 (2020), 1440-1445.

³⁸⁹ Platt, "U.S. Criminal Justice in the Reagan Era," 65-67.

³⁹⁰ Andrea Armstrong, "The Missing Link: Jail and Prison Conditions in Criminal Justice Reform," *Louisiana Law Review* 80, no. 1 (2019), 1-36.

which let them avoid the additional financial burdens of lawyers and court costs and stricter sentences of being convicted.

Nonetheless, this practice is also often criticised for its coercive nature and deterioration of reliability and legitimacy behind criminal sentencing, since plea deals had already become by far the most common method for settling criminal accusations by 2006, with well above 90% of closed court cases relying on plea deals negotiated by prosecutors without a proper trial instead of a judge's verdict.³⁹¹ This prevalence of plea deals as a primary means of ensuring time- and cost-efficiency in federal and state courts is still maintained in the 2020s, with convictions indicating similarly high levels of extrajudicial settlements.³⁹² Other criticisms include the increased likelihood for defendants to produce false confessions under pressure and out of remorse³⁹³, along with concerns for criminals to actively seek for plea deals to avoid more severe sentences.³⁹⁴ Another complaint concerns the criminalisation of poverty in this system, where wealthy defendants can just pay their bail, while poor individuals might go to jail for minor infringements, which reinforces the multilayered discrimination in policing, sentencing, and incarceration, by relying on people's ignorance about their own rights.³⁹⁵ This overstraining of judicial capacities would become an issue after legislation on increasing prison sentences caused prison populations to explode in the 1990s.

Reagan's influence on American legal culture can be summed up with his overemphasis on hyper-individualist beliefs and a neoliberal celebration of privatisation, that stem from Reagan's social Darwinist and American exceptionalist understandings of social stratification, which still remains a core pillar for preventing solidarisation and collective actions against social inequalities.³⁹⁶ Remnants of the Reagan administration's instrumentalization and reinforcement of American foundational myths are still prevalent in today's political discourse. Combined with the conservative political alignment of both parties and his legacy of laissez-faire economic policies of the 1980s, Reagan's tenure shaped America's prisons, by not only

³⁹¹ Friedman, and Grant, "Crimes and Punishment," 167.

³⁹² Jenia I. Turner, "Transparency in Plea Bargaining," *Notre Dame Law Review* 96 (2021), 974f.

³⁹³ Miko M. Milford, Gary L. Wells, and Annabelle Frazier, „Plea-Bargaining Law: The Impact of Innocence, Trial Penalty, and Conviction Probability on Plea Outcomes," *American Journal of Criminal Justice* 46 (2021), 563f.

³⁹⁴ Ortman, "When Plea Bargaining Became Normal," 1460-1463.

³⁹⁵ Alexander, *The New Jim Crow*, 63-65, 206f.

³⁹⁶ Zachary A. Casey, "Hyperindividualism," In: Zachary A. Casey (ed.), *Encyclopedia of Critical Whiteness Studies in Education* (Leiden: Brill, 2020), 279-285.

Mounk, *The Age of Responsibility*, 2-3, 33-37.

doubling incarcerations (329.122 in 1980³⁹⁷ to 771.243 in 1990³⁹⁸) and introducing private prisons, but ensuring that any successor had to commit to a further carceral expansion, thanks to the established consensus on his right-wing law and order paradigm of criminal justice and its judicial support from the Supreme Court.³⁹⁹ This extension of correctional services into a prison-industrial complex, exhibits a redistribution of correctional priorities, that is commonly defined as the carceral turn of the American prison system, as this paradigm shift indicates a repressive justice system and increasing prison populations to become a central part of the United States' carceral functionality.⁴⁰⁰ The legislative and institutional changes being associated with this were generally well-received, as they aligned with Reagan's popular sentiments on ACR, which follow the quintessential tenets of a neoliberal interpretation of the American Dream. However, the resulting legal system did not spend much consideration on anyone who fell through the cracks of this ideological framework. The victims of his war on crime and drugs were usually poor urban communities and people of colour, as the short-term treatment of criminality through increased policing of ethnic minorities and stigmatised poverty-stricken neighbourhoods strengthened associative relations between criminality and the propagated stereotype of young, Black, male criminals, reminiscent of anti-Black prejudice in the Jim Crow South.⁴⁰¹ These developments were implemented under the guise of individual responsibilities of the *homo oeconomicus*⁴⁰², which not only overlap with neoliberal and civil religious beliefs to ensure people's acceptance, but provided a precedent for future laws that would expand judicial neglect of circumstantial evidence.⁴⁰³

³⁹⁷ Bureau of Justice Statistics, *Bulletin: Prisoners in 1980*, by Benjamin H. Renshaw III (Washington D.C.: U.S. Department of Justice, 1981), accessed 4.11.2023, <https://bjs.ojp.gov/content/pub/pdf/p80.pdf>.

³⁹⁸ Bureau of Justice Statistics, *Bulletin: Prisoners in 1990*, by Steven D. Dillingham (Washington D.C.: U.S. Department of Justice, 1991), accessed 4.11.2023, <https://bjs.ojp.gov/content/pub/pdf/p90.pdf>.

³⁹⁹ Platt, "U.S. Criminal Justice in the Reagan Era," 65-67.

⁴⁰⁰ Noah De Lissoy, "Conceptualizing the Carceral Turn: Neoliberalism, Racism and Violation," *Critical Sociology* 39, no. 5 (2012), 740f.

⁴⁰¹ Wacquant, *Punishing the Poor*, XI-XV, 1-11, 204-208.

⁴⁰² Algis Mickunas, "Neo-Liberalism: Managing the Tension Between Freedom and Equality," In: Travis Graham (ed.), *Neoliberalism: Perspectives, History and Criticisms* (New York: Nova Science Publisher, 2019), 7f. Klammer, Parr, and Schneider (ed.), *Foucault Handbuch*, 241.

⁴⁰³ Manfred Steger, and Ravi Roy, "First-Wave Neoliberalism in the 1980s: Reaganomics and Thatcherism," In: Manfred Steger, and Ravi Roy, *Neoliberalism: A Very Short Introduction* (Oxford: Oxford University Press, 2010), 21-49.

Joel Handler, *The Poverty of Welfare Reform* (London: Yale University Press, 1995), 29f.

Loïc Wacquant, "The Great Penal Leap Backward," In: John Pratt, David Brown, Mark Brown, Simon Hallsworth, and Wayne Morrison (eds.), *The New Punitiveness: Trends, Theories, Perspectives* (London/New York: Routledge, 2005), 23f.

Alexander, *The New Jim Crow*, 230f.

Reiman, and Leighton, *The Rich Get Richer and the Poor get Prison*, 178f.

4.3 Clinton and the 1994 Crime Bill: Expanding Three-Strikes, Mandatory Minimums, and Truth in Sentencing

This next section will focus on the changes to the legislature and carceral system under President William J. (Bill) Clinton and address the impact of their implementation on a federal and state level. The enacted changes under his administration exponentially increased prison populations as a bipartisan issue and are at the core of what defines the prison crisis in Louisiana along with the rest of the nation at the onset of the 21st century. The most significant factors for increasing prison populations were the expansion of three-strike laws, mandatory minimum sentencing practices, and truth-in-sentencing doctrine.

Clinton, being a Democratic president, demonstrates how tough-on-crime legislation has evolved from a wedge issue for southern White voters, into a bipartisan pursuit of expanding America's prison industry as a cure-all solution to criminality, with crime, its punishment and social order having been recognised as central aspects of Clinton's campaign and presidency by contemporary political commentators.⁴⁰⁴ Domestic politics under his administration were mainly defined by his successful compensation of the \$500 billion budgetary deficit he inherited from the preceding Reagan and Bush presidencies; the unprecedented duration of economic growth during his eight-year tenure, that prompted a drastic lowering of unemployment rates; along with modernisation efforts in education and governance.⁴⁰⁵ The legal cultural tenets governing criminal punishment and the war on drugs during the 90s remained relatively unchanged regarding its targets and methods, with one exception being the expansion of anti-Black prejudice and the introduction of harsher punishments for juvenile offenders, following several prominent cases of violent crimes, perpetrated by young men, who were categorically branded as "superpredators" by media and politicians following the incidents.⁴⁰⁶ This vilification of young offenders and socio-economically disadvantaged communities in general as fostering crime at a young age helped to provide legitimacy to the ever-expanding carceral state under mass incarceration, as it reinforced the idea, that

⁴⁰⁴ Gwen Ifill, "The 1992 Campaign: The Democrats; Clinton, in Houston Speech, Assails Bush on Crime Issue," *New York Times*, 24.7.1992, accessed 2.11.2023, <https://www.nytimes.com/1992/07/24/us/1992-campaign-democrats-clinton-houston-speech-assails-bush-crime-issue.html>.

⁴⁰⁵ Lammert, Siegwert, and Vormann, "Handbuch Politik USA," 95f.
„The Clinton-Gore Administration: A Record of Progress,” *The White House*, accessed 26.10.2023, <https://clintonwhitehouse5.archives.gov/WH/Accomplishments/eightyears-01.html>.

⁴⁰⁶ Carrol Bogert, "How the Media Created a "Superpredator" Myth that Harmed a Generation of Black Youth," *NBC News*, 20.11.2020, accessed 2.10.2023, <https://www.nbcnews.com/news/us-news/analysis-how-media-created-superpredator-myth-harmed-generation-black-youth-n1248101>.

increased and prolonged imprisonments, especially by state governments, are the only solution to an overall safer society, after anti-crime initiatives of previous decades does not seem to have produced the desired results.⁴⁰⁷ This shift in focus away from the morality aspect of drug persecution and towards violent crime deemphasised the moralistic influence of ACR, as it primarily addressed the immediate danger in urban communities of colour.

This sentiment is also represented in laws of the time. Whereas the decades discussed in previous sections saw policing and prevention agendas for the war on drugs being implemented in the wake of an institutional and political shift to the right, the anti-drug policies of the 1990s and onwards introduced sweeping legislative and judicial changes to sentencing laws, that were boosted by Reagan's tough-on-crime legacy and increased prison populations dramatically. In states that adapted these reforms, they required judges to employ longer sentences more frequently and utilised the previously established structures of policing to increase national total incarcerated population from 771.243 in 1990⁴⁰⁸ to 2.071.686 in 2000⁴⁰⁹ and 2.419.241 at their peak in 2008⁴¹⁰.⁴¹¹ It is generally acknowledged, that the surge in mass incarceration during the 1990s and 2000s was largely defined rather by the enforcement and expansion of tougher federal criminal legislation, after President Bill Clinton signed the Violent Crime Control and Law Enforcement Act of 1994, than by rising crime rates.⁴¹² President Clinton also signed another reform with the *Anti-Terrorism and Effective Death Penalty Act*, which revoked the majority of death row inmates' right to appeal their verdict, since Clinton felt that: "for too long, and in too many cases, endless death row appeals

⁴⁰⁷ Kim Taylor-Thompson, and Anthony C. Thompson (eds.), *Progressive Prosecution: Race and Reform in Criminal Justice* (New York: New York University Press, 2022), 135f.

⁴⁰⁸ Bureau of Justice Statistics, *Bulletin: Prisoners in 1990*.

⁴⁰⁹ Bureau of Justice Statistics, *Bulletin: Prisoners in 2000*, by Allen J. Beck, and Paige M. Harrison (Washington D.C.: U.S. Department of Justice, 2001), accessed 4.11.2023, <https://bjs.ojp.gov/content/pub/pdf/p00.pdf>.

⁴¹⁰ Bureau of Justice Statistics, *Bulletin: Prisoners in 2008*, by William J. Sabol, Heather C. West, and Matthew Cooper (Washington D.C.: U.S. Department of Justice, 2009), accessed 4.11.2023, <https://bjs.ojp.gov/library/publications/prisoners-2008>.

⁴¹¹ James Cullen, "The History of Mass Incarceration," *Brennan Center for Justice*, 20.7.2018, accessed 27.10.2023, <https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration>.

"United States of America," *World Prison Brief*, accessed 4.10.2023, <https://www.prisonstudies.org/country/united-states-america>.

⁴¹² Selman and Leighton, *Punishment for sale*, 100f.

John F. Pfaff, "The Micro and Macro Causes of Prison Growth," *Georgia State University Law Review* 28, 4 (2012), 1237–1271.

have stood in the way of justice being served”⁴¹³.⁴¹⁴ By introducing such harsh legislation, Democrats were able to break Republicans’ monopoly on initiating crime policy expansions, with the resulting upsurge in overall incarceration numbers under Clinton exceeding every previous expansion of prison populations in the United States and consolidating the already existing support for retributivist American legal culture under mass incarceration to prevail into the 21st century.

The decisions put forward by this *Crime Bill*⁴¹⁵ included the allocation of \$17 billion to fund law enforcement and the construction of carceral facilities⁴¹⁶, at a time when America’s GDP stood at just over \$7 billion⁴¹⁷, in addition to introducing three major reforms for increasing the severity of sentencing laws. The Crime Bill of 1994 thus effectively subsidised state governments to invest in prison construction in an effort to curb crime rates. One of these is the installation of three-strike laws, which prescribe higher sentences for habitual offenders and often coincide with another legislation implemented in this bill.⁴¹⁸ The expansion of mandatory minimum sentencing laws, that mandated a set amount of imprisonment, monetary compensation or the death penalty for certain charges to be non-negotiable, worked in combination with habitual offence legislation to dramatically increase incarcerated populations, by raising the number and duration of sentences across the board.⁴¹⁹

The requirement of minimum sentencings for certain felonies delegated judicial decision-making power away from judges and their ability to vary sentences under consideration of mitigating circumstances.⁴²⁰ The final doctrine, of preventing a prisoner’s release before their sentence had been completed, was realised in federal truth-in-sentencing incentives, which

⁴¹³ William J. Clinton, *Press Release: Statement on Signing the Antiterrorism and Effective Death Penalty Act of 1996*, 24.4.1996, accessed 2.10.2023, <https://www.presidency.ucsb.edu/documents/statement-signing-the-antiterrorism-and-effective-death-penalty-act-1996>.

⁴¹⁴ Ronald Weich, *ACLU: Upsetting Checks and Balances: Congressional Hostility Towards the Court in Times of Crisis* (New York/Washington D.C.: ACLU, 2001), 17-21.

⁴¹⁵ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322 (1994).

⁴¹⁶ Marc Mauer, “Bill Clinton, Black Lives, and the Myths of the 1994 Crime Bill,” *The Marshall Project*, 4.11.2016, accessed 2.11.2023, <https://perma.cc/37XD-N5VG>.

⁴¹⁷ OECD, *Data: Gross Domestic Product (GDP)*, accessed 22.1.2024, <https://data.oecd.org/gdp/gross-domestic-product-gdp.htm>.

⁴¹⁸ Eisen, *Inside Private Prisons*, 196f.

Brigitte Sarabi, and Edwin Bender, *The Prison Payoff: The Role of Politics and Private Prisons in the Incarceration Boom* (Portland: Western Prison Project/Western State Center, 2000), 4.

⁴¹⁹ Abigail, A. McNelis, “Habitual Offending the Constitution: The Cruel and Unusual Consequence of Habitual Offenders Laws and Mandatory Minimums,” *Civil Rights Law Journal* 28, no. 2 (2018), 97-127.

⁴²⁰ United States Sentencing Commission, “Report on the Continuing Impact of United States v. Booker on Federal Sentencing,” *Federal Sentencing Report* 25, no. 5 (2013), 327-333.

required sentences to be carried out to at least 85% of their original duration.⁴²¹ A 2012 report by the United States Sentencing Commission found that people of colour were not only sentenced more frequently, but also for longer durations since 1994, when compared to sentences for similar crimes committed by White criminals.⁴²² The combined application of these rule-changes proved to require a permanent and dramatical increase of prison capacities, as longer sentences were given more frequently, and needed to be carried out, even if convicts' conduct indicated low recidivism potential and pose no imminent threat to society.

Due to early estimates on potential costs and required time to conduct such a prison expansion, drastic increases in carceral capabilities and populations were already implemented in the early 1990s, with the number of prisons surging by 43% between 1990 and 2004, dwarfing prior expansions of the 1970s and 80s.⁴²³ The core elements of the Crime Bill were quickly ratified by multiple states – with Louisiana being one of the first states to apply three-strike laws in 1994⁴²⁴ – due to its overall popularity amongst lawmakers amidst the record-high crime rates of the early 1990s, and additional financial incentives for individual states to adopt its principles.⁴²⁵ A review by the U.S. Justice Department's National Institute of Justice from 1997, connects the rapid implementation of habitual offender laws to people's concerns, that serious offenders were released too early.⁴²⁶ This assessment is confirmed in a study conducted by Luna and Cassell, which highlights how the enforcement of uniformity in court decisions, presented to the public as an anti-discriminatory policy, and the deterring function of harsh sentences for future offenders were central in establishing the legitimacy of 1990s mass incarceration.⁴²⁷

Under similar conditions, the proposed mandatory sentence laws had been expanded from their focus on drug-related crimes to include violent crimes in every state, with congress

⁴²¹ Ditton, and Wilson, "Truth in Sentencing in State Prisons".

⁴²² United States Sentencing Commission, "Report on the Continued Impact of United States v. Booker on Federal Sentencing".

⁴²³ Congressional Research Service, *Economic Impacts of Prison Growth*.

⁴²⁴ National Institute of Justice, *'Three Strikes and You are Out': A Review of State Legislation*, by John Clark, James Austin, and Alan Henry (Washington D.C.: U.S. Department of Justice, 1997), 7-10.

⁴²⁵ Bureau of Justice Statistics, *Special Report: Truth in Sentencing in State Prisons*, by Paula M. Ditton, and Doris James Wilson (Washington D.C.: U.S. Department of Justice, 1999), accessed 28.10.2023, <https://bjs.ojp.gov/content/pub/pdf/tsrp.pdf>.

⁴²⁶ National Institute of Justice, *'Three Strikes and You are Out': A Review of State Legislation*, 1f.

⁴²⁷ Luna, and Cassell, "Mandatory Minimalism," 10-13.

passing over 60 federal laws by the mid-1990s.⁴²⁸ Truth-in-sentencing laws, although present since 1984, were also expanded in the percentage of time that needs to be served, which automatically increased the time spent in prison for a conviction and did not provide leeway for early releases due to good conduct.⁴²⁹ This deprivation of incentives to participate in prisoner rehabilitation might have a negative impact on prisoners' overall morale and their emotional state, which can lead to both health and disciplinary complications within penal institutions.⁴³⁰ Thus, indicating the reinforcement of severe sentencing laws and conditions of incarceration to have been detrimental to the overall quality of the American prison system.

While the efficacy of these federal mass incarceration laws to curb crime is still debated in political circles, academic discourse predominantly agrees, that its detrimental effect on already disadvantaged communities and a decline in trust in governmental institutions outweigh the limited successes it has had since being installed.⁴³¹ In the State of Louisiana, assessments of mass incarceration's effectiveness indicate the presumed claims of public safety benefits of a drop in crime and recidivism rates did not come true, as crime did initially drop but stagnated soon after, with incarceration numbers skyrocketing throughout the 1980s, 90s and 2000s, as increased racial profiling and criminal prosecutions led to over-policing and destabilisation in affected communities, with harsh punishments for comparatively small criminal offences not fulfilling their purported goals.⁴³² Communities during this period were not only ravaged by convictions to long prison terms, but also had to deal with the fallout of mass imprisonments, since released ex-convicts were legally discriminated against in the private and public sphere alike; being restricted from voting and disadvantaged when looking for employment, housing or public benefits.⁴³³ Clinton himself acknowledged the detrimental

⁴²⁸ Cassia Spohn, *How Do Judges Decide?*, 253f.

⁴²⁹ Wacquant, *Punishing the Poor*, 66.

⁴³⁰ Liebling, "Moral performance," 534f.

⁴³¹ Mathew Friedman, Ames C. Grawert, and James Cullen, *Crime Trends: 1990-2016* (New York: Brennan Center for Justice, 2017), 5-7.

⁴³² William Snowden, "Rethinking How Prosecutors Deal with Race and Implicit Bias," In: Anthony Thompson (ed.), *Progressive Prosecution* (New York: New York University Press, 2022), 135f.

Don Stemen, *The Prison Paradox: More Incarceration Will Not Make Us Safer* (New York: Vera Institute of Justice, 2017), 2f.

Wacquant, *Punishing the Poor*, 275.

Jacob Kang-Brown, Eital Schattner-Elmaleh, and Oliver Hinds, *People in Prison in 2018* (New York: Vera Institute of Justice, 2019).

⁴³³ Becky Pettit, *Invisible Men: Mass Incarceration and the Myth of Black Progress* (New York, NY: Russell Sage Foundation, 2012), 1-19.

Friedman and Grant, "Crimes and Punishment," 176.

impact on communities of colour, as the policies “overshot the mark” and mostly imprisoned people “who were minor actors, for way too long”, without having a proven impact on the crime rates during the 1990s.⁴³⁴

Concerning prison conditions since the introduction of this legislation, two aspects of the American justice system stood out as especially dire: one concerned legitimacy of sentences that were handed out, and the other was related to overcrowding issues. As a result of the skyrocketing number of court cases following the legislative changes of 1994, plea bargaining transitioned from being a mere means of occasionally cutting costs for defendants and prosecutors, to presenting a necessity for courts to keep up with the number of cases and avoid backlog.⁴³⁵ However, due to their sweeping application, it has increasingly diminished U.S. courts’ legitimacy; with the number of guilty pleas increasing to 97%, waivers of the right to appeal to verdicts becoming more common, and overall prosecutions rising, due to the high chance of settling criminal cases out of court, all of which increasingly affecting those who cannot afford to pay court fees.⁴³⁶

This convention of using plea bargaining as a panacea for increased prosecutorial demands, while initially promoted by legal reforms, finds its long-term stability in the continuous influx of defendants and prosecutions and the insufficient funding of defence attorneys, who cannot keep up with the quickening pace of legal proceedings.⁴³⁷ A compounding factor for this, mentioned by Albert Alschuler’s 2021 review of plea bargaining, is the financial incentive for everyone involved to complete as many trials as possible to ensure the reception of benefits associated with them.⁴³⁸ The characteristics of plea bargaining under mass incarceration have remained constant into the 21st century, with an assessment by the U.S. Department of Justice

⁴³⁴ Mona Chalabi, and Jan Diehm, “Fact-Checking Bill Clinton’s Defence of his Legacy on Crime and Poverty,” *The Guardian*, 9.4.2016, accessed 3.11.2023, <https://www.theguardian.com/us-news/reality-check/2016/apr/09/fact-checking-bill-clinton-poverty-crime-legacy>.

⁴³⁵ Vera Institute of Justice, “Incarceration Statistics: Mass Incarceration in Numbers,” *Vera*, accessed 25.10.2023, <https://www.vera.org/ending-mass-incarceration/causes-of-mass-incarceration/incarceration-statistics>.

James P. Lynch, and William J. Sabol, “Assessing the Effects of Mass Incarceration on Informal Social Control in Communities,” *Criminology & Public Policy* 3, no. 2 (2004), 267-294.

Elisabeth Maltby, “How Racialized Policy Contact Shapes the Social Construction of Policy Targets,” *Policy Studies Journal* 51, no. 1 (2023), 145-162.

⁴³⁶ Albert W. Alschuler, “Plea Bargaining and Mass Incarceration,” *New York University Annual Survey of American Law* 76, no. 2 (2021), 225-230.

⁴³⁷ John F. Pfaff, *Locked In: The True Cause of Mass Incarceration and How to Achieve Real Reform* (New York: Basic Books, 2017), 130-138.

⁴³⁸ Alschuler, “Plea Bargaining and Mass Incarceration,” 231f.

from 2011 indicating distribution between plea deals and court trials to remain high, with an average of 90-95%, and extra-legal characteristics (e.g.: ethnicity, location of trial) heavily influencing chances for reduced plea deals.⁴³⁹ For most people being sentenced under these conditions, court appearances are nothing but a formality, with judges simply confirming out-of-court agreements.

The second issue, relating to overcrowding, primarily deals with the resulting shortcomings in health care in public and private institutions. While prison capacities did increase significantly during this period following the Crime Bills funding of state-prison constructions, it also experienced a diversion of attention away from the already lacking availability of prisoner-care and adequate rehabilitative programmes.⁴⁴⁰ This suggests the acceptance of overextending the carceral capabilities to a certain extent for the sake of short-term political gains and the expansion of the prison-industrial complex, perpetuated by an overreliance on private contractors and their increasing leverage against governmental sanctions.

As previously discussed, the installation of private prisons was intended to combat divestment from rural areas, following rapid urbanisation since 1950. This dependency can be observed in the rise of private prison constructions in rural areas, with the number increasing from just 4 per year during the 1970, to sixteen per year until 1990, and a whopping 25 facilities per year between 1990 and the year 2000, with state funding increasing by 115% in the decade leading up to 1996.⁴⁴¹ Despite this broad incorporation of the prison industry in rural America, their actual effectiveness to increase counties' economies remains disputed, as described by Lauren-Brooke Eisen, senior director of the Brennan Center for Justice's Justice Program,⁴⁴² and contemporary assessments of private prisons' cost-effectiveness, including a 1996 evaluation of Winn Correctional Center.⁴⁴³

⁴³⁹ Bureau of Justice Assistance, *Plea and Charge Bargaining: Research Summary*.

⁴⁴⁰ William R. Kelly, *Criminal Justice at the Crossroads: Transforming Crime and Punishment* (New York/Chichester: Columbia University Press), 29f.

⁴⁴¹ Eisen, *Inside Private Prisons*, 81.

⁴⁴² Eisen, *Inside Private Prisons*, 94-96.

Ryan S. King, Marc Mauer, and Tracy Huling, *Big Prisons, Small Towns: Prison Economics in Rural America* (Washington D.C.: The Sentencing Project, 2003).

John M. Eason, "Prisons as Panacea or Pariah? The Countervailing Consequences of the Prison Boom on the Political Economy of Rural Towns," *Social Science* 6, no. 1 (2017), 17.

⁴⁴³ William G. Archambeault, and Donald R. Deis Jr., "Cost Effectiveness Comparison of Private Versus Public Prisons in Louisiana: A Comprehensive Analysis of Allen, Avoyelles, and Winn Correctional Center," *Journal of the Oklahoma Criminal Justice Research Consortium* 4 (1996).

Concurrent to the increase in prison populations and the struggle to keep up with the capacities needed for housing them, violence among American prisoners spiked dramatically under 1990s mass incarceration laws, when compared to the 1970s and earlier periods, especially concerning the high-security Louisiana State Penitentiary.⁴⁴⁴ As overcrowding and understaffing impeded adequate management and care, it gained notoriety for being the “bloodiest prison in America”.⁴⁴⁵ Due to these increased demands and challenges in prisons, efforts were diverted to primarily focus on maintaining control over the incarcerated population and compensate for this neglect of responsibility by foregrounding labour inside prisons instead of rehabilitating criminals and reintegrating them back into society.⁴⁴⁶ By propagating the expansion of mass incarceration as a reaction to an unprecedented crime-wave, that could not be contained through the moral intervention of the war on drugs, the sense of an inalienable and inherent capacity for moral decency, that was a central aspect of previously employed religious and individualist beliefs of ACR and its resulting legal culture during rehabilitative processes, was further diminished.

Practices and justifications for the expansion of mass incarceration have significantly exacerbated the stigmatisation of criminals and contributed to the widespread belief in a link between criminality and people of colour within American legal culture, which has been expanded from its main focus of urban, drug-related criminality from the 1960 until the late 1980s to propagate violent crime as the primary threat.⁴⁴⁷ This lent urgency to installing harsher criminal justice legislation and necessitated the expansion of prison capacities to contain the perceived increase in criminality, with rehabilitation and resocialisation having become hardly manageable, due to the overloading of carceral facilities. Its popularity and influence over the national discourse on crime is also reflected in popular media and news reporting, which for the most part function to bolster or at times criticise constitutionalist sentiments of ACR, by reenforcing the moral prerogative of the American justice system and its agents’ infallibility, thus, normalising the acceptance of otherwise unethical prosecutorial

Douglas McDonald, Elizabeth Fournier, Malcolm Russell-Einhorn, and Stephen Crawford, *Private Prisons in the United States: An Assessment of Current Practices* (Cambridge: Abt. Associates Inc., 1998).

⁴⁴⁴ Morris, *Jailhouse Journalism*, 9f.

⁴⁴⁵ Hallett, Hays, Johnson, Jang, and Duwe, *The Angola Prison Seminary*, 2-6.

⁴⁴⁶ Blakely, and Vic, *American Criminal Justice Philosophy*, 16-24.

⁴⁴⁷ Mark Peffley, and Jon Hurwitz, *Justice in America: The Separate Realities of Blacks and Whites* (Cambridge: Cambridge University Press, 2010), 149.

means and the inadequate handling of procedures or evidence, when trying to sway court opinions in favour of convicting alleged criminals for the “greater good” and public safety.⁴⁴⁸

Through this, the uncritical acceptance of insufficient prosecutorial and confinement practices is perpetuated and violence along with the ostracism of people deemed undesirable – including former prison inmates and through the cultivated association Black and Brown citizens – are justified, which would otherwise be perceived as violations of citizens’ constitutional and human rights.⁴⁴⁹ This is the continuation of a trend in the United States’ history, that showcases how the exclusion of criminals under a persistent system of discrimination has led to incarcerated people and people of colour being treated as second-class citizens, while not being provided with the same protections, that are postulated as being unalienable and natural by the American Constitution that is invoked as justification for these practices. By the early 2010s, these implicit biases associated with the racialised war on drugs/crime had become commonplace in the North and South alike, as legislative reforms leading up to its current state were mostly passed under bipartisan support, in order not to be criticised as too lenient on criminals during a time in which both parties contended as advocates for tightening criminal law and increased incarceration.⁴⁵⁰ The lasting effects this carceral turn and the popularisation of its enforcement has had on expanding racialised criminal prosecution can be observed in northern and southern prison trends alike, with Louisiana’s incarceration numbers showing 4.7 Black Americans being imprisoned for every White inmate⁴⁵¹, despite representing a mere 32.8% of the state’s population in its 2010 census⁴⁵².

4.4 Lasting Impact of Mass Incarceration on American Legal Culture

The analysis of developments in the American criminal justice discourse have highlighted three characteristics of United States’ legal culture established under mass incarceration: (1) Extensive criminal prosecution present a stable wedge issue, that is consistently raised as a racially connotated dog-whistle in America’s political discourse of the late 20th century to

⁴⁴⁸ Brandon Garret, “Images of Injustice,” In: Austin Sarat and Charles Ogletree Jr. (eds.), *Punishment in Popular Culture* (New York/London: New York University Press, 2015), 160f.

⁴⁴⁹ Alexander. *The New Jim Crow*, 62f, 192-195.

⁴⁵⁰ Schoen, *The Nixon Effect*, 12-15.

⁴⁵¹ Heather Ann Thompson, “Lessons from Attica: From Prisoner Rebellion to Mass Incarceration and Back,” *Socialism and Democracy* 28, no. 3 (2014), 153f.

⁴⁵² “QuickFacts: Louisiana,” United States Census Bureau, accessed 16.10.2023, <https://www.census.gov/quickfacts/fact/table/LA/POP010210#POP010210>.

frame policing and incarceration as the only viable solution to criminality, while disregarding the historically grown socio-economic disparities, that contributed to rising crime rates in certain areas.⁴⁵³

(2) The legal code has become less rigid, since modernisation efforts and societal paradigm shifts of the 1960s opened more possibilities for reform, which demystified the legal code's previously attributed infallibility and sanctity to a certain extent. However, this did not result in improvements of prison conditions, as reforms motivated by lobbying efforts of private interest groups generally neglected prisoners' interests in favour of economic gains, after Reagan's introduction of neoliberal open-market policies and Clinton's expansion of the prison-industrial complex necessitated their assistance and strengthened their influence.⁴⁵⁴ Within the confines of this study, this effect can also be observed in Louisiana's need to perpetuate the expansive profit-driven prison economy, in which financial gains have been shown to regularly eclipse considerations for prisoners' well-being and their reintegration into society after being released.⁴⁵⁵ The evolution of these prisoner-care and rehabilitation deficits into the 2010s will be discussed in the following chapter.

(3) In contrast to this aptitude for legislative changes, a simultaneous rise in advocacy for a canon of immutable norms and fundamental rights can be observed, that are agreed upon regardless of political affiliation and overlap with several aspects of early American legal culture, as well as constitutionalist reverence of rights expressed in foundational documents.⁴⁵⁶ At the same time, these foundational documents are also used to deprive prisoners of rights, such as the 13th Amendment's condoning of slavery as a form of punishment and their exclusion from other labour protection laws. Similarly a general affinity for morality-based criminal justice, reminiscent of Puritan belief systems of ACR, played a major role in legitimising the stigmatisation of criminals and the tightening of legislation for sentencings of drug-related charges⁴⁵⁷, with moral arguments having been a central impetus for zero tolerance policies, that were disproportionately enforced in low-income communities,

⁴⁵³ Marie Gottschalk, *Caught*, 1-25.

⁴⁵⁴ Friedman, "Is there a Modern Legal Culture?," 122-124.

⁴⁵⁵ Eisen, *Inside Private Prisons*, 68-78.

Haney, "Riding the Punishment Wave," 57-59.

⁴⁵⁶ Friedman, "Is there a Modern Legal Culture?," 125.

⁴⁵⁷ Lawrence Solum, "Originalism Versus Living Constitutionalism: The Conceptual Structure of the Great Debate," *Northwestern University Law Review* 113, no. 6 (2019), 1250-1276.

due to persistent prejudice.⁴⁵⁸ Only in its later stages during the 1990s and 2000s did broader criticism start to call the moralistic approach to criminal justice into question, after crime rates among poor urban communities kept rising despite increased policing and harsher sentencing laws, that separated criminals from the general population and reinforced the paradigm of ACR, which stigmatises criminals as morally deficient. These three developments in criminal justice have one thing in common; their compatibility with the hyper-individualism and continuation of racial and classist disparities in socio-economic conditions and incarceration rates, that this paper has shown to be a constant of American legal culture throughout the nation's history.

The prior retributivist disposition of American legal culture, combined with racially biased approaches to criminal punishment, created an environment under mass incarceration, in which prisons were mostly tasked with confining and punishing criminals. Thus, leading to rehabilitation in U.S. prisons to be relegated to an afterthought in most carceral environments, with prison labour presenting its main means of serving public interest and generating revenue from incarcerated people, while preventative measures against criminality and rehabilitative programmes for convicts continued to be underfunded despite being in high demand with prisoners wanting to reduce their sentence.⁴⁵⁹

The main policy stances associated with this retributive sentiment in the South are described by Michelle Alexander's analysis of this "New Jim Crow" to have been the continuation of racial oppression since Reconstruction, as the replacement of America's slave-economy with the convict leasing system and ultimately its carceral turn to increase revenue and ensure the perpetuation of societal hierarchies.⁴⁶⁰ This tendency, combined with the initial introduction of mandatory minimum sentences following the 1984 Federal Sentencing Reform Act and 1986 *Anti-Drug Abuse Act*, along with the concomitant expansion of private corporations' role in criminal punishment, are understood to have formed the basis for America's prison-industrial

⁴⁵⁸ Friedman, and Hayden, "Crimes and Punishment," 161f.

Bruce Bullington, and Alan A. Bock, "A Trojan Horse: Anti-Communism and the War on Drugs," *Contemporary Crises* 14 (1990), 39-42.

⁴⁵⁹ Vic Bumphus and Curtis Blakely, "American Criminal Justice Philosophy," *Federal Probation Journal* 63, no. 1 (1999), 64f.

Rachel O'Connor, *The United States Prison System: A Comparative Analysis* (PhD. Diss., University of South Florida, 2014), 49f, 94, 98.

Shichor, *Punishment for Profit*, 9, 24ff, 65.

⁴⁶⁰ Alexander, *The New Jim Crow*, 20-57.

complex. This complex was a major driving-force behind the 1994 Crime Bill's truth-in-sentencing incentives, habitual offender laws and additional prison funding, since they presented a logical progression of private interest groups' and lawmakers' push for prison expansion, despite increases in prison populations being predominantly defined by legislative changes, instead of fluctuations in crime rates.

The increased length of imprisonments accompanying this development similarly overshadowed its rehabilitative functionality, as extended sentences, life-sentences in particular, are described to be antithetical to prison rehabilitation by inmates and analysts alike.⁴⁶¹ The resulting system thus created the ongoing issue of America's aging prison population, fuelled by a constant influx of inmates and growing life-expectancies since its inception.⁴⁶² Louisiana's legal code, which contains more than 600 felony charges and numerous minimum sentencing laws, has resulted in 16.6% of inmates being sentenced to life without the possibility of parole (19% when combined with life-sentences with parole⁴⁶³) and a prison population, in which one quarter is over the age of 50, thus also presenting more challenges for in-prison health care services.⁴⁶⁴ However, due to the overcrowding and lack of scrutiny in many American prisons under mass incarceration, the resulting decline in prison conditions has oftentimes gone unnoticed.⁴⁶⁵ Despite early efforts to release non-violent elderly convicts by incentives like the Project of Older Prisoners, founded in 1989, that showed great promise by displaying low recidivism rates of people they negotiated a release for, their influence did not prove enough to contest with the positions taken by advocates of the prison-

⁴⁶¹ Daniel Micklethwaite, "The Contradictions of Prisoner Life and Rehabilitation: An Auto-Ethnographic Life Sentence Experience," *Journal of Prisoners on Prisons* 31, no. 1 (2022), 132-166.

Rick Ruddell, Ian Broom, and Matthew Young, "Creating Hope for Life-Sentenced Offenders," *Journal of Offender Rehabilitation* 49 (2010), 324-341.

Sarah French Russell, "A Second Look at Lifetime Incarceration: Narratives of Rehabilitation and Juvenile Offenders," *Quinnipiac Law Review* 31, no. 3 (2013), 489-522

⁴⁶² R.V. Rikard, and Ed Rosenberg, "Aging Inmates: A Convergence of Trends in the American Criminal Justice System," *Journal of Correctional Health Care* 13, no. 3 (2007), 152.

Melindy Brown, and Joanne Brooke, "An Aging Prison Population," In: Joanne Brooke (ed.), *Dementia in Prison: An Ethical Framework to Support Research, Practice and prisoners* (New York: Routledge, 2021), 1-20.

⁴⁶³ Ashley Nellis, and Savannah En, *No End in Sight: America's Enduring Reliance on Life Imprisonment* (Washington D.C.: The Sentencing Project, 2021), 8-10.

⁴⁶⁴ Andrea Armstrong, and Marcus Kondkar, *Louisiana Justice: Pre-Trial, Incarceration, & Reentry* (New Orleans: Loyola University New Orleans, 2022), 11-14.

⁴⁶⁵ Pettit, *Invisible Men*, xiif, 3f, 16-19.

industrial complex.⁴⁶⁶ Federal funding for health care was however provided⁴⁶⁷ to aid public and private facilities in coping with an increasing demand of correctional institutions, with the percentage of inmates over 55 quintupling from just 3% to 15% between 1991 and 2021.⁴⁶⁸

With a constant total incarcerated population of over 2.000.000 since the year 2000 and many states still having laws in place that disenfranchise ex-inmates, the lack of representation can lead to a major distortion of political, socio-economic and demographic data. This includes the state of Louisiana, in which 3.04% of the White voting age population, and 6.27% of Black voting age population were unable to vote in 2016.⁴⁶⁹ This also holds true for felons' ability to be selected for jury duty⁴⁷⁰, which further diminishes ex-inmates from actively participating in democratic processes. Until 2021, the only path to being called for jury duty as an ex-felon in Louisiana was a gubernatorial or presidential pardon, when the first legislation to permit felons to serve as jurors was narrowly signed into law.⁴⁷¹

Another practice diluting the political agency of incarcerated people and incentivising communities to permit the erection of prisons concerns the manner of collecting census data in the United States. Due to the United States Census Bureau's Current Population Survey's practice of allocating prison inmates to the parish they are incarcerated in, dating back to a 1870 regulation, the underrepresentation of ex-felons and thus people of colour is further diminished and skewed in favour of rural White populations, since the census data dictate the number of representatives in congress.⁴⁷² The exponential increase in prison populations and erection of new prisons in rural areas thus correlates to an underrepresentation of people

⁴⁶⁶ Jeff Yates, and William Gillespie, "The Elderly and Prison Policy," *Journal of Aging & Social Policy* 11 no. 2-3 (2000), 167-175.

Tina Maschi, and Adriana Kaye, "Responding to Crisis of Aging People in Prison: Promising Practices and Initiatives," In: Meera Balasubramaniam, Aartia Gupta, and Rajesh R. Tampi (eds.), *Psychiatric Ethics in Late-Life Patients: Medicolegal and Forensic Aspects at the Interface of Mental Health* (Cham: Springer, 2019), 219-237.

⁴⁶⁷ Selman and Leighton, *Punishment for sale*, 17f.

⁴⁶⁸ Emily Widra, "The Aging Prisons Populations: Causes and Consequences," *Prison Policy Initiative*, 2.8.2023, accessed 1.11.2023, <https://www.prisonpolicy.org/blog/2023/08/02/aging/#:~:text=Meanwhile%2C%20older%20people%20make%20up,%25%20to%20a%20whopping%2015%25>.

⁴⁶⁹ Christopher Uggen, Ryan Larson, and Sarah Shannon, *The Sentencing Project, 6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement* (Washington D.C.: The Sentencing Project, 2016), 15-16. Reilly, "'To Purify the Ballot,'" 4-5.

⁴⁷⁰ "Jury Duty," Louisiana State Bar Association, accessed 7.11.2023, <https://www.lsba.org/ChildrensLaw/COAJuryDuty.aspx>.

⁴⁷¹ "Louisiana Governor Agrees to Let Some Felons on Jury Service," *Associated Press*, 12.6.2021, accessed 7.11.2023, <https://apnews.com/article/government-and-politics-la-state-wire-louisiana-23cd9d0da3c32cd8142e7052512e15ca>.

⁴⁷² Khalil, Muhammad. *The Condemnation of Blackness*.

sentenced to prison, which, like almost all policies implemented in connection to mass incarceration, affects people of colour to a greater extent than others, and still presents a consistent feature of maintaining hierarchical structures in American society.

While the inclusions of private contractors into the criminal justice system had been a common practice throughout American history; being present from colonial times to the Reconstruction Era and the 20th century;⁴⁷³ self-operating private for-profit prisons only became a dominant feature of the American carceral state after tough-on-crime policies in the 1970s and the subsequent rise of mass incarceration required a rapid expansion of America's carceral capabilities, which governmental institutions were unequipped to deal with on their own.⁴⁷⁴ Concurrently to this growing dependency, changes in prison policies during this period reflect the disproportionate influence of private management firms' vested interests to expand America's penal state into an industrial complex, whose expansionist economic model is often described as not only prioritising a maximisation of revenue from lucrative contracts with governmental agencies, but also includes the monetisation of services provided to prisoners, including telephone calls, hygiene products, and aspects of healthcare.⁴⁷⁵

This inclusion of private operators in correctional procedures extends even beyond managing confinement facilities, as 4.65 million individuals were involved with private probation agencies, remote monitoring firms, and post-release support-groups in 2018 alone, to name a few.⁴⁷⁶ The increased expansion of the private sector, combined with expansionist aspirations for prisons themselves increased demands and presents a major strain on their capabilities of providing adequate services. Despite this deterioration of prison conditions, certain basic rights were upheld by the courts, as was the case with prisoners' right to adequate healthcare, which was stated in a 1976 Supreme Court ruling to be a constitutional right covered by the 8th Amendment and its denial would constitute cruel and unusual punishment.⁴⁷⁷ Nonetheless, inadequate access to healthcare and hygiene products have remained an underreported issue for decades, and have only recently become a notable issue on a national stage.⁴⁷⁸

⁴⁷³ Valerie Clark. "A Brief History of Private Prisons in the United States," In: Griffin Hayden III, and Vanessa H. Woodward (eds.), *Routledge Handbook of Corrections in the United States* (New York: Routledge, 2019), 143f.

⁴⁷⁴ Selman and Leighton, *Punishment for Sale*, 17-20.

⁴⁷⁵ Eisen, *Inside Private Prisons*, 68-78.

⁴⁷⁶ Eisen, *Inside Private Prisons*, 68.

⁴⁷⁷ *Estelle v. Gamble*, 429 U.S. 97, No. 75-929 (U.S. Supreme Court, 1976), <https://supreme.justia.com/cases/federal/us/429/97/>.

⁴⁷⁸ Eisen, *Inside Private Prisons*, 77f.

The influence of private prison corporations is thus not only confined to abiding by the rules set by governmental agencies, but actively participates in the shaping of American legal culture through their influence on prison legislation and their role in its enforcement. Prime examples for this include CoreCivic (formerly: Corrections Corporations of America) and GEO Group, who have exceeded their original sphere of influence, by expanding their reach to political decision-making via lobbying and conditional contractual arrangements with lawmakers.⁴⁷⁹ These contractual agreements usually entail provisions, requiring states to pay additional subsidies to private firms, such as “low-crime taxes” and guaranteed occupation quotas of 80-100%, with Louisiana’s being among the most extensive at 95-100% in 2012.⁴⁸⁰ This incorporation of interest groups into American politics is frequently identified as being critical for the industry’s enduring stability, as its range of influence allows them to tip the scales in their favour during congressional votes, thus affecting decisions on the quality and availability of services inside prisons to neglect inmates’ needs and rights in favour of increased profitability.⁴⁸¹

Regarding individuals and movements critical of the carceral system’s development in the latter half of the 20th century, there have been a plethora of examples, which could not be addressed in more detail, due to the longitudinal analysis of American legal culture this thesis pursues but will be addressed in summary here. These include incentives by civil rights organisation and legal institutions, such as NAACP, ACLU, or the American Bar Association⁴⁸², and peaceful demonstrations at campuses,⁴⁸³ to prison protests⁴⁸⁴ and riots, in reaction to institutional violence or mistreatment by police and prison staff, or racially motivated court convictions.⁴⁸⁵ The overall level of violence in carceral institutions and prison protests after the end of segregation generally peaked during the 1970s and early 80s, as prison populations rose but the system in place was unfit for handling this increase, which also saw the Attica prison riot take place, as the most deadly prison riot in American history, lasting 4 days and costing

⁴⁷⁹ Gottschalk, *The prison and the gallows*, 289-291.

Takei, “From Mass Incarceration to Mass Control,” 149f, 178f.

Craig Haney, “Counting Casualties in the War on Prisoners,” *University of San Francisco Law Review* 44 (2008), 90.

⁴⁸⁰ In the Public Interest, *Criminal: How Lockup Quotas and “Low-Crime Taxes” Guarantee Profits for Private Prison Corporations* (Washington D.C.: In the Public Interest, 2013).

⁴⁸¹ Takei, “From Mass Incarceration to Mass Control, and Back Again,” 148.

⁴⁸² Gottschalk, *The Prison and the Gallows*, 167-169, 176-182.

John Irwin, *Prisons in Turmoil* (Boston: Little, Brown, 1980), 87f.

⁴⁸³ Eisen, *Inside Private Prisons*, 119f.

⁴⁸⁴ Thompson, „Lessons from Attica,” 160, 170f.

⁴⁸⁵ Noli Brazil, “Large-Scale Urban Riots and Residential Segregation: A Case Study of the 1960s U.S. Riots,” *Demography* 53 (2016), 567f, 590-592.

29 inmates and 10 correctional officers their lives.⁴⁸⁶ When police took back the prison on the fourth day, after the operation had been authorised by President Nixon and Governor Rockefeller, they claimed all victims to be caused by inmates. However, after autopsies revealed the deaths to have been caused by bullet wounds from the storming of the prison and stories about the humiliating torture of surviving convicts were released, multiple lawsuits by victims and their relatives were raised against the State of New York and were only fully settled in 2000.⁴⁸⁷ While this is an extreme example of how high the level of violence exerted by inmates and prison staff was at during its peak, its consideration here is relevant for mass incarceration policies, due to its widespread reception and subsequent impact on legal culture, at a time, when tough-on-crime sentiments were at an all-time high.

Protests were also taking place in Louisiana, where the first prison chapter of the Black Panther Party was established in Louisiana State Penitentiary in 1971, who would later be known as the “Angola Three”, who gained a lot of attention for their hunger strikes, disrupting prison proceedings, and activism for a more humane treatment of prisoners.⁴⁸⁸ Their members had been perpetually kept in solitary confinement since the early 70s, with Robert Lary King being released in 2001, Albert Woodfox in 2016, and Herman Wallace in 2013, the latter of which was released due to medical concerns and died of terminal cancer a few days after his release.⁴⁸⁹ Later shifts in carceral politics during the 1980s and 90s, a period often associated with reduced attention towards demands for reform, prompted another group of convicts within the Louisiana State Penitentiary to organise into the “Angola Special Civics Project”, which proposed structural prison reforms based on their own experiences and differentiated itself from previous efforts, by expanding their focus to the release and reintegration of prisoners, instead of solely pursuing improvements of prison-life itself.⁴⁹⁰ While these efforts did attract attention and improved the conditions at Louisiana State Penitentiary, they were not able to enforce systemic reforms, as legislative reforms were outside of their sphere of influence.

⁴⁸⁶ Musick and Gunsaulus-Musick, *American Prisons*, 167f, 176-184.

⁴⁸⁷ Clyde Haberman, “The Specter of Attica, Restless Still,” *New York Times*, 11.5.2002, accessed 1.12.2023, <https://www.nytimes.com/2002/05/11/nyregion/nyc-the-specter-of-attica-restless-still.html>.

⁴⁸⁸ Gabrielle Corona, “Food, Punishment, and the Angola Three’s Struggle for Freedom, 1971-2019,” *Southern Cultures* 27, no. 3 (2021), 77-97.

⁴⁸⁹ Corona, “Food, Punishment and the Angola Three’s Struggle for Freedom,” 94.

⁴⁹⁰ Lydia Pelot-Hobbs, “Organized Inside and Out: The Angola Special Civics Project and the Crisis of Mass Incarceration,” *Souls* 15, no. 3 (2013), 201f, 206-209.

Concerning the legislative influence of prison reform advocates, the Congressional Black Caucus (formerly: Democratic Select Committee) presented the most consistent voice for change. It formed during the 1960s as a means of collaboration for the few Black members of congress at the time⁴⁹¹ and sought to increase the representation of America's Black population in legislative decision-making by expanding their ability to participate in the democratic process⁴⁹², while pursuing policies that benefited the populace overall.⁴⁹³ Yet, their opposition to the penal system and advocacy for suffrage issues has largely remained insufficient for instituting more fundamental changes, with their proposition of amending the 1994 Crime Bill to include \$5 billion investments in drug treatment and intervention programmes being discarded.⁴⁹⁴ Only since the 1990s, as political polarisation in America's two-party system increased and civil criticism of prison policies became more prominent, has the unequivocal trust in America's legal system been called into question on a bigger stage.⁴⁹⁵ While small gains and concessions could be made, these incentives mostly concerned specific applications and isolated aspects of the American justice system without addressing the underlying framework perpetuating the insufficient carceral conditions.

On a systemic level, a more fundamental deconstruction of the prison-industrial complex could not be achieved leading up to and including the 2000s. In Louisiana, it was not until 2015, when initial investigations into the viability of its carceral state were initiated by its state government. However, since the for-profit motive of America's prison industry has expanded, economic recessions overwhelmingly resulted in increases of crime-rates and incarcerations in the nation's recent past, as additional financial strains and a lack of opportunity in marginalised communities provoked spikes in criminality, as well as an expansion of the prison system's capacities: such was the case during the financial recessions of 1973-1975 under

⁴⁹¹ Robert Singh, *The Congressional Black Caucus: Racial Politics in the U.S. Congress* (Thousand Oaks: Sage Publications, 1998), 54–55.

⁴⁹² Carol M. Swain, *Black Faces, Black Interests: The Representation of African Americans in Congress* (Cambridge: Harvard University Press, 1993), 38f.

⁴⁹³ Christina Rivers, *The Congressional Black Caucus, Minority Voting Rights, and the U.S. Supreme Court* (Ann Arbor: University of Michigan Press, 2015⁴), 163.

⁴⁹⁴ Elizabeth Hinton, Julilly Kohler-Hausmann, and Vesla M. Weaver, „Did Blacks Really Endorse the 1994 Crime Bill?,” *The New York Times*, 13.4.2016, accessed 13.11.2023, <https://www.nytimes.com/2016/04/13/opinion/did-blacks-really-endorse-the-1994-crime-bill.html>.

⁴⁹⁵ Jacob M. Grumbach, „From Backwater to Major Policymakers: Policy Polarization in the States, 1970-2014,” *Perspectives on Politics*, 16 no. 2 (2018), 416-435.
Levi Boxell, Matthew Gentzkov, and Jesse M. Shapiro, „Cross-Country Trends in Affective Polarization,” *The Review of Economics and Statistics* (2022), 1-60.

Reagan and under Bush in the early 2000s' dot-com bubble.⁴⁹⁶ However, the extent of the 2008 financial collapse's strain on the U.S. prison economy seemed to have initiated serious discussions on decarceration for the first time since the 1960s, as prison overcrowding became an increasingly untenable issue and high-ranking officials such as former Attorney General Eric Holder, who started to call for initiating a reduction of existing "unsustainable" circumstances for prisons in 2009.⁴⁹⁷ A prominent reformatory legal approach at that time, that stood in contrast to the dominant retributivist theories, was the restorative justice paradigm, introduced in Howard Zehr's seminal work *Changing Lenses*⁴⁹⁸, in which he questions the retributivist mantra of focussing on the infliction of revanchist punishment, while advocating for criminal justice, that pursues a mending of societal or personal harm inflicted by perpetrators, by providing adequate means of punishment, rehabilitation, and reimbursement, issued in relation to the crime and its circumstances, instead of relying on mandatory minimums and increasingly harsh sentences.⁴⁹⁹

5. Case Study: On the State of Legal Culture in Louisiana's Prison System during the mid-2010s

In this section, more recent developments in American legal culture are explored, by investigating samples of the sentencing, incarceration and rehabilitation practice in two Louisianian carceral institutions: the state-run Louisiana State Penitentiary and the privately operated Winnfield Correctional Center. The attention of this analysis is primarily aimed at specific features of American legal culture, previously defined in relation to ACR and reinforced under mass incarceration. These comprise the treatment of prisoners, including labour conditions, correctional officers' measures for reprimanding disobedient behaviour, such as solitary confinement or deprivation of privileges, and the quality of prisons' rehabilitative efforts; the availability and quality of (mental) health care services inside the selected carceral facilities; and racial disparities within these categories.

In consideration of the critical realist approach to grounded theory applied in this study, the structure of this chapter follows the domain of the real, the domain of the actual, and the

⁴⁹⁶ Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton: Princeton University Press, 2015), 25-47.

⁴⁹⁷ Gottschalk, "Cell Blocks & Red Ink," 62f.

⁴⁹⁸ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Scottsdale: Herald Press, 1990).

⁴⁹⁹ Johnstone, "The Restorative Justice Movement," 76f

domain of the empirical, as defined in the methodology section, to observe applications of legal culture on Louisiana's institutional level, within its prisons' implementation of these guidelines, and experiences of individuals partaking in these procedures. Thus, only after establishing key parameters within the domain of the real, an assessment of how legal culture is realised in the domains of the actual and empirical at the two selected facilities will be made, by consulting primary sources on prisoners' experiences, including coded passages from The Angolite and Shane Bauer's investigative reporting, as well as relevant supplementary secondary sources on the application of carceral legislation.

Concerning the domain of the real, domestic legislation regulating the American carceral state discussed in previous sections will be summarised, along with national and international evaluations of their suitability by NGOs and the United Nations. The latter two domains will be discussed with regard to the public and private facilities respectively, with one portion addressing observations made concerning the Louisiana State Penitentiary (LSP), while another addresses management at the privately run Winn Correctional Center (Winn), only touching on its role as an ICE detention centre and the associated political and carceral consequences in the outlook of this thesis, since these have become more relevant and contested in the wake of the Covid-19 pandemic spreading amongst immigrant detainees.⁵⁰⁰ Ultimately, the discussion of the results will highlight similarities and disparities in the practice of legal culture observed in these three spheres, assess to what extent disparities between the publicly and privately operated prisons can be observed, and whether they are in accordance with the previously established dominant legal culture.

It has to be mentioned, that, due to the assessment cycles of auditors such as the PREA commission (Prison Rape Elimination Act), there were no assessments available on Winn's policies between 2012-2016, including the period of Shane Bauer's investigative reporting. This is due to the timing of transitioning from CCA's management to LaSalle Corrections, as they had to accumulate documentation of their conduct after taking over in 2015, before agencies were able to conduct the audit initially scheduled for 2015.⁵⁰¹

⁵⁰⁰ Office for Civil Rights and Civil Liberties, *Retention Memo to ICE Concerning Winn Correctional Center*.

⁵⁰¹ Vevia Sturm, Krista Helton, and Earl Dye, *PREA Audit Report: Adult Prisons and Jails: Winn Correctional Center* (Jefferson City: Missouri Department of Corrections, 2018), 78-79, accessed 20.8.2023, <https://lasallecorrections.com/wp-content/uploads/2020/11/2018-Winn-Correctional-Center-Final-PREA-Report.pdf>.

5.1 Legal Guidelines and Structures of Louisiana's Carceral State – Domain of the Real

Since the general understanding of American and Louisianian carceral practices and major paradigms this study operates under were already established in previous chapters, this section will touch on legislative and structural features to provide vital context on legal guidelines, that pertain to observations made during this case study and were not yet addressed sufficiently.

5.1.1 Convict Labour

One of these legislative frameworks concerns prisoners' rights to labour protections and the imposition of mandatory work within Louisiana's carceral institutions. In Louisiana's regulations on prison labour, convicts' rights are not included in the Fair Labor Standards Act, instated with the Civil Rights act of 1964, and the National Labor Relations Act against worker exploitation, which also deprives them of their right to organise in worker-unions.⁵⁰² Additionally, statutes requiring inmates to work as a form of punishment and atonement are still present in Louisiana's constitution. While critics of this practice still call for the abolition of forced labour as a form of punishment for people "duly convicted" of a crime, as permitted by the 13th Amendment, the prevailing practice of compulsory labour for prison inmates still preserves the legacy of cheap convict labour as a means of stabilising southern economies after the abolition of slavery.⁵⁰³

Consequently, they are frequently criticised as violating multiple internationally recognised human rights' and labour protections, that constitute the United Nations' framework for assessing the legality of prison practice.⁵⁰⁴ The questionable compliance of these methods with human rights is demonstrated by the application of disciplinary measures, such as solitary confinement or cancelation of family visitations, in case of insubordination of prisoners; the below minimum wages of <\$1 mentioned previously; and the necessity for inmates to purchase essential items, such as clothing, hygiene products, or visitations from their earnings,

⁵⁰² Jaron Brown, "Rooted in Slavery: Prison Labor Exploitation," *Race Poverty and Environment* 14, no. 2 (2010). Turner, et al., *Captive Labor*, 57.f

Takei, *From Mass Incarceration to Mass Control, and Back Again*, 12.

⁵⁰³ Cara McGoogan, "'You're a Slave': Inside Louisiana's Forced Prison Labor and a Failed Overhaul Attempt," *The Washington Post*, 1.1.2023, accessed 6.1.2024, <https://www.washingtonpost.com/nation/2023/01/01/louisiana-prison-labor-ballot-slavery/>.

⁵⁰⁴ Georges Enderle, "Abolishing Private Prisons in the United States: A Human Rights Assessment," *International Journal of New Political Economy* 2, no. 2 (2021), 31-39. Georges Enderle, *Corporate Responsibility for Wealth Creation and Human Rights* (Cambridge: Cambridge University Press, 2021).

which, according to an ACLU report on captive labour leaves almost 70% unable to afford basic necessities.⁵⁰⁵ Additionally, despite these extensive labour requirements, the acquired skills do oftentimes not prove to be transferrable once released from prison⁵⁰⁶, resulting in post-release unemployment rates of 62-65% in recently released data on convicts, having left prison in 2010.⁵⁰⁷ The devastating rate of unemployment not only eclipses the overall unemployment rates of 9.3% in 2010 and 5.4% in 2014, but also during the more recent COVID-19 pandemic, when it peaked at 14.8% in 2020.⁵⁰⁸ With regard to racial disparities, it has been noted in a 2019 study by Bruce Western and Catherine Sirois, that, despite overall longer sentences for more severe charges, White ex-convicts receive more and higher-paying occupations than other ethnicities.⁵⁰⁹ This trend mirrors prior observations of discrimination experienced by Black and Brown portions of the population, which can be noticed throughout the development of America's legal culture as shown in previous chapters.

It can thus be surmised that the structures and mechanisms governing prison labour in Louisiana are insufficient in satisfying international standards of prisoners' human rights and fall short of ensuring its rehabilitative function. However, with regard to the internal parameters of American legal culture, Louisiana's application of retributivist paradigms for harsh prison conduct and the utilisation of carceral institutions to provide a cheap labour force, observed here in the domain of the real, do not represent a break from legal traditions of American legal culture's previous iterations.

5.1.2 Death Penalty

This section will briefly provide insights on regulations of capital punishment within Louisiana, since national trends regarding its popularity and application were addressed in previous chapters.

⁵⁰⁵ Turner, et al., *Captive Labor*, 48-50, 72-75.

⁵⁰⁶ Josh Halladay, "The Thirteenth Amendment, Prison Labor Wages, and Interrupting the Intergenerational Cycle of Subjugation," *Seattle University Law Review* 42, no. 1 (2018), 937-965.

⁵⁰⁷ Leah Wang, and Wanda Bertram, "New Data on Formerly Incarcerated People's Employment Reveal Labor Market Injustices," *Prison Policy Incentive*, 8.2.2022, accessed 7.1.2024, <https://www.prisonpolicy.org/blog/2022/02/08/employment/>.

⁵⁰⁸ "Graphics for Economic News Releases: Civilian Unemployment Rate," *U.S. Bureau of Labor Statistics*, accessed 17.12.2023, <https://www.bls.gov/charts/employment-situation/civilian-unemployment-rate.htm>.

⁵⁰⁹ Bruce Western, and Catherine Sirois, "Racialized Re-entry: Labor Market Inequality After Incarceration," *Social Forces* 97, no. 4 (2019), 1517-1542.

The application of the death penalty in Louisiana is restricted to convictions of first-degree murder, that require the intent to kill or inflict great bodily harm on a victim under specific circumstances. These aggravating circumstances include: kidnapping, burglary, arson, drive-by shootings, armed robbery, cruelty to juveniles, terrorism, sexual abuse, receiving payment for the murder, and the consideration of whether the defendant was engaging in distribution of controlled substances or is a repeat offender of serious crimes.⁵¹⁰ The law thus reserves this form of punishment for crimes, whose malicious intent can be proven and which resulted in the violent death of their victims. Still, Louisiana's record shows a liberal application of the punishment, as it displays the highest rate of wrongful convictions and sentence reversals of capital punishment verdicts among U.S. states.⁵¹¹

Formerly, it also included aggravated rape charges if the victim was under the age of 12, in which case a jury would decide, whether life imprisonment or the death penalty should be applied.⁵¹² However, this application of the death sentence was abolished, after a 2003 guilty verdict for capital punishment in *Kenny v. Louisiana* was repeatedly appealed and eventually dismissed as unconstitutional under the 8th and 14th Amendments by a 5-4 U.S. Supreme Court decision in 2008, arguing that capital punishment for a crime that did not result in the death of the victim constitutes a form of excessive punishment.⁵¹³ This extended the 1977 decision in *Coker v. Georgia*, that had established a similar ruling for aggravated rape charges in non-lethal cases, that involved adult women.⁵¹⁴

The method of execution employed in Louisiana since 1990 is the lethal injection of three separate drugs, consisting of a paralysis-inducing drug, an anaesthetic and potassium chloride, that leads to heart failure.⁵¹⁵ Initially, this method of execution was initially hailed as humane and painless when it was introduced as substitution for the electric chair. However, after multiple unsuccessful lethal injection procedures had led to failed executions and violent

⁵¹⁰ Devon J. Clancy, "The Death Penalty across the Mason-Dixie Line: A Comparison of Capital Punishment in Louisiana and Ohio," *Loyola Journal of Public Interest Law* 23, no. 2 (2022), 26f.

⁵¹¹ Baumgartner, and Lyman, "Louisiana Death-Sentenced Cases and their Reversals, 1976-2015," 63-69.

⁵¹² *Kennedy v. Louisiana*, 554 U.S. 407, No. 07-343 (U.S. Supreme Court, 2008), [https://supreme.justia.com/cases/federal/us/428/325/#:~:text=Louisiana%2C%20428%20U.S.%20325%20\(1976\)&text=A%20death%20penalty%20law%20is,different%20crimes%20of%20varying%20severity](https://supreme.justia.com/cases/federal/us/428/325/#:~:text=Louisiana%2C%20428%20U.S.%20325%20(1976)&text=A%20death%20penalty%20law%20is,different%20crimes%20of%20varying%20severity).

⁵¹³ Rick Dierenfeldt, Samatha Scott, Gale Iles, Jaren Rosenberg, and Merideth Smith, "Support for the Death Penalty in Cases of Rape and Sexual Assault: Variation between Victim Age Categories," *International Journal of Offender Therapy and Comparative Criminology* 65, no. 16 (2020), 1824.

⁵¹⁴ *Coker v. Georgia*, 433 U.S. 584, No. 75-5444 (U.S. Supreme Court, 1977), <https://supreme.justia.com/cases/federal/us/433/584/>.

⁵¹⁵ Clancy, "The Death Penalty across the Mason-Dixie Line," 31.

deaths, criticism started to become more widespread throughout the United States in the 2010s.⁵¹⁶ Recently, supply shortages for the required drugs further hindered the enforcement of death sentences, leaving the number of executions since 2002 at two and that of death row convicts in 2014 at 57⁵¹⁷, with the most recent injection in 2010 having been administered after the death row convict waived his rights to appeal and accepted the execution.⁵¹⁸ Consequently, the analysis of death row convictions during this case study's temporal frame primarily concerns the confinement of affected individuals as opposed to the enforcement of capital punishment itself.

In the wake of Louisiana's 2017 decarceration and rehabilitation reforms as well as criticisms of the death penalty's high reversal rate, financial burden on the state and racial discrimination in its enforcement (2018: 68.1% of death row convicts were Black)⁵¹⁹, two separate bills on abolishing capital punishment altogether were proposed.⁵²⁰ Yet, in spite of the momentum for carceral reform at the time, they were ultimately abandoned after a co-author of the initially penned house legislation, Rep. Steven Pylant (R.), voted against his own bill, siding with his Republican colleagues and indicating a unanimous partisan vote against any future proposals.⁵²¹ Thus, shutting down efforts of ending the practice for that legislative period.

5.1.3 Prisoner Health Care & Litigation

With regard to inmates' accounts as part of the domain of the empirical, a set of laws from the mid-1990s need to be considered for contextualising prisoners' ability of taking legal actions against carceral facilities, especially with respect to medical complaints. The adopted reforms

⁵¹⁶ Austin Sarat, *Lethal Injections and the False Promise of Humane Executions* (Stanford: Stanford University Press, 2022), 46-90.

⁵¹⁷ "Louisiana Mass Clemency Efforts Highlight Similarities to Illinois Mass Clemency 20 Years Ago," Death Penalty Information Center, 3.7.2023, accessed 15.12.2023, <https://deathpenaltyinfo.org/news/louisiana-mass-clemency-efforts-highlight-similarities-to-illinois-mass-clemency-20-years-ago>.

⁵¹⁸ Associated Press, "Why Louisiana Executions Have Stalled for a Decade with 68 Remaining on Death Row," *The Advocate*, 3.2.2020, accessed 15.12.2023, https://www.theadvocate.com/baton_rouge/news/politics/legislature/why-louisiana-executions-have-stalled-for-a-decade-with-68-remaining-on-death-row/article_a802a5f6-46d1-11ea-9f51-eff2fa808090.html.

⁵¹⁹ Calvin Johnson, and William P. Quigley, "An Analysis of Economic Cost of Maintaining a Capital Punishment System in the Pelican State," *Loyola Journal for Public Interest Law* 21, no. 1 (2019), 10.

⁵²⁰ Louisiana House of Representatives, HLS 17RS-613, HR 101 (2017), <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1025996>.

Louisiana State Senate, SLS 17RS-316, S 142 (2017), <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1030108>.

⁵²¹ "2017 Legislation," Death Penalty Information Center, accessed 3.1.2024, <https://deathpenaltyinfo.org/stories/2017-legislation>.

Greg Hilburn, "Death Penalty Lives on in Louisiana," *News Star*, 17.5.2017, accessed 3.1.2024, <https://eu.thenewsstar.com/story/news/2017/05/17/death-penalty-lives-louisiana/101784274/>.

intended to curb the quantity of litigations brought forward by inmates, after the number of complaints skyrocketed in the wake of deteriorating prison conditions under mass incarceration.⁵²² A critical legislation regarding inmates' autonomy to pursue complaints of cruel and unusual punishment and other forms of violations against their rights, was the Prison Litigation Reform Act of 1996 (PLRA), which required inmates to "exhaust" all administrative options within their penal institution for rectifying any grievances, before being able to file a lawsuit against carceral institutions.⁵²³ Additionally, it is reliant on people's ability to afford court fees in addition to their everyday expenses at prison, and further bars individuals from the process, whose claims have been dismissed three separate times, unless in imminent danger of serious physical harm.⁵²⁴ With regard to these high demands for inmates and later considerations of their grievances, this reform relies on carceral institutions' obligation to provide comprehensible and effective avenues for processing complaints.

However, due to the imprecise wording used, some clarifications were made by courts throughout the years, including the specification of "prison conditions" to only be applied to regular occurrences affecting every inmate, rather than isolated instances of violence against individuals, and the clarification on requiring the "exhaustion" of "administrative remedies as are available", to counteract lacking availability.⁵²⁵ It also set the precedent, that no compensation for "mental or emotional injury" is required, if no physical harm was done, which makes it difficult to pursue claims of psychological consequences imposed by practices in American prisons.⁵²⁶

While this last regulation on litigation does impede inmates' legal pursuit of psychological abuse, regular health care in carceral facilities is required under federal guidelines to provide timely and adequate measures of ensuring inmates' well-being; a claim, that in theory does

⁵²² Andrea Fenster, and Margo Schlanger, "Slamming the Courthouse Door: 25 Years of Evidence for Repealing the Prison Litigation Reform Act," *Prison Policy Initiative*, accessed 2.1.2024, https://www.prisonpolicy.org/reports/PLRA_25.html#table_a.

⁵²³ Prison Litigation Reform Act of 1996, Acts 731, §1, eff. 7/9/1997.

⁵²⁴ Lepp, Peyton, *A Jailhouse Lawyers Manual* (New York: Columbia Human Rights Law Review, 2020¹²), 339-353.

⁵²⁵ Ryan Lefkowitz, "Prisoner's Dilemma—Exhausted Without a Place of Rest(itution): Why the Prison Litigation Reform Act's Exhaustion Requirement Needs to Be Amended," *The Scholar: St. Mary's Law Review on Race and Social Justice* 20, no. 2 (2018), 197-210.

⁵²⁶ Fenster, and Schlanger "Slamming the Courthouse Door".

David Fathi, Benjamin Ward, and James Ross (eds.), *No Equal Justice: The Prison Litigation Reform Act in the United States* (New York: Human Rights Watch, 2009).

not differentiate between the right to physical and mental health care.⁵²⁷ This is due to the constitutional statute of the 8th Amendment's ban of "cruel and unusual punishment" and the precedent of the 1976 *Estelle v. Gamble* Supreme Court case, that defined "deliberate indifference" to health concerns during incarceration as constituting a violation of this mandate.⁵²⁸ In case the treatment of mental or physical health issues is neglected despite a person's willingness to treat them, "deliberate indifference" claims cannot be made without proof of the medical condition's severity and evidence of faulty, non-standard procedures of treatment or wilful exclusion from those rights.⁵²⁹ These constitutional regulations build the basis of today's standards for prisoner health care in the United States and generally align with western standards of incarceration. Nonetheless, criticism has been mounting against the PLRA and the limited availability of mental health services, which frequently assign segregated housing units to people in mental distress, because of a lack of space at medical units.⁵³⁰ This will be considered in the analysis of medical care at LSP and Winn.

5.1.4 Solitary Confinement

The application of solitary confinement in Louisiana is enforced for a multitude of reasons, including pending investigations, transfer to another facility, the infraction of prison rules, potential danger for others or themselves, and in case of protective custody, including detainment in isolated "treatment" units for inmates with psychological distress or psychiatric disabilities.⁵³¹ This liberal application of solitary confinement as a panacea for enforcing disciplinary control, lowering expenses, and utilising them as holding-areas for people waiting for mental health assistance, expanded the narrow definition of acceptable applications initially provided by Louisianian law around 1800, which mandates the abolition of solitary confinement, with the only exception being its enforcement of "obedience to the police regulations of the penitentiary".⁵³² As Lepp Peyton further notes, additional regulations on its

⁵²⁷ Peyton, *A Jailhouse Lawyer's Manual*, 802-804.

⁵²⁸ *Estelle v. Gamble*, 429 U.S. 97, No. 75-929 (U.S. Supreme Court, 1976), <https://supreme.justia.com/cases/federal/us/429/97/>.

⁵²⁹ Peyton, *A Jailhouse Lawyer's Manual*, 791-794.

⁵³⁰ "Mental Illness, Human Rights, and US Prisons: Human Rights Watch Statement for the Record Senate Judiciary Committee Subcommittee on Human Rights and the Law," *Human Rights Watch*, 22.9.2009, accessed 21.11.2023, <https://www.hrw.org/news/2009/09/22/mental-illness-human-rights-and-us-prisons>.

⁵³¹ Cloud, Williams, Haardörfer, Hosbey, and Cooper, "Self-Injury and the Embodiment of Solitary Confinement," 3-5.

⁵³² Peyton, *Solitary Confinement in the Pelican State*, 3-8.

Louisiana House of Representatives, Act No. 140, HR 344 (2020), <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1181449>.

enforcement during or shortly after pregnancy (added in 2020) and in case of potential harm to others have only recently been added. This sweeping use of solitary confinement follows the pattern observed in connection with forced labour legislation, in which certain legal practices are abolished for the general population, only to carve out exceptions for them to be applied as a legitimate punitive measure for convicted criminals.

5.2 Legal Culture at LSP & Winn Correctional Center- Domain of the Actual & Empirical

5.2.1 Labour conditions

Domain of the Actual

LSP's main occupation and income source are its earnings from the facility's vast agricultural productions, manufacturing, and herding livestock. New arrivals at LSP start by working in the plantation of the nearly 73km² property, consisting of demanding labour conditions, under risk of dehydration and few opportunities for respite, as inmates are forced to till the fields under supervision of armed correctional officers and the threat of disciplinary actions in case of insufficient performance.⁵³³ Inmates in the fields work eight-hour days for five days a week, with crops mainly consisting of corn, cotton, soybeans, and other vegetables. In 2014, this was expanded by reintroducing sugarcane farming using refurbished machinery, presenting a form of farming, that was previously extensively implemented under slavery and during the convict-lease era, only ending in the 1970s.⁵³⁴ Its treatment and rehabilitative labour programmes confirmed to have been implemented at LSP in 2016 include "carpentry", "culinary arts", "vocational job life skills", and "welding" among others.⁵³⁵ The facility also incorporates the required standardised pre-release curriculum for people to be released within one year in cooperation with the Capital Regional Reentry, to facilitate the incorporation of community actors in rehabilitative proceedings.⁵³⁶ The presence of these in LSP's practice has also been confirmed by a PREA audit of the same year.⁵³⁷

⁵³³ Turner, et al., *Captive Labor*, 5f, 34.

⁵³⁴ Bryan E. Norwood, "Museum, Refinery, Penitentiary," *Places Journal*, 3.2021, accessed 13.11.2023, <https://placesjournal.org/article/museum-refinery-penitentiary/?cn-reloaded=1#0>.

⁵³⁵ Louisiana Commission on Law Enforcement, and Administration of Criminal Justice Statistical Analysis Center, *2016 Status Report*, 21f.

⁵³⁶ Louisiana Commission on Law Enforcement, and Administration of Criminal Justice Statistical Analysis Center, *2016 Status Report*, 8.

⁵³⁷ Vevia Sturm, Becky Ehlers, Sherie Korneman, Kelly Morriss, and Dan Redington, *PREA Audit: Auditor's Summary of Report – Adult Prisons and Jails: Louisiana State Penitentiary* (Jefferson City: Missouri Department of Corrections, 2016), accessed 18.8.2023, <https://doc.louisiana.gov/wp-content/uploads/2023/02/LSP-PREA-Audit-Report2016.pdf>.

The provision of certified job programmes at Winn is more varied than at LSP, ranging from manual professions (“automotive repair”, “welding”, “carpentry”), and a focus on technology (“Computer specialist”, “electrician”, “office system technology”, “heating, air conditioning”), to education on the “care and development of young children”, “horticulture” and “culinary arts”.⁵³⁸ Similar to LSP, the standardised pre-release curriculum is applied, which is employed in collaboration with the Northwest Regional Reentry Program.⁵³⁹ When comparing the available programmes within the two institutions, Winn provides thirteen certified courses, while LSP’s certification only includes six.⁵⁴⁰

Domain of the Empirical

For personal experiences from the LSP, the Angolite article “Raising Cane (Syrup), The Old-Fashioned Way”⁵⁴¹ was consulted. The resulting codes primarily focussed on the “History of Angola” (18), “Cooperation between correctional personnel and inmates” (12), and “Manual labour” (10). Minor categories can be grouped into the “restoration and use of antiquated equipment” (5), “personal interest” (7: 2 from inmates, 5 from staff), and one instance for the “commercialisation” of the syrup produced. The overall impression thus contradicts previously established connotations of sugar cane farming, that formed in relation to harsh conditions under slavery and forced labour during the 20th century, while stressing the personal interest of convicts and the collaborative effort between them and correctional officers.

There were eighteen codes attributed to LSP’s history surrounding the farming of sugarcane, with nine instances simply describing the historical background of old tools or methods used for production, as part of the collaborative effort to reintroduce sugarcane as one of LSP’s crops. The other nine instances provide a critical historical perspective and are provided via quotes from an assistant warden, that critically elaborates on its implementation during slavery and the gruelling labour conditions for workers during the “sugarcane era”, lasting until the 1970s. This critical assessment presents a vital part to the overall message of this article, as it stresses the importance of historical awareness multiple times, when it asserts that the prior periods of farming sugarcane were “brutal” and LSP “should never forget the mistakes of

⁵³⁸ Louisiana Commission on Law Enforcement, and Administration of Criminal Justice Statistical Analysis Center, *2016 Status Report*, 21f.

⁵³⁹ Louisiana Commission on Law Enforcement, and Administration of Criminal Justice Statistical Analysis Center, *2016 Status Report*, 8.

⁵⁴⁰ Louisiana Commission on Law Enforcement, and Administration of Criminal Justice Statistical Analysis Center, *2016 Status Report*, 21f.

⁵⁴¹ Jeffrey Hilburn, “Raising Cane (Syrup), The Old-Fashioned Way,” *The Angolite* 39, no. 1 (2014), 8-11.

the past". It further elaborates on the "long hours, harsh living and working conditions", and characterises the former guards as "far more brutal". These assertions are followed up by a correctional officer's quote on current "rehabilitation" and "re-entry programmes", that suggests a positive shift away from oppressive carceral practices but does not address the conditions of regular labour on LSP's fields or the disciplinary regiment at the time the article in the Angolite was published. The source thus implies the inhumane treatment of inmate workers to be a feature of a bygone era, that is unacceptable under the facility's more modern approach to criminal rehabilitation, while omitting crucial context on the continued application of these practices in LSP's regular farming programmes.

Observations concerning the aspects of "collaboration" indicate a positive reception by inmates, who volunteered to extra work by cultivating sugarcane, as well as staff, who expressed interest in the preservation of LSP's history and the working process itself. This is supported by assessments of the author, interviews of people involved in the project, and photographs highlighting the collaboration between participating parties. The twelve observed instances explicitly focussing on inmate-staff collaboration and cooperation between inmates of different units describe a pleasant atmosphere, that motivates people participating in the farming process and encourages active contribution to the project's success. However, when considering expressions of individuals' agency an inherent inequality within this cooperation is noticeable in the author's descriptions, since agency is primarily assigned to correctional officials, while prisoners' actions mainly concern the manual labour. The only exception to this being the initial proposal to refurbish the old equipment by an inmate, leaving six codes attributed to "agency in decision-making" to correctional officers and a staff assistant. This is not surprising in the context of a carceral facility but limits the article's assertion of cooperation and its positive effects to the work itself, while credit for its implementation and success are attributed to prison officials.

Regarding the specific observations of Winn's labour programmes in 2015 in Bauer's reporting, only a limited number of examples concern prison labour. They mostly consist of short comments by guards and inmates on the state of labour and general shortages in staff. One guard mentions, how inmates are supposed to be assigned to a "productive full-time activity" for five days per week, but these, along with hobby shops, access to the law library and recreational activities, were cut or run inconsistently, since "there aren't enough guards to

watch over it” even after employing additional staff from out of state.⁵⁴² Prisoners’ opinions on Winn reflect this impression, especially in connection with the lacking functionality of resocialisation programmes and psychological care, with one inmate stating: “Prison don’t rehabilitate you. You have to rehabilitate yourself”.⁵⁴³ On a related note to the cost-cutting, correctional officers’ statements on prison labour also entailed descriptions on how poor working conditions and low wages for regular guards (\$9/h) lowered interest in applying to empty positions and fostered closer relationships between inmates and guards, which was stated to lower overall compliance with instructions and entice corruption.⁵⁴⁴ These accounts of individuals’ perceptions not only call the functionality of Winn’s labour programmes into question, but also attribute the resulting shortcomings to staffing and funding issues in its private for-profit model.

5.2.2 Death Penalty

Domain of the Actual

LSP has a special position in the enforcement of capital punishment, as it is the sole provider of housing for Louisiana’s male death row convicts and also the only facility to administer executions of male inmates in the state, consequently aligning the facility’s policies on the issue with state regulations.⁵⁴⁵ As a consequence, the analysis of carceral facilities’ practices and experiences of people involved therein only applies to LSP in this study, since Winn does not play any role in enforcing these sentences. As mentioned with regards to the domain of the real, no executions took place in Louisiana after 2010, in part due to the controversial nature of lethal injections and also because of insufficient supply of the necessary drugs. Thus, the enforcement of the death penalty for the selected timeframe of this study primarily concerns the confinement of convicts. Since comments on the handling of death row inmates consequently overlap with descriptions provided in subsequent sections on prison health care and solitary confinement, they will not be discussed in further detail at this point. The following assessment of the domain of the empirical will focus on a lengthy article, commenting on developments surrounding legislative efforts to abolish capital punishment, published in *The Angolite* to infer the author’s viewpoint from.

⁵⁴² Bauer, *American Prison*, 91, 142, 149.

⁵⁴³ Bauer, *American Prison*, 141.

⁵⁴⁴ Bauer, *American Prison*, 48f, 208,

⁵⁴⁵ Johnson, and Quigley, “An Analysis of Economic Cost of Maintaining a Capital Punishment System in the Pelican State”, 5f.

The coding process of the Angolite article “Debating Death” on reform efforts from 2018⁵⁴⁶ helped to reveal the article’s general intentions and highlighted, how the author approached the content and its structure to convey the perspective of the incarcerated population, while also providing information for understanding dominant political thoughts. The broadest categories, established by process of axial coding, consisted of “Arguments in support of reforms” and “Arguments opposing reforms”, which encompassed the viewpoints of “Legislators/Political actors”, “Scientific/Empirical research by the government or NGOs”, and “Independent news coverage/Accounts from actors not involved with the prison system”. A distinction made to highlight the fact, that support for upholding capital punishment laws was depicted as consisting exclusively of Republican members of Congress, while abolition was depicted as being endorsed by not only Democrats, but also by scientific assessments (Legislative Fiscal Office, Louisiana Association of Criminal Defense Attorneys, Louisiana District Attorney Association, Multi Quest Poll) and public figures and organisations (e.g. a basketball player, the Catholic Church, various newspapers). This favouring of positions critical of the death sentence includes the provision of a poll showing a lack of public support for maintaining capital punishment (“24.3% voting support”), while the statement of a Republican representative to act on behalf of “the 130.000 people who sent me here” was not substantiated by data. Similarly, assertions of religious morality in favour of abolition were contextualised with a statement by the Catholic church, who “displayed solidarity against the ‘immoral’ death penalty”, whereas a Republican representative’s insistence, that “30 places in the Bible [...] proscribe the death penalty” and that the American government was “ordained by God” to enforce it, were left uncommented. These noticeable biases of the author advocate for the abandoning of capital punishment to be more trustworthy and based on evidence, when compared to their counterparts.

Concerning the more specific codes initially observed during open coding, significant overlaps with established paradigms of American Legal culture were identified, with multiple references to civil religious sentiments, including: nine instances of “retributivism” and its alternatives, ten of “moral/religious argumentation”, as well as sixteen codes relating to “financial

⁵⁴⁶ John Corley, “Debating Death,” *The Angolite* 43, no. 2 (2018), 14-19.

considerations” (as part of an extensive economic analysis), eighteen regarding “accuracy of verdicts”, and thirteen on “systemic racial bias”.

Notable observations concerning these codes include the close proximity of arguments in support of a tough-on-crime legislation to rebuttals of those claims – including assertions of American institutions’ moral authority, retributivist tenets therein, and denials of racial discrimination. It is also noteworthy, that sections on racial discrimination, wrongful convictions, and economic financial considerations did not primarily rest on quotes from politicians, like those focussing on religion, retribution or legislative proposals. Instead, they presented a collection of examples for malpractice in support of abolition, prior to elaborating on any counterarguments. Thus, a trend towards depicting the support of reforms as more favourable can be recognised, with standing paradigms of Louisiana’s legal culture and advocates’ expressions thereof (“use the justice system that we have been ordained by god”, “death penalty is ‘a recognition of how [...] sacred life is”, “it’s not my job to forgive the people who commit murders”,...) being at the centre of its criticism.

5.2.3 Health Care Services

Domain of the Actual

In the observations of this domain, regulations for the treatment of physical and mental health issues at LSP and Winn are explored before specific experiences are discussed in the domain of the empirical. Within LSP, multiple counselling and peer-counselling services connected to their re-entry programmes have been established. Their defining characteristic is the emphasis on Christian theology and morality training, excessively promoted by former warden Burl Cain. In these, the LSP employs graduates from the New Orleans Baptist Theological Seminary to counsel convicts and educate them to take on lay-ministry services for their fellow inmates, including counselling, hospice work, along with delivering and dealing with distressing news.⁵⁴⁷ While the practice was motivated by cuts in educational funds in 1995, it has become a staple of the prison’s modern approach to rehabilitation and inmate management.⁵⁴⁸ Despite insufficient empirical evidence on the effectiveness of this approach⁵⁴⁹, LSP’s model has been

⁵⁴⁷ Hallett, Hays, Johnson, Jang, and Duwe, *The Angola Prison Seminary*, 14-22.

⁵⁴⁸ Erik Eckholm, “Bible College Helps Some at Louisiana Prison Find Peace,” *The New York Times*, 5.10.2013, accessed 20.11.2023, <https://www.nytimes.com/2013/10/06/us/bible-college-helps-some-at-louisiana-prison-find-peace.html>.

⁵⁴⁹ Hallett, Hays, Johnson, Jang, and Duwe, *The Angola Prison Seminary*, 45f, 202.

Sung Joon Jang, and Byron R. Johnson, “Religion and Rehabilitation as Moral Reform: Conceptualization and Preliminary Evidence,” *American Journal of Criminal Justice* 49 (2022), 63-66.

adopted by carceral institutions in Texas, Georgia, and Mississippi, after rates of inmate violence dropped at LSP.⁵⁵⁰ Thus, continuing the previously observed tendency of American legal culture to present religious piety as the antithesis to criminality.

Despite employing these methods of improving prisoners' mental well-being, LSP's policies regarding physical health care as well as its handling of chronic and special care have been documented to be lacking. One recent house investigation revealed, that none of their medical staff had been fully licensed for years, with insufficient records of their credentials having been kept.⁵⁵¹ The same report on LSP's health care services has highlighted, that only ~30% of health related complaints were granted by the facility, while 50% of the 8.375 requests for specialty medical consultations were completed in 2019, despite routinely employing the help of underqualified EMTs to compensate for the insufficient medical staff.⁵⁵² This included a four year period of insufficient preventive procedures for a diabetic patient between 2015 and 2019.⁵⁵³ Still, the facility received high scores and a continued annual accreditation by the Louisiana Department of Public Safety & Corrections since 1999.⁵⁵⁴ These disparities in health care highlight the importance of this method's differentiation between the three different domains, since diverging characterisations of legal culture within a facility are noticeable in analyses of LSP's policies alone.

A PREA audit conducted in 2017 argued Winn to have generally met standards of health care, with regard to the treatment of physical injuries, but was blamed not to have established a memorandum of understanding with local mental health care providers, who were recommended to be employed for coping with emergency mental health issues and to ensure the effective access in non-emergency cases.⁵⁵⁵ In its assessment on Winn's implementation of administrative remedies, as required by the PLRA, it deemed necessary standards to have been met and noted that inmates were allowed to receive help from outside the facility, when

⁵⁵⁰ Stephanie Gaskill, "Moral Rehabilitation: Religion, Race, and Reform in America's Incarceration Capital" (PhD Diss. University of North Carolina at Chapel Hill, 2017), 7.

⁵⁵¹ Andrea Armstrong, and Bruce Reilly, *Adequacy of Healthcare Provided in Louisiana State Prisons* (New Orleans: Loyola University New Orleans, 2021), 11.

⁵⁵² Armstrong, and Reilly, *Adequacy of Healthcare*, 3, 12.

⁵⁵³ Armstrong, and Reilly, *Adequacy of Healthcare*, 7f.

⁵⁵⁴ Louisiana Division of Administration, *Executive Budget Supporting Document [FY 2017-2018]: 08A - Correction Services*, accessed 20.11.2023, <https://www.doa.la.gov/doa/opb/budget-documents/executive-budgets/fy18/>, 34f.

Louisiana Department of Public Safety and Corrections, *2019 Annual Report* (Baton Rouge: Louisiana Department of Public Safety and Corrections, 2020), 27.

⁵⁵⁵ Sturm, Helton, and Dye, *PREA Audit: Winn Correctional Center*, 70f.

filing a report.⁵⁵⁶ Thus, providing additional avenues for complaints and facilitating its access. However, the ACLU raised criticisms against Winn in a 2020 report, that mentioned understaffing of its medical personnel and questioned the suitability of its only doctor, Mark Singleton, who had been previously placed on probation, following his suspension from a New Mexico health care facility, where he did not meet the “standard of care”.⁵⁵⁷ These concerns are presented as especially dire, since Singleton was the only practicing physician for over 1400 individuals at Winn, after LaSalle took over operations, and no on-site psychiatrists or psychologists were employed, only being called upon when acute issues occurred, leading to longer waiting periods in emergencies.⁵⁵⁸

In consideration of the PLRA, lawsuits from inmates at Winn and LSP are consulted, to review how people’s experiences with carceral institutions’ health care policies, and courts’ handling of complaints regarding them, reflect the observations from other domains. The cases include those of *Lewis et al. v. Cain et al.* (LSP), a class-action lawsuit, claiming insufficient health care on the basis of regulations from the Americans with Disabilities Act⁵⁵⁹, *Robert Scott v. CCA*⁵⁶⁰ (Winn), which is introduced as part of Bauer’s general observations on health care at Winn, and *Garner v. Winn Correctional Center*⁵⁶¹, which deals with the denial of medical care. The handling of mental health issues at Winn will also be addressed in connection with solitary confinement, since observations on these issues overlapped. In addition to these court cases the coding results of an Angolite article on LSP’s re-entry programmes are presented, focussing on the New Orleans Baptist Theological Seminary’s impact, since these present the most common avenue for receiving regular mental health care for inmates.⁵⁶² While the selected article was initially intended as a source for labour conditions, it was repurposed during the coding process, when its relevance for LSP’s rehabilitation programmes was discovered.

⁵⁵⁶ Sturm, Helton, and Dye, *PREA Audit: Winn Correctional Center*, 46-48.

⁵⁵⁷ Hyunhye Cho, Tidwell Cullen, Long et al. *ACLU Report – Justice-Free Zones*, 45. Bauer, *American Prison*, 205.

⁵⁵⁸ Bauer, *American Prison*, 277.

⁵⁵⁹ *Lewis et al. v. Cain et al.*, 3:15-CV-00318 (United States District Court Middle District Louisiana, 2018), <https://clearinghouse.net/doc/98980/>.

John Corley, “News Briefs – Class Action,” *The Angolite* 43, no. 2 (2018), 5-6.

⁵⁶⁰ *Scott v. Corrections Corporation of America*, No. 3:13CV00168-DMB-JMV (United States District Court Western District of Louisiana Alexandria Division, 2015), <https://docs.justia.com/cases/federal/district-courts/mississippi/msndce/3:2013cv00168/34745/24>.

⁵⁶¹ *Garner v. Winn Correctional Center*, 1:08-CV-01977 (US District Court, Western District of Louisiana, Alexandria Division, 18.5.2011), <https://docs.justia.com/cases/federal/district-courts/louisiana/lawdce/1:2008cv01977/109871/7>.

⁵⁶² Jaime Haduro, „Seeing for Themselves,” *The Angolite* 41, no. 1&2 (2016), 14-15.

In Shane Bauer's undercover reporting during his four-month period at Winnfield, he recorded how a major concern for health care services was the unavailability of psychological assistance for the roughly 450 inmates, who required it at the time, but were only provided with one full-time social worker, as well as a part-time psychologist and psychiatrist.⁵⁶³ The availability of mental health assistance at Winn was described to show severe deficits, that incentivised inmates to be placed in isolated care under suicide watch, to move up the waiting list of appointments for mental health counselling, albeit at the cost of further deprivation of human interaction.⁵⁶⁴ This frequent practice of isolating inmates in mental distress is subsequently described by Bauer to have regularly led to the utilisation of conventional segregation units for suicide watch, despite not fulfilling the guidelines for this purpose, which will become relevant in the section on solitary confinement.

Bauer's recordings also included an interaction with Robert Scott, an amputee inmate, whose fingers and legs were removed as a consequence of circulatory problems and who mentioned how his repeated requests for health care had been denied, because they "didn't believe [him], or they talked bad to [him]", as Scott put it.⁵⁶⁵ Scott went on to raise legal claims of compensation against the facility operators⁵⁶⁶, in which he alleged repeated requests for secondary assessments to have been denied and that he had not been assessed by a doctor even after collapsing due to pain and exhaustion. Only after other inmates objected to share his cell, due to fears of contagion, stemming from signs of necrosis that were reportedly visible on Scott's extremities, did facility staff take action, leading to the amputation of his limbs. The allegations were ultimately dismissed under prejudice with no right to compensation for the plaintiff, since the defendant James Leblanc (Secretary of the Louisiana DPS&C) could not be held liable for misconduct of prison employees, since no policies enforced by him could be tied directly to the medical shortcomings. Neither did the incident fall under "deliberate indifference", due to insufficient proof provided by Scott.

⁵⁶³ Bauer, *American Prison*, 131f.

⁵⁶⁴ Katie Rose Quandt, and Alexi Jones, "Research Roundup: Incarceration can Cause Lasting Damage to Mental Health," *Prison Policy Incentive*, 13.5.2021, accessed 13.1.2024, <https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/>.

⁵⁶⁵ Bauer, *American Prisons*, 49.

⁵⁶⁶ Scott v. Corrections Corporation of America, No. 3:13CV00168-DMB-JMV (United States District Court Western District of Louisiana Alexandria Division, 2015), <https://docs.justia.com/cases/federal/district-courts/mississippi/msndce/3:2013cv00168/34745/24>.

An instance, in which courts partially granted compensation was that of *Wade Garner v. Winn Correctional Center*⁵⁶⁷, which alleged a denial of medical care for an emergency service, after his complaints of severe abdominal pain were not treated immediately, but only late afternoon the following day. After the examination, Garner was transported to an emergency room at a nearby hospital, where his ruptured appendix was removed. Compensation was granted on the grounds, that Garner's medical condition and severe pain did not align with correctional officers' claims of him displaying no symptoms or signs of distress in the morning preceding the operation.⁵⁶⁸ This assessment led to the affirmation of Garner's compensatory damages request of \$5000, but denied any claims to punitive and injunctive relief, indicating the court's verdict to rule out any malicious intent or the possibility of this case representing habitual behaviour for defendants. Thus, verifying the plaintiff's assertion of correctional officers' neglect and insufficient attention to prisoner care, while also reaffirming the adequacy of the current system, by characterising Garner's case as an isolated instance.

Regarding insights from legal actions against LSP, the class-action lawsuit *Lewis et al. v. Cain et al.* presented the most prominent example, alleging the medical misconduct at LSP to violate the over 6000 inmates' 8th Amendment protection against "cruel and unusual punishment". The allegations not only stressed individual experiences of the eleven plaintiffs, but also claimed systemic issues to be at the core of the malpractice described by them. The extensive suit also addressed the history of medical and constitutional deficiencies in LSP's health care provisions to have been consistently documented "for more than 25 years", especially with regard to delays in treatment, denial of medical care, violations of the Americans with Disabilities Act, along with insufficient staffing and documentation of necessary follow-up care.⁵⁶⁹ Plaintiffs also alleged practices at LSP to disincentivise inmates from requesting medical assistance, such as accusations of prisoners' feigning of injuries to avoid field labour or imposing solitary confinement for perceived disobedience; a means of enforcing compliance noted to have disincentivised some from participating as plaintiffs in this suit.⁵⁷⁰

⁵⁶⁷ *Lewis et al. v. Cain et al.*, 3:15-CV-00318 (United States District Court Middle District Louisiana, 2018), <https://clearinghouse.net/doc/98980/>.

⁵⁶⁸ *Lewis et al. v. Cain et al.*, 3:15-CV-00318 (United States District Court Middle District Louisiana, 2018), 7-8, <https://clearinghouse.net/doc/98980/>.

⁵⁶⁹ *Lewis et al. v. Cain et al.*, *Second Amendment: Statement of Claim*, 34-39, 39-43, 48-56, 57, 72-75. <https://www.laaclu.org/en/cases/lewis-v-cain>.

⁵⁷⁰ *Lewis et al. v. Cain et al.*, *Second Amendment: Statement of Claim*, 51f. <https://www.laaclu.org/en/cases/lewis-v-cain>.

The 2021 verdict by Federal Judge Shelly K. concurred with many allegations on violations of the 8th Amendment and the Americans with Disabilities Act, highlighting the areas of general clinical care, specialty care, infirmary care, and emergency care as not upholding constitutional standards in the allegations brought forward by the lawsuit. These “overwhelming deficiencies in medical leadership and administration of health care at LSP” and “constitutional violations” were compounded by the fact, that “defendants [had] been aware of these deficiencies for decades”, without showing efforts of implementing countermeasures.⁵⁷¹ Contrary to the previous verdict in *Garner v. Winn*, systemic problems with LSP’s handling of health care were addressed as part of this class-action lawsuit, whose purpose was not only to compensate individual plaintiffs, but positively affect treatment of prisoners at LSP as a whole.

Since the allegations above mainly address physical health care, this short analysis of the Angolite article “Seeing for Themselves”⁵⁷², on presenting re-entry programmes to new members of the board of pardons, will allow for insights into individuals’ perspectives on LSP’s peer-oriented rehabilitative programme surrounding the New Orleans Baptist Theological Seminary. The general tone of the article was positive throughout, highlighting different professions, success-rates, and the positive impact of LSP’s rehabilitation programmes on inter-personal relationships among inmates. While the codes assigned to this article included 13 instances of describing “available labour-focussed re-entry programmes”, the main attention of this piece lay on the “moral rehabilitation” (27) and its fostering of “positive character traits” (8) as the underlying principle behind the success of these services. In these two categories, the author primarily discussed communal forms of social rehabilitation, as opposed to strictly learning religious principles and the approach’s underlying Christian morality. Perspectives of correctional officers and inmate mentors were included in these comments, which all aligned in their reasoning for supporting LSP’s approach for improving inmates’ well-being, by supplementing mental health care services with peer-mentors’ guidance. Apart from its effect on people’s behaviour and will to work, these mainly consist of praise for inmate ministers’ function as “role models” (8) and its effectiveness as a result of extended “social bonding/solidarity” (9) amongst participants. While there is a mention of “religious components” (1), they are backgrounded in favour of social elements. The analysis

⁵⁷¹ Civil Rights Impact Litigation, “Lewis v. Cain Trial Remedy Phase Begins June 6,” *The Promise for Justice Initiative*, 6.6.2022, accessed 15.1.2024, <https://promiseofjustice.org/news/lewis-v-cain-trial-remedy-phase-begins-june-6#:~:text=The%20ruling%20made%20by%20the,ADA%20and%20the%20Rehabilitation%20Act.>

⁵⁷² Jamie Maduro, “Seeing for Themselves,” *The Angolite* 41, no. 1&2 (2016), 14-15.

of this article highlights inmates' and guards' positive reception of LSP's ministry programme and the benefits of building meaningful relationships with others to improve people's mental stability and chances of successfully completing re-entry programmes. However, it does not address the availability or quality of professional mental health care services for prisoners, as part of its focus is placed on resocialisation and solely relies on moral education instead of considering psychological care as part of the process.

5.2.4 Solitary confinement

Domain of the Actual

A routine implementation of solitary confinement can be observed in the policies of LSP and Winn even for nonviolent rule infractions, which mirrors the liberal interpretation of the relating legislation on “enforcing obedience to the police regulations of the penitentiary”, with it being frequently applied for administrative segregation, extended lockdown, closed cell and additional restrictions for death row inmates or ones confined to medical treatment units.⁵⁷³ Investigations by the Vera institute for Justice and the Association of State Correctional Administrators display the habitual and excessive use of solitary confinement in the state, which consistently exceeded that of other states, with 14.5% of all incarcerated having spent time in isolation during 2014⁵⁷⁴, and 17.4% during 2016⁵⁷⁵, quadrupling the national average. Data from the reports also indicated Louisiana's disproportionate separation of Black inmates from other prisoners, aligning with assumptions surrounding the state's history of racial discrimination.⁵⁷⁶

This sweeping application of inmate isolation is also reflected in the LSP's regulatory processes, as indicated by a 2016 PREA audit, which recognised excessive use of administrative isolation without provision of the required documentation concerning the purpose and possible alternatives to isolation, and a lack of mandated avenues for contacting the “Crime Stoppers” hotline (especially for death row inmates), that is responsible for processing inmates' reports

⁵⁷³ David Cloud, Jessi LaChance, Lionel Smith, and Lauren Galarza, *The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the Louisiana Department of Public Safety and Corrections, and Progress Toward Implementation* (New York: Vera Institute for Justice, 2019), 19f, 31, 34.

⁵⁷⁴ George Camp, and Camille Camp, *Aiming to Reduce Time-In-Cell: Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reforms* (New Haven: ASCA & The Arthur Liam Public Interest Program, 2016), 22.

⁵⁷⁵ Cloud, LaChance, Smith, Galarza *The Safe Alternatives to Segregation Initiative*, 5, 16, 29-32.

⁵⁷⁶ Camp, and Camp, *Aiming to Reduce Time-In-Cell*, 37.

Cloud, LaCachance, Smith, Galarza, *The Safe Alternatives to Segregation Initiative*, 67-69.

of abuse, harassment, and staff neglect.⁵⁷⁷ Following the audit, the included policy recommendations were noted to have been successfully implemented to reduce the number of administrative isolation.⁵⁷⁸ Additionally, LSP has designated a transitioning dormitory for people leaving certain forms of prolonged isolation to gradually re-enter the general prison population.⁵⁷⁹

While the data on Winn was less expansive, insights on the standards at the facility could be gained from a 2020 assessment by the ACLU, which concluded practices under LaSalle's management to present continuations of those under CCA, prior to 2015.⁵⁸⁰ Contrary to a governmental audit from 2018, which concluded that all of the 45 standards were met by the facility, the ACLU report mentions shortcomings in multiple areas, including staffing shortages, deprivation of health care, and the inappropriate use of solitary confinement for disciplinary and mental health care purposes.⁵⁸¹ The specific reasons for these disparities could not be determined in detail, but might be related to more strict criteria by the ACLU and preparations to accommodate for governmental guidelines and improve conditions for the scheduled inspection by state officials.

Domain of the Empirical

The domain of the empirical will be explored through an opinion piece by The Angolite editor John Corley titled "Solitary" from 2015 and by Bauer's observations regarding Winn's use of solitary confinement units during the same year, to address possible similarities and differences between the private and public sector.

In Corley's comments on solitary confinement, most arguments are in rebuttal of its usefulness and appropriateness as a penal measure, since the article focusses on the negative consequences of isolation to adults' and juveniles' mental health. No arguments in support of the practice are presented, compared to the seven instances of codes on the "detrimental physical or mental health consequences". One of which includes a list of 14 psychological conditions associated with prologued isolation. In the category of "conditions of solitary confinement", the code of "social isolation/interactions" was assigned five times and "material conditions/space" three times. Additionally, the arbitrary nature of diverging sets of rules for

⁵⁷⁷ Sturm, Ehlers, Korneman, Morriss, and Redington, *PREA Audit: Louisiana State Penitentiary* 13-14.

⁵⁷⁸ Sturm, Ehlers, Korneman, Morriss, and Redington, *PREA Audit: Louisiana State Penitentiary* 13-14.

⁵⁷⁹ Cloud, LaChance, Smith, and Galarza, *The Safe Alternatives to Segregation Initiative*, 47.

⁵⁸⁰ Hyunhye Cho, Tidwell Cullen, Long et al. *ACLU Report – Justice-Free Zones*, 45.

⁵⁸¹ Sturm, Helton, and Dye, *PREA Audit: Winn Correctional Center*, 78-79.

the use of solitary confinement on state and national levels is mentioned three times. Once as being detrimental to its legitimacy as a means of punishment and establishing order; another time for hindering research efforts into the practice, since these irregularities make it impossible to provide more than estimates for statistical analyses on solitary confinement, and a third time when discussing procedures at juvenile detention facilities, where some states mandate youths to be allowed outside for a certain period of time, while others have no such regulations. Overall, this is a scathing criticism of solitary confinements' suitability for correctional purposes, that not only disapproves of its assumptions and methods, but of the insufficient uniformity of legislative regulations.

Like previously analysed materials from *The Angolite*, several assessments from legal and scientific authorities on the issue were incorporated, to provide evidence for Corley's evaluation. Such is the case with Supreme Justice Anthony Kennedy's description of isolated confinement's "near-total isolation exact[ing] a terrible price" and his assertion that solitary is "most dangerous to young people", pointing to courts' responsibility in future decisions to evaluate, whether any alternatives to long-term confinement are viable in place of isolation. Other references to valid assessments include academic reports on the lack of consistency in "state legislatures' differences", when applying solitary confinement (6). Similarly, campaigns and legal actions from the ACLU, the Vera Institute of Justice, and the Marshall Project for legislative changes to ban its use at juvenile detention centres in Illinois, Mississippi, and New York, and establish general restrictions for its use on minors and the mentally ill, as well as re-socialisation programmes when exiting isolation in 10 other states (excluding Louisiana) were promoted (4).

Whereas insights from prisoners at LSP primarily addressed systemic issues and categorical consequences of isolation, the insights from Shane Bauer's experiences at Winn present a specific case within this wider frame. Descriptions of situations involving Damien Coestly, an inmate who experienced extended periods of mental distress at Winn and whose condition deteriorated parallel to lengthy periods spent in isolation cells, leading to his suicide. His prolonged stay on suicide watch can be understood in connection with Winn's practice of using solitary confinement cells for purposes of monitoring inmates in mental distress, mentioned previously.

The conditions of Coestly's isolation described by Bauer restricted access to anything but a blanket and some toilet paper, depriving him of clothing, a mattress, books or any other form of stimulation, and providing him with less nutrition than is recommended by official governmental recommendations.⁵⁸² The explanation given by a social worker present was, that this deprivation would discourage pretended threats of suicidal intent, since inmates prefer suicide watch over protective custody, which suggests cooperation with correctional officers to the detriment of fellow inmates. Expressed consideration also include the saving of costs, by disincentivising inmates to stay on suicide watch, since staff needs to be allocated to the surveillance of one or two prisoners, instead of a whole group. An example of this is provided when an inmate in regular solitary confinement, who experienced a psychotic episode, was denied his request to be placed on suicide watch, because the available spaces were already full.⁵⁸³

The further observations on Coestly during Bauer's shift at the isolation unit included an instance, during which he claimed to experience a mental health emergency and threatened to purposely break his own neck if nothing was done. The unit manager "roll[ed] her eyes" and no further action was taken in this instance.⁵⁸⁴ After two weeks in segregated isolation, Coestly was moved to a regular isolation cell with a "severely mentally ill" elderly man without following protocol and receiving approval of a mental health professional or physician.⁵⁸⁵ This irregular decision resulted in Coestly demanding to be placed on suicide watch, after relaying fears of "feeling suicidal" to the officer overseeing his ward. Despite multiple requests and threats, no action was taken and procedures for monitoring the cells every 30 minutes were neglected, leading to Coestly's death. CCA argued, that he did not commit suicide at Winn, because he "was no longer in CCA's custody when he died", after being transported to a nearby hospital and pronounced dead, leaving the case out of official records on the facility's suicide rate.⁵⁸⁶

Coestly's files included a psychological assessment, which acknowledged his feelings of guilt and mental distress, such as accounts of him describing "the voice of the person that he killed"

⁵⁸² Bauer, *American Prison*, 132.

⁵⁸³ Bauer, *American Prison*, 134.

⁵⁸⁴ Bauer, *American Prison*, 134.

⁵⁸⁵ Bauer, *American Prison*, 162.

⁵⁸⁶ Bauer, *American Prison*, 167.

that told him to “kill himself and join him”.⁵⁸⁷ Yet, no significant countermeasures to prevent his mental decline were taken, despite ample documentation of his willingness to receive psychological treatment spanning “over two years”⁵⁸⁸ before his death. The repeated appeals for psychological consultation were characterised by Winn’s psychologist as followed: “inmate has long history of playing games and trying to manipulate the system”.⁵⁸⁹ In an interview with his mother she described how visible his deterioration was to her, as his weight dropped from 55kg to 32kg during the six months she did not have direct contact with him, which was a result of hunger strikes to protest against the conditions he was confined under and a lack of exercise in solitary confinement.⁵⁹⁰

5.3 Discussion

In the following discussion, results of the domains of the real, actual, and empirical from this case study will be contrasted to previous observations on American legal culture. However, due to the limited scope of this case study, the results concerning the domain of the actual and empirical are only generalisable to a limited extent. Yet, the methodological approach’s combination of these insights with the assessment of legal guidelines through the domain of the real, several overlapping issues could be isolated, that bolster the validity of the gathered results. There was limited variability in the private and public prisons’ approaches to criminal punishment, with main difference being the more limited provision of funds for prison services and staffing at Winn, when compared to LSP. Insights on the treatment of prisoners in the three domains suggest a continuation of legal cultural principles along the central tenets established in the chapters on American myth criticism and whose evolution was further described in relation to mass incarceration. Specifically, it was observed that retributivist narratives of individual responsibility, national moral values, and financial profitability of incarceration still form the basis for justifying harsher and more exploitative prison practices compared to other western nations, which is warranted on the grounds of American legal culture’s presumptions of its institutions’ good faith conduct and moral sanctity. The subsequent section will thus

⁵⁸⁷ Bauer, *American Prison*, 165.

⁵⁸⁸ Bauer, *American Prison*, 165.

⁵⁸⁹ Bauer, *American Prison*, 166f

⁵⁹⁰ Shane Bauer, “He Weighed 71 Pounds. That was Like Somebody Starving,” *Mother Jones*, 2.8.2016, accessed 21.9.2023, <https://www.motherjones.com/politics/2016/08/damien-coestly-prisoner-suicide-winn-cca-private-prison/>.

explain how these conclusions were drawn and in how far noticed changes in those spheres can be attributed to a shift in American legal culture.

The main conclusions from this analysis indicate the retributivist and moralistic approaches to criminal punishment to have been maintained in multiple spheres of Louisiana's legal culture. This is not only limited to internal processes – which include those involving prison officials, inmates, legislators, and courts –, but also extends to external processes – such as the provision of post-release labour opportunities, that involve people not directly affiliated with the prison system. The former was predominantly represented and was observed in the maintained deprivation of criminals' rights on a structural level in the domain of the real and lacking resources and/or diligence in providing inmates with their rights when regulations are enacted by prisons as part of the domain of the actual. This is also reflected in the domain of the empirical by individuals' specific accounts. The disregard for constitutional and human rights observed in this study confirms the continued perseverance of stigmas against the incarcerated within American legal culture, that reinforce the rhetoric surrounding criminality of mass incarceration era politics and are realised in laws such as the PLRA the Fair Labor Standards Act. The racial biases inherent to this stigmatisation and incarceration practices of the 20th century were also shown to have been kept to a certain degree, as a disproportionate number of Louisiana's incarcerated population consists of Black convicts throughout the observed period and disciplinary actions (e.g. solitary confinement) having been documented to be used more commonly against non-White inmates. In the observed statements of correctional officers and legislators, the shortcomings of prior decades' and centuries' approaches to criminal punishment have only been recognised to a limited extent, with the American history of discrimination in relation to its incarceration policies not having entered the historical consciousness of observed individuals. The system can thus be stated to still be prejudiced against Louisiana's most vulnerable populations, by building on the socioeconomic disadvantages of poor neighbourhoods, especially urban communities of colour, whose formation and stigmatisation was discussed in prior chapters.

In the domain of the real this was observed in conservatives' ardent support for maintaining originalist principles of criminal justice and progressives' limited success in implementing systemic decarceration reforms, only being restricted to reductions of Louisiana's carceral population as part of austerity measures and to counteract overcrowded prisons. Thus, despite

lawmakers' noticeable efforts to limit American mass incarceration and its prison-industrial complex throughout the 2010s, with the 2017 reform package mandating a reduction of incarceration for low-level criminals, no substantial change has occurred to the underlying theories of criminal punishment or the death penalty as the key characteristic of criminal justice in the USA. While the comparison between practices of private and public carceral facilities in the domain of the actual did highlight some differences between the two, tenets of American legal culture were observed to have been maintained and practiced to a similar degree. Results from the domain of the empirical show deviations among experiences at LSP and Winn, with many deficiencies of the private sector relating to cost-cutting by facility operators as well as shortages in staff, services and their overall quality. While it has to be considered, that these observations were only made in the limited context of this study, they still allow a peek into the inner workings of two carceral facilities and their priorities in enforcing government-mandated punishments.

The labour regulations and conditions within carceral facilities indicate a shift towards a more rehabilitative approach, yet major concerns on prison-workers' rights and their treatment during, as well as after their incarceration remain as a result of the stigmatisation associated with criminals. This can be observed in the legislative framework, the observed facilities' provision of labour programmes, and former offenders' difficulties in finding an occupation after release, even if they were professionally trained as part of their sentence. Within the LSP, its selection of vocational programmes, along with cooperation between convicts, correctional officers, and community members, described in the Angolite articles, do indicate a shift towards less oppressive paradigms in its approach to carceral jobs. Nonetheless, its continued use of physically taxing and harmful labour practices on plantations under gruelling conditions as its main occupational option, described by outside observers and individual accounts alike, strongly suggests a continuity of retributivist sentiments and financial interests, as justification for subjecting people to these punishments. These observations are at odds with the affirmation of historical awareness among LSP's staff, described in the Angolite article on sugarcane farming, since these assertions of modern standards having nothing to do with former methods of brutal convict labour do not reflect the conditions at Angola's farm accurately. Within analyses of prison labour in the private sector, the most striking observation concerns the severe consequences of reduced spendings for prison programmes, staff wages, and services for inmates to raise the private management corporations' profits. This is done to

the detriment of the carceral population's access to (mental) health care, rehabilitative labour programmes and the overall quality drop of services available.

The research on the implementation of the death penalty in the three domains of critical realism are judged to be almost entirely in accordance with previously established principles of American legal culture, due to the preservation of laws and regulations from or preceding the height of mass incarceration. Specifically, this includes assertions of the criminal justice system's retributive function and the American legal code's moral obligation to mandate death sentences. Since capital punishment verdicts do not consider rehabilitation and reintegration into society but are restricted to the confinement and punishment of criminals, it is argued here, that the death penalty still represents the quintessence of state-sanctioned vengeance and 20th century paradigms of American legal culture. While partisan divide on this issue and a rise in proposed legislative changes following the 2017 penal reform package indicate a shift away from the political consensus that existed in the 1980s and 90s, the state has retained its tough-on-crime approach. This trend is not only restricted to the enforcement of capital punishment, but also includes the continuation of racial and class discriminations that disproportionately affect communities of colour and underprivileged sections of the population.

The standards of practice at LSP do not show major deviations from the legal requirements for detaining death row convicts during the observed period, with the only reported exceptions pertaining to the 2016 PREA audit's critique regarding inappropriate cross-gender video monitoring of death-row cells and their lack of access to issuing complaints to independent agencies.⁵⁹¹ Within The Angolite's reporting on the matter, characterisations of religious, retributivist justifications for the general legitimacy of capital punishment as a means of combating the evil predisposition of criminals, agree with traditions of American legal culture on the obligation of the government to punish severe crimes accordingly. Under the consideration, that the target audience of The Angolite consists of both, LSP's inmates and people outside of prisons, the codes and patterns observed in the article strongly suggest that the author not only conveys his displeasure with the current laws on capital punishment, but also has an interest in influencing public opinion in favour of reforms. This is argued here, by pointing to the inclusion of extensive analyses on economic, moral/religious and retributivist

⁵⁹¹ Sturm, Ehlers, Korneman, Morriss, and Redington, *PREA Audit: Louisiana State Penitentiary*, 6f, 14.

arguments, that were supported by multiple independent sources, when arguing in favour of abolishing the death penalty, while the only additional source supporting capital punishment questions the financial benefits of abolishing it. Thus, presenting reforms as the more desirable option, even for people with differing interests.

Legal guidelines regarding health care indicate a recognition of a right to adequate and timely health care services. However, these regulations also include the PLRA's hampering of convicts' access to these rights still suggests a certain degree of acceptable neglect of health care concerns within the domain of the real. This assertion is supported by the results from the other two domains of analysis, which show a significant number of inmates' medical requests not to have been processed in due time or at all as a consequence of medical personnel being understaffed or insufficiently qualified. The provided examples from successful lawsuits and unsuccessful litigations against carceral facilities also showcase how difficult a successful pursuit of legal claims for a can be under Louisiana's regulations. Standards of care in the observed private and public prisons did not differ fundamentally, with the handling of medical complaints at Winn and LSP including instances of neglect, that resulted in the deterioration of their conditions or even the death of convicts.

Despite severe lacks in the quality of health care services, some efforts to improve inmates' well-being by engaging in a cooperative and productive rehabilitation between inmates and correctional officers could be observed at LSP, especially with respect to its peer-mentoring programme through moral rehabilitation. The purpose of LSP's inclusion of Baptist ministers can be defined as fulfilling two separate purposes: On the one hand, it aligns with the civil religious belief that teaching of Christian morality counteracts future criminal behaviour. On the other hand, it establishes a system that enforces self- and peer-regulatory measures, mirroring mechanisms of rule abidance first introduced in Foucault's description of Panopticism. Yet, the enforcement of discipline still relies more heavily on control and surveillance, than the promotion of self-regulatory behaviour. Thus, while the program presents a shift towards focussing on the rehabilitative function of incarceration, it does not break existing patterns, but reinforces another assumption of American legal culture, by implying Christian morality to be synonymous with the pinnacle of American virtues.

The results on solitary confinement indicate two implications for its legal culture: Firstly, maintaining the vague nature of regulations for governing solitary confinement in Louisiana's

legislation allows for its more liberal implementation and prevents a uniform set of rules from being enforced. Thus, indicating an unwillingness to revoke or restrict carceral institution's use of forced isolation, despite its historically oppressive function and condemnations of its lasting psychological detriments. Secondly, the observations suggest it to be a financial necessity for correctional institutions, when considering the results of the domains of the actual and empirical, which highlight the use of solitary confinement as a mechanism for coping with disciplinary issues at LSP or the insufficient availability of mental health professionals at Winn. In general, the legal interpretation of this practice still follows the rules established in legal documents used during the 19th and 20th centuries, which contradict the originally intended use of social isolation for a limited period to allow for the reflexion of criminal behaviour and expanded it to be applied as a universal solution for administrative and disciplinary deficits.

Assessments and accounts of solitary confinement at Winn and LSP have confirmed this. These observations in the domain of the actual were exemplified by the case of Damien Coestly, whose psychological assessments indicate a negligence towards counteracting recognised patterns of mental crises, that were required to be addressed as part of inmate rehabilitation guidelines. Similarly, insights from audits, assessments and court cases related to solitary confinement at LSP indicate its flagrant use as an administrative means for controlling prison populations to be detrimental to incarcerated individuals' well-being and rehabilitation success. John Corley's Angolite article on "Solitary", as a representation of the domain of the empirical, challenged its broad acceptance within American legal culture by addressing the adverse effects of prolonged social isolation on mental health and promoting inmates' concerns about the practice. Additionally, his discussion of legislative limitations for its use in juvenile detention tries to deconstruct the stigmatisation of criminals, by expanding mainstream recognition of its negative impact on minors' mental state to be applied to adult prison populations. It is noticeable, that acceptance of the practice in the domains of the real and actual in accordance with American legal culture stand in stark contrast to observations in the domain of the empirical at the publicly run LSP and the privately operated Winn. Despite these growing criticisms, its frequent application to cope with disciplinary issues, understaffing, and a lack of funds for prisoners' mental health care still suggests a strong adherence to traditions of America's profit-oriented retributivist legal paradigms.

Noticeable developments regarding specific practices under established legal paradigms addressed by this study include the increase in reformatory propositions of abolishing or imposing severe restrictions on capital punishment and solitary confinement, as well as the maintained relevance of retributivist sentiments in American legal culture and moral justifications for the continuation of these carceral processes. The division of results into three domains highlighted structural and institutional attitudes of legal culture (real/actual) to have mainly supported and defended established legal paradigms for varying political and economic reasons, with the support for the 2017 reform package having been considerably boosted by its economising function. Relating to the political divide associated with these reform efforts, the bipartisan support for expanding America's prison industry seemed to have been fading since the turn of the century. In contrast to this, individuals' impressions (empirical) highlighted the hardships of prison life and advocated for sensible penal reforms that opposed the established legal culture. No significant differences between the results of privately and publicly operated facilities could be observed. Yet, the detrimental impact of private profit-oriented business models was noticeable with respect to the curtailing of rehabilitative and medical services at Winn, while criticisms of LSP indicated many problems to have resulted from an insufficient reappraisal of the facility's history of its exploitative treatment of prisoners. Whereas this study cannot conclusively assert the state of Louisiana's legal culture during the 2010s, its results indicate tacit systemic reforms not to have questioned general conceptions of criminal punishment, but only amended them to remain a sustainable and profitable part of America's prison-industrial complex. Nor did observations of prisons' conduct or individuals' experiences suggest the successful implementation of substantial reforms in prison practice in the years following their introduction.

6. Conclusion & Outlook

Throughout this thesis, three significant periods of American legal culture were subject to critical analysis, addressing the origins of its core principles and distinguishing features through American myth criticism, assessing the changes in legal culture under mass incarceration between the 1970s and early 2000s, and conducting a case study on the application of legal culture in two of Louisiana's state prisons during the mid-2010s. The initial review regarding underlying doctrines of American legal culture explored how ACR, conceptualised here through the application of American myth criticism, was represented in its legal practice and

approach to principles of justice. The subsequent investigation of transformations and expansions during the era of mass incarceration explored ideological changes and continuities within the previously established paradigms of American legal culture, as well as the shifts in carceral politics, that established the significant economic position, the American prison-industrial complex holds today. Ultimately, the case study regarding American legal culture during the mid-2010s evaluated developments in the most recent iterations of American legal culture following the gradual implementation of reforms, which was structured along the critical realist domains of the real, actual, and empirical. This was done to ascertain, whether the understanding of legal culture within these spheres is in accordance with one another, and to what degree legislative reforms were implemented in the policies and practices of the selected carceral facilities.

Concerning the first research interest on ideological principles and their application in Louisiana during the 20th century, the following findings were made: The central element of American legal culture could be identified to be its inherent retributivism, which prioritises the confinement and punishment of convicted criminals over efforts of rehabilitation. This approach is justified on moral grounds by foundational mythologies surrounding American exceptionalism, which include the religious component of presupposing moral superiority, exemplified here by the myth of the Promised Land and the institutionalisation of Christian morality; as well as assertions of an individual's responsibility to adhere to these rules; and the assumption of equal opportunity for all American citizens, as described in relation to the myth of the self-made man and the American melting pot. These premisses allow for the disregard of potential systemic inequalities and promote a perception of criminality, that presents criminal behaviour as being disrupting the perfect and fair order of American society, since its causes are assumed to be the lack of self-control and moral virtues, rather than taking circumstantial factors into account. Another substantial consideration of American legal culture is the economic relevance of exploiting cheap prison labour as part of paying back society for one's crimes. Prison labour is generally understood as a means of punishment and repaying damages done to society, thus justifying the low level of safeguards for prisoners' rights and the meagre payouts for incarcerated workers. Within the context of 20th century Louisiana, the extent of exploiting inmate workforces is compounded by the legacy of slavery, as segregationist laws were implemented after the civil war to replace the slave-economy of the 18th and 19th centuries with a prison economy, that relied on leasing convicts to private

contractors and recreating mechanisms reminiscent of the pre-abolitionist South. These trends in legal culture were not only confined to laws and regulations, but were also present in the historical consciousness, as attested by the whitewashing of history perpetrated by organisations, such as the United Daughters of the Confederacy.

The second focal point of legal cultural developments during the era of mass incarceration showed, that pre-existing paradigms of criminal justice were expanded and instrumentalised as part of a bipartisan push towards increasing the number and duration of criminal sentences. As a result of these tough-on-crime incentives, their promotion of retributivism through stoking fears of rising crime rates, along with their reinforcement of racial inequalities, previously observed stigmatisation of inherent moral inferiority was generalised and applied to already marginalised demographic groups. The resulting rise in carceral populations not only necessitated the employment of private for-profit contractors for constructing prisons and administering criminal justice (a practice hardly used since the abolition of convict leasing), but ultimately established the American prison-industrial complex as well as its private interest groups as major players in political decision-making processes and created the framework for an ever-expanding market for incarceration. It can thus be stated that the implementation of mass incarceration policies presented a continuation of pre-existing paradigms of retributivism, racial/class bias, and attributions of morality within Louisiana's legal culture, but significantly and permanently altered the extent of its carceral state and further diminished prisoners' rights in the process of streamlining and reducing carceral expenses.

The observations on the iteration of American legal culture at LSP and Winn in the mid-2010s have revealed some disparities in underlying beliefs compared to previously observed periods. These were predominantly motivated by the state's extremely high rates of incarceration, concerns about the system's ability to efficiently cope with demands while maintaining profitable, and re-evaluations of American standards for prisoner care under consideration of international standards and academic assessments discrediting its effectiveness and appropriateness. This is noticeable within the discourse on solitary confinement and capital punishment, since arguments in favour of abolition or reform not only rely on moral arguments and the preservation of criminals' human rights, but also routinely stress economic benefits to sway their audience. The socio-economic factors behind efforts of reforming structural

elements of Louisiana's carceral system can thus be identified as the recognition of mass incarceration's economic and moral unsustainability, in the face of its detrimental effect on individuals and the societal stability overall. However, major similarities to American legal culture of the 20th century can still be observed in multiple areas, either as having been maintained in the structural make-up of Louisiana's criminal justice legislation or as continued practices within the case study's frame. Especially in Louisiana, legislative guidelines still maintain many tough-on-crime laws from the 1970s-1990s, to the detriment of prisoners' rights, and continue practices of capital punishment and solitary confinement despite the financial burden they impose on the government and entities involved in enforcing them. Instead, justifications continue to rely on arguments, that isolating dangerous individuals from society and punishing them for their misconduct are duties of the American government, as the enforcer of absolute justice. Similarly, beliefs in the superiority of Christian morality and its synonymity with American virtues is present in the approaches to rehabilitation observed at LSP, which postulate the harsh treatment of prisoners to be the sole result of their individual choices, instead of a consequence of multiple societal and personal factors. Thus, it is argued that the central elements of America's retributivist approach to criminal justice, along with its systemic biases and its stigmatisation of criminals, also form the basis of penal practices within Louisiana, intensified under mass incarceration during the 20th century, and remain a vital part of the state's approach to criminal justice. This assertion is substantiated by observations on the lacking diligence of prisons regarding the protection of inmates' rights to health care, labour protections, and the disenfranchisement of the formerly incarcerated. However, some improvements in rehabilitation efforts and incarceration numbers could be observed, along with incentives from lawmakers and NGOs to improve conditions inside prisons and limit the use of psychologically or physically harmful practices employed by Louisiana's carceral institutions.

This study tried to present a comprehensive analysis of major developments in American legal culture, and assess its state in two Louisiana prisons during the 2010s. Future research to further elucidate specific aspects, timeframes, or locations associated with American legal culture will be essential for filling the gaps of this research and in gaining a better understanding of the past and present of U.S. carceral politics. During the 2020s, there have already been significant developments, that altered the representation of legal culture in one or more of the domains applied during this study, including issues of convicts' labour rights,

felon disenfranchisement, as well as restrictions on three-strike laws and mandatory minimum sentence laws.

Developments around the year 2020 have proven the structural and legislative components of American legal culture to be in a period of reorientation, to align with changing demands of focussing on rehabilitation and limiting the expansion of Louisiana's carceral state. Only in recent years have individual state legislatures begun introducing articles to their state constitutions to prevent the 13th Amendment's loophole to forced prison labour from being used. Since 2018, starting with Colorado, several states have added articles to their state constitutions revising the wording of the 13th Amendment to prevent forced prison labour (Colorado State Constitution: Art.2 Section 26: "There shall never be in this state either slavery or involuntary servitude").⁵⁹² In 2021 first efforts of changing Louisiana law for annulling the 13th Amendment's exception on slavery from Louisiana's constitution were made⁵⁹³, but were rejected by the Louisiana House of Representatives in 2021 and again in the following year.⁵⁹⁴ Concerning the same issue, a class action lawsuit was filed by inmates at the Louisiana State Penitentiary in late 2023, criticising forced labour as serving "no legitimate penological or institutional purpose" and being "purely punitive, designed to 'break' incarcerated men and ensure their submission".⁵⁹⁵ Despite opposition, a wider push towards the abolition of forced labour can be recognised through these developments.

Concerning felons' suffrage, significant reforms were introduced in Louisiana leading up to 2019, that aimed at lifting the ban on people's voting rights after having been convicted to a prison sentence of at least one year. This ongoing process had its most recent development in Louisiana, when the practice was first recognised as a discriminatory tool by the responsible courts.⁵⁹⁶ Subsequently, laws were enacted to ensure the restoration of felons' suffrage five years after their release from prison, instead of the voting-ban lasting until the completion of

⁵⁹² Micheal L. Smith, "State Constitutional Prohibitions of Slavery and Involuntary Servitude," *Washington Law Review* 99 (2023), 13f.

⁵⁹³ McGoogan, "'You're a Slave'.

⁵⁹⁴ Louisiana House of Representatives, *Constitutional Amendment: Prohibits slavery and involuntary servitude*, HLS 22RS-890, HR 298 (2022), <https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1253748>.

⁵⁹⁵ "Louisiana Prisoner Suit Claims They're Forced to Endure Dangerous Conditions at Angola Prison Farm," *Associated Press*, 16.11.2023, accessed 16.1.2024, <https://apnews.com/article/louisiana-angola-prison-lawsuit-a091bf3375d091994d5814539dafb87f>.

⁵⁹⁶ Alexander, *The New Jim Crow*, 187f.

one's sentence and the subsequent parole/probation period.⁵⁹⁷ This lift of voting bans also was effective retroactively, granting thousands of Louisiana citizens the right to vote, by reversing the 1976 law mandating the disenfranchisement of criminals in carceral facilities to include their probation period. These reforms also included the re-evaluation of extended sentences and provided judges with more individual authority to deliver lenient verdicts and consider mitigating circumstances. Thus, counteracting detrimental effects of mass incarceration era policies, such as mandatory minimums and three-strike-laws.

An event that could be considered in investigations on further developments of American legal culture was the impact of the Covid-19 pandemic.⁵⁹⁸ When it broke out in U.S. prisons in March of 2020⁵⁹⁹, it prompted many states to release non-violent inmates before their sentence was completed, due to concerns about the overcrowded facilities' inability of adhering to social distancing regulations⁶⁰⁰, and reduce their services to inmates, which was documented to have exacerbated existing psychological distress.⁶⁰¹ An analysis of American carceral practice during this state of emergency and its potential impact on national legal culture could provide insights on potential future developments. Regarding the continuation of this thesis' research, six issues of *The Angolite* from 2020, which comment on the effects of Covid-19 on prison life were added to the JSTOR prison newspaper archives at the beginning of 2024. It will be especially interesting to see, how policy changes for coping with the pandemic have affected

⁵⁹⁷ Elisabeth Crisp, "Thousands of Felons in Louisiana will Regain Voting Rights when this Law Takes Effect March 1," *The Advocate*, 15.2.2019, accessed 14.8.2023, https://www.theadvocate.com/baton_rouge/news/politics/thousands-of-felons-in-louisiana-will-regain-voting-rights-when-this-law-takes-effect-march/article_8a73810c-3153-11e9-81bd-97a9537e8c8b.html.

⁵⁹⁸ Laura Hawks, Steffie Wollhandler, and Danny McCormick, "COVID-19 in Prisons and Jails in the United States," *JAMA Internal Medicine* 180, no. 8 (2020), 1041-1042.

Andre G. Montoya-Barthelemy, Charles D. Lee, Dave R. Cundiff, and Eric B. Smith, "COVID-19 and the Correctional Environment: The American prison as a Focal Point for Public Health," *American Journal of Preventive Medicine* 58, no. 6 (2020), 888-891.

⁵⁹⁹ Mercedes Montagnes, Jamila Johnson, and Rebecca Ramaswamy, *Locked in with COVID-19: How the 2020 Pandemic Ravaged Louisiana's Prisons, Jails, and Detention Centers* (New Orleans: The Promise of Justice Initiative, 2020).

⁶⁰⁰ Nicole Cassarino, Harika Dabbara, Carla B. Monteiro, Arthur Bembury, Leslie Credle, Uma Grandhi, et al., "Conditions of Confinement in U.S. Carceral Facilities During COVID-19: Individuals Speak—Incarcerated During the COVID-19 Epidemic," *Health Equity* 7, no. 1 (2023), 261-270.

Carlos Franco-Paredes, Nazgol Ghandnoosh, Hassan Latif, et al., "Decarceration and Community Re-entry in the COVID-19 era," *The Lancet Infectious Diseases* 21, no. 1 (2021), e10-e15.

⁶⁰¹ Don Hummer, „United States Bureau of Prisons' Response to the COVID-19 Pandemic," In: James M. Byrne, Don Hummer, and Sabrina S. Rapisarda (eds.), *The Global Impact of the COVID-19 Pandemic on Institutional and Community Corrections* (London: Routledge, 2021), 443-457.

subsequent reform proposals, or whether legislators have maintained their previous stances on decarceration and non-violent prisoner releases.

In any case, the American carceral system and the economic dimension of its prison-industrial complex are certain to remain a prevalent issue within discourse on American legal culture as well as human rights groups, civil rights advocates, and proponents of the current practices.

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7. Appendix:

7.1. Coded Primary Sources

a.) Jeffrey Hilburn. "Raising Cane (Syrup), the Old-Fashioned Way." *The Angolite* 39, no. 1 (2014): 8-11.

inside angola



Maj. Roland Sylvester feeds a cane stalk into the large mill as inmate Charles Winfree receives the husk. Juice drains through a filter into the blue barrel. In the background are the cooking shed (left) and the mule-driven small mill.

Raising cane (syrup), the old-fashioned way

SUGARCANE HAS LONG BEEN SYNONYMOUS WITH LOUISIANA CULTURE. It was also a staple enterprise at Angola for decades during the early 20th century, employing large numbers of inmates and employees to cultivate and harvest nearly 5,000 acres planted annually. The business went belly-up in the 1970s, and most of the equipment was sold to Brazilian sugar refineries. What remained on the farm sank into the quiet, rusty decay of discarded technology.

8
The Angolite — January / February 2014

(neutral)
[history of Angola]
Louisiana
[prison production in agriculture]
[collaboration guards prison]

[sugar cane equipment]

history of Angola
mention of inmates' perspective/contribution
current occupation of inmates
statements by correctional officers/employees & mention of contribution
economic considerations

Rehabilitation/re-entry programs of today

[inmate interest]

A few years ago, Robert McCuin, an inmate mechanic at the prison's farm equipment repair shop, discovered that one of the large sugar mills, damaged and unsalable, was set to be shipped off as scrap metal. He contacted Angola Warden Burl Cain about salvaging the antique crusher. Cain gave McCuin permission to begin repairs, which promised to be extensive.

On his own time, with some assistance from fellow inmates Clyde Giddens and Jeffery West, McCuin replaced bushings and cleaned and restored the mill's workings and repainted the entire assembly. The finished mill was then deposited for display at the Louisiana State Penitentiary Museum outside the front gate. But it was destined for greater glory.

Cain decided to put the mill to work producing old-style pure cane syrup. He had a patch of Blue Ribbon and Plaquemine sugarcane planted near the historic Red Hat cellblock, close to the old sugar refinery, and a shed was constructed to house the mill. Its heavy flywheel would be turned by a restored John Deere Model 50 tractor's side drive and a wide canvas belt.

Another shed was built to house a furnace and stainless steel cooking trough manufactured by inmates at the metal fabrication unit. A smaller mill, salvaged in Mississippi and donated to Angola, was mounted on a steel frame to which a boom was attached so that the mill could be turned by Angola-raised Percheron workhorses or mules.

After harvesting and trimming the cane, the stalks are fed by hand through the mills, which use

[manual labour]

grinding wheels to crush it and force the juice down a sluice to be collected for cooking.

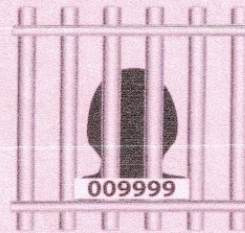
Adam Oliveaux, an Angola maintenance employee and amateur syrup-maker for over six years, supervised the cooking process. Oliveaux has often demonstrated his hobby for others interested in learning old-style syrup-making methods.

While some cooks boil the juice in large copper pots, Oliveaux prefers using the trough. "I like this method, as it allows us to continuously cook and draw off the syrup. The juice is poured into the lower end, where the fire heats it and the thermal reaction causes the syrup to rise to the other end of the trough." While cooking, Oliveaux and several helpers continuously stir the syrup to keep it from burning and use skimmers to remove impurities.

"A valve at the top end allows us to draw off the refined syrup, which we then pour through filtering cloth to remove any other impurities," Oliveaux said. The product is then poured into large barrels and transported to the 914 food processing center near Angola's St. Augustine Chapel where it is bottled in small containers similar to those of yesterday. The only modern technical aid Oliveaux uses is a glass hydrometer that enables him to measure the water content of the finished product.

"I'm really looking for a level of 35 percent, so that once the syrup cools, it is the right consistency and thickness," Oliveaux explained. "If we get a lower number, the syrup will be too thin, and if we get up to 37 percent or more, it's basically sugar."

Prison Numbers



Total number of prisoners at the Louisiana State Penitentiary as of 12/11/13 —

6,399

of prisoners classified as Angola prisoners —

5,463

of prisoners classified as C. Paul Phelps prisoners —

936

Total number of prisoners at the Louisiana State Penitentiary as of 12/10/2012 —

5,331

of prisoners at the Louisiana State Penitentiary serving life without parole sentences as of 12/11/13 —

4,031

of prisoners at the Louisiana State Penitentiary who are first offenders —

2,340

of prisoners at the Louisiana State Penitentiary who are age 18 or under as of 12/11/13 —

10

of prisoners released from Death Row at the Louisiana State Penitentiary since 12/31/13 due to wrongful convictions —

1

Total number of prisoners released from Death Row at the Louisiana State Penitentiary due to wrongful convictions —

10

Source: Louisiana State Penitentiary

inside angola



Asst. Warden Cathy Fontenot, checking in on the refining process, noted that Cain is focused on preserving the mill. "Warden Cain really wants to keep Angola's past linked to its future," she said. "The old sugarcane

era was, in many ways, a brutal period in Angola's history and we should never forget the mistakes of the past. Warden Cain wants to show that we can keep transforming this prison into a model for others to follow, while still preserving those things that made Angola what it is today."

Every aspect of the mill's restoration and the construction of the processing area was done through cooperation between employees and inmates who communicated

well and searched out information from older prisoners actively involved in the sugarcane era. During the weeklong cooking process, employees and inmates worked

Above: Inmates bundled against a chilly winter wind toss harvested sugarcane onto a mule-drawn trailer. Below: The cooking process requires constant attention by employees and inmates



The Angolite — January / February 2014

10

[preserving the past]
[past was brutality]
[historical awareness] → critical
[reform-oriented]
[conservative]
[chronicle]

[cooperation] b/w inmates, officers & among inmates

[extended process] → [successful prolonged collab.]

[visual evidence of cooperation]



together to transform the sugarcane into table-ready syrup. Nearly 20 inmates and a dozen employees took part in the demanding, cane-to-syrup process.

Fontenot reflected on the practices of the sugarcane era—when

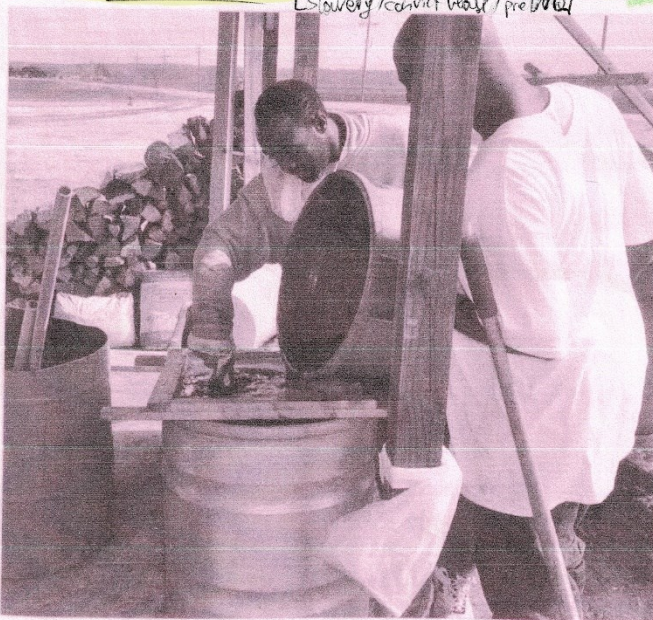
Above left: Maintenance supervisor Tim Byrd and Adam Oliveaux check the hydrometer for water content. Above right: A boiling, bubbling cane cauldron. Below: The syrup is strained into barrels for transport to Angola's food processing center.

long hours, harsh living and working conditions and convict guards were a fact of life at a far more brutal Angola—and pointed out that they have been supplanted by a Bible College, inmate ministers, a hospice program, a re-entry program and many other initiatives designed to facilitate rehabilitation.

Standing outside the cooking shed in the shadow of a huge old copper pot once used in the sugar refinery, Fontenot said, "We can only become a better prison by learning from our mistakes. Tours will see this, ask questions and leave Angola knowing more about our past and seeing how we have changed the future of prisons."

One acre of sugarcane should yield 75 to 80 gallons of syrup. After packaging, it will be sold at the museum alongside other Angola-grown products, including hot sauce and Mayhaw jelly.

—Jeffrey Hilburn



Slavery/convict lease / pre 1967

[harsh working conditions] [under slavery & convict leasing]

[contrasted with rehabilitation programs]

[implications of requiring gratefulness from prisoners today]

[reusing old instruments]

[improving prison conditions]

[contrast representation to the outside world]

[historical consciousness]

[willingness to improve]

[commercial utilisation of work]

b.) John Corley. "Debating Death." *The Angolite* 43, no. 2 (2018): 14-19.

LEGISLATIVE DEATH PENALTY DEBATE

Debating death

Louisiana death penalty survives another legislative attempt to erase it from the statute books

By John Corley

[Reform failure]

[Emotional argument for death penalty]
[consequences of murder for the bereaved]

I have had to hold the hands of a widow of a police officer who was murdered in the line of duty and look them in the eyes. —ADA Loren Lampert (Assistant District Attorney)

~~ADA (Assistant District Attorney)~~

Life in prison without the possibility of parole is in itself a death sentence. —Sen. JP Morrell (Dem.)

[relativising death penalty]
[as the only ultimate exclusion from society]
[equivalent with life-in-prison]

FOLLOWING A DEBATE THAT LASTED LESS THAN TWO HOURS, the Louisiana House Administration of Criminal Justice Committee decided to reject another bid to abolish capital punishment. The mid-April vote was split precisely down party lines, with the Republican majority winning out over seven Democrats and one Independent. Supporters of House Bill 162 said doing away with capital punishment would save money and possibly the lives of wrongfully convicted people. Opponents said anything less than death would come across as soft on crime and diminish the seriousness of the most heinous crimes committed in the state.

[quick decision against the party]
[Party Polarisation]
[Economic dimension]
[correcting wrong decisions/policies]
[acknowledging wrong convictions]
[tough on crime rhetoric]
[Retribution for crimes]

HB162 was a simple proposal. It eliminated the death penalty as punishment for the crimes of first degree murder, first degree rape (of a child under the age of 13; this provision was declared unconstitutional by the U.S. Supreme Court in 2008 but was never officially repealed from Louisiana law) and treason. It replaced death with life in prison without parole for crimes committed after August 1, 2018, leaving in place death sentences already handed down. [No retroactive effect]

An analysis by the Legislative Fiscal Office issued on April 10, a day before the House committee deliberated HB162, predicted that eliminating the death

14 On Legislation/Reforms/Petitions' statements
Arguments against a reform
Arguments in favour of a reform

Financial considerations
Retributivist arguments

Reception/accounts from the general public/outside of prisons
State/governmental & NGO's research & analyses

[Lack of conformity of Law with constitution]

penalty would likely result in an "indeterminable net decrease" in state and local expenses for both public defense and prosecutory obligations. According to data provided by the Louisiana Public Defender Board (LPDB), \$6,251,109 was paid out in 2017 to assure constitutionally effective assistance of counsel in capital cases to indigent defendants at trial, on appeal and in post conviction proceedings. Trial level costs included counsel, investigation, mitigation specialists and reasonably necessary expert assistance. The 40 capital cases currently pending at the trial level would not be impacted by the adoption of HB162, the LPDB pointed out, since it was not a retroactive bill. As a result, the board would continue to incur costs associated with the pending cases and any other cases that might arise prior to the bill's effective date should it become law. This would hold true for cases at the appellate and post conviction level, as well.

The LPDB has spent over \$100 million over the past decade on death penalty-related costs, said public defender Jay Dixon. Without the financial burden of capital punishment, if the same people were facing or serving life without parole sentences, their defense costs would be far cheaper and money could be diverted to other areas needing attention. "There's all sorts of ways we could use that money," Dixon said, to provide funding to the state's cash-strapped public defenders.

"We're in a fiscal crisis and we're paying millions of dollars a year for a service we're getting nothing out of," Kyla Romanach, president of the Louisiana Association of Criminal Defense Attorneys (LACDL), said after a similar bill to abolish the death penalty failed in the state Senate last year. *[leg. reform failed]*

HB162 was also geared toward alleviation of judicial and prosecutory costs. From a judicial standpoint, the cost to try death penalty cases is often more than triple that required to try non-capital cases and can easily reach \$250,000 or more. Capital cases can take up to five years to go to trial and then as many as 25 years to complete the appeals process. Most capital defendants require court-appointed lawyers, more evidence and lengthy social histories, and 300 or more motions are filed. Jury selection takes twice as long, and the trial is roughly four times longer. Without the death penalty, the Fiscal Office determined, those defendants who decided to accept a plea bargain of life without parole may not have accepted a plea, which the judiciary estimated can easily generate \$75,000 to \$100,000 of additional expenditures per case. *[death penalty trial costs are unavoidably high]*

Costs for prosecuting capital cases leading up to and including trial were estimated at three times the cost of prosecuting non-capital cases, according to the Louisiana District Attorneys Association (LDA). These prosecutions can cost \$250,000 or more, compared to roughly \$83,000 to try non-capital murder cases. Appeals and post conviction prosecutions are also significantly more expensive. However, the DAA suggested that eliminating the death penalty could double the number of trials for first and second degree murder; thus, any potential savings resulting from repeal is speculative and potentially offset by an increase in trials. *[saved costs might just shift]*

Speculations aside, capital punishment in the U.S. has historically been steeped in controversy, not least among which spotlights racial disparities in its application. An April report by nola.com asserted that black men are much more likely to be sentenced to death than others. This is not a new finding. In March 2016, *Think Progress*, citing research obtained from the American Civil Liberties Union, underscored this disparity by pointing out that Florida executed 84 people during the modern era (since 1976) of capital punishment, and none of them were white people who killed a black person. That changed in August 2017, when 63-year-old Mark James Asay became the first white man put to death in Florida for killing a black man. In Alabama, 6 percent of murders involve black defendants and white victims, but 60 percent of black defendants and white victims. *[Louisiana more over sentences when victim is white]*

Low inmates were convicted of murdering a white person," the report continued. "In Louisiana, a death sentence is 97 percent more likely in murder cases where the victim is white. Nationwide, only 20 white people have been executed since 1976 for killing a black person. By contrast, 269 black defendants were executed for killing someone who is white. *[Race]* *[Nationwide paradigm - systemic]*

Basketball great Kareem Abdul Jabbar cited the *Think Progress* examination in an interview with *Time* magazine, adding that "Part of the reason for this may be that those most responsible for determining which cases to pursue are white. Nearly 98 percent of district attorneys in counties using the death penalty are white; about 1 percent are African American." Jabbar said when it comes to being executed, minorities have a "Favorite Son" status. *[disproportionate execution of minorities]*

Sabine Parish District Attorney Don Burkett was one of several members of the judiciary, law enforcement and the general public to address the House committee in April. He denied that he prosecuted people

[economic burden of current state]
[prosecution costs]
[follow-up procedures]
[history of racial disparity]
[disproportionate execution of minorities]
[costs]
[only long-term effects]
[redistribution of financial funds for other]
[aid for public defenders]
[repeated efforts have failed]
[trial costs take time]

[note: prosecution costs]
[history of racial disparity]
[disproportionate execution of minorities]
[Louisiana more over sentences when victim is white]
[Race]
[Nationwide paradigm - systemic]
[cost of Black representation]
[cost in the legal/prosecutorial system]

[Plea bargains as positive feature]
[death penalty trial costs are unavoidably high]
The Angolite - March / April 2018

LEGISLATIVE DEATH PENALTY DEBATE

based on their race, adding that the hardest decision he has ever made was to execute someone or oversee the execution. "I don't prosecute African Americans or white or anybody else," he said. "I prosecute criminals. Period. I don't care what color their skin is, I don't care whether they are male or female." Burkett insisted that removing the death penalty from prosecutors would be "a serious mistake."

The death penalty "is not about politics," said Loren Lampert, administrative first assistant district attorney for Calcasieu Parish. "This is about standing for the victims of the most heinous crimes that can be committed."

A number of religious leaders, including a nun and representatives for the Catholic bishops—the sanctity of life has long been heralded by the Roman Catholic Church, which is an organized and vocal critic of the death penalty—displayed solidarity against the "immoral" death penalty. This stance drew the ire of Republican committee member Valerie Hodges, who said there "are 30 places in the Bible that proscribe the death penalty. [It is] part of the government's job to punish those who do evil, and the death penalty is to curb heinous crimes." Hodges, 61, is a minister, co-pastor of Destiny International and Straightway Ministries. "If the state doesn't use the justice system that we have been ordained by God to do," she said, "the people are gonna take the matter into their own hands, and that's one of my biggest concerns."

Rep. Terry Landry, D-Lafayette, a former Louisiana State Police superintendent who wrote HB162, responded by calling the death penalty "barbaric," "inhumane" and "expensive." "It's the business of God to take lives," said Rep. Barbara Norris, D-Shreveport, "not ours."

Rep. John Bagneris, D-New Orleans, commented on the obvious. "I can feel the tension in here." Most death row prisoners have mental problems, Landry said, and legislators should "treat mental health as it is, a public health issue and not a criminal issue. Because if we don't treat it, we're gonna continue to have the same problems. Some of us are not voting the way our heart is telling us to vote. Some of us are voting because of political pressure."

According to *The Advocate* in Baton Rouge, Landry urged lawmakers to put politics aside. "This is a piece of legislation that literally decides life and death. I want to plead to everyone to reach down deep into their spiritual beings," Landry also cited the danger of wrongful conviction for which death makes no excep-

tion. "If we risk executing one man for the sake of having a bill, what are we? Let's kill everybody," Landry said life in prison is punishment enough for the worst crimes. "I think one wrongful execution is not worth having [the death penalty]."

Rep. Joseph Marino, I-Gretna, echoed Landry's concerns. "There are a lot of issues. I can't get past the fact that we might execute an innocent person."

Those arguments were countered by Rep. Raymond Crews, R-Bossier City, who said the death penalty is "a recognition of how important life is and how sacred life is. We don't want to wrongfully accuse or kill anybody. With technology and the way things have gone DNA-wise, we are limiting that further and further each year."

Eleven condemned prisoners have been released from Louisiana's death row as a result of wrongful convictions, including Rodricus Crawford in 2017 after five years awaiting the needle. Glenn Ford spent 30 years waiting to die; his charges were dismissed in 2014. Damon Thibodeaux spent 15 years before exoneration in 2012. Dan Bright, eight years on death row, charges dismissed in 2004. Ryan Matthews, eight years on death row, charges dismissed in 2004. John Thompson, 14 years on death row, acquitted in 2003. Albert Burrell and Michael Graham, 13 and 14 years on death row, charges dismissed 2000 and 2001. Shareef Cousin, three years on death row, charges dismissed in 1999. Curtis Kyles, 14 years on death row, charges dismissed in 1998. Johnny Ross, six years on death row, charges dismissed in 1981. Eleven men, handed a check for bus fare and sent on their way to begin the daunting task of putting their lives back together. Year after year, we've identified them, because prosecutors manipulated the facts in order to secure a conviction, because juries lacked the ability or will to objectively weigh the evidence and the motivations of the presenters.

Nationwide, 158 prisoners condemned to die for crimes they did not commit have been freed from death row since 1973. Thirty-two states, the federal government and the U.S. military retain statutory provisions for the death penalty.

During a meeting with inmate leaders at Angola in January, Crowley Republican John Stefanski said that Louisiana is a punitive state in which the best hope for change lies with the U.S. Supreme Court. ("Seeking Solutions," *The Angolite*, January/February 2018). Still, systemic changes have been made by the state government and will continue in dramatic fashion, just not over-

Party all agree was overhauled prior support for reform
L. highest reversal rate in nation
Death penalty most frequent in US
Few known cases executed
Public support low
Questioning the rationale with the
repeated criticism
Failing to act on controversy

[The vote on abolishing the d.p. was already an unprecedented success]
night. "Never before did I think in Louisiana we would even be discussing removing the death penalty from the table and we came one vote short in committee (in 2017) from doing that." Stefanski said he was the only white Republican on last year's committee to vote for repeal. This year, the *Advocate* reported, the lawmaker preferred the death penalty measure be decided by the voters rather than their representatives in the Legislature, and joined other Republicans in voting against HB162. Louisiana has the highest conviction reversal rate in the country—83 percent—reported the *Weekly Citizen* in Gonzalez, another unflattering state statistic that Rep. Denise Marcelle, D-Baton Rouge, called "shameful." Her fellow committee member Tony Bacala, R-Prairieville, replied that "83 percent reversals does not equate to 83 percent acquittals." Since 2000, the *Citizen* said, 90 percent of the state's capital convictions have been reversed. [Almost all death penalties are overturned]
Only 16 of Louisiana's 64 parishes, noted attorney and LACDL member Walter Sanchez, have sent someone to death row in the past 15 years. Demographic records indicate that 69 men were housed on death row at the Louisiana State Penitentiary at Angola in late April 2018. One woman also faces the ultimate punishment, housed in separate quarters at Angola. The state has not executed anyone since child-killer Gerald Bordelon waived his appeals and volunteered for the guillotine in 2010, and before that Leslie Dale Martin in 2002. Michael Owen Perry is the state's longest-serving condemned prisoner, having spent 32 years on death row for a 1983 quadruple murder in Lake Arthur.
A March 2016 Multi Quest poll of Louisiana residents found that, when given a choice between life or death, 57 percent preferred a lengthy prison term or life without parole as appropriate for first degree murder, with 24.3 percent voicing support for the death penalty. [Alternative]
"We aren't using the death penalty," Bagneris told his fellow committee members. "Why have it?"
Capital punishment in Louisiana has come under fire several times in recent years, including the 2017 drive that saw HB101, co-sponsored by Landry and Rep. Steve Pylant, R-Winnboro, collapse under controversy. Pylant "raised eyebrows" when he voted in committee to kill his own legislation, according to *The Advocate*, essentially blindsiding Landry, who learned of Pylant's opposition when Pylant spoke against the measure only minutes before the 8-9, near party-line vote was taken.

[Politician's decisions in legislation votes are not consistent]
[Voting for party interests over pain]

"He co-authored the bill," Landry said. "I just think that it's not the way I would conduct business with a colleague. I'd give them the decency of saying I can't support it."

[Lack of honesty]

Following the vote, Pylant said he has always supported the death penalty and added his name to Landry's bill as co-sponsor to draw attention to the fact that Louisiana isn't actually executing anyone. "I just think that in the times we live in, the tight times, if we're not going to do it, then we don't need to be spending that kind of money."

[Executions are a real financial investment]

Pylant told reporters a week later, "We need to start executing folks. They say they can't get the pharmaceuticals. Well, then why can other states get them but we can't? If we don't want to do lethal injections, we got firing squads, we got gas chambers, we got other means."

[Alternatives to lethal injection → brutal / inhumane]

Sen. Dan Claitor, R-Baton Rouge, who sponsored a separate version of Landry's bill, and who previously said he felt his bill had enough support to pass a full Senate vote, immediately withdrew SB142, which otherwise would eventually be presented to the same House committee that killed Landry's effort. "Why would I push the bill when the same one just died in committee?" he said. "The bill is dead."

The sole committee vote against Claitor's SB142 was from Republican Sen. Bodi White of Central. "It's not my job to forgive the people who commit murders," he said. "That's for the family. It's my job to represent the 130,000 people who sent me up here."

Louisiana law authorizes only lethal injection with specified drugs as the means by which condemned prisoners may be put to death. The corrections department does not currently have a supply of the authorized drugs to carry out any executions. [Insufficient supply to enforce d.p.]

The day before this year's House vote, the Senate Judiciary A Committee voted 4-1 to advance SB51 sponsored by Sen. JP Morrell, D-New Orleans, a separate measure to repeal capital punishment. The bill's sole committee opponent was White. At the close of April, SB51 remained pending for debate before the full Senate. Even if it passes that chamber, Morrell said he will probably withdraw it from House consideration for the same reasons as Claitor in 2017. [Alternative avenue to repeal]

The *Associated Press* predicted that the failure of HB162 and SB51's expected withdrawal likely closes this year's legislative debate on capital punishment in Louisiana. No executions are currently scheduled.

[Status of executions is unchanged]
[Stagnant, just confinement for now currently]

Outcome of the
executions
Call to execute
drugs
discouraging elected
politicians from
proposing
abolition
Obstruction of legislation

c) Jaime Maduro. "Seeing for Themselves." *The Angolite* 41, no. 1&2 (2016): 14-15.

inside angola

Seeing for themselves

Area judges, new Pardon Board members, get a look at the workings of Angola's innovative re-entry program

[positive change, solution]



Left: Small engine technology mentor Justin Singleton discusses his mentees with Judge William "Rusty" Knight. Below: Tangipahoa Parish Sheriff Daniel Edwards and Judge Blair Edwards listen as Singleton explains the workings of the re-entry program

[value of labour]
gines in need of repair; from broken lawn mowers to four-wheelers and motorbikes. *[experience]* of guys who have come through this program and have been very successful. I teach them skills that they can use to build their lives and be successful as far as their careers are concerned. *[prior]* *[rehabilitation success]* *[rehabilitation method]* *[face on earth]*

Singleton, who is serving a life sentence, teaches more than 15 students who, to successfully complete the course, must pass an industry-standard certification exam. All will be returning to their homes and communities within the next two years. *[sentence of mentor]* *[peer-mentor with]* *[life sentence]*

"If it has a small engine, we fix it," lead instructor and vocational mentor Justin Singleton told the group as they filtered into a classroom filled with tools and equipment. *[facility]* *[re-entry equipment]*

AFTER LOUISIANA GOV. John Bel Edwards appointed five new members to the Board of Pardons and Parole, reappointing Sheryl M. Ranatza as its chairperson and Jim Wise as the vice-chairman. *[relevant to know their position]* *[personnel]* the members toured Angola in early February accompanied by an entourage of judges and probation and parole representatives from Livingston, St. Helena, St. Tammany and Tangipahoa parishes that included Edwards' brother, Tangipahoa Sheriff Daniel Edwards, Juvenile Court Judge Blair Edwards, Judge William Knight and District Attorney Scott Periloux of the 21st Judicial District.

Following a bus-ride tour through Angola's vast agricultural fields, the entourage zoomed in on the prison's Corrections Court Re-entry Program facilities, making their first stop at the Outdoor *[plantation]* *[relevant to Board of pardons]* *[Board members' interest]*

[disparance] *[Angola (cloves)]* *[Agriculture (modern)]* *[re-entry program]*

[moral rehabilitation] *[character change]*

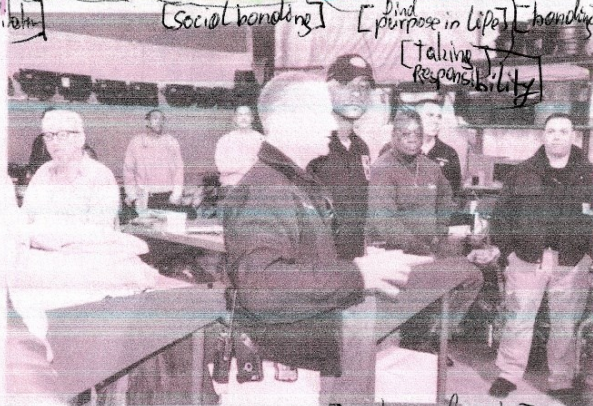
14 *The Angolite — Double Issue — January / February - March / April 2016*

- Re-entry programs
- actions of visitors (5 parole board members, judges, probation & parole officers, Sheriff, district attorney)
- inmate commentary
- personnel commentary
- moral rehabilitation

not better criminals. And the vocational and social mentors at Angola set an example of what better is and then hold them accountable to the same standards. Singleton is also a graduate of the New Orleans Baptist Theological Seminary and pastors the Angola Jail Gospel Fellowship church.

Perry Stagg, assistant warden of programming, told the group that "one of the most important reasons why the re-entry program works so well is the fact that inmate ministers teach, train and

[role model]
[discipline]
[Christianity]
[religion]
[re-entry program]
[moral rehabilitation]



take care of the program." In addition to small engine repair, there are more than 17 vocational certifications offered in areas like automotive technology, culinary arts, fiber optics, masonry, power generations and welding. But the main reason why this program works so well is because we focus and concentrate most of our time in moral rehabilitation, changing the men from the inside," Stagg said. "If we don't change their heart, we have not changed their minds."

Social and vocational mentors dwell, eat and sleep in the same

[vocational]
[re-entry program]
[moral]
[focus on moral rehab]
[gradual rehab]
[moral behavior]

dormitories with their mentees. "If one of them gets up in the middle of the night because he heard some bad news from his wife or his family," Stagg said, "he may wake his social mentor up to talk and these guys will get up to listen to them."

Wayward Jones has been a lead social mentor for the past five years, helping the mentees find purpose in their lives while doing time. The social mentor's role starts when a mentee first comes at Angola. Having served

as a social mentor for the past five years, helping the mentees find purpose in their lives while doing time. The social mentor's role starts when a mentee first comes at Angola. Having served

almost two decades of a life sentence, Jones first meets his mentees during their intake process, making sure they are provided with state clothes and two locker boxes for their personal property. "We tell them about the rules and the uniforms they need to wear," Jones said. "We are with them shoulder to shoulder making sure they make a good transition. We learn about their backgrounds, where they come from and why they are here and how we could help them because it's about what happens after class. We encourage good behavior and document

[social bonding]
[shared activities]
[personalized aid]
[help to prison life]

it, so we could help them in these areas where they lack the most." Social skill programs like anger management, victim awareness, 100 hours pre-release and residential drug abuse are just some of the classes included in the curriculum that provide the mentees with a moral compass. "No one wakes up and says I want to be a drug addict or a criminal," Singleton said. "There are some underlying factors that lead up to that kind of lifestyle, and a lot of times, we just miss them. With the relationships we build with these guys, we get a great opportunity to start taking off those bandages and start stitching up those wounds because when healing takes place, that's where we begin to see these guys change, and they realize that their lives actually matter."

Before the group returned to the bus that would take them to the automotive technology school, Judge Knight said that Tangipahoa, Livingston and St. Helena Parishes are considering the possibility of starting a re-entry program in their district. Judge Jeff Johnson, Scott Periloux and Kenneth Loftin form part of the key components to have the right people on board to run this program, Knight said. "Five of the seven board members of the pardon and parole board under the new administration with Gov. Edwards are here and is their first opportunity to visit and see what is taking place at Angola and see the program at work."

—Jaime Maduro

[documentation of observations]
[social skills]
[anti-drugs]
[drug prevention]
[moral rehabilitation]
[moral]
[consideration of backgrounds]
[drug rehabilitation]
[non-accusatory tone]
[social bonding]
[process, not instant solution]
[drug rehabilitation]
[through social support]

[mentor program]
[re-entry program]
[additional opportunities provided by judges]
[qualifications met]
[quality control/assessment]

d) John Corley. "Solitary." *The Angolite* 40, no. 3&4 (2015): 5-7.

-John Corley

Department of Corrections Medical and Mental Health Director Dr. Raman Singh flatly denied. The 63-page civil action specified several areas of concern, according to a press release from the American Civil Liberties Union, including "delays in evaluation, treatment and access to specialty care; denial of medically necessary treatments including surgeries, medication, medical devices, and physical therapy; inappropriately managed medications; poor follow-up care; and a lack of qualified staff."

The lead plaintiff in *Lewis v. Cain* is 81-year-old Joseph Lewis Jr., joined by Otto Barrera, Clyde Carter, Ricky D. Davis, Cedric Evans, Reginald George, Edward Giovanni, Kentrell Parker, Farrell Sampier, Lionel Tolbert, John Tonubbee and Rufus White. Represented by the nonprofits Advocacy Center in Lafayette and the Promise of Justice Initiative in New Orleans, the ACLU of Louisiana and the Washington, D.C., law firm of Cohen Milstein Sellers & Toll PLLC, the complaint requested class action designation on behalf of the named plaintiffs and "all others similarly situated." It named Angola Warden Burl Cain, Assistant Warden for Health Services Stephanie Lamartiniere, Corrections Secretary James LeBlanc and the entire state Department of Corrections (DOC) as defendants.

"The grave systemic deficiencies in the delivery of medical care at Angola lead to appalling outcomes," said plaintiffs' attorney Jeffrey Dubner. "Preventable illness, injury and death are not part of a prison sentence, yet Angola officials are pervasively subjecting the men in their custody to these risks."

Singh told *The Advocate* in Baton Rouge that despite the challenges of attending Angola's 6,200-plus inmates, particularly the increasing number of elderly and diseased prisoners, everyone there receives "quality health care." Penitentiary staff, Singh said in a written statement, "in collaboration with LSU (Louisiana State University) and other private healthcare providers has provided appropriate, quality care despite the challenges and will continue to do so." Singh said the *Lewis* attorneys met with only a "small fraction of the offender population, yet very broadly claim that all offenders lack appropriate care," and that assertion, he said, was untrue.

Prisoners have been challenging healthcare access and quality for as long as there have been prisons. Last summer, the Alabama-based Southern Poverty Law Center and the Alabama Disabilities Advocacy Program sued the Alabama DOC for ignoring prisoners' medical and mental health needs and discriminating against disabled prisoners. The state corrections system has the most overcrowded prisons, the lowest amount spent per inmate on health care, and one of the highest prisoner mortality rates in the country. In Illinois, more than 170 federal lawsuits were filed within a two-year period following implementation of the 2011 medical services contract between the state corrections department and Wexford Health Services, a for-profit company. One complainant was inmate Ray M. Fox, who was subsequently awarded \$12 million by a federal jury against a DOC certified medical technician who failed to provide anti-seizure medication, which resulted in Fox suffering a seizure that caused severe and permanent brain damage.

The public is generally apathetic to prisoners' health care and outraged when prisoner complaints garner outside attention. A 2012 article in the *Daily Beast*, "California inmates get better health care than ordinary citizens," suggested that "[T]he people of ... California need only get convicted of a serious crime ... as a sure way to get adequate health care." And last year, a report by ABC News about a prisoner seeking an organ transplant lamented that, "Thanks to the state of Oregon, a law-abiding citizen in need of a kidney transplant may have to die so that [a] death-row prisoner ... can live." Both premises grossly distort the facts and are ridiculously exaggerated.

SOLITARY

The U.S. Supreme Court's recent 5-4 harmless error ruling against California death row inmate Hector Ayala was not unexpected from the conservative majority. *The New York Times* reported in June, but it did spawn interesting comments from concurring Justice Anthony Kennedy on the subject of solitary confinement. Ayala, Kennedy wrote, "has been held for all or most of the past 20 years or more in a windowless cell no larger than a typical parking spot for 23 hours a day; and in the one hour when he leaves it, he likely is allowed

Corrections (Policies)

d.p. sentence upheld

Supreme Court

prison

Conditions of solitary

conditions

condemning conditions of solitary confinement

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negative connotation

positive connotation

mental health

perception / accounts from the general public / outside of prisons

scientific data / assessment

Legal / legislative decisions / opinions

news briefs

little or no opportunity for conversation or interaction with anyone. A practice rarely mentioned by the Supreme Court, Kennedy wrote that solitary's "near-total isolation exacts a terrible price" long recognized by courts and commentators. Kennedy noted that research has demonstrated that prolonged solitary confinement is most dangerous to young people and the mentally ill. If the constitutionality of this type of punishment is eventually challenged in a lawsuit, he wrote, courts may have to decide "whether workable alternative systems for long-term confinement exist, and, if so, whether a correctional system should be required to adopt them."

Also in June, a settlement to a federal lawsuit filed by the American Civil Liberties Union against the state of Illinois will limit solitary confinement in its six state-run juvenile correctional facilities that house nearly 700 youths. The settlement states that juvenile inmates spend at least eight hours a day outside their cells, and that isolation inmates continue to receive education and mental health services. "What we would say is that if you get to leave your room and be in the company of staff," said Adam Schwartz, a lawyer with the ACLU of Illinois, "and have the opportunity to talk to them for eight hours every single day, there's no longer solitary confinement." The new rules do not apply to hundreds of other young people in the custody of the Illinois Department of Corrections. Illinois is now one of 20 states that prohibit solitary as a punitive response for juveniles. Faced with similar lawsuits, Mississippi, New York and Ohio now require juveniles to be out of their cells for at least four hours a day. Some allow confinement for only a few hours a day, but nine states have no time limitations. In September 2014, the New York City Corrections Department banned solitary confinement for 16- and 17-year-olds at its Rikers Island complex, and the following January extended the ban to all Rikers inmates age 21 and younger. Eboni B. Smith, an advocacy group, also noted that adults, too, can fall victim to the psychological detriments of solitary confinement. A May 2015 report by the Vera Institute of Justice estimated that between 25,000 (in supermax facilities) and 80,000 (in federal and state facilities) prisoners are living in some form of administrative, disciplinary, protective or temporary segregation from

the general prison population, indicating that the practice of solitary confinement is still widely used by corrections officials despite years of research detailing its overall negative impacts. The report, "Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives," confirmed that the full scope of solitary confinement in the U.S. cannot be statistically appreciated because different jurisdictions use a variety of nomenclatures for the practice and no national standards exist to reconcile the differences. There are also differences in criteria for admission to and release from segregation that vary from state to state and even year to year. Any figures derived from the best available data, therefore, are merely estimates.

A 2015 study for the *American Journal of Public Health*, "Public Health and Solitary Confinement in the United States," reiterated that "In nearly every scientific inquiry into the effects of solitary confinement over the past 150 years has concluded that subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social and physical pathologies." The Vera report named several of the most common manifestations, including hypersensitivity to stimuli; distortions and hallucinations; diminished impulse control; increased anxiety and nervousness; severe and chronic depression; appetite and weight loss; heart palpitations; talking to one self; problems sleeping; nightmares; self-mutilation; difficulties with thinking, concentration and memory; and lower levels of brain function, including a decline in EEG activity after only seven days in segregation. Suicide rates and incidents of self-harm are also higher.

As a result of legislation or lawsuits challenging the legitimacy of solitary confinement as a penological tool—and spurred by several widely-publicized events including a *New York Times* exposé branding solitary confinement as torture, the ACLU taking up the cause in 2011, a 2013 anti-solitary hunger strike at California's Pelican Bay State Prison, and the shooting murder of Colorado Department of Corrections Director Tom Clements by a former inmate set free directly from prolonged solitary confinement—more U.S. states passed reforms in 2014 than in the past 16 years, according to The Marshall Project. Ten states—

6
"Poll within" → no control, but imposed on them

[use of solitary by prisons]
[research results condemn solitary]
[no national standard for quantifying its use]
[no national standard for legitimate use]
[arbitrariness of solitary]
[resulting difficulties to assess its viability]
[scientific concern is well established]
[neg. mental & physical effects]
[exhaustive list]
[mental health complications]
[after 7 days → Qualifying the urgency of change → prolonged solitary = normal in U.S.P]
[Questioning Solitary]
[public attention]
[evidence bc. of solitary]
[set free directly from solitary → connection implied → solitary → its mental health consequences cause violent behaviour]
[reforms]

[reforms] + positive
positive outlook + implausible reforms
 Arizona, California, Colorado, Indiana, Michigan, Nebraska, New Mexico, New York, Ohio and Wisconsin—adopted 14 measures “curtailing the use of solitary, abolishing solitary for juveniles or the mentally ill, improving conditions in segregated units, or gradually easing isolated inmates back into the general population.” *[slow re-integration]*

PRISON WOMEN

About 206,000 women in the U.S. are currently serving jail or prison time, according to a new report by the Prison Policy Initiative (PPI), nearly triple the total in 1990 and a figure that accounts for almost 30 percent of the world’s incarcerated females. Only Thailand locks up more women, but with an incarceration rate of 273 of every 100,000, West Virginia has the highest female incarceration rate in the world.

The PPI study analyzed how punitive America is toward women and how each state’s relevant policies differ with each other. Aleks Kajstura, a PPI legal director, recently told the Real News Network. “So for example, you can say, our state is better than Louisiana, or at least we’re not Texas. But when you ... step out of that isolationist world view and look outside the United States, even some of the ‘better’ states in the country are some of the harshest incarcerators of women in the world.”

More than 90 percent of prisoners in this country are men, but the number of women inmates has been growing at a faster rate than the overall prison population, according to The New York Times. Most are convicted of low-level drug or property crimes, caught up in larger sting operations aimed at the male drug dealers they were living with. Many suffer from mental illness or drug addiction and, as with men, the racial disparities are severe—black women are imprisoned at almost three times the rate of white women.

Women in the criminal justice system live with a particular set of burdens. A large percentage have experienced physical and sexual abuse in their lives, and often the system perpetuates the abuse. Twenty-eight states mandate pregnant inmates be shackled during labor, delivery and while caring for their newborns, and in many cases the newborns are immediately removed from the mothers. Two-thirds of women entering the system have children, many of whom bounce between foster homes for years.

TOP INCARCERATORS OF WOMEN: STATES AND NATIONS

(per 100,000 citizens)

State	Rate	Country	Rate
West Virginia	273	Thailand	130
Oklahoma	226	United States	127
Kentucky	220	Qatar	28
Alabama	211	Lithuania	27
Arizona	211	Hungary	26
Texas	206	Czech Republic	25
Louisiana	198	Ecuador	25

Although female prisoners suffer many of the same physical and emotional hardships as their male counterparts, the additional challenges inherent to their gender, including pregnancy and children left behind, require commonsense, humane attention. About 4 percent of women enter state prisons pregnant and give birth there, according to a report by Pacific Standard magazine. To address the special needs of these women and nurture the all-important bond between the child born behind bars and its mother, some states have created nursery programs which allow babies to remain with their mothers for varying periods of time and thereafter enjoy enhanced visitation opportunities. These programs have proven beneficial to both the family unit and criminal justice system.

Attachments formed between mother and child in a prison nursery setting can be as strong as attachments formed outside of prison, said Dr. Mary Byrne, a professor at Columbia University’s School of Nursing, who has examined nursery programs at Bedford Hills and Taconic Correctional Facilities in New York. Her 2011 study, “Intergenerational Transmission of Attachment for Infants Raised in a Prison Nursery,” concluded that “mothers in a prison nursery setting can raise infants who are securely attached to them at rates comparable to healthy community children.” The study also confirmed findings of a 2009 report by the Women’s Prison Association’s Institute on Women and Criminal Justice that women in mother-infant programs have lower recidivism rates.

Currently, prison systems in California, Illinois, Indiana, Ohio, Nebraska, New York, South Dakota, Washington, West Virginia and Wyoming operate some sort of nursery program, with other states considering the idea.

The National Registry of Exonerations listed 1,628 persons since 1989 exonerated of crimes that sent them to prison as of late this past sum-

7.2 Abstracts

7.2.1 English

The United States of America commonly proclaim the nation to be “The Land of the Free”. Yet, its criminal justice system produces the highest number of incarcerations worldwide in addition to being the target of frequent criticisms for its systemic discrimination and violations of prisoners’ rights. Thus, the question arises how this system is legitimised as part of America’s dominant *legal culture* – referring to the common understanding of criminal justice. While ample research on mass incarceration between the 1970s and 2000s exists, analyses on recent developments are less expansive, despite reform efforts having gained more momentum following 2010. Thus, this research intends to contribute to filling this gap by investigating the degree of compliance with long-standing ideological paradigms of American legal culture in Louisiana’s prisons system during the mid-2010s. For this purpose, the thesis includes literary research on the initial formation of a distinct American legal culture after gaining independence, explored here through the lens of American myths criticism and civil religion, and its evolution since the 1970s into a system of mass incarceration. For recent trends, a case study on the representation of legal culture at two carceral facilities in Louisiana during the mid-2010s was conducted, whose methodology comprises of a critical realist approach to grounded theory to differentiate between structural, facility-specific, and individual expressions of legal culture, and incorporates the analytical process of coding for selected primary sources. The results indicate Louisiana’s institutions, carceral facilities, and their employees to have maintained retributivist and moralistic legal paradigms. However, there were some noticeable deviations from prior patterns on an institutional level, including the discontinuation of bipartisan support for penal expansion, with Democrats more frequently advocating for lowering incarceration numbers, expanding (ex-)convicts’ voting rights, as well as limiting the use of solitary confinement and capital punishment. Yet, these changing attitudes on criminal punishment have not trickled down to prison practice thus far. Insights from this research validate legal cultural analyses and American civil religion as an important component for understanding contemporary political discourse on incarceration in the USA. The reluctant move away from mass incarceration era policies in Louisiana’s legislation implies broader criminal justice reforms to be possible, but difficult to enforce in the near future, if the other spheres of criminal punishment continue to adhere to their old patterns.

7.2.2 German

Die Vereinigten Staaten von Amerika behaupten oft, das „Land of the Free“ zu verkörpern. Im Widerspruch dazu verzeichnet das dort vorherrschende Justizsystem jedoch die meisten Inhaftierungen weltweit und steht zusätzlich häufig wegen seiner systemischen Diskriminierung und Verletzungen von Rechten inhaftierter Personen unter Kritik. Folglich stellt sich die Frage, wie dieses System im Rechtsverständnis Amerikas legitimiert wird. Während sich ein Großteil der Forschung mit der Entstehung von „Mass Incarceration“ zwischen den 1970er und 2000er Jahren beschäftigt, sind Analysen jüngere Entwicklungen betreffend, trotz erhöhtem Interesse an Reformen, weniger umfassend. Folglich versucht die hier vorliegende Ausarbeitung, dazu beizutragen, diese Forschungslücke zu füllen, indem sie das Gefängnisssystem Louisianas Mitte der 2010er Jahre hinsichtlich dessen Übereinstimmung mit Paradigmen amerikanischer Rechtskultur untersucht. Um dieses Forschungsinteresse zu erfüllen, wurde eine Literaturrecherche zum Ursprung eigenständiger amerikanischer Rechtskultur nach der Unabhängigkeitserklärung der USA, sowie Entwicklungen hin zur Akzeptanz von Masseninhaftierungen seit den 1970ern vorgenommen, die sich an Ansätzen von *American Myth Criticism* und nationaler Zivilreligion orientieren. Für die Untersuchung aktueller Trends wurde eine Fallstudie zur Rechtskultur in zwei Gefängnissen im Bundesstaat Louisiana Mitte der 2010er Jahre durchgeführt. Die Methodik besteht aus einem Critical Realist Ansatz zur Grounded Theory, der eine Unterscheidung zwischen strukturellen, gefängnispezifischen und individuellen Sphären amerikanischer Rechtskultur ermöglicht, und integriert analytisches Kodieren in der Untersuchung ausgewählter Primärquellen. Die Erkenntnisse aus dieser Forschung ergaben, dass Institutionen, Haftanstalten und deren Mitarbeiter*Innen retributive und moralistische Werte rechtlicher Paradigmen vorangegangener Rechtsvorstellungen beibehalten haben. Allerdings waren auf institutioneller Ebene auch einige bemerkenswerte Abweichungen von etablierten Mustern zu beobachten. Diese beinhalteten ein Ende parteiübergreifender Unterstützung für die Erweiterung des Gefängnissektors, wobei Mitglieder der Demokratischen Partei häufiger für eine Verringerung der Gefängnispopulation, die Sicherung des Wahlrechts für (ehemalige) Straftäter*Innen sowie die strengere Regulierung von Einzelhaft und der Todesstrafe plädierten. Allerdings sind diese reformatorischen Haltungen bislang nicht in die Gefängnispraxis durchgedrungen. Die Ergebnisse dieser Forschung veranschaulichen die Relevanz historischen Verständnisses amerikanischer Rechtskultur für die Analyse aktueller

politischer Diskurse über Inhaftierung in den USA. Die zögerliche Abkehr von Regulierungen zur Masseninhaftierung in der Legislative Louisianas deutet zwar darauf hin, dass umfassendere Reformen im Strafrecht möglich sind, deren Implementierung in naher Zukunft jedoch schwer durchzusetzen ist, solange andere Ebenen des Strafvollzugs in Louisiana an alten Mustern festhalten.